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**IN THE SPECIAL COURT NO. I
OF THE SPECIAL JUDGE UNDER THE MAHARASHTRA
CONTROL OF ORGANISED CRIME ACT, 1999 AND
THE NATIONAL INVESTIGATION AGENCY ACT, 2008
AT MUMBAI**

MCOC SPECIAL CASE NO.21 OF 2006

The State of Maharashtra
(Through Anti Terrorism Squad,
Mumbai, C. R. No.05/2006)

... **Prosecution**

V/s.

1. Kamal Ahmed Mohd. Vakil Ansari
Age : 32 years, resident of : At & Post
Basopatti, Dist. - Madhubani,
State – Bihar.
2. Tanveer Ahmed Mohd. Ibrahim Ansari
Age : 32 years, resident of : 4/31,
B. I. T. Chawl, 2nd Floor, Mominpura,
Mohd. Ansari Siddique Road,
Agripada, Mumbai – 11.
3. Mohd. Faisal Ataur Rahman Shaikh
Age : 32 years, resident of : (i) Tirupati
Apartments, 'A' Wing, 2nd Floor, Flat No.203,
Naya Nagar, Mira Road, Dist. Thane and
(ii) 24 Lucky Villa, Kantwadi, Pericross Road,
Bandra (W), Mumbai (On rental basis from
July, 2005 till today).

4. Ehtesham Qutubuddin Siddique
Age : 25 years, resident of : 202,
Safiya Manzil, Naya Nagar,
Mira Road (East), Dist – Thane.
5. Mohamad Majid Mohamad Shafi
Age : 28 years, resident of : 17/2/H/6,
Canal West Road, Near Narkel Danga
Police Station, Raja Bazar,
Kolkatta – 700 009.
6. Shaikh Mohd. Ali Alam Shaikh
Age : 37 years, resident of : Plot No.33,
'T' Line, Room No.2, Govandi,
Shivajinagar, Mumbai – 43.
7. Mohammad Sajid Margub Ansari
Age : 29 years, resident of : 101,
Saba Parveen Apartment, Pooja Nagar
Road, Naya Nagar, Mira Road (E),
Dist. Thane.
8. Abdul Wahid Din Mohammad Shaikh
Age : 29 years, resident of : (i) 202, 'B' Wing,
Moonleet Apartment, Opp. Kalsekar College,
Mumbai Pune Highway, Kausa-Mumbra,
Dist. Thane and (ii) 6/7, Khan and Sanghavi
Chawl, G. M. Colony, Amrut Nagar,
Ghatkopar, Mumbai – 86.
9. Muzzammil Ataur Rahman Shaikh
Age : 22 years, resident of : (i) Tirupati
Apartments, 'A' Wing, 2nd Floor,
Flat No. 203, Naya Nagar, Mira Road,
Dist. Thane and (ii) B. T. M., 2nd Street,
29 Main 13 Cross, Banargatta, Bangalore.

10. Suhail Mehmood Shaikh
Age : 37 years, resident of : 1538,
Galli No.16, Central Street, Bhimpura,
Camp, Pune – 1.
11. Zameer Ahmed Latifur Rehman Shaikh
Age : 32 years, resident of : Room No.100,
'L' Block, Vallabhbhai Patel Nagar,
Lotus Colony, Worli, Mumbai – 18.
12. Naveed Hussain Khan Rasheed Hussain Khan
Age : 26 years, resident of : (i) A/604, Topaz
Apartment, Narmada Paradise, In front of
R. K. Inn, Near Shivar Garden, Mira Road,
Dist. Thane and (ii) Plot No.43/45, Lake Shore
Towers, G-3, New Vidyanagar Colony, Neredment,
Sikndarabad, Andhra Pradesh.
13. Asif Khan Bashir khan @ Juned @ Abdulla
Age : 35 years, resident of : (i) 15, T. B. S. Road,
Near Swimming Pool, Shirsoli Naka,
Jalgaon 425 007 and (ii) M/18, 19, Ashok Nagar,
Near Ramdev Hotel, Belgaum,
Karnataka. ... **Accused.**

Wanted Accused :-

1. Azam Chima @ Babaji, Pakistani National
Javed Chaudhari Bungalow, Chuburji Chowk,
Karachi-Bahawalpur Road, Pakistan.
2. Rizwan Mohammad Dawarey, Indian National
203/B, Premanand Park, Shivarkar Road,
Vanawadi, Pune. Presently based in Saudi Arabia
-Detail address not known.

3. Rahil Ataur Rahman Shaikh, Indian National
Tirupati Apts., 'A' Wing, 2nd Floor, Flat No. 203,
Naya Nagar, Mira Road, Dist. Thane.
Presently based in Birmingham, U.K.
Detail address not know.
4. Hafiz Zuber @ Mohammad Zuber, Indian National
At Balkatwa, Post-Basupatti, Police Stn.-Basupatti,
Dist.-Madhubani, State – Bihar.
Presently based in Nepal. Detail address not known.
5. Sohail Shaikh, Indian National
Permanent address not know. Presently based
in Pakistan. Detail address not known.
6. Aslam, Pakistani National
Detail address not known.
7. Hafizullah, Pakistani National
Detail address not known.
8. Sabir, Pakistani National
Detail address not known.
9. Abu Bakr, Pakistani National
Detail address not known.
10. Kasam Ali, Pakistani National
Detail address not known.
11. Ammu Jaan, Pakistani National
Detail address not known.
12. Ehsanullah, Pakistani National
Detail address not known.
13. Abu Hasan, Pakistani National

Detail address not known.

14. Abdul Razzak, Pakistani National
Detail address not known.
15. Abdul Rahman, Pakistani National
Detail address not known.

SPPs Raja Thakare and Chimalkar for State/ATS.

Adv. P. L. Shetty for accused nos. 1, 3, 8, 9, 11 and 12.

Adv. Wahab Khan for accused nos. 2, 6, 7, 10 and 13.

Adv. Sharif Shaikh for accused nos. 4 and 5.

**CORAM : The Special Judge for
Special Court No. I,
Mumbai for trying cases
under the MCOC Act, 1999
registered and investigated
by the Anti Terrorism
Squad, Mumbai in Mumbai
and Maharashtra.
SHRI Y. D. SHINDE**

**DATE : 30/09/2015
(C. R. No. 57)**

JUDGEMENT

1. Terror struck the city of Mumbai when the first-class compartments of seven suburban trains to the city's western suburbs were ripped apart by powerful blasts on 11th July, 2006 between 1823 to 1828 hours leaving 187 dead and 829 injured and destroying railway property of the value of Rs.88,66,239/-. The bomb explosions were the result of a well orchestrated plan that was allegedly hatched in Pakistan by the Lashkar-e-Taiba (L-e-T) and was

executed with the help of persons allegedly belonging to the Students Islamic Movement of India (SIMI), an organisation banned by the Government of India.

2. The series of bomb blasts in this case is one of the largest incidents of bomb blasts in the history of independent India, second only to the series of bomb blasts of 1993 in Mumbai, in terms of the number of dead and injured.

257 persons had died and 751 had been injured in the serial bomb blasts of 1993.

187 persons have died and 829 have been injured in the serial bomb blasts in this case.

3. The thirteen accused before the court are chargesheeted for having caused the bomb explosions and thereby having committed the murders of 187 persons, for having attempted to cause the death of some persons, for having voluntarily caused hurt, grievous hurt, mischief, mischief by fire or explosive substance, for having conspired to commit these offences, for having conspired to wage war or attempt to wage war or abet waging war against the Government of India, for having collected men, arms or ammunition or otherwise made preparations with the intention of waging war against the Government of India, for having concealed the existence of a design to wage war against the Government of India, for having committed an act of sedition, for having caused disappearance of evidence of offence and for harbouring offenders, alongwith fifteen wanted accused, i.e., (1)Azam Chima @ Babaji, Pakistani National (2)Rizwan Mohammad Dawrey, Indian National, (3)Rahil Ataur

Rahman Shaikh, Indian National, (4)Hafiz Zuber @ Mohammad Zuber, Indian National, (5)Sohail Shaikh, Indian National (6)Aslam, Pakistani National, (7)Hafizullah, Pakistani National (8)Sabir, Pakistani National, (9)Abu Bakr, Pakistani National (10)Kasam Ali, Pakistani National, (11)Ammu Jaan, Pakistani National, (12)Ehsanulah, Pakistani National (13)Abu Hasan, Pakistani National (14)Abdul Razzak, Pakistani National and (15)Abdul Rahman, Pakistani National, alongwith two deceased accused, i.e., (1)Salim, Pakistani National and (2)Abu Osama @ Abu Umed @ Mohd. Ali @ Mohammad Chinag, Pakistani National, which are the offences punishable under sections 302, 307, 324, 325, 326, 427, 436, 120-B, 121-A, 122, 123, 124-A, 201 and 212 of the Indian Penal Code, 1860 (the IPC). They are also chargesheeted for having committed the above offences as an organised crime of promoting insurgency, for having conspired, advocated, abetted and knowingly facilitated the commission of the organised crime, for having harboured or concealed any member of the organised crime syndicate, for being members of an organised crime syndicate and for holding property derived or obtained from the commission of an organised crime or which has been acquired through the organised crime syndicate's funds, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3(1)(i), 3(2), 3(3), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act). They are also chargesheeted for being members of an association declared as an unlawful association under section 3 of the Unlawful Activities

(Prevention) Act, 1967 (the UA(P)A), for committing unlawful activities, for committing terrorist act, for raising funds for terrorist act, for conspiring to commit the terrorist act, for harbouring terrorists, for being members of a terrorist gang or terrorist organisation and for raising funds for terrorist organisation, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 10, 13, 16, 17, 18, 19, 20 and 40 of the said Act. They are also chargesheeted for having possessed, transported and used explosives, alongwith the fifteen wanted accused and two deceased accused, and thereby having contravened the notification issued by the Central Government under section 6 of the Explosives Act, 1884 and having committed an offence punishable under section 9B of the said Act. They are also chargesheeted for having conspired to cause explosions of a nature likely to endanger life or to cause serious injury to property by means of explosive substance, for being in possession of explosive substance for unlawful object and for having procured, counseled, aided, abetted or become accessory to the commission of offences under the Explosive Substances Act, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908. They are also chargesheeted for having committed mischief and causing damage to the public property of the Western Railways, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3, 4 of the Prevention of Damage to

Public Property Act, 1984. They are also chargesheeted for having intended to cause damage and destruction of the public property and having caused death, having endangered the safety of persons travelling in local trains, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 151 to 154 of the Railways Act, 1989. Two accused are chargesheeted for having failed to produce their passports and travel documents and thereby having committed the offences punishable under section 12(1)(c) of the Passports Act, 1967.

4. The case of the prosecution is as follows :

Mumbai, the capital of Maharashtra State, is also the financial capital of the country. About 3 million/30 lakhs commuters travel each day southwards in the morning and northwards in the evening in the western railway suburban trains between Churchgate and Virar during peak hours. These commuters comprise of executives, businessmen, students and persons in the employment at various levels in the Government as well as private establishments. Hence, the suburban trains are aptly called as essential services and the lifeline of the Mumbai metropolis. It is alleged that this lifeline came to a grinding halt on the evening of 11th July, 2006 when seven high intensity, highly sophisticated explosive devices ripped through the first-class gent's compartment of seven suburban trains that were headed towards the distant western/northern suburbs. The blasts at Mahim and Borivali took place when the trains were near the stations, while the remaining five blasts took place in moving trains and away from platforms. The explosions were so powerful that they

ripped through the double layered steel roofs and sides of each of the seven compartments, throwing bodies of the injured and dead passengers out of the compartments, and, at Mahim and Borivali Railway Stations, apart from the passengers in the compartments, the explosions even killed and injured passengers waiting on the platform and those travelling from the trains proceeding to the opposite direction. The roof of the platform no.3 of Mahim station was blown off by the explosion. Some passengers from the Borivali bound train that witnessed an explosion near Mahim station, jumped out of the train and got killed under a local train proceeding in the opposite direction. The prosecution states that from the record, three blasts simultaneously took place at 1823 hours near Mahim, Bandra and Mira Road stations, while the last took place at 1828 hours near Borivali station. This suggests that timer devices were used to cause the blasts simultaneously and at specific places and were aimed at large scale devastation of life and property and widespread panic and chaos with an intention to cripple the economy. The public transport was extensively damaged and disrupted with a view to overawe the government. The entire western railway, suburban as well as main line, came to a grinding halt. The commuters poured on the western express highway, thereby disrupting the north as well as south bound vehicular traffic and causing hindrance to the rescue operations. It was reported that 187 persons lost their lives in the explosions and 817 had sustained injuries of various gravity and railway property worth Rs. 85,61,039/- was reportedly damaged till the time of filing of the

chargesheet. One of the unclaimed dead was identified as a Pakistani national involved in the planting of an explosive laden bag in one of the trains.

5. The individual crimes of bomb blasts were initially registered separately at the respective railway police stations as per the table below :-

Sr. No.	Police Station, C. R. No.	Time of blast (FIR)	Place of Offence (Blast)	Train No.	Affected Coach No.	Persons	
						Killed	Injured
1	Mumbai Central Railway 77/06	1824 hrs.	Matunga	645 DN Virar Fast	864A	28	122
2	Mumbai Central Railway 78/06	1823 hrs.	Mahim	641 DN Borivali Fast	0528 A	43	096
3	Bandra Railway 86/06	1823 hrs.	Bandra	637 DN Borivali	8003A	22	107
4	Bandra Railway 87/06	1825 hrs	Khar Subway	635 DN Borivali Slow	849A	09	102
5	Andheri Railway 41/06	1824 hrs.	Jogeshwari	619 DN Borivali Slow	0634A	28	115
6	Borivali Railway 156/06	1828 hrs.	Borivali	621 DN Virar Fast	935A	26	153

7	Vasai Road Railway 59/06	1823 hrs.	Mira Road	607DN Virar Fast	846A	31	122

Registration of first information reports and preparation of spot panchanamas :-

C. R. No. 77 of 2006 of Mumbai Central Railway Police Station :-

6. The case of the prosecution as is revealed during the trial is that Sr. PI Bhimdev Bhalchandra Rathod, (PW-176)(Ext.1859), was on duty as Sr. PI of Mumbai Central Railway Police Station on 11/07/06. PC Jadhav, 3286, of his police station informed him by phone at about 6.30 p.m. from Matunga Railway Station that there had been a bomb blast in a local train near Matunga Railway Station. He, on receiving this information, immediately went to the spot by road in their vehicle, alongwith PI Godbole, API Inamdar and staff. When they reached the Matunga Railway Station, they saw that the affected train was standing near the electric pole no. 11/11 and the bomb blast had taken place in the male first-class bogie no.864A that was in front. Some injured were lying on the tracks. He sent them to the hospitals with the help of locals. Personnel of the fire brigade, passengers, local police and public had taken many dead bodies and injured to the hospitals before he reached there. He cordoned the spot with the help of his staff in order to preserve it and instructed them not to allow anyone to disturb the scene of offence. He then recorded the information Ext.

424, of the motorman of that train, Sachinkumar Singh, (PW-4)(Ext. 423), and sent it with PC Rajaram to the police station for registering the crime. He came to know before the crime was registered that there had been a similar blast at Mahim Railway Station. Hence, he sent PI Godbole, PI Shinde and other staff to that spot immediately.

7. ASI P. N. Kamble, who was the Station House Officer of the Mumbai Central Railway Police Station, registered crime No. 77 of 2006 on the basis of the information, Ext.424, against unknown persons for the offences under sections 120B, 302, 307, 326, 427, 436 r/w.34 of the IPC, sections 3, 5 and 6 of the Explosives Act and sections 151 to 154 of the Indian Railways Act.
8. In his information, Ext.424, Sachinkumar Singh, PW-4, stated that he is serving as a motorman in the Western Railways since five years, that their duties are fixed by the Chief Loco Inspector, Churchgate, that on 11/07/06 he came on duty at 1735 hours at the Churchgate motorman lobby, made entry and reported for duty at the DN 645 fast local of 1757 hours from Churchgate to Virar. This local was not to stop at any station between Mumbai Central and Dadar and from there it was to halt at Bandra, Andheri and Borivali. Three other motormen B. K. Singh, Satish Gautam, U. R. Kumbhar as well as train examiner Churi and one Deputy C. S. T., Bhatt were with him in the motorman cabin. He started the train from Churchgate at 1758 hours, the train came at platform no.3 at Dadar(W) at about 1822 hours and two minutes after it had started from the said platform and was going towards Matunga and

entering the Matunga Railway Station area, there was a sound of a big explosion and at the same time there was a signal of pulling the emergency chain and he heard people from the bogie behind the motorman cabin shouting to stop the train. He immediately stopped the train by applying the emergency brakes, but because of the speed of the train, it went ahead upto 300-400 meters and stopped. He lowered the pantograph as a precautionary measure after the train stopped and tried to contact the railway control by T. M. S. system in the motorman cabin, but could not establish contact. Therefore, he got down on the west side of the motorman cabin and started going towards the Station Master's office of the Matunga Railway Station. He saw people jumping down from the first-class bogie no.864 A and taking down the injured. He went to the office of the station superintendent on the Matunga Railway Station and gave information about the incident to the railway control. When he started going towards the motorman cabin, thereafter, he saw that the people gathered at the spot had started help to take injured and deceased persons to the hospitals. He saw that the eastern side of the affected first-class coach was damaged to a large extent because of the explosion and saw injured and deceased passengers on the eastern side also.

9. He became convinced that unknown persons had kept explosives in the said bogie and caused the explosion. Hence, he lodged the complaint against unknown persons that they had done so and killed and injured passengers.

10. The Bomb Detection and Disposal Squad (BDDS) personnel

had come to the Matunga blast site. Sr. PI Rathod, PW-176, got the blast site and the entire train inspected by them. He called two panch witnesses, Prithvirajsingh Ekelal Chauhan, (PW-12)(Ext.442), and one more, inspected the blast site, which was the first-class bogie no. 864A and prepared the panchanama Ext.441 in flood light. He collected about fifty articles of the passengers under the panchanama, like umbrellas, bags, bank documents, PAN card, I-cards, railway pass, etc., including Arts. 1 to 15.

11. Sr. PI Rathod, PW-176, came to know that personnel of the Forensic Science Laboratory had come at the Mahim Railway Station and were helping PI Godbole and PI Shinde in collecting the samples of remnants of explosive substances and that PI Godbole had called for packing and sealing material from the police station. He, therefore, directed PI Godbole to send the FSL personnel to the Matunga Railway Station after completing their work there and also to send the packing and sealing material with a constable. Balu Baban Daundkar, (PW-189)(Ext.2857), Dy. Director, Forensic Science Laboratory, Kalina, Mumbai, who was an Assistant Chemical Analyzer at that time, came to the spot with his staff at about 2.00 a.m. on 12/07/06 and collected certain articles from the bogie like burnt cloth, plastic, rexine pieces and cotton swabs of the blackening on the ceiling, handles and rods of the bogie, viz., whatever he felt necessary. He had collected four articles from the Matunga site, i.e., pieces of cloth, pieces of wood, pieces of iron and aluminum, Arts.16 to 19. He had also collected pieces of plastic carry bag, pieces of cloth and 6 pieces of currency notes, Arts. 21 to 23, cotton swab and

round piece of white paper, having blackish stains on one side, Arts. 25 and 26 and two cotton swabs, Arts.29 and 30, from the spot. These were seized, packed and sealed by Sr. PI Rathod, PW-176, in the presence of the same panchas under the panchanama Ext.443. Sr. PI Rathod, PW-176 returned back to the police station with the seized articles and handed them over to the muddemal clerk.

C. R. No. 78 of 2006 of Mumbai Central Railway Police Station :-

12. PI Vijaykumar Nana Godbole, (PW-140)(Ext.1559), was on day duty in the Mumbai Central Railway Police Station as PI(Administration) on 11/07/06 and had returned alongwith Sr. PI Rathod, PW-176, to the police station at 5.30 p.m. after patrolling. He, Sr. PI Rathod, PW-176, and API Inamdar and staff left the police station in police vehicle at 1835 hours on receiving the information from PC Jadhav, 3286, from Matunga Police Station about the blast in a local train at Matunga Railway Station and reached there at about 1900 hours. They came to know on reaching there that there had been a blast in the local railway on platform no.3 and when they reached at the spot, someone informed that there had also been a blast in a fast local train at Mahim Railway Station. He immediately went to the spot with staff in the police vehicle on the directions of Sr. PI Rathod, PW-176, and reached there at about 1930 hours. He came to know on inquiry with a policeman outside that the blast had taken place on the platform no.3. He and his staff went running to the spot on the northern side and saw that the train had halted at about 100 to 150 meters distance ahead of the

platform and its last three bogies were by the side of the platform. They reached the bogie no.528A in which the blast had taken place, two constables of Wadala Railway Police Station, who were there, told him that fire brigade personnel and the general public had shifted the dead bodies and injured persons to the hospitals and the articles of the passengers were collected and kept in the Mahim Railway Police Station. He saw blood on the ground below the bogie in which the blast had taken place, saw pools of blood, blood, pieces of glass in the bogie and saw damage to the fixtures like windows, benches, fans, etc., in the bogie and also saw the front portion of the bogie to be severely damaged. Railway authorities made arrangement of light after he told them to do so. He came to know that the blast had taken place when the train had started from platform no.3. Therefore, he went there, saw that a pit was created on the platform in front of pole no.12/17 and pieces of cement sheet of the roof had fallen there. He returned back to the bogie, went to the cabin of the motorman, inquired about the motorman and met Girishchandra Shridal Shingar Chaurasiya, (PW-5)(Ext.425), who told him that he was driving the train at the time of the incident. He informed his higher authorities about the blast and then took the motorman Girishchandra, PW-5, to the office of the Station Master of that railway station and took his FIR, Ext.426. He sent the FIR with PC Sonune, 1319, to the Mumbai Central Railway Police Station for registering the crime and told him to bring the packing and sealing material and when PC Sonune returned back, came to know that C. R. No.78 of 2006 was registered.

13. Girishchandra, PW-5, stated in his information Ext.426, that he is serving in the railways since 10 years, has done electrical diploma and, after giving the examination of motorman, he is appointed as such from 4 years and 6 months in the Churchgate Headquarters. Their duties are fixed as per the local time table and they do their job on the local trains as per their appointment. There is a motorman and a guard in every local and the railway trains are run from the first station to the last station as per the signals. He was the motorman on Churchgate-Borivali fast local 641 DN on 11/07/06, the departure time of which was 1754 hours, therefore, he came on duty at 1730 hours. There was a crowd of passengers at the railway station and in the local train as it was evening time. He saw the local train 641 DN standing on platform no.4 of Churchgate station at 1750 hours when he came to take its charge. One Ravindra Dalvi was on guard duty of that train and he was also present near the train. He started going towards the motorman cabin on the front side, at that time announcements were going on and passengers were boarding the train. There was less crowd in the train as it was the starting station. As the train got the green signal late, the train started two minutes late, i.e., at 1756 hours. After leaving Churchgate, it stopped at all stations upto Mumbai Central and as it was a fast train, after Mumbai Central, it was to stop at Dadar, Bandra, Andheri and after Andheri, it was to stop at every station upto Borivali. The train was of nine bogies, the fourth bogie from the motorman was the first-class bogie and the sixth bogie was also first-class for ladies and gents. The train came at Dadar station

at 1820 hours. There was crowd at Dadar station, therefore, he halted the train for 15-20 seconds. He started the train from Dadar station towards the Bandra station when the guard signaled by sounding the bell twice. He was driving the train at the regular speed of 50 kms. as the signal was green. Guard Dalvi informed him on the P. A. system when the train entered the Mahim station, that the motor generator system of the train had failed. He was trying to know more about it and in the meantime when the motorman cabin went upto the end of the platform no.3, there was a tremendous loud sound of explosion and he realised that the explosion had taken place in the train. He applied the urgent brakes to stop the train and was successful in stopping the train at the distance of at about 100-125 meters. He also started the flasher to signal the trains coming from the opposite directions and lowered the pantograph. He took the fire extinguisher, battery and other articles and got down from the western side of the train. He saw that the explosion had taken place in the first first-class bogie, which was destroyed and saw passengers of the train shouting loudly and jumping out from the train. He ran towards the bogie. Other passengers and outside people, who had come for help, were trying to take out the seriously injured passengers. He saw that some injured were dead. Many passengers were seriously injured as it was rush hour and passengers of other bogies had become injured as they had jumped outside.

14. He saw that western portion, portion of roof, sitting arrangement and eastern portion were totally destroyed and the

bogie was entirely damaged because of the explosion. Some passengers were lying injured below the broken parts of the bogie. The passengers in the bogie were thrown outside because of the explosion from the back side. Some passengers were crushed under the fast local train (up through) on the track no.4 during this period. The train running on the track no.2 got the signal and stopped at some distance behind as he had switched on the flasher.

15. He went behind to contact guard Dalvi. He saw at that time that the passengers in the bogie at the back side had jumped out of fear and were running away. Some injured were picked up from the track and kept on the platform and efforts were going on to take them to the hospitals for treatment. When he met guard Dalvi, he told him that there was an explosion in the front first-class bogie, in which many people had been injured and many had died and the bogie was also damaged. In the meanwhile police and fire brigade reached there and started the help work and also started inquiry. He and guard Dalvi went to platform no.3 where the explosion had taken place and there they saw that the cement sheets on the roof of the platform no.3, near pole no.12/17, were damaged and there was blood of injured passengers on the platform. They came to know that the injured passengers were taken to K. E. M. and Sion hospitals. Police officers of Mumbai Central Railway Police Station came there when he was near the train, inquired with him and took him to the Mahim Station and took his complaint. Hence he lodged the complaint on that day at 1823 hours that some unknown persons had conspired and caused bomb blast in the local train no.

614 DN of the Western Railways and had murdered many persons, attempted to murder and caused grievous hurt to many persons and caused damage and loss to the railway bogie and Mahim Railway Station.

- 16.** ASI P. N. Kamble, Station House Incharge officer, registered C. R. No.78 of 2006 on the basis of his information for the offences under sections 120B, 302, 307, 326, 427, 436 r/w 34 of the IPC, sections 3, 5 and 6 of the Explosives Act and sections 151, 152, 153 and 154 of the Railways Act. PI Godbole, PW-140, took steps for preparing spot panchanama. He called panch witnesses Hemant Rajaram Satarde, (PW-29)(Ext.524), and one more for that purpose. He, PI Shinde and panchas climbed the affected bogie. Daundkar, PW-189, and his staff from the CFSL, Kalina had also reached there at that time. They surveyed the damage. The FSL people started doing their work by collecting swabs of soot, pieces of debris, half burnt pieces of clothes and iron strips of benches and gave those articles to him. The FSL people had given five articles, i.e., cotton swab, Art.117, two swabs of cotton, Arts.118(1&2), burnt pieces of assorted articles, Arts.119 (colly), half burnt pieces of cloth, chain, sponge, paper, glass and mud, etc., Arts.120 (colly), bundle of half burnt pieces of clothes and paper attached to it, Art.121 and aluminum strips, Arts.122(1 to 4) and PI Godbole, PW-140, had collected 12 articles from the spot, i.e., articles of passengers, Arts. 123 to 132 (1 to 7), labeled and sealed the same and prepared the panchanama Ext.525 in the presence of the panchas and also took measurements. He gave permission to the railway authorities, at

their request, to shift the bogie from the spot and directed them to keep the bogie in the same condition. He returned to the police station, constituted six teams of his staff, two for holding inquests, two for taking statements of the injured persons and two for making inquiries about the persons responsible for the blast. He sent a special report about the incident to his ACP and DCP and sent copies of the FIR to the Mumbai Central Railway Magistrate, to his DCP and ACP. He seized articles of passengers that were brought to the police station by ASI Bhoir under panchanama Ext.1560 before two panchas. Most of the articles were returned to the injured or their relatives. An amount of Rs. 1.5 lakhs was found at the spot in a bag. It was returned to the son of one Laltaprasad Yadav.

C. R. No. 86 and 87 of 2006 of Bandra Railway Police Station :-

17. Sr. PI Mohd. Salim Yusuf Kadri, (PW-138)(Ext.1528), was on the way to the Bandra Railway Police Station on 11/07/06 where he was working as Sr. PI. Station House Officer HC More called him at about 1830 hours and told him that there was a blast in the first-class bogie of the Borivali fast local train no. 637 DN near Bandra station after the train had just left the Bandra station. He immediately went to the platform no.1 of the railway station, saw that passengers were running here and there on the platform, the staff of the police station were taking out the injured and the deceased and taking them to the nearest hospitals with the help of hamals and people. The affected train was standing on track no.3 in between Bandra and Khar but near the Bandra Railway Station and

its middle first-class bogie had been destroyed. He instructed his staff members to immediately take the injured and bodies of the deceased to the Bhabha Hospital. He saw that the roof of the first-class bogie was blown up, the seats, west side luggage racks were broken, the tin of the floor on the eastern side was pressed down and gaps were created, the lights had broken and fallen down, glasses had broken and pieces of glass were lying there, blood was spread in the bogie and bags, purses and other articles of the passengers were lying on the floor. He directed his staff to go to Bhabha Hospital to prepare inquest panchanamas and take statements of the injured.

18. He came to know at that time that a similar type of blast had taken place in between Santacruz and Khar Railway Stations. He therefore appointed two staff members to guard the spot and went by jeep to Santacruz station. There he saw 635 DN Borivali slow local standing on track no.1 near the Santacruz Railway Station and its first-class bogie, which was fourth coach from Virar side, being destroyed. The western and central portions of the roof were blown up, western luggage rack and seats were lying down. Western side door had broken and was lying on the ground on the western side. The overhead bar with handles had broken, the floor exactly below the portion that had blown up was also pressed down. He saw that there was a second class portion to that bogie after a partition of mesh. The said partition was pressed towards the second class portion and there was a hole in the mesh on the western side. Articles of passengers were lying on the floor and there was blood

on the floor. The injured and the dead bodies had already been taken to the hospitals before they reached there. He gave necessary directions to the staff to prepare inquest panchanamas and take statements of the injured and kept guards for guarding the bogie.

19. He then went to the police station and recorded the informations of Station Master of Bandra Railway Station, Hemant Suklal Tayde, (PW-3)(Ext.412), and Station Master of Santacruz Railway Station, Nizamuddin Shaikh, (PW-2)(Ext.407), and on the basis of their informations registered crimes no. 86 and 87 of 2006 respectively for the offences under sections 302, 307, 326, 427, 436, 120B r/w 34 of the IPC, sections 3, 4 and 5 of the Explosives Act and sections 151, 152, 153 and 154 of the Railways Act.

20. The Station Master of Bandra Railway Station Hemant, PW-3, stated in his information Ext.413, that he is working in the Western Railways since 25 years and as a Station Master since one month. He was on duty from 1400 hours to 2200 hours on 11/07/06 at Bandra Railway Station and at about 1823 hours when he was in his office, he heard a sound of a loud explosion outside. He immediately went outside, at that time a hamal on the station came running to him and told him that there had been a bomb blast in the down through Borivali local. He immediately informed about it by phone to the railway control, police station, hospital and ambulance and went to the spot with police and hamals. 637 DN Borivali fast local was standing in between KM pole No.15/1C and 15/6A. Dead bodies of two persons and 3-4 injured persons were lying by the side of the track in between KM pole no.14/22 and 14/23 CN. The western tin

portion of the middle first-class bogie no.8003A was torn and the door, fans, windows and seats had fallen down. The eastern tin was also torn and had fallen down below the window. The tin of the bogie on the upper side had torn at many places. The bogie was totally damaged. He told police, hamals and persons from the public to take the injured and dead bodies to the Bhabha Hospital. A crowd of passengers had gathered there and the injured were shouting loudly. As per his estimate approximately 15-20 persons had died and 25-30 had been injured and they had been taken to the hospitals by the police and people. Hence, he lodged the complaint that persons from some unknown terrorist organisation had kept a bomb in the said bogie of the said train with the intention of creating terror in the public, causing big loss to the railway property, cause loss of lives of passengers and to destabilize the government and, it had caused the bomb explosion by entering into a conspiracy and by doing an anti-national act.

- 21.** Station Master of Santacruz Railway Station Nizamuddin, PW-2, stated in his information Ext.408 that he serves in the Western Railways since 21 years and is working as Station Master at Santacruz since last one year. He was on duty from 1600 hours to 2000 hours on 11/07/06. He heard the sound of a big explosion at about 1825 hours. Therefore, he gave a call to GRP and hamal and went towards the direction of the sound, where he saw local no. 635 Borivali down standing on track no.1 in between KM no.17/2 and 17/6 and the blast having taken place in the middle first-class bogie no.849A. Tin of all sides of the bogie was bent outside, the doors

were bent outside, fans, windows and coaches were uprooted and had fallen there. Passengers were lying in the bogie one upon the other without clothes, some dead and some injured and the articles in the coach had fallen on them. He, with the help of police, public and hamals, shifted the dead bodies and the injured by ambulance and rickshaws to the Cooper, Nanavati, Asha Parekh, V. N. Desai and R. K. Nursing Hospitals. As per his estimate, approximately 8-10 persons had died and 35-40 had been injured and there was a total loss of the first-class coach. Hence he gave the complaint at about 1825 hours that some unknown persons of some unknown organisation had kept a bomb in the said bogie of the said train with the intention of creating terror in the public, causing big loss to the railway property, causing loss of lives of passengers and to destabilize the government and, it had caused the bomb explosion by entering into a conspiracy and by doing an anti-national act.

22. After taking the two complaints, PI Kadri, PW-138, went with the informant, Hemant, PW-3, to the spot on track no.3 in between KM 15/3 and 15/4 and prepared the panchanama Ext.516 of the spot in C. R. No.86 of 2006 shown by him in the presence and with the help of panch witnesses Pappu Radhesham Giri, (PW-28)(Ext. 515), and one more, in the flood lights that were arranged by the railway authorities. He seized assorted articles like blackened pieces of cloth, pieces of chains of bag, plywood, metal, sponge, glass, plastic, torn pouches of gutkha, some mud, etc., Arts.113(colly) and three metal pieces having strong smell of chemical, Arts.114 (1 to 3) during the panchanama. He also took swabs of blood by cotton. He

labeled and sealed all the articles in different packets and seized them under the panchanama.

23. He took the same panchas to the spot in C. R. No. 87 of 2006. Nizamuddin, PW-2, showed the spot and he prepared the panchanama Ext.517 in the presence of the same panchas. He collected burnt pieces of cloth, plastic carry bag, paper, coir, plastic, pieces of metal wire, etc., Art.115 (colly), labeled and sealed them and seized them under the panchanama. When he looked around the spot, he saw pieces of flesh, bags, footwear, papers, sunmica and other articles of use of passengers, lying at the distance of 100 meters from the guard bogie towards Churchgate on both sides of the track near KM 16/14 pole, which was bent outside the track towards west side. The kilometer board on that board was also bent.
24. He then returned to the police station and handed over the seized muddemal to the clerk. 22 passengers had died in the blast near Bandra Railway Station and 9 had died in the blast in the Santacruz Railway Station. People had brought articles of passengers to the police station. He prepared panchanama Ext.506 about it. The articles were returned back to the claimants. The station manager of Santacruz Railway Station had prepared a list of articles of the passengers that were found at the spot, which he brought to the police station. ASI Jagdale prepared the panchanama Ext.507 about it. The articles were returned back to the claimants.

C. R. No. 41 of 2006 of Andheri Railway Police Station :-

25. Dy. SP (Crimes), Maharashtra State at Pune, Maruti Dattatray Raskar, (PW-139)(Ext.1534), was posted as Sr. PI, Andheri Railway

Police Station and on duty on 11/07/06. PSI Ghuge, who was at Jogeshwari Railway Station for patrolling duty, called him from his mobile at about 6.30 p.m. and informed that at about 6.23 p.m. a bomb blast had taken place in the first-class bogie of Churchgate-Borivali slow local train of nine coaches at platform no.1 at the Jogeshwari Railway Station. He gathered all the staff of his police station on receiving this information, took the kit of investigation and went to the spot by the government jeep and reached the spot at about 7.00 p.m. He saw the first-class bogie to be completely destroyed and the articles of passengers lying scattered. PSI Ghuge and staff of Oshiwara and Meghwadi Police Stations, passengers, fire brigade personnel of Goregaon, Marol and Andheri and local people had taken the injured and the bodies of the deceased to the Cooper, Siddharth and Nanavati Hospitals. Railway authorities had made arrangements for floodlights and loudspeakers. He appointed his staff to cordon and guard the spot. Anand Gulab Desai, (PW-7)(Ext. 431), guard of that train, came forward when he was making inquiries and narrated the incident, therefore, he recorded his information Ext.432. He sent the information with HC Darade, 1045, by jeep to Andheri Railway Police Station for registering crime. The crime was registered and given C.R. No. 41 of 2006 for the offences under sections 302, 307, 324, 325, 326, 436, 427, 120B of the IPC, sections 3, 4 and 5 of the Explosives Act and sections 151, 152, 153 and 154 of the Railways Act.

- 26.** In his information, Anand Desai, PW-7, stated that he serves in the Western Railways from 25 years as a guard. He was on his

appointed duty on 11/07/06 on set no.209 alongwith motorman Mushraf Firoz Khan. They started from platform no.2 of the Churchgate station at 1736 hours with the train no.619DN, Churchgate-Borivali slow local of nine bogies. The train took stops at every station as it was a slow local and stopped at platform no.1 of Jogeshwari Railway Station at 1823 hours. Passengers boarded and got down, he rang the bell twice to intimate the motorman to start the train. The train started and when the last three bogies were at the platform and the train was running, there was a loud sound like that of an explosion at about 1824 hours. He saw smoke coming out from the 4th and 5th bogies when he looked towards the direction of the sound and passengers shouting and jumping out. He realised that some untoward incident had happened, hence he rang the bell once to intimate the motorman to stop the train. He got down after the train stopped and saw the situation. He saw that one or two passengers were lying on the northern side of the platform in injured condition and other passengers were helping them. He went ahead and saw that the explosion had taken place in the 6th bogie from the guard cabin that was the first-class bogie no.0634A and doors of both sides, roof, the benches inside had broken and had been destroyed.

27. Station Master Shishir Kaushik came to the spot with railway police and staff. Anand Desai, PW-7, saw many passengers of the train to be injured. They were being taken to the hospitals by all available means of transport. Fire brigade staff came there and they took away the dead bodies on stretchers. Hence he lodged complaint

against unknown persons and he was convinced that the incident is of bomb blast and he came to know that 28 persons had died and 34 had been injured.

28. Thereafter, Dy. SP Raskar, PW-139, prepared panchanama of spot Ext.494 in the presence of panch witnesses, Ratan Namdeo Tarware, (PW-21)(Ext.495), and one more. He also got a map of the spot Ext.1536, prepared from PC Satish Jadhav, 714, during the panchanama. He collected umbrella, documents, railway pass, valuable articles, mobile handsets, etc., total 22 articles, from the spot in the presence of panchas and put them in a white plastic sack.

29. PSI Gawade and Jumade of the Bomb Detection and Disposal Squad (BDDS) came to the spot during the preparation of the panchanama with the dog by name Prince and its handler. They produced certain suspicious articles, i.e., wrist watch of Gruen company with belt broken, Art.49, broken chain with piece of rexine bag, Art. 50, two deformed steel pieces, Art.51 (1 & 2), one deformed spring, Art.52, one small spring attached with black metal piece, Art.53, one broken battery cell, Art.54, a tube of white metal, Art.55, back portion of steel wrist watch, Art.56, a hook with nuts engraved with the words 'M6 and Jumbo', Art.57 and pulp of gray colour like cotton, Art.58. Dy. SP Raskar, PW-139, showed these articles to the same panchas, labeled and sealed them and seized them under the panchanama Ext.496 in their presence. The Station Superintendent of Jogeshwari Railway Station applied by the letter Ext.1537 to him for shifting the bogie as per the instructions received from the Sr. DSO, BCT. He gave permission Ext.1538 (1 &

2) and railway authorities shifted the train to the Kandivali car shed. He directed them to appoint RPF staff to protect the train as the investigation was going on.

30. Dy. SP Raskar, PW-139, had appointed four teams, two for making inquest panchanamas, one for taking statements of injured witnesses and one for making investigation about the suspects. He also appointed staff to guard the seized articles and then he visited the hospitals. From there he returned to the spot, where the team from the FSL had come and at their request he collected samples from the bogie that was in the car shed at Kandivali, in the presence of two panchas. Two samples were collected there and thereafter they went to the Jogeshwari Railway Station to the spot at which the blast had taken place. Pieces of blood stained small stones, earth and iron nails were taken from there. He collected all these articles in three separate plastic bags, labeled and sealed them and prepared panchanama Ext.1539. The articles that he collected were iron piece, plywood pieces, cotton swabs, Arts.361 (colly), iron strip, two screws, one big screw, plywood pieces, cotton like burnt piece of seat, soil like black substance, Arts.362(colly) and blackish red small stones, earth, glass pieces, nail and soil, Arts.363 (colly). He took the articles seized under the panchanama to the police station, handed over the articles to the muddemal clerk HC Jadhav and his assistant PC Khanvilkar. ADRs no. 92 (1 to 28) were registered on the basis of total 28 inquest panchanamas that were received.

C. R. No. 156 of 2006 of Borivali Railway Police Station :-

31. Dy. SP State Crimes, Pune, Satish Hiralal Ahir, (PW-144)(Ext.

1585), was working as Sr. PI, Borivali Railway Police Station in the year 2006 and was on duty on 11/07/06. He heard the sound of a loud explosion at about 1828 hours. Therefore, he and other officers PI Gaikwad, PSI Nagesh Baburao Dhone, (PW-1)(Ext. 105), PSI Karekar and staff, who were in the police station, which is on the west side of the railway station adjacent to the platform no.1, immediately came out, looked towards the eastern side from where the sound of explosion had come and saw that a local train had halted on platform no. 4, therefore, they immediately rushed to that platform. They saw on reaching the platform that the bogie no.935A was at a distance of 10 feet from the staircase and people had fallen out from it. Some people had fallen inside and the tin of the western side of the bogie was torn apart. They saw injured persons at the spot having sustained bleeding injuries, bodies fallen one upon other, blood in the bogie accumulated at some places, the fans, luggage racks, windows, seats totally broken and articles of passengers lying scattered in the bogie and outside. He realized that it was an act of sabotage. He told his staff to call more staff, directed PI Gaikwad and his staff to take the injured to the hospitals by whatever means available. Local persons, taximen and some local organisations helped them in taking the injured to the hospitals. He cordoned off the bogie as people started crowding and coming closer to the bogie. When some more staff members came, he directed them to search in the other bogies for similar act and to see whether there were any dangerous articles kept there. He gave information about the incident to his superiors and on making inquiries with the

staff about the injured, he came to know that 18 persons had died at the spot and about 40-50 persons had been injured. He recorded the information Ext.106 of PSI Dhone, PW-1, who was the beat incharge of Borivali Railway Police Station. He registered C. R. No. 156 of 2006 on its basis for the offences under sections 302, 307, 120B r/w 34 of the IPC, sections 3, 4, 5 and 6 of the Explosive Substances Act, sections 5, 6 and 9B of the Explosives Act, sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 and section 150 to 153, 164 and 165 of the Railways Act.

- 32.** PSI Dhone, PW-1, stated in his information Ext.106, that he is attached to the Borivali Railway Police Station as a PSI and was on day duty on 11/07/06. After doing the office work for the whole day, he went to the platforms at about 1800 hours for patrolling as he was the beat officer on the Borivali Railway Police Station. Dy. SP Ahir, PW-144, PI Gaikwad, SHO ASI Pandarkar and office police staff were in the police station at that time. He heard a sound of a big explosion at about 1828 hours, therefore, they came on platform no. 1 and looked towards the direction of the explosion. They saw that a Virar bound train was standing on railway track of platform no.4, in between platforms no. 4 and 5 and smoke was coming out from the first-class bogie that was near the northern bridge of the station. They also heard shouts and screams of people and they went to the spot. The passengers in the train and on the platform started running here and there. When they went to the bogie for helping the injured, they saw that the bogie was totally destroyed and parts of human bodies and blood was everywhere. Many dead bodies and,

injured were lying on each other and the articles of the passengers were lying scattered. All the police officers and staff took the dead bodies and injured persons by whatever transport available for medical treatment to the Bhagwati Hospital, Borivali. Dy. SP Ahir, PW-144, sent PI Gaikwad, ASI Shaikh, HC Dhodia, 1770, and PC Mhapdi to the Bhagwati Hospital. When they were surveying the spot and maintaining the law and order, PI Gaikwad phoned from Bhagwati Hospital on his mobile that, because of the blast, out of the injured persons, 18 had been declared as dead by the doctors in the said hospital and 40-50 persons were seriously injured and were admitted in that hospital.

33. Hence, he lodged the complaint alleging that on inquiring with the persons at the spot and on surveying the first-class bogie no. 935A of the Churchgate-Viral local, he was convinced that some unknown persons had conspired and planned to explode explosives that can cause huge damage, and, thereby created terror in the minds of people and thereby killed passengers and surrounding persons and injured many persons, because of which they attempted to commit their murder and caused damage and loss to the government property. Hence he gives the complaint under the sections as mentioned above.

34. Dy. SP Ahir, PW-144, called for the articles that were required for preparing the spot panchanama from the police station and with the help of panchas started preparing panchanama of the spot. Railway Police Commissioner and Control Room had given directions to the experts to reach the spot. When he started

preparing the panchanama and was inspecting the bogie with the help of panchas, FSL expert Kulkarni came there and showed them certain articles that would be useful for the purpose of investigation. He gave nine articles that he picked up from the bogie, which Dy. SP Ahir, PW-144, put in separate plastic bags and labeled and sealed them before the panchas. These were piece of rexine and cotton swabs, Arts. 189 and 190, pieces of glass, plywood and mud, Arts. 191 (colly), pieces of glass, plywood and mud, Arts.192 (colly), pieces of oil paint, Arts.193 (colly), pieces of sunmica and jute, Arts. 194 (colly), small silver cylinder and a piece of metal, Arts.195(1 & 2), pieces of half burnt clothes, burnt small battery cell, broken piece of lock of suitcase and ash, Arts.196 (colly), pieces of torn plastic carry bag having name GMCT, pieces of newspapers, rexine, metal, plastic, ash, etc., Art.197 (colly), pieces of metal, Arts.198 (colly). Dy. SP Ahir, PW-144, seized these articles under the panchanama Ext.540 in the presence of the panch witnesses, Eseki Muttu Nadar, (PW-32)(Ext. 539), and one more.

- 35.** PSI Shelar of the Bomb Detection and Disposal Squad came there with two sniffer dogs and alongwith him Dy. SP Ahir, PW-144 surveyed the bogie. He collected belongings of passengers Arts.199 to 242 and made an inventory Ext.1586 before the panchas. Railway authorities made arrangements of light as darkness started increasing during the panchanama. Thereafter he went to the police station. He gave permission to the railway authorities, on their request, to shift the train from the spot. He learnt on taking information that till that time 27 persons had died. He prepared

three teams of officers and staff and directed them to collect information about accused and to make inquiries. Relatives of the injured and deceased came there for inquiries and to take back the bodies of the deceased.

C. R. No. 59 of 2006 of Vasai Road Railway Police Station :-

36. Sr. PI Suresh Rajaram Kulkarni, (PW-133)(Ext.1498), was attached to Vasai Road Railway Police Station as Sr. PI and on duty on that railway station on 11/07/06. API Doke informed him on phone from the police station at 1840 hours that there was a bomb blast near Mira Road Railway Station in a local train. He told API Doke that he is going to the spot and that he should send PSI Bhosale and 15 staff members to the spot. He started from the police station and reached the spot that was in between Mira Road and Bhayandar. Staff of Kashimira, Bhayandar and Mira Road Police Stations were deployed for bandobast at the spot. A local train was standing at the spot with the overhead wire broken. Focus lights were put up at the spot by the railways and the blast had taken place in the first first-class compartment. The tin of the compartment was blown apart and the bogie was completely destroyed, blood and flesh pieces and articles of passengers were lying scattered in the bogie. Seats, fans and windows were broken and lying down. Mira Road Railway Station Master Pradeepkumar Verbey, (PW-6)(Ext. 427), met him at the spot. Sr. PI Kulkarni, PW-133, deployed his staff for guarding the spot and keeping it as it is. Dead and injured persons had been carried to nearby hospitals by the local police and the public. He took the Station Master to the Bhayander Railway

Police chowki, which is within the jurisdiction of Vasai Road Railway Police Station, and recorded his information Ext.428. He sent the information with API Doke to the Vasai Road Railway Police Station and asked the SHO to register a crime and to assign the investigation to him. The SHO registered crime no. 59 of 2006 for the offences under sections 302, 307, 326, 430, 427, 120B r/w. 34 of the IPC, 3, 4, 5 and 6 of the Explosive Substances Act, 3 and 4 of the Prevention of Damage to Public Property Act, 1984 and sections 150 to 154 of the Indian Railways Act.

37. Station Master Verbey, PW-6, stated in his information that he works as a Station Master in the Western Railways since last five years and from May, 2005 he is so working at the Mira Road Railway Station. One Dinesh Chorghe is the station superintendent. One Pawankumar Pandey is the Station Master alongwith him and they work in two shifts. The duty of the station superintendent is from 0600 hours to 1400 hours.

38. He was on duty on 11/07/06 from 1400 hours to 2200 hours, accordingly he came on duty at 1400 hours, platform porter Ghansham Pande and Dnyaneshwar Choudhary were on duty with him on the platform. 607DN Virar local was given the indicator. Its arrival time at Mira Road was 1814 hours, but it came at the Mira Road Railway Station at 1819 hours and left for Virar at 1820 hours. He heard the sound of a blast at about 1823 hours when he was in his office after it had left. Therefore, he came on the platform no. 1 and saw that the local train had stopped in between, passengers were jumping out of the train for saving their lives and running here

and there. Therefore, he called GRPs on duty, Chavan and Page, hamal Kallu, Rakesh, Hiralal and Hariprasad and started going towards the train. However, as he saw that there had been a big explosion and thought that many people had been injured, he returned to the office, informed the railway control and then phoned the ambulance and called it to Mira Road and then alongwith the abovementioned staff went to the spot and saw that Virar local no. 607DN was standing on the down track, signal no.506A was broken, overhead wire was broken and the bomb blast had taken place in the first-class coach no.864A that was on the Virar side. The tin of the roof and sides of the bogie were totally torn. He saw that about 11 persons were lying dead on both sides of the train and in the bogie, and, saw body parts lying scattered. He also saw that many persons had been injured and nearby residents had gathered and had started help work. 11 dead bodies and 33 injured were sent to the hospitals in ambulance and private vehicles. Some injured went walking. Police and RPF staff came for bandobast and they also made arrangements to send the injured to the hospital. Pieces of flesh and blood and bags of passengers were lying scattered.

39. Thereafter he made inquiries about the persons who had been sent to the hospital and came to know that total 25 persons had died in the bomb blast and 62 injured persons were taking treatment in the hospitals. Similarly there was a heavy damage to the railway property, as the signal and overhead wire on the local was damaged and the bogie was torn and damaged due to the big explosion. Hence he lodged the complaint that some unknown persons had

kept explosive substance in the said train to cause bomb blast with the intention of killing passengers and had killed 25 persons and injured about 62 persons, thereby attempted to kill them and had caused damage to the railway property to a large extent.

40. Sr. PI Kulkarni, PW-133, then started the investigation of the crime. Verbey, PW-6, showed him the spot and then he prepared the spot panchanama Ext.564 in the presence of panch witnesses, Ramesh Kailash Varma, (PW-34)(Ext.563), and one more. The dog squad and the Bomb Detection and Disposal Squad had come there during the preparation of panchanama. PSI Nikam of that squad directed the dog Seema to sniff at the spot and Sr. PI Kulkarni, PW-133, seized aluminum pieces, paper pieces and blood mixed earth, put them in two different plastic bags and labeled and sealed them under the panchanama. There were many bags in and outside the compartment. He directed PSI Bhosale to gather the bags under panchanama and also directed the local police to take further steps in connection with the injured and the deceased. He directed PSIs Devkate, Bhosale and Yadav to take the statements of the injured. PSI Bhosale took about 37 articles from the spot to the police station and prepared a panchanadma. The articles that he seized were rexine and assorted pieces, Art.245 (colly), three white round papers, Arts.246 (1 to 3) and assorted pieces of broken articles and mud, Art. 247(colly). A broadcast about the crime was made by wireless to all police stations and search for accused was launched. He gave the seized articles in the possession of the muddemal clerk on 12/07/06.

Further investigation :-

41. The abovementioned six police officers continued the investigation of the crimes registered at their respective railway police stations except Sr. PI Rathod, PW-176, who was attached to the ATS by the order of the Director General of Police that the investigation of the blasts should be taken over by the ATS. He reported to the ATS office on 12/07/06 and was assigned the investigation of C.R. no. 77 of 2006 of Mumbai Central Railway Police Station concerning the blast at Matunga Railway Station, as he was already investigating it.

C. R. No. 77 of 2006 of Mumbai Central Railway Police Station :-

42. Sr. PI Rathod, PW-176, sent the articles that were collected by the FSL officers from the site at Matunga to the Forensic Science Laboratory, Kalina, Santacruz, Mumbai alongwith his forwarding letter, office copy of which is at Ext.660, with PN Gautam Ankush Kamble, (PW-54)(Ext.659), on 13/07/06. The report of the FSL Ext. 2000 dtd.17/07/06 was received and it showed that Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris, that included cotton swabs of acetone and water.

43. Sr. PI Rathod, PW-176, had instructed his subordinate officers in the night of 11/07/06 to record the statements of the persons injured in the Mahim and Matunga blasts admitted in the Sion and KEM hospitals and he also went to the hospitals on 12/07/06 and inquired with the witnesses with a view to obtain information about

the suspects. On the orders of the superior officers, Dadar Railway Police Station and Bhoiwada Police Station officers prepared inquest panchanamas on the dead bodies that were in the KEM hospital and Sion Police Station officers prepared inquest panchanamas on the dead bodies that were in the Sion hospital. These three police stations registered ADRs at zero numbers and sent the inquest panchanamas to Mumbai Central Railway Police Station, on receipt of which, ADRs were registered and the inquest panchanamas were included in the respective CRs. These three police stations had handed over all dead bodies, except one, to the claimants directly. 28 persons had died in the Matunga blast as per the inquest panchanamas, memorandum of *post-mortem* examinations and cause of death certificates, Exts. 854, 856, 865, 866, 873, 874, 878, 1143, 1144, 1157 to 1160, 1163 to 1166, 1871 to 1890 as per the table below.

Table No. 1

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas
1	Prabhakar Shantaram Ghume	1157, 1158, 1879
2	Nand Vallabh Sadanand Daundiya	1163, 1164, 1883
3	Rajan Rohidas Naik	1159, 1160, 1885
4	Ramesh Kashinath Raut	1143, 1144, 1886
<u>5</u>	<u>Salim, Pakistani National</u>	<u>1165, 1166</u>

6	Bhairinath Krishna Salvi	1867
7	Manual Kustin D'Souza	874, 1868
8	Nitin Sukhlal Patil	854, 1869
9	Girish Baliram Talpade	873
10	Sojiram Modulal Meena	856, 1870
11	Sumant Dilip Day	865
12	Babulal Durlabhbhai Waghani	866
13	Jagannathan Narisngappa Gundappa	878
14	Mohammad Salim Kundiwala	1871
15	Suresh Chandra Sarangadhari Pandey	1872
16	Hemant Sakharam Vaidya	1873
17	Manohar Vaman Raut	1874
18	Sandeep Bhavani Zavar	1875
19	Sandeep Hari Bhosale	1876 & 1890
20	Dushyant Madhukar Bhoir	1877
21	Gokul Birdhichand Sharma	1878
22	Cyrus Jehangir Munshi	1880
23	Francis John Louis	1881
24	Ricard Augustine D'Monte	1882
25	Manish Rameshchandra Manihar	1884
26	Sharad Krishna Bobhate	1887
27	Mohd. Javed Naseem Ahmed Shaik	1888
28	Shankar Ramdin Gupta	1889

Out of the above, *post-mortem* examinations were done on 18 bodies at Sion Hospital and on 10 bodies at KEM Hospital. Random *post-mortem* examinations of two bodies of deceased Nitin Sukhlal Patil and Shojiram Modulal Meena were done, the memorandums of which are at Exts.854 and 856 respectively. The opinions as to the probable causes of deaths mentioned in the memorandums of *post-mortem* examinations and cause of death certificates were explosive cranio cerebral trauma, terminal cardio respiratory failure due to septicemia in operated case of contaminated grievous facial and left foot injuries, shock due to polytrauma/multiple injuries, haemorrhage and shock due to multiple injuries, head injury as a result of bomb explosion, etc.

44. Dr. Dharendra Shantilal Balsara, (PW-83)(Ext.846), and Dr. Walter Francis Vaz, (PW-84) (Ext.872), of KEM Hospital had performed the *post-mortem* on the dead body of Nitin Sukhlal Patil and had recovered fragments of shrapnel for metallurgical analysis, Arts. 313(colly), pieces of burnt/partially burnt explosive material, Arts. 314(colly), and blood for grouping and for chemical analysis from the dead body, which he forwarded to the FSL alongwith his forwarding letters, office copies of which are at Exts.848 to 850. Infact HC Shrimant Maruti Jadhav, (PW-90) (Ext.896), took the sample bottles from the hospital on 24/07/06 and reached them to the FSL, Kalina alongwith the forwarding letter of his police station, office copy of which is at Ext.898. The reports of the FSL, Exts. 851 to 853 were received by the hospital and they were sent to the police

station. The reports, Exts.851 and 852, showed that Nitrite (post explosive residue) was detected in the splinters and pieces of burnt/partially burnt explosive material that were recovered from the dead body of Nitin Sukhlal Patil.

45. Both the above doctors had also performed *post-mortem* on the dead body of Shojiram Modulal Meena and had recovered fragments of shrapnel for metallurgical analysis, Arts.315(colly), pieces of burnt/partially burnt explosive material, Arts.316 (colly), and blood for grouping and chemical analysis from the dead body and had sent them to the FSL alongwith Dr. Balsara's forwarding letter, copy of which is at Exts.857 to 859. HC Jadhav, PW-90, had taken the sample bottles from the hospital and had reached them to the FSL alongwith the forwarding letter of his police station, office copy of which is at Ext.897. FSL reports, Exts.860 to 862, were received by the hospital and sent to the police station. They showed that Nitrite (post explosive residue) was detected in the splinters and brownish material taken out from the dead body of Shojiram Modulal Meena. The cause of death was hemorrhagic shock in a bomb blast, cerebral and spinal concussion and massive bilateral pulmonary contusion as effects of a bomb blast (unnatural) and that all the external and internal injuries were collectively responsible for the death of that person and all the external injuries may have been caused in a high explosive blast and the internal injuries corresponded to the external injuries. Sion Hospital had also forwarded a sealed bottle containing a foreign body that was removed from the body of an injured Kalpesh Raut, alongwith their

letter, Ext.900, addressed to the police station. Sr. PI Rathod, PW-176, sent the said sealed bottle alongwith his forwarding letter, office copy of which is at Ext.899, alongwith HC Jadhav, PW-90, to the FSL, Kalina. Contents of the report, Ext.901, that was received subsequently, showed the result of analysis that traces of Nitrite (post explosion residue) were detected on the metal piece.

46. Dr. Balsara, PW-83, and Dr. Vaz, PW-84, had issued cause of death certificates, Exts.865, 866, 873, 874 and 878 in respect of five dead bodies and Dr. Mukesh Shamrao Ghuge (PW-112)(Ext.1138) and his junior Dr. Sapna had conducted *post-mortem* on 15 bodies of the persons who had died in the train blasts at Mahim and other places. They had performed *post-mortem* on 5 bodies concerning the blast at Matunga and had issued the memorandums of *post-mortem* examination and cause of death certificates, Exts.1879, 1157, 1158 and Exts.1883, 1163, 1164 and Exts.1885, 1159, 1160 and Exts. 1886, 1143, 1144. **Ext.1165 was of an unidentified dead body.**

47. 127 people had been injured in the Matunga blast as per the table below. The contents of their injury certificates Exts. 894, 2727 (1 to 3, 5, 6, 8, 13, 14, 15, 17, 18, 20, 21, 23, 27, 29, 32 to 37, 39, 40, 46 to 50, 52, 55 to 57, 59, 79), show that those persons had sustained the injuries in the bomb blast in a local train on 11/07/06.

Table No. 2

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate

1	Ganesh Shantaram Kadam	Ext. 1260	2727 (1)
2	Mukund Kamlesh Thakkar	Ext. 1261	2727 (2)
3	Zankariprasad Rangnath Joshi	Ext. 1262	2727 (3)
4	Surendrakumar Makhanlal Goyal	----	2727 (4)
5	Ramkrishna Changu Mhatre	Ext. 1263	2727 (5)
6	Keval Janak Doshi	Ext. 1264	2727 (6)
7	Tirumadai Raju Gopal	----	2727 (7)
8	Tejas Chandrakant Pathak	Ext. 1265	2727 (8)
9	Sanjay Baban More	----	2727 (9)
10	Jaspreet Awatar Singh Kalsi	----	2727 (10)
11	Tarachand Laxman Pawar	----	2727 (11)
12	Shrikant Ramrao Jedhe	----	2727 (12)
13	Sharad Shantaram Gorivale	Ext. 1266	2727 (13)
14	Ramsukh Matafer Paasi	Ext. 1267	2727 (14)
15	Ms. Pooja Chandrakant Yendait	Ext. 1407	2727 (15)
16	Mannan Shabbir Husain	----	2727 (16)
17	Vijay Madanraj Jain	PW No. 124, Affidavit Ext. 1268	2727 (17)
18	Dinesh Ambubhai Patel	Ext. 1269	2727 (18)
19	Naved Mohammad Chouhan	----	2727 (19)
20	Vijay Vasudev Amin	Ext. 1270	2727 (20)
21	Sudhakaran Krishnan Kotian	Ext. 1271	2727 (21)
22	Robinson N. Abraham	----	2727 (22)

23	Kalpesh Suryakant Raut	PW No. 81, Ext. 1272	839
24	Sayyed Imtiaz Mubarak Hussain	Ext. 1273	2727 (23)
25	Robert Luis Miranda	----	2727 (24)
26	Pranav Vidhushekhar Upadhyaya	----	2727 (25)
27	Uday Ramdas Kaikani	----	2727 (26)
28	Parkel Cherian Vergheese	PW No. 132, Affidavit Ext. 1274	2727 (27)
29	Larjaris Khistan Fernandis	----	2727 (28)
30	Tarun Devraj Acharya	Ext. 1410	2727 (29)
31	Manohardutt Bisandutt Fulora	PW No. 125, Affidavit Ext. 1275	2727 (29)
32	Suresh Vilas Mane	Ext. 1276	2727 (29)
33	Thomas Lopez Francis	PW No. 135, Affidavit Ext. 1277	2727 (29)
34	Namamishankar Kaliyaji Nimama	----	2727 (29)
35	Radheshyam Rammurthi Dube	Ext. 1278	2727 (29)
36	Bhairavkumar Rambhil Saha	Ext. 1279	2727 (29)
37	Sanjaykumar Ramkisan Baichaliya	Ext. 1280	----
38	Joseph Domnick D'Souza	----	2727 (30)
39	Devendra Sitaram Nimborkar	----	2727 (31)
40	Mohd. Iqbal Jamal Shaikh	Ext. 1280 & 1281	2727 (32)

41	Vimal Laxminarayan Soni	Ext. 1282	2727 (33)
42	Riaz Ali Kasam Ali Lokhandwala	Ext. 1283	2727 (34)
43	Liladhar Jaidutt Sharma	Ext. 2734	----
44	Ajaykumar Nandkishor Yadav	Ext. 1409	2727 (35)
45	Santosh Shankar Patil	Ext. 1284	2727 (36)
46	Rameshwar Haribhau Nandanwar	Ext. 2735	2727 (37)
47	Mahadeo Appanna Naik	----	2727 (38)
48	Dinesh Odhavji Ghamelia	Ext. 1285	2727 (39)
49	Uday Bhagwant Tale	Ext. 1286	----
50	Sandip Devaprasad Roy	Ext. 1412	----
51	Anant Ravikant Surve	Ext. 1287	2727 (40)
52	Laxman Sitaram Adhagale	Ext. 1402	----
53	Suresh Narayan Manoti	----	2727 (41)
54	Kalthumani Shivkrishna Iyer	----	2727 (42)
55	Yogendrakumar Ramdoot Dinkar	----	2727 (43)
56	Arvind Surendra Jain	----	2727 (44)
57	Mohandas Parmanudas Parnikar	----	2727 (45)
58	Rishi Pravin Bobra	Ext. 1408	2727 (46)
59	Vishal Prabhakar Patil	----	2727 (47)
60	Ms. Neha Manoj Kavre	Ext. 1289	2727 (48)

61	Ms. Chandrabai Mahadeo Kharatmal	Ext. 1414	----
62	Chitrasen Singh Dharam Raj Singh	PW No. 121, Affidavit Ext. 1290	2727 (49)
63	Hitesh Rohitkumar Kaveria	Ext. 1288	2727 (50)
64	Anil Sharadchandra Parab	Ext. 1291	----
65	Vilas Shantaram Jawkar	----	2727 (51)
66	Ashish Deviprasad Jain	Ext. 1292	2727 (52)
67	Ramdular Ramkinkar Roy	----	2727 (53)
68	Sambhaji Tatoba Nangre	----	2727 (54)
69	Ashish Rammohan Sharma	Ext. 2736	2727 (55)
70	Nagnath Keshav Mankeshwar	Ext. 1411	2727 (56)
71	Anil Pandurang Gamre	Ext. 1406	2727 (57)
72	Subhash Suresh Kamble	----	2727 (58)
73	Prabhakar Laxman Khamkar	Ext. 2737	2727 (59)
74	Narendra Monajibhai Lodhia	----	2727 (60)
75	Pradip Narayandas Agrawal	----	2727 (61)
76	Jayant Varjivandas Bhansali	----	2727 (62 & 63)
77	Raju Ghanshyamdas Shah	----	2727 (64)
78	M. Karunakaran	----	2727 (65)
79	K. Phalgun Nair	----	2727 (66)
80	Rajendra Atmaram Khedkar	----	2727 (67)
81	Bakulbhai Baslubhai Sawani	----	2727 (68)

82	Ms. Parvati Harischandra Kini	----	2727 (69 & 70)
83	AmrishKumar Harishankar Diwan	----	2727 (71)
84	Vinod Shankar Chawan	----	2727 (72)
85	Rupesh Harkisandas Mestri	----	2727 (73)
86	Maheshkumar Bhagirath Prasad Kumawat	----	2727 (74)
87	Ramjibhai Tulsibhai Kakadiya	----	2727 (75)
88	Sagar Sudhakar Patil	----	2727 (76)
89	Jaisingh Harisingh Rathod	----	2727 (77)
90	Shailesh Tribhuvan Singh	----	2727 (78)
91	Sunil Arjun Halaye	Ext. 1404	2727 (79)
92	Sanjay Ashok Pawar	Ext. 1403	----
93	Tekynath verges Jose	----	2727 (80)
94	Jitendra Vidyashankar Jappi	----	2727 (81)
95	Arvind Malappa Kotik	----	2727 (82)
96	Kishorkumar Surendrakumar Jain	----	2727 (83)
97	Prabhakar Raghunath Mishra	----	2727 (84)
98	Kalpana Dinesh Samant	----	2727 (85)
99	Arvind Gopaldas Oza	----	2727 (86)
100	Mohmad salim sheikh	----	2727 (87)
101	Santosh Filip Rathod	----	2727 (88)
102	Shiban Krishan Kaul	----	2727 (89)

103	Deepak Umakant Naik	----	2727 (90)
104	Jitendra Shreeram Raut	----	2727 (91)
105	Harish Shamlal Pawar	----	2727 (92)
106	Mansinh Gauri Chouhan	----	2727 (93)
107	Kamaljeetsingh Govindsing Verma	----	2727 (94)
108	Nimish Bipin Shah	----	2727 (95)
109	Hitesh Maganlal @ Raju Gandecha	PW No. 89	894
110	N. A. Robinson	----	2732(18)

48. Sr. PI Rathod, PW-176, requested the Dean of the Sion Hospital by his letter, Ext.1172 on 19/07/06 to reconstruct the face of the unclaimed dead body found in the Matunga blast, which consisted of only the head and chest portions, as it was torn and disfigured. He also requested to preserve the tissues of the part of the body for DNA test. Accordingly, the doctors reconstructed the face of that person and gave a CD to him, which he handed over to his Addl. CP in the ATS, who sent it to CFSL, Chandigarh for verifying its correctness. The report and the result of examination, Exts.1927 and 1928 dtd. 01/08/06 and 31/07/06 were received from the CFSL, Chandigarh saying that the reconstruction was 80% correct. They subsequently sent the tissues of the parts of the dead body to the FSL, Kalina for DNA profile by his letter, office copy of which is at Ext.1929 dtd. 21/08/06 and received the report from the FSL, Ext.1930.

C. R. No. 78 of 2006 of Mumbai Central Railway Police**Station :-**

49. PI Godbole, PW-140, during the investigation of this crime, sent five articles handed over by the FSL people alongwith forwarding letter, office copy of which is at Ext.906, under the signature of Sr. PI Rathod, PW-176, alongwith HC Jadhav, PW-90. The report, Ext.1561, dtd.17/07/06 from the FSL was received, opining that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris including the cotton acetone and water swabs. PI Godbole, PW-140, and his staff recorded statements of some witnesses and injured persons in the blast at Mahim Railway Station. The staff of other police stations also recorded the statements of some injured. Constable Avinash Marishchadra Meher, who works in the photograph department, had taken 29 photographs of the spot on 11/07/06 and got it developed from Bawan Photo Studio. He gave the said photographs, Arts.257 (1 to 29) to PI Godbole, PW-140. One D. B. Rane had done video shooting of the spot. He gave the CD of the video shooting to PI Godbole, PW-140. Police Station Shahu Nagar had handed over fourteen articles of passengers. He seized them under a panchanama and the important article in these articles was an amount of Re.1,00,000/- belonging to a deceased by name Anuj Killawala. He handed over this amount to his daughter Kruti on 18/07/06. He, the head constable and two constables returned many articles to the injured and relatives of deceased subsequently.

50. PI Godbole, PW-140, handed over all the papers of

investigation to ACP Shengal of the ATS on 21/07/06 on receiving orders from his superiors. He took the statements of the injured who came to his police station after that day and sent them to the ATS and also sent some injured to the ATS.

51. Subsequently, Sion Hospital sent two letters, Exts.903 and 905, to the police station for sending sealed bottles containing metal pieces Art.317, that were taken out from the body of deceased Jogarao Mantri Pragada and injured Lalji Ramakant Pande, (PW-85) (Ext.883). PI Godbole, PW-140, sent the sealed bottles alongwith his forwarding letters, Exts.902 and 904, under the signature of Sr. PI Rathod, PW-176, to the FSL for chemical analysis alongwith HC Jadhav, PW-90. The opinion in the FSL reports, Exts.1563 and 1562 respectively, received later on by PI Godbole, PW-140, shows the result of analysis that traces of Nitrite (post explosion residue) was detected on the exhibits, i.e., the metal pieces, Art.317.

52. 43 persons had died in the blast at Mahim Railway Station as per the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates, Exts. 863, 864, 867 to 871, 875 to 877, 879 to 881, 1139, 1141, 1142, 1147 to 1151, 1154 to 1156, 1161, 1162, 1167 to 1170, 1891 to 1894, 1897 to 1925 as per the table below.

Table No. 3

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas

1	Jogarao Mantri Pragada	1169, 1170, 1897
2	Namdeo Chintaman Bhagat	1139, 1140, 1900
3	Raman Kutty Kandy Nair	1151, 1154, 1902
4	Arvind Jammanlal Agrawal	1155, 1156, 1906
5	Naval Bhagwandas Mathuriya	1145, 1146, 1907
6	Subhash Chotalal Shah	1147, 1148, 1908
7	Rasiklal Rameshchandra Merchant	1141, 1142, 1910
8	Joseph Robert Naron	1161, 1162, 1914
9	Prashant Giridhar Bendale	1149, 1150, 1916
10	Sunil Ganpat Birwadkar	1167, 1168, 1924
11	Vrundesh Ramnirajan Sakeria	1891
12	Zuber Istija Khan	867, 1892
13	Yashwant Prabhakar Badekar	881, 1893
14	Sanfard Tony Diselas	871, 1894
15	Kalubhai Laxman Kasodaria	868, 1895
16	Somnath Pranavkumar Das	879, 1896
17	Anish Vinaykumar Baindur	863
18	Sanjay Mohanlal Jeswani	864
19	Anees Sattar Patel	876
20	Ninad Sudhakar Mahale	870
21	Amritlal Laljibhai Patel	875
22	Chetan Kuldip Sharma	877
23	Mohd. Tariq Ansari	880

24	Anil Lalubhai Shah	869
25	Prashant Yashwant Sawant	1898
26	Yogesh Harirao Phutane	1899
27	Trikamal Keshavlal Pandya	1901
28	Asim Ajit Kumar Bhajan	1903
29	Laxmichand Nanji Gala	1904
30	Naushad Ramaniklal Tejani	1905
31	Maksood Mohd Umar Darvesh	1909
32	Jitendra Maniklal Shah	1911
33	Louis Anthony Siquera	1912
34	Yogesh Mahendrabhai Doshi	1913
35	Niteshkumar Raeshwar Patel	1915
36	Himmatlal Pabhudas Modi	1917
37	Nathmul Dharnraj Saboo	1918
38	Mavjibhai Hairbhai Patel	1919
39	Anuj Navinchandra Kilwala	1920
40	Abhijeet Vilas Ahiwale	1921
41	Parag Vasant Karambelkar	1922
42	Sanjay Dattaram Shirke	1923
43	Chandrakant Mohanlal Mithani	1925

These documents show the opinions as to the causes of deaths to be head injury in case of explosion, shock following

multiple/polytrauma injuries in case of bomb explosion, haemorrhage and shock due to polytrauma with complete transection of trunk, head injury in bomb blast, terminal cardio respiratory arrest with acute respiratory distressed syndrome following lung contusion following bomb blast, septicemia with bilateral lobar pneumonia due to multiple traumatic injuries as a result of bomb explosion.

53. 96 persons were injured in the blast at Mahim Railway Station as per the injury certificates, Exts. 2728 (1 to 96) as per table below, contents of which show that they had sustained the injuries in the bomb blast in the local train on 11/07/06.

Table No. 4

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Gajanan Shailam Mergu	----	2728 (1)
2	Shivkumar Jagdishprasad Sharma	----	2728 (2)
3	Sushil Jagnnath Sawant	Ext. 1416	2728 (3)
4	Giridhar Dejappa Kotiyan	Ext. 2745	2728 (4)
5	Ajay Pravinchandra Parekh	----	2728 (5)
6	Ashok Laxmichand Shah	----	2728 (6)
7	Amjad Nurul Ansari	----	2728 (7)
8	Barka Devka Okate	----	2728 (8)
9	Mahadev Bhagvanji Kadam	Ext. 1415	2728 (9)

10	Parko Tangavel Nadar	Ext. 1405	2728 (10)
11	Kalicharan Kuhari Shetty	----	2728 (11)
12	Umesh Vinayak Naik	----	2728 (12)
13	Mohammad Maharoof Khalil	----	2728 (13)
14	Mohammad Yar Mohd. Sajid	----	2728 (14)
15	Pravin Shankarlal Varma	Ext. 2740	2728 (15)
16	Pankaj Rasiklal Shah	Ext. 2739	2728 (16)
17	Mohammad Salim Mohd. Sharif	Ext. 1418	2728 (17)
18	Rajesh Trivenipsad Ranjan	----	2728 (18)
19	Samir Tulshant	----	2728 (19)
20	Kaushik Uttam Pradhan	Ext. 1293	2728 (20)
21	Aniket Vishwas Joshi	----	2728 (21)
22	Kishan Bugadimal Lakhani	----	2728 (22)
23	Ramesh Khadebhai Goti	Ext. 2738	2728 (23)
24	Smt. Shalini Tukaram Jogdhan	Ext. 2748	2728 (24)
25	Parag Laxman Kadam	----	2728 (25)
26	Vasant Gopinath Totka	----	2728 (26)
27	Ramniwas Pannalal Laddha	----	2728 (27)
28	Kashinath Vasant Shinde	----	2728 (28)
29	Narendra Jayantilal Mehta	----	2728 (29)
30	Umesh Ramesh Shah	----	2728 (30)
31	Vira Raghvan Shriniwasan	----	2728 (31)

32	Dilip Ramchandra Shirke	Ext. 2747	2728 (32)
33	Balkrishnna Balram Controllu	----	2728 (33)
34	Dilip Amichand Khandelwal	----	2728 (34)
35	Louis Dagdu Kadam	----	2728 (35)
36	Gautam Bharat Dhanaresha	----	2728 (36)
37	Umesh Pyarelal Sonar	----	2728 (37)
38	Marutiprasad Hemchandra Prakash	----	2728 (38)
39	Tambi Thomas Lazer	----	2728 (39)
40	Ashok Laxmichand Shah	----	2728 (40)
41	Arjun Sakharam Kalambe	----	2728 (41)
42	Balu Sakharam Kakad	----	2728 (42)
43	Chandravilas Mahadev Gandhi	----	2728 (43)
44	Antonito George Naron	----	2728 (43)
45	J. K. Nair	----	2728 (43)
46	Arvind Manilal Parikh	----	2728 (44)
47	Jaiprakash Chandrashekhar Shukla	----	2728 (45)
48	Prakash Yashwant Samant	----	2728 (46)
49	Laxman Balwant Samant	----	2728 (47)
50	Birju Balkrishnna Nayar	----	2728 (48)
51	Sunil Chandrakant Karnik	----	2728 (49)
52	Sandeep Gajendra Zha	----	2728 (50)
53	Chandesh Rasiklal Kothari	----	2728 (51)

54	Rajeev Sumeru Varma	----	2728 (52)
55	Vijay Palni Makwana	----	2728 (53)
56	Babu Maruti Kamble	----	2728 (54)
57	Maheshbhai Shantilal Shah	----	2728 (55)
58	Roystan Abraham D'mello	Ext. 1417	2728 (56)
59	Balkrishnna Divakar Patkar	----	2728 (57)
60	Mukesh Sadanand Shenoy	----	2728 (58)
61	Padmachand Mohanlal Gandhi	----	2728 (59)
62	Nilesh Bhogilal Shah	----	2728 (60)
63	Lalji Ramkant Pandey	PW No. 85	2728 (61)
64	Rameshbhai Popatbhai Nathani	----	2728 (62)
65	Mahesh Natwarlal Ponda	----	2728 (63)
66	Rajnikant Maganlal Desai	Ext. 2743	2728 (64)
67	Damjibhai Mathurbhai Jadhav	----	2728 (65)
68	Prestan Peter Farnandis	----	2728 (66)
69	Dipak Vasant Kadam	Ext. 2742	2728 (67)
70	Digambar Limbaji Sasane	----	2728 (68)
71	Bismilla Mohammad Sultan	----	2728 (69)
72	Saurabh Vijay Harde	----	2728 (70)
73	Vinod Gajanan Bhatt	----	2728 (71)
74	Sanjeshkumar Sushilkumar Singh	----	2728 (72)
75	Nikhilkumar Kantilal Mehta	----	2728 (73)

76	Kamal Rajaram Yadav	----	2728 (74)
77	Kamlesh Zabbu Rajbhar	PW No. 25	2728 (75)
78	Vilas Dhaku Pawar	----	2728 (76)
79	Bhimrao sadhoo Kesare	----	2728 (77)
80	Parshuram Rajaram Ingle	----	2728 (78)
81	Chandrakant Shankar Dalvi	----	2728 (79)
82	Sitaram Mangiram Rathi	----	2728 (80)
83	Rakesh Vasant Salunkhe	Ext. 2749	2728 (81)
84	Vinod Yellappa Mendhan	----	2728 (82)
85	Sirajuddin Jaimul Mutabik Shaikh	Ext. 2746	2728 (86)
86	Ratnakar Vasudeo Sawant	Aff. Ex. 2744	2728 (87)
87	Navin Kumar Babu Devadiya	Ext. 2741	2728 (88)
88	Mahesh Chotubhai Chavan	----	2728 (89)
89	Prabhakar Datram Sadekar	----	2728 (90)
90	Challaih Mallaiah Bodge	----	2728 (91)
91	Mohammad Kaisar Kasim Ansari	----	2728 (92)
92	Laltaprasad Kalika Yadav	----	2728 (93)
93	Chandrakant Basanna Dolgaund	----	2728 (94)
94	Ms. Shantabai Shankar Trimukhe	Ext. 1413	2728 (95)
95	Mohammad Aadil Mohd. Ali	----	2728 (96)
96	Smt. Hirabai Yeshwant Shinde	Ext. 1419	----

C. R. No. 86 and 87 of 2006 of Bandra Railway Police Station :-

54. Sr. PI Kadri, PW-138, sent seized articles in both the crimes to the FSL, Kalina alongwith his forwarding letters, office copies of which are at Exts. 656 (1&2) and 657 (1&2) respectively, alongwith PC Gurudas Bhadi Jadhav, (PW-52) (Ext.655). The contents of the reports of the FSL, Exts.2430 and 2429 respectively, with respect to the articles that were seized from the spots in C. R. No.86 and 87 of 2006, show the results of analysis that Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris.
55. Dr. Kalpesh Jayantkumar Gajiwala, (PW-69)(Ext.779), a consultant plastic surgeon in the Holy Family Hospital, Bandra, had operated on Devdas Situ Shetty, (PW-23)(Ext.501), an injured in C. R. No.86 of 2006 and had removed the foreign body, Art.94, from the scalp of that patient and had issued the injury certificate, Ext. 781. Dr. Russell Pinto, (PW-56)(Ext.681), consultant surgeon in the Holy Family Hospital at Bandra, had treated Ashok Raghuvir Rao, (PW-27)(Ext.594), an injured in C. R. No.86 of 2006 and had removed the foreign body, Art.93, from the wound on the right side of his chest and had issued the injury certificate Ext.684. He had also treated Vishal Vijaykumar Nagaich, (PW-13)(Ext.445), an injured in C. R. No.87 of 2006 and had removed a triangular shaped foreign body, Art.95, from the right side of his neck and had issued the injury certificate Ext.682.
56. Holy Family Hospital phoned the police station that they had

taken out foreign bodies from the bodies of three injured persons. Sr. PI Kadri, PW-138, sent PSI Pednekar to bring them. PSI Pednekar seized them under the panchanama Ext.504 in the presence of panch witnesses Suresh Dagdu Vandre, (PW-24)(Ext.503), and one more. Sr. PI Kadri, PW-138, sent the foreign bodies/metal pieces in C. R. No. 86 of 2006 to the FSL, Kalina alongwith WPC Savita Raghunath Satav, (PW-87)(Ext.886), alongwith his forwarding letters, copies of which are at Exts.888(1 and 2). He also sent the foreign body/metal piece taken out from the body of the injured Vishal Nagaich alongwith WPC Satav, PW-87, alongwith his forwarding letters, copies of which are at Exts. 889 (1 and 2). The contents of the FSL reports, Ext.2434(1) of the metal pieces concerning the injured Devdas Shetty and Ashok Rao and Ext. 2433(1) of the injured Vishal Nagaich, show the result of analysis that traces of Nitrite (post explosive residue) was detected. Exts. 2434(2) and 2433(2) are the FSL reports in respect of analysis of trace elements in the metal pieces.

57. 22 persons had died in the blast near Bandra Railway Station as per the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates Exts.2610 to 2631 as per the table below. The opinion as to the probable causes of deaths mentioned in the memorandums of *post-mortem* examinations and cause of death certificates was due to haemorrhagic shock due to polytrauma in bomb blast.

Table No. 5

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas
1	Krishnakumar Parasnath	2610
2	Shashi Shekhar Gangadhar	2611
3	Suresh Shenshadu Pawar	2612
4	Shashikant Sudam Badekar	2613
5	Jignesh Bipinbhai Mehta	2614
6	Dalpat Chabildas Masekar	2615
7	Sudhir Divakar Chimote	2616
8	Dilip Kashinath Kamath	2617
9	Rupesh Rahul Kamble	2618
10	Sanad Madhubahi Badekar	2619
11	Ajay Daulatrao Shevda	2620
12	Hariharan Chidambaram Ayyar	2621
13	Modh. Sohail Sagir Shaikh	2622
14	Sachin Radhesham Khanna	2623
15	Pinaki Mukhopadhyaya	2624
16	Surendraprabhu Ramchandran	2625
17	Sanjay Ramakant Samant	2626
18	Vishwas Ananat Thorat	2627

19	Kantilal Tulshidas Gohil	2628
20	K. Bhujang Shetty	2629
21	Tejas Chandrakant Shah	2630
22	Hemchandra Vishwanath Mastkar	2631

58. 107 persons had been injured in this blast as per the injury certificates, Ext.2729 (1 to 134) as per the table below, contents of which show that they had sustained the injuries in the bomb blast in local train on 11/07/06.

Table No. 6

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Suman Kumar Pappa Raju	----	2729 (1)
2	Rakesh Ramnarayan Pandey	Ext. 1425	2729 (2 & 3)
3	Mukesh Kanhaiyalal Hinduja	Ext. 1300	2729 (4)
4	Anant Sadashiv Raorane	----	2729 (5)
5	Vijay Ganesh Sahasrabudhe	----	2729 (6)
6	Bhagyabat Sardeshwar Rahang	----	2729 (7)
7	Smt. Shobhana Jamunashankar Pandya	----	2729 (8 & 9)
8	Roshanlal Raghunath Sahay	----	2729 (10)
9	Nilesh Chandrakant Maru	----	2729 (11)

10	Mahesh Manoharlal Trivedi	PW No. 8	2729 (12 & 13)
11	Ashok Bhaurao Kulgod	Ext. 1299	2729 (14 & 15)
12	Arun Gunwant Deshmukh	Ext. 1302	2729 (16)
13	Vrishabh Suryakant Pathak	Ext. 1298	2729 (17)
14	Kaushik Uttambhai Pradhan	----	2729 (18)
15	Kalpesh Prakash Mhatre	Ext. 1294	2729 (19 & 20)
16	Sajid Ali Mehboob Ali	Ext. 1295	2729 (21 & 22)
17	Parag Jayant Mahadani	----	2729 (23 & 24)
18	Laxman Vasudeo Parab	----	2729 (25)
19	Morakala Gopalkrishna	----	2729 (26)
20	Vijay Harish Purohit	----	2729 (27)
21	Mukesh Indulal Shah	Ext. 1296	2729 (28 & 29)
22	Kamlesh Mohanlal Shah	----	2729 (30)
23	Ravindra Vasant Saravate	Ext. 1297	2729 (31)
24	Kishor Tuljashankar Shukla	----	2729 (32)
25	Cajetan Dennis Espibeiro	----	2729 (33)
26	Shubendu Shishirkumar Behra	Ext. 1420	2729 (34)
27	Ashok Ramchandra Dayani	----	2729 (35)
28	Vasant Laharchand Gaudani	Ext. 1421	2729 (36)
29	Nagin Lalaji Rathod	----	2729 (37 & 38)
30	Bhaskar Sanayya Kotian	Ext. 1424	2729 (39 & 40)
31	Bhagwandas Phuljibhai Makwana	Ext. 1301	2729 (41)

32	Nikesh Kantilal Rathod	----	2729 (42)
33	Suhas Pandurang Chougule	----	2729 (43)
34	Ramesh Mahadeo Zope	Ext. 2750	2729 (44)
35	Mukeshbhai Narendra Zaveri	----	2729 (45 & 46)
36	Anup Jagdish Saksena	Ext. 1422	2729 (47)
37	Bipin Dattatraya Raut	Ext. 1429	2729 (48)
38	Nishit Sitaram Shrivastav	----	2729 (49)
39	Manveer Singh Rajindra Singh Chandok	----	2729 (50)
40	Kaustubh Rajendra Kulkarni	Ext. 2751	2729 (51)
41	Rajan Kunjbihari Shah	----	2729 (52 & 53)
42	Harish Ramchandra Kundnani	----	2729 (54 & 55)
43	Dinesh Vishwanath Tirodkar	----	2729 (56)
44	Devdas Siddhu Shetty	PW No. 23	780 & 781
45	Suryanarayan Subramanyam Iyer	Ext. 1428	2729 (59)
46	Ashish Rajulal Chauhan	----	2729 (60)
47	Yogesh Natwarlal Adia	----	2729 (61)
48	Sunil Rambhau Sasane	----	2729 (62)
49	Deepak Vasudeo Chhabria	----	2729 (63)
50	Bhaven Manohar Desai	Ext. 1430	2729 (57 & 58)
51	Nitin Anandrao Jawale	Ext. 2752	2729 (64)
52	Amit Ramdas Bante	----	2729 (65 & 66)
53	Sanjay Ishwarlal Desai	----	2729 (67 & 68)

54	Sriram Gowardhandas Lanjewal	----	2729 (69 & 70)
55	Ashok Raghuvir Rao	PW No. 27	2729 (71)
56	Ganpat Chintaman Pimparkar	----	2729 (72)
57	Kiran Anantraï Desai	----	2729 (73)
58	Subhash Chimaji Tawde	Ext. 2753	2729 (74)
59	Sitaram Mahadeo Pandit	----	2729 (75)
60	Lalkumar Kanasanand Tolani	----	2729 (76)
61	Jairajan Kunnikrishnan Nair	----	2729 (77 & 78)
62	Nitin Rasiklal Shah	----	2729 (79 & 80)
63	Nutan Harilal Prasad	----	2729 (81 & 82)
64	Devendra Kumar Jain	----	2729 (83)
65	Sanjay Satyanarayan Namdeo	----	2729 (84)
66	Parasharan Gangaram Rathod	----	2729 (85 & 86)
67	Subbir Kumar Phanindranath Roy	----	2729 (87)
68	Jaywant Yeshwant Rane	----	2729 (88)
69	Ramesh Mahadeo Manchekar	----	2729 (89)
70	Prasanna Sitaram Prabhu	----	2729 (90)
71	Lakhan Singh Jagram Singh Rajput	Ext. 1423	2729 (91)
72	Maulin Harish Momaya	Ext. 2754	2729 (92 & 93)
73	Rampher Sharda Prasad Mishra	----	2729 (94 & 95)
74	Surendra Pundalik Thavi	----	2729 (96)
75	Murad Mallick Panjwani	----	2729 (97)

76	Prabhakar Dhaku Iswalkar	----	2729 (98)
77	Sunil Kumar Ramesh Chandra Singh	----	2729 (99)
78	Sanjay Nathuji Patil	----	2729 (100 & 101)
79	Vaibhav Pradeep Mittal	----	2729 (102 & 103)
80	Pankaj Ashok Vazirani	----	2729 (104)
81	Avinash Narayan Karve	Ext. 1426	2729 (105)
82	Nishikant Jagannath Gore	----	2729 (106)
83	Suhas Manohar Jadhav	----	2729 (107)
84	Dr. Pankaj Poonamchand Lohia	----	2729 (108)
85	Pundlik Mahadu More	----	2729 (109)
86	Chandrasekhar Vasant Pujari	----	2729 (110)
87	Vivek Rajendra Kumar Tulsiyani	----	2729 (111)
88	Mahendrakumar Ramanlal Parikh	----	2729 (112)
89	Kaushal Suresh Vora	----	2729 (113)
90	Deepak Vishwanath Parab	----	2729 (114)
91	Chetan Anand Bishandas	----	2729 (115 & 116)
92	Nagendra Prasad Koropolu	----	2729 (117 & 118)
93	Kamal Jethmal Pareikh	----	2729 (119)
94	Raju Sethia	----	2729 (120)
95	Urban John Baptist Sequeira	----	2729 (121)
96	Gajanan Sitaram Manjrekar	Ext. 1427	2729 (122)

97	Abdul Karim Khan	----	2729 (123)
98	Ashish Mohan Baktani	----	2729 (124)
99	Saurabh Shantaram Kochrekar	----	2729 (125)
100	G. Harihar Subrayamanyam	Ext. 2755	2729 (126)
101	Mrs. Vinaya Vinayak Palav	----	2729 (127 & 128)
102	Pradeep Indulal Shah	----	2729 (129)
103	Mehul Rajendra Trivedi	----	2729 (130)
104	Siddharth Hindurao Gholap	----	2729 (131)
105	Veena Ganesh Chorat	----	2729 (132)
106	Rajendraprasad Shivdayal Pateria	----	2729 (133)
107	William Baptist Fernandis	----	2729 (134)

59. 9 persons had died in the Khar Subway blast near Santacruz Railway Station as per the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates, Exts.2632 to 2640 as per the table below. The opinion as to the probable causes of deaths mentioned in the memorandums *post-mortem* examinations and cause of death certificates was due to shock and haemorrhage due to multiple injuries in the bomb blast.

Table No. 7

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas

1	Jitnedra J. Thadeshwar	2632
2	Kunal Rajnikant Shah	2633
3	Ramesh Shivilal Kumawat	2634
4	Mohanlal Ratanlal Shrawji	2635
5	Himanshu Buddhadev	2636
6	Girish N. Paramanand	2637
7	Manish Mohan Divekar	2638
8	Vinod Ari Kottan Thatiotan	2639
9	Waghela Ashok Ramjibhai	2640

60. 102 persons had been injured in the same blast as per the injury certificates, Ext.2730 (1 to 118) as per the table below, which show that they had sustained the injuries in the bomb blast in local train on 11/07/06.

Table No. 8

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Lalit Kumar Bhagwandas Phanse	----	2730 (1)
2	Pramod Hareshwar Gharat	Ext. 1309	2730 (2 & 3)
3	Parimal Jagjivandas Gandhi	Ext. 1328	2730 (4)
4	Sheshmal Bhurmal Jain	Ext. 1307	2730 (5)

5	Gulabrao Ganpat Patole	Ext. 1446	2730 (6)
6	Viraj Narendrabhai Panchal	Ext. 1303	2730 (7 & 8)
7	Suryakant Balkrishna Sawant	Ext. 1311	2730 (9)
8	Ishwaran Tarun	Ext. 1450	2730 (10)
9	Jatin Mafatbhai Waghela	Ext. 1310	2730 (11)
10	Raees Abdul Rauf Choudhary	----	2730 (12)
11	Ketan Dalpatbhai Patel	----	2730 (13 & 14)
12	Hasmukh Narayan Popat	Ext. 1447	2730 (15)
13	Nitin Shivaji Tungare	Ext. 1306	2730 (16)
14	Kunal Manohar Kolge	Ext. 1313	2730 (17 & 19)
15	Lalubhai Puroshattam Gopani	Ext. 1318	2730 (18)
16	Rasik Shantilal Sawala	----	2730 (20)
17	Ashok Hari Kamble	----	2730 (21)
18	Anat Pandurag Ashtekar	Ext. 1343	2730 (22)
19	Chirag Arvind Chauhan	----	2730 (23 & 24)
20	Kunda Vithoba Shinde	Ext. 1304	2730 (25)
21	Narendra Gunwantlal Shah	Ext. 1308	2730 (26 & 27)
22	Sukesh Shekhar Amin	Ext. 1448	2730 (28)
23	Chintan Badresh Gandhi	----	2730 (29)
24	Rajendra Deju Shetty	Ext. 1314	2730 (30)
25	Mangesh Lallan Zha	----	2730 (31)
26	Sunil Krushanmurari Goyal	----	2730 (32)

27	Umesh Jayantilal Maniyar	Ext. 1315	2730 (33)
28	Hemchandra Chandrakant Patankar	Ext. 1316	2730 (34)
29	Narendra Surajmal Khandelwal	Ext. 1441	2730 (35 & 36)
30	Amitprakash Omprakash Singh	----	2730 (37)
31	Chandrakant Narayan Deshmukh	Ext. 1320	2730 (38 & 39)
32	Jaydip Anantrao Vyas	Ext. 1431	2730 (40 & 41)
33	Jayantilal Memribai Kathad	Ext. 1436	2730 (42)
34	Sandeep Suresh Naik	Ext. 2756	2730 (43)
35	Kishor Gopinath Divekar	Ext. 1319	2730 (44)
36	Nimesh Nitin Desai	----	2730 (45)
37	Minrul Anis Ur Rehman Islam	----	2730 (46)
38	Dipti Sitaram Ghadigaonkar	Ext. 1317	2730 (47)
39	Sanjeev Raghvan Chachil	----	2730 (48 & 49)
40	Madhukar Narayan Loke	Ext. 1305	2730 (50)
41	Sachin Prabhakar Pawar	Ext. 1433	2730 (51)
42	Pradeep Kantilal Joshi	Ext. 1324	2730 (52)
43	Vinay Hanumant Patil	Ext. 1321	2730 (53)
44	Vinodkumar Keshavlal Darji	----	2730 (54)
45	Mahendra Babulal Mehta	Ext. 1444	2730 (55 & 56)
46	Anuj Girishkukmar Nandawani	----	2730 (57)
47	Madhukar Babulal Zaveri	Ext. 1312	2730 (58)

48	Jacob K Mathew	Ext. 1435	2730 (59)
49	Dhanisharan Ramswarup Jayant	Ext. 1443	2730 (60)
50	Amit Rangnath Punja	----	2730 (61)
51	Minesh Popatlal Munani	Ext. 1342	2730 (62)
52	Rajeshkumar Sarvanarayan Zha	----	2730 (63 & 64)
53	Dhiraj Kuvarji Rathod	----	2730 (65)
54	Narshinha Muddagiri Kamat	Ext. 1325	2730 (66)
55	Alpesh Ashok Kondalkar	Ext. 1440	2730 (67)
56	Jarad Kalapurekal Mathew	Ext. 1322	2730 (68)
57	Ansub Ramanuj Isthapak	----	2730 (69)
58	Ashok Tukaram Tandale	Ext. 1442	2730 (70)
59	Jagdish Lalji Godia	PW No. 9	2730 (71)
60	Rakesh Jaynarayan Kapoor	----	2730 (72)
61	Clinton George Martin	----	2730 (73)
62	Sundareshan S. Iyer	Ext. 1327	2730 (74)
63	Anles Anant Desai	----	2730 (75)
64	Sarbinder Sing Harbansing	----	2730 (76)
65	Rajendra Manohar Panchal	Ext. 1326	2730 (77)
66	Rohit Jagannath Shetty	----	2730 (78)
67	Prashant Sitaram Rathi	----	2730 (79)
68	Lalit Nikunj Poddar	Ext. 1331	2730 (80)
69	Harshadbhai Trambaklal Shah	Ext. 1333	2730 (81 & 82)

70	Premlal Nalin Ajmera	Ext. 1330	2730 (83)
71	Nilesh Ganeshbhai Joshalia	Ext. 1432	2730 (84)
72	Dara B Shroff	Ext. 1329	2730 (85 & 86)
73	Dhananjay Srirang Updekar	----	2730 (87)
74	Ramnathan Sudarshan Iyer	----	2730 (88)
75	Tushar N. Shah	Ext. 1332	2730 (89)
76	Ashish Vinayak Gokhale	Ext. 1445	2730 (90)
77	Ms. Chaya Pankaj Modi	Ext. 1334	2730 (91)
78	Shivaji Arjun Sahinsakhale	----	2730 (92)
79	Anish Kumar Datta	Ext. 1449	2730 (93 & 94)
80	Satish Parshuram Madav	----	2730 (95)
81	Brijeshkumar Suryakant Dubey	Ext. 1335	2730 (96)
82	Dinesh Satyanarayan Lahoti	Ext. 1337	2730 (97 & 98)
83	Ranjit Prataprao Patil	Ext. 1336	2730 (99)
84	Indrakumar Shyamsundar Saraf	Ext. 1341	2730 (100)
85	Ilancheri K. Padmanabhan	Ext. 1339	2730 (101 & 102)
86	Dhawal Ashok Shah	Ext. 1434	2730 (103)
87	Harishbhai Hargovind Shah	Ext. 1451	2730 (104)
88	Manubhai Shankarlal Bhat	----	2730 (105)
89	Tenilapuram Sundaram Mahalingam	----	2730 (106)
90	Rajesh Haridas Biswadia	Ext. 1340	2730 (107)
91	Harish Sumanlal Doshi	Ext. 1439	2730 (108)

92	Sachin Dilip Mahimkar	----	2730 (109)
93	E. K. Kutty	----	2730 (110)
94	Vishal Vijaykumar Nagaiech	PW No. 13	682
95	Vikas Vishwanath Modi	----	2730 (111)
96	Manojkumar Giridharbhai Kheredia	Ext. 1438	2730 (112)
97	Balsubramanyam Sriram	----	2730 (113)
98	Ashfaque Jabbar Khan	----	2730 (114)
99	Anish Pradeep Kelkar	----	2730 (115)
100	Vivek Dattatraya Shirke	Ext. 1437	2730 (116)
101	Lakshman Gopalkrishnan Kamath	Ext. 1323	2730 (117)
102	Umarshi Raimal Mota	Ext. 1338	2730 (118)

61. Sr. PI Kadri, PW-138, handed over all the documents of the investigation to ACP Shengal at the ATS office, Nagpada on 19/07/06 as per the order of the Director General of Police to hand over the investigation of the crimes to the ATS.

C. R. No. 41 of 2006 of Andheri Railway Police Station :-

62. Dy. SP Raskar, PW-139, took statements of injured, took the statement of PSI Ghuge, who had given him the information of the blast and of other witnesses, sent a special report to his superiors on 12/07/06 and the notes of investigation to the railway and city police stations. He also gave instructions to the investigating team to make inquiries about the suspects with daily passengers.

- 63.** He sent the articles seized from the spot to the FSL with ASI Basavraj Shivsangapa Autgiri, (PW-96)(Ext.959), alongwith his forwarding letter on 13/07/06, office copy of which is at Ext.960. The contents of the FSL report, Ext.961, shows the result of analysis that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris.
- 64.** He continued with the further investigation and on 15/07/06 he sent the articles seized from the spot as per the directions of the Bomb Detection and Disposal Squad, to the FSL alongwith PN Subhash Jairam Tambe, (PW-98)(Ext.975), alongwith his forwarding letter, office copy of which is at Ext.976. The contents of the report of the FSL, Ext.977, show the result of analysis that Cyclonite (RDX), Ammonium, Nitrate, Nitrite, Petroleum Hydrocarbon Oil were detected in the post explosion debris.
- 65.** Dy. SP Raskar, PW-139, continued with the investigation, during which crime no. 42 of 2006 was registered on the complaint of a relative of a deceased by name Ajmera, about someone having taken away a gold finger ring and a credit card of the deceased. One Mithun Jitendra Gandhi came to the police station on 14/07/06 and requested for showing the seized articles for locating his father, who had gone missing after the incident. He was shown the articles and he identified a photograph, a railway pass and other documents, as belonging to his father. This confirmed that his father had traveled upto Jogeshwari, but his name did not figure in the list of the injured or the deceased. Therefore, Dy. SP Raskar, PW-139, appointed a team of PSI Ghuge and staff to search the father of that

person. Sr. PI Arvind Narayan Wadhankar, (PW-167)(Ext.1767), and staff of the ATS, came to the police station on that day for inquiry and he gave them brief information about the crime. Dy. SP Raskar, PW-139, also recorded statements of injured who came to the police station during 14th to 17/07/06 after being treated. PSI Ghuge and his team produced a man by name Sagar Vyapari and a woman by name Sangeeta Vyapari, resident of Manjipada, Dist. Thane, on 17/07/06 and gave report alleging that they had taken the dead body of Jitendra Darjibhai Gandhi of Kandivali from Cooper Hospital on the pretext that it is the dead body of Sunil Vyapari, Sagar's father and Sangeeta's husband and had cremated the body at Oshiwara and had taken compensation of Re.1,00,000/- from the State Government. This Jitendra Darjibhai Gandhi was the father of Mithun Jitendra Gandhi, who had come to the police station on 14/07/06, in search of his father. Dy. SP Raskar, PW-139, sent the complaint with the said two persons to Juhu Police Station, as the crime had been committed in the jurisdiction of that police station. C.R. No. 240 of 2006 was registered there for the offences under sections 419 and 420 r/w 34 of the IPC.

66. He gave instructions during the period from 14th to 19/07/06 to the muddemal clerk HC Jadhav and his assistant to verify and hand over the articles of passengers to their relatives after due verification. During that work, one Archana Manoj Shah came on 14/07/06 to collect the diamonds that had been recovered from the dead body of her husband Manoj Shah, resident of Malad. The diamonds were kept in plastic pouches in two white paper packets

bearing the dates 6th and 11/07/06 and were worth Rs.4,00,000/-. They were returned to her after due verification of her identity. The said Manoj Shah was a carrier of the diamonds.

67. ASI Autgiri, PW-96, brought the letter, Ext.962, from Cooper Hospital addressed to the Sr. PI to take custody of a metal piece that was taken out from the body of Mohd. Kalal, an injured, during operation. Therefore, he wrote a letter to the Sr. Medical Officer, Cooper Hospital, Vile Parle, Mumbai, office copy of which is at Ext. 963 dtd.19/07/06, about handing over the metal piece to ASI Autgiri, PW-96. By his letter, Ext.964, the Sr. Medical Officer of that hospital handed over the said metal piece to ASI Autgiri, PW-96, who brought the letter and a sealed plastic jar containing the metal piece to the police station. Dy. SP Raskar, PW-139, sent the sealed plastic jar to the FSL, Kalina, alongwith ASI Autgiri, PW-96, with his forwarding letter, office copy of which is at Ext.965. The FSL report, Ext.966 was received in a due course.

68. 28 persons had died in the blast at Jogeshwari as per the table below as per the contents of the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates, Exts.2641 to 2668. The opinion as to the probable causes of deaths mentioned in the memorandums of *post-mortem* examinations and cause of death certificates were haemorrhage and shock due to polytrauma, multiple injuries in case of bomb blast.

Table No. 9

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas
1	Narendra Kundandas Rawal	2641
2	Paresh Chotalal Thakkar	2642
3	Lotan Bhila Bediskar	2643
4	Kumud Manubai Shah	2644
5	Chandrsen Champaklal Bangdiwala	2645
6	Tushit Shanmukhanan Shah	2646
7	Yatin Mahendrakumar Mehta	2647
8	Dr. Krushnakumar Dubey	2648
9	Arvind Arjun Chikne	2649
10	Mukundraj Amidar Modi	2650
11	Nandkumar Bhargav Vaidya	2651
12	Amrish Madhukar Sawant	2652
13	Pravinkumar Keshvlal Upadhayaya	2653
14	Shakir Abid Ali Merchant	2654
15	Ashok Gajanan Bapat	2655
16	Mahendra Motilal Mehta	2656
17	Hitendra Purushottamdas Nagar	2657
18	Manoj Mahendrakumar Shah	2658

19	Amitabh Laxminarayan Pai	2659
20	Ashok Gopikishan Ajmera	2660
21	Shashikant Ramniklal Doshi	2661
22	Prataproy Nanchand Vhora	2662
23	Francis Zevier Lobo	2663
24	Lalit Raghunathprasad Kakani	2664
25	Govindji Gulabchandji Dave	2665
26	Madhu Parshuram Pawar	2666
27	Lalit Jayantilal Kanchaliya	2667
28	Sunil Thakkar	2668

69. 115 persons had been injured in the same blast as per the injury certificates, Ext.2731 (1 to 110) as per the table below, which show that they had sustained the injuries described in the certificates in the bomb blast in local train on 11/07/06.

Table No. 10

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Smt. Jasvinder Pradeepkumar Samiyar	----	2731 (1 & 2)
2	Miss. Lata Bhimrao Shirsat	----	2731 (3)
3	Smt. Deepika Arun Chavan	----	2731 (4)
4	Jayprakash Balkrishna Gurav	PW No. 14	2731 (5)

5	Smt. Chhaya Vilas Kothe	----	2731 (6)
6	Chandravadan Maganlal Savla	----	2731 (7)
7	Sunil Kashiprasad Bajaj	----	2731 (8)
8	Smt Sharda Pramod Tople	----	2731 (9)
9	Nikhil Vasant Khopkar	Ext. 1452	2731 (10)
10	Bajirao Bhausahab Desai	----	2731 (11)
11	Ambar Abani Day	----	2731 (12)
12	Miss Aparna Vivek Salvi	----	2731 (13)
13	Nilesh Rohidas Kadam	----	2731 (14)
14	Smt. Shanta Rohidas Kadam	----	2731 (15)
15	Rambharan Yadunandan Mishra	----	2731 (16 & 17)
16	Eshan Bhratkumar Thakkar	Ext. 2757	2731 (18)
17	Hanasraj M. Kanojia	----	2731 (19)
18	Rambhau Vitthal Sadavarte	----	2731 (20)
19	Vilas Maruti Ghoge	Ext. 2758	2731 (21)
20	Smt. Meena Salvi	----	2731 (22)
21	Vasant Abhimanyu Sirsikar	Ext. 2759	2731 (23)
22	Chandrakant Mataprasad Mishra	----	2731 (24)
23	Dilip Keshavji Vora	----	2731 (25)
24	Pintukumar Amir Sarosh	Ext. 2760	2731 (26)
25	Vijay Jagannath Pawar	Ext. 2761	2731 (27)
26	Tushar Rajesh Rawal	----	2731 (28)
27	Sanjay Babu Shigvan	----	2731 (29 & 30)

28	Sabajit Pheku Yadav	----	2731 (31)
29	Smt. Nandubai Saiba Mujmule	----	2731 (32)
30	Mahendra Vilas Pitale	Ext. 2762	2731 (33)
31	Prakash Bhalchandra Wagh	Ext. 2763	2731 (34)
32	Ashwin Ramesh Boricha	PW No. 134, Affidavit Ext. 1453	2731 (35)
33	Smt. Manisha Anant Joshi	----	2731 (36)
34	Ramdas Dhondiba Warange	----	2731 (37)
35	Vijay Pandurang Mestry	----	2731 (38)
36	Arvind Vallabhaji Mahendra	----	2731 (39)
37	Bipin Natwarlal Shah	----	2731 (40)
38	Janak Harshad Upadhayay	----	2731 (41)
39	Harshad Subhash Borgaokar	Ex. 2764	2731 (42)
40	Chandrashekhar Vinayak Joshi	----	2731 (43)
41	Smt. Supriya Baban Kheratkar	----	2731 (44 & 45)
42	Rylan Francis Crasto	----	2731 (46)
43	Vipul Manharlal Halani	----	2731 (47)
44	Ashok Radhakisan Singal	----	2731 (48)
45	Narendra Ghusabhai Rupareliya	----	2731 (49)
46	Smt. Deepjyoti Suprakash Chaterjee	----	2731 (50)
47	Deepak Balmukund Shah	Ext. 2765	2731 (51)
48	Keith Anthony D'Souza	----	2731 (52)

49	Harishchandra Deomal Gandhi	----	2731 (53)
50	Babay Aaba Sodkar	Ext. 1454	2731 (54)
51	Gulab Sriram Yadav	----	2731 (55)
52	Bharat Radheshyam Khatod	----	2731 (56)
53	Rajkumar Bachhan Singh	----	2731 (57)
54	Rajan Govind Nair	----	2731 (58)
55	Shiva Balan	----	2731 (59)
56	Smt. Sushila Vijay Valtati	----	2731 (60)
57	Shivanna A. Shetty	----	2731 (61)
58	Pramodkumar Manager Thakur	----	2731 (62)
59	Kshitij Anil Baldota	Ext. 2766	2731 (63)
60	Shashitant Raghunath Dablekar	----	2731 (64)
61	Sachin Naginaprasad Gupta	----	2731 (65)
62	Abhijit Avadhesh Sharma	----	2731 (66)
63	Dadasaheb Baburao Lokhande	----	2731 (67)
64	Chetan Dwarkadas Mehta	Ext. 1455	2731 (68)
65	Daji Ganpat Naik	----	2731 (69 & 70)
66	Ketan Narendra Rathod	Ext. 2767	2731 (71)
67	Jafar Ali Sayyed Ali Sayyed	----	2731 (72 & 73)
68	Hitesh Shashikant Shah	----	2731 (74)
69	Subash Shankar Khedekar	Ext. 2768	2731 (75)
70	Andrew Gregory Figerado	----	2731 (76)

71	Mangesh Sadanand Mestry	----	2731 (77)
72	Kamlakar Jayram Sankhe	----	2731 (78)
73	Vaibhav Subash Mahale	----	2731 (79)
74	Dinesh Savlaram Nabar	----	2731 (80)
75	Amar Nanaji Solanki	----	2731 (81)
76	Vijay Kumar Narayan Deshpande	Ext. 2769	2731 (82)
77	Jekim John Fernandez	----	2731 (83)
78	Dilip Singh Sugandh Singh Shekhwat	Ext. 2770	2731 (84 & 85)
79	Vinod Koshanna Ayatalla	----	2731 (86 & 88)
80	Ajay Avinash Narse	----	2731 (87)
81	Kamal Kumar Ramavatar Devda	----	2731 (89)
82	Gopal Shyamsunder Chaudhari	----	2731 (90)
83	Jaydeep Keshavji Sampat	----	2731 (91)
84	Vijaykumar Bavanna Raippa	----	2731 (92)
85	Ramkumar Munnar Yadav	----	2731 (93)
86	Amarkant Mithailal Yadav	----	2731 (94)
87	Babukumar Basaulkumar Ray	----	2731 (95 & 96)
88	Kum. Foram Jayesh Shah	----	2731 (97)
89	Prashant Gangadhar Shetty	----	2731 (98)
90	Rajneesh Jiten Borkothoky	----	2731 (99)
91	Amrut Tulshiram Patil	----	2731 (100)
92	Suresh Laxman Sapkal	Ext. 2771	2731 (101 & 102)

93	Sanjay Ghanashyam Pandey	----	2731 (103)
94	Ninad Vishnu Katdare	----	2731 (104)
95	Jagdish Dhirajlal Vyas	Ext. 2772	2731 (105)
96	Kum. Nilam Vishnu Ghegadmal	----	2731 (106)
97	Mrs. Vijayanti Anirudha Sule	Ext. 2773	2731 (107)
98	Rajendrakumar Mulkraj Mahajan	----	2731 (108)
99	Mr. Mohanlal Damji Pasad	Ext. 2774	2731 (109)
100	Smt. Gayabai Lakshman Narvade	----	2731 (110)

70. Dy. SP Raskar, PW-139 handed over the documents and case diaries to ACP Shengal at the ATS office, Nagpada on 20/07/06 as per the order of the Commissioner of Railway Police, to hand over the investigation of the crime to the ATS, Mumbai.

C. R. No. 156 of 2006 of Borivali Railway Police Station :-

71. Dy. SP Ahir, PW-144, sent the nine articles that he had picked up from the bogie on being shown by the FSL expert, Kuklarni, who had come there, alongwith HC Mahadeo Hariba Khot, (PW-143) (Ext.1581), alongwith his forwarding letter, office copy of which is at Ext.1582, to the FSL, Kalina. The contents of the report of the FSL, Ext.2416, show the result of analysis that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris.

72. The police of Borivali Railway Police Station were searching for the witnesses and the accused during that day. Dr. Madhukar Puroshottam Chaudhary, (PW-38) (Ext.574), of Saibaba Maternity

and Nursing Home, had treated Shweta Narayan Ambede, (PW-37) (Ext.573), as she had suffered injury on her right leg while travelling in the train that was going to Kandivali and when the blast had taken place in the train on platform no. 4 of Jogeshwari Railway Station that was going towards Virar. He had taken out a foreign body, i.e., metal piece, Art.243, with great difficulty, preserved it and handed it over to her father alongwith letters, Exts.575 and 576. Her father took a sealed transparent plastic bottle on 13/07/06 containing the metal piece alongwith the forwarding letter of the said hospital to the police station, which was seized by Dy. SP Ahir, PW-144, under the panchanama, Ext.562 before panch witnesses Dilip Vitthal Aayre, (PW-33)(Ext.561), and one more. He sent the seized plastic bottle with HC Khot, PW-143, on 15/07/06 to the FSL alongwith his forwarding letter, office copy of which is at Ext.1583.

73. Dy. SP Ahir, PW-144, continued with the investigation and during that time there was an order that the ATS would conduct the further investigation. Accordingly the ATS officers came to the police station and he informed them about the progress of the investigation and had discussions with them. They also started making the investigation parallel to his investigation. He took 29 photographs and a CD of the video shooting done by Jignesh Waghadia under the panchanama, Ext.1587.

74. Kishore Popatlal Shah, (PW-60)(Ext.745), the first witness who informed the police about seeing two persons keeping a bag in the first-class compartment in the Virar fast local on 11/07/06 at Churchgate, went to the Borivali Railway Police Station on

14/07/06 and narrated about what he had seen on that day to Dy. SP Ahir, PW-144, who recorded his statement, told him that he would call the ATS people to prepare sketches of the two persons that he had seen. However, the witness was in a hurry and was not feeling well. Therefore, he left saying that he would come later on. He was tried to be contacted many times thereafter, but he did not come. It was disclosed from the information that Kishore Shah, PW-60, gave, that he boarded the front first-class bogie of the 1737 Virar fast local at Churchgate on 11/07/06, that alongwith other passengers, two persons together boarded the bogie, out of whom one had a black coloured bag, which he kept on the luggage rack on the western side, that they got down at Dadar and that there was an explosion at about 1830 hours when the train stopped at Borivali Railway Station. He gave the description of the two persons to the police.

75. They inquired with many persons and recorded the statements of about 118 persons, whom they found important. He recorded the statements of 29 witnesses out of them.

76. 26 persons had died in the blast at Borivali Railway Station as per the contents of the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates, Exts. 2669 to 2694 as per the table below. The opinion as to the probable causes of deaths mentioned in the memorandums of *post-mortem* examinations and cause of death certificates was haemorrhage and shock due to multiple injuries in case of bomb blast and complications due to head injury with polytrauma in case of bomb

blast.

Table No. 11

Sr. No.	Name of deceased	Exhibit numbers of memorandum of <i>post-mortem</i> examinations, cause of death certificates and inquest panchanamas
1	Suresh Chunilal Engineer	2669
2	Dipak Ramlakhan Kewat	2670
3	Ravindranath Budhasingh Balhariya	2671
4	Omkarnath Adiyashankar Mishra	2672
5	Bhogilal Ambalal Sarwayya	2673
6	Jaikumar Raman Pilai Nair	2674
7	Kawan Subhash Thakur	2675
8	Naresh Jivrajibhai Saliya	2676
9	Ajaj Moin Shaikh	2677
10	Sriniwasrao Bhimsenrao Mulbagelu	2678
11	Satyawan Ramchandra Biradar	2679
12	Kirtibhai Sarabhai Shah	2680
13	Harshal Yashwant Bhalerao	2681
14	Anandnath Shambihari Tiwari	2682
15	Mohanprasad Faujiram Khansali	2683
16	Brij Mohan Prasad	2684
17	Giribau Narsinghrao Nijamapatanam	2685

18	Vitthal Warloji Choudhari	2686
19	Nandini Ramesh Naik	2687
20	Rajnikant Purushottamdas Panchal	2688
21	Subhash Narhari Sawant	2689
22	Hemlata Yadunath Yadav	2690
23	Devesh Satyapraksh Singh	2691
24	Beni Joseph	2692
25	Vikrant Satish Khanvilkar	2693
26	Ramjanali Rajabali Motani	2694

77. 153 persons had been injured in the same blast as per the injury certificates, Exts.2733 (1 to 152) as per the table below, which show that those persons had sustained injuries, as described in the certificates in the bomb blast in local train on 11/07/06.

Table No. 12

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Rajesh Amborkar	----	2733 (1)
2	Ashokbhai Durgashankar Joshi	----	2733 (2)
3	Prathamesh D. Tawde	----	2733 (3)
4	Ms. Darshana Bhupendra Keni	----	2733 (4)

5	Vijaykumar Narayan Kuroop Nair	----	2733 (5)
6	Sudhir Harinath Upadhyay	----	2733 (6)
7	Santosh Madhukar Vichare	----	2733 (7)
8	Harshad Vivek Tondawalkar	----	2733 (8)
9	Nilesh Amritlal Soni	----	2733 (9)
10	Manoj Jugalkishore Purohit	----	2733 (10)
11	Ms. Vidya Bhaskar Shetty	----	2733 (11)
12	Khalid Abdul Hafij Siddique	----	2733 (12)
13	Avinash Shyamsundar Dhanawat	----	2733 (13)
14	Parth Pratik Shah	----	2733 (14)
15	Arvind Bawarilal Sharma	----	2733 (15)
16	Kamal Ramvilas Parikh	----	2733 (16)
17	Santoshkumar Kutti Narayan	----	2733 (17)
18	Rajaram Sawlaram Chavan	PW No. 11	2733 (18)
19	Vinay Madanlal Gupta	----	2733 (19)
20	Namdeo Ratnu Rade	----	2733 (20)
21	Bhushan Subhash Kothawale	----	2733 (21 & 22)
22	Kamal Satyanarayan Khemla	----	2733 (23& 24)
23	Ms. Sheela Kamal Khemla	----	2733 (25 & 26)
24	Dharmendra Atmaram Waghela	----	2733 (27)
25	Shripal Somlal Jain	----	2733 (28 & 29)
26	Chinmay Harischandra Mahajan	----	2733 (30)

27	Kumar Naik	----	2733 (31)
28	Mrs. Gajra Perukumar Khaniya	----	2733 (32)
29	Giridhar Daya Koli	----	2733 (33)
30	Chedilal Kharpatu Yadav	----	2733 (34)
31	Prashant Satish Shinde	----	2733 (35)
32	Sanjaybhai Narayanbhai Luwani	----	2733 (36 to 38)
33	Balkrishna Atayappa Kotian	----	2733 (39)
34	Zakir Usman Khan	----	2733 (40 & 41)
35	Gajanan Jagannath Bhavsar	----	2733 (42)
36	Jathashankar Moreshwar Pande	----	2733 (43)
37	Ms. Neeta Ashok Ranpura	----	2733 (44)
38	Alwin Anthony D'Cunha	----	2733 (45)
39	Ms. Shweta Narayan Ambede	PW No. 37	576
40	Mahesh Shridhar Sawant	----	2733 (46)
41	Dinesh Tulsibhai Moradia	----	2733 (47)
42	Honabhai Budhabhai Rathod	Ext. 2775	2733 (48)
43	Ashish Chinubhai Shah	Ext. 2776	2733 (49)
44	Piyush Rameshchandra Sharma	Ext. 2777	2733 (50)
45	Suraj Kalikanja Zha	----	2733 (51)
46	Baby George Varghese Mathew	----	2733 (52)
47	Suresh Kamapra Shreyan	----	2733 (53)
48	Vijay Nair	----	2733 (54)

49	Vinit Dilip Patil	----	2733 (55)
50	Bramhesh Shankar Nadkarni	----	2733 (56)
51	Rahul Ram Wankhede	----	2733 (57)
52	Nayan Kantilal Tokle	----	2733 (58)
53	Omkar Prakash Tirodkar	----	2733 (59)
54	George D'Mello	----	2733 (60)
55	Yogesh Devmurat Pande	----	2733 (61)
56	Rajkumar Nabab Singh Chouhan	----	2733 (62)
57	Hemraj Damaji Satpute	----	2733 (63)
58	Ms. Kailashben Ranjitbhai Thakur	----	2733 (64)
59	Aniket Taipanna Shettigar	----	2733 (65 & 66)
60	Suresh Jayawant Prabhu	----	2733 (67 & 68)
61	Sayyad Nasiruddin Muniruddin	----	2733 (69 & 70)
62	Kishore Popatlal Shah	PW No. 60	2733 (71)
63	Sunil Motilal Murde	----	2733 (72)
64	Ms. Shagufa Amir Ansari	----	2733 (73)
65	Jeenank Pareshbhai Dalal	Ext. 2778	2733 (74)
66	Suhas Dattatraya Apte	----	2733 (75)
67	Babu K. Anand	----	2733 (76)
68	Manubhai D. Jasoliya	----	2733 (77)
69	Mohd. Safi Munna Mirza	----	2733 (78)
70	Suresh Shekhar Suvarna	----	2733 (79)

71	Hemant Jangubhai Surti	----	2733 (80 & 81)
72	Prakash Ganesh Bhandare	----	2733 (82)
73	Manish Himmatlal Mehta	----	2733 (83)
74	Jayanti Veljibhai Kokia	----	2733 (84)
75	Deepak Taraprasad Sharma	----	2733 (85)
76	Prabhudas Keshav Goti	----	2733 (86 to 88)
77	Keni Yogesh Pande	----	2733 (89)
78	Ashish Narayan Agawane	----	2733 (90)
79	Shekhar Chagan Birari	----	2733 (91 & 92)
80	Vivek Mahadeo Deshmukh	----	2733 (93 & 94)
81	Premasukh Bafarlal Khandelwal	----	2733 (95)
82	Ms. Kavita Dilip Shah	----	2733 (96)
83	Pramod Ganpat Narkar	Ext. 2780	2733 (97)
84	Kishor Bapu Gawali	----	2733 (98 & 99)
85	Subhashchandra Jangiram Arora	----	2733 (100)
86	Pravinchandra Natvarlal Shah	----	2733 (101)
87	Girishbhai Bhailal Gandhi	----	2733 (102 & 103)
88	Ajay S. Thakkar	Ext. 2781	2733 (104)
89	Leeladhar B. Kotian	Ext. 2782	2733 (105)
90	Sanjeeva Kariappa Suvarna	----	2733 (106)
91	Ram Ishwarlal Dhawale	----	2733 (107)
92	Pradeep Prabhatkumar Jindani	----	2733 (108)

93	Mani Kanthan Nair	----	2733 (109)
94	Arunkumar Juguraj Prajapati	----	2733 (110)
95	Mangesh Vishvanath Kolekar	----	2733 (111)
96	Haridas Ravindranath Puduwal	----	2733 (112)
97	Rajeshkumar Harkisan Jaiswal	----	2733 (113)
98	Nitin Vidyadhar Panjari	----	2733 (114)
99	Santosh Prakash Khanvilkar	----	2733 (115)
100	Husain Yusuf Singaporwala	----	2733 (116)
101	Gaurav Rajesh Jain	----	2733 (117)
102	Jaijeet Jyotindra Sengupta	----	2733 (118 & 119)
103	Prakash Rajaram Benkar	----	2733 (120)
104	Amit Bhikaji Padwal	Ext. 2783	2733 (121)
105	Raja Mohamad Akbar	----	2733 (122)
106	Jude Milton Vholkart	----	2733 (123)
107	Surendra Chaitram Hirkane	----	2733 (124)
108	Smt. C. Jaya Bapuji	----	2733 (125)
109	Dinanath Bhaskar Save	----	2733 (126)
110	Chandrakant Somabhai Makwana	----	2733 (127)
111	Siddharam Shantamallappa Nagur	----	2733 (128)
112	Raju Sadashiv Kamble	----	2733 (129 to 131)
113	Ramesh Hajarichand Thakur	----	2733 (132 & 133)

114	Ramesh Dattatraya Kulkarni	----	2733 (134)
115	Allwyn Xavier D'Cunha	----	2733 (135)
116	Pawan Karunashankar Chaturvedi	----	2733 (132 & 136)
117	Ravindra Jairam Rawool	----	2733 (137)
118	Haridwar Mahesh Chauhan	----	2733 (138 & 139)
119	Mrs. Kalpana Ashok Pawar	----	2733 (140)
120	Ramesh Devlya Thakre	----	2733 (141)
121	Chimanlal Bhagwandas Wadher	----	2733 (142)
122	Samir Krishnachand Gujrathi	----	2733 (143)
123	Shiva Chandrashekhar Hiremath	----	2733 (144)
124	Dilip Tatoba Naik	----	2733 (145)
125	Manideep Murlidhar Seth	----	2733 (146)
126	Ashok Govind Kini	----	2733 (147 & 148)
127	Saurav Chandrashekhar Wable	----	2733 (149)
128	Rajkumar Roshanlal Chauhan	----	2733 (150)
129	Madhav Manjunath Naik	----	2733 (151 & 152)
130	Johnson @ Jacson Charles Amanna	Ext. 2779	----

78. Dy. SP Ahir, PW-144, sent all the papers of investigation alongwith PSI Dhone, PW-1, to the office of the ATS on 21/07/06. They recorded the statements of some injured persons, who came to their police station after that day and forwarded the statements to

the ATS.

C. R. No. 59 of 2006 of Vasai Road Railway Police Station :-

79. Sr. PI Kulkarni, PW-133, sent the articles seized from the spot, to the FSL, Kalina on 13/07/06 alongwith HC Rangnath Bhimrao Khot, (PW-99)(Ext.979), alongwith his forwarding letter, office copy of which is at Ext.980. The contents of the FSL report, Ext.981, that was received later on, show the result of analysis that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris. Sr. PI Kulkarni, PW-133, continued with the investigation and he and his staff recorded the statements of injured, received documents of deceased and injured persons from different police stations, registered ADRs and searched for the accused in the meanwhile.
80. 31 persons had died in the blast near Mira Road Railway Station as per the contents of the inquest panchanamas, memorandums of *post-mortem* examinations and cause of death certificates, Exts.2695 to 2725 as per the table below. One of the injured witnesses by name Amit Dinesh Singh had been admitted in the Jaslok Hospital after the blast in an unconscious condition and was decerebrating. He died on 03/05/13, i.e., nearly 7 years after the incident, and the prosecution produced his death certificate Ext. 4731 and death summary issued by the Jaslok Hospital Ext.4733. Hence, now 32 persons have died in this blast. The opinion as to the probable causes of deaths mentioned in the memorandums of *post-mortem* examinations and cause of death certificates was haemorrhagic shock due to multiple perforating injuries over

forehead, chest wall and abdomen due to explosion, multiple fractures, multiple injuries and injuries to vital organs of pelvis due to explosion, haemorrhagic shock due to fracture occipital region of skull vault and multiple fracture of extremities due to explosion, fractures of right ulna and radius, shock due to amputation of left hand below elbow, amputation of left leg below knee and head injury due to explosion, fracture of right lower legs, humerus, in case of bomb blast.

Table No. 13

Sr. No.	Name of deceased	Exhibit numbers of memorandum of post-mortem examinations, cause of death certificates and inquest panchanamas
1	Mahipal Madanlal Parihar	2695
2	Narottam Damodar Meher	2696
3	Ajit Laxman Pangle	2697
4	Hasmukhlal Pauran	2698
5	Dilip Dattatray Kirale	2699
6	Ashok K. Aail	2700
7	Shamsundar Shivkumar Sharma	2701
8	Rimnya Lalya Thakare	2702
9	Pramod Prabhakar Vispute	2703
10	Rakesh Kailas Richariya	2704
11	Ramdas Pundalik Shirodkar	2705

12	Ramesh Ramchandra Nijai	2706
13	Mickel Augastine Dabare	2707
14	Pratik Nivrutti Patil	2708
15	Kamlesh Ravidas Ashar	2709
16	Govind Khema Solankhi	2710
17	Abhinav Harishchandra Shrivastav	2711
18	Mohanan Takekkara	2712
19	Hasan Siraj Patel	2713
20	Rajendrakumar Ramkrushna Dilod	2714
21	Rammilan Birjlal Prajapati	2715
22	Dineshbhai Dhirajbhai Solankhi	2716
23	Jerold Paskal Farnandis	2717
24	Rohit Surendrakumar Jain	2718
25	Anil Kishorchand Satwani	2719
26	Rajesh Damodar Pandharekar	2720
27	Hridya Vaman Naikwade	2721
28	Swapnil Prakash Oak	2722
29	Jaiprakash Sons	2723
30	Arun Kashinath Patole	2724
31	Subramanyam Krushnan	2725
32	Amit Dinesh Singh	2732(14), 4731 & 4733

81. 122 persons had been injured in the same blast as per the

injury certificates, Ext.2732 (1 to 54) as per the table below, which show that those persons had sustained injuries as described in the certificates, in the bomb blast in local train on 11/07/06.

Table No. 14

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Abhay Dineshkumar Shrivastav	PW No. 192, Ext. 1461	2732 (1 & 49)
2	Ms. Vrunda Suresh Hegde	Ext. 1370	2732 (2)
3	Sunil Rama Choudhari	Ext. 1372	2732 (3 & 28)
4	Ms. Sonal Xavier Gonsalves	Ext. 1368	2732 (4 & 18)
5	Macwin William D'souza	Ext. 1369	2732 (5)
6	Raju Kosiko Thomas	Ext. 1371	2732 (6)
7	William Sunder Bhasme	----	2732 (7)
8	Govardhan Udhumji Ingawale	----	2732 (8)
9	Mohammed Shabbir Mohammed Dinos Khan	----	2732 (9)
10	Sanjay Thomas Lopes	----	2732 (10)
11	Prakash Shridharan Kannotikudian	Ext. 1356	2732 (11)
12	William George Joseph	----	2732 (12)
13	Sanjay Pandurang Sawant	----	2732 (13, 16 & 17)
14	Kishor Dattatray Mhatre	PW No. 10	2732 (15 & 17)

15	Radheshyam Suraj Prasad Singh	----	2732 (17)
16	Avadhesh Laxman Thakur	----	2732 (17)
17	Sachin Somesh Narad	Ext. 1398	2732 (17)
18	Wilfred Walter Naronha	PW No. 130	2732 (17 & 28)
19	Santosh Ramchandra Yadav	----	2732 (17)
20	Subhash Dharmaji Lad	----	2732 (17)
21	Manish Vallabhji Gogri	----	2732 (17)
22	Ashish Anant Borgare	----	2732 (17)
23	Claudius Wilfred Saldhana	PW No. 147 Affidavit Ext. 1366	2732 (18)
24	Suresh Krishna Rao	----	2732 (18)
25	Shailesh Shirish Kawle	----	2732 (18)
26	Pradeepkumar Mahakant Jha	----	2732 (18)
27	Ms. Sonal Xavier Gonsalves	----	2732 (18)
28	P.C. Govindan Nambiyar	----	2732 (18)
29	Ashok Jai Narayan Sabharwal	Ext. 1367	2732 (18)
30	Bajranglal Marhadin Kyal	Ext. 1386	2732 (18 & 44)
31	Pranav Jayant Ankalesaria	Ext. 1393	2732 (18)
32	Ajay Singh	----	2732 (18)
33	Kailash Takatmal Mehta	----	2732 (19)
34	Rishikesh Ratibhai Bhavsar	----	2732 (20)
35	Hirendra Suresh Barrot	Ext. 1361	2732 (21)

36	Vishnu Trimbak Waghode	----	2732 (22)
37	Mahendrakumar Tarachand Jain	----	2732 (23 & 24)
38	Arvindkumar Sheshbahadur Kanauiya	----	2732 (24)
39	Prakash Hadkar	----	2732 (24)
40	Gyanendra Jain	----	2732 (24)
41	Shivkumar Rambheerji Prasad	----	2732 (24)
42	Pinesh Kalyanbhai Shah	Ext. 1362	2732 (24)
43	Swadhin Richpal Padiya	----	2732 (25)
44	Wilfred Rosario Kashta	----	2732 (26)
45	Dr. Aziz Akbarali Keswani	----	2732 (27)
46	Manoj Shymdeo Bharadwaj	----	2732 (28)
47	Yashwant Ramesh Naik	----	2732 (28)
48	Ramanbhai Hargovinddas Patel	----	2732 (28)
49	Mahesh Prakash Surve	Ext. 1460	2732 (28)
50	Santosh Izak Nago	Ext. 1354	2732 (28)
51	Pratik Prakash Raut	----	2732 (28)
52	Sanyo Alizar D'Silva	Ext. 1355	2732 (28)
53	Paresh Vitthaladas Amlani	----	2732 (28)
54	Gopinath Vitthal Patil	Ext. 1352	2732 (28)
55	Subhash Shivagan	Ext. 1353	2732 (28)
56	Nirbhaynath Ramshiromani Tiwari	----	2732 (28)

57	Nagesh Gopal Shenoy	Ext. 1350	2732 (28)
58	Umar Hussein Shaikh	----	2732 (28)
59	Sanjay Khobrekar	Ext. 1364	2732 (28)
60	Balam Pushpasen Rane	PW No. 190, Ext. 1351	2732 (28)
61	Jatin Rohit Thakkar	----	2732 (28)
62	Namdeo Keru Surve	Ext. 1373	2732 (28)
63	Ajay Bijay Bahadur Singh	Ext. 1382	2732 (29)
64	Shailesh Shirish Kawle	----	2732 (30)
65	Nameet Kashinath Vanmale	----	2732 (31)
66	Milind Vasudeo Kamankar	----	2732 (32)
67	Dattatray Vasant Choudhari	----	2732 (33)
68	Pommuti Rai	----	2732 (35)
69	Prashant Sanath Pandya	----	2732 (36)
70	Mina Ramesh Maru	----	2732 (37)
71	Parkot Matai Matai	Ext. 1349	2732 (28 & 38)
72	Ajay Gangaram Naik	----	2732 (39)
73	Hastimal Choudamal Solanki	Ext. 1376	2732 (39)
74	Ashish Suresh Chaturvedi	Ext. 1375	2732 (39)
75	Tushar Ramesh Kulkarni	Ext. 1348	2732(28 & 40)
76	Vrushang Dharmendra Shah	----	2732 (41 & 43)
77	Vijay Krishna Nair	PW No. 187, Affidavit Ext. 1379	2732 (42)

78	Lalchand Vidyadhar Dubey	Ext. 1384	2732 (45)
79	Rampyare Sidhdheshwar Lal	Ext. 1391	2732 (46)
80	Chandradas Koragga Karkera	Ext. 1394	2732 (46)
81	Ramesh Manilal Patel	----	2732 (47)
82	Devendra P. Chavhan	PW No. 123, Affidavit Ext. 1389	2732 (48)
83	Raghunath Shankar Chindarkar	Ext. 1458	2732 (49)
84	Shankar Siddhu Abhang	Ext. 1374	2732 (49)
85	Asitkumar Vijaychandra Panda	----	2732 (49)
86	Swapnil Rajaram Ambre	Ext. 1377	2732 (50)
87	Dashrath Kantilal Patel	Ext. 1387	2732 (51)
88	Aman Anup Pumvani	----	2732 (51)
89	Eric Fracis Nunis	----	2732 (52)
90	Rahul Milind Kadam	Ext. 1399	2732 (53)
91	Parag Sawant	----	2732 (17 & 54) 2728 (83 to 85)
92	Kiran R. Kini	PW No. 191, Ext. 1347	----
93	Umesh Ramanna Shetty	Ext. 1357	2727 (29)
94	Bamsingh Raisingh Khatri	Ext. 1358	----
95	Madhukar Raghu Mistri	Ext. 1359	----
96	Naresh Gajanan Patil	Ext. 1360	----
97	Ramnaval Dhanukdhari Sahani	Ext. 1363	----

98	Chandrikasingh Sarjoram Yadav	Ext. 1365	----
99	Dr. Ajay Jayant Nikam	Ext. 1457	----
100	Satish Narayan Manoti	Ext. 1378	----
101	Balram Kashinath Sankhe	Ext. 1459	----
102	Naresh Maruti Kalokhe	PW No. 126, Affidavit Ext. 1380	----
103	Kaushal Dharamvir Bali	Ext. 1381	----
104	Pritam Dattatray Mhatre	Ext. 1383	----
105	Murarilal Haridyalji Parekh	PW No. 137, Affidavit Ext. 1385	----
106	Atmaram Vishnu Dalvi	PW No. 136, Affidavit Ext. 1388	----
107	Nandakishore Bajaj	PW NO. 127, Affidavit Ext. 1390	----
108	Joseph Anthon Almeida	PW No. 128, Affidavit Ext. 1392	----
109	Habib Chand Shaikh	Ext. 1395	----
110	Hiren Chotelal More	Ext. 1396	----
111	Dhananjay Govind Dighe	Ext. 1397	----
112	Mrs. Swati Ravindra Walinjkar	Ext. 1400	----
113	Nilesh Ramvilas Sharma	Ext. 1456	----

114	Kirit Ramanlal Shah	Ext. 1401	----
115	Rajesh Pondrekar	----	2732(1)

82. Sr. PI Kuklarni, PW-133, handed over all the papers of investigation that he had done to ACP Shengal of ATS as per the order of the Commissioner of Railway Police, Mumbai.

Transfer of investigation to the ATS :-

83. Sr. PI Rathod, PW-176, continued with the investigation of C. R. No.77 of 2006 of Mumbai Central Railway Police Station as mentioned above. ACP Iqbal Hasan Shaikh, (PW-162)(Ext.1748), was attached to Police Head Quarters, Naigaon as PI. He was deputed to the ATS on 22/07/06 and assigned the investigation of C. R. No.78 of 2006 of Mumbai Central Railway Police Station. ACP Rajaram Ramchandra Joshi, (PW-163)(Ext.1752), who was attached to the ATS as PI, was entrusted with the further investigation of C. R. No. 86 of 2006 of Bandra Railway Police Station on 20/07/06, the papers of which he received from ACP Shengal on 20/07/06. PI Vijay Kadam of the ATS was entrusted with the investigation of C. R. No. 87 of 2006 of Bandra Railway Police Station in connection with the bomb blast that had occurred at Khar Subway. Sr. PI Wadhankar, PW-167, who was attached to the EOW on 11/07/06 as PI, was asked to report to the ATS, Nagpada unit immediately. A team consisting of him, one API, two PSIs and staff was constituted on 12/07/06 for making the investigation of C. R. No. 41 of 2006 of Andheri Railway Police Station pertaining to the blast that had taken place at Jogeshwari. ACP Prasad Mahendra Khandekar, (PW-174)

(Ext.1840), was attached to Dadar Police Station as PI in July, 2006. He reported to the ATS, Mumbai on 12/07/06 on receiving a wireless message from the control room. Addl. CP Jaijeet Singh of the ATS informed him that the Director General of Police has transferred the investigation of the blasts to the ATS and ordered him to conduct the investigation of C. R. No. 156 of 2006 of Borivali Railway Police Station, in connection with the blast that had taken place at that railway station. PI Dinesh Mussaddilal Agrawal, (PW-173)(Ext.1835), was attached to V. P. Road Police Station as PI in 2006. He reported to the ATS on deputation on 12/07/06 on receiving a message from the control room and met Addl. CP Jaijeet Singh of ATS at Nagpada, who told him that the Director General of Police had transferred the investigation of railway bomb blasts to the ATS and ordered him to conduct the further investigation of C. R. No. 59 of 2006 of Vasai Road Railway Police Station that was registered in connection with the blast that had taken place near Mira Road Railway Station.

Investigation of different CRs by ATS :-

C. R. No. 77 of 2006 of Mumbai Central Railway Police Station :-

84. Sr. PI Vasant Maruti Tajne, (PW-161)(Ext.1712), was attached to the ATS as PI at the time of the incident and was working at the Kalachowki unit. The officers and the staff of the ATS were immediately directed to visit the sites of the blast after the serial bomb blasts in the western local railways. He and his team visited some blast sites. The office of the Director General issued an order

on the same day for handing over the investigation of the blasts to the ATS. Different teams were formed for making the investigation in the blasts and he was assisting the investigation of C. R. No. 77 of 2006 of Mumbai Central Railway Police Station and for that purpose visited number of places for collection of information and contacted his sources.

85. He went to Basopatti, District-Madhubani, Bihar, alongwith API Nivrutti Bapurao Kolhatkar, (PW-18)(Ext.466), and PSI Sachin Kadam on 19/07/06, on receiving an information from a reliable source about the complicity of the A1. He arranged a trap near the Prasad Cinema Hall in Basopatti with the assistance of PSI Rajan Prasad Singh, (PW-107)(Ext.1095), other officers and staff of Kotwali Police Station, Patna and accosted A1 and one Khalid Aziz Shaikh, who were coming towards the city from outside at about 3.50 a.m. of 20/07/06. They were accosted as PSI Rajan, PW-107, identified the A1. They disclosed their names on being asked and he confirmed the identity of the A1. Two panchas, Ashokkumar Sitaram Prasad, (PW-22)(Ext.499), and one more were called from the locality to carry out their personal search. They were searched and the A1 was found in possession of mobile handset, Art.37 and cash amount of Rs.460. Khalid Shaikh was found in possession of mobile, Art.38 and cash amount of Rs.260/-. He seized these articles under panchanama Ext.467 before the panchas, which was written by API Kolhatkar, PW-18. He then conducted the searches of the houses of the A1 and Khalid Shaikh. Ashok, PW-22, and another panch witness were called for the house search. They noticed a plastic bag

containing black coloured powder weighing 500 gms. during the house search of the A1. It was kept behind old clothes and an empty oil box below the wooden cot. They inquired with the A1 about it on suspicion, but he failed to give any satisfactory answer. They suspected that the powder was explosive substance, hence, he drew a sample of about 10 gms, Art.40, in the small plastic bag, Art.40A, put the remaining powder in a plastic jar, Art.39, labeled and sealed the sample and packed and labeled the plastic jar. He seized these articles under panchanama, Ext.500, before the panch witnesses Ashok, PW-22, and one more. He arrested the A1 and Khalid Shaikh and gave intimation to the wife of the A1 that they are being taken to Mumbai and also intimated PSI Rajan, PW-107, about taking them to Mumbai. He also searched the house of the accused Khalid at Malmal, but did not find any incriminating thing. They left Basopatti for Patna alongwith the accused. He made entry about the arrest of the accused in the Kotwali Police Station, Patna, deputed API Kolhatkar, PW-18, to carry the seized powder by road as they wanted to come back to Mumbai by air and it was not possible to carry the explosive powder in the aeroplane. He and PSI Sachin Kadam brought both the accused to Mumbai by air and reported to the Chief IO about their arrest. He also handed over the original panchanama and the seized articles, i.e., mobile and cash amount to ACP Shengal, who handed them over to Sr. PI Rathod, PW-176, on the same day.

86. API Kolhatkar, PW-18, reached Mumbai on 22/07/06 by road with the suspected explosive substance, i.e., black powder seized

from the house of the A1 and handed it over to ACP Shengal.

- 87.** PI Sunil Deshmukh had arrested one suspect by name Mumtaz Chaudhary from Navi Mumbai on 20/07/06 on the information that he had received and had taken his house search on 21/07/06. Sr. PI Rathod, PW-176, arrested the A2 under the arrest panchanama Ext.1933 on 24/07/06 from the Crime Branch, Unit II, at Jacob Circle/Sat Rasta, where he had gone as per the directions of his superiors. He arrested A10 and A11 under the panchanama Ext. 1937 on 25/07/06 as the officers of the same unit of the Crime Branch brought them to the ATS office at Kalachowki. He also arrested A3 and A9 from the said unit on 27/07/06 under the panchanama Ext.1941.
- 88.** Sr. PI Tajne, PW-161, went to Patna, Bihar on 24/07/06 as per directions, for verifying the information given by the A1. He visited Madhubani on 26/07/06, made inquiry with Nitishkumar Kalishchanddra Mishra, (PW-68)(Ext.776), owner of Shanti Communication Cyber Cafe, who told him that the A1 used to frequently visit his internet cafe for operating internet and sending e-mails. He recorded his statement and also visited a number of places for tracing the associates of the A1 and then returned to Mumbai on 29/07/06 and handed over the statement to the chief IO.
- 89.** Sr. PI Rathod, PW-176, obtained police custody of all the arrested accused and on 26/07/06 went for the house search of the A2 alongwith him and his staff, searched his house and prepared panchanama, Ext.448, in the presence of panch witnesses Shridhar

Vitthal Gangan, (PW-15)(Ext.447), and one more. He did not find any objectionable thing in the house. He went with the A2 and panch witnesses to the office of the International Trade Links in Fort as per his directions on making inquiries with him and receiving information about his passport and seized his passport Ext.449, under the panchanama Ext.450 in the presence of panch witnesses Shridhar Gangan, PW-15, and one more, from the manager Prakash Krishna Pillai, (PW-16)(Ext.451). The passport contained the stamps of arrival and departure and visa of Iran.

90. Sr. PI Rathod, PW-176, alongwith ACP Shengal, PSI Kshirsagar and staff and panch witnesses Sanford Santan Fernandes, (PW-31)(Ext.532) and one more and searched the house of the A3 and A9 on 28/07/06. They had gone with the A3 and A9 near the house of A3 in Bandra. The A3 led them to a room that was on the third floor in Lucky Villa Building on the Carter Road, Bandra (W). They searched the room and noticed black powder on the cardboard floor of the upper compartment in a cloth cupboard having a zip. The A3 did not give any satisfactory answer on inquiry about the black powder. Therefore, the powder was wiped with cotton swabs, Art.146, put in a polythene bag, Art.146A, packed and labeled. They also found a white plastic bag, Art.147, containing a black coloured folder pouch, Art.160. They also found registration book of Bajaj Pulsar motorcycle, MH-01-TA-9542, Art.148 in the name of A9, certificate of insurance in the same name, Art.148A, letter of insurance company Art-148B, receipt dated 10/01/05 of Bajaj Choice Center in the name of A9, Art-148C and xerox copies of

certificate of insurance, registration certificate and of driving licence in the name of A9 and A3, Arts-148D to 148F respectively. He also found two notes of Rs.1,000/- denomination each, Arts.154(1 and 2), 30 Saudi Riyals of the denomination of 500 each, photocopy of agreement of that room between the A3 and the flat owner Sajid Mohd. Chand, (PW-48)(Ext.631), Art.149, i.e., Ext.537. They also found two books titled, 'April, 2004 Tehrik-E-Millat', Arts.150(1&2), two books titled 'Tehrik-E-Millat, Atankwad ka jimmedar kaun', Arts. 151(1&2), and four books titled 'SIMI, Sangharsh yatra ke pachis varsh', Arts. 152(1to4). They also found a map of Mumbai, Art.153, learning licence and driving licence of the A3, Arts. 155 and 156, ATM Card of ICICI Bank, Art. 157, two railway tickets from Howrah to Mumbai and Mumbai to Howrah, Arts.158(1&2), reservation forms Arts. 159 (1&2) and a photocopy of international map Art. 161, i.e., Ext. 1486. There were marks at some places in green and red ink on the map Art.153. Art.161, i.e., Ext.1486, was the international map of India, Pakistan, Iran, Muscat, Afghanistan, Tehran, etc. A route from Mumbai to Tehran, Tehran to Zahidan and Zahidan to Muzzafarabad was drawn on the map and there was some matter in Urdu below the map, an international mobile number and e-mail address 'gudu_sir_@yahoo.com', which he encircled by red ink. He also found mobile, Art.163, battery, Art. 163A and simcard, Art.163B.

91. The A3 had led them to the third floor of the Lucky Villa Building and showed them the room on the right side informing that he lives there. The door was locked and on inquiry, the A3 took out

the key, Art.162, from a crack above the door and opened the door by that key. The above described articles were found in the polythene bag, Art.147, which was found in a red handbag by the side of the cupboard, where the black powder was found. Sr. PI Rathod, PW-176, seized these articles under the panchanama Ext. 533 in the presence of the panch witnesses, after packing and labeling the articles in five different packets of khaki paper, except the cotton swabs that were already packed.

92. The A3 was made to sit in another vehicle after the panchanama at his house was over and alongwith the same panch witnesses, the police and staff went to Mira Road in the vehicles as per the directions of the A9, reached below Tirupati Apartment in Mira Road, kept the A3 in the vehicle with the constables and the A9 led them by staircase to Flat no.203 on the second floor. They searched the house in the presence of the panch witnesses. Sr. PI Rathod, PW-176, found maps and books similar to those found in the house of the A3. They found map of Mumbai, Art.164, with marking at some places in green and red ink, photocopy of international map, Art.165, i.e., Ext.1487 showing the similar route as described above, books having similar titles, Exts.166(1&2), 167 and 168, statements of marks and passing certificate of the Maharashtra State Board of Secondary and Higher Secondary Education, Pune in the name of A9, Art.169 and Art.170 respectively, the licence in his name, Art.171, brown leather purse, Art.172, identity card of Oracle Company in the name of A9, Art. 173(1&2), white blank plastic card, Art.174, ICICI Bank card in

pouch, Art.175, Sify I-way internet card, Art.176, Netwala.com card, Art. 177, passport, Art. 178, blank identity card of All India Association of Unani Medical Colleges, Art. 179 and two blank identity cards of Z.V.M. Unani Medical College & Hospital, Pune Art. 180 (1&2), Sony Ericsson company mobile, Art. 181, Airtel sim card, Art. 182. They saw a computer on a table in the living room. They disconnected the CPU and took it in possession. They found two cardboard CPU boxes containing two new CPUs in the bedroom alongwith the articles described above. The articles described above were found in an Echolac Company travel bag that was by the side of the CPU boxes, the lock of which was opened by the key of that bag that was in the side compartment. They had found the CD pouch, Art. 184A, DVDs, Arts. 183 (1 to 25) and the CDs, Arts.184(1 to 5), hard disk, Art.185, CPUs, Arts.186 to 188. He seized all these articles under panchanama, Ext.534, after packing and labeling them and gave copy of the panchanama to the A9. They returned to the office after midnight and deposited the seized property with the muddemal clerk.

- 93.** The agreement, Art.149, i.e., Ext.537, that was seized at the house of A3 showed that part of the amount was to be paid by cash and part by cheque. Therefore, Sr. PI Rathod, PW-176, called for the statement of bank account and the transactions of the ATM card of the ICICI Bank by sending letter, office copy of which is at Ext.1948, dtd.31/07/06, under the signature of ACP Tawde. The ICICI Bank vide its letter, Ext.1949, sent printout of the bank account, Ext.1950, that was in the name of father of the A3 and photocopies of the

application and the other documents, Art.372 (1 to 4). From the entries in the bank account statement, it was gathered that the cheque given by the A3 to the flat owner, Sajid, PW-48, was from the bank account of his father.

94. It was revealed in the investigation to Sr. PI Rathod, PW-176, that the A3 and A9 were in contact with Azam Chima, Commander of L-e-T from Bahawalpur, through their brother Rahil and his friend Rizwan Dawrey, originally resident of Pune, but at Jeddah at that time, that Rahil and Rizwan Dawrey used to get money from Azam Chima and send it with Indian citizens, who used to come from Jeddah to Mumbai, to the A3 and that the A3 used it for sending jihadi minded Muslim youths from India to Pakistan via Tehran. Therefore, he added Rahil Shaikh, Rizwan Dawrey and Azam Chima as wanted accused in this case.

95. It was necessary to search the house of the A10, who used to reside in Pune. Therefore, Sr. PI Rathod, PW-176, after consulting the supervising officer ACP Tawde, directed API Kadam and PSI Arjun Vitthal Gaikwad, (PW-169)(Ext.1795), to take the accused to Pune and conduct the search. PSI Gaikwad, PW-169, was deputed to the ATS after the blast. He had joined on 12/07/06 and was attached to the team of Sr. PI Rathod, PW-176. He had accompanied Sr. PI Rathod, PW-176, on 26/07/06 for the house search of the A2 and doing seizure of the passport of the A2 from the travel agency. He met API Dinesh Kadam on 30/07/06 on the instructions of Sr. PI Rathod, PW-176, who told him about going to Pune for searching the house of the A10, who was present there and of wanted accused

Rizwan Dawrey. Panch witnesses were called and after the necessary formalities, they went to Pune taking the A10 with them, first going to Police Station Wanawadi in Pune as Rizwan Dawrey's house was first on the route. There they asked for and got additional help and went to the house of the wanted accused Rizwan Dawrey at Premanand Park, Shivalkar Road, Pune. They, the panch witnesses and the local police staff went to the second floor of the 'B' wing of the building keeping the A10 in the vehicle with two constables on guard. They went to Flat no.203, the door of which was opened by Mohd. Hussain Dawrey, father of wanted accused Rizwan Dawrey and on search, they found two books, Arts.304 and 305, one titled as 'Indian Muslim Problems' and the other titled as 'Islamic Directives to Reform Individuals and the Community'. They also found photocopies of passport of wanted accused Rizwan Dawrey and his wife, Arts.306 and 307, in one of the books. The books were found in the left side drawer of an iron cupboard, which was of the wanted accused Rizwan Dawrey, as informed by Mohd. Hussain Dawrey. He seized these articles under the panchanama, Ext.756, in the presence of the panch witnesses, Alankar Milind Mane, (PW-61) (Ext.755), and one more, after packing and labeling them. It was learnt on inquiry from Mohd. Hussain that wanted accused Rizwan Dawrey is in Saudi Arabia and his, i.e., Mohd. Hussain's, elder son resides in Flat no. 202 of the 'C' wing in the same building. He gave a copy of the panchanama Ext.756 to Mohd. Hussain Dawrey.

96. They went to the flat of Abdul Rehman Dawrey, (PW-71)(Ext. 794), thereafter. He was found present and was informed about

their intention to search his house. He produced a closed white envelope when they entered the house and informed them that his brother, wanted accused Rizwan Dawrey had sent some Riyals for the A3. The envelope was opened and found to contain 22 notes of 500 Riyals each and one note of 200 Riyals. Abdul Dawrey, PW-71, also informed that Rizwan Dawrey had informed him by e-mail about sending the Riyals to him. Therefore, they disconnected the cords of the CPU Art.308, that was in the computer set in front of the main entrance door, labeled it on the input sockets on the back side and packed it. A copy of the panchanama, Ext.757, was given to Abdul Dawrey.

97. They then went to Lashkar area for going to the house of the A10. First they went to Lashkar Police Station, took local assistance and then went as per the directions of the A10 to the House No. 1538, at Bhimpura, 16th Lane, Central Street, Lashkar, Pune. PSI Gaikwad, PW-169, found during the search an Indian passport of the A10, Art.251, i.e., Ext.621, similar type of maps as were found in the house search of the A3 and A9, one map of Mumbai with certain spots in Mumbai like Veer Savarkar Marg, Dadar, Mahalaxmi Temple, Reserve Bank of India, etc., encircled by green ink, Art.248, map of middle east showing half of India, Art.250, i.e., Ext.1489, showing route from Salet, Tehran in Iran upto Muzzafarabad in Pakistan and containing some numbers in handwriting and e-mail ids. He also found ISD rate card, Art.248B(1), two chits, Arts.248B (2 & 3), two books titled 'Tehrik-E-Millat' Arts.249 (1 & 2), two books titled 'Tehrik Atankwad ka Jimmedar Kaun' Arts.249 (3 & 4),

two books titled 'SIMI' Arts. 249 (5 & 6), Samsung Reliance mobile Art.252 and audio cassettes Arts.253(1 to 4). All these articles and the passport were found in the drawer of an iron cupboard. PSI Gaikwad, PW-169, seized these articles under the panchanama, Ext. 758, before the panchas and packed and labeled them. Copies of the panchanama were given to the A10 and his brother. They returned to Mumbai at 00.30 hours on 31/07/06 and deposited the seized articles.

98. Sr. PI Rathod, PW-176, sent the sample of black powder that was taken out from the black powder found at the house of the A1 on 20/07/06 to the FSL, Kalina on 31/07/06 alongwith his forwarding letter, copy of which is at Ext.596, alongwith HC Mahadeo Sudama Auti, (PW-41)(Ext.595), who was attached to the ATS as PC. The report of the FSL, Ext.469, in connection with the said sample was received, showing the result of analysis that Cyclonite (RDX) 85% and Charcoal 15% are detected in the exhibit.
99. ACP Tawde and Sr. PI Rathod, PW-176, directed PI Sanjeev Krushnarao Tonapi, (PW-155) (Ext.1663), on 31/07/06 to take the house search of the A11. He went with PSI Kandharkar, staff and panchas to the house of the accused as per his directions to the Sardar Vallabbhai Patel Hutment and at the instance of the accused, they opened a wooden cupboard on the western side of the loft, the accused open the door and took out a passport in his name, Art.133, i.e., Ext.619, which had a stamp of Mumbai immigration, Mehrabad airport and visa of Iran. He also found two maps similar to the maps recovered at the instance of the A3, A9 and A10. There was a

booklet of road map of Mumbai, Art. 138, i.e., Ext.1665, in which certain places like RBI, Rajabai Tower, CST, Mumbadevi, Mahalaxmi and somewhere near Century Bazar were marked. The other map, Art.134, i.e., Ext.1489, contained portions of India, Pakistan, Afganistan, Oman and Iran and a route from India to Tehran, Tehran to Zaidan, Zaidan to Quetta, Quetta to Bhawalpur and Bhawalpur to Muzzafarabad was marked on it. It also contained an international phone number and one e-mail id, 'gudu_sir@yahoo.com'. He also found books Arts.135 and 136 allegedly connected with SIMI. He also found driving licence, Art.140 in the name of the accused, ATM cards Arts. 141 & 142 of the Canara Bank, pocket diary Art.143, two visiting cards and three chits Arts.144 (1 to 5) and cash amount of Rs.1135/-, Art.145. PI Tonapi, PW-155, packed and labeled all these articles and seized them under the panchanama, Ext.527, in the presence of panch witnesses Mukesh Shripat Jadhav, (PW-30)(Ext. 526), and one more, copy of which was given to A11. He handed over the panchanama to Sr. PI Rathod, PW-176, on return.

100. A letter was sent on 31/07/06 under the signature of ACP Tawde, office copy of which is at Ext.1953, to the Superintendent of Stamps, to verify whether the agreement that was found in the house of the A3 was registered. A reply was received vide letter Exts. 1954 (1 & 2) that the agreement had been registered and the flat owner had deposited the stamp duty of Rs.750/-.

101. A2 was taken out for inquiry on 01/08/06. At that time he made the disclosure statement, Ext.484, in the presence of Sr. PI Rathod, PW-176, panch witnesses Rohit Shashikant Warang,

(PW-19)(Ext.483), and one more, that he is ready to show books and maps that he has hidden in his brother's house. As per his directions and at his instance Sr. PI Rathod, PW-176, and the panch witnesses went with the A2 to the BIT Chawl in Momin Pura. The A2 obtained a key of the house of his brother from his mother from room no.31 and then led the police to another building known as Pila Mahal. He took them to the room no.35 on the second floor, opened the lock with the key and produced map of Mumbai, Art.42, in which some places were marked with green and red colour, two books titled as 'Teherik-e- Millat' and 'Atankwad Ka Jimmedar Kaun', Arts.43 (1 & 2), books bearing the name 'SIMI', Arts.44 (1 to 4) and an international map, Art.116, i.e., Ext.1490, which contained a marked route from Mumbai to Muzzafarabad in Pakistan via Tehran, Zahidan to Bhawalpur. Sr. PI Rathod, PW-176, packed and labeled the books and the maps and seized them under the panchanama, Ext.485, before the panch witnesses. The key of the room was given to the mother of the A2 who had come there.

102. Sr. PI Rathod, PW-176, recorded the statement of Khalida Shaikh, cousin sister of the A3 on 02/08/06. She used to receive money through hawala on behalf of the A3. He also recorded the statement of Manisha Chavan, girl friend of A3 and Shah Faisal Khurshid Alam, friend of A3 on 03/08/06. On that day he sent the cotton swabs of the black powder that were taken as sample during the house search of the A3, to the FSL, Kalina, alongwith his forwarding letter, alongwith PC Sachin Sadashiv More, (PW-42)(Ext. 597). PC More, PW-42, took the article from the muddemal clerk

and when he tried to hand it over to the inward clerk of the FSL office, the clerk did not accept it as it did not have lac seal and informed that he should get the lac seal of any police station on the box and then he would accept the same. PC More, PW-42, returned back, deposited the box with the muddemal clerk at Kalachowki, met Sr. PI Rathod, PW-176 and told him as to what had happened. The forwarding letter and its office copy, Ext.601 (1 & 2) were brought back by PC More, PW-42. Therefore, Sr. PI Rathod, PW-176, sent PC More, PW-42, to the Kalachowki Police Station to put the lac seal on the said box and take it to the FSL alongwith his forwarding letter, office copy of which is at Ext.598, after making the necessary changes. PC More, PW-42, did accordingly. The report of the FSL, Ext.599, in respect of black stained cotton swabs was received subsequently showing the result of analysis that cyclonite (RDX) and charcoal are detected in them.

103. Sr. PI Rathod, PW-176, opened the five packets containing the maps and passports, that were seized from the A2, A9, A3 and A10 in the presence of panch witnesses Prashant Kisan Zunjarrao, (PW-35)(Ext.565), and one more on 06/08/06, as he wanted to get the maps and the passports examined. He kept the international maps and the passports of the accused in separate envelopes and remaining books and maps were kept in separate envelopes alongwith original wrappers and then he labeled them and prepared the panchanama, Ext.566.

104. PI Hemant Anant Bavdhankar, (PW-152) (Ext.1636), who was API in 2006, inquired with and took the statements of the travel

agents, who had obtained the visas and tickets for the A2, A9, A10 and A11 on the direction of Sr. PI Rathod, PW-176. Amongst the travel agents, one was Mohd. Umar Hussainmiya Patni, (PW-47) (Ext.629), who had done the work of visa and ticket of wanted accused Rahil, brother of A3, for Umrah from Gokul Travels, Marine Lines as sub-agent Mushtaq Ahmed Mohd. Saheb, (PW-46) (Ext. 625), had taken the A3 to him. He had also done the work of visa and ticket for the A3 for Umrah. This took place in 2003. PI Bavdhankar, PW-152, seized xerox copies of passports, air tickets and the invoices of Akbar Travels of the A3 and wanted accused Rahil, Arts.261(1 to 5) and 262 (1 to 6) from this witness, which he had brought from Gokul Travels under panchanama, Ext.1637. Mushtaq Ahmed, PW-46 had obtained visa of Iran for A2 on the request of A3. A3 had sent the passport of the A2 with the A9 and Mushtaq Ahmed, PW-46, had given that work to Johar Sayyed and obtained the ticket from Akbar Travels. A9 had also given his passport for obtaining visa for Iran to Ashik Ali Mukadam, (PW-44) (Ext.615). Thereafter A9 had also given the passport of one Firoz Ghaswala for obtaining visa for Iran, which he had given to Johar Sayyed. A3 had given the passport of A11 to Mushtaq Ahmed, PW-46 in 2005 or 2006 for obtaining visa for Iran, which he had given to Ashik Ali, PW-44. Subsequently, A3 had also given the passports of Faiyyaz Ahmed and Mohd. Chand for obtaining visa of Iran, which he had given to Ashik Ali, PW-44, and had obtained tickets from him. PI Bavdhankar, PW-152, seized registers, Exts.616 to 618 from Ashik Ali, PW-44, containing the entries of obtaining the

visas and tickets of the A9, A11, Chhipa Mohammedali and Zulfequar Fayaz during the period from 2004 to 2006, under the panchanama, Ext.1638. He also seized the register Art.259, Ext.624, and photocopy of passport of A10 Art.259A, under the panchanama, Ext.1639 from Shaikh Mohammad Wasi, (PW-45)(Ext.623), a travel agent of Western Travel Services Agency. PI Bavdhankar, PW-152, also seized the registers Exts.608 to 612 from Afzal Hussain Salim Hirji, (PW-43)(Ext.602), manager in Al Shaya Naseer Travels, as the registers contained the entries of the names of A10, Firoz Ghaswala, A2, A9, Chhipa Mohammedali and Zulfequar Fayaz for the period from 2002 to 2006, under the panchanama, Ext.1640. The entries are at Exts. 603 to 607 and include the entry about the A11 of the year 2005. He had also seized letters Exts.1641(1 & 2), that were sent by the travel company of this witness to the visa section of the Consulate of Iran, which contained the name of A2. PI Bavdhankar, PW-152, deposited the seized articles with the muddemal clerk and handed over the statements, panchanamas and documents to Sr. PI Rathod, PW-176.

105. Sr. PI Rathod, PW-176 opened the envelope in which the mobile phone and audio cassettes that were seized from the house of the A10 were kept, in the presence of panch witnesses Samuelraj Sadanand Kukkala, (PW-36)(Ext.570) and one more, took out the mobile, Art.252 and kept it aside and put the cassettes and the earlier two envelopes in an other packet and prepared panchanama, Ext.571. This he did as it was necessary to send the mobile to the FSL.

106. Sr. PI Rathod, PW-176 obtained the specimen handwritings of the A2, A9, A3, A11 and A10 during the period from 30/07/06 to 04/08/06 and forwarded them and the five maps on which there was matter in handwriting, by letter dtd.11/08/06 alongwith a questionnaire, Exts.1484 and 1485 respectively, under the signature of ACP Tawde to the Addl. Commissioner of Police, Crime Branch, CID, Mumbai for onward submission to the handwriting expert for finding out the author of writings on the maps.

107. Sr. PI Rathod, PW-176, arrested A4 on 12/08/06 while he was in the custody of the ATS in LAC No. 04/06, as it was revealed that he was involved in the commission of the offence of the Matunga blast under the panchanama, Ext.1971. During his interrogation A4 disclosed that the A2 was going to teach them how to prepare bomb with the help of chemicals. A2 was in the custody of Sr. PI Wadhankar, PW-167, in C. R. No. 41 of 2006 on that day. Sr. PI Rathod, PW-176, interrogated the accused in that custody and at that time the A2 voluntarily made a statement that he is willing to show bottles of chemicals that he has kept in the locker of the Sabu Siddiqui Hospital. This statement was made in the presence of panch witnesses Chandrakant Bhikaji Shigwan (PW-17)(Ext.456), and one more, about which the memorandum of the statement, Ext.457, was prepared. As per the directions of the A2 and at his instance, Sr. PI Rathod, PW-176, seized three bottles of chemicals that were of 500 ml. quantity each and were factory sealed, viz., bottle of sulphuric acid, Art.34, bottle of acetone, Art.35 and bottle of hydrogen peroxide, Art.36, from the locker that was opened by A2 by the key,

Art.33, which he had taken out from below the mattress, under the panchanama Ext.458. At that time Dr. Atiya Sayyed Arif, (PW-53) (Ext.658), a doctor working in the Sabu Siddique Hospital, near Imam Wada Road, Bhendi Bazar, Mumbai, was also present. Sr. PI Rathod, PW-176, sent the bottles of chemicals that were recovered at the instance of A2 to the FSL on 13/08/06 alongwith HC Dilip Shivram Padval, (PW-91)(Ext.907), with his forwarding letter, office copy of which is at Ext.908. The report of the FSL, Ext.909, revealed the result of analysis that the bottles contain the chemicals as described on their labels and a note was appended that Hydrogen Peroxide is a strong oxidizing agent, Acetone is highly flammable liquid and as per literature, concentrated Sulphuric acid is used as initiator with Chlorate in explosive mixture.

108. A2 had given mobile Art.373 to a patient when he was taken in custody by the Crime Branch and that patient had given it to his brother by name Inshtiaq Ahmed Ansari. Sr. PI Rathod, PW-176, seized it under panchanama Ext.1973 on 16/08/06. The seized CPUs and mobiles were sent to CFSL, Hyderabad on 17/08/06 alongwith PSI Gaikwad, PW-169, with the forwarding letter of DCP Bajaj, office copy of which is at Ext.1805, for retrieving the data and analysing it. He recorded the statements of Hidayatulla Mehboob Sundke, (PW-64)(Ext.765), Bilal Salauddin Shaikh, (PW-66)(Ext. 772) and Mohsin Junaid Khan, (PW-67)(Ext.774) on 21/08/06 in connection with the Saudi Riyals that were sent for the A3.

109. PSI Kshirsagar was sent to Pune for obtaining the documents submitted by wanted accused Rahil Shaikh at Zensor Technology

Private Limited and also to collect the documents submitted by him at the Regional Passport office. He came back on 24/08/06 and gave report Ext.1974 and produced the letter of the P. R. O. of that company, Ext.1975, attested true copies of documents, Ext.1976 (1 to 14), letter of Zensor Company, Ext.1977 alongwith the copies of educational documents of wanted accused Rahil, Art.374 (1 to 9).

110. Sr. PI Rathod, PW-176, had asked for information and details about the certificates that were obtained by A9 and his brother, wanted accused Rahil from the Director, Bharatiya Shiksha Parishad, Lucknow, UP, asking them to produce the mark-sheet registers of 1996-97 to 1998-99. Two advocates Pravinraj Gupta and Ajay Yadav had come from Lucknow with three registers and a letter. He seized the registers under the panchanama, Ext.1978 on 22/09/06 as he *prima facie* found that they appeared to be forged. A separate crime of forgery was registered later on against the A9 and the Director, Bharatiya Shiksha Parishad. Data Core Technology Pvt. Ltd, Bangalore registered an offence of forgery against A9 in the High Ground Police Station at Bangalore. The educational certificate of the A9 that were provided by him from Bharatiya Shiksha Parishad were sent to the police station.

111. Joint Commissioner of Customs and Central Excise, Arvind Kumar Singh, (PW-40)(Ext.579), who was working as Assistant Director in the Enforcement Directorate of Government of India, Zonal Office, Mumbai in 2006, took the statement of A3 on 21/08/06 and 24/08/06, certified true photocopies of which are at Exts.585 (1&2), while he was in the police custody of the ATS, after

obtaining an order from the Addl. CMM, 2nd Court, Mazgaon on 18/08/06 allowing them to interrogate him and to take over the foreign currency, i.e., Saudi Riyals, about which they had come to know that the police had seized them from the residential premises of some persons. Amongst other things, the A3 stated to them that he had visited foreign countries 4-5 times, twice to Pakistan, that on the first visit he had gone to Muzafarabad, where there was a training camp and on the second visit he had taken elaborate training in terror camps organised by militant organisation. In respect of the foreign currency part, he stated that he was getting it by hawala from wanted accused Azam Chima through wanted accused Rizwan Dawrey and used the money for sending young people to Pakistan for arms training and had told the names of the A2, A10, one Ghaswala and 4-5 persons. Arvind Kumar, PW-40, gathered from the statements that the terror financing network was that wanted accused Azam Chima used to send money to A3 as described above through his cousin sister or through some other people. He also recorded the statement of Abdul Dawrey, PW-71, certified true copies of which are at Exts.586 (1&2) on 14/09/06 and 15/09/06 and of Khaleeda Iqbal Ahmed Khan, Ext.587 on 19/09/06. He had gone to the ATS office on 25/09/06. The statement of the A3 resulted in issuing show-case notice by the Enforcement Director to the A3, his sister and Abdul Dawrey, PW-71. He went to the ATS office on 25/09/06 and on his request and authority letter, Sr. PI Rathod, PW-176, handed over 26,200 Riyals to him under the panchanama, Ext.1255 and 1256 in the presence of

panch witnesses, Farid Bakir Mallik, (PW119)(Ext.1254), and one more. Arvind Kumar, PW-40, produced attested true copy of show-cause notice, Ext.582 issued by the Deputy Director of the Directorate of Enforcement and attested true photocopy of complaint, Ext.583.

112. Sr. PI Rathod, PW-176, collected certified copies of chargesheets of cases registered under the UA(P)A and for rioting and under section 353 of the IPC, Exts. 462 and 463, that had been registered against the A2 and A4 and others in Police Station Kurla. He also obtained certified copy of the chargesheet, Ext.1812 (1 to 41), of the LAC registered against the A1 and his co-brother (sadu) Anwar-ul Haq under the Arms Act at the Special Cell, Lodhi Road, Delhi.

113. DCP Nawal Bajaj of the ATS sent letter dtd.29/07/06, office copy of which is at Ext. 1994, to the DCB, SB-II, CID, Mumbai, to obtain the details and dates of arrival and departure of the A2, A9, A10 and A11, as they had gone from Mumbai airport to Tehran, Iran and from there to Pakistan. Sr. PI Rathod, PW-176, thereafter sent letter to Sr. Inspector of Police, Airport Branch, SB-II, CID, Mumbai on 03/08/06, office copy of which is at Ext. 1995, for furnishing the said details. He sent reminder to the DCB, SB-II, CID and FRRO, Mumbai on 20/09/06, office copy of which is at Ext.1996(1) alongwith enclosures Ext.1996(2 to 4). The Senior Inspector of Police, Airport Branch, SB-II, CID, C.S.T. Airport, Mumbai sent the details by his letters, Exts.1997, 1998 and 1999 mentioning that the A2 had departed on 21/05/04 and arrived on 25/06/04. The A3 had

departed on 08/11/03.

- 114.** ACP Tawde gave letter on 31/07/06 to the Passport Office, Pune, office copy of which is at Ext.1986, for obtaining copies of the applications and documents given by the A9 and A10. The PRO, Passport Office, Pune sent letter Ext.1987 and forwarded attested true copies of the documents of the A9, Exts.1988 (1 to 14) and of the A10, Exts.1989 (1 to 11). ACP Tawde also gave letter on 09/08/06, office copy of which is at Ext.1572, to the Regional Passport Office, Pune for obtaining copies of the applications and documents given by the A3. The Superintendent, Passport Office, Pune sent attested true copies of the documents of the A3, Exts. 1574(colly) alongwith his covering letter, Ext.1573.
- 115.** DCP Bajaj gave letter to the Passport Office, Worli on 04/09/06, office copy of which is at Ext.1990, for obtaining the copies of the applications and documents given by the A2 and A11. The PRO (Policy) of the Regional Passport Office, Mumbai sent letter Ext. 1991 and forwarded attested true copies of the documents of the A11, Exts. 1992 (1to 10) and of the A2, Exts. 1993 (1 to 13).
- 116.** DCP Bajaj sent a wireless message on 21/08/06, office copy of which is at Ext.1981, alongwith his request letter to the Asst. Inspector General of Police (Crime), Maharashtra State, Wireless Grid Mumbai, office copy of which is at Ext.1980, for permission to broadcast the wireless message to the Foreigners Registration Office (FRO), Amritsar as it was revealed in the investigation that the A3 had gone to Pakistan in 2001 through Attari Rail Check Post, Amritsar. The FRRO, BOI, Amritsar sent a fax on 20/09/06, Ext.

1982, confirming that the A3 had left for Pakistan via ICP Attari Rail on 01/10/01 and returned via the same route on 29/11/01. As the copies of embarkation and disembarkation cards were not sent with the fax, DCP Bajaj again sent a letter, office copy of which is at Ext. 1188, to the same authority for handing them over and to inform the names of the officers who had given the clearance. PSI Gaikwad, PW-169, was appointed to collect the documents and to record the statements of the concerned officers. Sr. PI Rathod, PW-176, asked PSI Gaikwad, PW-169, to go to the Tees Hajari Court, Delhi to collect the information about the Special Cell Case No. 79 of 2002 under section 25 of the Arms Act that was pending against the A1 and had given a written letter under his signature, office copy of which is at Ext.1810, addressed to the CMM, 38th Court, Tees Hajari, New Delhi. PSI Gaikwad, PW-169, went to Delhi and gave the letter in the court and requested for furnishing certified copies of the case. He then went to Amritsar on 05/10/06, handed over the letter given by DCP Bajaj, was directed to give it to the AFRRO at Attari Check Post. He went there, met the AFRRO Premraj Sharma, gave him the letter of DCP Bajaj and requested him to give copies of the register of the arrival and departure of the A3 and names of the officers who were on duty at that time. The said officer informed him that officer Subhash Choudhary, (PW-114), (Ext.1187), was on duty on 01/10/01 at the time of departure of the A3 to Pakistan and officer Surjeet Singh, (PW-115), (Ext.1191), was on duty at the time of arrival of the A3 on 29/11/01. The officer also gave letter, Ext.1189, addressed to the DCP, ATS, alongwith the attested true copies of

relevant entries of arrival and departure, Exts.1190 and 1192. PSI Gaikwad, PW-169, then went to the Tees Hajari Court, Delhi and collected the certified copies of the chargesheet, FIR, photocopy of the revolver, Exts.1812 (1 to 41). He informed Sr. PI Rathod, PW-176, and DCP Bajaj about the investigation on phone. Sr. PI Rathod, PW-176, told him to collect the details and the information about the A3 having gone to Jeddah by air in 2004. Hence, he went to the office of the AFRRO, Immigration, New Delhi on 10/10/06, met officer Ravi Saigal, who inspected his record and gave him the information that the A3 had come to Delhi on emergency certificate from Jeddah on 01/12/04. He also gave the attested photocopy of the disembarkation card, Ext.1813. PSI Gaikwad, PW-169, returned to Mumbai and gave report, Ext.1814 to Sr. PI Rathod, PW-176 and also met DCP Bajaj. The original embarkation certificate of the A3 had been sent to the Passport Office, Pune.

117. DCP Bajaj corresponded with the Regional Passport Officer, Pune and sent a fax on 09/08/06, office copy of which is at Ext. 1572, inquiring whether a passport in the name of the A3 had been issued from their office. The Superintendent, Passport Office, Pune sent reply Ext.1573 and also forwarded attested copies of the passport application and other documents of the A3, Ext.1574 (colly). DCP Bajaj also wrote a letter dtd.14/08/06, office copy of which is at Ext.1575, to the said office asking for the emergency certificate of the A3. The office sent letter on 18/09/06, office copy of which is at Ext.1576, forwarding photocopy of the emergency certificate. Therefore, DCP Bajaj again sent letter dtd.19/09/06,

office copy of which is at Ext.1577(1), alongwith an application in format, office copy of which is at Ext.1577(2), for sending the original emergency certificate. DCP Bajaj sent letter on 30/10/06 to the Superintendent, Passport Office, Pune, office copy of which is at Ext.1578, that he is sending PSI Kshirsagar to collect the emergency certificate. Manisha Murlidhar Doiphode, (PW-142)(Ext.1571), who was working as Superintendent in the Regional Passport Office at Pune, handed over the emergency certificate Ext.1580 to PSI Kshirsagar alongwith the forwarding letter Ext.1579.

118. The A3 was deported to India by Saudi Airlines. ACP Tawde corresponded with the Saudi Airlines by sending letter dtd. 20/08/06, office copy of which is at Ext.1983. The Saudi Airlines sent the information, i.e., the manifest containing the list of passengers, Ext.1985, alongwith his forwarding letter Ext.1984. The list of passengers showed the name of the A3 on 01/12/04.

119. In the meanwhile on 05/09/06 ACP Sadashiv Laxman Patil, (PW-186)(Ext.2361), gave copy of FSL report to Sr. PI Tajne, PW-161, in respect of the sample of the black powder that was found in the house of the A1. The FSL report Ext.469 showed that the black powder was high explosive RDX. Hence, Sr. PI Tajne, PW-161 recorded the statement/complaint Ext.468 of API Kolhatkar, PW-18, against the A1 at sr. no. 0 on 05/09/06. API Kolhatkar, PW-18, requested Sr. PI Tajne, PW-161, to send the original papers and the explosive substance to Police Station Basopatti, District Madhubani in Bihar as the explosive substance was found in the house of the A1 in its jurisdiction. Sr. PI Tajne, PW-161, submitted his report to his

superior to transfer the investigation of this crime to the Police Station Basopatti. PSI Rajan Prasad, PW-107, received letter dtd. 05/09/06 from the Addl. CP, ATS, Mumbai on 09/09/06 informing him that the black powder that was seized from the house of the A1 was RDX powder. PSI Yogeshwar Choudhary made a station diary entry about it, certified copy of which is at Ext.1097, lodged the formal FIR No. 102 of 2006, copy of which is at Ext.1098, and gave the investigation to PSI B. Upadhyay.

C. R. No.78 of 2006 of Mumbai Central Railway Police Station :-

120. ACP Shaikh, PW-162, learnt during the course of investigation that a person by name Tafheem Akmal Hashmi, (PW-95)(Ext.952), was apprehended by the Indian Army in Kashmir and was in the custody of D. H. Pora Police Station, Kulgam, Jammu and Kashmir and was suspected to be involved in the present bomb blasts case. He applied to the magistrate for a transfer warrant and the said Tahfeem, PW-95, was brought to Mumbai under transfer warrant by the ATS staff on 02/09/06. He arrested the said Tafheem, PW-95, in this crime on that day. He could not gather any substantial and tangible evidence against the said person. Therefore, he filed an application before the Metropolitan Magistrate, 2nd Court, Mazgaon on 13/10/06 for discharging him and obtained orders. On the same day the said accused Tafheem, PW-95, had sent an application through the jailor addressed to the court stating that he wanted to make a statement before the court. This application was forwarded to the ATS and marked to ACP Shaikh, PW-162. He presented the

said application before the magistrate and the magistrate recorded the statement of the said accused under section 164 of the Cr.PC., Ext.954, in open court. The said accused had been taken to that court for the purpose of the discharge application. Tahfeem, PW-95, was then sent back to Kashmir to be given in the custody of D. H. Pora Police Station, District Anantnag, Jammu and Kashmir.

C. R. No. 41 of 2006 of Andheri Railway Police Station :-

121. After the investigation of this crime was handed over to Sr. PI Wadhankar, PW-167, he immediately went to Andheri Railway Police Station, took the information about the crime from Dy. SP Raskar, PW-139, who was investigating the crime, went to the Kandivali car shed and alongwith the BDDS people inspected the affected bogie no. 634A. He and his team consisting of one API, two PSIs and staff recorded statements of witnesses as well as injured. He arrested the nine accused who had been arrested in C. R. No.77 of 2006, i.e., the A1, Khalid Shaikh, Mumtaz Chaudhary, A2 A4, A3, A9, A10 and A11 in this crime on the strong belief that they were involved in the crime that they were investigating and on the basis of the interrogation, the information given by the investigating officer of that crime and the inputs that they had received. One team from Bandra Police Station, out of the teams constituted at the central level for investigating the crime, gave them information that a suspected Kashmiri youth had purchased pressure cookers on a large scale from two shops in Bandra in May, 2006. Therefore, they inquired with the owners and salesmen of the shops who informed them that the said person was continuously making calls from his

mobile. They got prepared sketches of the suspects and tried to get the ID of the mobile with the help of mobile service providers and the technical team of the ATS, but they did not get any lead.

C. R. No. 86 and 87 of 2006 of Bandra Railway Police Station :-

122. ACP Joshi, PW-163, received the case papers from ACP Shengal on 20/07/06 and perused them. PSI Datir, PSI Yogesh Chavan, PSI Patare, API Pophale and four policemen were given to him for the purpose of investigation. He instructed them to contact the injured and to collect maximum information with a view to know about the identity of the accused persons. He also instructed them to travel in the same semi-fast Borivali local train at the same time and to contact the commuters regularly travelling in the bogie with a view to get more information useful for the investigation. Thereafter, he arrested the A1 on 14/08/06, Khalid Shaikh and Mumtaz Chaudhary on 16/08/06, A2 on 17/08/06, A11 and A10 on 21/08/06, A3 and A9 on 22/08/06 and A4 on 08/09/06. A1, A2, A3 and A9 to A11 had also been arrested in C. R. No. 87 of 2006 before they were arrested in C. R. No. 59 of 2006.

C. R. No. 59 of 2006 of Vasai Road Railway Police Station :-

123. Addl. CP Jaijeet Singh directed PI Agrawal, PW-173, to conduct the investigation of this crime and PSI Shinde and two constables were given to assist him. He visited Kandivali car shed in the evening on 12/07/06 alongwith the investigating officers of other teams and with the BDDS team, examined the affected bogie no.864A in order to get some clues from the residue, collected

copies of the FIR and panchanama and details of the hospitals where the injured were admitted. APIs Agarkar and Surve were attached to his team on 13/07/06. On that day he received information that some suspects were caught by the Vasai Road Railway Police Station. He immediately rushed there, contacted Sr. PI Kulkarni, PW-133, who informed him that they had apprehended four persons under section 41(2) of the Cr. P. C. He inquired with them and came to know their names as Shivprasad Chauhan, two more Chauhans and one Tawar. He gathered on their interrogation that they had come to Mumbai in search of jobs, therefore the possibility of they being suspects in this case was ruled out. API Shelke was attached to his team on 15/07/06. On the directions of his superiors, PI Agrawal, PW-173, inquired with Ramanand Machewar, a person who was injured in the blast in his crime and had certain information. Said person told him that he had seen a person boarding the same bogie holding a small green coloured bag that was passed through other commuters to be kept on the luggage rack. The witness suspected this as he thought that the small bag could be held in the hands and there was no necessity of keeping it on the luggage rack. Moreover, he saw that person alighting at Mira Road Station without the bag. PI Agrawal, PW-173, asked API Shelke to continue with the inquiry of the witness and he immediately rushed to Vasai Road Railway Police Station. On inquiry, he learnt that PI Kulkarni, PW-133, had also recorded the statement of the said witness on 12/07/06. He went through the said statement and found that the information that the witness had given to him was not in his statement. He checked

the unclaimed baggage and articles and found a small green coloured bag. He opened it and found a telephone diary, bunch of keys and some money. The telephone diary showed that it was belonging to one Kailash Mehta, who was admitted in Kasturi Hospital. Hence he took that bag and came back to his office, showed the bag to the witness Ramanand Machewar and confirmed that it was the same bag.

124. ACP Shengal handed over the case paper of this crime to him on 21/07/06. Thereafter he arrested the A1 on 11/09/06, A2 on 14/09/06, A10 and A11 on 16/09/06 and A3 and A9 on 18/09/06. He gathered from the interrogation of the accused by the other investigating officers that most of them were members of SIMI, that SIMI literature was recovered from them, that some of them had gone to Pakistan to undergo militant training in the L-e-T camps at Muzaffarabad in Pakistan occupied Kashmir and that certain incriminating articles had been recovered from them.

C. R. No. 156 of 2006 of Borivali Railway Police Station :-

125. ACP Khandekar, PW-174, on being directed by Addl. CP Jaijeet Singh, started conducting the investigation of this crime parallel to the investigating officers of the railways. He went to the Kandivali car shed on 12/07/06, surveyed the affected bogie no. 935A, inspected the articles that were lying in the bogie with a view to obtain evidence, then went to Borivali Railway Station and had discussion with Dy. SP Ahir, PW-144, took information of the hospitals in which about 100 injured persons had been admitted, allotted different hospitals for visits amongst himself, API

Dudhgaonkar, PSI Awati and PSI Sakpal and all of them inquired with the injured who were in a position to speak. During this period he was contacting and interacting with Dy. SP Ahir, PW-144, for obtaining information in the investigation during which he came to know that out of the injured one Kishore Shah, PW-60, had given the description of two suspects and had stated that he would be able to identify them. Dy. SP Ahir, PW-144, informed him that sketches were not drawn as the sketch drawer was not available and witness was not ready to sit in the police station as he was injured. He also informed ACP Khandekar, PW-174, that one Suresh Suvarna had also given the information about the suspects, but had not described their faces and had stated that he would not be able to identify them. Therefore ACP Khandekar, PW-174, called the sketch drawer after 2-3 days and sent him with constable Nagvekar to the house of the witness Kishore Shah, PW-60. He returned back and reported that the said witness had gone to his native place as he had sustained a shock because of the blast and was injured. ACP Khandekar, PW-174, then met Suresh Suvarna, who told him that he did not have any more information than what he had given in his statement.

126. ACP Shengal handed over the papers of this crime to him on 21/07/06 as he had received them from Dy. SP Ahir, PW-144, and he went through the documents. The officers in his team were assigned other work and API Wadmare and PSI Patil joined his team.

127. He came to know from the other investigating officers of the ATS that the A1 to A4 and A9 to A11 and two more, who were

discharged later on, had been arrested first by Sr. PI Rathod, PW-176, and in the other crimes one after other by the respective investigating officers with whom he used to share the inputs that were received during the interrogation of the accused by them. Sr. PI Rathod, PW-176, informed him about the seizure of 500 gms. black powder from the house of the A1 in Madhubani, Bihar and that the FSL report of that powder showed that it was RDX powder. He also informed that the A1 had gone to Pakistan and had taken militancy training from Muzzafarabad in Pakistan occupied Kashmir. He also informed that he had found two black spots of which he had taken swabs, during the search of the house of the A3 in Bandra and had also seized 26200 Saudi Riyals, about which the A3 could not give any satisfactory explanation. Sr. PI Rathod, PW-176, also told him that it was revealed in the investigation that the A3 had received the said Saudi Riyals from the wanted accused Azam Chima, commander of L-e-T, Pakistan *via* wanted accused Rizwan Dawrey from Saudi Arabia and that he had also found books of SIMI, which was a banned organisation. He also informed about the recovery of bottles of Sulfuric Acid, Hydrogen Peroxide and Acetone at the instance of the A2 from the locker of Sabu Siddiqui hospital and found literature connected with SIMI at the houses of the A2, A3 and A9 to A11. Dy. SP Ahir, PW-144, of the ATS had recovered literature connected with SIMI from the A4 in an LAC case. Sr. PI Rathod, PW-176, had recovered maps from the different accused showing the marked route from India to Pakistan *via* Iran and maps of Mumbai wherein some important and strategic points had been

marked. He also came to know that the A3 had visited Pakistan twice and had taken militancy training there and had sent the A2 and A9 to A11 for militancy training there and that he was being funded by the wanted accused Azam Chima for sending Muslim youths for training. ACP Khandekar, PW-174, came to know from Sr. PI Rathod, PW-176, that during his interaction with the accused he came to know that the literature found with them contained the information as to how the democracy in India can be replaced by a Muslim Government, to create disharmony in different ways in the Indian society and how to do it. He came to know that the ideology and object of SIMI was behind the railway blasts and it was to create public opinion against the government, so that the government would topple, which fell within the meaning of promoting insurgency.

128. PI Agrawal, PW-173, and PI Kadam had received the information during the interrogation of the A2 and A4, when they were in their custody, that the A13 is an active member of SIMI and is connected with the railway blasts and ACP Khandekar, PW-174, got the confirmation from his source at the same time that A13 had played a vital role in the Borivali blast. ACP Khandekar, PW-174, had taken the A3 and A4 for their scientific tests to Bangalore and during the interrogation with the A4 during the travel, he obtained some information about the involvement of the A13. He gave all this information to DCP Bajaj, but did not share it with any other officer. DCP Bajaj directed him to gather more information and to prepare and give a comprehensive report about it. ACP Khandekar, PW-174,

also came to know that the A13 is an active member of the SIMI and some cases were filed against him at Jalgaon. Hence, he told ACP Tawde that he wanted information about the cases. ACP Tawde sent a letter and then deputed API Padmakar Pandharinath Deore, (PW-180) (Ext.2082), to collect the information.

129. API Deore, PW-180, who was PSI in July, 2006, was deputed to the ATS in the last week of July, 2006 and on the instructions of ACP Tawde he met ACP Khandekar, PW-174, who asked him to collect information about the A13 from Jalgaon, as to where he is, whether there are any cases lodged against him at Jalgaon, to keep the information secret and to contact him immediately if he gets some information. Accordingly he went to Jalgaon with PC Chorge and met the concerned officers in the District Special Branch in the SP office, who were handling the cell of SIMI activists. They showed him the record of SIMI activists. He found the name of Asif Khan Bashir Khan and his photograph and the information that he was the President of Jalgaon unit of SIMI and there were two crimes, C. R. No. 178 of 1999 and C. R. No. 103 of 2001 under Section 153A of the IPC, both registered with MIDC Police Station, Jalgaon. The officer there told him that C. R. No. 178 of 1999 had been investigated by the MIDC Police Station and the Local Crime Branch, Jalgaon had arrested the wanted accused by name Parvez Khan in August 2006. He noted all this information on paper and requested them to give copies of the photographs of the A13 and then went to the office of LCB, asked for and went through the papers of C. R. No. 103 of 2001, from which he came to know that 10-12 accused were

arrested and 6-7 accused were wanted, that the chargesheet was sent to the Sessions court and some accused had been convicted for 10 years. It was revealed during the interrogation of the wanted accused Parvez Khan, that the full name of wanted accused Asif Khan was disclosed as Asif Khan Bashir Khan @ Junaid. He then went to the MIDC Police Station and got the information about the status of the case of C. R. No. 178 of 1999 that it had been registered in the court and given RCC No. 219 of 2001 and was disposed off. He collected photocopies of the FIR and other papers of both the crimes, went to the court and with the help of the APP working in the CJM court, perused the case papers and came to know that one of the accused had been acquitted in the year 2002 and the other accused, i.e., the A13, was shown as proclaimed offender in March, 2002. He noted down all the details and the dates and asked the APP to get copies of the relevant papers. He then went to the Sessions Court, but could not get any information. He then went to the DSB office and collected the copies of the photographs and then called ACP Khandekar, PW-174, on phone and gave him the information that he had gathered, viz., the crime numbers of the two crimes, the names of the accused, sections of offences, date of proclamation, date of order of conviction, etc., which ACP Khandekar, PW-174, wrote down. On the next day he came to know from the Sessions Court that the convicted accused had filed appeal in the High Court. He went to the CJM court and collected the certified true copies of the documents, then contacted the ATS office, Mumbai and told ACP Tawde, who was on the phone,

about having received certified copies of papers of one case and informed him that the papers of the other case have been sent to the High Court at Aurangabad in an appeal. He took out photocopies of all the documents that he had collected and sent the documents that he had collected with PC Santosh Chorge to the ATS office on the directions of ACP Tawde and told him to hand over the documents to ACP Tawde. He met Dilip Sawant, Addl. SP (Home), Jalgaon, on the directions of ACP Tawde and told him about the requirement of the case papers from the High Court. He was told to wait there for two days. During his stay at Jalgaon, he and his constable went around Tambapura and Shirsoli area where the A13 used to be and tried to collect the information about him by making confidential inquiry. At that time he did not get any information about the whereabouts of the A13, but only came to know that when the offence was committed in 1999 and the A13 was arrested, he had been released on bail and used to attend the court dates regularly. However, after Crime No. 103 of 2001 was registered and some boys were arrested and his name also cropped up in that crime, he left that area and was not seen thereafter. He also came to know that the A13 came some time in between and took his wife and children and there is no information about his present whereabouts. He collected certified copies of the documents obtained on 22/09/06 by the Addl. SP from the High Court and copies of the supplementary chargesheet that had been filed against the A13 from the MIDC Police Station. The certified copies and photocopies are at Exts. 1506 to 1511, out of which he had collected the photocopies Exts.1509

and 1511 from the police station.

130. On receiving the information about the cases registered against the A13, ACP Khandekar, PW-174, realised that the main accused, i.e., the A13, in this case had more than one offence registered against him during the last ten years. He was also convinced that the A1 to A4 were involved in the commission of the crime that he was investigating. He also received information that a chargesheet was filed against the A2 and A4 under the UA(P)A as they were involved in SIMI activities in 2001 after the ban on SIMI and when they were produced in the court in the case they had shouted slogans concerning SIMI, for which another case was registered in Kurla Police Station against them and chargesheet was filed. On all this information, he realised that though SIMI was banned, it was operating as an illegal criminal organisation, i.e., an organised crime syndicate and the accused were continuing with the unlawful activities under that syndicate and they were promoting insurgency and obtaining pecuniary gains. Therefore, he prepared a proposal for application of the provisions of the MCOC Act to the crime that he was investigating, sent it for prior approval to DCP Bajaj for onward submission and received the order of prior approval from Addl. CP Jaiswal of the ATS on 24/09/06, Ext.1841.

Investigation under the MCOC Act :-

131. ACP Patil, PW-186, was attached to Womens Police Training School at Solapur as Vice Principal in July 2006 in the rank of Addl. SP. On receiving a wireless message, copy of which is at Ext.2362, from the Director General of Police, Maharashtra State, attaching

him to the ATS temporarily to assist the investigation of the railway bomb blasts, he was relieved on 26/07/06 and he reported for duty at the ATS, Mumbai on 27/07/06. He was attached on deputation temporarily to the ATS till 18/12/06 and on that day he was posted on regular basis to the ATS as per the order of the Director General of Police, Maharashtra. After he joined the ATS, Addl. CP Jaijeet Singh issued an order on 28/07/06, Ext. 2366, posting him in the team of investigation for the railway bomb blasts. He got acquainted with the bomb blasts cases after joining the investigation team. He alongwith ACPs Bhatt and Tawde and other superior officers were supervising the investigations that were conducted by the seven investigating officers of the ATS, who used to have co-ordination amongst themselves and used to interact with each other as well as with them. He was also supervising the interrogation of the A1 to A4 and A9 to A11 and Khalid Shaikh, Mumtaz Chaudhary and Tafheem Akmal, PW-95, who had been arrested in C. R. No. 78 of 2006. He had come to know that most of the arrested accused were members of the unlawful association banned by the government, viz., SIMI, that some literature of SIMI and other inflammatory literature was recovered from some of the arrested accused, that A1 to A3 and A9 to A11 had undergone terrorist training in handling of arms and ammunition and explosives in the terrorist camp of L-e-T, situated at Muzzafarabad in Pak occupied Kashmir (POK) and that they had gone to Iran by obtaining ziyarat visa and thereafter infiltrated into Pakistan by clandestine way, that they had contacted wanted accused Azam Chima @ Babaji, one of the commanders of L-e-T, that

some maps showing Asian countries and a route marked from Mumbai to Tehran, Tehran to Zaydan, Zaydan to Quetta, then to Bhawalpur and to Muzaffarabad were recovered from some of the arrested accused and there were some e-mail addresses and telephone numbers written on the maps. He also came to know that wanted accused Azam Chima was providing funds to the A3 for the expenses of sending boys for arms training, that wanted accused Rizwan Dawrey and Rahil Shaikh were acting as conduits between Azam Chima and A3 and A9, that out of the money sent, 15000 Saudi Riyals were recovered from the A3 and that 11200 Riyals, which were meant for the A3, were recovered from one Abdul Dawrey, PW-71, and that wanted accused Azam Chima used to send money *via* Dubai either through carriers or by hawala. He also came to know that RDX was recovered from the house of the A1, spots of RDX were noticed in the house search of the A3 and the reports of the FSL were tallying with the FSL reports of the bomb blast debris from the seven bomb blasts sites. Similarly, three bottles of chemicals were recovered at the instance of the A2, which the FSL opined as being capable of causing explosion. A13's name was disclosed as the main conspirator to the investigating officer of C. R. No. 156 of 2006 on conducting inquiries about his antecedents and he had come to the conclusion that he was indulging in continuing unlawful activity. ACP Patil, PW-186, was aware that the said investigating officer had come to the conclusion that the provisions of the MCOC Act are attracted and that he had submitted a proposal to Addl. CP Jaiswal, who is of the rank of DIG, for granting prior

approval for invocation of the provisions of the MCOC Act to his case.

132. ACP Patil, PW-186, was appointed as the investigating officer of this crime, i.e., C. R. No.156 of 2006 of Borivali Railway Police Station by the order of prior approval Ext.1841. He recorded a written statement of ACP Khandekar, PW-174, after receiving the order, treated it as information under Section 23(1) (a) of the MCOC Act and on his directions ACP Khandekar, PW-174, handed over the papers of investigation of this crime to him on 25/09/06. He perused the case papers, discussed the progress of the investigation and also recorded his statement about the investigation conducted by him. The names of the A1 to A4 and A13 were mentioned in the prior approval, out of whom the A1 to A4 were in police custody in other cases at that time. He showed the A1 and A2 arrested on 25/09/06 in this crime from their police custody in C. R. No. 59 of 2006.

133. API Deore, PW-180, again went to Jalgaon on the directions of ACP Patil, PW-186, on 27/09/06, tried to locate the A13 with the help of his sources and the HC of MIDC Police Station but did not get any information. Therefore, he took search of house of the A13 in the presence of two panch witnesses and in the presence of A13's younger brother Aziz Khan and prepared panchanama Ext.2083. He did not find any objectionable thing in his house. He recorded the statements of brother and father-in-law of the A13 and inquired with them about his whereabouts. He then recorded statement of API Dhakrao and obtained certified true copies of the FIR, chargesheet

and supplementary chargesheet of C. R. No. 178 of 1999 and FIR of C. R. No. 103 of 2001, Exts. 1509 and 1511. He showed the copy of the photograph of the A13, Art.376, to API Dhakrao, who certified behind it that it is of the accused. He also got such a certificate from Aziz Khan, younger brother of the A13, Ext.2085, behind the photograph, Art.377. API Dhakrao had only filed the supplementary chargesheet and API Tare, who had investigated the offence, arrested the A13 and filed the chargesheet, was attached to the Special Branch, Nasik. He went there on the next day, met him, inquired with him, recorded his statement, showed him a photograph of the A13, which he identified and obtained his certificate Ext.2086 behind the photograph Art.378. He returned back to the ATS office, Mumbai on the next day and handed over all the documents of the investigation that he had done to ACP Patil, PW-186.

134. ACP Patil, PW-186, arrested the A3 and A4 from their police custody in C. R. No. 59 and 87 of 2006 respectively on 28/09/06.

135. Four separate teams were formed to trace the A5 to A8 as their involvement in this case was disclosed during the course of investigation and from the information gathered from the arrested accused. One team headed by PI Salaskar was sent to Kolkata on the basis of certain information about the A5. PI Salaskar, API Phadke and staff returned from Kolkata on 29/09/06 and produced the A5 before him and reported that they had arrested him at Kolkata on 28/09/06 with the help of the local police and produced the memorandum of arrest and inspection memo, Exts. 2374 and 2375.

PI Ahir and staff who were deputed for tracing the A6, produced the accused before him on 29/09/06 and he arrested him under the arrest panchanama Ext.2377.

136. Sr. PI Tajne, PW-161, and staff were deputed for tracing the A7 on 28/09/06. He alongwith API Kolhatkar, PW-18, PSI Kadam and staff went for inquiry and after contacting his sources, was able to locate the A7 at Malad, Malwani on 29/09/06. He caught him and produced him before ACP Patil, PW-186, who arrested him under the arrest panchanama Ext.1742.

137. PI Arun Sambhaji Khanvilkar, (PW-168)(Ext.1776), and staff were deputed to arrest the A8 on 28/09/06 and ACP Patil, PW-186, gave him information that he resides in Ghatkopar area. Accordingly he, API Dinesh Kadam, PSI Varpe and staff went to Ghatkopar in the evening on that day and traced the A8 in Ghatkopar (E) in the morning on the next day near the railway station on the east side. He took the accused in custody and brought him to the Bhoiwada office and produced him before ACP Patil, PW-186, who directed him to search the accused, which he did under the panchanama, Ext. 1778, and found a Nokia company mobile handset, Art.370, which he seized and sealed in the presence of panch witnesses. They also inquired with the accused about the railway pass of Mumbra and he told them that he had taken a house at Mumbra. PI Khanvilkar, PW-168, called the owner of that flat by name Abdul Naeem Siddhiqui to the Bhoiwada office on 05/10/06. He told him that out of the two flats in Moonlight building at Mumbra, he had given flat no. 202 to the A8 on leave and licence basis for 11 months period

from 03/12/05 to 02/11/06, as Mehmood Azim Qureshi, (PW-65) (Ext.766), brother-in-law of the A7 was known to him and he also produced the original leave and licence agreement Art.371.

138. ACP Patil, PW-186, had formed three teams for searching the house of the A6 to A8 after their arrest on 29/09/06. The team of Sr. PI Tajne, PW-161, alongwith ACP Shengal, PI Khanvilkar, PW-168, PSI Sachin Kadam and staff took the A6 to his house at Govandi on the same day, searched it before panch witnesses, Pritam Pradeep Mhatre, (PW-58)(Ext.715), and one more, found a Kanchan pressure cooker, Art.303, in a wooden box bed that was in the hall. On minute observation of the bed, they noticed black and white spots on the inner side of the bed, which they suspected to be of some explosive substance. Therefore, they wiped them with clean and dry separate cotton swabs, Arts. 301 and 302, and seized these articles under the search panchanama Ext.716. They returned to the ATS office, reported the happenings to the chief IO and deposited the seized articles in the muddemal room. ACP Patil, PW-186, sent the seized cotton swabs that were in the plastic bags, Arts.301A and 302B, to the FSL alongwith his forwarding letter, office copy of which is at Ext.796, with PN Sudhir Dattatraya Kulkarni, (PW-72) (Ext.795), on 03/10/06. The contents of the report Ext.2383 in connection with the cotton swabs that was received from the FSL, showed the result of analysis that cyclonite (RDX) and charcoal are detected on one swab, ammonium, nitrate and traces of cyclonite (RDX) are detected on the second swab.

139. ACP Patil, PW-186, sent PI Dinesh Ahir and staff to search the

house of the A7 and PI Iqbal Shaikh and staff to search the house of the A8 on 29/09/06. They returned on the same day and handed over the house search panchanamas Exts.2384 and 2385 respectively, reporting that nothing objectionable was found in the house search. He arrested the A9, A10 and A11 in this case on 30/09/06 from their custody in C. R. No. 59 of 2006 as their involvement was disclosed during the course of investigation and from the information gathered during the interrogation of the arrested accused. A team comprising of API Dinesh Kadam, PSI Avari and staff was formed for tracing the A12 as his involvement was also disclosed during the course of investigation and from the information revealed from the interrogation of the arrested accused. They went to Secunderabad in Andhra Pradesh on receiving certain information and traced the accused at Secunderabad with the help of local police. PSI Avari produced him before ACP Patil, PW-186, on 30/09/06 alongwith arrest panchanama Ext.2380. PI Deshmukh and staff were specially appointed for tracing the A13, who was the main conspirator in this case and shown wanted, and, they were making all efforts for doing so. PI Deshmukh sent PSI Kandharkar and staff to Belgaum to trace the A13 as they had received certain information. PSI Kandharkar traced the A13 at Belgaum on 03/10/06, arrested him and produced him before ACP Patil, PW-186, alongwith the panchanama Ext. 2382. PI Dinesh Ahir, who had gone to Secunderabad in search of the A12, came to Mumbai and handed over the house search panchanama Ext.2836 to ACP Patil, PW-186 on 30/09/06 reporting that nothing objectionable was

found in the house search.

140. ACP Patil, PW-186 requested the Jt. CP, ATS to allot a team of officers to assist him in the investigation, as it was very voluminous and wide spread. Accordingly, the Jt. CP, ATS, K. P. Raghuvanshi issued the office order Ext.2387, on 30/09/06 allotting a team of officers to him. ACP Patil, PW-186, also used the services of officers other than those mentioned in the order, as and when needed, with the permission of superiors.

141. Separate teams of officers and their staff were formed for interrogation of the accused and ACP Patil, PW-186, alongwith other senior officers were supervising the interrogation. He instructed the officers to take immediate steps if needed, if something important came from the interrogation and to keep him posted about it. All the arrested accused were put under constant interrogation after their arrest.

Confessional statements given by the accused u/s. 18 of the MCOC Act :-

142. ACP Patil, PW-186 was informed on 29/09/06 by the team of officers interrogating the A2 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. C.P, ATS to nominate a DCP for recording it. The Jt. C. P, ATS nominated Superintendent of Police Sanjay Vilasrao Mohite, (PW-102)(Ext.1014), who was DCP (Preventive), Crime Branch, Mumbai at that time to record it and he recorded Part-I and II of the confessional statement of the A2 on 04/10/06 and 05/10/06, Exts.

1019 and 1020 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1028.

143. The contents of the confessional statements of the accused have been reproduced in short at this stage in order to understand the prosecution story in a better manner.

144. A2 confessed about his participation in the program of SIMI, becoming its member, carrying out the activities of SIMI even after it was banned in September, 2001, knowing the A3 since the year 2000 when he used to go to the office of the SIMI at Kurla, he being arrested in September, 2001 from the Kurla office alongwith the other members like the A4, SIMI President of Maharashtra and other office bearers, being produced in Kurla Court, giving slogans there about which another case being registered against him. He confessed about becoming secretary of SIMI of Mumbai in 2003 and being removed from that post in December, 2003, till that time having prepared his mind for doing something towards jihad in connection with the atrocities on Muslims in Kashmir, Palestine, Chechenia and Iraq countries, that he was knowing the A4, who was an active member of SIMI and who used to tell him to take the training of preparing bombs. He confessed about going for militancy training at the training camp of L-e-T in Muzzafarabad in April, 2004 with the help of the A4, A9 and A3, resigning his service in the Prince Ali Khan Hospital and returning back to Mumbai in July, 2004. He confessed about taking training of operating AK 47 rifle, pistols and

preparing bombs and getting information about detonators. He confessed about returning to Mumbai, meeting the A4, who collected many SIMI activists in a flat at Mira Road in February, 2004, where A4 played a CD of Masood Azhar, the Chief of Jaish-e-Mohammed. He confessed about A3 calling him to his house at Bandra in February, 2006, where the A3, A4, A9, A10, A11 and A13 were present, the A3 telling them about the plan of blasting bombs in the local trains hatched by wanted accused Azam Chima on the say of ISI and that some Pakistani guests would be coming for executing the plan. He confessed about they conducting a recce of the probable spots where the bombs were to be placed, by traveling in trains from Churchgate to Virar, the A3 and A13 having decided to make the bomb explosions, there being many meetings at the house of the A3 wherein he used to remain present, bombs being prepared at the house of the A6 at Govandi on 8th, 9th and 10/07/06 as told by the A3, A13 bringing the articles for preparing the bombs, A7 and two Pakistani persons, out of whom one was wanted accused Suhail Shaikh, doing the work of preparing bombs, he keeping watch outside the house of A6 as instructed by the A4, seven bomb laden bags being taken to the house of the A3 in Bandra in the evening of 10/07/06 and being instructed by the A3 to be ready on 11/07/06, if the need arose.

145. ACP Patil, PW-186 was informed on 29/09/06 by the team of officers interrogating the A4 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested

the Jt. C.P, ATS to nominate a DCP for recording it. The Jt. C. P, ATS nominated Superintendent of Police Dattatray Rajaram Karale, (PW-104)(Ext.1053), who was DCP, Zone-IV, Matunga, Mumbai at that time to record it and he recorded Part-I and II of the confessional statement of the A4 on 06/10/06 and 07/10/06, Exts. 1057 and 1060 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1064.

146. A4 confessed about going in April, 2001 to the office of SIMI on Pipe Road, Kurla, reading religious books, getting acquainted with members of SIMI, attending programs of SIMI, being introduced to SIMI members, being sent to the head quarters of SIMI at Delhi for training in August, 2001 where he heard lectures of many activists, becoming acquainted with the A3 at Delhi who had also came there for training, being arrested on 27/09/01 when he was in the SIMI office at Kurla alongwith several other persons including the A2 and A13, who was the Secretary of Maharashtra, SIMI, and was absconding in a case at Jalgaon and staying in a rented room at Kurla after the ban on SIMI and doing the work of SIMI and for that purpose touring India and the A13 being elected as President of All India SIMI at the meeting in Kerala in February, 2006, but the A13 refused, therefore, being expelled from SIMI. He confessed about being appointed as President of SIMI of Mira Road in March, 2002 studying Quran and more particularly about jihad, downloading the literature of the jihad from the website of L-e-T,

jamatuddawa.org. He confessed about getting acquainted with Riyaz Bhatkal in Karnataka in May, 2003, who was running Asif Raza Group after the ban on SIMI, having discussions with him about jihad and setting up camps for training Muslims for jihad and for that purpose to search for the places. He confessed about the A3 giving him information about jihad and Ahle Hadis and he and his brother A9 having taken training in the L-e-T camps in Pakistan and asking him to go for training, A3 asking him whether the A2 is ready to go for training, the A2 expressing his willingness, he arranging for the visa of the A2 in April, 2004 with the help of the A3 and A9, A2 going for training and returning in June, 2004. He confessed about the A3 being in constant contact with wanted accused Azam Chima, commander of L-e-T, that wanted accused Azam Chima had sent some persons to India in May, 2006, out of whom two were brought by the A2 by crossing the Nepal border, i.e., wanted accused Aslam and wanted accused Hafizullah. He confessed about he coming to know from the A3 that the A5 had brought six Pakistani persons from Bangladesh by crossing the Dhaka border, viz., Sabir, Abu Bakr, Kasam Ali, Ammujan, Abu Hasan and Ehsanullah, all wanted accused, and that Ehsanullah had brought 15 kgs. RDX with him and some Pakistani persons had come from the Kuchh border. He confessed about the A3, A10 and A11 conducting a recce of the targets in Mumbai as per the message of wanted accused Azam Chima and finding the railway trains to be an easy target. He confessed about he, A2, A6, A7, A10 to A13 maintaining continuous contact with the A3. He confessed about the A3 telling him that the

wanted accused Azam Chima has decided to cause bomb explosions in seven trains on the western line at the rush time in the evening. He confessed about he, A2, A3 and A9 to A11 traveling in the trains from Churchgate to Virar to survey the spots, the bombs being prepared on 8th, 9th, and 10th July at the house of the A6 at Govandi by the A7 and wanted accused Suhail Shaikh, who had come from Pakistan and one more Pakistani person, that the RDX, Ammonium Nitrate, Diesel, 9 Volts Battery and a Quartz watch being used for preparing the bombs, that A13 and wanted accused Ammu Jaan, who had come from Pakistan and one Parvez being present there. He confessed that he himself supervised the work of preparing the bombs, the A2 kept watch outside the house and that seven bomb laden bags were taken to the house of the A3 at Bandra in the evening of 10/07/06. He confessed his role in keeping a bomb laden bag in the first-class bogie of the Virar train starting from Churchgate at about 1715 hours alongwith wanted Pakistani accused Ammu Jaan, etc.

- 147.** ACP Patil, PW-186, was informed on 01/10/06 by the team of officers interrogating the A1 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. C.P, ATS to nominate a DCP for recording it. The Jt. C. P, ATS nominated Regional Passport Officer Vinoy Kumar Choubey, (PW-113)(Ext.1175), who was DCP, Zone-IX at that time to record it and he recorded Part-I and II of the confessional statement of the A1 on 03/10/06 and 04/10/06, Exts.1180 and 1181 respectively, after

following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1203 along with the statement Ext.1204 that the accused had made before him.

148. Amongst other things, the A1 confessed about he being sent to Pakistan by wanted accused Hafiz Zuber at Sitapayala in Nepal on the pretext of collecting donations for Madarssas, going through Wagha border to Pakistan and being given training in the training centre at Ummul Koda and being told about the atrocities committed on Muslims and on Muslim women, because of which a feeling of hatred against India was born in him. He confessed about going to Bahawalpur and from there being taken to a training centre in the desert and being trained in AK 47, rifles, revolvers and preparing bombs. He confessed about sending his own co-brother Anwar Uk Haq to Pakistan for training on the pretext of sending him for collection of donation for Madarssa, that he was being given money by one Ibrahim Raeen for preparing poor, educated and needy boys to be sent to Pakistan for training on the pretext of collection of donations, but he could not send anyone, that in the beginning of May, 2006 wanted accused Abdul Rahman, who was working in the Nice Travels of wanted accused Hafiz Zuber at Kathmandu, gave him Rs.10,000/- and a plastic bag that contained ½ kg. black coloured powder, which on inquiry the wanted accused Abdul Rahman told that it is RDX powder, that at the end of May, 2006 on the say of wanted accused Abdul Rahman, he brought two Pakistanis, i.e.,

wanted accused Aslam and Hafizullah, from Janakpur in Nepal to Patna and then to Mumbai and took them to the shop of the A7. He also confessed that on the instructions of the wanted accused Abdul Rahman on 07/07/06, he started for Mumbai on 09/07/06 and reached the house of the A7 in the morning on 11/07/06, where wanted accused Aslam and wanted accused Hafizullah were present, that wanted accused Abdul Rahman told him that he has to reach the house of the A7 at any cost and there has to execute a big work of L-e-T commander, wanted accused Azam Chima, with the help of wanted accused Aslam, wanted accused Hafizullah and A7. He confessed about having gone to the house of the A3 at Bandra at 3.00 p.m. by local train alongwith A7 and wanted accused Aslam and Hafizullah, where he was assigned the work of planting a bomb laden bag in the local train, that he, wanted accused Aslam and Hafizullah and one more Pakistani, whose name was told as deceased accused Salim, was given one bag by the A3, that they four went to Churchgate Railway Station by taxi and boarded a first-class compartment of the 5.57 p.m. train and he kept the bomb laden bag on the passenger rack and after the train reached Dadar, he and the other three started getting down, but because of rush only three persons managed to get down, but deceased accused Salim could not get down.

149. ACP Patil, PW-186, was informed on 01/10/06 by the team of officers interrogating the A3 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested

the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated Addl. CP Brijesh Singh, (PW-117)(Ext.1208), who was DCP, Zone-I at that time to record it and he recorded Part-I and II of the confessional statement of the A3 on 03/10/06 and 5 and 06/10/06, Exts.1212 and 1218 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1222.

150. A3 confessed about becoming acquainted with some members of SIMI including the A10 when he was staying with his family at Pune in 2001 and coming to know about the activities of SIMI, that he started participating in the Durs-e-Quran programs conducted by SIMI in Masjid alongwith his brothers, A9 and wanted accused Rahil, and got very well acquainted with a lot of SIMI activists from Mumbai and Pune, that he became acquainted with A4 and A13 in a big zonal Tabiyati program organised by SIMI at Unani Medical College, Pune, in May, 2001, that because of the Takrir and lectures in the program of SIMI, in which they told about the atrocities and excesses on Muslims in all the countries in the world, he developed concern for his Muslim brothers and wished to do something in respect of the atrocities on Muslims and was moved because of the communal riots in Mumbai and Gujarat and decided to migrate and settle in some Muslim country and to take revenge in respect of the atrocities committed on Muslims in Hindustan, therefore got his passport prepared in Pune, went to Pakistan in June, 2002 by Samjhauta Express, met Abu Harara and wanted

accused Abdul Razzak, an Indian from Hyderabad, who used to work for L-e-T and who sent him to Muzaffarabad for training at the camp of L-e-T, that he was given the training of handling of AK 47, Pistol and TT Revolver, preparing bombs and causing explosion, that he was sent to Al-Aksa training camp, where people used to come in military vehicles and in military uniforms, that thereafter he met wanted accused Azam Chima at Yurbji bungalow, near Lahore, that wanted accused Abdul Razzak told him that by the order of Zaki-Ur-Rehman, training chief commander of L-e-T, he, i.e., the A3 has to work with wanted accused Azam Chima, that he returned to India and thereafter worked only for L-e-T and during this time searched for youngsters and able boys for training of Lashkar, for which purpose he asked for money from wanted accused Azam Chima, which he sent by hawala, that he sent the A10 for training to Pakistan in November, 2002 and gave Re.1,00,000/- to him, that he used to remain in contact with wanted accused Azam Chima through wanted accused Rahil and wanted accused Rizwan, that he started obtaining detailed information about the work of L-e-T in this manner through wanted accused Azam Chima, that he went to Saudi at the end of 2003, changed his name as Mustafa, went to Dubai in March, 2004, from where he went to Abbas Bandargaah (Iran), then crossed Iran-Pak border and finally reached Bahawalpur, where he was given a new name Amin, that from there he contacted wanted accused Rizwan Dawrey and asked him to send more persons for training from India, that accordingly wanted accused Rizwan Dawrey informed him about the A2 being ready to come to

Pakistan through A4 for training at Muzaffarabad and where he went *via* Iran route and completed 15 days training, that A9 also underwent training at Muzaffarabad in August, 2004, that he came to know from wanted accused Rizwan Dawrey that one Sohail Shaikh from Pune is undergoing training in Muzaffarabad and is staying there since last 7-8 months and had obtained six months training. He confessed that he obtained a lot of information about L-e-T from wanted accused Azam Chima, that the said organisation is a branch of Markaj Ud Dava Ul Irshad, looking after the execution of its terrorist activities, that Hafiz Mohmad Saeed is the chief sargana of "Markaj" and "Lashkar" and wanted accused Azam Chima (Bahawalpur), wanted accused Abu Muzammil (Islamabad) and Arif Kasmani (Karachi) and many more similar commanders work under Hafiz Saeed and they recruit persons and give terrorist training to them for the L-e-T. He confessed that wanted accused Azam Chima wanted to commit a big incident in Mumbai and for this purpose, he wanted to send the A3 to India, that he was sent to Delhi on an emergency certificate at the end of year 2004 as his Indian passport was taken away from him by the police at Saudi Arabia.

151. He also confessed about sending the boys by name Firoz Ghaswala, Ubed Chipa of Ahmedabad, Zulfiqar Faiyyaz Ahmed of Aurangabad and A11 to wanted accused Azam Chima for training in Pakistan, that wanted accused Azam Chima had sent him a total amount of Rs.10,00,000/- by hawala through wanted accused Rizwan Dawrey.

152. A3 also confessed that after going to reside in Mumbai, he

was in continuous contact with the wanted accused Azam Chima, who told him to search for a good target for committing a big incident in Mumbai, that then he alongwith the A10 and A11 had toured Mumbai and he realised that local trains were a proper target, about which he gave information to wanted accused Azam Chima in February, 2004, which he approved and told the A3 about sending 11 persons of Pakistan for that purpose, that A6, A7, A12, A13, A2, A4, A10 and A11 were in constant contact with him on the instructions of wanted accused Azam Chima, that the A1 and A5 were also maintaining contact with him, that he, A2, A4, A9 to A11 travelled in local trains from Bombay to Virar to survey the situation and he found that it was easy to cause explosion in running local train at the time of crowd in the evening. He confessed that on the instructions of the wanted accused Azam Chima, he started preparations for executing the plan of causing explosions in the local trains, that A13 started collecting articles required for it in May, 2006 and kept them in the house of the A6, that the A1 brought wanted accused Aslam and wanted accused Hafizullah, Pakistani persons sent by wanted accused Azam Chima from Nepal border in May, 2006 and the A5 brought six Pakistani persons from Dhaka border, viz., Sabir, Abu Bakr, Kasam Ali, Ammujan, Abu Hasan and Ehsanullah, all wanted accused, that wanted accused Ehsanullah had brought 15 kgs. RDX with him, that wanted accused Abdul Razzak, resident of Hyderabad, brought three Pakistani persons from Kutch border of Gujarat, viz., Abu Umed and Salim, both deceased accused and wanted accused Sohail Shaikh and he and A13 made

arrangements for the stay of the Pakistani persons, that 11th July was fixed as the date for executing the work and before that it was decided to prepare the bombs at the house of the A6, that A4, A2, A13, A6, A7 and some other persons were in continuous contact with him and they all had meeting in his house at Bandra and at the A7's house at Mira Road, that the bombs were prepared at the house of the A6 on 8, 9 and 10 by the wanted accused Sohail Shaikh, who had come from Pakistan with the help of A7 and one Pakistani person, that A4 was supervising over the work, that seven bags containing bombs were brought to his house at Bandra and kept there on 10/07/06 that as per the instructions of wanted accused Azam Chima, seven pairs, each consisting of one Pakistani and one local person, were formed for planting the bombs, that he was accompanied with a Pakistani person, wanted accused Abu Bakr, that A4, A12, A1, and A7 were the other persons, that all pairs one by one went to the east side of Churchgate station, came on platforms from the subway with the bomb laden bags, each pair kept the bag in different local trains and he and Abu Bakr kept the bag in the first-class compartment below the seat and got down at Dadar and thereafter the Pakistani persons went out of Mumbai to other cities by road and from there to Pakistan by catching different trains.

153. ACP Patil, PW-186, was informed on 01/10/06 by the team of officers interrogating the A9 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS

nominated DCP Dnyaneshwar Mansingrao Phadtare, (PW-93)(Ext. 916) to record it and he recorded Part-I and II of the confessional statement of the A9 on 04/10/06 and 05/10/06, Exts.921 and 924 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.2810.

154. A9 confessed that his brother A3 used to work for L-e-T, that he and his brother A3 and wanted accused Rahil used to go to Macca Masjid in Mominpura, Pune and used to take knowledge about Dars-e-Quran and jihad from SIMI workers, who used to give them information about atrocities being committed on Muslims by telling the tales of the demolition of Babri Masjid, by telling them about massacre of Muslims in the communal riots that had taken place in Gujarat. He confessed that they were taught and instigated to commit jihad and since then he started working for SIMI alongwith his two brothers, that he had attended Zonal Tarbiyati School, a big program organised once in a year by SIMI, at the end of the year 2001, in the hall of Unani Medical College in Azam Campus, Pune, where A3, wanted accused Rahil, wanted accused Rizwan Dawrey and others were present and A3 introduced the A4 and he also met A13. He confessed that his brother A3 had gone to Pakistan in the month of Ramzan in 2002 and met the leaders of L-e-T, wanted accused Abdul Razzak, Abu Zuber, Arif Kasmani, wanted accused Azam Chima and Abu Muzammil and had received weapons training and making bombs in the training centre at Muzzafarabad,

that after returning back A3 had sent the A10 to Pakistan for terrorist training in November, 2002, that with the help of A13, A3 sent Abdul Rauf, Samee Lulle and wanted accused Rizwan Dawrey for L-e-T training, that he, i.e., the A9, collected money sent by hawala on the instructions of the A3 from his cousin Khalida Apa, that he arranged for visa of Iran for the A2 on the say of A4 by taking Rs.20,000/- from Khalida Apa, that on the instructions of wanted accused Rizwan Dawrey, he took Rs.10,000/- from Khalida Apa in April, 2004 and gave it to the A4 for going to Ajmer. He confessed about having gone for training to Al-Aksa training centre of the L-e-T at Muzaffarabad via Iran on 09/08/04, taking with him an ultra violet lamp machine for identifying counterfeit currency notes, which the A2 had given to him as it was asked for by wanted accused Azam Chima, that he handed it over to wanted accused Azam Chima, that he took training for 15 days and returned to Mumbai again through Iran route in September, 2004. He confessed about the A3 returning to Mumbai in February, 2005 and started staying at Masjid Bunder and working for L-e-T, taking money received by Khalida Apa through hawala on the instructions of the A3, that the A3 shifting to a flat at Carter Road, Bandra(W) in Lucky Villa Building. He confessed that after the A3 returned from Pakistan to Mumbai in February, 2005, A3 told him that jihad has to be done in India and therefore a big incident has to be done in Mumbai and that the A3 remained in constant contact with the wanted accused Azam Chima. He confessed about having attended a meeting at the instance of the A13, where A2 to A4, A10 and A13 were present and

A13 and A3 ordering them to search for targets for causing bomb explosions, that A3 took him, A4, A10 and A11 and traveled in the local trains from Churchgate to Virar and found that target of trains was proper for exploding bombs in the crowd, that many days thereafter A3 told him that 11th July had been fixed for causing the bomb explosions and for that purpose wanted accused Azam Chima would be sending several men from Pakistan and asked him to be ready for doing any work and if necessary, his help would be taken. He confessed about wanted accused Rizwan Dawrey contacting him in May, 2006 and informing him that the A3 had asked for an amount of Rs.15,000 Riyals, which he would be sending from Saudi Arabia with an acquaintance by name Hidayatulla Sundke, PW-64, to Pune. He confessed about contacting the said Hidayatulla Sundke, PW-64, and telling him to give the Riyals to Bilal Shaikh, PW-66, who took it and gave them to Mohsin Khan, PW-67, who took them to Mumbai and handed them over to the A3. He confessed that during his militant training in Pakistan, highly placed officers used to visit the training camps on several occasions in military vehicles for observation and learnt that they were officers of the Pakistan's secret service agency I.S.I. and that they have full control over the members of L-e-T.

- 155.** ACP Patil, PW-186, was informed on 02/10/06 by the team of officers interrogating the A10 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS

nominated Dy. Chief Vigilance Officer, Air India, Ashutosh Karbhari Dumbre, (PW-118)(Ext.1242) to record it and he recorded Part-I and II of the confessional statement of the A10 on 05/10/06 and 06/10/06, Exts.1246 and 1249 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1253.

156. A10 confessed that he started going to Kamruddin Masjid with his neighbour Imran Shaikh, a SIMI member and attending Saturday night SIMI programs of Dars-e-Quran, where he became acquainted with the A13, who was the president of SIMI unit, that he became deeply hurt because of Babri Masjid demolition in December 1992, that in 1995 he alongwith the said Imran, A13 and others had burned American flags in the Id-e-Milad procession, for which a case was registered at Lashkar Police Station, that he became acquainted with the father of the A3 and later on with the A3 and his brother wanted accused Rahil, who also became acquainted with the A13 and thereafter started going to SIMI organisation and got acquainted with the wanted accused Rizwan Dawrey and all of them started meeting each other in the office of SIMI at Pune. He confessed about having worked for SIMI upto 1999 for which purpose, he visited Aligarh, Uttar Pradesh and Aurangabad to participate in the seminars organised by SIMI, obtained passport in 2002, that inspite of the ban on SIMI, he and A3 used to have secret meetings at masjid and discuss about injustice on the SIMI, that A3 offered to improve his financial

condition and wanted accused Rizwan Dawrey also asked him about A3's proposal and with their help and as the A3 arranged for his visa and ticket, he went to Tehran from Mumbai on 01/11/02, that wanted accused Rizwan Dawrey gave him Rs.10,000/- and 12,000 Saudi Riyals, that from there he was taken to Bahawalpur, where he met wanted accused Azam Chima, who told him about jihad and Gujarat, that from there he was sent to Lahore with a person of ISI, from there to Rawalpindi, where the officers of ISI asked him to work for them in India and to become an ISI agent, that he was again taken to Bahawalpur and from there to the bungalow of wanted accused Azam Chima, who told him that he should work for L-e-T and that he should work with the A3 and wanted accused Azam Chima gave him knowledge of arms and made him practice operating arms. Thereafter he crossed the Iran border and returned to Mumbai, met the A3 and told him all that had happened in Pakistan. He confessed having gone to Mumbai in February, 2006 for collecting money from the A3, that thereafter the A13 calling him for meeting at the house of the A3, where he, A3, A13, A2, A4, A9 and A11 were present and there was a discussion about selection of targets in Mumbai for bomb blast, that A13 ordered them to make a survey for targets, that A3 took him and A11 with him for surveying Mumbai and found that security arrangements were not good at local railway stations and that railway stations were always crowded, decided that the local trains were the proper targets in comparison with the World Trade Center, Stock Exchange, Mahalaxmi Mandir, Siddhivinayaka Mandir and some big shopping

mall, which they had surveyed and where they found tight security arrangements. He confessed to having travelled in the local train from Mumbai to Virar for taking stock of the situation along with A2 to A4 and A9 to A11 and found more crowd in the evening and thinking that it would be easy to do the explosion at that time. He confessed that the A3 called him in the first week of July, 2006 at his house at Bandra, that there were 4-5 more persons at the house, that the A3 told him that they were guests from Pakistan and with their help he is going to cause a big bomb explosion in Mumbai and they had come for those preparations, at that time the A13 was also present there. He confessed that on 10/07/06 he again went to Mumbai to get more money from the A3 and when he met the A3, the A3 told him that the bombs are ready, that they would do the bomb explosions in the local railway in Mumbai on 11/07/06 and if there is some work that he can do, he would be told about it and he should be ready for it.

157. ACP Patil, PW-186, was informed on 02/10/06 by the team of officers interrogating the A11 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated DCP Makarand Madhusudan Ranade, (PW-111)(Ext. 1117), who was DCP, Zone XI, Mumbai at that time, to record it and he recorded Part-I and II of the confessional statement of the A11 on 04/10/06 and 05/10/06, Exts. 1122 and 1127 respectively, after following the due procedure and taking the necessary precautions

and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1133.

158. A11 confessed in his confessional statement that he became interested in the work of SIMI in 1999 when he saw a crowd near the office of SIMI at Kurla, saw some books kept alongwith the photographs of Babri Masjid and Aksa Masjid (Jerusalem, Isreal), got impressed, entered inside the office, where a man by name Waqar got himself acquainted with him, he gave information about the SIMI, whereupon he expressed his desire to work in the SIMI organisation and he was directed to go to the office of SIMI at Iqwanu Safa in Madanpura, Mumbai where he went and got introduced to A2, Khalid, Sajid, Salim and Anis, that after his marriage in December, 1999 when his wife suffered from TB and pneumonia, she was treated by the A2 and he got well-acquainted with him at that time and his meetings with the A2 increased after August, 2002 when his pregnant wife was admitted for delivery in Fauziya Hospital with the help of A2 and that both he and the A2 used to participate in the programs of SIMI at the said office. He confessed that the A2 was arrested after the SIMI was banned by the Government in September, 2001 and he, i.e., the A11 was saved from the clutches of law as no one knew about the office at the Iqwanu Safa because it was in the dispensary of a charitable trust. He confessed that after the attack by America on Iraq in 2005, A2 assured him on the basis of Hadis that Israel is now going to attack countries like Iran, Iraq, Sham (Syria), Misra (Egypt) and the attack

on Iraq by America is just the beginning, that after Iraq, the turn of all will come and that those people from Hindustan, Pakistan, Bangladesh and Nepal, who would fight would be fortunate to get Jannat, that the A2 used to give him the books on Hadis to read and used to say that all of them should be ready, that after listening to such lectures, he also felt that he should be ready and some days thereafter on the motivation of the A2, he went for training to Muzafarabad and from there to "Maskar" (Aksa) training centre, that he gave his passport and Rs.8,000/- to the A2, who gave him 200 American dollars, Irani visa and ticket and told him about the route to go to Pakistan via Tehran in Iran, where he went on 04/04/05 by air, telling his family members that he is going for a job interview. He confessed having gone to Iran, wanted accused Azam Chima sending a person by name Abdulla, who sent him to Zaidan from where wanted accused Abdul Rehman took him to the border and crossed it, then they went to Koyta and further to Bahawalpur and from Bahawalpur to Muzafarabad. He confessed about his training starting from 14/04/05 and he being given knowledge about explosive material for five days and how to use them to cause maximum loss to life and property in crowded places, that he was given training by military officers, who used to come in vehicle having Pakistani flag, of setting the time upto three months by using timer device and preparing time bomb, that he was also given training and practice of operating automatic firearms, assembling, dismantling and firing them and was told that the officers were the officers of the ISI and the training centre was run under the ISI. He

confessed having met wanted accused Azam Chima after the training, who told him about causing explosions at crowded places like Stock Exchange and Film Industry and to inform the A3 to send more and more boys for training saying that he would be sending an explosive expert as early as possible for giving training to Hindustani people. He confessed having returned to India thereafter, meeting A2 and telling him about the training, that the A2 had already introduced him to the A3 and after coming to Mumbai, he maintaining regular contact with the A3. He confessed about the A13 calling a meeting in the house of the A3 at Bandra, in which he participated alongwith them both and A2, A4, A9 and A10, A13 discussing with them about selecting targets and causing bomb explosions in Mumbai and ordering them to make a survey for targets, that the A3 took him and the A10 for surveying Mumbai and they visited Mahalaxmi Mandir, Siddhivinayak Mandir in Dadar, World Trade Centre in Colaba, share bazar, big shopping malls and local railway stations and finding that security arrangements at local railway stations were not so strict and used to be heavily crowded, hence they realized that local trains would be the correct target for blasts than the other places where the security was more. He also confessed about keeping regular contact with the A3 and travelling in the local trains from Mumbai to Virar alongwith the A2 to A4, A9 and A10 and assessing the situation and finding that there is more crowd in the evening after the offices closed and thinking that it would be easy to cause bomb blasts in the local trains. He confessed having met A3 on 10/07/06, who told him that bombs have been

prepared as per the plan and the explosions will take place in the local trains on 11/07/06 and telling him that they all should be ready at their places and the A3 may tell him any work as per his ability, in case of any emergency.

159. ACP Dhawale, Sr. PI Deshmukh, PI Tonapi, PW-155, and staff of the Juhu Unit of the ATS were interrogating the A3 on 08/10/06. The A3 volunteered to make a voluntary statement, therefore, HC Patil called panch witnesses Kirtiraj Sambhaji Dalvi, (PW-109)(Ext. 1107) and one more and in their presence the A3 made a voluntary statement that he is ready to show the place where he had thrown the remaining articles like pressure cooker rings, whistles and circuit, while going to Mira Road by train. Memorandum, Ext.1108, of the voluntary statement made by the A3, was prepared and he led the police and panch witnesses to Dahisar sub-way *via* Link Road and then by a kachha road to the railway track. From the spot pointed out by the A3, the copper brown plastic bag, Art.335, was taken out and the thin white plastic bag, Art.336 was found inside it. Cooker rings, Arts.331 (1 to 7), whistles, Arts.332 (1 to 5), five electric wires with red and white insulation, Arts.333 (1 to 5), printed circuit board with wires attached and the circuit on it, Art. 334 and a plastic box Art.334A were found in the white plastic bag. The seven black rubber cooker rings had the word 'Kanchan' printed in white colour on them. The five stainless steel pressure cooker whistles with black plastic caps had the name 'Kanchan' on them. The five electric wires were having red and white insulation. The transparent plastic box had two clamps and on opening them a

printed circuit board was found placed on yellow sponge, the circuit board had three outgoing wires, one was having a red cap, one was having black wire with cylindrical Nokia switch. PI Tonapi, PW-155, put each article in a separate plastic bag, labeled and sealed them and wrote the panchanama, Ext.1109, as dictated by ACP Dhawale. A photocopy of the panchanama was obtained from a nearby shop and given to the accused whose signature was taken on the original. They returned to the police station. PI Tonapi, PW-155, handed over the seized articles to the muddemal clerk, gave the panchanama to ACP Patil, PW-186, and put the A3 in the lock-up.

160. ACP Patil, PW-186, sent the above seized articles to the FSL on 11/10/06 with PC Santosh Hindurao Salunkhe, (PW-97)(Ext. 971), under his forwarding letter, office copy of which is at Ext.972. The FSL reports, Exts.973 and 974, about examination of the articles were received and their contents showed that Cyclonite (RDX) was detected on the plastic bags, that the rubber rings and metallic whistles can be used in domestic cookers, that electric wires are not tallying with the electric wires used in the PCB in respect of physical characteristics and the PCB can be used to form a triggering device. The FSL sent letter, Ext.1258, to ACP Patil, PW-186, for procuring original rubber gasket and whistle of pressure cooker from Kanchan Company and forward them to it for the purpose of comparison. He gave this letter to PI Deshmukh and directed him to do the needful. PI Deshmukh wrote a request letter, office copy of which is at Art. 341, addressed to the manager of Kanchan Company on 14/10/06. PI Tonapi, PW-155, called panch witnesses Simon Louis Devinadan,

(PW-120)(Ext.1257), and one more and alongwith PSI Kandharkar and the panch witnesses he went to Raju Industrial Estate, near Dahisar Check-Naka to the office of Kanchan Cooker Company. He handed over the request letter and the manager Prashant Kothari produced one sealed packet of pressure cooker ring, Art.342A, and one whistle, Art.343, and gave them a delivery challan, Art.340. The articles were packed in brown paper separately, labeled and sealed and PI Kandharkar seized them under the panchanama Ext.1259. They then returned to Juhu Unit and from there went to Kalachowki, handed over the articles to the muddemal clerk and the panchanama to PI Deshmukh. ACP Patil, PW-186, sent these articles to the FSL on 16/10/06 with PC Tanaji Santu Patil, (PW-148)(Ext. 1598), alongwith his forwarding letter, office copy of which is at Ext. 1599. The FSL opined in its report Ext.2388, that the rubber gasket and the whistle procured from the company do not tally with the rubber gaskets and whistles recovered from the A3 in respect of markings and physical characteristics. In other words the rubber gaskets and whistles recovered at the instance of the A3 bearing the markings of Kanchan Company were duplicates.

161. ACP Patil, PW-186, gave a memo to Sr. PI Tajne, PW-161, on 07/10/06 for interrogating the A13. He, ACP Tawde, PSI Kadam and staff were interrogating him and on 09/10/06 the A13 expressed his desire to make a voluntary statement. Therefore, panch witnesses Kevalkumar Tarchand Jain, (PW-55)(Ext.663), and one more were called and in their presence the A13 gave a voluntary statement, about which the memorandum Ext.664 was written, during which

he stated that he is ready to show the remaining material. Thereafter, he led the police and panch witnesses to Flat No.101 on the first floor in 'A' Wing of Poonam Park Apartments, Naya Nagar, Haidar Chowk in Mira Road. The flat was found locked from outside and the A13 disclosed on the inquiry that the key was lost. Therefore, Sr. PI Tajne, PW-161, deputed a constable for bringing a key maker. A key maker was brought and he prepared a duplicate key and opened the lock and door and Sr. PI Tajne, PW-161, took the key in his possession. When they and panch witnesses entered the flat with the A13, they noticed that the windows of the hall were latched from the inside and other things. At the instance of the A13, a plastic bag containing white granules, weighing about 2.7 kgs., Art.284, was seized when he took out a white plastic bag from a rexine bag. Sr. PI Tajne, PW-161, drew two samples of 10 grams each, Arts.280 and 283, and put them in small separate plastic pouches. The A13 then took out a blue coloured plastic bag from the other side of the rexine bag. It contained ten aluminum tubes joined with wires, Art.281(colly). On examination they were found to be detonators. He kept them in plastic bottles and labeled and sealed the samples of granules and the plastic bottles. The A13 led them to another bedroom from where they seized, at his instance, 22 books in Urdu language, Art.285 (1 to 23), one book in English, Art.286, outer cover of Frontline weekly, Art.287, pamphlet of Vector Classes, Art.288, visiting card of Bombino Collection, Art.289, file and documents, Art.290(1 to 26), Urdu newspaper, Art. 290A, file and handwritten documents therein, Art.291(colly), one more file and its

contents, Art.292(colly), CPUs, Arts.293 and 294, laser printer, Art. 295, computer monitor, Art. 296, application for NOC alongwith an agreement of leave and licence, Art.297(colly), Reliance Energy bill, Art.298, key, Art.299 and wedding card, Art.300. During the search operation the secretary and chairman of that building came there, introduced themselves to the police and identified the A13, who was with them, as the tenant of that flat. Sr. PI Tajne, PW-161, seized all these articles under panchanama Ext.665, obtained a photocopy of the panchanama, gave it to the A13 and obtained his signature.

162. Thereafter he returned back to the ATS office alongwith the A13 and the seized articles after having instructed the same panchas to remain present in the ATS office after two hours as he wanted to get the detonators and granules inspected by the BDDS. He had intimated ACP Patil, PW-186, while returning from Mira Road about seizing explosive substance and detonators and had requested him to call the BDDS team to the Kalachowki office. He reported the happenings to the Chief IO on returning to the ATS office and gave him the original panchanama and the articles. The BDDS team comprising of API Sandesh Sadashiv Revle, (PW-154)(Ext.1659), other officers, staff and the dog Max came to Kalachowki office at about 1930 hours and the same two panchas also came there. Sr. PI Tajne, PW-161, handed over sealed khaki packet containing the granules to API Revle, PW-154, in the presence of the panchas. API Revle, PW-154, took them and the panchas to the open space behind the ATS office. The A13 was also with them. The dog Max sniffed the packet and gave a positive signal by barking that the packet

contained explosives. API Revle, PW-154, took a small quantity of granules and burnt it and they all noticed that it melted while burning. Sr. PI Tajne, PW-161, then packed the granules in another khaki paper and labeled and sealed it. Thereafter, he gave the plastic jar containing the detonators to API Revle, PW-154. He took them out from the jar and after examination informed them that they are electronic detonators. He divided the ten detonators in two parts of five each and kept them in other half cut plastic bottles, which were labeled and sealed and which Sr. PI Tajne, PW-161, seized under panchanama Ext.667 before the panchas. API Revle, PW-154, submitted a report about his inspection to ACP Patil, PW-186, and Sr. PI Tajne, PW-161, handed over the original panchanama and articles to him. ACP Patil, PW-186, sent one packet containing the sample of white granulated powder and the handbag to the FSL on 11/10/06 with PC Dinesh Dashrath Gaikwad, (PW-164)(Ext.1755), alongwith his forwarding letter, office copy of which is at Ext.1756. The report of the FSL Ext.2389 contained the opinion that Cyclonite (RDX), charcoal and petroleum hydrocarbon oil were found in the handbag in the percentage of 82.34%, 8.00% and 9.17% respectively. It was also opined that ammonium and nitrate radicals are detected in the white granulated powder.

163. ACP Patil, PW-186, applied and got permission from the Special Court on 13/10/06 to defuse the detonators as they were hazardous for storage. He directed Sr. PI Tajne, PW-161, to do the needful and gave him the letter alongwith the order of the court for destroying the detonators. Sr. PI Tajne, PW-161, summoned the

BDDS team on 20/10/06 and in the presence of panch witnesses, Ajit Bhagat Singh, (PW-158)(Ext.1691), and one more, the detonators were destroyed at Girgaon Chowpaty by API Revle, PW-154, and his staff. Sr. PI Tajane, PW-161, and staff collected the remaining pieces of detonators and wires, packed, labeled and sealed them and PSI Gaikwad prepared panchanama Ext.1692.

164. Sr. PI Tajane, PW-161, handed over the panchanama Ext. 1692 to ACP Patil, PW-186, and produced the residue of the defused detonators seized by him under the panchanama and deposited it with the muddemal clerk. ACP Patil, PW-186, sent the residue of the defused detonators to the FSL with HC Jagannath Tukaram Golhar, (PW-86)(Ext.885), alongwith his forwarding letter dtd. 27/10/06, office copy of which is at Ext.886. ACP Patil, PW-186, gave the letter and sealed envelopes to HC Golhar, PW-86, on 30/10/06 and he reached them to the FSL on that day. The FSL opined in its report Ext.2390 that nitrite and lead radicals (post explosion residues) were detected in the ten defused detonators with electrical wires, metallic pieces and adhesive pieces.

165. ACP Patil, PW-186, submitted a proposal to his superiors in the meanwhile, seeking permission for clubbing all the seven cases together as he came to the conclusion on 09/10/06 that all the seven bomb blasts are a part of a single larger conspiracy, that the arrested and wanted accused are involved in the conspiracy as members of the organised crime syndicate, the object of which is to commit insurgency and, therefore, the seven cases needed to be clubbed together and investigated together as one case. DCP Bajaj

gave order Ext.2394 on 12/10/06 giving the investigation of remaining six cases, i.e., C. R. No. 77 of 2006, C. R. No. 78 of 2006, C. R. No. 86 of 2006, C. R. No. 87 of 2006, C. R. No. 41 of 2006 and C. R. No. 59 of 2006 to ACP Patil, PW-186, for further investigation and also granted permission for clubbing the six, crimes together. ACP Patil, PW-186, on receipt of this order clubbed all the seven cases of the bomb blasts and gave a new C. R. No. 5 of 2006 of the ATS for the sake of convenience. The investigating, officers of the six crimes handed over the papers of the investigation to him on 13/10/06 and 14/10/06 on his direction and he recorded their statements about the progress in the investigation. The said investigating officers terminated the remands of the accused in their respective cases on his directions, by applying to the courts and they also discharged Khalid Shaikh, Mumtaz Chaudhary and Tafheem Akmal Hashmi, PW-95, from their respective cases. They continued to assist ACP Patil, PW-186, in the investigation.

166. A12 expressed his desire on 22/10/06 to disclose important information concerning the crime when he was being interrogated by PI Khanvilkar, PW-168, API Dudhgaokar, PSI Sachin Kadam and staff. Therefore panch witnesses Shrikrishna Shivaji Pawale, (PW-50) (Ext.635), and one more were called and the A12 stated before them that he is ready to show the places where he had gone, to show the spot where he had kept the car and the person to whom he had given the key of the car on the instructions of the A3. The memorandum Ext.636 of his voluntary statement was prepared. He then led the police and the panch witnesses to Shivajinagar, Govandi

and to a shop by name Sandeep Tailor and told him that he had halted the Maruti car there and the A3, A7 and two Pakistani nationals had got down there, that the shop was closed, therefore, the police could not gather any information, but the residents told them that the said locality is in plots no.23 and 24. PSI Sachin Kadam prepared a rough sketch of the spot, Ext.637, on the directions of PI Khanvilkar, PW-168, which was signed by all present. A12 then led them to Perry Cross Road at Bandra, where he took them to Lucky Villa Building and showed the temporary structure room on the terrace informing them that the A3 used to reside there and two Pakistanis also used to reside with him. The police found the room locked, inquired with the nearby residents about the key, but did not get any information. PSI Sachin Kadam prepared rough sketch of the spot, Ext.638, on the directions of PI Khanvilkar, PW-168, on which all present signed. The A12 then led them to Millat Nagar in Andheri and to a compound in which there was Ocaz Shopping Center, pointed out the four storied building in front of the shopping center and informed them that he had dropped the A3 below that building and the A3 had gone to meet the Pakistani guests in that building. He informed that he had halted the Maruti 800 vehicle near that gate and waited for the A3. PSI Sachin Kadam prepared rough sketch of the spot, Ext.639, on the directions of PI Khanvilkar, PW-168. The A12 then led the police and the panch witnesses to the compound of Al Hatim building, pointed out to a white Maruti 800 car amongst other cars that were parked there and said that, that was the car of the A3. Police went to the car and

found it to be locked. A12 told them that the key is with a person who resides in the building. He then led them to the flat no.403 on the 4th floor, rang the door bell, one Rizwan Khot opened the door and on the A12 asking him to hand over the key, he produced the key and gave it to PI Khanvilkar, PW-168. PI Khanvilkar, PW-168, had instructed HC Ghag to remain near the car and guard it. They all came down to the car alongwith Rizwan Khot. PI Khanvilkar, PW-168, opened the car with the key and searched it and found documents of the car in the glove compartment, i.e., registration certificate, Art.272/Ext.641, insurance certificate, Art.273, PUC Certificate, Art.274 and service center receipt, Art.275. He also found three audio cassettes, Arts.276(1 to 3). He examined the vehicle minutely and saw blackish spots in the boot compartment and in between the driver and the rear seat. He wiped the spot from three places in the boot with the help of cotton swabs and also from the three places in between the driver seat and the rear seat, put the cotton swabs in separate plastic pouches, wrapped, labeled and sealed them. He also wrapped and sealed all the other articles that he had found and covered the spot in the boot and in between the driver seat and rear seat by khaki paper. He seized all the articles and the car, Art.277, under the panchanama Ext.641. PSI Sachin Kadam prepared rough sketch of the spot, Ext.640, on the directions of PI Khanvilkar, PW-168, which was signed by all present. The vehicle was bearing registration no. MH-01-V-9568. He returned to the ATS office with the A12 and the seized articles, deposited the seized articles with the muddemal clerk and handed over the

panchanama to ACP Patil, PW-186. PI Khanvilkar, PW-168, recorded the statement of Rizwan Khot, who came to the office on the same day on being called.

167. ACP Patil, PW-186, sent the six cotton swabs and the Maruti car on 26/10/06 to the FSL with PC Mahesh Digambar Bagwe, (PW-157)(Ext.1685), with his forwarding letter, office copy of which is at Ext.1686. PI Khanvilkar, PW-168, appointed HC Patil and PC Bagwe, PW-157, to take the car and the sealed packets to the FSL, which he did accordingly. An expert officer from the FSL inspected the boot of the car, the seat behind the driver seat and the space behind the front seat and back seat by magnifying glass by removing the khaki paper and took some swabs of some spots by cotton and asked PC Bagwe, PW-157, to take back the car. The FSL opined in its report Ext.2391, that Cyclonite (RDX), Petroleum Hydrocarbon Oil and Charcoal were detected on three cotton swabs and Ammonium, Nitrate and Nitrite radicals were detected in the other three swabs. It was opined that Cyclonite(RDX), Ammonium, Nitrate, Nitrite, Petroleum Hydrocarbon Oil and Charcoal were detected in the car.

168. PI Khanvilkar, PW-168, gave letter to the RTO, Mumbai on 27/10/06, office copy of which is at Ext.1784, on the instructions of ACP Patil, PW-186, to get information about the ownership of the Maruti car and by the report, Ext.1785, the RTO informed that one Gulamraze M. Badam is the owner of that car. PI Khanvilkar, PW-168, called that person to the Kalachowki office, recorded his statement, during which he produced photocopies of the transfer forms that he had given to the A9 and receipt of the A9 having paid

the amount, Exts.1786(1 to 10). He also recorded the statement of Ataur Rehman Shaikh, father of A3 and A9, in connection with the car and of Afzal Mohd. Hussain Alwani, (PW-39)(Ext.577), on 02/11/06, as he had arranged for selling the car. He also recorded the statement of one Mohd. Abul, garage owner.

169. A7 expressed his desire on 23/10/06 to make a voluntary statement during his interrogation at Juhu Unit by PI Deshmukh, PI Tonapi, PW-155, and staff. Therefore panch witnesses, Raju Mani Tapi, (PW-129)(Ext.1478), and one more were called and in their presence A7 stated that he is ready to show the place where the articles used for making timer circuit devices are kept. The memorandum Ext.1479 was prepared about his statement. He then led the police and panch witnesses to the office on the first floor of a structure having a paper board Tanzeem-e-Walidaen, near Mother Teresa School in Malwani Gate No.6, obtained the keys of his drawer from an old man Mushtaq Ali, who was sitting there, opened one of the drawers of the computer table and took out the polythene bag, Art.345, from which he took out soldering gun, Art.346, four pieces of soldering wire, Art.347(1to4), box containing soldering flux, Art. 348, printed circuit board, Art.349, yellow multimeter, Art.350, tweezers, Arts.351 (1 and 2), screw driver, Art. 352, empty packet of Airtel recharge card, Art. 353, resistors, Arts.354 (1 to 22), capacitors Arts. 355 (1 and 2), coil, Art.356, transistors, Arts.357 (1 to 8), LEDs, Arts.358 (1 to 9) and diodes, Arts. 359 (1 to 6). PI Tonapi, PW-155, put all the articles in separate plastic bags, labeled and sealed them and seized them under the panchanama Ext.1480,

giving photocopies to the A7 and to the said Mushtaq Ali. They returned to the police station, handed over the articles to the clerk, put the A7 in the lock-up and PI Tonapi, PW-155, gave the panchanama to ACP Patil, PW-186.

170. ACP Patil, PW-186, sent the seized articles to the FSL on 27/10/06 with PC Anil Vitthal Ranpise, (PW-146)(Ext.1595), alongwith his forwarding letter, office copy of which is at Ext.1596. The FSL opined in its reports, Exts.2392 and 2393, that no explosives were detected from the seized articles. It further opined that the electronic components recovered from the accused can be used for building a timer/triggering device to trigger a detonator. This was in the technical report.

171. ACP Patil, PW-186, was informed on 19/10/06 by the team of officers interrogating the A6 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated Superintendent of Police Karale, PW-104 to record it and he recorded Part-I and II of the confessional statement of the A6 on 24/10/06 and 25/10/06, Exts. 1068 and 1071 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1077.

172. A6 confessed in his confessional statement that he became a member of the SIMI in 1993 after Abdul Kadir and Zameer Ul Hasan

of Chita Camp, Mankhurd took him to Bandra for a SIMI program and since then started going to the SIMI office repeatedly and giving lectures and Takrir outside the mosque to other members of SIMI, attending the SIMI program in Yeotmal District in 1994, where Ashraf Jafari, All India Secretary of SIMI, was present, attending a program of SIMI at Aurangabad in November, 1999 and attending a program at Jalgaon in July, 2000, where he got acquainted with the A13. He confessed about retiring from SIMI in December, 2000, but even then attending programs of SIMI at Anjuman-Islam High School, Mumbai, that after the ban on SIMI in September, 2001, he was not arrested as he had retired, that Riyaz Bhatkal, an office bearer of SIMI, always used to meet him near the masjid on the Kurla Pipe Road, that Asuda Urban Credit Co-Operative Society closed in 2001 and he became unemployed, at that time he told Riyaz Bhatkal that his bank would start again if anyone gives him a help of Rs. 25-30 lakhs, whereupon Riyaz Bhatkal told him to meet advocate Shahid Azmi. He confessed about meeting advocate Shahid Azmi, who introduced him to Zahir, whose real name was Asif Raza, who refused his request for finance to start the bank saying that he would help only if the A6 does something for Islam and when the A6 said yes, he told him to remain in contact with Riyaz Bhatkal. He confessed about Riyaz Bhatkal giving him money in March, 2002, he teaching Mushir Uddin Siddhiqui, a resident of Shivajinagar, Govandi about jihad and preparing him, becoming acquainted with Munwar of Malegaon, where they went in October, 2002, where he got acquainted with Shabbir, Jahid and Raju and told them about

Tehrik and said that Shabbir will have to go out of Mumbai for jihad, that Shabbir came to Mumbai for preparing his passport and one month thereafter the A6 gave ,Rs.10,000/- to Mushir and sent him to Malegaon and Munir brought a katta from there with the help of Shabbir's acquaintance and it was shown to Riyaz Bhatkal. He said that it is not good. He confessed about going for training to an unknown place in Pakistan in February, 2003 alongwith Mushir via Dubai at the instance of Riyaz Bhatkal, who had given them money, taking the training of firearms, pistols, AK 47, LMG, etc., being taught about jihad by Baba Gajali, Ishtia and Mashar, chief of the training camp, who were officers of the ISI, Pakistan, that the training went on for sixteen days and they also took the training of operating hand grenades and preparing bombs. He confessed that they returned to Karachi on 12/03/03, took their passports, went to Dubai and from there to Kathmandu and then crossed the Nepal border. He went to Sultanpur-Amethi and returned to Mumbai on 21/03/03. He confessed about demanding Rs.1,85,000/- from Riyaz Bhatkal in 2003 for sending Nafis to Bangalore, obtaining it by hawala, giving Rs. 30,000/- to Shabbir of Malegaon and Rs. 1,50,000/- to Nafis. He confessed about making efforts to send boys to Pakistan for jihadi training and having sent Shabbir and Nafis for training in Pakistan and they returning in July, 2003 after taking training and thereafter he, i.e., the A6 being search of some people who could be sent for training, therefore, he maintaining contact with Riyaz Bhatkal for money and becoming worried as the training of Teherik that he had obtained, was not giving any benefits and

there was also no arrangement of money for him. He started some small business thereafter, but stopped it as there was no income and started another business, but also did not get much income, therefore, he tried to contact Asif Razak, friend of Riyaz Bhatkal for finding a way ahead for jihad, but came to know that Asif Razak was killed in police encounter. He stated about starting the business of selling Tilisma Moti in Sabu Siddiqui Hospital, Dongari and getting acquainted with A2 there, whom he knew from beginning as a SIMI activist and who introduced him to A3 and during his talks with the A3 later on at the said hospital, he came to know that the A3 is also a SIMI activist and the thinking of them is similar. He confessed that he and the A3 talked about jihad and Islam and came nearer to each other, that the A3 was of a jihadi nature and he, i.e., the A6 had also the wish inside him to do something about jihad. He confessed that the A3 told him that he had obtained jihadi training twice from the L-e-T through ISI and he told the A3 about the work that he had done for SIMI. A3 did not give his mobile number to him, but asked him to contact him through the A4 at Mira Road. He confessed having gone to the shop of A4 in March, 2006, where A2, A3, A4, A12 and A13 were present, that he was introduced to A12 as he had met him for the first time and A12 was introduced by the A3 as his friend and a SIMI activist. He confessed that during the talks on the katta of Shams masjid, he came to know that the A3 is in contact with wanted accused Azam Chima, commander of L-e-T and is the head of L-e-T of western India and he, i.e., the A6 soon mixed with them and told them about obtaining training for Pakistan through

Riyaz Bhatkal. He confessed that the A3 told him to be in contact with them and that planning is going on for causing bomb explosions in Hindustan, more particularly in Mumbai and asked him to be in contact with the A4. He confessed about going to Bandra, near Lucky Hotel in the first week of April, 2006 as the A4 had called him, A10 and A11 being already there with the A12. The A3 told them that there is a big loss to Muslims in the rioting in Gujarat, therefore, Gujarati people are to be targeted in Mumbai and after a considerable discussion, A3 found the target of local trains to be proper as mostly Gujarati people traveled in the first-class compartments of the western locals and it would be proper to do bomb explosions in the evenings as local trains are packed at that time and also said that he has finalised all these things after discussion with wanted accused Azam Chima of Pakistan. He confessed that the A3 told him that the wanted accused Azam Chima is going to send some expert Pakistani persons to finally execute the bomb explosions and that his house, i.e., the house of the A6 would be used for the work of preparing the bombs, for which he consented. He confessed that on Saturday in the last week in April, 2006, A2, A3, A4 and A12 came to his house, went around the house and surveyed it, that in the third week of May, 2006, he met the A7 at Jogeshwari Railway Station and they met the A3, who told them that preparations for bomb explosions have been completed and he and A2, A4, A7 and A9 to A12 would help in executing the work, that wanted accused Azam Chima had told him that Stock Exchange building, World Trade Center, big shopping malls,

Government officers responsible for Gujarat riots, police officers and local trains should be targeted for jihad and when he surveyed all these places alongwith others, all of them agreed that target of local trains is the most appropriate and had decided that the bomb explosions are to be done in the evening on 11/07/06 and accordingly the complete plan is being prepared by the A3 and A13 on the instructions of wanted accused Azam Chima, commander of L-e-T. He confessed that he met A3 in June, 2006 when he had gone to Mira Road, that the A3 told him to come to Lucky Hotel in Bandra(W), where A3 told that as decided Pakistani persons had come to India and the work of preparing bombs would be done at his, i.e., A6's house on 8th, 9th and 10th July and he should keep the entire house empty, that, therefore, by telling some reasons to his brother and family, he sent them on 7th July to the house of his relative at Rafiq Nagar for 5-6 days. He confessed that as per the plan, A3, A7, A12 and two Pakistani persons came to his house in the evening of 8th July, that one of the Pakistani persons was one Sohail Shaikh, a resident of Pune, who had stayed in the training camp of L-e-T for two years and was staying in Pakistan and was an expert in making bombs, that those people did the work of preparing bombs till late night and the A4 was present there, making arrangements of food for all and the A2 kept watch outside the house. He confessed that the other Pakistani person by name Ehsanullah had brought 15 kgs. RDX with him for preparing bombs, that A3 brought it to his house, that the A13 had already brought remaining articles like eight black coloured rexine bags, Ammonium

Nitrate, detonators, cords, watches, etc., and kept them in his house, that A7 was to do the work of electric circuitry, therefore, he had brought battery, wire, soldering gun, soldering wire and circuit board. He confessed that the work of preparing bombs was going on for three days, that some household utensils were used for preparing bombs, that wanted accused Sohail Shaikh and the other Pakistani person mixed the explosives and prepared the mixture, fixed detonators in it and thereafter the A7 did the work of joining the circuit and wires, which could be used for exploding the bombs. He confessed that on 10th July seven bombs were packed in separate black coloured bags, that A13 put the remaining articles in a bag and took it with him and the seven bomb laden bags were taken by him, A3 and A12 to Bandra in taxi and in the car of the A3 and kept at his house at that time, that he came to know in the evening on 11/07/06 that they had been successful in their aim, that he tried to hide from the eyes of the police, but was arrested on 30/09/06.

173. ACP Patil, PW-186, was informed on 19/10/06 by the team of officers interrogating the A7 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated Superintendent of Police Mohite, PW-102 to record it and he recorded Part-I and II of the confessional statement of the A7 on 24/10/06 and 25/10/06, Exts. 1033 and 1037 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional

statements to the CMM, who sent it to this court alongwith his letter Ext.1043.

174. A7 confessed having attended a program at Haj house in the year 2000 in connection with the difficulties faced by Muslim community and the solution about it, that religious discourses were given by Shahid Badar Falahi, Sadar of All India SIMI and other SIMI activists, who said that it is necessary to do jihad for the Muslim community, that Muslim youths should remove the fear from their hearts about going in prisons. He confessed that he was impressed by these talks and after some days he went to the office of SIMI in Kurla(W), became acquainted with Irshad Khan, Sadar of Maharashtra SIMI, on whose proposal he agreed to work for SIMI, that 2-4 months thereafter when he read the news of Kuran burning at Delhi in Urdu Times newspaper, he went to the Kurla office of SIMI, obtained the pamphlets that were prepared by Irshad Khan about that incident and distributed them to people by standing in front of masjid, that he and his brother were arrested, that inspite of the ban on SIMI in September 2001, he worked for it and was made ansar of SIMI, that eight months thereafter his brother and others were arrested, that he became acquainted with A2, A3, A4, A6, A9 to A11 and A13 during this period, that they all were activists of SIMI and used to have jihadi mentality and they used to discuss issues like communal riots in Gujarat, Babri masjid, Kashmir, etc., and how to take revenge about the atrocities committed on the Muslims in the whole world. He confessed that there also used to be discussions about sending Muslim youths to Pakistan to take training of

operating arms and ammunition, to do terrorist activities, that A3 told about he being in contact with the terrorist organisation L-e-T and that he had taken arms training in Pakistan in the training camp of wanted accused Azam Chima, that there was a meeting of all of them at Mira Road after some months, in which A3 told that he is in continuous contact with wanted accused Azam Chima, who had said that Muslim persons be readied for jihad training and for that purpose they should be sent to Pakistan, that the entire expenses of it would be made by him on behalf of the ISI, that A3 was searching for boys to be sent for jihadi training and after some months told that he was called by wanted accused Azam Chima to Pakistan. He confessed that in a similar meeting with A2, A3, A4, A13 and others, A3 told that he had taken training twice and had stayed there for 6-7 months and that L-e-T conducts the training camps under the directions and by the funding of ISI and on that basis A3 had sent A2, A9 to A11 and some other persons to Pakistan for training. He confessed about maintaining continuous contact with A3 and A13, starting search for rental house for office of SIMI in January/February, 2005 and taking a room at Mira Road on rent, that the rent used to be paid by A4 and meetings of SIMI used to be conducted in the room, that elections were conducted by A4 in March, 2006 in the capacity of General Secretary of Maharashtra SIMI and he, i.e., the A7, was elected as President of Mira Road Unit, that the keys of Mira Road office used to be with the A13 and the A4, and, the A13 stayed in that room for 3-4 months.

175. He confessed that when he contacted the A3 in February,

2006, A3 told him that he had talked with wanted accused Azam Chima, who had selected local trains in Mumbai as targets for bomb explosions and he also came to know from A3 that wanted accused Azam Chima was going to send some Pakistani terrorists. On the instructions of the A3, he maintained contact with A3 and A13 and A1 of Bihar and A5 of Kolkata were also in contact with them. He confessed that the A3 told him that alongwith A4 and some accomplices, they had travelled in local trains and made study as to how bomb explosions can be made, that there were some meetings about this at his house at Mira Road and some at the house of A3 and during the meetings the A3 and A13 had given the responsibility of causing bomb explosions to each of them. He confessed that as per the plan, he, i.e., the A7 was given the responsibility of fitting timer devices on the bombs, for which he gathered the instruments necessary for it, i.e., battery, wire, printed circuit boards, soldering gun, multimeter, soldering wire, resistors, capacitors, insulation tape, tool kit, etc., that it was decided that the bombs would be prepared at the house of the A6 at Govandi, that A13 was given the responsibility of collecting the articles necessary for preparing the bombs and keep them in the house of A6, that wanted accused Azam Chima sent Pakistani terrorists from separate places to Mumbai, out of whom some halted at the house of A3, and, the A13 had arranged for the stay of some in the office of SIMI at Mira Road, that he was told that the Pakistani persons had brought 15 kgs. RDX with them, that they, i.e., he and the other arrested accused decided to cause the bomb explosions in the evening on 11/07/06 in the trains on the

western lines going from Churchgate to Virar. He confessed that as directed by A3, he went to his house on 08/07/06 taking him with all the instruments necessary for preparing timer devices, that four Pakistani persons were already in the house of the A3 where A12 reached there after some time and then as per the directions of the A3, he, i.e., the A7, A12 and the four Pakistani persons went to the house of A6 at Govandi by the A3's car driven by A12, that he came to know later on that the Pakistani person by name wanted accused Sohail Shaikh is a resident of Pune, but staying in Pakistan since two years where he had undergone jihadi training and obtained expertise in weapons and preparing bombs. He confessed that as per the plan, bombs were prepared on 8th, 9th and 10th July 2006 in the house of A6 at Govandi, for which household utensils were used, that wanted accused Sohail Shaikh and one Pakistani person prepared the mixture of seven bombs with the help of RDX, Ammonium Nitrate and Diesel and fitted detonators in it and he, i.e., the A7 prepared timer devices on the seven bombs, that at that time A4 was present there and the A2 was keeping vigil outside the house of A6. He confessed that the bombs were prepared upto late night on 10/07/06, packed in seven separate bags and A6, A12, A3 took the seven bags containing bombs to the house of the A3 at Bandra and A13 took the remaining articles. He confessed that as per the plan he was told that it would be risky for those who would be keeping bombs in the local trains to keep their mobiles with them, therefore, it was decided that nobody should keep mobile with him and because of this reason A13 told him to reach the signal

near Lucky Hotel in Bandra at 3.30 in the afternoon on 11th July and that A12 would give his mobile to him, which he, i.e., A7 should keep with him. He confessed that he boarded the 2.30 p.m. local train at Mira Road for going to Bandra on 11/07/06 and stood near the signal near Lucky Hotel at Bandra and at 4.15 p.m., the A12 reached there by rickshaw and gave his mobile phone and left for going to the house of A3, that thereafter he returned by train to Mira Road and came to know late in the evening about the bomb blasts in the local trains and as decided the A12 came to Mira Road and collected his mobile phone. He confessed about having made a voluntary statement to the police on 23/10/06 after being arrested, in pursuance of which instruments necessary for preparing electric circuitry were seized by the police.

176. ACP Patil, PW-186, was informed on 19/10/06 by the team of officers interrogating the A12 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated Addl. CP Brijesh Singh, PW-117, to record it and he recorded Part-I and II of the confessional statement of the A12 on 23/10/06 and 25/10/06, Exts. 1226 and 1230 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who sent it to this court alongwith his letter Ext.1235.

177. A12 confessed in his confessional statement that he was

introduced by his friend Imran to his friend Mohd. Alam staying in Mira Road and through him got acquainted with A3, that he and A3 used to go to dance bars often, that he went to Hyderabad to his uncle's house because of quarrels between him and his father and returned to Mumbai in February, 2006 and kept on meeting Alam, that in the second or third week of March, 2006 he went near Shams masjid as asked by Alam on phone, where A3, A4, A13 and A2 were present, that A3 said that A4 prints and publishes Tehriki and jihadi books, that A6 came there, that he came to know that A3, A2 and A6 had obtained jihadi training in Pakistan and that A3 is in direct contact with L-e-T commander wanted accused Azam Chima and is responsible for L-e-T of Western India, that on listening to them, his thoughts also became like jihadi and the wish for doing something for Muslim brothers was awakened in him and on coming to know of this, the A3 said that soon they are going to make preparations for a big incident and he, i.e., the A12 would also be given some work and asked him to remain in contact. He confessed that he and A3 were standing near Lucky Hotel in Bandra in the first week of April, 2006, where A4 and A6 came in a short while and after talking for some time they all went to the house of the A3 in Bandra where A10 and A11 were present, that they talked for long in the house of A3 and A3 said that in the rioting in Gujarat there was a considerable loss of life and property of Muslims, therefore, Gujarati people are to be targeted in Mumbai and it would be proper to cause explosion in the first-class bogies of the local trains in Mumbai, because Gujarati people mostly travel in first-class bogies and that it would be proper

to cause the explosions at the evening time on the western line, because at that time every bogie of the local trains is jampacked and all these things have been finalized by the A3 after talking with wanted accused Azam Chima, that A3 also told them that wanted accused Azam Chima is going to send some expert Pakistani persons to India for executing the plan and told him that he would be given some responsibility, which he would have to fulfill with all his ability and it was decided that the bombs would be prepared at the house of the A6.

178. He confessed that on Saturday in the last week of April, 2006 at about 8.30 in the night he, A4, A2 and A3 went to the house of A6, which was known to the A4 and they all went around the house and surveyed it. He confessed that in the third week of June, 2006, A6 called him at Bandra and thereafter they and A3 went to Discovery Bar, had liquor and returned to A3's house and at that time he saw some Pakistani persons there, that on 27th June also they roamed about and had liquor thereafter and enjoyed girls and then went to the house of A3 and at that time he saw the same Pakistani persons there. He confessed that on the next day A3 told him that some of the Pakistani persons staying in his house will have to be shifted to some other place as A3's house is not sufficient, that repeated visits of people have increased, because of which the inmates of the building may have doubt and that A13 had arranged for their stay in Millat Nagar, that on the next day A3 took him to Millat Nagar and *en route* told him that they are going to meet the Pakistani persons, who had been shifted from his house, that he

parked the car outside and A3 alone went inside the Millat Nagar colony and returned after some time. He confessed that A3 met him in the evening of 30/06/06 at Narendra Park at Mira Road and introduced him to A7, staying in Mira Road, who was doing the work of repairing mobiles and electronic remotes. He confessed that he went to A3's house at Bandra in the evening of 07/07/06 and then went by car to the seashore of Carter Road at 6.30 p.m., where A4, A2, A11 and one more person were present, that A3 introduced that person as A1 of Bihar and they all discussed about conspiracy for causing the bomb blasts.

179. He confessed that he went to the A3's house on 08/07/06 at about 1.00 p.m. on being called by the A3, that A7 and two Pakistani persons were already there and as per the instructions of the A3 they all went to the house of A6 at Govandi and he drove the car. A2, A4 and A6 were present in the house of A6. He confessed that as decided A7 and two Pakistani persons went inside the house of A6, that one out of them was Sohail Shaikh, a resident of Pune, but staying in Pakistan since last two years, where he had taken terrorist and arms training and was an expert in preparing bombs, that thereafter he and A3 went back to Bandra and in that night he, A3 and some Pakistani persons talked about jihad and teherik upto late night. He confessed that there were discussions amongst them on 09/07/06 in the afternoon about the explosions in the local trains, that at that time A3 openly told him about his responsibility that after the bombs are prepared, the bags containing the bombs are to be carefully brought from Govandi to his house in Bandra and he,

i.e., the A12 would be given the bag containing bomb at about 3.30 or 4.00 in the afternoon on 11th July and there would be a Pakistani person by name Abu Umed @ Abu Osama with him, that he would have to go with that Pakistani person in taxi to Churchgate, reach platform no.2 with the bag containing the bomb and he was to keep the bag containing the bomb in the first-class bogie in the Borivali slow local that would be leaving at 5.45 in the evening, that A3 told them that the persons who would be keeping the bombs in the local trains should not keep the mobiles with them as it is risky and it was decided that no one would keep mobiles with them and for that reason A3 told him to give his mobile to A7 at 3.30 in the afternoon near the signal near Lucky Hotel in Bandra and to collect it from the A7 in the night.

180. He confessed that as decided he and A3 went to the house of A6 in the night of 10/07/06, that they kept four bags containing bombs in the car of the A3, that remaining three bags were kept by A6 in a taxi and Pakistani person Sohail Shaikh and one more Pakistani person sat in the taxi with A6 and in Bandra they took out all the bags and kept them in the house of A3. He confessed that at that time A3 told him that it would be risky to keep the Maruti car near his house and told him to park it in the compound of Al Hatim, Millat Nagar of his friend and to give the key to Rizwan Khot and accordingly he did so. He confessed that on 11/07/06 he went to Bandra by train and got down at 3.30 p.m. at Bandra station, took a rickshaw for going to A3's house and as instructed gave his phone to A7 near Lucky Hotel. He confessed that as decided, A3 gave him a

bag containing bomb asking him to go to Churchgate with Abu Umed, that he took the bag, got down with Abu Umed, took a taxi, reached Churchgate at 5.30 in the evening, purchased two first-class tickets, boarded the first-class bogie of Borivali slow local that was on the platform no.2 and kept the bag containing the bomb on the luggage rack. He confessed that he and Abu Umed got down at Dadar station as per the plan and started for Mira Road by taxi, that he dropped Abu Umed near the house of A3 and he proceeded to Mira Road and collected his mobile from the A7, that on the advice of A3 on phone in the same night, he stayed in his house for 8-10 days and went to Hyderabad on 22/07/06. He confessed that after his arrest on 29/09/06, he gave a voluntary statement to the police on 22/10/06 and showed them the place where he had kept the car and showed them the car also, brought the key from Rizwan Khot's house and the police inspected the car and took samples by cotton and seized the car under panchanama.

181. ACP Patil, PW-186, was informed on 20/10/06 by the team of officers interrogating the A5 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated DCP Phadtare, PW-93, to record it and he recorded Part-I and II of the confessional statement of the A3 on 24/10/06 and 25/10/06, Exts. 934 and 937 respectively, after following the due procedure and taking the necessary precautions and sent the sealed envelopes containing the confessional statements to the CMM, who

sent it to this court alongwith his letter Ext.2812.

182. A5 confessed in his confessional statement that he runs shoe shops by name Raja Footwear and New Star Footwear on Dr. M. M. Chatterjee Sarane, Raja Bazar, Kolkata-9 and other than these two shops he does the business of spectacles with his childhood friend Mohd. Shakil Mohd. Mehboob, (PW-70)(Ext.782). He confessed that Mohd. Asif son of step aunt of Dhaka, Bangladesh used to visit Kolkata to meet his step uncle Mohd. Aslam and during his visits they used to roam around and Mohd. Asif used to make all the expenditure, that in December, 2001, Mohd. Asif had come with his friends for marriage and then they all went to Mumbai and Goa for sightseeing, that in February, 2006 he took Asif's friend Sami from Sealdah Station to Bongaon by train on the request of Mohd. Asif and Sami made all the expenses and at Bongaon he handed over Sami to Kallu for crossing the border and for this work he got Rs. 3,000/- from Sami, that in the same manner he reached two persons from Sealdah Station to Bongaon on the request of Asif and Sami and had handed them over to a person for which purpose he got Rs. 5,000/-. He confessed that after some days, Asif came to Kolkata and told him that there have been atrocities on Muslims in the riots in Gujarat, but the government has not taken any action in respect of Babri masjid and the said riots, therefore, it is necessary to do jihad in Hindustan, then he, i.e., the A5 felt that this was proper and said that he is ready to help in this good work. Thereupon Asif told him that he is in contact with wanted accused Azam Chima, commander of L-e-T, and his disciple Abdul Razak. He confessed that Asif further

told him that wanted accused Azam Chima is going to send some Pakistani persons from Bangladesh border for causing a big incident in Hindustan and he also came to know from Asif that some persons of Mumbai are working on this on the instructions of wanted accused Azam Chima and out of them A13 and A3 are the main coordinators and on the instructions of wanted accused Azam Chima he remained in contact with A3 and A13. He confessed that he came to know from A3 and A13 in May, 2006, that local trains in Mumbai have been selected as targets for the bomb blasts, that he was given the responsibility of bringing six persons sent by wanted accused Azam Chima from the Bangladesh border to Hindustan and to hand them over to A3 and A13 in Mumbai and was warned not to keep his mobile phone with him, that he contacted Kallu for this work and also took the help of his partner of the spectacle shop, Mohd. Shakil, PW-70. He confessed that in the second week of May, 2006, he and Mohd. Shakil, PW-70, went by railway to Bongaon and from there by taxi to Bongaon market as Kallu had told him that he is going to bring six Pakistani persons to the market by crossing the Bangladesh border upto Bongaon border and those people are being sent as per the directions of wanted accused Azam Chima and are to be taken to Mumbai, that Kallu came there after some time with six Pakistani persons, whose names he told as Sabir, Abu Bakar, Kasam Ali, Ammujan, Abu Hasan and Ehsanullah, that all had their own bags, but Ehsanullah had a different big suitcase like bag and he said that there is RDX in the bag and it has to be taken carefully to Mumbai. He confessed that he took the said persons to Kolkata by

train, they stayed at his house on that day and then he took them to Mumbai by railway on the next day and met A13, who took them to a place about which he came to know that it was the office of SIMI earlier, that he halted there for one night and returned to Kolkata and A13 had told him to remain in contact with him.

183. He confessed that in the first week of July, 2006 he got a message from Mumbai that he has to reach Mumbai at any cost on 10/07/06, that accordingly he reached Mumbai, the A13 received him and took him to the house of A8, a SIMI person, in Mumbra area outside Mumbai, advised him to stay there and told him that after the bomb blasts on the next day, he should take the Pakistani persons, whom he had brought in Hindustan from Pakistan by crossing Bangladesh border, back to Bangladesh by the same route. He confessed that as instructed, the Pakistani persons met him late in the night of 11/07/06, that they were brought there by A4, a SIMI activist, that he then took them first by bus to Gujarat and from there by train to Kolkata and through Kallu, he reached them in Bangladesh by crossing the India border.

184. ACP Patil, PW-186, was informed on 20/10/06 by the team of officers interrogating the A13 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by questioning the accused. He requested the Jt. CP, ATS to nominate a DCP for recording it. The Jt. CP, ATS nominated DCP Ranade, PW-111, to record it. ACP Patil, PW-186, sent the A13 to DCP Ranade, PW-111, on 29/10/06. However, the DCP sent the A13 back on 31/10/06 alongwith letter Ext.2410

informing that he had refused to make a confessional statement.

Further investigation and witnesses :-

185. The officers working under ACP Patil, PW-186, were conducting parts of the investigation by following the leads for the purpose of collecting evidence. PI Khanvilkar, PW-168, had arrested the A8 on 29/09/06 and at the time of arrest had found a railway pass from Mumbai to Mumbra. A8 told on inquiry that he had taken a house on rent at Mumbra. Therefore, PI Khanvilkar, PW-168, made further inquiry and called the owner of that flat, Abdul Naeem Siddiqui, to Bhoiwada office on 05/10/06, who on inquiry told him that he has two flats in Moonlight building at Mumbra and had given flat no.202 to the A8 on leave and licence basis for eleven months from 03/12/05 to 02/11/06, as A8's brother-in-law Mehmood Qureshi, PW-65, was known to him. He produced the original leave and licence agreement, Art.371. PI Khanvilkar, PW-168, called Mehmood Qureshi, PW-65, on the same day and recorded his statement. It was disclosed that he helped the A8 to obtain the said flat and amongst other things, about his involvement in SIMI activities, becoming acquainted with and knowing SIMI activists like A4, A13, A7, A2 and A8, about SIMI activists helping persons doing illegal activities, talking about jihad, encouraging members to do jihad and about different organisations starting to enter SIMI. It was disclosed that he became related to A7 and A8, as he married A7's sister and A8 married his wife's sister. It was disclosed that SIMI activists, including A4 used to visit A8, and the A4 took the key of A8's house twice, which key A8 had kept with

him, and, at that time 5-6 members were with him. The said Mehmood Qureshi, PW-65, had also given his statement to a magistrate under section 164 of the Cr.P.C. confirming what he stated to the police.

186. PSI Kadam recorded the statements of Amir Karamat Khan, (PW-49)(Ext.633), an estate agent, and, Khurshid Begum Shaikh Ayyaz, (PW-51)(Ext.653), owner of Flat No. 101, 'A' Wing, Poonam Park, Naya Nagar, Hyderi Chowk, Mira Road, on 10/10/06, as it was found during the investigation that the A13 used to reside in that flat. It was disclosed that the said flat was given on rent for eleven months from February, 2006 to one Mohd. Irshad Mohd. Kasam through Amir Khan, PW-49, vide agreement Ext.654. It was disclosed that Khurshid Begum, PW-51, had gone to the said flat once in the first month of rainy season, saw a man, woman and two children in the flat. On realising that the man was some other person than Irshad, to whom she had rented the flat, she called Amir Khan, PW-49, on phone and told him about it. She then took Amir Khan, PW-49, and Kasam, Secretary of the society, to the flat. When she knocked on the door, a woman opened it. There was a man, the woman and two children in the flat and on seeing her, the man, who was having a beard, went inside and on inquiry the woman told her that they are relatives of the person, who had taken the flat on rent and he is her brother-in-law. Amir Khan, PW-49, confirmed these things. Both these witnesses gave statements to a magistrate under section 164 of the Cr.P.C. confirming what they had stated to the police.

187. ACP Patil, PW-186, recorded the statement of Tafheem, PW-95, on 13/10/06. It was disclosed that he is a Pakistani national, a militant from Al-badar and deserter from the Pakistan Army, that he was engaged in militant activities and in May, 2004, met 4-5 militants, who walked down from the hill where the militant camp of L-e-T is situated, that they came to their camp of Al-badar, which is on the way and halted for a while in his camp to drink water and one of them approached him asking for a glass of water and he found his accent of a non-Pakistani and on being asked as to where he belongs to, the said person told them that he is from India and is undergoing militant training in the said camp of the L-e-T and would go back to India soon to carry out activities in India and would play a true role of mujahid. It was disclosed that he identified the said person in the lock-up of ATS, Bhoiwada, Mumbai where he came to know his name as Faisal Shaikh, i.e., the A3, who was in police custody in the case of the bomb blasts in the local trains in Mumbai on 11/07/06 and that he reminded the said accused about the incident of May, 2004 and A3 also identified him, but warned him not to tell the police about the said incident. It was disclosed that he saw A2, A9 and A11 being lodged in the other cells of Bhoiwada lock-up and that they told him that they had also undergone jihadi training in the camps of L-e-T in Pakistan and that they are affiliated to the SIMI organisation.

188. It was revealed to Sr. PI Rathod, PW-176, during the investigation that an unclaimed dead body in the Matunga blast, was of a Pakistani national by name Salim. Therefore, he gave a

letter, office copy of which is at Ext.1173, to the medical officer of Sion Hospital to write the said name in the memorandum of *post-mortem* and the death certificate of that dead body. Dr. Ghuge, PW-112 made the necessary correction in the memorandum of *post-mortem* examination and in the cause of death certificate under his signature. Sr. PI Rathod, PW-176, also gave a letter, office copy of which is at Ext.1695, to the Dean of Sion Hospital for handing over the said dead body for funeral to HC Jadhav and HC Uttam Genbhau Marbhal, (PW-159)(Ext.1694), and another letter, office copy of which is at Ext.1696, to the medical officer, incharge of *post-mortem* center for handing over the dead body to HC Marbhal, PW-159. He had directed HC Marbhal, PW-159, to dispose off the dead body as per Muslim religious rites.

189. HC Marbhal, PW-159, with the assistance of PSI Kshirsagar, took the body in their possession from the *post-mortem* center, the medical officer gave cause of death certificate and they went to Chandanwadi kabrastan, obtained receipt, Ext.1697, from the clerk of the death registration office and the clerk buried the body in the kabrastan.

190. Subhash Kamlakar Nagarsekar, (PW-57)(Ext.688), the second witness, who informed the police about seeing two persons keeping a bag in the first-class compartment of 1757 hours Virar fast local, went to the ATS office on 18/10/06 after reading a news item in the newspaper in the first week of October, that during the investigation of the crime of the bomb blasts, the ATS had arrested 13 accused, who had kept explosives in rexine bags in first-class bogies and done

the explosions. At that time, he suspected the person who had kept a rexine bag on the rack in the local in which he was traveling and also the other person who was with him. Hence he went to the ATS office and voluntarily gave information. PI Rajaram Bhanudas Mandge, (PW-172)(Ext.1833) recorded his statement on 18/10/06. It was disclosed that Subhash Nagarsekar, PW-57, was travelling in the last first-class bogie on the seat near the window that was near the door, that he had seen two persons entering the bogie from the left side, one of them had a black colour filled rexine bag, which he kept on the right side rack in the middle, that when he got down at the Dadar Station he saw the two persons coming out of the bogie and after the train left the station, he did not see the rexine bag with both the persons, who then hurriedly went in the crowd. He described the two persons to the police.

191. API Kolhatkar, PW-18, went to Basopatti, Dist. Madhubani, Bihar for the purpose of investigation on 10/10/06 and recorded the statement of A1's wife and collected telephone and electricity bills. He also recorded the statement of Bharatlal Sukhdev Mandal, (PW-20)(Ext.490), Mukhiya, Basopatti Paschimi, who knew the A1 and gave certificates, Exts.491 and 492 and true photocopy of voter's list, Ext.493.

192. ACP Joshi, PW-163, recorded the statement of eyewitness Devendra Lahu Patil, (PW-62)(Ext.761), on 20/10/06, on the instructions of ACP Patil, PW-186, as he had gone to the ATS office and stated that he was traveling in the train in which the blast had occurred at Jogeshwari and had seen two persons. It was disclosed

that Devendra Patil, PW-62, was travelling in the first-class bogie in the 1736 Borivali slow train on 11/07/06, that when he boarded the said bogie at Churchgate station, he had seen two men boarding the same bogie with a black coloured rexine handbag, that the said two persons tried to keep the bag on the luggage rack on the eastern side of the central portion, but other passengers had kept their bags there and as the size of their bag was big, they could not keep it there, therefore, the first person kept it in the open space below the first seat from the window on the eastern side in the central portion. He described the two persons to the police.

193. Amar Khan Sardar Khan, (PW-75)(Ext.809), went with his friend Ajmeri Shaikh@Aju to PC Vijay Rajaram Ambekar, (PW-76) (Ext.818), acquaintance of Ajmeri Shaikh, on 28/10/06 and Ajmeri Shaikh told him about a news item that was on the first page of Mumbai Mirror on 01/10/06, in which photograph of A6 and his family was printed and it was mentioned that the root of the bomb blasts that had taken place on 11/07/06 in the local trains in Mumbai, was the house of A6 and 2-3 days before the bomb blasts, bombs were prepared at that house with the help of some Pakistani persons. Amar Khan, PW-75, and Ajmeri Shaikh realised that the said news item is true in view of what they had seen when they had gone to the house of the A6 in Govandi, Shivajinagar area, 2-3 days before the bomb blasts, therefore they decided to tell this thing to the police, but were not sure as to how and where to tell it, therefore they approached PC Ambekar, PW-76. It was disclosed that Amar Khan, PW-75, was well acquainted with some active members

of SIMI, including the A8, at whose instance he used to accompany him at SIMI programs, where he came to know SIMI activists A2, A4 and A12. It was disclosed that he and Ajmeri had once gone with the A8 to the home of the A6 at Shivaji Nagar, Govandi. It was disclosed that the A2, A4, A6 and A8 used to give explosive and provoking lectures about Kuran and SIMI and make strong statements about jihad and taking revenge about atrocities on Muslims to teach lesson to people opposed to them and to the government. It was disclosed that he was also caught alongwith A8 and others in September, 2001 after the ban on SIMI. Amongst other things, it was disclosed that 2-3 days before the bomb blasts, he and Ajmeri happened to visit the house of the A6, that they saw A2, A4, A6 and three unknown persons inside the house, out of whom one was joining wires and there were heaps of black and white and gray powder on newspaper in front of two persons.

194. PC Ambekar, PW-76 heard this, felt that it was very important information that can be useful in the investigation of the crime. Hence, he took Amar Khan, PW-75, and Ajmeri Shaikh to the office of ATS at Nagpada as the ATS was investigating the crime, met DCP Nawal Bajaj of the ATS and told him about the information. DCP Bajaj called the two inside and heard the information and then told PC Ambekar, PW-76, to take them to ACP Patil, PW-186, at the ATS office at Bhoiwada. Hence he took them there, met ACP Patil, PW-186, and 3-4 other officers and informed them about the detailed information. PI Nitin Ramchadra Alaknure, (PW-153)(Ext. 1649), recorded their statements as ACP Patil, PW-186, told him to

do so. At that time they produced the copy of Mumbai Mirror, Ext. 810.

195. The name of Mohd. Alam Gulam Sabir Qureshi, (PW-59)(Ext. 721), was disclosed during the interrogation of the A3. Hence, ACP Patil, PW-186, recorded his statement on 02/11/06. It was disclosed that Mohd. Alam, PW-59, developed friendship with one Sameer, whom he came to know later on as Faisal Shaikh, i.e., the A3, through his relative Ashraf Qureshi @ Ashu in September, 2005 and also came to know about A3's habit of visiting disco and dance bars. It was disclosed that he came to know from the A3 that he had devoted his life for jihad, that the A3 was the commander of L-e-T in Mumbai and had therefore assumed the name Sameer as a security precaution, that the A3 had taken arms training twice in the camps run by the L-e-T in Pakistan, that the A3 was in constant contact with Azam Chima (wanted accused no. 1), from whom he had received funds for jihadi activities.

196. It was disclosed that on his visit to the house of the A3 in February, 2006, A3 introduced the A13, A4, A2, A11, A10 and A9 who were present there, as his friends, that he had namaz with them, that the A3 told him that they had gathered there for an important meeting, that the A3, A13, A4 and A2 came to Mira Road in March and the A3 asked him to arrange for a flat for his guests for six months, that he observed and asked the A3 about his reduced interest in girls and dance bars, that the A3 informed him that he is hosting some guests from Pakistan. It was disclosed that on his visit to the house of A3 in the third or fourth week of May, 2006, he saw

four Pakistani persons who were introduced by the A3 as Abdul Razak (wanted accused no. 14), Sohail Shaikh (wanted accused no. 5, Abu Umed (deceased accused no. 2) and Salim (deceased accused no.1). It was disclosed that he came to know in June, 2006 from the A12 (with whom he had got acquainted earlier) that the Pakistani guests of the A3 had been shifted to the A3's house in Millat Nagar, Andheri (W), Mumbai. It was disclosed that the A3 had introduced his friend Rizwan Khot to him and that the A3 had purchased a white Maruti 800 car in 2006. He was shown two photographs of two deceased persons and from them he identified one to be that of Abu Umed (deceased accused no. 2), who was introduced by A3 at his house at Bandra.

197. The said Mohd. Alam, PW-59, also gave a statement to a magistrate under section 164 of the Cr. P. C. confirming his statement given before the police.

198. PI Khanvilkar, PW-168, went to the Bhoiwada office on 02/11/06 on being called by ACP Patil, PW-186, and on his instructions he recorded the statement of Vishal Kishore Parmar, (PW-74)(Ext.804).

199. Vishal Parmar, PW-74, read in the newspaper about the police having caught some of the persons who had kept black coloured bags containing bombs at the railway stations and had done the bomb explosions in the local railways. He remembered an incident of 11/07/06 when he traveled from Churchgate to Dadar and as he felt it necessary to give this information to the police, he met the ATS officers and told them about the incident.

200. It was disclosed from the information that he gave that he had traveled on 11/07/06 from Churchgate to Dadar in the 5.19 p.m. fast Virar train in the front first-class bogie, that two passengers had boarded the bogie with him, out of whom one had a black coloured hand bag, that earlier before the train came on the platform, the said two persons came near him and asked him whether Virar train would leave from there, that in his hurry to get the window seat, the bag of that person come in between his legs and he stumbled and at that time he felt that there is some heavy article in the bag. It was disclosed that he as well as the said two persons got down at Dadar and he saw them walking ahead speedily moving their arms and had realized that none of them had the black bag. He gave the description of the persons to the police.

201. PI Devram Dagadu Wadmare, (PW-175)(Ext.1851), took two constables with him and searched for taxi drivers at the taxi stands of Bandra, Govandi and Andheri and taxi stands on the way, on the directions of his superiors, to search for taxi drivers, who may have taken some persons from Bandra to Churchgate on the day of blasts. After searching for 15 days, on 03/11/06 he came across a taxi driver by name Santosh Kedar Singh, (PW-63)(Ext.764), at Hill Road, Bandra, who informed him that he had taken two persons from the Perry Cross Road to Churchgate on the day of blast and had thought that those persons are suspicious. PI Wadmare, PW-175, inquired with him in detail, asked him to describe the persons and to tell the reasons as to why he suspected them and PI Wadmare, PW-175 felt that the information that Santosh Singh, PW-63, was

giving to him, was important. Santosh Singh, PW-63, went to the ATS office at Bhoiwada in his own taxi as PI Wadmare, PW-175, requested him. ACP Patil, PW-186 inquired with him and he told the same information that he had told to PI Wadmare, PW-175, who recorded his statement on the directions of ACP Patil, PW-186, on 03/11/06.

202. It was disclosed that Santosh Singh, PW-63, was plying his taxi no. MRK 8286 on 11/07/06, that at about 3.15 to 3.30 p. m. two persons, one carrying a black coloured bag, engaged his taxi at New Perry Cross Road, Bandra for going to Churchgate, that he reached them at Churchgate at about 5.00 p.m. and left them at the subway that goes to Churchgate Station. He gave the description of the two persons to the police.

203. PI Khanvilkar, PW-168, deputed his staff to Carter Road, Bandra for making inquiries about taxi drivers, who may have taken passengers from there to Churchgate on the day of incident, as ACP Patil, PW-186 told him about the information. His staff brought taxi driver Rajesh Chandrakant Satpute, (PW-77)(Ext.819), on 03/11/06 and he and his staff took him before ACP Patil, PW-186, who inquired with him and then PI Khanvilkar, PW-168 took his statement.

204. It was disclosed that Rajesh Satpute, PW-77, was plying taxi no. MH-01-J-4066 on 11/07/06, that at about 4.00 p.m. two youths having a black coloured bag engaged his taxi at Carter Road Bandra for going to Churchgate, that he reached them at Churchgate and they went walking towards the subway. He gave the description of

the two persons to the police.

205. ACP Patil, PW-186, recorded the statement of Mohd. Shakil Mohd. Mehboob, (PW-70)(Ext.782), partner of the A5 in the spectacle business, on 03/11/06 and whose help A5 had taken for bringing six Pakistani persons from Bangladesh in May, 2006. It was disclosed that the A5, who is his childhood friend, has relations in Bangladesh, out of who, he, i.e., Mohd. Shakil, PW-70, knew one Asif since 2003, that he started the business of manufacturing power opticals in partnership with the A5, that the said Asif came to Kolkata in the last week of February, 2006 and met him and the A5 and told them that he is on some confidential visits which he had discussed with the A5, that on being asked, the A5 told him subsequently about he being worried about the plight of Muslims in India and thinking of devoting major part of his time for Islam and used to speak about jihad all the time and that Asif and some other elements are contemplating some major jihadi action in India. It was disclosed that the A5 requested him, i.e., Mohd. Shaikh, PW-70, to help if the need arose and he learnt from the A5 that he was in contact with L-e-T operatives in Mumbai.

206. It was disclosed that in May, 2006 the A5 asked him to remain ready to help him in his assignment that he accompanied the A5 to Bongaon in Bangladesh by railway on his request in the second or third week of May, 2006, that the A5 was in constant touch with Asif and Munna during the journey, that they went to the Bongaon market where Munna came with six persons and introduced them to Pakistani nationals by name Sabir (wanted accused no. 8), Abu Bakr

(wanted accused no. 9), Kasam Ali (wanted accused no. 10), Ammujan (wanted accused no. 11), Ehsanullah (wanted accused no. 12) and Abu Hasan (wanted accused no. 13), who had Pakistani passports which they handed over to Munna. It was disclosed that he and the A5 brought the six Pakistani nationals to Kolkata by train, the tickets being purchased by the A5, that he came to know from the A5 that they were sent by Azam Chima (wanted accused no. 1), a Pakistani based L-e-T commander, and the A5 took them to his house. He also gave a statement to the magistrate under section 164 of the Cr.P.C. confirming all that he had stated before the police.

207. API Phadake recorded the statement of Jairam Mahabal Shetty, (PW-141)(Ext.1568), on 03/11/06, who was managing his brother's residential Hotel Heena in Bhendi Bazar, Mumbai during the period from 2001 to 2007.

208. It was disclosed from the information given by Jairam Shetty, PW-141, that the A5 and his five friends had stayed in Room No. 401 of the said Hotel from 04/01/04 to 06/01/04 and from 10/01/04 to 14/01/04.

209. ACP Patil, PW-186, recorded the statement of Noman Sultan Shaikh, (PW-78)(Ext.828), cousin of the A3 and A9, on 07/11/06. It was disclosed that A3, A9 and their brother Rahil resided in Pune, that they were members of SIMI and used to attend Maharashtra SIMI office at Fitwala Compound, Pipe Line Road, Kurla(W), Mumbai, that A3 introduced him to SIMI in 2000 and he started attending SIMI programs, that during these programs he came to know about other SIMI activists, i.e., A2, A13, A4, A11, A7, A6 and

others, that even after the ban on SIMI in September, 2001, these SIMI members were active in SIMI work in a secret manner, that they used to hold regular meetings of SIMI in Kurla and at Mira Road and used to allow him to attend these meetings because of his relationship with A3. It was disclosed that he came to know that the A13 was a senior SIMI activist from Jalgaon, who had left Jalgaon as he was wanted in a bomb blast case in Jalgaon, that A13 rented a room in Kurla(W) in November, 2001 and had started SIMI office there and assumed the duplicate name Junaid to avoid security risks, that A13 conducted SIMI affairs till August, 2002 from that room and thereafter shifted to Mira Road, that he was made Maharashtra SIMI President in February, 2004, that he was getting Rs.3,000/- from SIMI, that subsequently he moved to Nagpur and continued his SIMI activities, that he was in touch with other SIMI activists at different places including the A7, that he lived in the SIMI office at Mira Road from April, 2005 to April, 2006. It was disclosed that the A13 attended SIMI Zonal Advisory Council meeting held in the house of A7 at Mira Road in May, 2006, that he, i.e., Shaikh Noman, PW-78, attended a SIMI program at Anjuman High School, near CST Railway Station in November, 2001 alongwith A4, A2, A3, A9 and A10. It was disclosed that the A4 was elected as Mira Road President of SIMI in July, 2002 upto March, 2003, that the A4 visited Nepal and contacted Jaish-E-Mohammed operatives for the purpose of setting up of arms and explosives training camp for SIMI cadres, that the A4 concentrated on SIMI work in Mira Road, developing close relationship with the A13 and

A3, that the A4 had printed and published lot of jihadi literature during this period, for which he was financially assisted by the A3. It was disclosed that the A4 organised programs of SIMI at his residence in Mira Road in August, 2005 and in March, 2006 and the two programs of SIMI, one on Khilafat at Vikhroli and other on jihad at Borivali, that he had conducted elections of office bearers of SIMI in various units of Maharashtra and had attended a meeting in Ujjain in the beginning of July, 2006 for the purpose of setting up of arms and explosives training camps for SIMI cadres.

210. It was disclosed that the A3 and A9 used to attend various programs of SIMI and continued their SIMI activities even after the ban, that they used to finance printing and publishing of literature propagating SIMI ideology, that the A3 had visited Pakistan twice and had received training from training camps of L-e-T and was in constant contact with L-e-T commander, Azam Chima and was receiving funds from him for jihadi activities, having once received Rs.1.5 lacs through hawala, that the A3 also used to receive money through his sister Khalida Apa, who acted as a conduit for channeling hawala funds sent by Azam Chima. It was disclosed that the A3 had sent many SIMI activists to Pakistan for training, that the A2 also used to come to Kurla office of SIMI, having attended Central Training School of SIMI in Delhi for ten days training program in 2000 and attending Khilafat conference of SIMI in 1999 at Aurangabad. It was disclosed that he, i.e., Shaikh Noman, PW-78, attended a SIMI program with the A2, that A2 continued to associate with SIMI even after the ban, that he came to know afterwards that

the A2 and others had gone to Pakistan for jihadi training and after returning from training, had reduced contacts with him, i.e., Shaikh Noman, PW-78, and used to meet in clandestine manner.

Identification Parades :-

211. All the accused were remanded to judicial custody by 01/11/06. Thereafter ACP Patil, PW-186, started making preparations for holding the test identification parade of all the accused and for that purpose he alongwith seven former investigating officers scrutinised the papers and had discussions amongst themselves and identified eight witnesses, who were required to be placed in the test identification parade. They were Amar Khan, PW-75 and Ajmeri Shaikh who had gone to the house of the A6 2-3 days before the bomb blasts and had seen the A2, A4 and A6 there and a person who was doing something with wire, Subhash Nagarsekar, PW-57, Devendra Patil, PW-62, Vishal Parmar, PW-74 and Kishore Shah, PW-60, who had seen persons keeping black coloured rexine bags in the local trains at Churchgate on the date of the incident. Rajesh Satpute, PW-77, and Santosh Singh, PW-63 were the taxi drivers, who had taken persons from Bandra to Churchgate in their taxi and those persons were carrying rexine bags with them. ACP Patil, PW-186, obtained the permission from this court to conduct the test identification parade of all the arrested accused in the premises of the Mumbai Central Prison, then he contacted Special Executive Officers Kirti Ramchandra Purandare, (PW-80)(Ext.832), Shashikant Balwant Barve, (PW-82)(Ext.843) and Bendge and requested the first two to attend his office on

07/11/06 by his letters, office copies of which are at Exts. 2412 to 2414. He gave letter to the Superintendent, Mumbai Central Prison, office copy of which is at Ext.2415, to make arrangements and render assistance for holding the test identification parade. He asked his officers to contact the eight witnesses and call them to the office on 07/11/06 and accordingly SEOs Purandare, PW-80 and Barve, PW-82, came to his office on 07/11/06. He explained the brief facts of C. R. No. 5 of 2006 to them, gave them names of the witnesses, who had come for the test identification parade and introduced them to the witnesses. He gave names of the A2, A4, A6 and A7 to SEO Purandare, PW-80, and the names of the A1, A3, A12 and A13 to SEO Barve, PW-82. His staff assisted the SEOs in procuring panch witnesses.

212. First SEO Purandare, PW-80, conducted the test identification parade of A2 and A7 on 07/11/06. Amar Khan, PW-75 and Ajmeri Shaikh identified the A2 and A7. SEO Purandare, PW-80, then conducted the second test identification parade of A4 and A6. Amar Khan, PW-75 and Ajmeri Shaikh identified A4 and A6. These two witnesses described the roles of four accused to the SEO by stating that they had seen the A2, A4 and A6 at the house of the A6 three days before the blasts and they identified the A7 as the person who was doing something with wires in the house of the A6. Vishal Parmar, PW-74, identified the A4 as the person whom he had seen with a black coloured rexine bag at Churchgate and who had boarded the first-class compartment with one more person and when these two got down at Dadar, they did not have a bag with

them. SEO Purandare, PW-80, prepared the memorandums of test identification parades, Exts. 833 and 834 and gave them to ACP Patil, PW-186, who was outside the prison.

213. SEO Barve, PW-82, also conducted two test identification parades on the same day, i.e., on 07/11/06. First was in respect of the A3 and A13. Rajesh Satpute, PW-77, the taxi driver, identified the A3 as the passenger who had hired his taxi on 11/07/06 for going to Churchgate and who had a black bag in his hands. Santosh Singh, PW-63, identified the A13 as one of the persons who had traveled in his taxi on 11/07/06. Devendra Patil, PW-62, identified the A3 as the person who had kept a black coloured bag in the train at Churchgate on the day of the blasts. Kishore Shah, PW-60, identified the A13 as the person who had kept a black coloured bag in the train on 11/07/06 at Churchgate. SEO Barve, PW-82, conducted the second test identification parade of the A1 and A12 in which Subhash Nagarsekar, PW-57, identified the A1 as the person who had entered from the left door of the train at Churchgate and kept a big rexine bag on the rack above him. SEO Barve, PW-82, prepared the memorandum of the test identification parade, Ext. 844, and handed it over to ACP Patil, PW-186, at the ATS office. ACP Patil, PW-186, recorded further statements of these eight witnesses on the point of identification of the different accused. SEO Bendge conducted three test identification parades on 08/11/06 of the A5, A8, A9, A10 and A11 with the help of two panch witnesses and the eight witnesses, who had participated in the parades on 07/11/06. None of the witnesses identified any one out of the five accused.

Further investigation :-

- 214.** PI Shashank Ganpatrao Shelke, (PW-150)(Ext.1614), went to the office of FSL, Kalina on 06/11/06 on the directions of ACP Patil, PW-186, and brought reports Exts.2383, 2389 and 2391 and the property and again on 08/11/06 brought the report Ext.2390 and the property and gave the reports to ACP Patil, PW-186, and deposited the properties with the muddemal clerk. API Sunil Mahadev Yadav, (PW-178)(Ext.2054), went to the office of FSL, Kalina on 13/11/06 as per the directions of ACP Patil, PW-186, and brought back the reports Exts.973, 2388 and 2392 and the property and gave them to ACP Patil, PW-186, and deposited the property with the muddemal clerk.
- 215.** In between a letter was sent to the Regional Passport Officer, Worli under the signature of DCP Bajaj, office copy of which is at Ext.2417, to obtain the details of the passport of A6, as it was disclosed in the investigation that he was having a passport, that by using it he had gone to Dubai and then to Pakistan for terrorist training, that thereafter he came back to Dubai and from Dubai he went to Nepal and entered India from Nepal and he had used this route to hide his visit to Pakistan and his passport was not traceable and it was suspected that he had destroyed it. The Public Relation Officer (Policy) of the Regional Passport Office, Mumbai informed by his letter, Ext.2418, that a passport was issued twice to the A6, once on 04/12/90 and secondly on 13/03/02. ACP Patil, PW-186, wrote a letter to the Sr. PI, SB-II, CID, Airport Branch, Mumbai on 10/10/06, office copy of which is at Ext.2419, to obtain departure details of the

A6 to Muscat on 01/02/03, as it was found during the course of investigation that he had traveled to Dubai from Mumbai International Airport. The Sr. PI, Airport Branch, SB-II, CID, C. S. I. Airport, Mumbai by his letter, Ext.2420, confirmed the departure of the A6 by flight no. WY 802 on 01/02/03. This was the flight of Oman Airways, therefore, ACP Patil, PW-186, wrote a letter to the Airport Service Manager, Oman Airways, C.S.I. Airport, Terminal-IIA, Departure Level, Mumbai, to inquire about his departure, office copy of which is at Ext.2421. The reply from the Airport Manager of Oman Airways, Ext.2422, was received, enclosing necessary relevant documents, which reflected the name of A6 as the passenger, Art. 381 (1 to 7).

216. ACP Patil, PW-186, sent a letter on 28/11/06, office copy of which is at Ext.2423, to the Development Credit Co-operative Bank, Kausa Branch, to obtain the details of the deposit of Rs.7,000/- given by the A8 by cheque to the landlady Mrs. Raeesa Khatoon Abdul Naeem, as it was disclosed in the investigation that the A8 had rented the flat no. 202 in Moonlight Building, Mumbra and the cheque was encashed in her account of the said bank. The bank sent reply Ext.2424 alongwith the statement of account that showed deposit of cheque of Rs.7,000/- in the account of Mrs. Raeesa Naeem. Attested cheque deposit slip and statement of account, Arts. 382 (1 and 2), were sent with the letter. ACP Patil, PW-186, deputed ACP Joshi, PW-163, for making further inquiries as the original cheque was not available with the said bank. He procured the letter Art.383 and the accompanying documents Arts.384 (1 to 4), which

confirmed that the cheque was issued by the A8 and it was deposited and encashed from the account of the landlady.

217. PI Rathod, PW-176, sent a letter on 22/12/06, office copy of which is at Ext.2425, to the Sr. DCM, Mumbai Central Division, Mumbai Central as ACP Patil, PW-186, asked him to collect the information about the daily passengers load on Western Railway Suburban Trains. The Western Railways sent the reply Ext.2426 informing that the number of average passengers traveling daily was more than 30 lacs. PI Rathod, PW-176, sent letter on 22/12/06, office copy of which is at Ext.2427 to the Sr. Divisional Personal Manager, Mumbai Central Division, Mumbai Central on the directions of ACP Patil, PW-186, to collect information as to whether services of local trains in Mumbai are covered under the essential services. Western Railways informed by the reply Ext.2428 that railway services are defined as essential services under section 2 of the Essential Services Maintenance Act, 1968 and photocopy of the Act, Art.385, was also enclosed.

Allegations of the prosecution in the final report :-

218. It is alleged by the prosecution that it transpired during the course of investigation that wanted accused Azam Chima @ Babaji, a Pakistani national, the arrested accused A3, A13 and others, conspired sometime in the year 1999 and thereafter, both within and outside India, to do and cause to be done illegal acts, i.e., to wage war against the Government of India, to collect men and explosives with the intention of waging war against the Government of India, to overawe by means of criminal force the Government of

Maharashtra and Government of India, to terrorise the people in general and railway commuters in particular by indulging in wanton killings and destruction of property through bomb explosions in local trains, thereby disrupting public transport system in Mumbai, the economic capital of India, to create instability in the State of Maharashtra and in India by the aforesaid subversive activity, to shake and reduce the faith of the common citizen in its elected democratic government by large scale violence, destruction of lives and property and thereby destabilize the system of Government established by law, to organize the spread of secessionist and rebellious thoughts through covert and secret meetings with like minded Muslim youths, to exploit the communal sentiments of Muslims and to provoke them in the name of religion in order to resort to terrorist acts, to collect money from across the border and by sale of provocative SIMI literature in India for achieving the objective of the criminal conspiracy, to organize training camps in Pakistan in order to impart training to Indian Muslim youths in the handling and use of arms and explosives for causing the explosions, to establish training camps in India too and organise training in the handling of arms and explosives to like minded Indian Muslim youths locally, to facilitate infiltration of Pakistani militants from across the Indian border along with explosives for causing the explosions, to store and conceal such explosives at such safe places alongwith the Pakistani wanted accused for achieving the objective of criminal conspiracy, to do and commit any other illegal acts as were necessary for achieving the aforesaid objective of criminal

conspiracy, to continue unlawful activities of banned organisations, i.e., SIMI and L-e-T, with an intention to promote enmity between different groups on grounds of religion prejudicial to the maintenance of harmony, incite individuals or group of individuals to cause disaffection against India or the Government of India or encourage or aid persons to undertake any unlawful activity like bomb explosions or of which the members undertake such activities and to continue activities of organised crime syndicate, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, conspire, advocate, abet or knowingly facilitate the commission of an organised crime by use of violence or other unlawful means and promote insurgency by causing explosions in local trains in order to cause large scale loss to life and railway property.

219. It is alleged that in pursuance of the aforesaid conspiracy, during one such meeting held in the month of May, 2006 in the house of the A3 at Bandra (W), the plan to cause explosions in western railway local trains was finalised and the co-conspirators were assigned specific responsibilities. As a part of the conspiracy, wanted accused Azam Chima took the responsibility of sending RDX and Pakistan based terrorists, including those who would be experts in assembling the explosive devices. As a part of the conspiracy, the A5 of Kolkata and the A1 from Bihar were entrusted the responsibility of bringing Pakistani terrorists into India through Indo-Bangladesh and Indo-Nepal borders respectively. It was also decided to assemble explosive devices in the house of A6 in Govandi,

Shivajinagar, Mumbai. Co-conspirator A13 was entrusted with the responsibility of procuring rexene bags, utensils, ammonium nitrate/nitrite, detonators, etc., and make arrangements to send them to the house of the A6 at Govandi, Shivajinagar, Mumbai. The A7 was entrusted with the responsibility of procuring timer electric circuitry and other relevant devices and keep it ready for the 'D' day.

220. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of conspiracy, in the month of May, 2006, the A5, an Indian national and residing in Kolkata, made arrangements and ensured the infiltration of wanted accused and Pakistani nationals, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan into India through Bangladesh border. These accused persons traveled from Kolkata to Mumbai by train. Similarly, in the month of May, 2006, wanted accused, viz., Salim, Sohail Shaikh, Abdul Razak and Abu Umed illegally crossed over from Pakistan into India from Kutch border in Gujarat. Accused persons, viz., Salim and Abu Umed (both dead) are Pakistani nationals, while Abdul Razzak is a resident of Hyderabad, Andhra Pradesh and Sohail Shaikh is a resident of Pune, but now both are learnt to be settled in Pakistan. As a part of the same conspiracy, the A1 made arrangements for and illegally escorted wanted accused Pakistani nationals, viz., Aslam and Hafizullah into India through Nepal border.

221. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of conspiracy, wanted accused, Pakistani national Ehsanullah brought with him RDX, which was

used for causing explosions in Mumbai on 11/07/06.

222. It is alleged that in pursuance of the aforesaid conspiracy, the above mentioned wanted accused illegally crossed over into India and came to Mumbai. The accused who crossed over from Bangladesh border were received by the A13 and were housed and harboured in Flat no.304, Amrapali Apartments, Naya Nagar, Mira Road, Thane. Similarly, wanted accused who crossed over into India from Kutch border, were provided safe house and harboured in flat no.24, Lucky Villa building, Kant Wadi, Perry Cross Road, Bandra (W), Mumbai 400 050 belonging to the A3. The two wanted accused and Pakistani nationals, who illegally infiltrated into India through Nepal border and brought to Mumbai by the A1, were housed and harboured in Flat No.101, Saba Parveen Apartment, Pooja Nagar Road, Naya Nagar, Mira Road, Thane, belonging to the A7. It has also come on record that as a part of the same conspiracy, after the bomb blasts on 11/07/06, the A4 provided shelter and harboured wanted accused Pakistani nationals and co-conspirators by name Ammu Jaan, Sabir, Abu Bakr, Kasam Ali, Ehsanullah and Abu Hasan brought by the A5, at 202, B Wing, 2nd Floor, Moonlight Apartment, Opp. Kalsekar College, Kausa, Mumbra, Thane, rented by the A8.

223. It is alleged that in pursuance of the aforesaid conspiracy, during the said period, A3, A2, A10, A11, A9 and A4 traveled in western railway local trains between Mumbai and Virar in order to make a reconnaissance of the target. The conspirators decided to cause bomb blasts in the evening of a working day so as to cause maximum damage to the lives and to the property and also to strike

against a symbolic institution of governmental authority. The same was approved by the blast master-mind wanted accused Azam Chima, top commander of L-e-T and based in Bahawalpur, Pakistan. The act of causing bomb explosions was aimed at disturbing public peace and subverting the authority of government established by law under the constitutional framework of India. The above *modus* conforms to the professed ideology and agenda of L-e-T. The L-e-T has repeatedly claimed through its web sites that its main aim is to destroy the Indian Republic and annihilate Hinduism.

224. It is alleged that in pursuance of the said conspiracy, sometime in the month of April, 2006, A4, A2, A3 and A12 went to the house of the A6 and surveyed the surroundings.

225. It is alleged that in pursuance of the said conspiracy and in order to achieve objectives of the conspiracy, between 08/07/06 upto 10/07/06, accused persons, viz., A7, Sohail Shaikh, Pakistani national and one more unknown Pakistani national assembled seven explosive devices at Plot No.33, T. Line, Room No.2, Shivajinagar, Govandi, Mumbai - 43, house belonging to the A6 for planting in local trains. They were assisted, aided and abetted by various means by co-conspirators, viz., A6, A2, A4, A12, A13 and A3.

226. It is alleged that in pursuance of the conspiracy referred to above, wanted accused Azam Chima, a Pakistani national, and an office bearer of banned terrorist outfit L-e-T, organised training camp in Pakistan for training of Indian Muslim youths in the handling and use of arms and explosives. For the said purpose, he sent money to India through various persons and means for funding travel of

Indian Muslim youths, desirous of undergoing the said training, to Pakistan. During the course of and after the said training, Azam Chima incited the trained youths to avenge the alleged atrocities committed on Muslims in India, by causing wide spread insurgent and terrorist activities by exploding / bombing financial nerve centers and causing mass damage to life and property thereby crippling the economy of the nation.

227. It is alleged that between 1999 and 17/07/06 wanted accused Azam Chima, through wanted accused Mohammed Rizwan Dawrey and Rahil Ataur Rehman Shaikh, sent money through various means to India to the A3 for publishing jihadi literature, promoting anti-India sentiments and bearing the expenditure for the travel of those Indian Muslim youths who were to be sent for training to Pakistan and escape of those who participated in the bombing operations with an intention to achieve the objectives of the larger conspiracy referred to above. After the A3 returned from Pakistan, after receiving training in March, 2002, he received Rs.1,80,000/- through hawala transaction from wanted accused Azam Chima. In November, 2003, Mohammed Rizwan Dawrey sent Rs.50,000/- to the A9. In February, 2004, wanted accused Mohammed Rizwan Dawrey and the A3 sent Rs.1,00,000/- through hawala. There is evidence on record that this amount was received by one Smt. Khalida Iqbal Shaikh and handed over to the A9. In the same year and after about 3 to 4 months, wanted accused Rizwan Mohammed Dawrey sent Saudi Riyals 14000 to the A3. In April, 2004, Rizwan Mohammed Dawrey and the A3 sent Saudi Riyals 40000 through

hawala to Smt. Khalida Iqbal Shaikh, which was in turn collected by the A9. In the same month, A3 sent Rs.10,000/- to Smt. Khalida Iqbal Shaikh, which was collected by the A9. Sometime in July or August 2004, wanted accused Rizwan Mohammed Dawrey and the A3 sent Rs.20,000/-to Smt. Khalida Iqbal Shaikh for the A9. On 02/07/06 Mohammed Rizwan Dawrey again sent Saudi Riyals 15000 through one Hidaytulla Mehboob Sundke, PW-64, for the A3. Even after the explosions Mohammed Rizwan Dawrey sent Saudi Riyals 11200 on 14/07/06 through one Afzal of Pune for handing over to Abdul Rehman Dawrey for onward handing over to the A3. Saudi Riyals 15000 mentioned above, were seized during the house search of the A3 at Bandra(W), Mumbai on 28/07/06. Saudi Riyals 11200 sent by wanted accused Rizwan Dawrey as stated above, could not be delivered to the A3 as he was arrested prior to the delivery of the said amount. This amount was seized on 30/07/06 from Abdul Rehman Dawrey, PW-71, brother of wanted accused Mohammed Rizwan Dawrey. The amounts mentioned above and received by the conspirators, was used by the accused to send others to Pakistan for training and other purposes, for achieving the larger goal of conspiracy as well as for facilitating the escape of those who participated in the bombing operation. As a part of the conspiracy and with a view to gain respectability and status, some of the co-conspirators fraudulently obtained forged and fake degree/education certificates using which they got gainfully employed even in foreign countries, ostensibly for the purpose of raising funds for the organised crime syndicate and/or for the

purpose of siphoning funds from foreign countries for achieving the larger goal of conspiracy.

228. It is alleged that in pursuance of the aforesaid criminal conspiracy, the A3, A2, A1, A9, A10, A11 and A6 went to Pakistan and received training in the handling of arms and explosives in the training camp run by wanted accused Azam Chima. The travel plans were elaborately planned by the conspirators in order to ensure that passports of the accused did not bear the arrival and departure stamps into and out of Pakistan. During the course of investigation, the A3, A9, A10, A11 and A2 have been found in possession of maps showing travel route from Tehran to Pakistan with details, i.e., names and/or phone numbers of persons who could be contacted for making their travel arrangements. Investigation has disclosed that the accused persons were trained in the handling and use of arms and explosives. The trainees were repeatedly indoctrinated by their foreign trainers to avenge the alleged atrocities committed on Indian Muslims. The feelings and sentiments of the accused trainees were exploited to the fullest and they were exhorted to cause wide spread destruction of life and property in India in order to cripple the Indian economy and attain by force and violence an object of a general public nature, i.e., cause bomb blasts, thereby striking directly against the authority of the government. That in pursuance of the aforesaid criminal conspiracy, the accused who underwent training in Pakistan were paid money and were further asked to persuade more Indian Muslim youths to go to Pakistan for undergoing the said training.

229. It is alleged that in pursuance of the aforesaid conspiracy, sometime in the year 2000, wanted accused Azam Chima on behalf of banned organisation L-e-T alongwith wanted accused Hafiz Zuber and Abdul Rehman, recruited the A1. Accordingly A1 traveled to Pakistan on a fake Nepalese passport on an assumed name Kamal Ahmed Mohd. Munshi through Wagha border. This passport was prepared for the A1 by wanted accused Hafiz Zuber, an Indian national presently based in Nepal. One Khalid Saifulla asked the A1 to motivate and recruit alienated and marginalised Muslim youths. One Ibrahim Rayeen (suspected accused) of Nepal, provided money to the A1 with instructions to send more Muslim youths to undergo training in Pakistan. He accordingly sent his co-brother Anwar Ul Haque to Pakistan for undergoing training in the handling and use of arms and explosives.

230. It is alleged that in pursuance of the aforesaid criminal conspiracy, the A3 went to Pakistan for undergoing training in the handling and use of arms and explosives, firstly, on 01/10/01 and returned to India on 29/11/01 through Wagha border using Indian passport bearing No. B-5403385 issued on 06/06/01 by RPO, Pune. During his second visit and in order to avoid detection, the A3 left Mumbai for Jeddah on 08/11/03 using the above passport. From Jeddah, he illegally entered Pakistan *via* Kisham Island, Iran, where he allegedly destroyed his Indian passport. During return, his mentors in Pakistan gave him a fake Pakistani passport on an assumed name Mohammed Akram, using which he returned to Jeddah. While in Saudi Arabia, he was arrested for not possessing a

travel document and on 01/12/04 he was deported to New Delhi on an Emergency Certificate. During his both visits, the A3 received training in the handling and use of arms and explosives in a training camp of wanted accused Azam Chima. He also asked A3 to recruit Muslim youths for arms training in Pakistan and also to survey targets for terrorists attacks.

231. It is alleged that in pursuance of the aforesaid conspiracy, on return to India and using the money that he had received from wanted accused Azam Chima, the A3 incited A10 and sent him to Pakistan for undergoing training as stated above. The A10 traveled to Pakistan on 01/11/02 on Indian passport bearing No.E-1185233. In order to avoid detection of his Pakistan visit, the A10 traveled from Mumbai to Tehran on a ziyarat visa and from there infiltrated into Pakistan. A10 too underwent training in the training camp of wanted accused Azam Chima.

232. It is alleged that in pursuance of the aforesaid criminal conspiracy, A6 traveled to Pakistan on 01/02/03 using his Indian passport bearing No.E-1560453 issued by RPO, Mumbai on 13/02/02. He left Chatrapati Shivaji International Airport, Mumbai and went to Dubai from where he traveled to Karachi and underwent training in the handling and use of arms and explosives.

233. It is alleged that in pursuance of the aforesaid conspiracy and while the A3 was still in Pakistan, he instructed his brother, i.e., the A9 to send some more Muslim youths to Pakistan for undergoing training. Accordingly, the A9 paid and arranged for the travel and training of the A2 in Pakistan. In order to avoid detection, the A2

went illegally to Pakistan via Iran from Chatrapati Shivaji International Airport, Mumbai. The A2 traveled on Indian passport bearing No. B-0099830 issued by RPO, Mumbai on 21/05/04 and underwent training in the training camp of wanted accused Azam Chima.

234. It is alleged that as a part of the same conspiracy and as instructed by the A3, the A9 illegally traveled to Pakistan via Iran on 09/08/04. He traveled from Mumbai to Tehran and then illegally crossed Iran border into Pakistan. He too underwent training in the militant training camp of wanted accused Azam Chima.

235. It is alleged that on return from training, the A2 induced the A11 to undergo training in Pakistan to achieve the larger objective of conspiracy. Accordingly, the A2 collected A11's passport bearing no. A-1886227 issued by RPO, Mumbai on 12/09/96 and handed it over to the A9 who in turn got the same stamped with ziyarat visa for Iran. The A11 left Mumbai for Tehran on 04/04/05, from where he illegally crossed into Pakistan and received training in the training camp of wanted accused Azam Chima.

236. It is submitted by the investigating officer ACP Patil, PW-186, that members of Shiya sect of Muslim community visit Iran on ziyarat visa. This tour is necessarily for pilgrimage and for the visit of a holy place by name Mashad, where there is a tomb of the 8th religious leader, Imam Raza of Shiya sect. The persons who undertake this pilgrimage usually travel in groups with a proper operator. It is a known fact that members of the Sunni sect of Muslims do not believe in the teachings of Imam Raza and hence do

not go to ziyarat pilgrimage to Iran. It is also a known fact that Sunnis are not granted a ziyarat visa to Iran. During visit to Mashad, all pilgrims get holy food known as 'Niyaz'. Before any pilgrim receives Niyaz, his passport is stamped accordingly on the page bearing ziyarat visa. However, A2, A9, A10 and A11 are all Sunnis. Though they traveled from India to Iran on a ziyarat visa, they did not visit Mashad, but instead crossed the Iran border and went to Pakistan and underwent training in the camp of wanted accused Azam Chima. The absence of the stamps/seals on their ziyarat visa page are conclusive proof of the same. Though the A2, A9, A10 and A11 traveled to Pakistan *via* Iran on a ziyarat visa, their visas are not stamped as required at Mashad. Against the regular practice, these accused persons also traveled individually instead of going in a group or with a tour operator.

237. It is submitted by the investigating officer ACP Patil, PW-186, that activities of the organisation Students Islamic Movement of India (SIMI) were banned in India with effect from 27/09/01 by declaring it as an unlawful association under section 3(1) of the UA(P)A. PSI Vijay Bharatrao Mandlik, (PW-145)(Ext.1591), was attached to Kurla Police Station as ASI in 2001. He went with his staff by the Pipeline Road in Kurla (W) on the orders of the Sr. PI and with the help of megaphone they promulgated the ban by the government and also pasted copies of the notification of the official gazette, Ext.1592, containing the ban order, at conspicuous places like beat chowkis, madarsa, sewage center of BMC, tahasil office, Pipe Road masjid, etc., and also pasted a copy on the office of the

SIMI that was on the Pipe Road. It is alleged by the prosecution that though the SIMI was banned in the year 2001, A13, A3, A2, A4, A10, A11, A7, A8, A6 and A9 and wanted accused Rizwan Mohammed Dawrey and Rahil Ataur Rehman Shaikh, continued to remain members of the said banned organisation and continued to take part in the activities of 'Students Islamic Movement of India', which is a declared terrorist organisation under sections 2(1)(m) and 35 of the UA(P)A and thereby advocated, abetted, advised and incited the Indian Muslim youths against the policies of the Government of India, promoted enmity between different groups on grounds of religion by printing, publishing and circulating seditious, inflammatory and derogatory material and collected funds and subscriptions from others for the achievement of the larger goal of conspiracy. The A4 even distributed receipt books to others and by using the said receipt books, personally collected subscriptions for and on behalf of SIMI under assumed names. Similarly, wanted accused Azam Chima and the other Pakistani nationals continued to remain members of the banned terrorist organisation 'Lashkar-e-Toiba' and continued to take part in the activities of L-e-T. They thereby advocated, abetted, advised and incited the Indian Muslim youths against the policies of the Government of India. For achieving their objectives, they funded the travel of selected Muslim youths to Pakistan, bore the expenditure for their training in the handling and use of arms and explosives, indoctrinated them in the name of religion and also supplied explosives like RDX. All this was done in order to prepare a group of youths, Indian as well as Pakistani, to

conspire against the government or civil authorities and wage war by striking terror in the minds of the people or section of people by use of violence or force by causing large scale destruction of life and property in order to cripple the national economy through the disruption of the public transport system, which tantamounts to insurgency. The objective of the conspiracy was to continue unlawful activities within the State of Maharashtra and to overawe the government by causing disruption of the mass public transport system and thereby undermine the authority of the Government. Mumbai, the economic capital and a soft target was apparently chosen for executing the conspiracy.

238. It is alleged that in pursuance of the aforesaid conspiracy, the said accused persons advocated, abetted, advised and incited the Indian Muslim youths and knowingly facilitated the commission of terrorist act, to wit, to cause bomb explosions in seven first-class compartments of western railway trains in Mumbai on 11/07/06. Accused persons, viz., A13, A3, A2, A4, A10, A11, A7, A8, A6, A9 and Rizwan Mohammed Dawrey and Rahil Ataur Rehman Shaikh continued to be members of 'Students Islamic Movement of India' and remained in contact with wanted accused Azam Chima, commander of L-e-T, both banned terrorist outfits, as declared by the Government of India in the schedule as laid down under section 2(1)(m) and 35 of UA(P)A.

239. It is alleged that the A13 is one of the key conspirators continuously indulging in committing terrorist acts and unlawful activities for and on behalf of SIMI, an organisation banned by the

Government of India since 27/09/01. A case under section 153(1) (A) read with 34 of the IPC was registered at M.I.D.C. Police Station, Jalgaon, Maharashtra vide C. R. No. 178 of 1999 against him in 1999. The Court had taken cognizance of the said case vide C. C. No. 219 of 2001. The A13 was declared as proclaimed offender on 08/03/02. While he was so absconding, another case was registered against him by the M. I. D. C. Police Station, Jalgaon, Maharashtra vide C. R. No. 103 of 2001 under sections 153A, 121, 121-A, 122, 123, 201, 506(II), 120B, 34 of the IPC read with sections 4(a) and 4(b) and 5 of the Explosive Substances Act. In the said case too, A13 evaded arrest and remained absconding till his arrest in this case. The six co-accused in the said case have since been convicted for various terms ranging from 3 years to 10 years vide S. C. No. 126 of 2002.

240. It is alleged that in pursuance of the aforesaid conspiracy, between February and May, 2006, arrested accused persons held several conspiratorial meetings in the house of the A3 at Bandra (W), Mumbai, near Shams Masjid, Mira Road, Dist. Thane and at 101, Saba Parveen Apartment, Pooja Nagar Road, Naya Nagar, Mira Road (E), Thane, i.e., house of the A7. The said meetings were attended by A13, A10, A3, A4, A2, A9, A11, A12, A6 and A7. In the said meetings it was decided to survey and select targets for causing large scale explosions.

241. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of the conspiracy, wanted accused Azam Chima asked the A3 during May, 2006 to identify likely targets

to cause large scale damage and fear in the minds of general citizens. Accordingly the A3, A11 and A10 surveyed places like World Trade Centre, Mumbai Stock Exchange, Mahalaxmi Temple, Siddhi Vinayak Temple, local trains and some large shopping complexes. Except for the local trains, the conspirators avoided the other targets as all the said places had tight security arrangements. The A3 informed wanted accused Azam Chima that local trains were crowded and soft targets and hence, suitable for causing explosions.

242. It is alleged that in pursuance of the said conspiracy and in order to achieve objectives of the conspiracy, on the evening of 10/07/06, accused persons, viz., A6, A3, A12 and Sohail Shaikh, Pakistani national and one unknown Pakistani national, transported seven rexene bags containing explosive devices from the house of the arrested accused A6, i.e., Plot No.33, T. Line, Room No.2, Shivajinagar, Govandi, Mumbai-43 to Flat No.24, Lucky Villa, Perry Cross Road, Kant Wadi, Bandra(W), Mumbai-50, i.e., the house of the A3 in his Maruti car bearing no.MH-01-V-9568 and one taxi.

243. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, on 11/07/06 between 1500 hours and 1630 hours arrested accused persons, viz., A4, A12, A13, A3 and A1 and wanted accused Hafizullah, Aslam, Salim, Ammu Jaan, Abu Umed @ Abu Osama, Sabir and Abu Bakr traveled with the seven bags containing explosives devices from Flat No.24, Lucky Villa, Perry Cross Road, Kant Wadi, Bandra (W), Mumbai-50, i.e., the house of the A3, in different taxis to Churchgate Railway Station on western railways.

244. It is alleged that the A1 alongwith wanted Pakistani accused Salim, Hafizullah and Aslam planted explosive device in bogie no. 864A, which blasted at Matunga Railway Station, for which C. R. No. 77 of 2006 was registered at Mumbai Central Railway Police Station. It is alleged that the A12 alongwith wanted Pakistani accused Abu Umed @ Abu Osama planted explosive device in bogie no. 849A, which blasted in between Santacruz and Khar Railway Stations, for which C. R. No. 87 of 2006 was registered at Bandra Railway Police Station. It is alleged that the A3 alongwith wanted Pakistani accused Abu Bakr planted explosive device in bogie no. 0634A, which blasted at Jogeshwari Railway Station, for which C. R. No. 41 of 2006 was registered at Andheri Railway Police Station. It is alleged that the A13 alongwith wanted Pakistani accused Sabir planted explosive device in bogie no. 935A, which blasted at Borivali Railway Station, for which C. R. No. 156 of 2006 was registered at Borivali Railway Police Station. It is alleged that the A4 alongwith wanted Pakistani accused Ammu Jaan planted explosive device in bogie no. 846A, which blasted at Mira Road Railway Station, for which C. R. No. 59 of 2006 was registered at Vasai Road Railway Police Station. It is alleged that unidentified Indian and Pakistani accused planted explosive devices in bogies no. 528A and 8003A, which exploded at Mahim and Bandra Railway Stations, for which C. R. No. 78 of 2006 and 86 of 2006 were registered at Mumbai Central Railway Police Station and Bandra Railway Police Station respectively.

245. It is alleged that in pursuance of the said conspiracy, the

arrested and wanted accused persons planted explosive devices in the first-class compartments of local trains with intent to cause or knowing that it is likely to cause damage or destruction to railway property, i.e., compartments of western railway local trains, station platforms, overbridges, overhead wires, electric poles, etc. The accused persons by causing explosions in running local trains, caused the deaths of 187 passengers and injuries of various gravity to 817 passengers and generally endangered the safety of passengers traveling by local trains on 11/07/06.

246. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, the arrested and wanted accused procured explosives, detonators, electric circuits and other logistics for achieving the larger goal of conspiracy. During the course of investigation, the A1 came to be arrested on 20/07/06. At the time of his arrest about 500 grams of RDX, which is an explosive, was seized from his house in village Basopatti, Dist. Madhubani, Bihar. Also traces of RDX were recovered from Plot No. 33, T Line, Room No.2, Govandi, Shivajinagar, Mumbai-43 on 29/09/06, i.e., residential premises of the A6. It is alleged that between 08/07/06 to 10/07/06 the conspirators used this very place for assembling the explosive devices. Traces of RDX were also recovered from Maruti car No.MH-01-V-9568 belonging to the A3 on 22/10/06 recovered from the compound of Al Hatim building, Millat Nagar, Andheri(W), Mumbai. This very vehicle was used by the accused to transport the explosive stacked bags from the house of A6 at Govandi, Shivajinagar to the house of A3 at Bandra(W), Mumbai.

Traces of RDX were also recovered from Bldg. No.1, 25/B, Kant Wadi, Lucky Villa, Perry Cross Road, Bandra(W), Mumbai-50, on 28/07/06, i.e., the house of the A3. It is alleged that on 10/07/06 after the explosive devices were assembled and kept in black rexene bags, this very place was used by the conspirators to store the explosive devices before they were taken to Churchgate Railway Station on 11/07/06. At the instance of the A13, 2.7 kg. of Ammonium Nitrite powder and 10 detonators were recovered from his house at Poonam Park, 'A' Wing, Flat No.101, Near Lodha Complex, Mira Road, Dist. Thane. Similarly, corrosive materials namely Sulphuric Acid, Acetone and Hydrogen Peroxide were recovered from the possession of A2. The same, according to expert's opinion, could when mixed in the right proportions, be turned into a deadly mixture called TATP, capable of causing high intensity blasts. Experts have opined that RDX, Ammonium Nitrate, Nitrite and Petroleum Hydrocarbon oil was used in the explosions that took place in the seven first-class compartments of western suburban trains of Mumbai on 11/07/06.

247. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, the arrested and wanted accused, singly or jointly, either as member of an organised crime syndicate or on behalf of such syndicate, conspired, advocated, abetted or knowingly facilitated the commission of an organised crime by use of violence, promoted insurgency by causing explosions on 11/07/06 in seven different compartments of western railway local trains causing damage to property worth Rs.

85,61,039/- and deaths of 187 persons and injuries to 817 others.

248. It is alleged that all the arrested, wanted and two dead accused persons did commit murders by intentionally and knowingly causing the deaths of 187 persons and also did cause injuries of various gravity to 817 persons, with such intention and knowledge and under such circumstances that if by that act all accused had caused the death of such persons, they would have been guilty of murder and that all the accused had done the said illegal acts in furtherance of the common objective of the criminal conspiracy referred to above and also caused damage to public property, to wit, Western Railway local trains, platforms, overbridges, electric poles, overhead electrical wires, etc.

249. It is alleged that all the accused persons mentioned in the report were parties to a criminal conspiracy hatched by holding meetings in Maharashtra and outside India between 1999 and October, 2006, the object of which was to do and cause to be done such illegal acts for achieving the aforesaid objectives of the criminal conspiracy and such illegal acts were done intentionally and knowingly by participating in furtherance of the common objectives of the criminal conspiracy.

250. It is alleged that as a part of the larger conspiracy, while committing various illegal acts, the members of the organised crime syndicate also resorted to obtaining forged documents, to wit, degree certificates and using them as genuine to reflect false educational qualifications, with a view to gain false status and respectability and also for employment and did gain employment on

the strength of these forged documents.

251. It is alleged that as a part of the larger conspiracy, while committing various illegal acts, the A3 and the A6 obtained Indian passports from the office of the Regional Passport office, Pune and Mumbai respectively. Both these accused traveled to Pakistan using the said passports. However, in order to obliterate all evidence relating to their visit to Pakistan, they destroyed/disposed off their Indian passports and failed to produce the said passports before police, when directed to do so for the purpose of investigation.

252. It is alleged that as a part of the larger conspiracy and while committing various illegal acts, between May, 2006 and July, 2006, the arrested Indian conspirators, knowing fully well that their Pakistani counterparts had conspired and had illegally infiltrated into India with explosives for causing bomb explosions, with the intention of screening them from legal punishment, made arrangements for and harboured them. Accordingly, in the month of May, 2006, wanted Pakistani accused, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan entered India through Bangladesh border and were housed in 304, Amrapali Building, Sector-XI, Shanti Nagar 'A', Mira Road(E), Dist. Thane, office/house in the control of A7, A4 and A13. Similarly in the same month accused, viz., Salim (deceased), wanted accused Sohail Shaikh, Abdul Razzak and Abu Umed (deceased) illegally crossed over from Pakistan into India from Kutch border in Gujarat and were harboured in Flat No.24, Lucky Villa, Kant Wadi, Perry Cross Road, Bandra(W), Mumbai-50, house belonging to the A3. As a part of the

same conspiracy, wanted Pakistani accused Aslam and Hafizullah entered India through Indo-Nepal border and were harboured in 101, Saba Parveen Apartment, Naya Nagar, Mira Road(E), Thane, house belonging to the A7. Prior to the blasts, two of the wanted accused, who were staying in Flat No.24, Lucky Villa, Kant Wadi, Perry Cross Road, Bandra(W), Mumbai-50, shifted their hide out to a flat in Millat Nagar. After the commission of the bomb blasts, the A4 escorted wanted Pakistani accused, viz., Ammu Jaan and brought him to stay in 202, B Wing, Moonlight Apartment, Opp. Kalsekar College, Kausa, Mumbra, Dist. Thane, which was rented by the A8. Five other Pakistani nationals were also provided shelter in this flat after the bomb blasts. After staying for a while, these accused were provided a safe passage by the A5 out of Mumbai.

Sanction under the MCOC Act :-

253. ACP Patil, PW-186, came to the conclusion on the basis of the investigation carried out and the evidence collected upto 13/11/06 that all the arrested 13 accused and 15 wanted accused alongwith 2 deceased accused were members of an organised crime syndicate indulging in continuing unlawful activities and resorting to various acts of violence including bomb blasts, with the object of spreading communal disharmony, disturbing public tranquility, destabilizing the economy, spreading terror in the rank and file of common citizens and promoting insurgency and that the evidence collected was sufficient to prosecute them under the provisions of the MCOC Act. Therefore, he submitted a proposal on 13/11/06 to the Commissioner of Police through proper channel seeking sanction as

required under section 23(2) of the MCOC Act to prosecute the arrested and wanted accused under sections 3(1), 3 (2) and 3 (4) of the MCOC Act. Anami Narayan Roy, (PW-185)(Ext.2255), who retired as Director General of Police, Maharashtra in 2010, was Commissioner of Police, Mumbai from February, 2004 to February, 2007, in the rank of Additional Director General of Police. He received the proposal sent by ACP Patil, PW-186, through the DCP, Addl. CP and Jt. CP, ATS and it was accompanied with several volumes of documents. He studied the proposal, scrutinised the papers, took the assistance of the investigating officer, the legal advisor of his office and some times the Jt. CP, ATS and accorded sanction for prosecution, Ext.13, after he was satisfied that a *prima facie* case was made out against all the accused who were arrested and who were shown as absconding.

Filing of chargesheet :-

254. ACP Patil, PW-186, filed chargesheet in this court on 30/11/06 on the basis of the investigation conducted upto that date against 13 arrested accused and 15 wanted accused. At that time, he requested this court to allow them to conduct further investigation and was permitted.

Sanctions under other Acts :-

255. ACP Patil, PW-186, had submitted proposals to various authorities before filing chargesheet. He submitted proposals to the Addl. Chief Secretary (Home), Government of Maharashtra, Mantralaya, Mumbai for obtaining sanction for prosecuting the accused under the provisions of the UA(P)A and under sections

121A, 122, 123, 124A and 120B of the IPC. Awadhesh Prasad Sinha, (PW-160)(Ext.1699), Vice-Chairman of the Maharashtra Administrative Tribunal, Mumbai Bench, retired from the Indian Administrative Service on 30/06/07 as Addl. Chief Secretary, Home, Government of Maharashtra, on which post he was working from 2005 till retirement. He received the proposal sent by ACP Patil, PW-186, through the Commissioner of Police. He studied the entire proposal together with the comments of other officers and departments and after he was *prima facie* and subjectively satisfied about the applicability of the provisions of Chapter III of the UA(P)A, he accorded sanction and then forwarded the file to the minister incharge of the Home Department for consideration of rest of the proposal under the UA(P)A and the Passport Act. He issued the common sanction order Ext.1700 in the first week of January, 2007, under his signature for prosecution under the UA(P)A and the Passport Act.

256. Ruprao Natthuji Deshmukh, (PW-149)(Ext.1602), Jt. Secretary, Home Department, Mantralaya, Maharashtra Government received a proposal from the Jt. CP, ATS for according sanction to prosecute the accused in C. R. No. 5 of 2006 for the offences under sections 121A, 122, 123 and 124A of the IPC. He studied the proposal and discussed it with ACP Patil, PW-186, and after complying with the formalities and the Home Minister giving the approval, he issued the sanction order Ext.1603 under section 196 of the Cr.P.C. against 13 arrested accused and 15 wanted accused.

257. Sambhaji Sadashiv Zende, (PW-166)(Ext.1765), was the

Collector and District Magistrate, Thane from December, 2006 to September, 2008 and was the competent authority to issue consent for prosecution under section 7 of the Explosive Substances Act as a District Magistrate. He received a proposal in the beginning of March, 2007 from the ATS, Mumbai to issue consent for prosecuting the accused involved in the serial bomb blasts that had taken place in Mumbai in July, 2006. He had discussions with the Addl. District Magistrate, Tahasildar and ACP Patil, PW-186, and after being subjectively satisfied on the basis of the documents that were sent with the proposal and the discussions that he had with ACP Patil, PW-186, and his staff, that the case was fit for according consent, he accorded consent Ext.1766 on 09/03/07 for prosecuting three accused.

258. Valsa Nair Singh, (PW-151)(Ext.1633), was Collector and District Magistrate, Mumbai City from July 2006 to April 2007. She received a proposal on 02/03/07 from the ATS, Mumbai for consent order for prosecuting six accused in C. R. No. 5 of 2006 regarding the bomb blasts in seven local trains, as required under section 7 of Explosive Substances Act. She went through the proposal, had discussions with ACP Patil, PW-186, scrutinised all the documents and after satisfying herself, issued consent order Ext.1634 on 17/03/07 for prosecuting six accused under section 7 of the Explosive Substances Act.

259. Vishwas Mahipati Patil, (PW-165)(Ext.1761), was Collector of Brihanmumbai Suburban District from 15/12/06 to 21/05/10 and had the power to sanction the prosecution under section 7 of the

Explosive Substances Act. He got the proposal for grant of sanction to prosecute the accused in this case under the said act in the first week of March, 2007. He scrutinised it and he, the Deputy Collector and Tahsildar went through the proposal and documents sent with it and on perusing the documents, the proposal and after applying his mind, he was satisfied that the case was fit for granting the sanction for prosecution. Hence he granted sanction Ext.1762 on 15/03/07 for prosecuting nine persons under the Explosive Substances Act.

Further investigation :-

260. ACP Patil, PW-186, obtained gazette copies of Government of India dtd.27/09/01 declaring SIMI as an unlawful association and imposing ban on it, extending the period of ban by the order dtd. 08/02/06 and the gazettes regarding confirmation of the ban, Exts. 1592 and 2437 to 2443. He obtained photocopies of newspapers cuttings from the Central Library and SB-I, CID office, wherein the news regarding the ban on the SIMI appeared, Arts. 386 to 390 by giving a letter, office copy of which is at Ext.2444.

261. He obtained information about previous cases registered against the arrested accused at various police stations by procuring certified/true copies of the relevant documents like chargesheets, FIR, etc., Exts.1506 to 1511 in respect of A13, Exts.1512 to 1514 in respect of A4, Exts.1515 to 1517 in respect of A8, Exts.1518 to 1520 in respect of A7, Ext.1521 in respect of A1, Ext.1522 in respect of A9, Ext.1523 in respect of A10 and Ext.1524 in respect of C. R. No. 195 of 2006 registered at Antop Hill Police Station regarding death of wanted accused Abu Umed @ Abu Osama @ Mohd. Ali.

262. ACP Patil, PW-186, sent a letter on 21/11/06, office copy of which is at Ext.1681 to the Divisional Railway Manager, Western Railways, Mumbai, in order to find out the revenue losses suffered by the railway authorities, amount paid as compensation to the injured and to the next of kin of the deceased persons and other losses. The Railway Authorities sent reply Ext.1682 mentioning that the loss towards the revenue till 27/11/06 was estimated at Rs. 2,80,00,000/- and the losses on account of compensation paid were estimated Rs. 2,92,17,270/- .

263. ACP Patil, PW-186, wrote a letter on 01/11/06, office copy of which is at Ext.2445, to the Medical Superintendent of the Prince Ali Khan Hospital, Mazgaon, Mumbai-10 to furnish service details of the A2, as it was found during the course of investigation that he had gone to Pakistan for training in the month of May and June, 2004 after resigning his job in the hospital. The hospital by its reply Ext. 2446(1) dtd. 06/11/06, informed that the A2 was employed in their hospital from 16/06/03 to 30/04/04 and left the hospital on 30/04/04. It was also informed that the A2 again joined the hospital in April, 2005 and worked there till 26/10/05 after which he disappeared without giving resignation letter and during the above tenure he had full attendance on full days except the entire month of June, 2005. The hospital also sent a true photocopy of summary of resignation letter of the year 2004, Ext.2446(2).

264. A petition was filed in the Supreme Court for transferring C. R. No. 102 of 2006 registered at Basopatti Police Station, Dist. Madhubani, Bihar to this court for trial in connection with 500

grams of black coloured powder that was recovered on 20/07/06 from the house of the A1 about which the FSL had opined that it consists of Cyclonite (RDX), a high explosive and charcoal. The Supreme Court allowed the petition by its order dtd. 05/04/07, certified copies of which are at Ext.2450(1 and 2). PI Mohite was sent to Madhubani and he collected the documents of the case and the black powder. ACP Patil, PW-186, applied to the Collector of District Madhubani requesting consent to prosecute the A1 under the provisions of the Explosive Substances Act. Rahul Sachidanand Singh, (PW-26)(Ext.510), Collector and District Magistrate at Madhubani, Bihar from 29/06/06 to 15/03/08, issued sanction Ext. 511 under the Explosive Substances Act on 04/01/07 against the A1, in connection with the crime registered with Police Station Basopatti on the proposal sent by District Superintendent of Police, Basopatti for according sanction. He received a similar proposal from the ATS, Mumbai on 14/06/07 and on the basis of the documents and after having discussion with the ATS officers, he accorded the consent Ext.512 on 15/06/07 for prosecution under section 7 of the Explosive Substances Act.

265. The specimen handwritings of the A2, A9, A3, A11 and A10 that were forwarded by PI Rathod, PW-176, to the handwriting expert alongwith the maps seized from the said accused were examined by Jayant Kashiram Aher, (PW-131)(Ext.1482), State Examiner of Documents and he gave the opinion Ext.1493 alongwith the reasons Ext.1492, that the handwriting of the email ids on the maps were tallying with the specimen handwriting of the A3.

266. The bottles of chemicals seized at the instance of the A2 were deposited in the court. They were hazardous for storage. Therefore, prosecution requested this court to grant permission for disposing off the chemicals and after getting permission the chemicals were disposed off on 16/12/06.

267. ACP Patil, PW-186, alongwith his officers and staff of the ATS made all possible efforts to trace the wanted accused, they obtained standing non-bailable warrants against them and made efforts to execute them, but did not succeed. They requested this court to issue proclamations and proclamations were issued against all the 15 wanted accused and were promulgated at the places where they were likely to be located and to the District Superintendents and Commissioners of Police in India with a request to keep a lookout for them. The wanted accused whose names, addresses and passport details were available, were kept on lookout at all the sea and air check-posts of India. Red corner notices (RCN) were issued at their request by Interpol against wanted accused Rizwan Dawrey and Rahil Shaikh, as details about their names, addresses, photographs and passports were available. Wanted accused Sohail was subsequently revealed to be Sohail Abdul Gani Shaikh resident of Pune. He was found to be involved in Mulund Railway bomb blast in 2003 and a red corner notice had already been issued against him. At the request of the ATS and addendum to the RCN was issued against him. It was found that a RCN was also issued against wanted accused Azam Chima @ Babaji for his involvement in a case in Gujarat State. At the request of the ATS, an addendum to the RCN

was issued against him. Certain important evidence was required to be gathered from Iran, UAE and Saudi Arabia. Hence, prosecution requested this court to issue letter rogatorys. The court issued them and they were forwarded to the Government of India.

268. ACP Patil, PW-186, alongwith other officers and men conducted remaining investigation in the case after filing the chargesheet and filed additional documents in the court.

Charge :-

269. My learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) framed charge against A1 to A4 and A6 to A13 at Exh. 53 on 06/08/07 on considering the above allegations made by the prosecution and on hearing both sides. When the charge was being read over and explained, the A13, A2 and A4 submitted applications Exts.54, 55 and 56 respectively, making number of allegations against the presiding officer. A1 pleaded not guilty, A2 refused the charge, but stated that he has no faith on the court, A3 said that he is innocent, A4 refused to participate in legal proceedings, A6 said that he is innocent, but does not have faith on the court, A7 said that he has no faith on the court and does not want to say anything, A8 said that he does not want to participate in legal proceedings, A9, A10, A12 and A13 said that they do not have faith in the court and do not want to participate in the legal proceedings and A11 pleaded not guilty. The plea of the A1 was marked as Ext.57. As the A5 had informed the presiding officer that he does not understand Hindi, the charge was not read over and explained to him. Thereafter on the next day, i.e., on 07/08/06,

my learned predecessor passed an order in the noting that the charge was explained to the accused, however, the accused moved an application for transfer and have expressed that they do not have faith in this court, however, as per section 230 of the Cr. P. C., if the accused refuses to plea or does not plea or claim to be tried, they are asked independently and the plea is exhibited. A2 and A3 refused to mention anything when called upon to plea, hence their pleas were marked Exts.58 and 59. A4 refused to participate in the legal proceedings, when called upon to plea, hence his plea was marked as Ext.60. A5 was called upon to plea and my learned predecessor observed that throughout the period of police custody and judicial custody, he never informed the court that he does not understand Hindi and now he is informing the court in Hindi that he does not understand Hindi. She observed that the A5 is conversing in Hindi and understands Hindi, so there is no need to explain charge in Urdu. A5 refused to say anything on the plea, hence it was marked as Ext.61. A6 to A13 refused to say anything or sign the plea when called upon to plea, hence their pleas were marked as Exts.62 to 69. Thus except A1 no other accused signed their pleas.

270. The charge, Ext.53, was framed against all the accused for having committed the offences under sections 120B of the IPC, sections 3(1)(i) and (ii) of the MCOC Act read with section 120B of the IPC, section 3(2) of the MCOC Act, section 3(3) of the MCOC Act, section 19 of the UA(P)A, section 212 of the IPC, section 3(4) of the MCOC Act read with section 120B of the IPC, section 3(5) of the MCOC Act, section 302 read with section 120B of the IPC, section

307 read with section 120B of the IPC, section 121A read with section 120B of the IPC, section 122 read with section 120B of the IPC, section 123 read with section 120B of the IPC, section 124A read with section 120B of the IPC, section 201 read with section 120B of the IPC, sections 10(a) and (b) of the UA(P)A, sections 13(1) and 13(2) of the UA(P)A and sections 16(1)(a) of the UA(P)A. A separate charge was framed against the A4 for having committed the offence under section 17 and section 40(2) of the UA(P)A and against the A1, A3, A6 and A9 for the offences under sections 17 and 40(2) of the UA(P)A. All the accused were further charged for having committed an offences under sections 18 and 20 of the UA(P)A. A separate charge was framed against the A1, A3, A4, A12 and A13 for contravention of the rules made under section 5 of the Explosives Act and the Notification issued by the Central Government under section 6 of the said act punishable under section 9B of the Explosives Act, 1884. A2 was separately charged under section 5 of the Explosives Act. A1 was separately charged for having contravened the rules made under section 5 and the notification issued by the Central Government under section 6 and thereby having committed the offences under section 9B of the Explosives Act. A1 was also separately charged for the offences under section 4(b) of the Explosives Act and under section 5 of the said act. A1, A3, A4, A12 and A13 were also charged under sections 3 and 5 of the Explosive Substances Act, 1908. A7 and A13, A6 and A3 were also charged for the offences under section 6 of the Explosive Substances Act, 1908. A1, A3, A4, A12 and A13 were charged for

the offences under sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 and sections 151 and 153 of the Railways Act. A3 and A6 were also charged for the offences under sections 12(1)(c) of the Passport Act, 1967.

Defence of accused :-

271. The defence of all the accused is of total denial about their complicity in the case and they allege that they are falsely implicated in the case and most of them have taken the defence of alibi. All accused produced numerous documents during the trial when the witnesses were being examined. All gave explanations to some questions asked to them under section 313 of the Cr. P. C. and also submitted their written statements separately.

272. A1 produced documents Exts. 3142 to 3145 and 3031 to 3033 and Arts. 405 and 406 with his written statement, some obtained under the Right to Information Act, 2005 (RTI Act). It is the case of the A1 that he had sent a religious SMS to his brother-in-law Mumtaz Ahmed Chaudhary on 10/07/06, who sent the same SMS to Kamrujama on the say of his friend and after the bomb blasts in railways on 11/07/06, the ATS picked up Mumtaz Chaudhary and Kamrujama and when they asked them about the SMS, Mumtaz Chaudhary told them his name. He alleged that the ATS picked him up at 10.30 p.m. on 19/07/06, did not find anything in his house and did not take anything with them, much less any black powder from his house, that they only found mobile and driving licence and that his mobile used to be with him. He has then mentioned about he being taken to Patna on 19/07/06 in Tata Sumo and from there

by air to Mumbai, from where he was taken to Chandanchowki and given third degree torture and was shown photographs of some persons, etc. It is his specific case that on 10/07/06 he was having a goat cut from the butcher for his cousin's daughter's marriage, that the marriage was performed on that day and the persons who had participated in the marriage had talked with him, and, on 11/07/06 he had gone to Nepal to meet his relatives for four hours and the evidence for this is the entry in the Entry Register at the Nepal border, which mentions his name, motorcycle no. BR-32-A-7377 and licence number. Thereafter he made allegations about being given third degree torture by the ATS, inducement given by the police to become approver, etc. He also alleged that the ATS did not produce the CDR of his mobile no. 9934610679 to hide the truth, but he had obtained it under the RTI and it is the evidence of his innocence, as it shows that he was in Basopatti on 11/07/06. He submits that he does not know any of his co-accused and saw them first time in the custody of the ATS, that he has not given any confessional statement and has alleged that his signatures were taken on blank papers by giving third degree torture, that his video was prepared, that there was no test identification parade, that he complained about his signatures being taken forcibly to the CMM on 05/10/06 and has complained to this court on various dates about his torture. He alleged that the ATS has prepared an imaginary story to involve him and that he never went to Pakistan.

273. A2 produced documents Exts.3146 to 3251 and 2931 to 2935 and Arts. 407 to 422, 399 and 400, obtained under the RTI Act and

by other means. It is his case that he was not acquainted with any of the co-accused in the present case and had not met them personally or heard about them and he only knew the A4, who was also an accused in a 2001 SIMI case, in which he was falsely implicated. He submits that he was owning mobile no.9869320457, using it for his personal and official work, contacting his family members, friends, doctors, hospital staff and colleagues of the Sabu Siddique Hospital and carrying it with him all the time as he was the only medical registrar in the said hospital and had the responsibility of taking proper medical care of all the admitted patients in his hospital. He submits that on 8, 9 and 10/07/06, he went to the hospital at the usual time at around 11.30 a.m. to 11.45 a.m. with his mobile and attended and performed his duty till around 10.00 to 11.00 p.m. and had not visited Shivaji Nagar, Govandi, Mumbai and did not know about the house of the A6, whom he met for the first time in the Mumbai Central Prison. He submits that his attendance at the hospital on 09/07/06 can be verified by the Biometric thumb impression attendance record. He has alleged that this attendance record was deliberately not included in the chargesheet by the ATS in order to falsely implicate him, however, he is producing it. He has alleged that the ATS and the prosecution has not produced the CDR of his mobile phone in order to misguide and hide the facts from the court by replying that the prosecution does not rely on the CDR and also prohibiting the public information officer of M. T. N. L., Mumbai from sharing or furnishing the information relating to his mobile. He submits that he attended his duty in the hospital on 11/07/06 as

usual, reaching there at about 1200 hours and remaining there till late night, being busy in between 7.00 to 7.30 p.m. in the ICCU of the hospital and attending an emergency there when he was informed about the railway bomb blasts by the hospital administrator.

274. He has mentioned about his arrest on 27/09/01 by Kurla Police Station in connection with the ban on SIMI though he was not its member and not associated with it and again being falsely arrested in a different case after getting bail in that case. He alleges that because of these two cases he used to be called to the SB-I at C. S. T. for inquiry repeatedly whenever anything happened in Mumbai and after 11/07/06 was called to Kurla Police Station, inquired with and his statement was recorded on 18/07/06. He has denied knowledge of the house of the A3 at Bandra and having visited it any time and has alleged that he was illegally picked on 20/07/06 at around 7.00 to 7.30 p.m. from the hospital and taken to DCB, CID, Unit-III at Byculla, where he was beaten very ruthlessly and asked about railway blasts and he told them everything honestly. He alleges that he was then transferred to DCB, CID, Unit-II, Jacob Circle, Sat Rasta, Mumbai, where he was detained illegally upto 24/07/06, after which he was handed over to the ATS after being interrogated about his movements on 11/07/06, before and after the railway bomb blasts. He has named certain officers as having tortured him and he suffering injuries and not being provided with any medical relief and his family members being not allowed to meet him. He submits that he told the officers about visiting Iran for

ziyarat in May, 2004, after which the police officers said that he was the right candidate to be booked in the blasts case. He alleges about being produced before the then Commissioner of Police A. N. Roy, ATS chief K. P. Raghuvanshi and A. N. Roy beating him after making inquiries and he denying his involvement and A. N. Roy telling the police officers to book him in the case. His further statement contains allegations about torture by the ATS police officers and ATS police personnel after he was transferred there on 24/07/06 and he has named certain officers as having tortured him day and night pressuring him and taking his signatures on blank papers and on some papers on which something has written in Hindi and Marathi, which he was not allowed to read.

275. He has then denied having made any voluntary statement or discovery of any article at his instance that has come in the evidence and has discussed the evidence of the investigating officers and panchas and has tried to show how it is not true. He has alleged about being forcibly taken for narco analysis and the narco analysis test conducted by S. Malini, who was not qualified and who is removed from service after a criminal case was filed against her. He alleged about being handed over to the team and squad of police officer Vijay Salaskar, an encounter specialist at Kurla, where he was assaulted and brutally tortured and where he saw some persons who were examined as prosecution witnesses later on, viz., Abdul Rehman Dawrey, PW-71 and Vijay Ambekar, PW-76. He has alleged about being pressurized by ATS officers K. P. Raghuvanshi, Nawal Bajaj, S. L. Patil and P. M. Khandekar for giving confessional

statement, to co-operate with them for framing case against the co-accused and for becoming approver and was offered Rs.25 lakhs. He has then alleged about being forced to sign on blank papers by DCP Sanjay Mohite at the behest of ATS police officers P. M. Khandekar and other police, who were continuously with him during that period and submits that he had never given any voluntary confessional statement. He has discussed the evidence of the witnesses connected with the recording of his confessional statement as examined by the prosecution to show that the said evidence is false. He submits about stating before the Magistrate S. S. Shirke that he has not given any voluntary confession to the DCP and he was forced to sign on it and he retracted it before the magistrate. He retracted the alleged confession before the court on 09/10/06 also.

276. He has stated about being taken out from the high security yard or barrack alongwith A4 and A7 at 12.35 p.m. on 07/11/06 and being sent back after five minutes with the co-accused to the cell and no test identification parade being held, but the ATS officers who present at the gate with some persons pointing to him. He has then made allegations against Swati Sathe, the then Superintendent of Mumbai Central Prison and has thereafter discussed in detail all the documents that he has produced with the written statement.

277. A3 produced documents Exts. 3252 to 3266, Ext. 3053 and Arts. 423 to 426 alongwith his written statement. He submits that he is educated in Urdu and Arabi, he does not know Hindi or Marathi and though English was a subject, he just passed it with minimum marks, but does not know how to speak it, nor does he understand

it. He submits that he did not know whatever the ATS police wrote in English, Hindi and Marathi at the time of his inquiry and he was not told as to what was written, but every time he was beaten and given third degree torture and forced to sign on written and blank papers. He was arrested by the Crime Branch Unit - II on 19/07/06 near his house by stopping his bike and straight away taken to their office at Sat Rasta, where he was illegally detained upto 27/07/06 alongwith his father, cousin and his school friend. He alleges that he was tortured there, handed over to the ATS on 27/07/06 alongwith A9, his brother, who was arrested on 22/07/06 from Bangalore and taken to Kalachowki office. He has alleged about being mercilessly tortured by the ATS during the police custody by keeping him awoken during the night and keeping him naked for 24 hours, abusing his parents and religion and behaving like animals and with new methods of third degree torture. During this period he was being inquired with and the ATS officers were writing the story as per their wish and taking his signature forcefully, which he used to sign to save himself from the torture and out of fear. Major part of his written statement consist of allegations about torture, false implication, false preparation of confessional statement, concocting false story by the ATS officers. He has also discussed the evidence of certain witnesses like Mohd. Alam, PW-59, Rajesh Satpute, PW-77, Devendra Patil, PW-62, Mushtaq Ahmed, PW-46, Abdul Dawrey, PW-71, Bilal Shaikh, PW-66, Mohsin Khan, PW-67 and has tried to show how they are false and got up witnesses. In respect of his Pakistan visit in 2001, he submits that he had gone there to meet his

cousin Zohra Abdul Rehman and having gone to Pakistan only at that time. He has alleged that Arvind Kumar Singh, PW-40, has given false evidence as per the instructions of the ATS and has alleged that the statement written by him in English earlier was again falsely got written from him. He has denied having purchased any car and has alleged that the ATS has fabricated false evidence and brought up false witnesses about it.

278. A4 filed documents Exts. 3267 to 3300, Exts. 3049, 3052, 3051, 3062 to 3067, 3083, 3084, 3074 to 3076, 3091, 3069, 3088, 3056, 3057, 3087, 3086, 3059, 3058, 3071 and Arts. 427 to 431 alongwith his written statement. It is his case in the written statement that he was never a member of SIMI, never connected with SIMI in any way, but falsely arrested on 27/09/01 twice, being called by Kurla and Mira Road Police Stations and Mumbai Crime Branch when any incident happened in any part of the country, starting business of D. T. P. by name Graphic Point from his house and business of book publishing by name Shahadah Publishing House from his house in Mira Road, using mobile no.9867139179, visiting Patna in Bihar, Allahabad, Kanpur, Lucknow, Aligarh, Deoband in U. P., Delhi, Jaipur and Jodhpur in Rajasthan, Bhopal, Indore and Ujjain in M.P. and Ahmedabad and Surat in Gujarat to take the orders of books published by him from various books stores since the last week of December, 2005 upto 26/03/06 when he reached Mumbai. He denied knowing any co-accused or visiting any place at Bandra in February, 2006 and his specific case is that on 08/07/06, as usual he was in Mira Road doing the work of his

business in his house, on 09/07/06 he had gone to Mumbra for his business purpose, on 10/07/06 he was in Mira Road at his house, doing the work of his business and on 11/07/06 he did his business work at his house on computer, visited cyber cafe for internet surfing, returned to his house at 1600 hours and offered namaj at 1745 hours. When he was going to offer Maghrib namaj, he heard from the public that there is bomb blast between Mira Road and Bhayandar. He submits that he never went to Shivaji Nagar, Govandi on 8, 9 and 10/07/06. He does not know the house of the A6 and does not know the A6, but had met him and A3 in the lock-up. He submits that he was called on 12/07/06 and 13/07/06 at Mira Road Police Station, inquired about his whereabouts and released in the evening, that officers of DCB, CID, Dahisar Unit came to his house on 14/07/06 and took him to their office, inquired with him and released him on the same day. He alleges that on 24/07/06 ATS officer Sunil Mane came to his house and told him to attend ATS office at Nagpada in the afternoon, that he went there at about 1400 hours and never returned back to his house till date. He has alleged that ATS officers tortured him, took all his belongings including mobile phone, cash of Rs.25,000/- and all documents and distributed the cash amongst themselves. He has then made datewise allegations about torture by the ATS officers, threatening by ATS officers not to complain against the police, being arrested in bomb blast case on 12/08/06, being taken to Kurla to the office of Anti Robbery Squad for special torture, seeing A6 there and A3 and A9's father brought there and made naked, etc. Major portion of his

written statement consists of allegations of torture and threats and he has denied having given his willingness for narco test or for confessional statement and the ATS officers threatening him not to complain about torture whenever he was produced before the different courts and other authorities. He has alleged that he was taken out from his barrack for five minutes on 07/11/06 alongwith the A2 and A7 and three witnesses identifying him on being pointed out by the ATS officers, but Vishal Parmar, PW-74 and Amar Khan, PW-75 not identifying him and he complaining about it to the court. He has made allegations about being beaten on 28/06/08 and transferred to Kolhapur prison after suffering injuries like fracture of right wrist, bleeding in thigh and severe injuries on the back and stomach. He has alleged that he was forced to sign on printed papers on 06/10/06 and he having retracted his confessional statement before this court on 07/10/06. He has then described the applications that he made under the RTI to obtain information and on the basis of the information that he obtained, he has discussed the evidence given by Vishal Parmar, PW-74, PI Khanvilkar, PW-168, SP Karale, PW-104, PI Alaknure, PW-153, Amar Khan, PW-75, PC Ambekar, PW-76, Mohd. Alam, PW-59, Dr. Singal, PW-171, Anami Roy, PW-185 and Pritam Mhatre, PW-58, to show that their evidence is false and got up. He has alleged that PI Mohite and other ATS officers showed him to PW-59, PW-74, PW-75, PW-80, PW-104 and PW-106 in the court premises, just before their evidence. He has alleged that important witnesses like Ramanand Marutirao Machewar and Kiran Ramdas Kini have not been examined by the

prosecution. He has alleged that the evidence that proves his innocence is suppressed and destroyed by the ATS officers and they have also falsely fabricated the evidence against him through their regular witnesses.

279. A5 in his written statement submits that during the year 2003, he came across Mohd. Shakil, PW-70, and started the business of optical glasses manufacturing by taking money from his brothers, but the said Mohd. Shakil, PW-70, did not deposit the amount in a pigmy account in the bank, though he had promised repayment of the money that he had taken from his brothers. He has alleged that after three years he requested Mohd. Shakil, PW-70, to sign an application to withdraw the money deposited in the said account, amounting to Rs.15,000/- and after several arguments he reluctantly signed the application keeping a grudge on him. He submits that he was arrested on 28/09/06 and falsely implicated in this case and has alleged that the story told by Mohd. Shakil, PW-70 about visiting the border of Bongaon in the month of May, 2006 to receive some Pakistani nationals, is fabricated and he denies it. He submits that he can furnish his attendance register as well as the business diary that was maintained daily. To prove his claim that he was physically in Kolkata, he can provide the details of money deposited daily in Sahara Bank personally. He alleges that the ATS has fabricated the story of his presence in Mumbai on 10/07/06 submitting that as an ardent fan of Football and on the invitation of his brother-in-law Noor Ahmed, a sales tax officer, he had gone to his house on 09/07/06 to watch the late night match and had already sent his

wife and mother there and joined them at about 10.00 p.m. after closing his shop. He submits that he remembers it very well as Zainuddin Zaidan, one of the French players had injured an Italian player by hitting him with his head, because of which he was shown the red card. He submits that he spent the night at his brother-in-law's house, returned on the next day, i.e., on 10/07/06 to his shop to repair his shutter as it was Monday, a weekly off and the right time to get the repair work done. His shop neighbour visited his shop on that day and talked with him and his brother's daughter was engaged on that day. He has given the detailed timings of getting up on 11/07/06, leaving house for the shop, being at the shop, coming back to the house for lunch, returning back to the shop and being there upto 2200 hours and there being a commotion at about 1900 or 2000 hours in the market about the railway blasts in the Mumbai. He submits that he can produce the daily business diary of his shop to prove that he was not in Mumbai at the time of the blasts or before and his shop neighbours, his employees, brothers, traders and persons residing in his neighbourhood can be called as witnesses by the court to prove it. He has given the names of three reputed business persons from his locality. He submits that from 11/07/06 to 28/09/06, he continued the same way of life as always, had opened an ICICI insurance policy on 11/07/06 or 12/07/06 and this can be verified by calling the insurance agent, who is the son of the owner of shop Golden Footwear, which is adjacent.

280. He has thereafter made allegations about being forcefully picked up from his shop on 28/09/06 and being tortured. He has

denied having made any confessional statement or expressing his desire to give it. He has alleged that the ATS attempted to turn him and the other accused as approver with the help of Swati Sathe, Superintendent of Mumbai Central Prison. He has mentioned about being beaten by the jail officers on 28/06/08 and sent to various other jails in Maharashtra. He submits that he was never in contact with any of his co-accused before his arrest as he never knew them personally.

281. A6 filed documents Exts. 3301 to 3306 and Art. 432 alongwith his written statement. His case is that he was doing the business of selling Tilisma moti in medical shops in Mumbai in 2006 and on 8 and 10/07/06 he was out of his house from 8.00 or 9.00 a.m. in the morning upto 9.00 – 9.30 p.m. in the night. He and his family and his brothers' families staying on the first floor, were at their house on 09/07/06, which was a Sunday. He submits that on 8, 9 and 10/07/06 his and his two brothers' families were in the house and had not gone anywhere, that bombs were not prepared at his house, that no person for that purpose had come to his house and this allegation is falsely prepared by ATS Chief Raghuvanshi, which is clear from the statements of his elder brother Hajarat Ali and wife Saidunissa recorded by ATS officer Vijay Kamble on 28/10/06, in which they stated that they were in the house on these three days with their families continuously. He submits that he was using mobile no. 9224253454 continuously, that on 11/07/06 he had attended the funeral of his friend's brother upto 12.00 in the afternoon and from 12.00 to 6.30 p.m. in the evening, he Dr. Salman

Farsi, Maulana Hussain and a boy by name Ravi and a woman, whose husband was sick, had gone to K. E. M. Hospital to admit him in that hospital and from there he returned home at 8.30 p.m. and came to know from the news on the T. V. about the bomb blasts. He submits that he had gone to Mumbra on 12/07/06 to sell Tilisma Moti and when he returned home in the evening a hawaldar came and told him that ATS officer Shailesh Gaikwad had called him to Chembur. He went there and was made to sit for three hours for inquiry and then allowed to go. He has then described in detail and datewise how he was called repeatedly from time to time, that the constables and ATS officers gave their mobile numbers to him, about seeing A4, A10 and A3 for the first time in the ATS office at Kurla, about seeing Abdul Dawrey, PW-71 and one more person, about his mobile being used by ATS officers Shailesh Gaikwad, Alaknure, etc., he being kept at Kurla ATS office upto 09/09/06, ATS officers telling him that they know that he is innocent and he is not involved in the railway blast, but they are in search of a person by name Mohd. Naeem Tailor residing on road no.7 and are not finding him and till he is found they would be keeping him there, about seeing A7 for the first time on 25/09/06 in custody and being told on 29/09/06 that he is arrested in this case. He has then described the torture by the ATS officers on him as well as his brother, forcing him to undergo narco test, continuous beating and senior officers of the ATS forcing him to learn a false story about Malegaon blast and Mumbai railway blast and to tell it before their senior officers and getting his signatures on alleged confessions forcibly. He has alleged

that ATS officers took him before his aunt and told her to say that his family was in her house on 8th, 9th and 10th July. He has alleged that Commissioner A. N. Roy and Raghuvanshi came to Kalachowki office on 24/10/06 and told him to sign on his confessional statement and to become an approver and threatened that he would be involved in the Malegaon blast. He alleged that he was forced to sign on already written papers before the DCP and the story was prepared by ATS chief Raghuvanshi. He stated about making complaints in the court and being arrested in the Malegaon blast case on 14/11/06 and again being forced to make a confession before DCP Ashok Dumare. He submits that nobody identified him on 07/11/06 and he had not seen Amar Khan, PW-75 in the prison on that day. He alleges that he is falsely implicated in this case and in the Malegaon blast case of 2006, that he does not know the remaining 12 accused in this case and had seen some of them for the first time in the ATS custody and some in the prison, that the witnesses have deposed falsely against him on the say of the ATS on being tutored by the ATS, that he was illegally detained in the office of Vijay Salaskar at Kurla from 31/07/06 to 09/09/06 and at Nagpada office by ATS officer Dinesh Ahir from 09/09/06 to 29/09/06. He submits that nothing was seized from his house on 29/09/06, that his passport was lost in the floods of 26/07/05, that after he complained in the court against the ATS, his family members have been repeatedly harassed by the ATS officers till date. He has given the numbers of miscellaneous applications and exhibits by which he has complained.

282. His specific case is that the ATS and crime branch people have involved him in a false case because 5-6 years prior to the blasts there used to be illegal gambling dens and a video theater that used to show blue films on road no.7 in Shivaji Nagar area and local police of Shivaji Nagar and officers of Crime Branch, Ghatkopar used to get lakhs of rupees every month from them. Local public and local leaders closed down the gambling den and video theater and he was also amongst them, because of which the hafta of the police stopped and officers of local police and Ghatkopar Crime Branch had called him and said that he is becoming a big leader and said that they would involve him in a big case and his leadership will then go away. He has alleged that since that day, they always called him whenever any incident happened in Mumbai and made him sit in the police station for 4-5 hours. The ATS and Crime Branch got an opportunity after the blasts in July, 2006 and involved him in the cases. He submits that he was never a member of SIMI, had never attended any program of SIMI, does not know any member of SIMI and had gone to Muscat in 2003 for labour work, but returned after 1½ – 2 months. He submits that he never went to Dubai or Pakistan and has never given confessional statement. He produced photocopy of a page from his diary in which he had written the name and phone numbers of the police and ATS officers.

283. A7 produced documents Exts. 3307 to 3381, 3047, 3080, 3081, 3018, 3019, 3072 and Arts. 401, 433 to 445. It is his case that he stays with his mother, wife, two brothers and their families at his residence at Mira Road (E), Thane and has not rented or purchased

any room or flat or house anywhere in Mira Road, Thane or anywhere else, that he was using his mobile phone no.9224446830, which he used to keep at his residence to contact his family from mobile no.9867244681, which he was personally using, as it was a dealer card or easy recharge card through which he used to refill the talktime of Airtel mobile phones of customers and it used to be with him all the time wherever he went. He submits that he has done three years diploma in Industrial Electronics Engineering and in July, 2006 was conducting classes of computer hardware and maintenance and mobile phone repairing at Hitech Computers at Malwani, Malad(W), Mumbai daily from 8.00 a.m. to 10.00 a.m. except Sunday and was having rented shop at Jogeshwari(W), where he used to repair mobile phones from 11.00 a.m. to 8.00 p.m. daily except Sundays, that in July, 2006 he was working at both the places and had attended his class on 6, 7, 8 and 10/07/06 at Malad and his shop at Jogeshwari and had not visited any place at Shivaji Nagar, Govandi on these days. He submits that on 09/07/06 he was at his residence as it was Sunday, weekly holiday, that one of his sisters had come with her husband Mehmood Qureshi, PW-65, and children to meet them and he was with them since morning to evening 10.00 p.m. and had not left the house at any time. He submits that he had never visited the house of the A6 at Shivaji Nagar, Govandi since his birth till date, that he is not acquainted with any of the accused of this case, except the A8, his brother-in-law and had seen the other accused either in the police custody or in the judicial custody. He submits that on 11/07/06 also he visited his

class and then went to the shop at Jogeshwari, that Bilal Kadiwala, DW-8, is the owner of this shop and he used to work there on rental basis, on that day he worked there till evening and when he was repairing a phone at 1830 hours, he heard the sound of an explosion, at that time, Bilal Kadiwala, DW-8, was also with him and people coming from the station side told them that a blast had occurred in the local train, that Bilal Kadiwala, DW-8, asked him to remain at the shop and rushed to the blast site to help victims, that he returned after half an hour or so and told him that it was a dangerous blast and he had helped the victims. He states that he returned to his home *via* Western Express Highway by different vehicles arranged by people and government as train service was completely stopped and reached at about 11.00 p.m. He submits that he was falsely arrested by Andheri Police Station on 14/03/01 and again implicated on 27/09/01 by the same police station after the ban was imposed on SIMI, therefore, when the bomb blasts occurred in the local trains on 11/07/06, he had made up his mind that the police will call him for inquiries as there were two cases pending against him, even then he did not disturb his routine work and continuously attended his place of work at Malad and Jogeshwari daily. He alleges that he was picked up on 17/07/06 by the officers of Ghatkopar Crime Branch from his Jogeshwari shop at about 4.00 or 4.30 p.m. and since then was detained upto 18/07/06, that he was again called on 21/07/06 and allowed to go home. He submits that he had gone to his native place at Bijnour, U. P. on 25/07/06 to reach his aunt Habiba Khatoon to her home, that

his elder brother told on phone that ATS officers had called him at Nagpada office for inquiries and had forced him to call him, i.e., the A7, from U. P. for inquiry and about which he had sent telegram also. He submits that he immediately came back on 15/08/06, that he contacted ATS officer Shailesh Gaikwad on 18/08/06, who asked him to reach Nagpada ATS office, where he went with his elder brother, Dr. Javed and after meeting, was detained and inquired with and was allowed to go home on 22/08/06 after the ATS officers threatened him not to make any complaint anywhere. He was asked to attend ATS Nagpada office daily. Major portion of his written statement consists of the dates on which he attended the ATS Nagpada office upto 24/09/06 and then being illegally detained from 25/09/06 to 29/09/06, during which period he was tortured by ATS officers. He had also seen the co-accused in this case being tortured and beaten and has alleged that he was falsely shown as arrested on 29/09/06 from Malad. He has described the documents that he obtained under the RTI Act, which according to him falsify the evidence given by the prosecution witnesses. He has made allegations against the ATS chief K. P. Raghuvanshi and other ATS officers about torture and beating and they asking him to become approver. He has discussed the evidence of the witnesses that the prosecution examined against him and on the basis of the documents obtained by him under the RTI Act has tried to show that the witnesses are regular/habitual and tutored witnesses of the police, that some electronic components and material are foisted on him, that he never made a voluntary statement of disclosure of any

article or expressed his desire to make any voluntary confessional statement and has alleged that he was forced to sign on written papers before the DCP. He has alleged that instead of producing him before the CMM Shri S. S. Shirke, API Nana Shinde, PW-103, produced him before the Addl. CMM Shri S. Y. Shisode at his residence at Kurla and has alleged that Shri S. Y. Shisode was neither the CMM nor the incharge CMM on 25/10/06 and this fact is clear from the documents obtained by him under the RTI Act. He has alleged that the CMM was also managed by the ATS, because he did not open the envelopes containing their confessional statements though he had done so in respect of confessional statements of accused in MCOC Special Case No. 20 of 2006 and 23 of 2006 and even of the A1 in this case. He has alleged that the Addl. CMM Shri S. Y. Shisode, the CMM Shri S. S. Shirke, SP Mohite, PW-102, API Shinde, PW-103, ACP Khandekar, PW-174, ACP Tambe, PW-177 and ACP Patil, PW-186 have collectively violated section 18 of the MCOC Act, Art.20 of the Constitution of India and various sections of the Cr. P. C. and Shri S. Y. Shisode was not authorised/designated to verify the confessions under section 18(4) on 25/10/06. He has then mentioned about his complaints about torture before this court, medical examination at J. J. Hospital, where they found 11 injury marks, which is contradictory to the medical reports of those dates produced by the ATS. The entire written statement consists of descriptions of alleged events that happened on certain dates in respect of torture in the police custody as well as in the prison and he has described the incident of 28/06/08 when all of them were

assaulted under a false alarm by Swati Sathe, Superintendent of Mumbai Central Prison and the jail staff. He has also made allegations about ATS officers continuously tutoring witnesses during the trial, pointing them out to the witnesses and they being shown to the witnesses in the police custody. The written statement also consists of discussions about the evidence given by the prosecution and as to how it is false and got up and the alleged confession of the accused in MCOC Special Case No.4 of 2009 about the Indian Mujaheedin having done the blasts in this case. He has made allegations against the ATS and the prosecution about deliberately concealing the identities of the witnesses to prevent them and their lawyers from preparing their defence and they harassing and torturing family members, colleagues, relatives of the accused to extract false statements. Finally, he submits that he is totally innocent and has alleged that he is falsely implicated in this case, that the only reason of he being arrested is that he is easily available to the ATS, he was attending their office regularly and fully co-operating with them and that two false cases were registered against him in the past.

284. A8 produced the documents Exts. 3382 to 3397 and Arts. 445 and 446 obtained under the RTI Act alongwith his written statement. It is his case in the written statement that except the A7, who is his brother-in-law, he has never heard of the other accused and had never met them personally, but had seen some of them when he was illegally detained by the ATS in August and September, 2006. His address is of Ghatkopar(W), Mumbai and since 1999 he

has a permanent job as a teacher in a school at Do Taki, Maulana Shaukat Ali Road, Mumbai. He has alleged that the story by the ATS police that after the blasts on 11/07/06 some Pakistani persons came to his house at Mumbra is concocted and false. He also alleges that the ATS has concocted a false story that he said to his brother-in-law Mehmood Qureshi, PW-65, that he should give the key of his flat in Mumbra to a person by name Ehtesham, that on his say Mehmood Qureshi, PW-65, gave a key of his Mumbra flat twice in May, 2006 to Ehtesham and the said person had a meeting with some persons in that flat. He alleges that Parksit Police arrested him in 2001 in a false case showing him to be a member of SIMI. He submits that he never was a member of SIMI and because of his involvement in the false case of 2001 he is being arrested till date, because whenever there is any blast in the country anywhere, he is called to the police station for inquiry. He submits that after the blasts on 11/07/06, he was called to different police stations, his statements were recorded, he was mentally and physically tortured and was illegally detained for many days in the ATS Police Station. He has then given the datewise details about being called on 12/07/06 by Parksit Police Station, about being inquired with his connection and whereabouts on 11/07/06 and about the bomb blasts on that day and then being repeatedly called on 17/07/06 and 14/08/06, being picked up in the night of 17 and 18/08/06, being beaten repeatedly and being illegally detained upto 22/08/06 and being tortured by ATS officers as well as crime branch officers. He stated about attending Kalachowki office as directed by the ATS

officers from 22/08/06 to 13/09/06 and being picked up from his school on 13/09/06 and being tortured by ATS officers like Raghuvanshi and others and being given the option of becoming an accused or approver. He has stated about seeing A1 and A4 being taken in the torture room and he being illegally detained again at the ATS Kalachowki office from 13/09/06 to 26/09/06. He submits that on 27/09/06 he had gone for attendance, at that time PI Tajane and ACP Dhavale told him to bring his passport and the leave and licence agreement of the Mumbra flat. He took the said documents on 28/09/06 and was allowed to go at 6.00 p.m. He saw his brother-in-law Mehmood Qureshi, PW-65, and his father there. He stated about being called to the ATS Kalachowki Police Station on 29/09/06 urgently in the morning and when he started going to the police station, he being informed to stand near Shreyas Cinema in Ghatkopar and from there being taken to ATS, Bhoiwada, where he was arrested. He has alleged that because of the threats given by the ATS officers for not complaining to the court about ill-treatment and illegal detention, because of which he did not do so before the court when he was produced. Hence he has alleged that the ATS cooked up the false story about PI Khanvilkar catching him at Ghatkopar(E) and taking him to Bhoiwada and arresting him there. He has discussed the documents that he obtained under the RTI Act and produced them with the written statement *vis-a-vis* the arrest panchanama and the evidence of the prosecution witnesses. He alleges that in the entire police custody period he was mentally and physically tortured, shown to many witnesses and forced to undergo

narco test on 16/10/06 at Bangalore. He has alleged that during the period of judicial custody the ATS officer Vijay Salaskar had come in the prison and had allured the A6 to become approver and during that period other ATS officers also allured the A12 to become approver and promised to give lacs of rupees, flats and security. He alleges that there was no test identification parade on 08/11/06. Most of his subsequent written statement consists of the details of dates of appearance in the court, his complaints to the courts about ill-treatment and torture, the discussion about the documents that he had obtained under the RTI Act and from inmates in the prison to show that one witness of his arrest panchanama is a regular panch witness. He has alleged that false station diary entries were prepared to show that he was allowed to go home in the evening on some days, but the ATS has been caught as they forgot to prepare the station diary entries of 15th and 16/09/06. He has referred to the confessional statement of some accused in MCOC Special Case No. 4 of 2009 submitting that they have accepted the responsibility of the blasts on 11/07/06 and has also referred to some cases at Hyderabad, Delhi, Dakshin Karnataka, etc. He submits that he is innocent, has no concern with this case and has not taken any type of part in the conspiracy in this case.

285. A9 produced two photocopies of three witness statements dtd. 09/11/06 in this case, Exts. 3398 to 3400, attested as true copies by Sr. PI, ATS, Mumbai, alongwith his written statement. It is his case in the written statement that he is being victimised alongwith his family in this case though he is innocent, that prior to his arrest he

was earning his livelihood through gainful means as he was working with a reputed multi-national company and he and his two brothers, who are the total support of their old parents, have been shown as accused and absconder. He submits that he was not acquainted with any of the accused in the present case and had not met them personally nor he ever heard about them prior to his arrest. His specific case is that he was working in an IT firm by name Spyder System at Viman Nagar, Pune as a Oracle APPS DBA from 04/07/05 till 26/06/06, that thereafter he got selected for serving in Oracle Corporation at Bangalore and went to Mumbai on 26/06/06 and from there to Bangalore by air on 27/06/06 and started working from 28/06/06. On 11/07/06 also he attended his work and was working upto 20/07/06 and again had gone for work on 22/07/06, when he was picked up by two officers from Mumbai Crime Branch who took him to Mumbai by air. He submits that he was inquired about his visit to Iran and he told them that he had visited Iran for spiritual purposes and returned back to Mumbai and had not gone to Pakistan. He submits that after being detained upto 27/07/06 he was arrested on that day and during this period was given third degree torture and pressurised and forced to admit that he was a part of the Mumbai train blasts. He submits that during his entire police custody of about 85 days, he was subjected to all kinds of mental and physical torture and has alleged that the panchanamas shown in the chargesheet are all false, that he never made any discovery statement, that he had never instructed witnesses, Bilal, PW-66, and Mohsin, PW-67, to collect money on his behalf, that he

has never given any voluntary confessional statement to any police officer and the DCP and has alleged that his signatures on such statements were taken forcefully. He has alleged that he was approached by the ATS officers who tried to convince him to become their approver and in return they promised that he would be given special facilities and they will go soft on him in this case. He has alleged that the jail officers tried to coax him to become an approver and when he refused, they harassed and threatened him.

286. The A10 stated in his written statement that professionally he is a spiritual healer, that before his arrest in this case he was not acquainted with any of the accused nor he had met them or heard about them through anybody, that he was never a member of SIMI and never acquainted with any of its members and had never attended any of its program. He alleges that he was picked up and arrested illegally on 21/07/06 by DCB CID, Unit II of the Crime Branch, that he had gone to Iran for ziyarat in November, 2002 and has refuted the allegations of the prosecution that he had gone to Pakistan from Iran. He submits that he never came to Bombay in the months of January to March, 2006, but may have come once or twice in April-May till July, 2006, to visit his relatives and patients in Andheri, but he never visited the A3's flat at Perry Cross Road, Bandra. He alleges that he was arrested and sent to Yerwada jail for 15 days in the months of August and September, 2003 under preventive detention though there was no case and complaint against him. He submits that he was at his house on 11/07/06 and has denied the allegations of the prosecution that he had taken part

in the conspiracy of the bomb blasts alongwith his co-accused and knew about their occurrence in advance. He has then made allegations about the illegal detention and torture datewise, the documents collected by him under the RTI Act, his signatures being taken on blank pages as well as on some written documents and he agreeing and taking the responsibility of the offence, because of inhuman treatment and physical and mental third degree torture. He denies having given any voluntary confessional statement to any one including the DCP. He submits that one ATS officer by name Mandke visited him in the prison and told him to retract his retracted statement in the court and become approver, for which he would be getting Rs.25/- lakhs and he was shown an advance payment of Rs. 2/- lakhs and also offered a flat of one BHK anywhere in India as per his wish. This offer was again repeated on 09/11/06 by ATS officer Sachin Kadam and also by the then jail superintendent. He submits that he does not have anything to do with the bomb blasts even remotely and has alleged that PW-59 is lying.

287. A11 produced documents Ext. 3401 to 3415 and Arts. 447 to 449 obtained by him under the RTI Act alongwith his written statement. He submits that before his arrest he was not acquainted with any of the accused, that neither he ever met them personally nor heard about them, that he was working at his father's stall at Bombay Central and on 11/07/06 he was so working routinely at the said stall. He alleges that Crime Branch, Unit II police picked him up on 21/07/06 under the guise of making inquiry, illegally detained him till 25/07/06, interacted with him about his

movements on 11/07/06 and tortured him by hi-tech methods physically and mentally. He alleges that during the police custody period with the ATS, he was tortured and forced to sign on blank and written documents and his video was also recorded making a statement, he was approached by ATS officer Sachin Kadam in jail custody to become an approver and implicate others with the promise of money as well as early release. He submits that he was never taken to any place for recovery nor did he make any disclosure/discovery statement nor he led the police party to any place and produced any articles. He has alleged that the ATS officers prepared false panchanamas as well as statements of witnesses in connivance with those panchas and witnesses. He alleges that he was tortured by PI Salaskar and his staff, that on 08/11/06 he was taken out from his high security cell for 15 minutes and there was no test identification parade. He has discussed some documents that he obtained under the RTI Act.

288. A12 produced two CDs Arts. 450 and 451 alongwith his written statement. He submits in his written statement that in July, 2006 he was residing in Hyderabad, that before his arrest he was not acquainted with any of the accused, had never met them or heard about them, that on 8, 9 and 10/07/06 he was at his place in Hyderabad, had not visited any place at Shivaji Nagar and does not know the address of the house of A6, that on 11/07/06 he was at his house. He submits that he was asked to contact PI Sunil Deshmukh, who on being contacted, asked him his residential and office address, mobile, etc., and alleged that on 29/09/06 when he again

got a similar message to contact Sunil Deshmukh and he contacted him and when he was waiting near the STD booth, the local police came and arrested him and brought him to Mumbai on the next day and he was arrested under the MCOC Act. He submits that he was never related to SIMI either directly or indirectly and had not gone for any training, he was pressurised and beaten with sticks, belts and kicks and punches to admit what they were saying, that he was forced to write a consent letter to the court for conducting the narco test, that on 14/10/06 his narco test was done at Bangalore, that after being brought back to Mumbai, he was assaulted and beaten and tortured by even senior ATS officers. He alleged that he was forced to sign on some papers on 22/10/06 and 25/10/06. He alleges that during police custody Commissioner of Police A. N. Roy and Jt. CP Raghuvanshi tortured him in the Nagpada office asking him to do what they say and promising him of release, that they also said that they will make him an approver in this case and he would be provided protection, rewarded in cash as per his needs, a business would be set-up for him for settling down. He submits that he was never taken to any place nor did he make any discovery statement and had not given any confessional statement. He has alleged that even in the prison, ATS officer Raghuvanshi met him and reminded him about the offer of monetary benefits, rehabilitation and early release if he becomes an approver. Subsequently also similar offer was reiterated on 06/11/06. He has alleged about he being threatened to utter confessing sentences in front of handycam.

289. A13 filed documents Exts. 3416 to 3445 and Arts. 452 (1 to 6) obtained by him under the RTI Act alongwith his written statement. He submits in his written statement that he has completed Civil Engineering Diploma and when he was arrested he was working as Billing Engineer on the Kandivali site of the Lokhandwala Construction Company. He submits that he had no concern with the SIMI organisation, was never its member, but MIDC Police, Jalgaon had filed a false case against him in 1999 in which he is on bail. He used to stay in his house before the bomb blasts on 11/07/06 with his family, has no concern with the bomb blasts, does not know any of the accused, has never met any accused in this case and has no concern with any of them. On 7, 8 and 10/07/06 he was working at his office from 9.00 a.m. to 6.20 p.m., using his mobile continuously, that on 11/07/06 also he had reached his office at 0905 hours and left it at 1825 hours. His case is that he was arrested at Belgaon by the ATS, Mumbai on 03/10/06 where he had gone with his family to his friend's house. He alleges that he was then taken to Chandanchowki and ATS officers gave him third degree torture and though they cross-checked and found his claim of working in his office on 11/07/06 to be true, did not accept it and told him to tell the story that they were telling and to confess and threatened that if he does not confess they would implicate him in this case and also in the Malegaon case. He submits that he did not give any disclosure statement to the ATS officers, did not take them anywhere and did not take out any articles, but was forced to sign on false panchanamas by torturing him. He alleges that he was required to

undergo narco test illegally at Chandanchowki on 10/10/06 and 24/10/06 and at Bangalore on 20/10/06 and 28/10/06, that some persons were brought to Bhoiwada lock-up on 03/10/06 and he was shown to them and these were the false and got up witnesses, i.e., Mohd. Alam, PW-59, Kishore Shah, PW-60, and Santosh Singh, PW-63. He submits that he never went to the flat of the A3 at Bandra, had never met the said accused or PW-59 there and never attended any meeting and not participated in any anti-national activity, had not met or contacted any Pakistani persons, had not seen any articles for preparing bomb, had not collected any such articles and given it to the A6 and kept the remaining articles at his flat in Mira Road. He alleges that this is a false story cooked up by police in order to reduce public pressure and to involve them falsely. He alleges that he was given third degree torture on the night of 29/10/06 and produced before DCP Ranade to sign on a ready-made false confession, but he refused and then he was again tortured more and ACP Patil told him that he would be falsely involved in the Malegaon blast case also and was accordingly involved in that case. He has then described the documents Ext.2088 to 2094 obtained from Lokhandwala Construction Company, Kandivali(E) site office, which includes the attendance muster record and pay slip record, which shows that he was present throughout in the month of June at his work, which falsifies Amir Khan, PW-49's evidence about seeing him in Poonam Park at Mira Road in the month of June. These documents also falsify the evidence of PW-60's that he had seen him at Churchgate Railway

Station on 11/07/06 at 5.30 p.m. and of Santosh Singh, PW-63, that he had taken him in his taxi on that day from Carter Road, Bandra to Churchgate subway. He has then discussed the documents that he had obtained under the RTI Act *vis-a-vis* the evidence given by the witnesses concerning him. He alleges that test identification parade was not held on 07/11/06 and he and his co-accused were taken out only for twenty minutes and no witnesses have identified him. He has alleged that though there were no two chargesheets against him, S. K. Jaiswal has given prior approval without application of mind and without reading the documents and same thing was done by him in MCOC Special Case No. 23 of 2006 also. He has alleged that police have used their regular witnesses to falsely involve them and the ATS officers alongwith superintendent Swati Sathe tried to allure them to become an approver and on their refusal had beaten them on 28/06/08.

The trial :-

290. To prove its case, the prosecution examined 192 witnesses and is relying on their oral evidence as well as the documentary evidence in the form of spot panchanamas, discovery statements, seizure statements, memorandums of test identification parade, FSL reports, certified copies of chargesheets and other documents of cases against the accused and the confessional statements of eleven accused. It examined few injured persons in each crime as sample cases, though their evidence is of a formal nature. Hitesh Maganlal Gandecha @ Raju Gandecha, (PW-89)(Ext.893), was injured in the Matunga blast for which C. R. No. 77 of 2006 was registered.

Kamlesh Jhabu Rajbhar, (PW-25)(Ext.505) and Lalji Ramakant Pande, (PW-85)(Ext.883), were examined in connection with the blast at Mahim for which C. R. No. 78 of 2006 was registered at Mumbai Central Railway Police Station. Mahesh Manharlal Trivedi, (PW-8)(Ext.433), Vishal Vijaykumar Nagaich, (PW-13)(Ext.445), Devdas Situ Shetty, (PW-23)(Ext.501), Jagdish Balaji Godia, (PW-9)(Ext.434), Ashok Raghuvir Rao, (PW-27)(Ext.514), were examined in connection with the blasts at Bandra and Khar Subway for which C. R. Nos. 86 and 87 of 2006 were registered in Bandra Railway Police Station. Jayprakash Balkrishna Gurav, (PW-14)(Ext.446), was examined in connection with the blast at Jogeshwari for which C. R. No. 41 of 2006 was registered at Andheri Railway Police Station. Kishor Dattatraya Mhatre, (PW-10)(Ext.435), was examined in connection with the blast at Mira Road for which C. R. No. 59 of 2006 was registered at Vasai Road Railway Police Station. Rajaram Savlaram Chavan, (PW-11)(Ext.440) and Shweta Narayan Ambede, (PW-37)(Ext.573), were examined in connection with the blast at Borivali for which C. R. No. 156 of 2006 was registered at Borivali Railway Police Station.

291. The prosecution filed affidavits-in-evidence of 55 injured persons in C. R. No. 77 of 2006, of 22 injured persons in C. R. No. 78 of 2006, of 29 injured persons in C. R. No. 86 of 2006, of 65 injured persons in C. R. No. 87 of 2006, of 24 injured persons in C. R. No. 41 of 2006, of 63 injured persons in C. R. No. 59 of 2006, under section 296 of the Cr. P. C. as these witnesses were formal witnesses and the affidavits were marked as Exts.1260 to 1461 and

Exts. 2734 to 2783. Out of these, at the request of the defence, injured persons like Chitrasen Singh Dharam Raj Singh, (PW-121) (Ext.1290), Vijay Madanlal Jain, (PW-124)(Ext.1268), Manohardutt Bisandutt Fulora, (PW-125)(Ext.1275), Parkel Cherian Verghees, (PW-132)(Ext.1274) and Thomas Francis Lopez, (PW-135)(Ext. 1277), were examined in connection with the blast at Matunga. Ashwin Ramesh Boricha, (PW-134)(Ext.1453), was examined in connection with the blast at Jogeshwari. Devendra Pandurang Chavan, (PW-123)(Ext.1389), Naresh Maruti Kalokhe, (PW-126) (Ext.1380), Nandkishore Bajaj (PW-127)(Ext.1390), Joseph Anthony Almeida, (PW-128)(Ext.1392), Vilfred Walter Naronha, (PW-130) (Ext.1344), Atmaram Vishnu Dalvi, (PW-136)(Ext.1388), Murarilal Haridyalji Parekh, (PW-137)(Ext.1385), Claudius Wilfred Saldana, (PW-147)(Ext.1366) and Vijay Krishna Nair, (PW-187)(Ext.1379) were examined in connection with the blast at Mira Road. Even after the prosecution closed its evidence in April, 2012 and during the examination of the defence witnesses, at the request of the defence, three more injured in the same blast, i.e., the blast at Mira Road, whose affidavits were filed, were called for cross-examination. They are Balam Pushpasen Rane, (PW-190)(Ext.1351), Kiran Ramdas Kini, (PW-191)(Ext.1347) and Abhay Dinesh Shrivastav, (PW-192) (Ext.1461). Prosecution relies on the affidavits-in-evidence of the injured witnesses and their medical certificates. Prosecution also examined medical officers of different hospitals to prove that during the police custody period the accused were medically got examined regularly. They are Dr. Ganesh Krushnakant Dhangar, (PW-184)(Ext.

2257), Assistant Medical Officer in Cooper Hospital, who produced and proved entries in the original register and contents of OPD case papers, Ext.2258 to 2263, Dr. Naresh Wadhoram Ochaney, (PW-179) (Ext.2060), medical officer of Bhabha Hospital, who produced and proved true copies of MLC register, Exts.2061 to 2080, Dr. Sadashiv Yashwant Helaskar, (PW-170)(Ext.1822), who produced and proved notes of examination, Ext.1823, Dr. Udaykumar Dnyandevrao Yelkar, (PW-183)(Ext.2195), who produced and proved Exts.2197, 2199 and 2200. Dr. Nandratna Sadashiv Paikrao, (PW-181)(Ext.2100), who produced and proved entries in casualty registers, etc., Exts. 2101 to 2141, Dr. Anilkumar Mithalal Singal, (PW-171)(Ext.1824), who produced and proved true certified copies of registers Exts.1825 to 1831 and Dr. Parmeshwar Venkatrao Gond, (PW-182)(Ext.2116), who produced and proved entries in the original register, Ext.2116 to 2354.

292. Prosecution also examined Samir Lohani, (PW-156)(Ext. 1680), Senior Divisional Safety Officer of Western Railways to prove the revenue loss and the damage property report, Exts.1681 and 1682.

293. Prosecution examined the police officers of the ATS and of different police stations to prove the compliance of the procedural aspects of recording the confessional statements of eleven accused and also to prove that the accused had been taken to the DCPs, to the CMM and to the medical officers.

294. ACP Shaikh, PW-162, is the ATS officer, who had produced the A1 before DCP Choubey, PW-113, on 03/10/06. PI Subhash

Janardan Gaikwad, (PW-116)(Ext.1193), of Police Station Bandra took the A1 in his custody from DCP Choubey, PW-113, on 03/10/06 and put the accused in the lock-up of Bandra Police Station on the same day. He produced the accused before the DCP again on 04/10/06, the DCP gave him the custody of the accused at 2.30 a.m. on 05/10/06, he put the accused in the lock-up and produced him before the CMM on 05/10/06 and then reached him to the ATS office at Bhoiwada on the same day and gave him in the custody of the duty officer and API Mohite.

295. ACP Khandekar, PW-174, is the ATS officer, who had produced the A2 before SP Mohite, PW-102, on 04/10/06. PSI Balu Sambhaji Gangurde, (PW-105)(Ext.1079) of Police Station Azad Maidan had taken the custody of the A2 from SP Mohite, PW-102, on 04/10/06, put him in the lock-up of his police station after getting him medically examined and produced him before the DCP on 05/10/06. The DCP gave the accused in his custody at 10.00 p.m. on that day, he again put the accused in the lock-up of the police station and produced him before the CMM on 06/10/06 and then took the accused to the office of the ATS at Bhoiwada and gave him in the custody of ACP Patil, PW-186, and ACP Khandekar, PW-174.

296. PI Shashank Ganpatrao Shelke, (PW-150)(Ext.1614), is the ATS officer, who had produced the A3 before Addl. CP Brijesh Singh, PW-117, on 03/10/06, where he had gone alongwith PI Sunil Deshmukh. API Shashikant Dattatray Dasurkar, (PW-101)(Ext.996), attached to Azad Maidan Police Station, had taken the custody of the A3 from the DCP on 03/10/06 and put him in the lock-up of his

police station. He had produced the accused before the DCP on 04/10/06 and 05/10/06 and had put him in the lock-up of his police station again. He had then produced the accused before the DCP on 06/10/06 and after the accused was given in his custody, he had taken him to G. T. Hospital and then to the CMM and then back to his police station where he put him in the lock-up. He had taken the accused on the next day to the CMM and produced him before the CMM and then taken him to the office of ATS at Bhoiwada and given him in the custody of ACP Patil, PW-186.

297. API Deore, PW-180, of the ATS had produced the A4 before SP Karale, PW-104, on 06/10/06. API Vinod Mahadev Randive, (PW-106)(Ext.1086), of Police Station Matunga had taken the A4 in his custody from SP Karale, PW-104 on 06/10/06 and had put him in the lock-up of his police station and produced him before the DCP again on 07/10/06 and from there he produced the accused before the CMM and then handed him over to API Deore, PW-180, at Police Station Matunga.

298. PI Alaknure, PW-153, attached to Anti Robbery and Dacoity Squad in Kurla in 2006, who was attached to the ATS for the purpose of investigation in railway bomb blasts, went to the office of DCP Phadtare, PW-93, on 23/10/06 on the instructions of ACP Patil, PW-186, and gave him a sealed envelope after opening which DCP Phadtare, PW-93, gave him a letter addressed to ACP Patil, PW-186, directing him to produce the A5 before him on 24/10/06. Accordingly he produced the A5 before DCP Phadtare, PW-93, on 24/10/06. PSI Dyandeo Savaba Powar, (PW-94)(Ext.942), of Police

Station Mahim was given the custody of the A5 by DCP Phadtare, PW-93 on 24/10/06. He put the accused in the lock-up of his police station and on the next day, i.e., on 25/10/06 produced the accused before DCP Phadtare, PW-93, as directed by him after getting him examined at Bhabha Hospital. Thereafter on the instructions of the DCP, he produced the accused at the residence of the ACMM and thereafter took him to the ATS office and handed over his custody to PI Alaknure, PW-153.

299. API Kolhatkar, PW-18, produced the A6 before SP Karale, PW-104, on 24/10/06 as per the directions of ACP Patil, PW-186, and handed over his custody. PSI Ram Kisan Divekar, (PW-108)(Ext. 1102), of Matunga Police Station reported to the DCP office, Zone IV on 24/10/06 on the directions of his PI and the DCP gave the custody of the A6 to him, he took the accused to his police station and put him in the lock-up and again produced him on the next day, i.e., on 25/10/06. The DCP gave the accused in his custody at about 5.00 p.m. and as per his directions he produced the accused at the house of the incharge CMM Shisode on the same day and then took him to the ATS office at Bhoiwada and handed him over to ACP Patil, PW-186.

300. ACP Balasaheb Sakharam Tambe, (PW-177)(Ext.2049), of the ATS, who was attached to the ATS as PSI in 2006, took the A7 to SP Mohite, PW-102, on 24/10/06 on the directions of ACP Patil, PW-186, and handed over his custody. API Nana Dagdu Shinde, (PW-103)(Ext.1046), of Azad Maidan Police Station, reported to the office of the DCP on 24/10/06 on the directions of his Sr. PI. The

DCP gave him the custody of the A7 and he took the accused to his police station and put him in the lock-up after getting him examined at the G. T. Hospital. He again produced the accused on 25/10/06 before the DCP and was given his custody in the afternoon and as per the directions of the DCP took the accused before Shri Shisode, ACMM, at his residence, who was incharge of the work of the CMM. After some time the accused was given back to him in his custody. Thereafter he took him to the G. T. Hospital for medical examination and took him to the Sessions Court and gave him in the custody of ACP Patil, PW-186.

301. ACP Joshi, PW-163, who was attached to the ATS as a PI in 2006, produced the A9 before DCP Phadtare, PW-93, on 04/10/06 and handed over the custody of the accused to him. PSI Powar, PW-94, of Mahim Police Station reported to the office of DCP Phadtare, PW-93, on 04/10/06 as per the directions of the Sr. PI. The DCP gave the A9 in his custody and as per the directions of the DCP, he took the accused to his police station and put him in the lock-up and on the next day, i.e., on 05/10/06 he again produced the accused before him and gave him in his custody. The DCP gave the custody of the accused to him after sometime and on his directions he took him to the Police Station Mahim and put him in the lock-up. He produced the accused on the next day, i.e., on 06/10/06 before the CMM and was directed after sometime to produce him before the DCP. He did accordingly and took him to the office of the ATS at Bhoiwada and handed over his custody to ACP Joshi, PW-163.

302. API Yadav, PW-178, attached to the ATS as PSI in 2006, alongwith PI Sunil Deshmukh, took the A10 to the office of DCP Dumbre, PW-118, on 08/10/06 as directed by ACP Patil, PW-186, and handed over the custody of the A10. PSI Prakash Babulal Thakur, (PW-110)(Ext.1111), attached to L. T. Marg Police Station in the year 2006, reported to the office of DCP Dumbre, PW-118, on 05/10/06 as directed by his PI and was given the custody of the A10. He took the accused to his police station and put him in the lock-up as per the directions of the DCP and got him medically examined at the G. T. Hospital. He produced the accused before the DCP on the next day, i.e., on 06/10/06, the DCP gave the custody of the accused to him at about 9.15 p.m. and as per his directions, he took him to the police station and again put him in the lock-up and on the next day, i.e., on 07/10/06 got him medically examined in G. T. Hospital and then produced him before the CMM. The CMM gave the accused in his custody after sometime, then he took the accused to the office of the DCP and as per his directions he took the accused to the ATS office at Bhoiwada and handed over his custody to ACP Patil, PW-186.

303. PI Mathadhikari of Borivali Police Station in October, 2006 was handed over the custody of the A11 on 04/10/06, he put the accused in the lock-up after getting him medically examined. Addl. SP Deepak Madhukar Bhavsar, (PW-100)(Ext.989) attached to Borivali Police Station as PI at that time, produced the accused before DCP Ranade, PW-111, on 05/10/06 as per the request of PI Mathadhikari. The DCP gave him the custody of the accused at

about 8.00 or 8.30 p.m. and on his directions he took the accused to his police station and put him in the lock-up. He produced the accused before the CMM on 06/10/06 after getting him medically examined in G. T. Hospital and after sometime the CMM asked him to take the accused to DCP Ranade, PW-111. He again took the accused to DCP Ranade, PW-111, and as per his directions he handed over the custody of the accused to PI Alaknure, PW-153, at the ATS office at Bhoiwada.

304. PI Shelke, PW-150, produced the A12 before Addl. CP Brijesh Singh, PW-117, on 23/10/06 on the instructions of ACP Patil, PW-186, and gave the accused in his custody. PI Dhananjay Pandharinath Sonavane, (PW-122)(Ext.1468), was attached to Police Station Azad Maidan as PSI since August, 2006 and as per the directions of his PI, he went to the office of Addl. CP Brijesh Singh, PW-117, on 23/10/06 and was handed over the custody of the A12. He took the accused to his police station after first getting him medically examined at G. T. Hospital, then put him in the lock-up of his police station. He produced the accused before the DCP on 24/10/06 and was told by the DCP that he could not record the confessional statement of the accused on that day, therefore, as per the directions of the DCP he took him to the police station and put him in the lock-up. He produced the accused on the next day, i.e., on 25/10/06 as directed by the DCP and at about 9.30 p.m. the DCP gave him the custody of the accused. He then produced the accused before CMM Shisode at his house at Kurla as per the directions of the DCP and after sometime was given the custody of the accused.

He took the accused to the office of the ATS at Bhoiwada and gave him in the custody of PI Shelke, PW-150.

Defence witnesses :-

- 305.** Accused examined 28 witnesses to prove their defence. Sandeep Sahay, (DW-14)(Ext.3030), Principal Circle Nodal Officer, Bihar & Jharkhand of Bharti Airtel Ltd., was examined to prove the CDRs of mobile no.9934610679 of the A1, to prove his case of alibi that he was at his village and not in Mumbai from 9 to 12/07/06.
- 306.** Dr. Abdul Rauf Sumar, (DW-5)(Ext.2930), the honorary medical director of Sabu Siddiqui Hospital, was examined to prove biometric attendance record, original case papers and salary register of the A2, to show that A2 was working in the hospital from 8 to 11/07/06. Dr. Aminuddin Abul Hasan Khan, (DW-7)(Ext.2945), medical administrator of the same hospital, was examined to prove the attendance of A2 in the hospital in July, 2006 and noting of the A2 on the case papers of the patients. Dr. Jafar Imamkha Tadvi, (DW-28)(Ext.3105), who was CMO of St. George Hospital during the year 2006, was examined to prove the medical examination of the A2 on 11/11/06.
- 307.** Mohd. Sajid Mohd. Shafi, (DW-23)(Ext.3081), brother of the A5, was examined to prove the case of alibi of the A5 that he was in Kolkata from 08/07/06 to 12/07/06.
- 308.** Shaikh Hazrat Ali, (DW-4)(Ext.2928), brother of the A6 was examined to prove that his, A6's and one more brother's families were in their houses on 8, 9 and 10/07/06.
- 309.** Bilal Abdul Jamal Kadiwala, (DW-8)(Ext.2984), was examined

to prove the A7's defence of alibi that on 11/07/06, the A7 was working at his shop on the counter rented by the A7. He also examined Iqbal Amin Qureshi, (DW-9)(Ext.2985), a resident of the same building in which the A7 has flat at Mira Road, to prove that the A7 was brought by the Crime Branch people from Ghatkopar, 4-5 days after 11/07/06, was released thereafter, but called to the police chowki every 2-3 days, which continued for 2-3 months and 2-3 days before Ramjan Eid, he saw the police bringing the A7 handcuffed in the building. Dr. Arun Sonaram Pol, (DW-6)(Ext. 2936), Superintendent of J. J. Hospital, was examined to prove the medical examination of A7 on 25/10/06.

310. Sr. PI Ajendrasingh Sadansingh Thakur, (DW-1)(Ext.2907), Ankush Sahdev More, (DW-2)(Ext.2910), General Manager, Municipal Co-operative Bank, Mumbai, Dr. Dipika Ajay Rana, (DW-18)(Ext.3061), Chief Medical Officer in Seth A. J. B. Municipal ENT Hospital, Sukhlal Ambadas Rathod, (DW-24)(Ext.3082), Asst. Head Supervisor of BMC, Dadar, were examined in connection with Vishal Parmar, PW-74's evidence.

311. ACP Chandrakant Babanrao Katkar, (DW-3)(Ext.2925), attached to Anti Corruption bureau was examined with respect to the complaint under the Prevention of Corruption Act against PI Khanvilkar, PW-168. Dattaram Ramchandra Shinde, (DW-17)(Ext. 3055), Sr. Office Superintendent in the office of Director General of Police, Mumbai was examined in respect of bio-data of PI Khanvilkar, PW-168.

312. Prabhudayal J. Chavala, (DW-10)(Ext.2995), Editor of India

Today in 2006 and Saurabh Sureshchandra Shukla, (DW-11)(Ext. 2996), Associate Editor of India Today in 2006 were examined to prove articles that had appeared in India Today magazine.

313. Siddiqui Ahmed Ali, (DW-12)(Ext.2997), and Abdul Mateen Abdul Hafeez, (DW-13)(Ext.3012), journalists in the Times of India, were examined to prove certain news items.

314. Avdheshkumar Ayodhyaprasad Shukla, (DW-16)(Ext.3048), Chief Controller of Mumbai Division, Western Railways, was examined to prove documents issued by him under RTI concerning train timings. Dr. Umesh Ranga Pai, (DW-27)(Ext.3090), Dy. Dean of LTMG Hospital, Sion, was examined to prove documents issued by him under the RTI in connection with the opinion about medical check-up of prisoners.

315. Sr. PI Deepak Nathu Dhole, (DW-15)(Ext.3046), attached to Azad Maidan Police Station, Dr. Ravindra Nagiram Chavan, (DW-19)(Ext.3068), PI Nishikant Bapusaheb Patil, (DW-20)(Ext.3070), Sr. PI Chandrakant Anant Thakur, (DW-21)(Ext.3073), DCP Bansidhar Nawal Shirsath, (DW-22)(Ext.3078) and PI Kaniram Hari Pawar, (DW-25)(Ext.3085), attached to Park Site Police Station, were examined to prove the documents issued by them under the RTI Act.

316. Seven nodal officers and information technology officers of mobile service providers of different mobile companies were examined as per the order of the High Court dtd.10/12/12 in Criminal Appeals No.973 and 992 of 2012. They are Anand Rajkumar Bhatnagar, (DW-29)(Ext.3606), Prashant Anand Agrawal, (DW-30)(Ext.3609), Nipun Pravinchandra Mehta, (DW-31)(Ext.

3621), Changdeo Haribhau Godse, (DW-32)(Ext.3705), Yogesh Shrikrishna Rajapurkar, (DW-36)(Ext.3764), Rakeshchandra Rambujh Prajapati, (DW-37)Ext.3784) and Prashant Hemant Padvale, (DW-39)(Ext.3813). They were examined to prove the contents of the CDRs of the mobiles of the accused that they had produced.

317. Accused also examined Sadiq Israr Ahmed Shaikh (DW-33) (Ext.3719), Mohd. Arif Badruddin Shaikh (DW-34)(Ext.3744) and Ansar Ahmed Badshah Shaikh (DW-35)(Ext.3753), accused in MCOC Special Case No. 4 of 2009 (Indian Mujaheedin Case), to prove the confessional statements that they had given under section 18 of the MCOC Act in the crime for which MCOC Special Case No. 4 of 2009 was filed.

318. DCP Sanjeev Kumar Yadav, (DW-50)(Ext.4319), was examined to prove a disclosure statement of DW-33 given by him during interrogation in FIR Nos. 418 and 419 of 2008 of Police Station Connaught Place, Delhi, FIR No. 166 of 2008 of Police Station Karol Bagh, Delhi, FIR No. 130 of 2008 of Police Station Greater Kailash, Delhi and FIR No. 293 of 2008 of Police Station Tilak Marg.

319. Though the accused had stated during their statements under section 313 of the Cr. P. C. that they do not want to examine themselves on oath, A2, A4, A5, A6, A7, A8, A10, A11 and A13 filed applications Exts. 3773 to 3781 under section 315 of the Cr. P. C. on 25/04/13 after the evidence of DW-36 was over on 25/04/13 for allowing them to examine themselves on oath as defence witness in support of their case and they gave evidence as DW-41, DW-38,

DW-43, DW-42, DW-46, DW-40, DW-44, DW-45 and DW-49 respectively. Subsequently, A9 and A12 also gave similar applications on 08/07/13 and 19/07/13 and examined themselves as DW-47 and DW-48 respectively.

320. Accused went on producing several documents from time to time and even at the time of filing their written submissions with their statements under section 313 of the Cr. P. C. and subsequently. The documents will be referred to and discussed at the appropriate place.

321. ACP Kisan Narayan Shengal, (DW-51) (Ext.4342), was examined in view of the order of the High Court dtd. 19/09/13 in Criminal Appeal No. 451 of 2013.

322. Sr. PI Sunil Dattatray Wadke, (Court Witness No. 1) (Ext. 4312), was examined as a court witness as per the order of the High Court dtd. 10/12/12 in Criminal Appeals No. 973 and 992 of 2012. Certified true copy of his affidavit Ext.4313, that he had filed in the said appeals in the High Court, was received in evidence during his examination by the court.

323. Prosecution intimated by its application Ext. 4327 on 29/08/13 that one of the injured witnesses by name Amit Dinesh Singh, who was taking treatment in the Jaslok Hospital, had expired on 03/05/13. He was injured in the bomb blast for which the FIR was registered with Vasai Road Police Station. By the said application, the prosecution prayed for permission to produce a death summary issued by the Jaslok Hospital. Advocate for the accused were called to give say and learned advocate for the A1, A3,

A8, A9, A11 and A12 gave no objection for admitting the documents on record. However, learned advocate for the A2, A6, A7, A10 and A13 objected. Advocate for the A4 and A5 did not give any say. Subsequently, by the application dtd. 05/09/13 Ext. 4329 the prosecution prayed for taking on record the death certificate of the said victim Amit D. Singh. Advocates for the accused were called upon to give say, but they did not give say. In any case, since the death certificate is a public document, it will have to be received in evidence. It is accordingly received in evidence and marked as Ext. 4731 at the time of judgement. Consequently, the documents sought to be produced by the application Ext.4327 described supra, are formal documents in connection with the death of the said injured, whose name is at sr. no. 14 in Table No. 14 supra, which is the list of the injured in the blast at Mira Road for which C. R. No. 59 of 2006 of Vasai Road Railway Police Station was registered. Hence, the office copy of the letter given by the ACP, ATS, Mumbai dtd. 26/08/13 and the death summary issued by the team of officials and consultants of the Jaslok Hospital are received in evidence at the time of judgement and marked as Exts. 4732 and 4733 respectively. Thus, now there are 188 persons who were killed and 828 persons who were injured in the bomb explosions.

324. On the above allegations of the prosecution, on the evidence led by the prosecution and the accused and on hearing both sides, following points arise for my determination and I answer them accordingly for the reasons discussed below:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Has the prosecution proved that there were bomb explosions in the first-class bogies of seven western railway suburban trains in Mumbai between 6.23 to 6.28 p.m. on 11/07/06?	<u>Yes proved.</u>
2. Has it proved that explosives were used to cause the bomb explosions?	<u>Yes proved.</u>
3. Has it proved that 187 + 1, total 188 persons were killed and 829 – 1 total 828 persons were injured in the bomb explosions?	<u>It is proved that 188 persons were killed and 760 persons were injured.</u>
4. Has it proved that there was damage to or destruction of public and railway property because of the bomb explosions?	<u>Yes proved.</u>
5. Has it proved that the bomb explosions amount to conspiring to wage war against the Government of India or attempting to wage such a war or abetting the waging of such war or to overawe, by means of force or the show of criminal force, the Government of India or the Government of Maharashtra and is a terrorist act and an act of promoting insurgency?	<u>Yes proved.</u>

6. Has it proved that A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 and wanted accused no. 2 and 3 are members of an unlawful association?	<u>Yes proved against A2, A3, A4, A6, A7, A9, A10, A11 and A13 and wanted accused no. 2 and 3.</u>
7. Has it proved that all the thirteen accused facing the trial alongwith fifteen wanted accused and two deceased accused are members of a terrorist gang or organisation?	<u>Yes proved, except against the A8.</u>
8. Has it proved that the A1 to A13 are members of an organised crime syndicate?	<u>Yes proved, except against the A8.</u>
9. Has it proved that they conspired and caused the bomb explosions?	<u>Yes proved, except against the A8.</u>
10. Has it proved that the A1 to A13 alongwith fifteen wanted accused and two deceased accused committed an organised crime?	<u>Yes proved, except against the A8.</u>
11. Has it proved that all the thirteen accused facing the trial alongwith fifteen wanted accused and two deceased accused conspired, abetted and did any preparatory act for committing an organised crime or terrorist act?	<u>Yes proved, except against the A8.</u>
12. Has it proved that A1, A3, A4, A5, A7,	<u>It is proved that the A3</u>

A8 and A13 harboured the wanted accused no. 5 and 8 to 14 and the deceased accused no. 1 and 2?	<u>harboured wanted accused no. 5 and 14 and deceased accused no. 1 and 2 in his house.</u>
13. Has it proved that A3 alongwith wanted accused no. 2 held property derived or obtained from the commission of an organised crime or acquired from the funds of an organised crime syndicate?	<u>Yes proved.</u>
14. Has it proved that A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9 and 11 and deceased accused no. 1 and 2 conspired and committed the murder of 187+1, total 188 persons and attempted to murder and voluntarily caused hurt and grievous hurt by dangerous means to 829 persons?	<u>Yes proved, murder of 188 persons and attempt to commit murder and voluntarily causing hurt and grievous hurt to 557 persons.</u>
15. Has it proved that all the accused facing the trial alongwith fifteen wanted accused and two deceased accused conspired to wage war against the Government of India or attempted to wage such war or abet the waging of such war or to overawe by means of force or to show a criminal force, the Government of	<u>Yes proved, except against the A8.</u>

India or the Government of Maharashtra?	
16. Has it proved that they collected men and ammunition or otherwise prepared to wage war with the intention of either waging or being prepared to wage war against the Government of India?	<u>Yes proved, except against the A8.</u>
17. Has it proved that they concealed the existence of a design to wage war against the Government of India, intending by such concealment to facilitate or knowing it to be likely that such concealment will facilitate the waging of such war?	<u>Yes proved, except against the A8.</u>
18. Has it proved that A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 alongwith wanted accused no. 2 and 6 by words, either spoken or written, or by signs or visible representation or otherwise, brought or attempted to bring into hatred or contempt or excited or attempted to excite dissatisfaction towards the Government established by law in India?	<u>Not proved.</u>
19. Has it proved that A3, A7 and A13 knowing or having reason to believe that an offence has been committed caused evidence of the commission of that offence to disappear with the intention of	<u>Yes proved.</u>

screening the offender from legal punishment?	
20. Has it proved that all thirteen accused facing the trial alongwith fifteen wanted accused and two deceased accused took part in, committed, advocated and abetted the commission of an unlawful activity as contemplated under the UA(P)A Act, 1967?	<u>Yes proved, except against the A8.</u>
21. Has it proved that all the above accused committed a terrorist act?	<u>Yes proved, except against the A8.</u>
22. Has it proved that the A4 raised or collected the funds or provided funds or attempted to do so, to any person or persons or a terrorist organisation, knowing that such funds are likely to be used by such person or persons to commit a terrorist act?	<u>Not proved.</u>
23. Has it proved that the A1, A3, A6, A7 alongwith wanted accused no. 2 and 3 raised or collected funds or provided funds or attempted to do so, to any person or persons or a terrorist organisation, knowing that such funds are likely to be used by such person or	<u>Not proved.</u>

persons to commit a terrorist act?	
24. Has it proved that A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2 possessed, used and transported explosives in contravention of the rules made under section 5 of the Explosives Act, 1884?	<u>Yes proved.</u>
25. Has it proved that the A2 possessed explosives in contravention of the rules made under section 5 of the Explosives Act, 1884?	<u>Yes proved.</u>
26. Has it proved that the A1 was found in possession of explosive substance for an unlawful object?	<u>Yes proved.</u>
27. Has it proved that the A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2 caused explosions by explosive substance, likely to endanger life or to cause severe injury to property?	<u>Yes proved.</u>
28. Has it proved that A1, A2, A3, A6, A12 and A13 alongwith wanted accused no. 5 were possessing explosive substance for an unlawful object?	<u>Yes proved.</u>

29. Has it proved that A3, A6, A7, A8 and A13 supplied money or provided premises, supplied material or in any manner whatsoever, procured, counseled, aided and abetted or were accessory to the commission of any offence under the Explosive Substances Act, 1908?	<u>Yes proved.</u>
30. Has it proved that A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2 committed mischief by damaging and destroying public property by explosive substance?	<u>Yes proved.</u>
31. Has it proved that the above accused damaged and destroyed property of the railway by explosive substance with the intention to do so knowing it likely that they can do so?	<u>Yes proved.</u>
32. Has it proved that they endangered the safety of persons travelling on railways by causing explosions by explosive substance?	<u>Yes proved.</u>
33. Has it proved that A3 and A6 failed to produce their passports for inspection?	<u>Not proved.</u>
34. Has it proved that all the accused	<u>Yes proved, except against the</u>

facing trial alongwith fifteen wanted accused two deceased accused conspired to do and did all the above illegal acts?	<u>A8.</u>
35. What offence, if any, have the accused committed?	<u>As per final order.</u>
36. What order?	<u>A1 to A7 and A9 to A13 are convicted as per the final order.</u>

REASONS

Points no. 1 to 3 :-

325. These three points are taken together as the facts relevant to prove them are interlinked. There is no dispute from the side of the defence about the happening of the bomb explosions, about explosives being used for causing the bomb explosions and about the number of persons who were killed and injured in them. However, the discussion of the evidence led by the prosecution to prove this is necessary in view of its relevancy to the subsequent evidence collected against the accused and the main defence of the accused that they are falsely implicated.

326. It is also necessary to consider the evidence of the prosecution crimewise, i.e., the initial investigation by the officers of the railway police stations in respect of the crimes registered at their respective railway police stations, because the bomb blasts had taken place within the jurisdiction of their railway police stations.

C. R. No. 77 of 2006 of Mumbai Central Railway Police**Station :-**

327. Sr. PI Rathod, PW-176, deposed as per the case of the prosecution as is narrated in paragraphs 6 and 7 of the judgement in respect of how he came to know about there being a bomb blast in a local train near Matunga Railway Station and the further steps that he took. Major part of his evidence in examination-in-chief was brought on record during his cross-examination as omission to state in his statement recorded by ACP Patil, PW-186. However, it cannot be called as an omission as he has stated in his chief-examination itself that he gave a brief statement to ACP Patil, PW-186. Even otherwise, he is an investigating officer and he had handed over the papers of investigation alongwith the case diaries to ACP Patil, PW-186, after the application of the MCOC Act, and the case diary and the papers of investigation must have revealed the investigation that he had done. The said omissions were brought on record by learned advocate Wahab Khan, but there is no suggestion at the end to Sr. PI Rathod, PW-176, that he had not done that investigation. It has come in his cross-examination by learned advocate Rasal, for A1 and A4 to A6 that PI Rathod, PW-176, did not make any inquiry with PC Jadhav, who had informed him on telephone about the blast and whom he met when he went to the spot. He answered that he did not feel it necessary to inquire with PC Jadhav before he met the informant. It is argued that PC Jadhav was not examined, but the fact remains that the happening of the bomb blast at Matunga Railway Station is not disputed.

328. The informant Sachinkumar Singh, PW-4, gave evidence about the incident as described in his FIR and proved the contents of the FIR, Ext.424, given by him which corroborates his testimony. There is nothing in his cross-examination to discredit his version and during his cross-examination by learned advocate P L. Shetty, the position stated by him in his examination-in-chief that the train stopped just in front of the platforms of the Matunga Railway Station and had not crossed it, is confirmed. He is a formal witness and the arguments of learned advocate Shetty that he has not explained the position of the bogie and the impact on the bogie does not discredit his version in respect of the occurrence of bomb blast in his train.

329. Sr. PI Rathod, PW-176, stated about preparing the panchanama of the spot, Ext.441, with the help of panch witnesses, Prithvirajsingh Chauhan, PW-12, and one more, after inspecting the blast site and he described what he saw and the type of articles that he seized under the said panchanama. This panchanama is admitted by the defence. There is no cross-examination to the panch witness in respect of the actual position described in the said panchanama. It is only brought out in his cross-examination that there were rains after the blast, which were going on for some time, that there was darkness at the coach where the blast took place, that it was raining at the time of panchanama, that the roof of the coach was open, that rain water was falling inside the coach and water was flowing out of the coach. He denied the suggestion that he did not go to the spot as a panch witness, that nothing happened in his presence, that

contents of the panchanama were written separately and he signed later on and he deposed falsely to please the police officers.

330. The preparation of the panchanama, Ext.441, by Sr. PI Rathod, PW-176, is not disputed, but during his cross-examination, learned advocate Shetty tried to point out certain shortcomings like not measuring the length and width of the bogie, which door of the bogie was lying at what distance from the bogie, the spot where it was lying, the locations of the six fans that had fallen down in the bogie and most important of all not noting the diameter of the blown up portion of the roof, its distance from the northern and southern ends of the bogie, etc. However, all these things have been pointed out in connection with the evidence of the so called eyewitnesses, who were examined subsequently. Insofar as the condition of the bogie as is described in the panchanama, Ext.441, there is no dispute.

331. On the direction of Sr. PI Rathod, PW-176, Daundkar, PW-189, Assistant Chemical Analyzer, FSL, Kalina, Mumbai came to the spot with his staff at about 2.00 a.m. on 12/07/06 and collected certain articles from the bogie as described in paragraph 11 of the judgement. Daundkar, PW-189, was not examined by prosecution, but was called for cross-examination as per the order below the application Ext.2817 filed by the defence and it is during his cross-examination that he stated about visiting the spots of the blasts at Matunga as well as Mahim Railway Stations, observing the damaged portions of the particular bogie, collecting some cotton swabs of the blackening on the ceiling, handles and rods of the bogie and

collecting whatever things he felt necessary from the spots and of having collected four articles from the Matunga site. It is in his cross-examination that he did not submit any report in writing to his department about his visit because he only helped the police officers to collect the proper scientific evidence. It has also come in his cross-examination that he told the police officers to take the precautions to avoid contamination of the samples by keeping them in polythene bags and stapling the bags and that he did not give any specific instructions about transporting and storing the samples as they were separately collected in separate polythene bags. Sr. PI Rathod, PW-176, and panch witness Prithvirajsingh Chauhan, PW-12, identified all the articles. These articles were pieces of burnt cloth, plastic bag, rexine pieces, etc. They were kept in separate plastic bags, wrapped in khaki papers, labelled and the envelopes were sealed. All these articles were seized under the panchanama, Ext. 443, the contents of which are proved by Sr. PI, Rathod, PW-176, and the panch witness, Prithvirajsingh Chauhan, PW-12, and which corroborate their testimony. There is nothing in the cross-examination of the panch witness in respect of the collection of the articles no. 16 to 19, 21 to 23, 25 & 26 and 29 & 30.

332. Sr. PI Rathod, PW-176, proved the contents of the certified true copies of station diary entries, Exts. 1860 to 1863, in respect of receiving the knowledge about the bomb blast, he and his staff going to the spot, he sending the information given by Sachinkumar Singh, PW-4, he preparing the panchanamas, Exts. 441 & 443 and collecting the articles from the spot.

333. Sr. PI Rathod, PW-176, and panch witness Prithvirajsingh Chauhan, PW-12, identified all the articles and they have not been cross-examined about it. These articles correspond with the articles described in the panchanama Ext.443, wherein they are described as being packed in four packets. It has come in the evidence of Sr. PI Rathod, PW-176, that he sent these articles to the FSL alongwith PC Kamble, alongwith his forwarding letter Ext.660. His evidence is corroborated by the evidence of PN Kamble, PW-54. It is in his evidence that he was given four sealed packets, a letter and its office copy, Ext.660, and he went to the FSL, Kalina and handed over the parcels and obtained an acknowledgment. Ext.660 shows acknowledgment of the receiving clerk dtd. 13/07/06. His cross-examination has not discredited his version and his evidence about carrying the parcels to the FSL is not controverted though he admitted that his buckle number is not mentioned in the letter, that he did not initial any letter that was given to him and that it is not mentioned in the letter that the parcels were given in his possession. In fact, it has come in his evidence that Sr. PI Rathod, PW-176, gave him a letter and he took the parcels from the muddemal clerk.

334. The contents of the FSL report Ext. 2000 describe the articles in the four sealed packets as partly burnt and damaged cloth pieces, wooden pieces, partly burnt and damaged cloth pieces, wooden pieces, partly burnt blackened thermocol pieces, metallic wires, metal pieces, paper pieces and debris, damaged and blackened plastic paper pieces, cotton swabs (acetone and water swabs), which correspond to the articles described in Ext.443. The result of the

analysis is relevant to note. The Assistant Chemical Analyzer found that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris in all the four sealed packets. He has put a note below that RDX is used as a high explosive. This evidence is unchallenged.

335. Prosecution examined an injured witness Hitesh Gandecha, PW-89, as a sample case. He was injured in this blast and his cross-examination has not discredited his version about having travelled in the said train going to Virar on the alleged date and time and there being a blast at Matunga and he sustaining injuries as described by him. He produced his original certificate of discharge, Ext.894, which was admitted in evidence as the learned advocates for the accused consented. Its contents corroborate his version about sustaining injury to his stomach, which is described as a penetrating defect 15cm x 15cm in left anterior abdominal wall with pouting bowel with perforation and other injuries. A portion from his statement was confronted to him and marked as an improvement, but it was not proved. One more omission was brought on record, but it is minor and it does not affect his evidence.

336. Prosecution filed affidavits of 55 injured persons in this crime and out of them Chitrasen Singh, PW-121, Vijay Jain, PW-124, Manohardutt Fulora, PW-125, Parkel Verghees, PW-132 and Thomas Lopez, PW-135, were called for cross-examination at the request of the defence. Two portions in the statement of Chitrasen Singh, PW-121, were confronted for the purpose of contradiction and were marked, but not proved by the defence. Same is the case of one

contradiction during the cross-examination of Parkel Verghees, PW-132. The defence chose to cross-examine these five witnesses for some particular purpose, but their evidence by way of their affidavits about they having travelled in the said train on the alleged date and time and having sustained injuries, which is corroborated by their injury certificates, Exts.2727 (24, 17, 29 and 27 respectively), is not controverted and denied.

337. The prosecution examined Dr. Balsara, PW-83, and Dr. Vaz, PW-84, as a sample case to prove the nature of injuries sustained by the persons who had been killed in the blast. It has come in the evidence of both these witnesses that they had received many dead bodies in the night of 11/07/06 in connection with the bomb blasts in the western railways to determine the cause of death and on consultation with the police surgeon, it was decided that *post-mortem* of all the dead bodies is not possible and they will do only sample *post-mortem* examination of two dead bodies. Both these witnesses proved the memorandum of *post-mortem* examinations, Exts. 854 and 856, in respect of Nitin Sukhlal Patil and Shojiram Modulal Meena. Dr. Balsara, PW-83, described in detail the external and internal injuries that he found and the contents of the memorandum of the *post-mortem* examination corroborate his version. The description of the injuries is necessary and relevant in order to appreciate the allegations of the prosecution about the happening of the bomb blasts. It has come in his evidence that on external examination alongwith the other injuries, he found blackish, minute generalized fine powder tattooing all over the face,

anterior part of thorax and front of right side of the abdomen and deformity at the upper side of right arm, surface wounds like multiple circular punctured wounds on various parts of the body. Multiple very small powdered tattooing of upper, front of both the legs. It has come in his evidence that the blackish powder by which there was tattooing all over the body is a peculiarity of post-explosive residue of Nitrite, which was also confirmed by the reports of the FSL. It has come in his evidence that fragments of shrapnel, pieces of burnt/partially burnt explosive material and blood for grouping were recovered from the dead body of Nitin Sukhlal Patil for metallurgical and chemical analysis and sent to the FSL, Kalina for analysis alongwith his forwarding letters, Exts. 848 and 850, in connection with which the hospital received the FSL reports, Exts. 851 and 853. He identified the pieces of shrapnel, Arts. 313 (colly) and pieces of burnt/partially burnt explosive material, Arts. 314 (colly). It has come in his evidence that articles were recovered and preserved for metallurgical and chemical analysis from the body of Shojiram Modulal Meena and sent to the FSL, Kalina alongwith the forwarding letters, Exts. 857 to 859, in respect of which the reports of FSL, Exts. 860 to 862, were received. He identified the pieces of shrapnel, Arts. 315 (colly) and pieces of burnt/partially burnt explosive material, Arts. 316 (colly).

338. It has come in the evidence of HC Jadhav, PW-90, that he took the sample bottles from the Sion Hospital concerning the two dead bodies, alongwith the forwarding letters, office copies of which are at Exts. 898 and 897 respectively. The contents of these two letters

are proved by Sr. PI Rathod, PW-176. Thus by these two covering letters the articles were sent alongwith the forwarding letters sent by Dr. Balsara, PW-83, Exts. 848 to 850 and 857 & 858. HC Jadhav, PW-90's evidence was sought to be discredited during his cross-examination by pointing out that the seal impressions of their police station are not appearing on Exts. 897 to 899. However, he has given a proper explanation that if the seal impression is of the hospital, then there is no question of putting the seal impression of the police station on the forwarding letters. He denied the suggestion given at the end that he had not taken any articles from the police station to the FSL, Kalina and no arguments have been advanced in this respect. In this respect Dr. Balsara, PW-83, was also cross-examined and he admitted that the office copies of his forwarding letters do not have the impression of the seal, but explained that they are on original letters. This evidence in cross-examination has not been controverted. Exts. 848 to 850 and 857 & 859, which are the office copies of the forwarding letters sent by Dr. Balsara, PW-83, show that the samples and the originals of the letters were taken in custody by a PC and in the space in respect of copy of impression of seal, the entire description of the articles recovered from the dead bodies, the identification of the dead body, ADR number, *post-mortem* number and names of doctors are mentioned.

339. The result of analysis of the articles recovered from the two dead bodies as described in the FSL report is relevant. The contents of the FSL reports Exts. 851 and 852 in respect of splinters and blackish mass pertaining to the dead body of Nitin Sukhlal Patil

show that the Nitrite (post explosive residue) were detected in the exhibits. Same is the case in respect of the FSL reports, Exts. 860 and 861, in respect of similar articles pertaining to the dead body of Shojiram Modulal Meena.

340. It has also come in the evidence of Dr. Vaz, PW-84, that he, Dr. Balsara, PW-83, and Dr. Kadam had examined all the remaining dead bodies and had issued death certificates, the contents of which he proved and about which there is no dispute from the side of the defence. It has come in his evidence that they had ascertained the cause of death after thorough external examination and on finding more or less similar type of injuries. There is no cross-examination to him.

341. It has come in the evidence of Sr. PI Rathod, PW-176, that a dead body in this blast was unclaimed, that it consisted of only the chest and head portion, but the face was torn and disfigured. Dr. Mukesh Ghuge, PW-112, proved the contents of the memorandum of *post-mortem* examination, Ext. 1165, conducted on this unidentified unknown body. It has come in his evidence that the cause of death of all 15 bodies about whom he conducted *post-mortem* was shock following multiple injuries in a case of bomb blast. There is considerable dispute about police fixing the identity of this dead body as that of one Salim, a Pakistani national. It will be discussed subsequently, but the fact remains that on the date of the *post-mortem*, i.e., on 13/07/06, the said body was unidentified.

342. It has come in the evidence of Sr. PI Rathod, PW-176, that he requested the Dean of Sion Hospital by a letter, office copy of which

is at Ext. 1172, to reconstruct the face of the said unidentified dead body and to preserve the tissues/parts of the body for DNA test, that accordingly the doctors reconstructed the face of that person, gave him a CD, which was sent to the CFSL, Chandigarh for verifying its correctness and reports, Exts. 1927 and 1928, were received confirming that the reconstruction was 80% correct. It has also come in his evidence that he had sent the tissues/parts of the said dead body to the FSL, Kalina for DNA profile, by a letter, office copy of which is at Ext.1929, and then received the report, Ext.1930.

343. Prosecution has proved the contents of the memorandum of *post-mortem* examination of three persons as a sample case by examining three medical officers, who had performed the *post-mortem* in respect of remaining 42 deceased persons. Their memorandum of *post-mortem* examinations are received in evidence and given exhibits as mentioned in Table No. 1. Their contents and the contents of the cause of death certificates show shock due to polytrauma in case of bomb blast (unnatural).

344. The prosecution has proved the contents of injury certificate, Ext.839, of one injured and the contents of the remaining medico legal certificates of injuries sustained by remaining injured as mentioned in Table No. 2 supra are not disputed by defence.

345. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no. 864A of train no. 645 DN Virar fast on 11/07/06 at 1824 hours at Matunga Railway Station. The results of analysis of the articles that were found at the spot as well as the articles that

were collected from the bodies of the deceased prove that explosives were used to cause the bomb explosions. This is also proved by the evidence of the medical officers, who have categorically opined that the blackish minute tattooing all over the face and body is a peculiarity of post-explosive residue of Nitrite. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil. The memorandums of *post-mortem* examinations and the injury certificates prove that 28 persons were killed and 110 persons were injured in the bomb explosion that took place at Matunga Railway Station.

C. R. No. 78 of 2006 of Mumbai Central Railway Police Station :-

346. PI Godbole, PW-140, gave evidence as narrated in paragraph 12 supra and described what he saw when he reached the spot of the blast at Mahim Railway Station, about seeing blood on the ground below the bogie in which the blast had taken place, pools of blood, blood, pieces of glass in the bogie no. 528A, the glass of the windows, benches, fans and tube lights to be broken, the front portion of the bogie being severely damaged, coming to know that the blast had taken place when the train had started from platform no. 3, therefore, going to the said platform and seeing a pit created on the platform in front of pole no. 12/17 and pieces of the cement sheet of the roof having fallen there. He deposed about recording the FIR of Girishchandra Chaurasiya, PW-5, who proved the contents of his FIR, Ext.426, which corroborate his version. There is no cross-

examination to Girishchandra Chaurasiya, PW-5.

347. It has come in the evidence of Girishchandra Chaurasiya, PW-5, that he heard a loud explosion when he was just entering the Mahim Railway Station and he went to the fourth coach, which was of first-class. He saw many bodies of persons outside and the coach blown apart on the west side, smoke in the coach and all fixtures in the coach bended. It has come in his evidence that the tin sheets of the roof of the platform had also broken. There is no cross-examination to him.

348. It has come in the evidence of PI Godbole, PW-140, that after getting the crime number from the police station, he prepared the panchanama of spot Ext.525, in the presence of panch witnesses Hemant Satarde, PW-29, and one more and at the same time Daundkar, PW-189, and his staff from the CFSL, Kalina, who had reached there, collected swabs of soot, pieces of debris, half burnt pieces of clothes and iron strips of the benches and gave these five articles to him which he labelled and sealed and he also collected twelve articles from the spot. He proved the contents of the panchanama Ext. 525 and his evidence is corroborated by the evidence of panch witness, Hemant Satarde, PW-29. The contents of the said panchanama Ext. 525 corroborate the testimony of both these witnesses. Both of them have identified the five articles that were collected from the spot by the FSL personnel and also the twelve articles that were collected by PI Godbole, PW-140. The articles collected by the FSL were cotton swabs, Arts.117 and 118(1 & 2), burnt pieces of assorted articles, Art.119(colly), half burnt

pieces of cloth, chain, sponge, paper, glass and mud, etc., Art. 120 (colly), bundle of half burnt pieces of clothes, Art. 121 and four aluminum strips, Art. 122 (1 to 4).

349. Nothing was brought forward in the cross-examination of panch witness Hemant Satarde, PW-29, to discredit his version, except for a slight difference between the ink and the writing and crowding of words on the first page as compared to the third page of the panchanama and they being smaller than the third page. He turned down the suggestion that no articles were seized in his presence, that panchanama was not prepared in his presence and he gave false evidence and identified the articles as tutored by the police. The last suggestion is obviously fallacious as it is not shown as to how he is an interested witness. However, his answer in his cross-examination further that chemical experts team had come there, shows his truthfulness. He has denied the suggestion that the chemical experts team did not do anything at the spot in his presence and had not taken cotton swabs from the spot.

350. PI Godbole, PW-140, was cross-examined firstly in respect of the movement of brass seal of the police station outside the police station and some register that is required to be maintained about it and about taking entry in the muddemal register after the muddemal is deposited in the muddemal room. He admitted in his cross-examination that he did not collect the schedule of the timetable of the train and denied the suggestion that he did not do all the acts as deposed by him in connection with he seizing any articles from the spot or the FSL officers handing over articles to him

or he sending the articles to FSL. He was cross-examined at length in respect of the actual description of the damage and he gave specific answers narrating what he had seen. Major part of his cross-examination is in respect of some shortcomings in preparation of the panchanama like he not measuring the diameter of the roofs that were blown up in both bogies, he not taking measurements inside the bogies to pinpoint the spot of impact, he not measuring the length of blown up portion in both the bogies, he not taking photographs of the pit and the portion of the roof on the platform and not measuring the length of the bogie from inside and outside, etc. The fact remains that the factual position of the damage of the bogie and of the platform that he described in the spot panchanama is not affected or not controverted by the cross-examination and he was very specific in giving all the answers in respect of the particular places where the damage was caused.

351. It was an attempt from the side of the defence to show that he could have pinpointed the location where the explosives had been kept in both the bogies on the basis of the inspection that he made, but he turned down this suggestion. On the other hand, he positively stated that after looking at the pit and the damaged portion of the roof above it, he thought that the blast had taken place in the bogie at that spot and not at the spot of the pit. He gave a good reason for he having thought so, viz., because the extent of the damage on the western side of the affected bogie was quite large. The only omission that is brought on record is that it is not mentioned in the panchanama Ext.525 that he packed and sealed the five articles

given by the FSL people at the spot. He explained that it remained to be written inadvertently. He denied the suggestion that he had not packed and sealed the articles and therefore it is not written in the panchanama. However, the fact remains that the report of the FSL, Ext.1561, in respect of the said five articles show the description of the parcels as five sealed parcels and seals in intact condition.

352. It has come in his evidence that he sent the said five articles to the FSL, Kalina by a letter signed by Sr. PI Rathod, PW-176, office copy of which is at Ext.906, the contents of which were proved by Sr. PI Rathod, PW-176, and which corroborate the version of PI Godbole, PW-140. Ext.906 bears the acknowledgment of the inward clerk of the FSL office saying that five sealed packets are received. It also bears the seal impression of the police station.

353. It has come in the evidence of HC Jadhav, PW-90, that he had taken the said five sealed parcels to the FSL, Kalina alongwith the original of this letter, Ext.906. His evidence on this point is not controverted from the side of the defence. The result of the analysis in the FSL report Ext.1561, in respect of the articles in the five sealed parcels shows that Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris in all of them and a note given at the end that RDX is used a high explosive.

354. Prosecution examined two injured witnesses as sample witnesses in respect of the blast and the injuries that they had sustained. Kamlesh Rajbhar, PW-25, is rather an unfortunate person, because he was not travelling in the said train at that time, but was

standing on the platform no. 2 and when there was a blast he sustained injuries to his both legs, they were cut from the knee below and he was hospitalized for three months. There is no cross-examination to this witness. The impact of the bomb explosion can be visualized from his evidence. Lalji Pande, PW-85, was travelling in the said train and his evidence about there being a loud explosion, something hitting him on the back of his neck and his head while he was standing near the middle pole in the door on the east side and having sustained injuries on the back of his neck, etc., is unchallenged. It has come in his evidence that the doctors removed some article from the back of his neck when he was operated in the Sion Hospital and he identified the said metallic object, Art.317, when it was shown to him, stating that it was shown to him immediately after the operation. It has come in his evidence that even now he is not able to hear properly as his hearing is impaired partially. All this evidence is uncontroverted and his cross-examination is concentrated on the aspect of he giving statement to the police that he had seen two persons getting down hurriedly, looking frightened, therefore, he becoming suspicious and looking at them carefully, etc. This aspect will be discussed at the relevant stage. Some omissions were brought on record during his further cross-examination and a portion from his statement was confronted to him by way of contradiction, but it was not proved.

355. The evidence of Dr. Balsara, PW-83, Dr. Vaz, PW-84 and Dr. Ghuge, PW-112, is also relevant as with the help of their evidence the prosecution has proved most of the memorandums of the *post-*

mortem examinations and death certificates of the persons killed in this blast. It is also relevant insofar as the opinion by Dr. Balsara, PW-83, that the blackish powder by which there was minute tattooing all over the face and body, is a peculiarity of post-explosive residue of Nitrite, which was confirmed by the reports of the FSL.

356. It has come in the evidence of PI Godbole, PW-140, that he had sent two metal pieces, one recovered from the body of an injured, i.e., Lalji Pande, PW-85, and the viscera of deceased Jogarao Mantri Pragada, alongwith HC Jadhav, PW-90, for the purpose of chemical examination alongwith his forwarding letters, office copies of which are at Exts. 899 and 902, contents of which he proved and which corroborate his version. HC Jadhav, PW-90, corroborated his version and it has come in his evidence that he had taken three sealed bottles received from Sion Hospital from his police station to the FSL, Kalina on 11/08/06 alongwith the forwarding letters Exts. 899 and 902, which contain his name and buckle number. During his evidence the letters issued by Sion Hospital Exts. 903 and 905 were received in evidence. Both describe that sealed bottles in respect of Jogarao Mantri Pragada and Lalji Pande, PW-85, were being sent to the Sr. PI of Mumbai Central Railway Police Station for being forwarded to the chemical analyzer. Exts. 903 and 905 contain the acknowledgment of the inward clerk of the FSL office of having received the sealed bottles.

357. The contents of the two FSL reports Exts.1563 and 1562 in connection with the two metal pieces, one found in the body of Jogarao Mantri Pragada and one recovered from the body of injured

Lalji Pande, PW-85, show the result of analysis that traces of Nitrite (post explosion residue) was detected on the exhibits.

358. Dr. Vaz, PW-84, has proved the contents of the death certificates, Exts. 875, 876 and 877, which were issued and signed by him and the death certificates, Exts. 879 to 881, issued by Dr. Kadam, who was working with him in respect of six, out of 43 persons killed in this blast. Death certificates and memorandums of *post-mortem* examination of the remaining 37 persons killed in the blast as mentioned in Table No. 3 supra and the injury certificates of 96 persons injured in the blast as mentioned in Table No. 4 supra are not disputed by the defence. Thus prosecution has proved their contents.

359. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no.0528A of train no. 641DN Borivali fast on 11/07/06 at 1823 hours at Mahim Railway Station. The results of analysis of the articles that were found at the spot as well as the articles that were collected from the bodies of the deceased prove that explosives were used to cause the bomb explosions. This is also proved by the evidence of the medical officers, who have categorically opined that the blackish minute tattooing all over the face and body is a peculiarity of post-explosive residue of Nitrite. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil. The memorandums of *post-mortem* examinations and the injury certificates prove that 43 persons were

killed and 96 persons were injured in the bomb explosion that took place at Mahim Railway Station.

C. R. No. 86 and 87 of 2006 of Bandra Railway Police Station :-

360. Sr. PI Kadri, PW-138, gave evidence as narrated in paragraphs 17 to 19 supra. These two crimes are in respect of two blasts, one that occurred near the Bandra Railway Station in between Bandra and Khar Railway Stations and the second that had taken place in between Santacruz and Khar Railway Stations. Sr. PI Kadri, PW-138, investigated both these crimes. It has come in his evidence that he was on his way to the police station when he came to know about the blasts. Therefore, he immediately went to the railway station and saw the train standing on track no. 3. He gave instructions for taking the injured and bodies of the deceased to the Bhabha Hospital. He described the damage to the first-class bogie that he saw, viz., roof blown up, seats and west side luggage racks broken, tin of the floor on the eastern side pressed down and pieces of glass, blood of passengers, bags, purses and other articles of passengers lying on the floor. It has come in his evidence that on coming to know that a similar type of blast had taken place in between Santacruz and Khar Railway Stations, he went there by jeep and saw that the affected train was standing on track no. 1 near the Santacruz Railway Station and its first-class bogie was destroyed and he saw similar type of damage to the bogie and similar position of articles. This bogie was having second class portion after a partition of mesh. It has come in his evidence that he took the information

Ext.413 of Hemant Tayde, PW-3, who was the Station Master on duty, contents of which were proved by Hemant Tayde, PW-3, and which corroborate his and Sr. PI Kadri, PW-138's testimony. Hemant Tayde, PW-3, also described the damage to the coach and the situation at the spot. There is no cross-examination to him.

361. It has come in the evidence of Sr. PI Kadri, PW-138, that he took the informant Hemant Tayde, PW-3, to the spot near Bandra Railway Station and with the help of panch witnesses, Pappu Giri, PW-28, and one more he prepared panchanama of the spot Ext.516, contents of which were proved by him as well as by Pappu Giri, PW-28. It has come in his evidence that he seized pieces of cloth having strong smell of chemical, pieces of sunmica, pieces of glass and also took swabs of the blood by cotton, Arts.113(colly). It has also come in his evidence that he seized three metal pieces that were having strong smell of chemical, Arts.114(colly), under the panchanama. The evidence of the panch witness, Pappu Giri, PW-28, corroborates his evidence and both have identified the articles that were collected from the spot. This was done in respect of the first blast for which C. R. No. 86/06 was registered.

362. It has come in the evidence of Sr. PI Kadri, PW-138, that he also took the information Ext.408 of Nizamuddin Shaikh, PW-2, Station Master of Santacruz Railway Station and Nizamuddin Shaikh, PW-2, proved the contents of the information, the contents of which corroborates the evidence of both of them. Nothing is brought forward during the cross-examination of Nizamuddin Shaikh, PW-2, in respect of the information. Nizamuddin Shaikh,

PW-2, also described the damage that had been caused to the affected coach like western roof portion being blown off, east side portion ripped, west side door not in place and the east side door ripped and protruding outside and a big hole in the roof, etc. Learned SPP submitted during his arguments that considering the fact of explosion and the destruction of the property and life that was caused, the informant alleged at the time of giving the FIR itself that some unknown organisation had kept bombs in the said bogies of the said trains with the intention to create terror in the public, causing big loss to the railway property, cause loss of life of passengers and to destabilize the government and the bomb explosion was done by entering into a conspiracy and by doing an anti-national act.

363. It has come in the evidence of Sr. PI Kadri, PW-138, that he took the same panchas to the second spot which was shown by Nizamuddin Shaikh, PW-2, and prepared panchanama of the spot Ext.517. It has come in his evidence that he collected pieces of clothes of passengers having strong smell of chemical, pieces of rexine, glass, iron and aluminum, Arts.115 (colly) and sealed them. Pappu Giri, PW-28, corroborated his version. He was cross-examined at length, but nothing has come out from his cross-examination to discredit his version in respect of the preparation of panchanama, collecting the articles from the spot and sealing them and he denied the suggestion that he had not gone to the spot, nothing was seized in his presence and that he signed on both the panchanamas and labels in the police station. Thus the contents of the panchanama

Ext.517 corroborate the version of Sr. PI Kadri, PW-138 and Pappu Giri, PW-28.

364. The cross-examination of Sr. PI Kadri, PW-138, by learned advocate Wahab Khan is mainly pertaining to the record of the statements of witnesses, some of whom are not included in his case diary, etc., which is not relevant for the present. In connection with the recording of the first information report and preparation of the panchanama, his cross-examination has not discredited his version and some inconsequential shortcomings while preparing the panchanama were brought on record like buckle number of writer constable Bade, who wrote both the panchanamas being not mentioned in them, that he did not take photographs or video shooting of the articles at the spot before lifting them from the spot, etc., which do not affect his credibility. He has denied the suggestion that he did not prepare the spot panchanama, did not seize any article from the spot and did not send them to the FSL. During his cross-examination by learned advocate P. L. Shetty, he stated that drawing of spot panchanama is an important event in the investigation of a crime and in further cross-examination once again some minor shortcomings at the time of the preparation of the panchanama were brought on record in respect of the number of overhead rods, he not taking internal measurements of both bogies, of the portion of the roofs that were blown up and of the floor that had been pressed downwards, of the diameter of these portions, not mentioning the exact locations of the damages, etc. However that does not affect his evidence and the description of the spot where

the blast took place and the position in the affected bogie. He did not agree with the suggestion that correct sketch of the spot giving the measurements of the damaged portions may enable the investigator to fix the identity of the culprits.

365. It has come in his evidence that he sent the seized articles to FSL, Kalina alongwith PC Jadhav, PW-52, alongwith the letters, office copies of which are at Exts. 656 (1 & 2) and 657 (1 & 2), in respect of C. R. No. 86 and 87 of 2006 respectively. He proved the contents of both the letters, which bear the acknowledgment of the receiving clerk of the FSL, Kalina. The evidence of PC Jadhav, PW-52, corroborates his evidence and the only thing that has come in his cross-examination is that his buckle number is not mentioned on the acknowledgment of the FSL in both the letters. However, he explained that the receiving clerk at the office of the FSL asks about his buckle number and makes an entry in the register. He denied the suggestion that he had not personally taken the parcels to the office of the FSL, but his version is not affected by the cross-examination.

366. The contents of the FSL report Ext. 2430 of the articles seized from the bogie and the spot of the first blast of C. R. No. 86 of 2006 and Ext.2429 of the second blast of C. R. No. 87 of 2006 show the result of analysis that Cyclonite (RDX) Ammonium Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris in the exhibit and a note is appended that RDX is used as high explosive.

367. Prosecution examined three injured witnesses out of 107 injured in the first blast of C. R. No. 86 of 2006. Mahesh Trivedi,

PW-8, Devdas Shetty, PW-23 and Ashok Rao, PW-27, gave evidence about their travel in the said train on the alleged date and time, hearing a loud explosion, losing consciousness and sustaining injuries and they being treated at different hospitals. First two witnesses are not cross-examined and it has come in the evidence of Devdas Shetty, PW-23, that doctors had removed metal pieces from his head and it has come in the evidence of Ashok Rao, PW-27, that splinters were removed from his body and one splinter was removed from near his lung by operation. The cross-examination of Ashok Rao, PW-27, has not discredited his version and a portion was confronted to him and marked in respect of he having stated to the police that he had gone to sleep because he was tired from the whole days work. However that portion is not proved by the defence. Thus, his evidence is unchallenged.

368. Prosecution examined two witnesses out of 102 injured in the second blast of C. R. No. 87 of 2006. Jagdish Godia, PW-9, and Vishal Nagaich, PW-13, described about the blast, losing consciousness, sustaining injuries and Vishal Nagaich, PW-13, stated about splinters and metal pieces being taken out from his body by the doctors by operations. They are not cross-examined on the factual aspect and their evidence is unchallenged.

369. Dr. Kalpesh Gajiwala, PW-69, had operated on Devdas Shetty, PW-23 and Vishal Nagaich, PW-13, and it has come in his evidence that at the time of operation of Devdas Shetty, PW-23, he found and removed multiple tiny foreign bodies, black with greenish tinge in colour, embedded in both upper extremities, mainly both hands and

distal forearms from fingertips onwards, large wound with loss of skin and extensor muscle from left forearm dorsal aspect, parallel rectangular zone of burns on the volar aspect, i.e., inner aspect of left wrist embedded with tiny multiple foreign bodies, which were also found in the right hand and distal part of the forearm and all these foreign bodies were stippled in appearance and multiple dot like. He identified the foreign body, i.e., the metal piece Art. 94 that he removed from his scalp. He proved the contents of the injury certificate Ext. 781. Dr. Russell Pinto, PW-56, had operated on Vishal Nagaich, PW-13, along with Dr. Kalpesh Gajiwala, PW-69, and it has come in his evidence that the triangular shaped foreign body Art.95 was removed from the right side of his neck. He proved the contents of the injury certificate Ext.682. It has come in his evidence that he had also operated on Ashok Rao, PW-27, and had removed the metal piece Art.93 from the wound on the right side of the chest. Both these doctors identified the articles that were shown to them. Their cross-examination has not discredited their version and it was only by way of seeking explanation in respect of cleaning the wounds by particular antiseptics and about the procedure of sealing of articles removed from the bodies of patients, but it has not affected their credibility and insofar as sealing is concerned, reports of the FSL in this connection show that they were received in sealed condition.

370. It has come in the evidence of Sr. PI Kadri, PW-138, that PSI Pednekar was deputed to the Holy Family Hospital on receiving a phone call that they had taken out foreign bodies from the bodies of the above three injured. PSI Pednekar seized the three sealed bottles

under the panchanama Ext. 504 in the presence of panch witnesses, Suresh Vandre, PW-24, and one more the contents of which were proved by Suresh Vandre, PW-24, and which corroborate his version. He identified the metal pieces Arts. 93 to 95 that were seized under the panchanama from the Holy Family Hospital, Bandra. Nothing has come out in his cross-examination to discredit his version and he denied the suggestion that he signed on the labels and panchanamas in the police station and identified the articles in the court at the instance of the police.

371. It has come in the evidence of Sr. PI Kadri, PW-138, that he sent the three small sealed bottles that were seized under the panchanama, Ext.504, from Holy Family Hospital, to the FSL, Kalina alongwith his forwarding letters, office copies of which are at Exts. 888(1 & 2) and 889(1 & 2), contents of which he proved, alongwith WPC Savita Satav, PW-87, who deposed about taking the two letters with their office copies, collecting two khaki sealed envelopes from the muddemal incharge of the police station and going to the FSL, Kalina on 17/08/06 and that the letters bear the signatures and stamp of the receiving clerk of the FSL. Her evidence about taking the samples with the forwarding letters is not controverted and it has only come in her cross-examination that the date at the end of the forwarding letters is 31/07/06 and she had read her statement fifteen days before her evidence. That does not affect the credibility of her and Sr. PI Kadri, PW-138's evidence. It may be that the forwarding letters were prepared on 31/07/06, but it was only when the samples were being sent that the date 17/08/06 was written on

the front page. However Sr. PI Kadri, PW-138, is not cross-examined on this aspect. The FSL reports in connection with the metal pieces of all the three injured, Exts. 2434(1) and 2433(1), show the results of analysis that Nitrite (post explosive residue) and traces of Nitrite were detected on the exhibits. The reports Exts. 2434(2) of the metal pieces by Physics Division of the FSL taken out from the body of Devdas Shetty, PW-23, and Ashok Rao, PW-27, show the result of analysis that they contain Zinc as a major element with traces of Iron. The result of analysis in the report Ext. 2433(2) in respect of the metal piece taken out from the body of Vishal Nagaich, PW-13, shows that it contains Iron as major element and Calcium, Titanium, Chromium, Manganese, Copper and Zinc as trace elements.

372. By the evidence of Dr. Russell Pinto, PW-56, and Dr. Kalpesh Gajiwala, PW-69, prosecution has proved the injury certificates, Ext. 662 of Vishal Nagaich, PW-13, Ext.684 of Ashok Rao, PW-27, and Ext.781 of Devdas Shetty, PW-23. Death certificates and memorandums of *post-mortem* examination of 22 persons who were killed and the injury certificates of the remaining 105 injured persons in the blast at Bandra Railway Station as mentioned in Tables No. 5 and 6 supra, cause of death certificates and memorandums of *post-mortem* examinations of 9 persons who were killed and injury certificates of the 101 persons who were injured in the blast in between Santacruz and Khar as mentioned in Tables No. 7 and 8 supra, for which C. R. No. 86 and 87 of 2006 respectively were registered, are not disputed by the defence. Thus, the prosecution has proved their contents.

373. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no.8003A of train no. 637DN Borivali fast on 11/07/06 at 1823 hours at Bandra Railway Station and there was a bomb explosion in the first-class bogie no. 849A of train no. 635DN Borivali slow local on 11/07/06 at 1825 hours. The results of analysis of the articles that were found at the spot as well as the metal articles that were removed from the bodies of the injured prove that explosives were used to cause the bomb explosions. This is also proved by the evidence of the medical officers, who have categorically opined that the blackish minute tattooing all over the face and body is a peculiarity of post-explosive residue of Nitrite. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil. The memorandums of *post-mortem* examinations and the injury certificates prove that 22 persons were killed and 107 persons were injured in the bomb explosion that took place at Bandra Railway Station and 9 were killed and 102 were injured in the bomb explosion that took place at Khar Subway.

C. R. No. 41 of 2006 of Andheri Railway Police Station :-

374. Dy. SP Raskar, PW-139, gave evidence as narrated in paragraph 25 supra and stated about seeing the first-class bogie to be completely destroyed and articles of passengers lying scattered. It has come in his evidence that he took the information Ext.432 from the guard of that train Anand Desai, PW-7, who proved the contents

of the information, which corroborate the testimony of both these witnesses. There is a formal cross-examination to PW-7. It has come in the evidence of Dy SP Raskar, PW-139, that he prepared panchanama of the spot, Ext.494 in the presence of panch witnesses Ratan Tarware, PW-21, and one more. The contents of this panchanama are admitted by the defence. There was considerable cross-examination to Dy. SP Raskar, PW-139, in respect of the condition of the spot and he gave very specific answers about blood on the platform and the bogie being washed away because of rains at some places, that some bogies of the train were behind the affected bogie, about there being a staircase on the platform no. 1 having a roof of cement sheets, about there being a roof on the platform, but no roof on the portion of the platform towards Borivali side and at the portion where the staircase starts, he seeing blood on the platform near the staircase and on the metal (small stones) near the bogie and that panchanama of the spot is important during the investigation. Certain shortcomings were brought on record that he did not prepare a sketch during the panchanama to show the spots of blood and the distance of the staircase and the platform and the last bogie of that train, etc., that he cannot tell about the sitting capacity of the bogie, that he does not remember how many doors the bogie had on the platform side, that he cannot say whether the affected doors were on the east side or west side and which part of the bogie was affected from the inside. He could not tell the measurement of the passage near the door and admitted that he did not take the measurement of the compartment/middle portion or of

any points inside the bogie or of the distance between the damaged portion of the roof, other portions of the bogie and the doors or seats. However, he gave a proper explanation to all these shortcomings that he did not mention it as the entire bogie was damaged. He admitted that it is necessary to locate the spot where the bomb was placed, that he had investigated in that direction, but he gave a perfect explanation to this by saying that he could not locate the spot as there was extensive damage to the bogie. He denied the suggestion that he vaguely described the damage to the bogie in the panchanama and did not prepare it correctly as per the factual condition. This is an incorrect suggestion because the defence has admitted the contents of the panchanama and therefore it is received in evidence directly. There may be shortcomings, but they do not affect his credibility and the contents of said panchanama are not controverted and denied. It has further come in his evidence that the BDDS squad alongwith dog Prince and its handler had come to the spot and produced certain suspicious articles like watch of Gruen company golden dial, round ball of melted metal with spring, etc., Arts. 49 to 58, which he seized under the panchanama Ext.496 in the presence of the same panchas. His evidence is corroborated by the evidence of Ratan Tarware, PW-21, and both of them have proved the contents of the said panchanama, which corroborate their version. Both the witnesses have identified all the articles that were seized. During the cross-examination of Ratan Tarware, PW-21, it was brought on record that he works as a panch witness in accident cases during his work as hamal at the

railway stations, that it was raining hard for some time and then raining slightly continuously from evening upto night, that the roof of the coach was torn and rain water was coming inside, that all the articles in the coach were soaked with the rain water and that many people had gone inside the coach before the first panchanama. However, these things do not affect his evidence, because he has given certain positive answers in his cross-examination that it was dark at the spot, but there were electric floodlights and torches, that he was made aware that specific articles were seized from the coach and was told that they were suspicious articles. He denied the suggestion that the articles that were recovered at the time of the second panchanama were not there at the time of the first panchanama, that the panchanama was written in the police station, not read over to him, that nothing happened in his presence and neither he nor the other panch was present at the spot. Thus, his testimony has not been discredited. On the other hand these positive answers show that he has knowledge as to what had happened on that day in his presence and establishes his presence at the time of panchanama.

375. It has come in the evidence of Dy. SP Raskar, PW-139, that the FSL team had come there and on their request he collected certain samples, i.e., Arts. 361(colly), 362(colly) and 363(colly), packed, labelled and sealed them and seized them under panchanama Ext. 1539. The panch witnesses of this panchanama are not examined by the prosecution and he explained that they are not traceable. He is not cross-examined on this point and his evidence about preparation

of this panchanama is not disputed. It has come in his evidence that he sent the articles that he had seized under the panchanama Ext. 496 to the FSL alongwith ASI Autgiri, PW-96, alongwith his forwarding letter, office copy of which is at Ext.960, the contents of which he proved. ASI Autgiri, PW-96, corroborated his version. The omission to mention that the articles seized under this panchanama were packed and sealed, was brought on record during his cross-examination, however, the FSL report Ext.961 mentions receipt of sealed parcels with seals intact. The main portion of the statement of ASI Autgiri, PW-96, was confronted to him in respect of the date on which he had taken the samples to the FSL and it was proved during the evidence of Dy. SP Raskhar, PW-139, and marked as Ext.1545. It has come in the evidence of ASI Autgiri, PW-96, that he had taken the sealed envelopes on 13/07/06, but the proved portion starts with the date 12/07/06, by which it is tried to be pointed out that infact he had not gone on 13/07/06. However, there is no such suggestion given to him and his evidence is not controverted. Perusal of the proved portion Ext.1545 shows the date 12/07/06 at the beginning, but the statement itself is dated 13/07/06. It is obviously a typographical error. Hence, this contradiction is of no consequence more particularly because his evidence is not controverted.

376. It has come in the evidence of Dy. SP Raskar, PW-139, that he forwarded the articles that were seized at the instance of the FSL personnel from the bogie in the Kandivali Car Shed and from the spot at Jogeshwari to the FSL alongwith PC Tambe, PW-98, with the

forwarding letter, office copy of which is at Ext.976, contents of which he proved. PC Tambe, PW-98, corroborated his version and the only thing that is brought on record during his cross-examination is that the date at the end, below the signature of Dy. SP Raskar, PW-139, is 14/07/06, whereas the date on top of letter is altered to 15/07/06. However, it is inconsequential and he has denied the suggestion that he had not gone there on 15/07/06 and the receiving stamp and signature were obtained later on.

377. The contents of the FSL report Ext. 966 in respect of the articles that were collected as shown by the BDDS personnel and Ext.977 in respect of the articles that were collected from the bogie when they were shown by the FSL personnel show the result of analysis that Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris in the exhibits and RDX is used as a high explosive.

378. Prosecution examined Jayprakash Gurav, PW-14, an injured in the blast, who deposed about the happening of the bomb blast. His left leg from the knee down was cut in the blast and his friend one Arvind Chikane, who was with him, died at the spot. His evidence is uncontroverted.

379. His injury certificate Ext.2731(5) shows amputation of the left lower leg. One more injured Ashwin Boricha, PW-134, who had filed his affidavit Ext.1453 in evidence, was called by the defence for cross-examination and certain portions from his statement were confronted to him by way of contradiction, but they were not proved by the defence. Thus, they are of no consequence and other than this

there is nothing in his cross-examination to discredit his version and his evidence about he having travelled in the said train is not controverted.

380. Dy. SP Raskar, PW-139's evidence in respect of this preliminary investigation is not discredited by his cross-examination. He was questioned about maintenance of record, about use of brass seal of the police station and he answered that there is no record like station diary entry or seal movement register or requisition to the property incharge about taking the seal outside the police station. Major portion of his cross-examination is devoted to ascertain the names of injured persons whose statement he had recorded, to the statements of injured which he had not recorded but are on record, etc.

381. Death certificates and memorandums of *post-mortem* examination of 28 persons, who were killed and of 100 persons, who were injured in this blast as mentioned in Tables No. 9 and 10 respectively supra, are not disputed by the defence. Thus, these contents stand proved.

382. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no.0634A of train no. 619DN Borivali slow on 11/07/06 at 1824 hours at Jogeshwari Railway Station. The results of analysis of the articles that were found at the spot prove that explosives were used to cause the bomb explosion. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil.

The memorandums of *post-mortem* examinations and the injury certificates prove that 28 persons were killed and 100 persons were injured in the bomb explosion that took place at Jogeshwari Railway Station.

C. R. No. 156 of 2006 of Borivali Railway Police Station :-

383. Dy. SP Satish Ahir, PW-144, gave evidence as narrated in paragraphs 31 to 35 supra and described the situation that he saw when he reached the spot. It has come in his evidence that on reaching the platform no. 4 from where he had heard the sound of explosion, he saw that the affected bogie no. 935A was at a distance of 10 feet from the end of staircase, some people had fallen out of it, some had fallen inside and the tin of the western side was torn apart, that the fans, luggage racks, windows and seats were totally broken. It has come in his evidence that he cordoned the bogie when people started crowding and coming closer to it. It has come in his evidence that he took the information of PSI Dhone, PW-1, who was the beat incharge of the Borivali Railway Police Station and then registered the crime. PSI Dhone, PW-1, proved the contents of his information Ext.106 and described the situation at the spot in respect of the damage to the bogie and the injured and dead commuters and the rescue work that was organised at the spot. He is the first witness examined on 18/12/07 when the case was only one and a half years old. It was recorded by my learned predecessor Mrs. M. R. Bhatkar (now Hon'ble Judge of the Bombay High Court). However, by that time the accused had cancelled the vakalatnama of their advocates and when they were asked to cross-examine the

witness, they showed chits in which it was written that they have no faith on this court. My learned predecessor therefore appointed one advocate Merchant as Amicus Curiae and asked him to cross-examine the witness. His cross-examination has not revealed anything adverse in respect of the factual position deposed by the witness. The contents of the FIR Ext.106 corroborate his evidence and the evidence of Dy. SP Ahir, PW-144.

384. It has come in the evidence of Dy. SP Ahir, PW-144, that he prepared the panchanama Ext.140 of the spot shown by PSI Dhone, PW-1, in the presence of panch witnesses, Eseki Nadar, PW-32, and one more and during the preparation of the panchanama, FSL expert Kulkarni had come there and had shown certain articles that would be useful for the purpose of investigation and accordingly handed over the nine articles that he had picked up from the bogie, i.e., Arts. 189 to 198(d), which were packed, sealed and labelled and seized under the panchanama Ext.540. Eseki Nadar, PW-32, admitted in his cross-examination that he has acted as panch witness in the cases of railway accidents and certain minor things about the timings of the preparation of the panchanama, about not seeing any cloth bag or bag with the police, about he not knowing from where the police collected the articles, etc., and about number of signatures that he made. However, a positive statement has come in his cross-examination that police showed him the articles that were collected. He, however, denied the suggestion that the police took his signatures on blank papers in the police station, that no article was seized in his presence and that he identified the articles on the say of

the police. There are no submissions in the arguments by the defence advocates about this witness. Dy. SP Ahir, PW-144, was however cross-examined at length on the point of preparation of spot panchanama and he gave specific answers in respect of the position of the affected bogie and the damage that was caused to specific portions of the bogie and it has come in his cross-examination that the portion that was most damaged was important from the point of investigation, one could ascertain the place where explosive was planted from the location of the dislocated benches and breaking of the windows. He, however, explained that flooring of the bogie was damaged, but was not pushed down or broken. He admitted that the point where the blown up portion was, was an important point and it has come in his evidence that the central portion of the flooring was damaged, the measurement of which are not described in the panchanama. He turned down the suggestion that he deposed falsely to help the ATS and kept many lacunas in the spot panchanama to make it convenient to be filled up during the further investigation. However, the relevance of this suggestion is not explained or pointed out during the arguments. He was further cross-examined in respect of the movement of the seal of the police station outside the police station and the record that is required to be kept about it. However, the preparation of the spot panchanama, seizure of the nine articles under it and the factual position as described in the panchanama are not disputed.

385. It has come in the evidence of Dy. SP Ahir, PW-144, he sent the seized nine articles with HC Khot, PW-143, alongwith a forwarding

letter. He proved the contents of its office copy, Ext.1582. It has come in the evidence of HC Khot, PW-143, that he had taken the said articles on 12/07/06 to the FSL and the office copy, Ext.1582, contains the acknowledgment of the receiving clerk of the FSL office. The words on the seals of the sealed packets were disputed during his cross-examination in the sense that some words are not readable and the emblem of 'Ashok Pillar' is also not visible and the colour of seal on one packet is darker than the seals on the another packet, that the seals on both of the police station and word 'Forensic' appears on the seal of the police station. However, he has turned down the suggestion that he did not take the sealed packets to the FSL. There are no submissions about the above cross-examination. The contents of the report of the FSL Ext.2416, however, mention receipt of the sealed parcels with seals intact and as per the copy, similarly, there is no cross-examination to Dy. SP Ahir, PW-144, in respect of his evidence about seizure of the articles and sealing them.

386. The contents of the FSL report Ext.2416 in respect of the articles seized from the spot show the result of analysis that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in the post explosion debris in all nine articles.

387. Prosecution examined three persons who are the injured in this blast, out of which two were not travelling in the train, but were on the same platform in the Borivali Railway Station. Rajaram Chavan, PW-11, is an unfortunate security guard, who may have

been 36 years of age on the day of the incident. He was sitting on platform no. 2 and 3 of Borivali Railway Station as he wanted to go to Santacruz. It has come in his evidence that he was sitting on the bench near the location of the first-class compartment from the Virar side on platform no. 2 and 3 of Borivali Railway Station as he wanted to go to Santacruz and when the Virar local came on platform no. 4, there was a loud explosion, he was lifted from the bench and thrown down and saw that his left leg was blood stained and was not in place from the knee downwards, because of which he lost his job. There is no cross-examination to him. The contents of his injury certificate Ext.2733(18), show traumatic below knee amputation and contaminated wound and bleeding. The other injured is Shweta Ambede, PW-37, in whose evidence it is revealed that she was standing at the door in the first ladies compartment in a train going to Kandivali, which she had boarded from platform no. 2 and at that time a train going towards Virar came on platform no. 4 and she heard a loud sound and saw fire. It has come in her evidence that she sustained a bleeding injury on the right leg and a metal piece was removed from her leg on the next day. There is some cross-examination to her in respect of the said metal piece and about some improvements that she made on her statement, but the fact of she having sustained injury in the said blast is not disputed. Same is the case about Dr. Madhukar Chaudhary, PW-38, who has given evidence about taking out the foreign body metal piece, Art. 243, from the body of Shweta Ambede, PW-37, with great difficulty. He was surprisingly given a suggestion that the said metal piece was

not removed from the body of the said patient, which he, of course, denied. There is some cross-examination to him about the procedure that he adopted for cleaning wounds by some chemicals and about he forwarding the metal piece to Santa Nagar Police Station, etc., but as mentioned above he was given the suggestion and he denied that no x-ray was taken and no metal piece was removed from the body of the patient. It has come in the evidence of Dy. SP Ahir, PW-144, that he seized the metal piece Art. 243 when it was brought by father of Shweta Ambede, PW-37, in the police station, in the presence of panch witnesses Dilip Aayre, PW-33, and one more. Both proved the contents of the panchanama Ext.562, which corroborate their version and both identified the metal piece, Art.243. Cross-examination of Dilip Aayre, PW-33, has not discredited his version and he has denied the suggestion that no article was seized in his presence, etc. It has come in the evidence of Dy. SP Ahir, PW-144, that he sent the said metal piece alongwith HC Khot, PW-143, alongwith a forwarding letter, office copy of which is at Ext.1583, the contents of which he proved. HC Khot, PW-143, also gave the evidence accordingly. This evidence is not much material as FSL report regarding this metal piece is not produced by the prosecution. However, the contents of the MLC record issued by Dr. Madhukar Chaudhary, PW-38, is proved by him and it corroborates the evidence of Shweta Ambede, PW-37, and proves her injury. The third injured examined by the prosecution in this blast case is Kishore Shah, PW-60. It has come in his evidence that he had boarded the said train at Churchgate Railway Station and there was an explosion

at Borivali Railway Station when the train was about to stop and he, alongwith the other persons standing on the door, were thrown on the platform. He was examined by the prosecution as an injured as well as a witness, who had seen two persons keeping a black bag on the luggage rack, out of whom he identified one as A13 subsequently in the test identification parade and also in the court. The contents of his injury certificate Ext. 2733(71) show abrasion at two places and main injury is left ear drum rupture. His presence in the said bogie is heavily disputed in view of his evidence about seeing the A13 and one more keeping a black bag on the luggage rack. Therefore, his evidence will be discussed later on when the evidence against particular accused will be discussed. However, the most important thing about this witness is that he had himself gone to the police station immediately two days after the incident voluntarily and had given the statement about what he had witnessed.

388. Death certificates and memorandums of *post-mortem* examinations of 26 persons that were killed in this explosion and injury certificates of 130 injured persons as mentioned in Tables No. 11 and 12 supra, except that of Kishore Shah, PW-60, Ext.2733(71), are not disputed by the defence. Thus, the prosecution has proved their contents.

389. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no. 935A of train no. 621DN Virar Fast on 11/07/06 at 1828 hours at Borivali Railway Station. The results of analysis of the

articles that were seized from the spot prove that explosives were used to cause the bomb explosion. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil. The memorandums of *post-mortem* examinations, cause of death certificates and the injury certificates prove that 26 persons were killed and 130 persons were injured in the bomb explosion that took place at Borivali Railway Station.

C. R. No. 59 of 2006 of Vasai Road Railway Police Station :-

390. Sr. PI Kulkarni, PW-133, gave evidence as narrated in paragraphs 36 to 40 supra and described the situation at the spot. It has come in his evidence that he recorded the first information report Ext.428 of Station Master Verbey, PW-6, who proved its contents. The contents of Ext.428 corroborate the version of both the witnesses. Station Master Verbey, PW-6, also described the damage to the coach and the situation at the spot. There is no cross-examination to him.

391. It has come in the evidence of Sr. PI Kulkarni, PW-133, that he prepared panchanama of spot Ext.564 and during the preparation of panchanama, the dog squad and the Bomb Detection Squad had come there and after the dog Seema sniffed at the spot, he seized aluminum pieces, paper pieces and blood mixed earth, Arts. 245(colly), 246(1 to 3) and 247(colly), in the presence of panch witnesses Ramesh Varma, PW-34, and one more, packed and sealed them. Panch witness Ramesh Varma, PW-34, corroborated his version and it has come in his evidence that the Station Master

showed the spot, a dog squad had come there, it was taken inside the coach and the dog sniffed at particular articles and the police picked up pieces of rexine, etc., and a panchanama was prepared. He as well as Sr. PI Kulkarni, PW-133, proved the contents of the panchanama Ext.564, which corroborate their version. They also identified Arts. 245(colly), 246(1 to 3) and 247(colly). There is nothing in the cross-examination of Ramesh Varma, PW-34, to discredit his version. He turned down the suggestion that no panchanama was drawn at the time mentioned in the panchanama, no articles were seized in his presence, that he identified all the articles on the say of the police and he signed subsequently in the office of the Station Master.

392. Sr. PI Kulkarni, PW-133, was cross-examined in respect of the arrival of Bomb Detection and Disposal Squad and in respect of the situation at the spot. It has come in his evidence that the roof of the bogie was torn and it had opened, but he did not call any railway officer to ascertain which part of the bogie was more damaged. He denied the suggestion that waste material is dumped by the sides of the railway track in between Mira Road and Bhayander and that he took hamals as panch witnesses, who are taken as panch witnesses whenever accidents take place on the platforms and who are under his thumb. Other than this, there is no cross-examination to him in respect of the factual position described in the spot panchanama and about the collection of the articles. He was put some questions about movement of brass seal of police station and he admitted that the record is maintained to take out the brass seal from the police

station, but the explanation that he gave is very important, because he explained that if he takes out the brass seal, it is not necessary to mention it in the record. The panch witness has deposed about seizing an iron pipe from the spot and Sr. PI Kulkarni, PW-133, also admitted in his cross-examination that it was seized from the spot, but it is not before the court. However, his evidence about preparation of the panchanama is not controverted.

393. It has come in the evidence of Sr. PI Kulkarni, PW-133, that he sent the seized articles to the FSL, Kalina on 13/07/06 alongwith his forwarding letter. He proved the contents of the office copy of the letter Ext.980, which bears the acknowledgment of the inward clerk of the FSL. HC Khot, PW-99, corroborated his evidence and proved the contents of Ext.980 stating that it mentions his name and buckle number. His cross-examination has not discredited his version and he denied the suggestion that he did not take articles to the FSL on 13/07/06. Contents of the forwarding letter Ext.980 show that his name is mentioned alongwith buckle number and the impression of the seal of the police station is also on the second page of the letter. The contents of the FSL report Ext.981, show receipt of two sealed parcels, seals intact and as per copy sent. The result of analysis of the parcels that are described as paper pieces, metallic pieces, ply pieces, partly burnt and damaged cloth pieces and debris, shows that Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were detected in post explosion debris in all articles and a note is added that RDX is used as high explosive.

394. Prosecution examined an injured Kishor Mhatre, PW-10, who

was a traveller of that train and was travelling in the same bogie. It has come in his evidence that he heard a loud explosion after the train left Mira Road Railway Station, that he was thrown and lost consciousness and when he became somewhat conscious he realized that he was half out of the train on the floor and there were two-four bodies on him. It has come in his evidence that he sustained multiple fractures to right hand, it was required to be operated twice and two rods were inserted, that his left hand was also operated and he had injuries on his head and on the back portion. The contents of his injury certificate Ext. 2732 (15 & 17) corroborate his version.

395. Twelve persons out of the injured in the said blast, who had filed their affidavits, were called for cross-examination by the defence in respect of this blast, where they sat in the said bogie. However, there is no denial to their evidence by way of an affidavit about they having travelled in the said train and bogie and having sustained the injuries as mentioned in the injury certificates in Table No. 14 supra. Their names are not mentioned here as their evidence will be discussed at the appropriate stage.

396. Sr. PI Kulkarni, PW-133, was cross-examined in respect of the statement of one Ramanand Marutirao Macheware and Joseph Anthony Almeida. He could not say whether the statement of Ramanand Macheware was recorded by the ATS and sent to him on 15/07/06. However, subsequently on going through the case diary at the request of the defence advocate he stated that it was not recorded on 15/07/06, but he recorded the statement of that injured on 12/07/06, which is recorded in his case diary. Other than this,

there is nothing in his cross-examination to discredit his version in respect of the preliminary investigation that he did.

397. It was finally revealed that 31 persons had died in this blast. An injured Amit Dinesh Singh, in this blast was taking treatment in the Jaslok Hospital since 13/07/06 after being initially treated at Bhakti Vedant Hospital from 11/07/06 as per the death summary Ext.4733. He was received unconscious in the Jaslok Hospital and he was in Coma till the date of his death on 02/05/13 after nearly seven years. Hence, his name is included in the list of deceased which takes the total of the persons killed in the blast to 32.

398. The death certificates, memorandums of *post-mortem* examination of 32 persons and the affidavits and the injury certificates of 116 persons injured in the blast as mentioned in Tables no. 13 and 14 respectively are not disputed by the defence. Thus, their contents are proved by the prosecution.

399. In view of the above discussion, it will have to be held that the prosecution has proved that there was a bomb explosion in the first-class bogie no.846A of train no. 607DN Virar Fast on 11/07/06 at 1823 hours at Mira Road Railway Station. The results of analysis of the articles that were seized from the spot prove that explosives were used to cause the bomb explosion. The kinds of explosives that were used is specifically found by the Chemical Analyzer, viz., Cyclonite (RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil. The memorandums of *post-mortem* examinations, cause of death certificates and the injury certificates prove that 32 persons were killed and 115 persons were injured in the bomb

explosion that took place at Mira Road Railway Station.

400. In view of the above discussion, it will have to be held that the prosecution has proved that there were bomb explosions in the first-class bogies of seven western railway suburban trains in Mumbai in between 6.23 to 6.28 p.m. on 11/07/06, that explosives like Cyclonite(RDX), Ammonium, Nitrate, Nitrite and Petroleum Hydrocarbon Oil were used to cause the bomb explosions and that 187 + 1, total 188 persons were killed and 760 were injured in the bomb explosions. **I have to, therefore, answer points no. 1 to 3 in the affirmative accordingly.**

401. The above evidence of the seven investigating officers of the railway police stations shows the meticulous manner in which the preliminary investigation of the disaster was conducted. It must have been quite a tedious work to ascertain the number of dead, to get them identified, to ascertain the number of injured, to get them identified, to get the post-mortems done, to make arrangements for treatment of the injured, to hand over the dead bodies of the victims to their kith and kin, to return the personal articles that were seized from the spot to the rightful claimants, etc. One can just imagine the chaos and commotion at the spots of the bomb blasts and the herculean task of the police to maintain law and order and also to make arrangements to carry the bodies of persons killed and to take the injured to the hospitals for treatment as well as to concentrate on the investigation aspect of the crime, etc. All these seven investigating officers had no concern, either prior or after the blasts with the ATS, with the exception of Sr. PI Rathod, PW-176, who was

deputed to the ATS.

Point no. 4 :-

402. There is no dispute from the side of the defence about the fact that there was damage to and destruction of railway property because of the bomb explosions. The 'railway' is a Central Government Undertaking as per The Railways Act, 1989 and it is administered by the Central Government. Clause (b) of Section 2 of the Prevention of Damage to Public Property Act, 1984 defines, *"public property' means any property, whether immovable or movable including any machinery which is owned by, or in the possession of, or under the control of the Central Government'*. Thus any damage or destruction to railway property will amount to damage or destruction to public property. It is alleged by the prosecution in the chargesheet that railway property worth Rs.88,66,239/- was destroyed because of the bomb explosions. Prosecution produced a letter dtd.13/09/06 from the General Manager (Safety), Head Quarters Office, Churchgate, Mumbai-20, dated 13/09/06, addressed to the ACP & CIO, Office of the Anti Terrorism Squad, Bhoiwada Police Station Compound, Mumbai – 14, which mentions the damage to the railway assets in all the seven bomb blasts. This letter was produced at page no. 4621 of Volume – A-III of the chargesheet and at page 463 is another letter dated 20/11/06 giving the specifications of the damages at every individual site of the blast. Prosecution called upon the defence to admit as many as 1077 documents by its application Ext.111 filed on 20/12/06. These documents include the above two letters from the General Manager

(Safety) dtd.13/09/06 and 20/11/06. This application was moved after the evidence of PSI Dhone, PW-1, was recorded on 18/12/06. Defence did not file say to this application till today. After the recording of evidence again started on 22/06/10 and PSI Dhone, PW-1, and the informants in four other crimes were present on that day, learned advocate for the accused requested that they be given copy of Ext.111 and the copy was accordingly given. However, they did not file any say to the said application. Most of the documents in the list with Ext.111 have been admitted in evidence as they are formal and undisputed documents in the nature of medical certificates of injuries sustained by the injured in all the seven blasts, inquest panchanamas, death certificates and memorandums of *post-mortem* examination of the deceased in all the blasts, etc. The other documents like the FIR, spot panchanamas, forwarding letters, sanctions for prosecution have been proved by the prosecution by examining the concerned witnesses. Reports received from the FSL have been received in evidence directly. Since, there is no dispute about the fact that there was damage to and destruction of railway property and since the defence has not given any say to the application under section 294 of the Cr. P. C. Ext. 111 filed by the prosecution, these two documents are received in evidence at the time of judgement and marked as Exts. 4738 and 4739 respectively. The contents of Ext.4738, which is dtd.13/09/06, show the total damages to the railway assets in all the seven blasts to the tune of Rs.88,66,239/-. However, the contents of the letter Ext.4739, which is dtd.20/11/06 and which describes the damage to the railway

assets at all seven sites of bomb explosions of the total value of Rs. 85,61,039/- will have to be accepted as it refers to the letter by the investigating officer dtd.18/08/06 and also to the letter Ext.4738. It appears that after totally assessing the damage and loss this figure has been arrived at. Prosecution examined Samir Lohani, PW-156, to prove the loss of revenue and damage to the property. It has come in his evidence that the damage to property was assessed at Rs. 88,66,239/-, which figure he probably got from the first letter Ext. 4738. There is no challenge to his evidence. It has come in his evidence that the total money paid in case of death, grievous injuries and simple injuries by the railway administration lastly, i.e., as on the date of his evidence on 20/10/11, is Rs.12,45,50,000/- and besides this, railway claims tribunal has decreed 732 claims and awarded Rs.9,37,72,000/- as compensation. If the loss to the railway is considered in totality, i.e., including the damage and destruction to the railway property, compensation given by the railway administration and compensation awarded by the railway claims tribunal, the total comes to a staggering amount of Rs. 22,68,83,039/-. There is no challenge to this evidence and to his testimony. His cross-examination is not in respect of damage or the compensation. He has proved the contents of his letter Ext.1682, which shows the approximate revenue loss on the suburban and non-suburban passenger traffic as well as the details of the amount that was paid as compensation and awarded. The loss of revenue was to the tune of Rs.2,80,00,000/- and the amount paid to various hospitals in Mumbai for treatment of the injured was Rs.

2,92,17,270/-. These two figures when added with the figure arrived at above, take the total loss to the railways to the tune of Rs. 28,41,00,309/-.

403. In view of the above discussion, it will have to be held that prosecution has proved that there was damage to and destruction of railway property which is public property, because of the bomb explosions. It is clear from the figure of damage to the property and the loss of revenue and the amounts of compensation paid by the railway authorities directly and amount of compensation awarded by the railways tribunal and the money spent for deferring the expenses of hospitals for treating the injured, that there was loss to the railways which *inter alia* means to the Government of India as the railway property is public property. **I have to, therefore, answer this point in the affirmative.**

Point no. 5 :-

404. Prosecution has alleged that the happening of the seven bomb explosions within a short span of time suggest that timer devices were used to cause the blasts simultaneously and at specific places and were aimed at large scale devastation of life and property and widespread panic and chaos with an intention to cripple the economy. The public transport was extensively damaged and disrupted with a view to overawe the government. The entire western railway, suburban as well as main line, came to a grinding halt. The commuters poured on the western express highway, thereby disrupting the north as well as south bound vehicular traffic. Thus, it is its case that Mumbai, which is the capital of State of

Maharashtra, is also the financial capital of the country, about 30 lakhs commuters travel each day in the western railway suburban trains between Churchgate and Virar during peak hours, that these commuters comprise of executives, businessmen, students and persons in the employment at various levels in the Government as well as private establishments, therefore, the suburban trains are called as essential services and the lifeline of the Mumbai metropolis. It is alleged that this lifeline came to a grinding halt because of seven bomb explosions. It is on the background of the magnitude of the loss of life, injuries to a large number of persons and damage and destruction to railway property, that the prosecution has levelled the charges for the offences under sections 121-A, 122 and 123 read with 120-B of the IPC as well as section 16 of the UA(P)A and sections 3(1)(i) and 3(2) of the MCOC Act.

405. In view of the discussion in the points no. 1 to 4 supra and findings on those points, in my humble opinion, before considering the evidence against the accused facing the trial in respect of their complicity in causing the bomb explosions, a positive inference can be legitimately drawn from the facts established by the prosecution for proving the points no. 1 to 4 supra, that the bomb explosions amount to conspiring to wage war against the Government of India and is a terrorist act and an act of promoting insurgency. The investigating officer under the MCOC Act, ACP Patil, PW-186, who has filed the chargesheet, deposed in connection with the accused facing the trial as well as the wanted accused, that they were members of an organised crime syndicate, that they were indulging

in continuing unlawful activities and resorting to various acts of violence, including bomb blasts, with the object of spreading communal disharmony, disturbing public tranquility, destabilizing the economy, spreading terror in the rank and file of common citizens and promoting insurgency. Keeping aside the aspect of allegations against the accused, to my mind, the very fact of the happening of the bomb explosions, that exactly similar explosives were used to cause the bomb explosions, the undisputed facts of the number of persons killed and injured and proof of damage and destruction to public property, leads to the only inference that this is an unlawful activity, an act of violence with the object of spreading communal disharmony, disturbing public tranquility, destabilizing the economy, spreading terror in the rank and file of common citizens and promoting insurgency. Considering the magnitude of the incidents of the bomb blasts and the calculated manner in which the bomb explosions were done, it will have to be said that it is not the handiwork of an individual or a group of persons, but there must be some organisation behind the actual executors and such an organisation must be inimical against the Government of India. The intention of crippling the economy by means of force is as clear as daylight, in view of the targets that were selected and the timings of the bomb blasts. The targets were the western suburban railways and the timing was evening, when businessmen, employees of private and public sectors return to their homes after the days work in Mumbai. These persons are a part of the economic work force of the state and central governments and of big and small businesses

and industrial establishments and the intention behind killing them and causing the mass destruction cannot be but for the purpose of waging war or attempting to wage such a war or abetting the waging war against the Government of India or to overawe, by means of force or the show of criminal force to the Government of India or the Government of Maharashtra. The explosion of the seven bombs at different places within a certain small time frame cannot be the planning and handiwork of one person or a few individuals and it can be gathered and inferred from this that it was the perfect and meticulous planning of an organisation inimical to our country, i.e., the Government of India.

406. The target of the attack by causing the bomb explosions was not any specific individual or a specific group of people. From the selection of the timings, the locations and the common nature of the explosive substances, it is obvious that whosoever committed this crime intended to cause maximum damage and loss to human life and property. It can be best described as wanton killing and destruction of property from which the only irresistible conclusion that can be drawn is that the persons who committed the crime, committed this act to wage war against the Government of India as well as the Government of Maharashtra.

407. Jurisprudence says that doctrine of *res ipsa loquitur* is mainly applicable to the cases of civil nature and the cases of negligence and accident in criminal cases. To my mind, this is a fit case to import and apply the doctrine of *res ipsa loquitur* to the present set of facts, because they are self-speaking in respect of the allegations

of the prosecution for the charges levelled. The act of the bomb explosions was designed in such a manner that it would shake the faith and confidence of the common man in the democratically established government of the country. It can be visualized that the situation that arose or prevailed would have further provoked the common man to question the competence of the government and revolt against it, as the very security of the common man was seen to be at stake. The tremendous devastation and destruction that was caused because of the bomb explosions was obviously done with a view to create an impression in the minds of the general public that the government is incapable of handling and looking after their security. The seven devastating bomb explosions were nothing short of an attempt to wage war against the government and the meticulous planning in execution of the bomb explosions effectively, leads to the inference that there was a deep rooted long standing conspiracy to cause the bomb explosions. The attempt to wage war or to overawe the Government of India and the Government of Maharashtra, by means of force or the show of criminal force can be gathered and it will have to be so held, because the word 'overawe' clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears that to connote the creation of a situation in which the members of the Central or State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger. The above circumstantial evidence discussed in points no. 1 to 4 supra is sufficient to draw the inference, the existence and

planning of the overt acts.

408. Section 15 of the UA(P)A defines a terrorist act as the act with an intention to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India with intent to strike terror or likely to strike terror in the people or any section of the people of India or in any foreign country by using bombs, dynamite or other explosive substances, etc., to cause or likely to cause death of or injuries to any person or persons, or loss of or damage to or destruction of property, or destruction of any supplies or services essential to the life of the community in India. In my humble opinion, the acts described above in the answer to points no. 1 to 4 supra squarely fall in the definition of 'Terrorist Act'. If this act is not a terrorist act, then what is? In addition, it is obvious that the tremendous devastation and destruction was caused with the intention of igniting the feelings that the government is incapable of handling and looking after the safety and security of its people, which leads to the inference that it was for the purpose of promoting insurgency. It will have to be said that this crime was committed in an organised manner, whether or not it amounts to organised crime as defined in section 2(1)(e) of the MCOC Act is a different question, but the very fact of the meticulous timings and the execution of the bomb explosions certainly force me to hold that it was an act of promoting insurgency.

409. In view of the above discussion, it will have to be held that the facts speaks for themselves, i.e., the bomb explosions amount to conspiring to wage war against the Government of India or

attempting to wage such a war or abetting the waging of such war or to overawe, by means of force or the show of criminal force, the Government of India or the Government of Maharashtra and is a terrorist act and also an act of promoting insurgency. **I have to, therefore, answer this point in the affirmative.**

Points no. 6 to 34 :-

Documents obtained by the accused under the RTI Act and produced on record :-

410. It is necessary first to take up the issue in respect of the documents produced by the accused during the trial, before proceeding to the discussion of the evidence led by the prosecution on these points, because arguments have been advanced on behalf of the accused on the basis of the documents produced by them from time to time and reliance has been placed on them on such documents, most of which have been obtained under the RTI Act as if they are proved documents. The accused obtained certified copies of documents from various courts and also obtained numerous documents from various authorities under the RTI Act. They produced all such documents obtained by them from time to time during every stage of the trial and even after the arguments were concluded. The applications for production of the documents before the start of the arguments were allowed and the documents were taken on record. However, after the statements of the accused under section 313 of the Cr. P. C. were recorded in July, 2012, learned advocate for the A4 and A5 filed applications Exts.2986, 2987 and 2988 to give exhibits to various documents and information

obtained under the RTI Act, to certified copies of various documents obtained from courts and to certified copies of panchanamas of test identification parades in two other cases. On taking the say of the learned SPP and on hearing both sides, the applications were allowed on 16/08/12 by passing the following orders :-

ORDER BELOW EXT. 2986

“Documents produced by all accused with their statements u/s 313 of the Cr. P. C., in the nature of documents received under the RTI, be exhibited as they are public documents, for the purpose of identification, subject, however, to the proof of the correctness of their contents in view of the law laid down in Appellants : Om Prakash Berlia and Anr. vs. Respondent : Unit Trust of India and Ors. reported in AIR 1983, Bombay at page 1”.

ORDER BELOW EXT.2987

“ Certified copies of judgements, depositions, chargesheets (Final Report u/s 173 of the Cr. P. C.) and proved documents produced by all accused with their statements u/s 313 of the Cr. P. C., obtained from various courts are received in evidence and be marked as exhibits”.

ORDER BELOW EXT.2988

“Two certified true copies of test identification parade panchanamas of SC No. 187/11 and 436/11 produced by the A4 with his statement u/s 313 of the Cr. P. C. be marked as exhibits for the purpose of identification. The certified copy of the memorandum of test identification parade in MCOC 08/12 was sent directly by Shri S. M. Modak, Judge, CR No. 56 and was given exhibit 2883. These three documents are only marked as exhibits for the purpose of identification. They cannot be read in this case as their contents have not been proved”.

411. During final arguments, the learned SPP reiterated his contentions that certified copies of the documents obtained under the RTI Act can be exhibited, subject to proof of the correctness of the contents. He submits that relevancy and admissibility of

documents is one thing and proof of correctness of the contents of the documents is another thing. Learned advocate for the A4 and A5 in point no. 13 of Volume 5 of his written submissions submitted that the documents obtained under the RTI Act are admissible in evidence with proof of the contents of the documents under sections 76 and 77 of the Indian Evidence Act, 1872, that such documents are certified copies of public documents obtained under the RTI Act, which is a Central Act passed by the Parliament and therefore they shall be admissible with proof of their contents. It is submitted that the opinion and information given by the Public Information Officer (PIO) on the basis of public record or public activity is also admissible as per sections 76 and 77 of the Indian Evidence Act. It is further submitted that the documents obtained under the RTI Act, even a letter written by a public officer, i.e., the PIO, on the basis of record are public activity and are admissible with proof of its contents under section 74(1) of the Indian Evidence Act. Similarly, the application under section 6(1) of the RTI Act and reply by the PIO under section 7(1) of the RTI Act is a document forming the acts or record of the acts and admissible in evidence under section 74(1) of the Indian Evidence Act. It is submitted that all the documents obtained under the RTI Act shall be presumed to be genuine documents as is the case with certified copies of the records of the court proceedings that are presumed to be genuine under section 80 of the Evidence Act. A strange submission is made that the production of two documents by the learned SPP, one from the DGP office and other from the CMM court, shows that the learned SPP

and the prosecuting agency have already verified the authenticity of all documents and not produced any rebuttal in respect of the others.

412. In my humble opinion, it is obvious that the submission that all the documents obtained under the RTI Act shall be presumed to be the genuine documents is contradictory with many submissions on this point by the learned advocate for the accused, viz., “that such documents and even a letter written by a PIO on the basis of records, are public activity, is a document forming the acts or records of the acts and admissible in evidence under section 74(1) of the Indian Evidence Act with proof of its contents”. Thus the submissions are self contradictory and it is no one's case that the learned SPP or the prosecuting agency undertook an exercise for verification of the authenticity of all documents. On the other hand, it is the submission of the learned SPP that the information that is gathered under the RTI Act is not free from flaws and to demonstrate this he has given certain examples illustratively. Learned advocate for the accused has relied on the following authorities in support of his submissions :-

- (i) **Umiya Glass Industries V. M. P. State Electricity Board.**
- (ii) **Rajasthan State Road Transport V. Nand Kishore & Ors.**
(2002 ACJ 1564).
- (iii) **Marwari Kumhar, Appellant V. Bhagwanpuri Guru Ganeshpuri, Respondents (LAWS(SC)-2000-8-148).**
- (iv) **Jagdishchandra Chandulal Shah V. State of Gujarat & Ors.**
(1989 CriLJ 1724).

413. I have carefully gone through the authorities. There is no citation for the first authority and it is not known whether it is reported. It is inapplicable because it is in connection with the official documents like provisional assessment order, copies of notices and final assessment order maintained in regular course of the official work by the M. P. State Electricity Board. These documents cannot be equated to copies of documents supplied under the RTI Act or the information given by the PIO in his letter to a person asking the information. In the second authority, reference was made to sections 74 and 77 of the Evidence Act and to an authority of the Apex Court wherein it had been observed that if a document is a certified copy of a public document, it need not be proved by calling a witness, which is as per the basic law. The third authority is not applicable on facts because the facts of the case before the Supreme Court were that an ordinary copy of judgement in a previous proceeding was produced before the first and second Appellate Courts, but the courts held that it was not proved and was inadmissible in evidence, ignoring the fact that the respondents were not claiming that the copy which was produced was not a correct copy. The last authority is concerning the public record kept in any State of private documents as provided in sub-section (2) of section 74 of the Evidence Act. The first authority is of the M. P. High Court, the second is of the Rajasthan High Court and the last is of the Gujarat High Court.

414. Learned advocate for the accused has not cited any authority under the RTI Act in support of his submissions. Obviously, a

certified copy of a public document is in the nature of secondary evidence as per section 63 of the Evidence Act. Section 65 prescribes that secondary evidence may be given of the existence, condition or contents of a document in the following cases, the relevant is clause (f), which reads, '*(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence*'. Now, there is no provision in the RTI Act permitting the information or certified copy given under that Act to be given in evidence.

415. In my humble opinion the order passed below Ext.2986 based on the authority in the case of **Om Prakash Berlia & Anr., Plaintiffs V. Unit Trust of India & Ors. (AIR 1983 Bombay 1)** will cover all these submissions. The Public Information Officer under the RTI Act only gives certified copies of the record that is available in his office. Such record may be based on hearsay material or may be sometimes on the basis of incorrect information provided to that office. The certified copy of such record, therefore, would at best establish the existence of the original in the office of the PIO. It will not however dispense with the proof of correctness of its contents, because there are several factors that may affect the correctness of the contents.

416. The relevant provisions of the Evidence Act, i.e., sections 3, 59, 62, 63 to 65, 67, 74 to 80 and 83 were discussed in the case of **Om Prakash Berlia** and it was held that, '*sections 61 and 62 read together show that the contents of a document must, preliminary, be proved by the production of the documents itself for the inspection of the court. It is obvious that the truth of the contents of the documents,*

even prima facie, cannot be proved by merely producing the document for the inspection of the court'.

417. It was held that, '*the Act requires, first, the production of the original document. If the original document is not available, secondary evidence may be given. This is to prove what the document states. Upon this the document becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, under section 67, that the signature and handwriting must be proved. Further, where the party tendering the document finds it necessary to prove the truth of its contents, that is, the truth of what it states, he must do so in the manner he would prove a relevant fact'.*

418. Reference was made to the law laid down in Bishwanath Rai reported in AIR 1971 SC 1949 and Madholal Sindhu reported in AIR 1954 Bom 305, which indicate that the truth of what the document states is generally done by calling the author of the document. In respect of section 74 of the Evidence Act, it is held that under it a certified copy of a public document is admissible. This is the secondary evidence and it proves what the document states, no more. In other words, he who seeks to prove a public document is relieved of the obligation to produce the original. However, all other requirements must still be complied with and must be separately established.

419. Secondly, in respect of submissions of the learned advocate for the accused that even letters sent by the PIO in reply to the application under the RTI Act are admissible under section 74(1) of the Evidence Act and are presumed to be genuine documents, in my

humble opinion, considering the above discussion and the law laid down in the above authority this will not be a correct preposition of law. To my mind, if certain information is given by a PIO in his letter in reply to an application seeking information, such information is given for the knowledge of the party seeking that information. Such information, to my mind, cannot be a substitute for an evidence and cannot be considered as evidence that is proved under the law. If such an information is required to be used as evidence of a particular fact it has to be proved as per the provisions of the Evidence Act.

420. In view of the above discussion, the order dtd.16/08/12 below Ext.2986 will apply to all the documents that are obtained by the defence under the RTI Act and produced and marked as exhibits. Such documents if duly proved as per the provisions of the Indian Evidence Act can only be considered and referred to.

Evidence of the prosecution and defence case and defence evidence.

421. The progress of the investigation has been chronologically given in the earlier part of the judgment. It is now necessary to appreciate/evaluate the evidence given by the prosecution and the defence of the accused and the evidence given by them on the points under consideration. Both sides have relied on numerous authorities covering all possible aspects of the case. The learned SPP started his arguments on 28/03/14 on facts and concluded them on 30/04/14. Before he could conclude his arguments, learned advocates for the accused filed application Ext. 4642 that the learned SPP has not

argued on the points of law and prayed for directing him to argue on points of law. On taking the say of the learned SPP and on hearing both sides, the application was rejected and disposed off in view of proviso to section 234 of the Cr. P. C. Thereafter, learned advocates for the accused made submissions on facts as well as on law points and submitted various authorities. Learned SPP then made submissions on law points in reply and submitted authorities on which he relied.

422. Both sides have submitted various authorities in respect of appreciation of evidence of witnesses as well as defence witnesses and the defence taken by the accused and it is therefore necessary to consider the law laid down by the High Courts and the Apex Court before proceeding further with the discussion of the evidence.

423. Learned advocate Shetty has placed reliance on the following authorities and the specific paragraphs on which he relied are reproduced in order to appreciate his submissions :-

(i) **Gurcharan Singh and another V. State of Punjab (AIR 1956 SC 460).**

Learned advocate has placed reliance on the observations in paragraphs 5 and 6 of the judgment. Paragraph 5 contains the discussion about the accused failing to prove the defence of alibi and in paragraph 6, it is held '*But even so, the burden of proving the case against the appellants was on the prosecution irrespective of whether or not the accused have made out a plausible defence*'.

(ii) **Dudh Nath Pandey V. State of U. P (AIR 1981 Supreme Court 911).**

It is observed in paragraph 5 that the burden of proving the 'alibi' undoubtedly lay on the appellant.

Learned advocate placed reliance on head note-C in which certain portions from paragraph 19 of the judgment are reproduced as follows :-

'Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.'

The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed'.

(iii) Tanviben Pankajkumar Divetia V. State of Gujarat (1997 Cri. L. J. 2535).

Learned advocate has placed reliance on the observations in paragraph 44 of the judgment which is as follows:-

'The Court has drawn adverse inference against the accused for making false statement as recorded under Section 313 of the Code of Criminal Procedure. In view of our findings, it cannot be held that the accused made false statements. Even if it is assumed that the accused had made false statements when examined under Section 313 of the Code of Criminal Procedure, the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea may be

considered as an additional circumstances if other circumstances proved and established point out the guilt of the accused. In this connection, reference may be made to the decision of this Court, in Shankarlal Gyrasilal V. State of Maharashtra, AIR 1981 SC 765'.

(iv) Harbhajan Singh V. State of Punjab and another (AIR 1966 Supreme Court 97).

Learned advocate placed reliance on the observations in paragraphs 14 to 17 portion of which are reproduced in head note-C as follows:-

'There is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused. It is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where he is called upon to prove that his case falls under an Exception, law treats the onus as discharged if he succeeds in proving a preponderance of probability. As soon as the preponderance of probability is established the burden shifts to the prosecution which still has to discharge its original onus. Basically, the original onus never shifts and the prosecution has at all stages of the case to prove the guilt of the accused beyond a reasonable doubt. (1935) AC 462, Rel. on.

Where an accused person pleads an Exception he must justify his plea, but the degree and character of proof which he is expected to

furnish in support of the plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case. The onus on the accused may well be compared to the onus on a party in civil proceedings; just as in civil proceedings the Court which tries an issue makes its decision by adopting the test of probabilities, so must a criminal Court hold the plea made by the accused proved, if a preponderance of probability is established by the evidence led by him'.

(v) S. Gopal Reddy, Appellant V. State of Andhra Pradesh, Respondent (AIR 1996 Supreme Court 2184).

Learned advocate has placed reliance on the observations in paragraph 17, wherein, the Supreme Court expressed concern about alarming increase in cases relating to harassment, torture, abetted suicides, etc. It was observed that, *'The role of the Courts, under the circumstances, assumes a great importance. The Courts are expected to deal with such cases in a realistic manner so as to further the object of the legislation. However, the Courts must not lose sight of the fact that the Act, though a piece of social legislation, is a penal statute. One of the cardinal rules of interpretation in such cases is that a penal statute must be strictly construed. The Courts have, thus, to be watchful to see that emotional sentiments are not allowed to influence their judgment, one way or the other and that they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt. They must carefully assess the evidence and not allow either suspicion or surmise or conjectures to*

take the place of proof in their zeal to stamp out the evil from the society while at the same time not adopting the easy course of letting technicalities or minor discrepancies in the evidence result in acquitting an accused. They must critically analyse the evidence and decide the case in a realistic manner.

424. Learned advocate Dr. Yug Choudhary for advocate Wahab Khan for the accused made submissions only on law points and placed reliance and furnished as many as 68 authorities. In respect of appreciation of evidence of witnesses and appreciation of evidence in such type of cases, he relied on following authorities :-

(i) Kashmira Singh, Appellant V. State of Madhya Pradesh, Respondents (AIR 1952 SC 159).

Learned advocate relied on the observations in paragraph 2 of the judgement and submits that one has to be on guard when the suspicion takes place on proof. The greater the charge, the higher the standard of proof, because the stakes are much higher. When the Prime Minister is killed, when the parliament is attacked, when the trains are blown up, the public wants to know who has done it. We have to see who are the right people, that they are caught and neutralized. The greater the charge, the higher the proof required. The observations in paragraph 2 are, '*The murder was a particularly cruel and revolting one and for that reason it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law*'.

(ii) Ashish Batham, Appellant, V. State of Madhya Pradesh,

Respondent (2002 CRI.L. J. 4676).

Learned advocate relied on the observations in paragraph 8 that, *'Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between may be true and must be true and this basic and golden rule only helps to maintain the vital distinction between conjectures and sure conclusions to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record'*.

While discussing this authority, he submits that this court will have to decide on the basis of circumstantial evidence, which is the mansty of the prosecution evidence and it is a difficult task. He submits that it is the weakest kind of evidence though it is no doubt admissible. He criticized the prosecution evidence and nature of the witnesses submitting that there is no fingerprints evidence, no voice

recordings, no eyewitnesses, no hard evidence though there are CCTVs everywhere. He also criticized the quality of prosecution witnesses as being habitual and of criminals on record and the possibility of fabrication of the confessions, which are not worth the paper on which they are written.

(iii) Shankarlal Gyarsilal Dixit, Appellant V. State of Maharashtra, Respondent (AIR 1981 Supreme Court 765).

Learned advocate has relied on the observations in paragraph 32 as follows :-

'The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of Uttar Pradesh, AIR 1976 SC 69 and Chandmal v. State of Rajasthan, AIR 1976 SC 917 in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the Court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond a "shadow of doubt". In the first place, the 'shadow of doubt', even in cases which depend on direct evidence is shadow of "reasonable" doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypothesis is far more rigorous than the test of proof beyond reasonable doubt'.

(iv) Mousam Singha Roy And Others, Appellants V. State of W. B., Respondent ((2003) 12 Supreme Court Cases 377).

Learned advocate has relied on the observations in paragraph 8 of the judgement in which the observations in paragraph 10 of the

judgement in the case of Hanumant Govind Nargundkar V. State of M. P. (AIR 1952 SC 343) are reproduced as follows :-

'In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof. 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'.

To my mind, the quoting in an English Judgement in paragraph 9 is a warning to the courts in respect of the appreciation of circumstantial evidence. It reads, *'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete'.*

(v) Raj Kumar Singh @ Raju @ Batya, Appellant V. State of Rajasthan, Respondent ((2013) 5 Supreme Court Cases 722.

Learned advocate has placed reliance on the observations in paragraphs 22 to 28 submitting that this is a much more recent judgement wherein the test is laid down in very great detail. He submits that there is a fact, it may be established, it may be true, yet the inference drawn from the fact may not be true and this is the danger. The second thing is that the inference drawn may also be true but it may not be only the inference that can be drawn from the set of the facts. Paragraphs 22 to 28 are as follows :-

'22. *In Kali Ram v. State of H. P. this court observed as under : (SCC p.820, para 25)*

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

23. *In Hodge, In re the Court held that before a person is convicted entirely on circumstantial evidence, the court must be satisfied not only that those circumstances were consistent with his having committed the act, but also that the facts were such, so as to be inconsistent with any other rational conclusion other than the one that the accused is the guilty person.*

24. *In Sharad Birdhichand Sarda this Court held as under :*

(SCC p. 185, para 153)

“153.(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused.....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,

(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.”

A similar view has been reiterated in Krishnan v. State, Pawan v. State of Uttaranchal and State of Maharashtra v. Mangilal.

25. *In M. G. Agarwal v. State of Maharashtra this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.*

26. *Similarly, in Sharad Birdhichand Sarda this Court held as under : (SCC pp.127-28)*

Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that

cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt of the accused is sought to be established by circumstantial evidence.

27. *In an Essay on the Principles of Circumstantial Evidence by William Wills by T. & J. W. Johnson & Co. 1872, it has been explained as under :*

“In matter of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions.

The term 'presumptive' is frequently used as synonymous with circumstantial evidence; but it is not so used with strict accuracy, The word 'presumption', ex vi termini, imports an inference from facts; and the adjunct 'presumptive', as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference.

Circumstances generally but not necessarily, lead to particular inferences; for the facts may be indisputable and yet their relation to the principal fact may be only apparent and not real; and

even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.

The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum.”

28. *Thus, in view of the above, the court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion. That the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.*

(vi) Lakshmi Singh and others, Appellants V. State of Bihar, Respondent (AIR 1976 Supreme Court 2263).

Learned advocate relied on the observations in paragraph 13 of the judgement submitting that this case was in respect of the self-defence, but the rule is to be applied to all general exceptions. The observations are *'It is well settled that it is not necessary for the*

defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version'.

(vii) Partap, appellant V. The State of Uttar Pradesh, respondent (AIR 1976 Supreme Court 966).

Learned advocate relied on the observations in paragraphs 12 and 28 in support of his submissions that burden on the accused is not as onerous as on the prosecution and even if the defence version is not fully established, it will not prove the prosecution case. Paragraphs 12 and 28 are as follows :-

'12. It is well settled that the burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability.

28. The question which arises in this case is : Even if the defence version is not held to be fully established, by a balance of probabilities, were there not sufficient pointers in evidence of what was probably the truth which leaked out from some statements of the prosecution witnesses themselves?'

He also relied on the observations in paragraphs 29 to 31 submitting that the observations in paragraph 31 is one of the best statements of law of allocation of burden of proof which reads, *'Even a literal interpretation of the first part of Section 105 could indicate that "the burden of proving the existence of circumstances bringing the case" within an exception is meant to cover complete proof of the*

exception pleaded, by a preponderance of probability, as well as proof of circumstances showing that the exception may exist which will entitle the accused to the benefit of doubt on the ingredients of an offence. If the intention was to confine the benefit of bringing a case within an exception to case where the exception was established by a preponderance of probability, more direct and definite language would have been employed by providing that the accused must 'prove the existence' of the exception pleaded. But, the language used in the first part of Section 105 seems to be deliberately less precise so that the accused, even if he fails to discharge his duty fully, by establishing the existence of an exception, may get the benefit of the exception indirectly when the prosecution fails in its duty to eliminate genuine doubt about his guilt introduced by the accused. Again, the last part of section 105, even if strictly and literally interpreted, does not justify reading into it the meaning that the obligatory presumption must last until the accused's pleas is fully established and not just till circumstances (i.e. not necessarily all) to support the plea are proved'.

(viii) Holia Budhoo Gawara, appellant V. Emperor (AIR (36) 1949 Nagpur 163).

Learned advocate has relied on the observations in paragraphs 7 and 12 and reiterated the same test as to what weight is to be attached to the evidence of the accused and that all that may be necessary for the accused is to offer some explanation of the prosecution evidence, and if this appears to the court to be reasonable, even though not beyond doubt and to be consistent with the innocence of the accused, he should be given the benefit of it.

(ix) Bapurao Annaji Khond, applicant V. Emperor, opposite party (A. I. R. 1936 Nagpur 160).

It is observed in this case that, *'when the accused gives a reasonable explanation which may be true, then even though the Judge or the Jury, as the case may be, is not convinced that it is true, he is entitled to an acquittal'*.

(x) Rabindra Kumar Dey, appellant V. State of Orissa, respondent (AIR 1977 Supreme Court 170).

Learned advocate has relied on the observations in paragraph 6, which are dealing with the same principle, but are more elaborate. He made a submission that if in his case he says that somebody has committed crime then it is for the prosecution to prove that he has not given such a confession and that he is not chargesheeted for the said allegations. The observations are, *'The Courts below appear to have convicted the appellant on the basis of the decision referred to above and have held that since the explanation given by the appellant was false, an inference of misappropriation could reasonably be drawn against him. This proposition cannot be doubted. But the question is whether the explanation given by the appellant in this case can be said to be absolutely false? Another question that arises is what are the standards to be employed in order to judge the truth or falsity of the version given by the defence? Should the accused prove his case with the same amount of rigour and certainty, as the prosecution is required to prove a criminal charge, or it is sufficient if the accused puts forward a probable or reasonable explanation which is sufficient to throw doubt on the prosecution case?*

In our opinion three cardinal principles of criminal jurisprudence are well-settled, namely:

- (1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;*
- (2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and*
- (3) that the onus on the prosecution never shifts.*

It is true that under Section 105 of the Evidence Act the onus of proving exceptions mentioned in the Indian Penal Code lies on the accused, but this section does not at all indicate the nature and standard of proof required. The Evidence Act does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that, it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of the version given by him throws doubt on the prosecution case and, therefore, the prosecution cannot be said to have established the charge beyond reasonable doubt. In other words, the mode of proof, by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions of the Indian Penal Code on which he seeks to rely. It is sufficient for the defence to give a version which competes in probability with the prosecution version, for that would be sufficient

to throw suspicion on the prosecution case entailing its rejection by the Court. This aspect of the matter is no longer res integra but is concluded by several authorities of this Court'.

Reference to the observations in the case of State of U. P. V. Ram Sarup reported in AIR 1974 SC 1570 at page 1576 were reiterated as, *'that is to say an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by him while discharging the burden under Section 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea'.*

(xi) The State of Punjab, appellant V. Hari Singh and Another, respondents ((1974) 4 Supreme Court Cases 552).

Learned advocate relied on the observations in paragraph 12 that, *'the ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect'.* Placing reliance on the above observation, he submits that whenever defence evidence is led there is always doubt in the mind of the people that he may be creating something and usually when an accused leads evidence, the prosecution says that it should not be believed.

(xii) Sarwan Singh, appellant V. State of Punjab, respondent ((2003) 1 Supreme Court Cases 240).

Learned advocate relied on a sentence in paragraph 9, *'It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted'*.

(xiii) Gianchand & others, appellants V. State of Haryana, respondent ((2013) 14 Supreme Court Cases 420).

Learned advocate has relied on the observations in paragraph 14 of the judgement and submitted that the confessions were recorded behind the back of this court, the prosecution gave evidence about it, the accused gave oral evidence, the prosecution have the confessions of the accused in its hand, but they were not confronted with the confessions. Observations in paragraphs 14 are, *'The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai V. Bhagwantbuva observing as under : (SCC p. 114, para 40)*

“40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act,

1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provisions stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(emphasis supplied)

(xiv) Kartar Singh, petitioner V. State of Punjab, respondent ((1994) 3 Supreme Court Cases 569).

Learned advocate has relied on the observation in paragraph 208 in support of his submission that the prosecution should have confronted the accused with their statements recorded by the police. Paragraph 208 reads as, 'Article 22(1) and (2) confer certain rights upon a person who has been arrested. Coming to the provisions of Code of Criminal Procedure, Section 161 empowers a police officer making an investigation to examine orally any person supposed to be acquitted with the facts and circumstances of the case and to reduce into writing any statement made to him in the course of such examination. Section

162 which speaks of the use of the statement so recorded, states that no statement recorded by a police officer, if reduced into writing, be signed by the person making it and that the statement shall not be used for any purpose save as provided in the Code and the provisions of the Evidence Act. The ban imposed by Section 162 applies to all the statements whether confessional or otherwise, made to a police officer by any person whether accused or not during the course of the investigation under Chapter XII of the Code. But the statement given by an accused can be used in the manner provided by Section 145 of the Evidence Act in case the accused examines himself as a witness for the defence by availing Section 315(1) of the Code corresponding to Section 342-A of the old Code and to give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial'.

(xv) State of Haryana, appellant V. Ram Singh, respondent ((2002) 2 Supreme Court Cases 426).

Learned advocate has relied on the observations in paragraph 19, which reads as, '*incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one – the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution witnesses, in particular PW 10 Dholu Ram that his father Manphool*

was missing for about 2/3 days prior to the day of the occurrence itself – what more is expected of the defence case : a doubt or a certainty - jurisprudentially a doubt would be enough : when such a suggestion has been made the prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet – it is the prosecutor's duty to prove beyond all reasonable doubts and not to defence to prove its innocence – this itself is a circumstance, which cannot but be termed to be suspicious in nature'. Learned advocate submits that the accused have given detailed evidence about torture and confessions, but only suggestion by the prosecutor that they are speaking false is not sufficient. Accused stated on oath about certain things but no suggestion was even given that it is not true. He points out to specific instances in the evidence given by A7, A12 and A13. He submits that there is no suggestion to the particular accused that they have planted the bombs or that they have given confessions or harboured the wanted accused or that test identification parade was conducted properly though the accused gave specific evidence to disprove these allegations and even produced and proved documents. Specific instance of injury certificates proved by the A7 has been pointed out.

425. Learned advocate Sharif Shaikh relied on the following authorities :-

(i) State of Goa, appellants V. Sanjay Thakran, respondent (Laws (SC)-2007-3-22).

Learned advocate has relied on the settled propositions of law when a case raised upon circumstantial evidence in paragraph 6 which is unnecessary to reiterate.

(ii) Surajit Sarkar, appellant V. State of West Bengal, respondent ((2013) 1 Supreme Court Cases (Cri) 877).

Learned advocate has relied on the discussion of the facts of that case in paragraph 12 and on the observations in paragraphs 38 to 42 of the judgement in support of his submission that there was delay in the examination of the witnesses by the investigating officers which was fitted to the prosecution. Paragraph 15 in the case of Ganesh Bhavan Patel V. State of Maharashtra reported in (1978) 4 SCC at page 371 is quoted in paragraph 40, i.e., *'15....Delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced'* and in paragraph 41 it is observed that there was a delay of a month and a half in examining of the witnesses. Paragraph 17 in the case of Banti V. State of M. P. reported in (2004) 1 SCC at page 414 is quoted in paragraph 42 as, *'17....As regards the delayed examination of certain witnesses, this Court in several decisions has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application*

that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion'.

The above two judgements were the authorities relied upon by the counsels for the appellants and respondents.

(iii) Sunil Kundu & Anr., appellants V. State of Jharkhand, respondent ((2013) 2 Supreme Court Cases (Cri) 427).

Learned advocate has relied on paragraphs 2, 13 and 15 to 29, most of which contain the discussion about the facts of the case. The observations on law in the facts of that case were in paragraph 28 as, *'It is also true that the plea of alibi taken by the accused has failed. The defence witnesses examined by them have been disbelieved. It was urged that adverse inference should be drawn from this. We reject this submission. When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt'.* In paragraph 29 it is observed that, *'it is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused'.*

(iv) Tulshiram Bhanudas Kambale, appellant V. State of Maharashtra, respondents (Laws (Bom)-1999-4-72).

Learned advocate has relied on paragraphs 7 to 14, which contain a discussion about the factual aspects of the case.

(v) Ron Chayak V. State of Goa (2007 ALL MR (Cri) 2786).

Learned advocate has relied on the head note and paragraphs 7, 9, 13, 15, 18 and 19 of the judgement in support of his submission that pliable witnesses who had acted as panel witness on several occasions were taken alongwith for the search which rendered doubtful the entire raid for lack and absence of independent witnesses, whom the search officer failed to take along. This case is in respect of the search and seizure of narcotic drugs and the discussion in paragraphs is mainly in respect of the factual aspects of the case wherein it was observed that the panch witness has acted as much on 4-5 occasions and therefore his evidence did not carry any value. Reference is made in paragraph 9 to an earlier authority of the Bombay High Court wherein it was observed that, *'the learned Divisional Bench observed that the circumstance that the public panch is a habitual panch would certainly weigh with the Court if it finds that the evidence of police witnesses is not free from blemish'*. Reference is also made to the observation in an authority of the Supreme Court wherein observations by the Gujarat High Court and the conclusion arrived at are reproduced.

(vi) State of Rajasthan V. Sher Singh (1994 Cri LJ 904).

Learned advocate has relied on paragraphs 12, 14, 16, 19, 25, 28, 30, 32, 35 and 37 of the judgement in support of the submissions that burden is always on the prosecution and it never shifts. Paragraph 12 contains the submissions of the advocate for the

appellant before the Rajasthan High Court and in paragraph 14 it is observed that the trial court did not approach the issue in its correct perspective as it ignored the elementary and cardinal principle of criminal jurisprudence which requires the prosecution to stand on its own legs and regarding this the trial court examined the defence version before examining the prosecution story. The discussion in the remaining paragraphs is totally factual.

(vii) Jarnail Singh & Ors., appellants V. State of Punjab, respondent ((2009) 9 Supreme Court Cases 719).

Learned advocate has relied on this authority that was cited by learned advocate Yug Choudhary in support of his submission that the prosecution cannot rely on defence evidence to prove its case. It appears that the submissions are incorrect and in fact the learned advocate wants to rely on the observations in paragraphs 20 to 23 of the judgement, in respect of the chance witnesses, which is summarized in head note-c. It is observed in the paragraphs that evidence of chance witnesses requires a very cautious and close scrutiny and he must adequately explain his presence at the place of occurrence, that deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded and conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else about the incident.

(viii) Nagappa Dondiba Kalal, appellants V. State of Karnataka, respondents (Laws (SC)-1980-7-11).

Learned advocate placed reliance on paragraphs 2 and 3 of

the judgement in support of his submission, which contains only three paragraphs, that prosecution must prove its case and cannot get any strength from the conduct of the accused in remaining silent.

(ix) Murugesan s/o Muthu & Ors., appellants V. State through Inspector of Police, respondent ((2013) 1 Supreme Court Cases (Cri) 69).

Learned advocate has placed reliance on paragraphs 12, 26, 31 and 32 in support of his submissions in respect of the defence of alibi. The first three paragraphs are in respect of the factual aspects and in paragraph 32 it is observed that the High Court ought not to have exercised the jurisdiction to reverse all the findings of acquittal by the trial court if the conclusion recorded by the trial court did not reflect a “possible view”. “Possible view” is in contradistinction to expressions such as “erroneous view” or “wrong view”.

(x) Jumni, appellants V. State of Haryana, respondent (Laws (SC)-2014-3-21).

Learned advocate has placed reliance on paragraphs 19 to 31. It is observed in paragraph 19 that, *'it is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty'*.

The elaborate explanation of the plea of alibi in the case of Binay Kumar Singh V. State of Bihar [(1997) 1 SCC 283] is

reproduced as, '*we must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant*'.

(xi) Jagarnath Giri & Ors. V. The State of Bihar (1992 Cri LJ 648).

Learned advocate has placed his reliance on paragraphs 11 and 20 of the judgement in support of the submission that plea of alibi proved to the satisfaction of the court, accused at least creates a doubt. It is observed in paragraph 20 that, '*it is the duty of the accused to prove the plea of alibi to the satisfaction of the court and to substantiate the plea and to make it reasonably probable. The standard of proof about alibi is same as is on the prosecution to establish its case. Even if, a doubt is raised in the mind of the court that the accused may have been present or may not have been present at the time of the occurrence, then the accused is entitled to the benefit of doubt*'.

(xii) Nandeswar Das, appellant V. State of Assam, respondent (2004 CRI. L. J. 4723).

Learned advocate relied on this authority in support of his submission that the hostile witnesses are also reliable. He relied on paragraph 10 of the judgement. This authority is of the Gauhati High Court and in paragraph 10 it is observed that, '*though P. W. 5 and P. W. 6 were declared hostile by the prosecution, their evidence cannot be brushed aside merely on the ground that they were declared*

hostile inasmuch as the portion of evidence which has gone in favour of the defence, would have to be taken being advantageous to the defence. It is settled law that declaration of a witness to be hostile does not ipso facto reject the evidence and the portion of the evidence being advantageous to the parties may be taken advantage of, but the Court should be extremely cautious and circumspect in such acceptance'.

(xiii) Majenderan Langeswaran, appellant V. State (NCT of Delhi) & Anr., respondents ((2013) 3 Supreme Court Cases (Cri) 266).

Learned advocate relied on head notes – B, D and E and paragraphs 7, 11, 14 to 24 and 27. The discussion in paragraphs 7, 11, 14 and 15 is factual and it is only in paragraph 23 that the observations in paragraph 23 of the judgement of the Supreme Court in the case of G. Parshwanath V. State of Karnataka reported in (2010) 8 SCC 593 were considered again, which are as follows :-

'23. In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies.

Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts'.

(xiv) State of Kerala, appellants V. Anilachandran @ Madhu, respondents (AIR (SC)-2009-0-1866).

Learned advocate has relied on this authority in reply to the reply of the learned SPP on law points and has placed reliance on the head note, which mentions that, '*merely because the accused was not able to prove his defence, it cannot be presumed that the prosecution case was proved against him*'.

(xv) Bhanudas Bagaji Salve, appellants V. State of Maharashtra, respondents (BCR (Cri)-2006-1-22).

Learned advocate has placed reliance on the observations in paragraphs 4 and 6 of the judgement in support of his submission that the evidence of hostile witnesses can be relied upon. Paragraph 6 is in respect of the factual aspect and in paragraph 4 it is held that, '*it is by now well-settled that mere fact that a witness has been declared hostile does not result in automatic rejection of his evidence. If the evidence of the hostile witness finds corroboration from the facts of the case, same may be taken into account while judging the guilt of an accused. Law in this regard has been laid down by several judgments of the Apex Court. The latest judgment of the Apex court in this regard is*

the judgment of the Apex Court in the case of (Leila Srinivasa Rao v. State of Andhra Pradesh), A. I. R. 2004 S. C. W. 1254, wherein the Apex Court observed as follows :

“the fact that these witnesses have been declared hostile by the prosecution, does not result in the automatic rejection of their evidence. Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of an accused.”

Yet another proposition relating to the acceptance of the evidence of a hostile witness was laid down by the Apex Court in the case of (State of U. P. v. Ramesh Prasad Misra and another), 1996 (10) S. C. C. 360, in the following terms :

“the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted”.

(xvi) Asif Mamu, appellant V. State of Madhya Pradesh, respondents (Laws (SC)-2008-11-54).

Learned advocate has relied on paragraphs 15 and 16 in support of his submission that discrepant evidence on record and faulty investigation will not prove the prosecution case. To my mind, paragraphs 15 and 16 contain discussion about the facts of the case.

426. Learned SPP Raja Thakare has relied on following authorities in reply to the legal submissions made by the learned advocates for the accused :-

(i) Krishna Mochi & Ors., appellants V. State of Bihar, respondent (AIR 2002 SC 1965).

Learned SPP has relied on paragraphs 76 and 77 of the judgement in support of his submissions that the duty that is cast upon the court is to appreciate the evidence as per section 3 of the Evidence Act and to arrive at the right conclusion based on the existing system of criminal jurisprudence enunciated from time to time by the Apex Court. He submits that the criminal jurisprudence is undergoing a radical change all over the world with the changing times considering human values, public cry, the larger interest of the society in view of the enormity of the crime, complicities of the crime and their impact of an orderly society. Paragraphs 76 and 77 are as follows :-

'76. It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination which may be sometime because he is a bucolic person and is not able to understand the question put to him by the skillful cross-examiner and at times under the stress of cross-

examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent. It is most unfortunate that expert witnesses and the investigating agencies and other agencies which have an important role to play are also not immune from decline of values in public life. Their evidence sometimes becomes doubtful because they do not act sincerely, take everything in a casual manner and are not able to devote proper attention and time.

77. *Thus, in criminal trial a prosecutor is faced with so many odds. The Court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the Court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbled, court should tread upon it, but if the same are boulders, court should not make an attempt to jump over the same. These days when*

crime is looming large and humanity is suffering and society is so much more. Now the maxim “let hundred guilty persons be acquitted, but not a single innocent be convicted” is, in practice, changing world over and courts have been compelled to accept that “society suffers by wrong convictions and it equally suffers by wrong acquittals”. I find this Court in recent times has conscientiously taken notice of these facts from time to time. In the case of Inder Singh and Anr. v. MANU/SC/0093/1978 : state (Delhi Administration) 1978 CriLJ 766, Krishna Iyer, J. laid down that “Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.” In the case of State of U. P. v. Anil Singh 1989CriLJ88, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. In the case of State of West Bengal v. Orilal Jaiswal and Anr. 1994CriLJ2104, it was held that justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law. In the case of Mohan Singh and Anr. v. MANU/SC/0035/1999 : State of M.P. 1999CriLJ1334, it was held that the courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of

doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused'.

(ii) Gangadhar Behera & Ors., appellants V. State of Orissa, respondent (AIR 2002 SC 3633).

Learned SPP has relied on paragraphs 16, 18, 19, 21 and 22 in the authority submitting that this is one of the classic judgement with respect to the guidance to the judicial officers in respect of the rule of benefit of reasonable doubt. The paragraphs relied upon are follows :-

'16. To the same effect is the decision in State of Punjab v. Jagir Singh MANU/SC/0193/1973 : 1973CriLJ1589 and Lehna v. State of Haryana MANU/SC/0075/2002 : [2002]1SCR377. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from

grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence.' (See Nisar Alli v. The State of Uttar Pradesh MANU/SC/0032/1957 : 1957CriLJ550). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab MANU/SC/0122/1955 : 1956CriLJ827). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in

each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh MANU/SC/0254/1972 : 1972CriLJ1302 and Ugar Ahir and Ors. v. The State of Bihar MANU/SC/0333/1964 : AIR1965SC277 : AIR1965SC277). An attempt has to be made to, as noted above in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh MANU/SC/0093/1952 : AIR1954SC15 and Balaka Singh and Ors. v. The State of Punjab MANU/SC/0087/1975 : 1975CriLJ1734). As observed by this Court in State of Rajasthan v. Smt Kalki and Anr. MANU/SC/0254/1981 : 1981CriLJ1012, normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at

the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Ors. v. State of Bihar etc. MANU/SC/0327/2002 : 2002CriLJ2645. Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguished features in evidence so far as acquitted and convicted accused are concerned.

18. *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: Gurbachan Singh v. Satpal Singh and Ors. MANU/SC/0034/1990 : 1990CriLJ562]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U. P. v. Ashok Kumar Srivastava MANU/SC/0161/1992 : [1992]1SCR37]. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare*

innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admin.). MANU/SC/0093/1978 : 1978CriLJ766]. Vague hunches cannot take place of judicial evaluation. “A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.” (Per Viscount Simon is Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U. P. v. Anil Singh AIR 1988 SC 1988. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

19. *In matters such as this, it is appropriate to recall the observations of this Court in Shivaji Sahebrao Bobade v. State of Maharashtra MANU/SC/0167/1973 : 1973CriLJ1783:*

“...The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt...”

“...The evil of acquitting a guilty person light-heartedly as learned author Glanville Williams in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that, just one guilty person

has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltiness...."

"....a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent...."

21. *At this juncture, it would be appropriate to deal with the plea that ocular evidence and medical evidence are at variance. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".*

22. *In Krishna Gopal's case (supra), the position has been succinctly stated as follows :*

"It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ear of justice. Hence the importance and primacy of the quality of the trial process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of

other witnesses held to be credit-worthy; consistency with the undisputed facts the 'credit' of the witnesses, their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to 'proof' is an exercise particular to each case. Referring to of probability amounts to 'proof' is an exercise the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says" (See "The Mathematics of Proof II" : Glanville Williams : Criminal Law Review, 1979 by Sweet and Maxwell, p. 340 (342).

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may

confirm the other.”

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uniformed legitimization of trivialities would make a mockery of administration of criminal justice”.’

(iii) State of Rajasthan, appellants V. Smt. Kalki & Anr., respondents (AIR 1981 SC 1390).

Learned SPP has relied on the observations in paragraphs 6 and 7 of the judgement in respect of the normal discrepancies in the evidence of witnesses. Paragraphs 6 and 7 are as follows :-

“6. The second ground on which the High Court refused to place reliance on the evidence of P. W. 1 was that there were “material discrepancies”. As indicated above we have perused the evidence of P. W. 1. We have not found any “material discrepancies” in her evidence. The discrepancies referred to by the High Court are in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused “pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.

7. Learned Counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in

miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice.'

(iv) Dhanaj Singh @ Shera and Ors., appellants V. State of Punjab, respondent (AIR 2004 SC 1920).

Learned SPP has relied on the observations in paragraphs 4 and 5 of judgement in respect of the submission that cause of justice should not be allowed to suffer by faulty investigation or latches in the investigation in the absence of alleged grudge, motive in the witnesses against the accused. Paragraphs 4 and 5 are as under :-

'4. In reply, learned counsel for the State submitted that faulty investigation cannot be a ground to affect the credibility of the eye-witnesses. It is a fairly settled position in law that when witnesses are branded as partisan or inimical, their evidence has to be analyzed with care and scrutiny. That has been done in the present case and both the trial Court and the High Court have found the evidence to be credible. Even if the investigation was faulty, both the trial Court and the High Court have acted only in the permissible way, i.e., to weigh the evidence carefully and come to an independent conclusion. As rightly noted by the High Court, the investigation seems to be slip shod. The highly improbable stand that the complainant and his relatives killed the deceased who was their close relative can hardly be accepted with even a pinch of salt. Though the deceased and the complainant had criminal track records that per se will not affect the evidence of witnesses if it is otherwise credible and cogent. Both the trial Court and the High Court after analysing the evidence found it to be credible, cogent and trustworthy. The plea that the primary duty to investigate

the evidence is that of the police and when the police has given clean chit, that should prima facie be accepted is clearly without substance.

5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M. P. MANU/SC/0497/1995 : 1995CriLJ4173).'

(v) Manjeet Singh, appellant V. State (Govt. of NCT of Delhi) (Criminal Appeal 112/2013 by the High Court of Delhi).

Learned SPP has relied on the observation in paragraph 15 in support of his submission in respect of defective investigation and in respect of sealing of samples. Paragraph 15 is as under :-

'15. Admittedly, the IO did not collect any gunshot residue from the appellant's hand. Obviously, presence of gunshot residue would have corroborated the prosecution version. It is very disturbing to note that even in 21st century scientific investigation is not carried out properly by the investigating agency. But, at the same time, defect in investigation will not enure for the benefit of an accused. In Paramjit Singh v. State of Punjab MANU/SC/8084/2007 : (2007) 13 SCC 530 the Supreme Court emphasized that a defective investigation, however serious by itself, cannot vitiate and nullify the trial. Similar sentiments were echoed by the Supreme Court in its later judgment in Gajjo v. State of Uttarakhand MANU/SC/0747/2012 : (2012) 9 SCC 532 where serologist's report was not obtained in relation to the daranti Ex.2 and bloodstained pyjama Ex. KA-5. Paras 19 and 20 of

the judgment in Gajoo, the Supreme Court observed as under :-

19....Now we turn to the last submission on behalf of the accused that no serologist report was obtained in relation to the daranti, Ext.2 and bloodstained pyjama, Ext. Ka-5, and therefore, the prosecution case should fail. This argument does not impress us at all. No doubt both these exhibits were not sent to the laboratory for obtaining the serologist's report, but the absence thereof per se would not give any advantage to the accused. This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. PW 5 has duly proved the recovery of daranti, Ext. 2 and the bloodstained pyjama, Ext. Ka-5 and has duly stood the test of cross-examination in the court. Both these articles were recovered by the Investigating Officer Brahma Singh, PW 6 and the recoveries have been duly established before the court. The recoveries having been proved and the case of the prosecution being duly supported by two eyewitnesses, PW 2 and PW 3 and two witnesses, PW 4 and AW 5 who were present immediately after the occurrence, have proved the case of the prosecution beyond any reasonable doubt.

20....In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal MANU/SC/0622/2012 : (2012) 8 SCC 263 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under : (SCC pp.280-83, paras 27-36).

27....Now, we may advert to the duty of the court in such cases.

In Sathi Prasad v. State of U.P MANU/SC/0229/1972 : (1972) 3 SCC 613 this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab MANU/SC/0203/2004 : (2004) 3 SCC 654, held : (SCC p.657, para 5).

'5....In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'

28....Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar MANU/SC.0009/1999 : (1999) 2 SCC 136 enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

32....In State of Karnataka v. K. Yarappa Reddy MANU/SC/0633/1999 : (1999) 8 SCC 715 this Court had occasion to consider the similar question of defective investigation as to whether

any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows : (SCC p. 720)

19....But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and preeminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

33....In Ram Bali v. State of U.P MANU/SC/0345/2004 : (2004) 10 SCC 598 the judgment in Karnel Singh v. State of MP MANU/SC/0497/1995 : (1995) 5 SCC 518 was reiterated and this Court had observed that : (Ram Bali case MANU/SC/0345/2004 :

(2004) 10 SCC 598, SCC p. 604, para 12)

12....In the case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34...Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a fair trial, the court should leave no stone unturned to do justice and protect the interest of the society as well'.

(vi) Shanti Devi, appellants V. State of Rajasthan, respondent ((2012) 12 SCC 158).

Learned SPP relied on paragraphs 8 and 14 of the judgement in respect of the appreciation of evidence, of the rule of appreciation of circumstantial evidence and discoveries made by the accused.

(vii) Ashok Kumar, appellants V. State of Haryana, respondent (AIR 2010 SC 2839).

Learned SPP relied on paragraphs 23, 24 and 34 of the judgement in reply to the authorities at sr. no. (i) to (iii) cited by learned advocate Shetty and two judgements cited by learned advocate Sharif Shaikh in respect of the law that faulty defence cannot take the place of proof and prosecution cannot take advantage of the fact that accused has failed to make out a plausible defence and discharge the onus of proving and that the prosecution must stand on its own legs. Paragraph 24 is on the facts of the case and paragraph 32 is the conclusion. The law laid down in paragraph 23 as follows :-

'23....Let us examine the essential features of this section and the principles of law as enunciated by judgments of this Court, which are the guiding factor for proper application and consequences which shall flow from the provisions of Section 313 of the Cr. P. C. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr. P. C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets

a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly an evidence in the case. The provisions of Section 313(4) of the Cr. P. C. explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use of a statement under Section 313 of Cr. P. C. as an evidence is permissible as per the provisions of the Code but has its own limitations. The Courts may rely

on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr. P. C. as it cannot be regarded as a substantive piece of evidence. In the case of Vijendrajit Ayodhya Prasad Goel v. State of Bombay MANU/SC/0108/1953 : AIR 1953 SC 247, the Court held as under :

3....As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under Section 342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown'.

(viii) Bhagaloo Lodh & Anr., appellants V. State of U. P.,

respondent (AIR 2011 SC 2292).

Learned SPP has relied on the observations in paragraphs 10, 11 and 14 in support of his submission as to why the evidence of a closely related witnesses should not be believed. Paragraphs 10 and 11 contain the discussion about the evidence and factual aspects of the case wherein the closely related witnesses were relied upon by both the courts below. It was held in paragraph 14 that, *'evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated evidence and meticulously analysed the same and the High Court re-appreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are interrelated to each other or to the deceased'*.

(ix) Ganesh Lal, appellants V. State of Rajasthan, respondent ((2002) 1 SCC 731).

Learned SPP has relied on the discussion and observations in paragraphs 15, 16, 19 and 20 of the judgement in respect of the false answers given by the accused providing a missing link for completing the chain of circumstantial evidence. The observations in paragraphs 19 and 20 are on the facts of the case. The observations in paragraphs 15 and 16 are follows :-

'15....A review of several decisions of this Court, some of which

we have cited hereinabove, leads to the following statement of law. Recovery of stolen property from the possession of accused enables a presumption as to commission of offence either theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied : (i) The offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstances, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the Court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance. Ordinarily the purpose of Section 313 of Code of Criminal Procedure is to afford the accused an opportunity of offering an explanation of incriminating circumstances appearing in prosecution evidence against him. It is not necessary for the accused to speak and explain. However, when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an

explanation which he failed to do.

*16....In **State of Maharashtra Vs. Suresh** (2001) 1 SCC 471 a female child of tender years was raped and murdered. Case against the accused rested on circumstantial evidence. The accused when arrested was found to have injuries on his person and blood and semen on under-clothes. There were several other incriminating circumstances pointing to the guilt of accused and this one, mentioned just before, termed by this Court in its judgment as most formidable incriminating circumstance' was put to the accused but he could not give any explanation whatsoever and instead chose to deny the existence thereof. This Court held that a false answer offered by the accused on his attention being drawn to such circumstance renders the circumstance capable of inculcating him. The Court went on to say that in a situation like this such a false answer can also be counted as providing 'a missing link' for completing the chain of circumstantial evidence.*

(x) The State of Maharashtra, appellants V. Sayeed Mohd. Hanif Abdul Rashim & Ors., respondents (in Confirmation Case No. 5 of 2009 and Criminal Appeal No. 880 of 2009 by the Divisional Bench of Bombay High Court).

Learned SPP has relied on the paragraphs 262, 263, 265 and 266 in respect of the aspect of sealing of articles at the time of seizure. Learned advocate Sharif Shaikh submitted that this judgement is stayed, however, learned SPP submitted that it is not stayed but the appeal has been admitted and even in case it is stayed, so long as the findings have not set aside, it will hold the field. The discussion in paragraph 262 and 263 contain the

discussion in the facts of the case. The observations in the case of Bilal Ahmed Kaloo vs. State of A. P. reported in ((1997) 7 SCC 431) are reproduced as follows :-

'19....Learned counsel for the appellant, however, assailed the prosecution case relating to the said revolver and cartridges, on the ground that those articles were not sealed after seizure and were left at the police station for a number of days before they were sent to the Forensic Science Laboratory.

20....We are not impressed by the said contention and we may point out that the appellant made no allegation at any stage of the case that the revolver and the cartridges were tampered with by the police. Not even a suggestion was made to any witness in that direction. According to the counsel, since those articles were not sealed there was the possibility of they being tampered with. Such an academic possibility need not be countenanced by us in this case because even the accused has no case that they were tampered with. That apart, the particulars of the weapon were given in the seizure memo and the same tallied with the weapon on examination by the ballistic expert. There is no challenge to the seizure memo admittedly prepared at the time of recovery of arms and ammunition. The identity of the weapon thus stands established beyond reasonable doubt'.

(Emphasis supplied)

On the basis of these observations, the conclusions are drawn in paragraphs 265 and 266 are as follows :-

'265....We have recited the aforesaid observation in view of misconception prevailing regarding the said test in the criminal

proceeding. At the cost of repetition we may add that by the said test exclusion of other probability is warranted and not the exclusion of far fetched possibility as tried to be canvassed in the instant case regarding non-sealing of the said explosive substances at the time of seizure from the houses of A2 and A1 and the one which were immediately sent to C. A. on the next day as rightly pointed out by APP. Thus in the light of the observations made by the Apex Court in the decision relied by APP and the factual submissions made by her regarding the said aspect including non-cross-examination of the relevant witnesses and not putting of the case being in conformity with the record, we find the grievance made by the defense is untenable.

266....As a net result of the aforesaid discussion, it will be necessary to conclude that the prosecution had duly established A1, A2 and A3 were arrested as claimed by the prosecution i.e. A1 on 31st August, 2003 and A2 and A3 on 1st of September, 2003. Similarly by the same evidence the prosecution has also established the articles, contraband articles, gelatin sticks, alarm clock and detonators were found at the house of A2 and/or places pointed by him i.e. the house of A1 and A3 and so also the house which was found in possession of A1'.

(xi) Khet Singh, appellant V. Union of India (UOI), respondent (AIR 2002 SC 1450).

Learned SPP has placed reliance on the discussion in paragraph 10 in respect of the preparation of panchanama at the spot, which are, 'there may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have

the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the articles seized was by itself substituted and some other items were planted to falsely implicate the accused'.

(xii) Hardip Singh, appellant V. State of Punjab, respondent (AIR 2009 SC 432).

Learned SPP has placed reliance on the discussion in paragraph 13 which are in the facts of the case and it is held by the Supreme Court that the appellant has also failed to show any prejudice caused to him for not putting the seal on the sample by the officer-incharge of the police station. There was evidence of the inspector, the officer who had seized the contraband and produced before him, the case property and sample with seals intact and he also stated that the articles were not tampered with so long as they remained in the custodial possession. The Supreme Court held that in the light of this evidence, no prejudice is caused to the accused.

(xiii) State of Maharashtra V. Mahesh s/o. Janardhan Gonnade

(2007 ALL MR (Cri) 2522).

(xiv) Mahesh s/o. Janardhan Gonnade, appellants V. State of Maharashtra, respondent ((2008) 13 SCC 271).

Learned SPP has placed reliance on paragraph 42 of the judgement of the Bombay High Court and paragraph 45 of the judgement of the Supreme Court in support of his submission that what matters is the quality of evidence that a witness gives in connection with the allegation of the defence that professional panch witnesses were used. The Bombay High Court observed in paragraph 42 that, *'Learned counsel for the respondent has contended that P. W. 13 Harihar is habitual Panch witness and he has taken us through cross-examination in which he has asserted that during the period 1978 to 1981 he had given evidence as Panch in court in 5-6 cases and that he resides in front of the police colony. In our opinion, simply on that count his evidence can not be disbelieved. No doubt, he has admitted that till 1981 he was working as Panch on behalf of Police, but fact remains that his evidence was recorded some time in 1989. It is difficult to believe that simply because of his admission that till 1981 he was acting as police Panch, he is still acting as police Panch and signing the panchanamas blindly. We have already pointed out that P. W. 9 Khobragade is legal practitioner and nothing is pointed out by the defence to show as to what was the reason for him to depose false against the respondent. Therefore, it has to be held that arrest Panchanama of the accused has been properly proved'*.

The Supreme Court has affirmed the view taken by the Bombay High Court and has observed in paragraph 45 that, *'the*

appellant was arrested by the Investigating Officer in the presence of PW-Vithoba Khobragade and PW-Harihar. The learned Counsel submitted that there is discrepancy in giving 7.30 p.m. the time of arrest of the appellant, which was factually incorrect as the same time was mentioned in the FIR and no reliance, therefore, could be placed on such documents and according to the counsel no reliance could be placed on the evidence of PW-Harihar being habitual panch witness of the Police. It is no doubt true that PW-Harihar in cross-examination admitted that during the period from 1978 to 1981 he had given evidence as Panch in 5 or 6 cases in the Court on behalf of the Police as his residence is located in front of the Police Colony. It is difficult to believe that simply because this witness in the past had appeared as Panch in the Court during the period 1978 to 1981 and for that sole reason he has to be branded as habitual Panch witness and in this case for the incident of 1988 he had blindly signed Panchanama (Ext.41)'.

(xv) Rohtash Kumar, appellant V. State of Haryana, respondent (in Criminal Appeal No. 896 of 2011 decided by Supreme Court on 29/05/13).

Learned SPP has relied on the observations in paragraph 17 in reply to the submission of the learned advocates of the defence that material cited witnesses were not examined by the prosecution and therefore an adverse inference is required to be drawn. It is observed in paragraph 17 after considering several of its earlier judgements that, *'thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined*

witnesses, if he so desires, in his defence. It is the discretion of the prosecution to tender the witnesses to prove the case of the prosecution and “the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive.” In an extra-ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to “pick and choose” his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interest of justice. In fact, the evidence of the witnesses, must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same'.

He has also pointed out the observations in paragraph 10 in the case of Masalti v. State of U. P., AIR 1965 SC 202, wherein it is held that, 'it would be unsound to lay down as a general rule, that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised. “In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interest of justice under Section 540 Cr. P. C'.

He has also relied on the observations in paragraph 23, wherein the observations in State of Maharashtra v. Suresh, (2000)

1 SCC 471, were considered, which are as follows :-

'When the attention of the accused is drawn to such circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances'.

'Undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain circumstances, the accused has to furnish some explanation to the incriminating circumstances, which has come in evidence, put to him. A false explanation may be counted as providing a missing link for completing the chain of circumstances'.

Discussion of the evidence given by the prosecution, the defence taken by the accused and the evidence given by the accused :-

427. Learned advocate Yug Choudhary for Wahab Khan submitted at the start of his submissions that this case hinges almost entirely on confessions, that if confessions are taken away the arguments about rest of the evidence would be over in one day, that there is no direct evidence, that inferences have to be drawn on the basis of circumstantial evidence and such inferences have to be compelled by law and are not rooted to the facts.

428. Learned SPP Raja Thakare in his reply submitted that this is a mis-statement and if the evidence against the accused other than the confessions is considered, it is sufficient to bring home the guilt to the accused.

429. To my mind, the submissions of learned advocate Yug

Choudhary are obviously incorrect because there are quite a large number of witnesses other than the witnesses on the aspect of confessions. The chronology of the investigation and the witnesses that were a part of the investigation has been mentioned in the earlier part of the judgement. It is necessary to group the witnesses so as to better appreciate the evidence given by them against particular accused. The witnesses can be classified into groups like the witnesses on alleged date of the bomb blasts, i.e., taxi drivers who purportedly carried some accused having big black rexine bags in their taxis from Bandra to Churchgate, witnesses who were travelling in some of the trains and who saw some of the accused placing the bags as above described on the luggage racks and below the seat in the first-class bogies of the local railways at Churchgate, then there are chance witnesses in respect of the previous activities of some of the accused, there are witnesses about the travels of some of the accused to foreign countries, then there are police witnesses and panch witnesses in respect of the seizure of alleged incriminating articles, then there are witnesses on the point of test identification parade and there are also witnesses in respect of the confessional statements allegedly made by the accused. The evidence of the prosecution witnesses will have to be considered in juxtaposition to the defence taken by the accused, to their statements made under section 313 of the Cr. P. C., to the oral and documentary defence evidence led by the accused and to the oral evidence given by the accused.

Taxi drivers :-

430. The first group will undoubtedly be of the two taxi drivers, Rajesh Satpute, PW-77, who had allegedly carried the A3 and one more person from Bandra to Churchgate in his taxi on 11/07/06 and Santosh Singh, PW-63, who had allegedly carried the A13 similarly on that day.

431. It has come in the evidence of Rajesh Satpute, PW-77, that after plying the taxi from 10.30 a.m. or 11.00 a.m. on 11/07/06, he ferried passengers upto 2.00 p.m., then went to his sister-in-law's house in Gulab Nagar, Khardanda, had meals at her house and left her house in the afternoon in search of passengers and came to Carter Road in Bandra where two persons came from the left side of his taxi after 15-20 minutes, engaged his taxi for Churchgate, sitting on the back side, one of them had a black bag with him, which he kept on the front seat by his side, i.e., by the side of the witness. He described the route *via* which he took them to Churchgate Station and stopped near a subway at the Churchgate Station, was asked about the fare, which they paid and gave him a tip of Rs.10/- and then the two passengers went towards the subway. He described an incident that happened en route, viz., that he was required to apply the brakes when he had gone some distance, at that time the bag moved ahead slightly, the person behind caught the handle of the bag and told him to drive the taxi carefully, where upon he asked him whether the bag should be kept in the boot, but the other person said that there are valuable articles in the bag and it should remain there. He unhesitatingly identified the A3 at the end of his

chief-examination as the person who had hired his taxi on 11/07/06 for Churchgate, had a black bag with him, had caught hold handles of the bag, which is a substantive evidence and whom he had identified in the third test identification parade on 07/11/06. It has come in his evidence that when he was at Carter Road just ahead of the taxi stand at about 3-4 p.m. on 03/11/06, two persons, who told him that they are policemen, came there and asked him whether he had taken any passengers from that point to Churchgate on 11/07/06 and he replied that he had done so. At their request, he went to their office at Bhoiwada, where he was taken before an officer and to whom he gave the information that he had, which was typed on the computer. He gave the descriptions of the two persons to the officer. His further evidence is in respect of the test identification parade, which will be discussed at the later stage, but it has come in the evidence that in the third parade conducted by SEO Barve, PW-82, on 07/11/06, he identified the A3 by touching him by hand and in respect of the events that took place on 11/07/06, viz., the A3 hiring his taxi on 11/07/06 for going to Churchgate and having black bag in his hands. SEO Barve, PW-82, asked A3 his name, which he stated as Faisal Shaikh. Rajesh Satpute, PW-77, stated about procedure of the test identification parade and also stated the name of the A3.

432. His cross-examination has revealed that he was residing in the area of Kalachowki since birth upto three years prior to the date of the evidence and Prakash Jedhe, the owner of the taxi, also resides in the slum area known as Rane Adda in the area of Kalachowki.

This aspect is one of the bone of contentions of the learned advocate for the accused to label him as a got up witness. The other aspect is about the delay in recording his statement, i.e., on 03/11/06, after a period of about more than three and half months. These two aspects will be dealt with shortly. His lengthy cross-examination is for the most part concentrated with respect to his mobile number in 2006, to whom the sim card belongs to, his current sim card, about his driving licence, about he driving the taxi of Prakash Jedhe, the permit number of the taxi, when he started driving the said taxi and when he stopped driving it after Diwali, 2007. He was also inquired about the method of handing over the days earnings to the owner of the taxi, whether the said taxi is still in use, whether log book was maintained when he used to drive the taxi, etc. The witness has given clear and candid answers in respect of the all inquiries that were made and in his chief-examination he stated that before the current employment he used to ply the taxi of Prakash Jedhe and he gave the taxi number also. The witness also candidly stated about the things which he did not know or did not remember. He correctly described the procedure about the handing over all the daily earnings to the owner of the taxi and candidly stated that he does not remember what amount he gave to Prakash Jedhe on 11/07/06 and how much kilometers the taxi had run on that day. It has come in his cross-examination that documents of registration certificate, permit, fitness, insurance, tax receipt and PUC are always in the vehicle and his truthfulness is evident from his knowledge that the taxi is of 1996 make and the owner had purchased it new. His

truthfulness is also evident from a very positive statement made by him in cross-examination about the taxi being insured with the New India Assurance Company. To my mind, this line of questioning has in fact shown the truthfulness of the witness insofar as he being a taxi driver on 11/07/06 and driving the taxi bearing no. MH-01-J-4066, belonging to one Prakash Jedhe in 2006. His openness and candid nature is also evident from the answers in cross-examination that he was not fined for any traffic violations, because he used to bribe the traffic constables voluntarily if he committed any mistake, that this happened twice or thrice in a month, that he was never fined legally and no receipt was issued to him and again that sometimes he met honest officers, who let him off with a warning not to repeat it again and that whenever he sees any policeman in uniform, he tries to go away from him.

433. In my humble opinion, it appears that the witness is honest and is a straightforward person and he has given firm answers and given information that he knew. Learned advocate for the accused while submitting that the witness is a got up witness, criticized the investigating machinery for not having collected copies of his driving licence and documents of the taxi, like, registration certificate, permit, etc., and of not recording the statement of the owner of the taxi.

434. In my humble opinion, you cannot discredit his version just because police did not collect his driving licence, badge or the documents of the taxi. He has come as a witness and his evidence is of an innocuous event, viz., that of ferrying two passengers on a

particular day from a particular point to a particular point. You cannot discredit his version just because he is a taxi driver. If the police call a doctor or an engineer or an advocate or any expert as a witness in respect of his professional work, they do not collect the documents of their profession to show that they are really doing that work or profession. Everyone accepts their profession and title so why not for a taxi driver? I do not think that these things will come in the way of accepting this witness as a truthful and honest witness. This was in respect of the periphery of the main evidence. In respect of the actual event, he was grilled about the number of passengers that he carried on that day, i.e., 11/07/06, the timings of them hiring the taxi, the points from where and upto where he took the passengers, the description of the passengers, their ages, the fare of a particular passenger, etc. In respect of the passengers at Khar, whom he reached about 1.00 or 1.30 p.m., he stated that the passenger was a lady, who had hired his taxi at Sion Hospital from the side of the gate at Dharavi. He has given a very specific answer, but the next was a question in the air to which he could not say whether she was a Maharashtrian, Muslim or Gujarathi, though he stated her approximate age. Now the witness could have answered this question specifically and could have also answered how much fare the said passenger paid and in what denomination notes she paid him and there would have been no means of ascertaining whether it is true or false. Thus, this and other line of questioning, to my mind, is of no consequence.

435. About his evidence about the relevant event, though in his

chief-examination did not give the specific time when the two persons had engaged his taxi at Carter Road, he gave the specific timing in his cross-examination as 3.30 to 4.00 p.m. and having left them at Churchgate at about 4.45 to 5.00 p.m. He has stated about the minimum fare of Rs.11/- at that time, but honestly said immediately that he does not exactly remember whether it was Rs. 11/-. He gave the details about the starting point and ending point of the Carter Road and its length, while admitting that he does not remember the meter reading of those passengers.

436. His evidence about the event of carrying two persons in his taxi from Carter Road, Bandra to Churchgate Railway Station is also severely criticized on the aspect of he having no opportunity to see the persons properly. These submissions are on the basis of his answers in cross-examination that he was on his seat reading the newspaper when those two persons came, that he did not get down from the seat till the time they sat in the taxi and he started it, that he had no occasion to pick-up that bag, that he cannot tell the exact width of his seat, that he was not required to get down since the time they sat in his taxi upto Churchgate when they got down and he was sitting on his seat continuously. To my mind, these submissions and the criticism are baseless, because it is common knowledge that a person of a particular profession views their work or the objects of their work in their routine course of work and they can very much be aware of the details even if they do not see or observe the particular object for a long time in detail. Take the example of a cobbler, or tyre puncture repairer or a dentist, the list

can be endless. A cobbler's attention is always on the footwear of persons who approach him. The dentist can at a glance see the deformities in the teeth of a person even while the person speaks to him before any detailed examination is done. It is observed that the taxi drivers glance at passengers who approach their vehicles and know the number of passengers as well as the baggage whether it is small or big which is with them and it is commonly noticed that they ask the passengers whether the luggage should be kept in the boot. After the passengers board the taxi, the taxi driver usually glances in the rear view mirror that is inside the taxi, looks at who the passenger/s is/are, looks at their eyes and asks them about the destination and some times the route also. It is also observed that the taxi drivers frequently look in the rear view mirror to see the vehicles coming from behind and in that process they also have occasion to look at the faces of the passengers. Thus, it cannot be said that Rajesh Satpute, PW-77, had no occasion to see and observe the two passengers specifically as he was continuously sitting on his seat from the time they boarded the taxi upto the time they got down at Churchgate Station. His glances, to my mind, would have been sufficient to see them properly. His good power of observation is also evident from an answer given by him in his cross-examination that he thinks that the bag was of rexine, though he had not described the bag in his chief-examination.

437. He has correctly answered that it is not normal for passengers to keep a bag on the front seat if they have only one bag with them, but it happens sometimes. An issue was raised on the basis of the

answers in his cross-examination as to who out of the two persons sat in the taxi first, who held the bag from the back side, who paid the fare, etc. His evidence that the person who was 30-35 years of age was the person who had the bag in his hands and who caught the handles of the bag in the taxi was brought on record as omission to state before the police. To my mind, the omission is not material, what is material is that one out of the two persons had caught the bag from the back seat. A confusion was also tried to be created about who is the first person and who is the second person and he gave specific answers, but to my mind, even if they do not give the exact picture, the fact remains that he has not stated about this in his chief-examination, it is also not shown from his statement under section 161 of the Cr. P. C. and he has answered in his cross-examination that he had described the two persons but had not stated their roles, that he himself stated about the first and second person and not at the suggestion of the police and he stated it in the order in which they sat in the taxi, as they were unknown to him on that day. A portion from his statement under section 161 of the Cr. P. C was confronted to him and proved as Ext.1791 during the cross-examination of PI Khanvilkar, PW-168, who had recorded it. The witness stated that it did not happen that thereafter upto Churchgate Station the second person had caught hold of the handles of the bag tightly, that he realized that there was some heavy articles in the bag, that when he stopped the taxi the same person asked him what was the fare, that after looking at the meter reading and rate card he told him that it was Rs.140/-, the person

gave him two notes of Rs.100/-, he returned Rs.60/-, out of which he gave Rs.10/- as tip. Though, this portion was proved, the witness stated that he does not remember whether he had stated so to the police and it is written in his statement as he might have stated so to the police, so infact it is not a contradiction. It is in the nature of specifications and if read with his earlier explanations about he having stated about the first and second persons in the order in which they sat in the taxi and had described them and not stated their roles, the contradiction is insignificant.

438. In further cross-examination he gave the specific route by which he went to his sister-in-law's house in Gulab Nagar, Khardanda and also stated about the landmark correctly, viz., about there being a Maruti temple after a turn, that the road has heavy traffic and there is a market area after the lane. All these statements are not controverted or shown to be incorrect. He also gave a straightforward answer that he does not stop at the spot on Carter Road regularly.

439. He was cross-examined in respect of the maintenance of log book and he answered that he does not know whether a log book is required to be given to the RTO office and he has never seen any log book in any taxi and some more questions about making of entries in the log book. These are unimportant questions and I do not think that anyone has seen any taxi driver, except the taxi driver of a fleet, maintaining a log book or there being a log book in a taxi. In respect of his licence and badge, he did not remember whether he had given their numbers or their copies to the police when his statement was

recorded and whether the police officer asked him to do so. In respect of the main event about which he deposed a very crucial answer has come on record in the form of a positive sentence in his cross-examination in paragraph 32 that the two passengers whom he had taken did not have mobile in their hands and that he did not see them making or receiving calls. It has also come in his evidence that he had told the police that it was a rexine bag, though he had not described the height, length and width of the bag to the police.

440. His cross-examination as to whether he has taken loan from any bank, in which bank he has an account, when it was opened, which address he gave, whether he has any other bank account and about pan card is irrelevant and a fishing expedition to some how get something from the witness to discredit him.

441. Thus, the evidence of Rajesh Satpute, PW-77, a taxi driver, in respect of he taking the A3 and one more person, they having a bag with them and they being reached to Churchgate Station is not discredited during his cross-examination and it has not affected his credibility.

442. In respect of his evidence about the two policemen approached him on 03/11/06 and making inquiries, taking him to Bhoiwada and he giving the statement that was recorded, his cross-examination is concentrated on getting the details about the name of the officer, who took his statement and as to whether any other taxi driver was brought to that office upto the time he was there. He gave clear answers that there were some taxis at the taxi stand on the Carter Road on that day at about 3.00 to 4.00 p.m., but he

cannot tell the number of taxis that were on his back side and he was the only one a head of them, that when the policemen approached him, at that time he was also on his seat reading newspaper and does not know whether they inquired with any other person like him. He stated about they going in his taxi to Bhoiwada, reaching there at 5.00 p.m. and being present at the ATS office upto 9.30 p.m. Now about recording of his statement, initially he stated that he does not know the name of the officer, who recorded his statement and at the end of same paragraph, he was again asked and he stated that it was officer Patil. In respect of the statement being given to him for reading after taking its printout, he expressed ignorance as to whether he had stated so to the police and whether he stated so on the earlier day of his evidence. This was in his cross-examination by learned advocate Shetty for the A3. Learned advocate Wahab Khan for some other accused cross-examined him about the distance of the Kalachowki Police Station from his house and from the house of the taxi owner, about whether he had stated that he had brought the taxi that he was driving on that day, to the Police Station, whether police asked him to show the place where the persons had sat in the taxi, whether any panchanama was drawn, etc. He gave the information in respect of the distance of his and his owner's house from the police station and gave positive answers that he had stated to the police on 03/11/06 that he had brought the taxi and it is outside the police station. He also stated to them that he has parked it in the compound and there were some other taxis there at that time. He, however, could not remember

whether the police officer asked him to show the place where the persons sat in the taxi, where they had kept the bag, whether he inspected his taxi, whether any panchanama of taxi was drawn, whether any chemical analyzer was called there, whether any photographs of the taxi from inside and outside were taken, whether it was sent for chemical examination to repeat, he also did not remember whether he had given the licence number and the badge number or their copies to the police, etc. To my mind, if the police did not think it fit to ask him all the questions or to take documents, then it is not his fault. These answers will not discredit his version about the main event about which he gave evidence.

443. He repeated correctly in further cross-examination that he met only two policemen on 03/11/06, when he was on Carter Road, who talked with him for about more than half an hour and he gave a good explanation that as they were in plain clothes, he does not know their names and buckle numbers. These are positive sentences in his cross-examination and his honesty and credibility is further endorsed by his positive answers in cross-examination that he was on the road by the side of the footpath, that it was not a junction, that there is a small stall (tapri) and buildings and bungalows around the spot, that the policemen asked him to show the spot from where he had taken those passengers and he told them that it was the same spot where he was at that time. He did not remember whether any panchanama of the spot was prepared at that time, but truly stated that he did not take the ATS officer to that spot thereafter. Same thing about showing the spot where he had reached

the passengers and the police not asking him to show that spot. The above line of cross-examination has not discredited his version or his credibility.

444. Learned advocate Shetty for the A3 attacked the evidence given by this witness in respect of his memory by submitting that though he is remembering about the event that took place on 11/07/06, he cannot tell the exact date, which is the important date in his life as to when he started and stopped driving the taxi of Prakash Jedhe, does not know about the exact minimum fare in that area. Learned advocate also questioned as to whether it was possible for the witness to see the two persons, when it has come in his evidence that he was on his seat reading the newspaper when the persons approached him and he was continuously on his seat till he reached them at Churchgate Station. He submits that a taxi driver is required to concentrate on the road in front and a casual look at a person does not enable him to identify the person after four months. I have clarified this aspect earlier and have held that it is possible for a taxi driver to remember the face of his passengers. Learned advocate pointed out inconsistencies in the evidence of this witness and the evidence of Devendra Patil, PW-62, a traveller in the train, who allegedly saw the A3 placing a black coloured bag in the local train. It is in respect of Rajesh Satpute, PW-77, stating that the two persons did not have any other thing in their hands, where as, Devendra Patil, PW-62, stated in his cross-examination that out of the two persons, who boarded the train at Churchgate, the second person was having a hand bag, which was in his hand and he had

not kept it anywhere. In my humble opinion, this will not be an inconsistency, because no further clarifications are asked from Devendra Patil, PW-62, in respect of the hand bag. The hand bag may be 4" x 6" or 8" x 10" and as compared with a big bag, it may be a pouch not noticeable to the taxi driver. It may or may not have been with the persons, but this inconsistency even if it is assumed to be true, is inconsequential.

445. Learned advocate submitted that Rajesh Satpute, PW-77, is a got up witness and as he is of the Kalachowki area in which the ATS Police Station is situated, he was just got up by the investigating machinery to stop the public outcry and to save themselves from the electronic media from failure to investigate and to bring the culprits to the book by creating the evidence to fix the persons, who were arrested on suspicious doubts without having any material.

446. Learned advocate Wahab Khan attacked the credibility of the witness submitting that there was nothing unusual in the two passengers travelling in the taxi of the witness from Carter Road, Bandra to Churchgate Railway Station with a bag kept on the front seat, which would have impressed the mind of the witness as something unusual. A taxi driver carries many passengers in a day from one place to another and passengers do give instructions to drive slow or to take a particular route. Therefore, it is unnatural on the part of the witness to remember all these particulars about the two passengers and about the route that he took on that particular date. Learned advocate discussed the evidence of this witness alongwith the evidence of PI Khanvilkar, PW-168, who had recorded

his statement and submitted that the investigating officer has not duly discharged his duty as expected and he gave an answer inconsistent to the answer given by Rajesh Satpute, PW-77, by saying that the witness had not brought the taxi to the office on that day. At this stage itself it can be stated that this aspect is not touching the material evidence of the witness which is in respect of the event of 11/07/06.

447. As against this, the learned SPP submitted that considering the evidence given by the witness and the positive statements made by him in cross-examination, his evidence is of unquestionable quality and totally reliable. In respect of the memory of the witness, he submits that many a times, it so happens that we see/perceive the things, but we may not attach importance to it at that time. Though such a thing may be at the back of the mind of the person, a person may not expressly act on it or do something in furtherance of the knowledge that he had derived, unless the stage comes or the occasion arises which sparks that memory with reference to some facts. Then the person is capable of co-relating the incident to his experience. He submits that ordinarily a taxi driver carries many passengers, he may not recollect all the passengers, but if his memory is triggered by some data that is provided then he can recollect a particular incident. Though the witness may have come to know about the bomb blasts on that day itself and may have read in the newspaper about it, there was no need for him to co-relate the bomb blasts with the two passengers, whom he had taken to the Churchgate Station, because the bomb blasts did not take place at

Churchgate Railway Station and the dropping of passengers at Churchgate is a normal routine that he had performed. Therefore there was nothing extraordinary for him to go and report and his memory is triggered when the constables asked him about it and his direction of thinking would be to recollect that thing, which would co-relate to the incident of 11/07/06. He submits that absolutely no spices have been added by the witness and his evidence is simple, straightforward and honest. He also submits that suffice to say that the evidence of this witness on the facts that there were two passengers, they had a bag with them, it was kept on the front seat, there was a jerk, the bag moved ahead and it was caught by one of the passengers, has not been challenged. Who was holding the bag is immaterial and if the witness was confused, such a confusion cannot be equated to falsity.

448. Learned SPP also submitted in respect of the memory that testing the memory of a particular incident and testing the general memory of a person is different. Same yardstick cannot be applied for recollection of memory. In respect of whether the vehicle was examined, whether the swab was taken, etc., he submits that if the result would have come in the positive, then it would have been an additional circumstance against the accused, but not finding any traces of explosive or not making any efforts in that direction will not constitute a negative evidence.

449. In connection with this witness, PI Khanvilkar, PW-168 as well as ACP Patil, PW-186 were examined. It has come in the evidence of PI Khanvilkar, PW-168, that his staff was deputed for going to Carter

Road and they used to go there for making inquiries about taxi drivers, who may have taken passengers from there to Churchgate on the day of the incident, as ACP Patil, PW-186, had told him about the information, that his staff brought taxi driver Rajesh Satpute, PW-77, on 03/11/06, they took him before ACP Patil, PW-186, who inquired with him and then he, i.e., PI Khanvilkar, PW-168, took his statement. The cross-examination on this point by learned advocate Wahab Khan has infact strengthened his evidence and has shown that this aspect is truthful. He denied the suggestion that they were not getting panchas and witnesses in the case, therefore, they introduced witnesses and panchas who were known to him and his colleagues since long. He was asked to go through the station diary entry dtd. 03/11/06 and a strange question was asked to him and he answered that there is no mention in the station diary that his staff was deputed to the Carter Road, Bandra where they used to go for making inquiries about the taxi drivers who may have taken passengers from there to Churchgate on the date of the incident, as ACP Patil, PW-186, had told him about the information and there is no endorsement about the particular staff having searched and found a particular taxi driver. In my humble opinion if all such things are required to be entered in the station diary, then the station diary will be as good as the case diary and there would be no need for maintaining a separate case diary. The efforts of the learned advocate to discredit the investigating agency as well as the witness is totally smashed by a further question. Learned advocate asked the witness to verify whether this is mentioned in the case diary and the

witness went through the case diary and stated that there is an entry in the case diary dtd. 03/11/06 about this. What this means is that his evidence in chief-examination is confirmed by the existence of the entry in the case diary and has ruled out the possibility of the witness being got up. The matter does not stop here. He has given some more details that the witness met his staff member Vijay Salvi, buckle no.25610 first and brought the witness to him at 1800 to 1830 hours. In this connection, it has come in his evidence that ACP Patil, PW-186, had given him instructions and PN Vijay Salvi was regularly visiting the taxi stand at Perry Cross Road for 10-15 days during which he did not get any important clue and he gave the clue to him only on 03/11/06 when he brought the witness. ACP Patil, PW-186, the investigating officer after the MCOC Act was applied, has denied the suggestion that he introduced Rajesh Satpute, PW-77 and Santosh Singh, PW-63, the taxi drivers in this case. In an answer to the question whether he had sent PN Vijay Salvi to bring two taxi drivers, he gave an acceptable answer that he does not remember having sent him, but, this is important, their officers and constables were searching for taxi drivers. He further turned down the suggestion that on his say PN Vijay Salvi brought two taxi drivers, that they were not taxi drivers, that therefore he did not get the taxis examined and did not seize any documents of the taxis and did not make any correspondence with the RTO authority about their owners. He also correctly stated during his cross-examination by learned advocate Shetty that Santosh Singh, PW-63, and Rajesh Satpute, PW-77, were not brought before him together, that he did

not record the statement of Rajesh Satpute, PW-77, but it was recorded by PI Khanvilkar, PW-168, and he told the address of Rajesh Satpute, PW-77, as Jijamata Nagar, Kalachowki, which is in the jurisdiction of Kalachowki Police Station. He came to know when the statement was placed before him that Rajesh Satpute, PW-77, was driving the taxi of someone else. The most important answer that he gave is that the constables had made inquiries with the taxi drivers at his instance, that he had directed number of officers and constables in general to make inquiries to find out the taxi drivers, that this direction was given about 15 days prior to 03/11/06, that they were making efforts, that they succeeded in finding two taxi drivers on 03/11/06 only. Now this piece of evidence is sufficient to show the truthfulness of the investigation insofar as the independence of Rajesh Satpute, PW-77, is concerned and fully rules out the possibility of he being a got up witness.

450. It was argued in respect of the delay in recording the statement of the witness that it is only after the accused retracted having made their confessional statements that the investigating agency created this evidence. The confessional statement of the A3 was allegedly recorded prior to 07/10/06, because the noting of Remand Application No. 67 of 2006 dtd. 09/10/06 shows that the Vakalatnama of advocate Shahid Azmi was filed on behalf of the A3, A5 and A7 on that day and the A3 submitted that his confessional statement was recorded under pressure, etc. Now admittedly the statement of Rajesh Satpute, PW-77, was recorded on 03/11/06. It has come in the cross-examination of ACP Patil, PW-186, that he had

gone through all the confessional statements and got their copies through his staff from the concerned DCPs as per his request 2-3 days after they were recorded and there is a mention in the case diary dtd. 08/10/06 about the confessional statements being received. Relying on this, it is submitted by the learned advocates for the defence that in view of the contents of the confessional statement the evidence in the nature of the taxi drivers and travelers was created. This submission is not acceptable if one considers the cogent and unimpeached evidence given by Rajesh Satpute, PW-77, about which there is contemporaneous entry in the case diary which is brought on record during cross-examination itself. On the contrary, it appears that after reading the confessional statement, the investigating machinery made the inquiries in the right direction and got certain witnesses. PI Khanvilkar, PW-168, was cross-examined about the taxi of Rajesh Satpute, PW-77, and though he gave an answer inconsistent to the statement made by Rajesh Satpute, PW-77, by stating that the witness had not brought his taxi to the office on that day, which does not affect the credibility of the evidence of Rajesh Satpute, PW-77, he gave very convincing reasons for not inspecting or examining the taxi. These convincing reasons were in reply to the questions put to him during cross-examination and therefore they are of great importance. He stated that he did not feel it necessary nor his superiors suggested him to inspect the taxi, that he did not feel that there would be some objectionable stains in it because it was a public vehicle and the witness had come after four months. He further answered that his role was limited to taking

the statement, that it was for the investigating officer to consider whether to inspect the vehicle and he did not send it for opinion of the forensic expert. He expressed ignorance as to whether there are log books in taxis and admitted that he did not examine the log book of that taxi, did not ask the taxi driver to show the place from where the passengers had sat in the vehicle and where he had left them, did not seize the taxi, did not call the owner of the taxi, the witness did not give his licence number though he asked him about it, etc. However, he turned down the suggestion that Rajesh Satpute, PW-77, is not a taxi driver, therefore, he did not give him his licence number, etc., and was not plying the taxi and was it not his occupation. He denied the suggestion that Rajesh Satpute, PW-77, and Vishal Parmar, PW-74, are false witnesses, whom he planted in this case.

451. Though the evidence of Rajesh Satpute, PW-77, is attacked on the ground of delay in examining him, to my mind, in fact it is not a delay, because the investigating agency came to know that he is a witness only on 03/11/06 when inquiries were made. Therefore, this does not affect the credibility of the witness.

452. The discussion of the evidence given by Rajesh Satpute, PW-77, and the evidence of PI Khanvilkar, PW-168, who had recorded his statement and the evidence of the investigating officer ACP Patil, PW-186, shows the type of the person Rajesh Satpute, PW-77, is and his nature, and, it does not appear that he is the type of person who is capable of giving false evidence. His evidence is of unquestionable quality and there is absolutely nothing in his cross-

examination to discredit his version or impeach his credibility. The omissions and contradictions that are pointed out do not go to the root of the case and are not material to show that he is a got up witness. There is nothing in his cross-examination to show his antecedents or his connection with police officers or the ATS or that he has any criminal background or about his involvement as a panch witness or eyewitness in any earlier case. It is only that he and the owner of the said taxi are residing within the jurisdiction of Kalachowki Police Station. However, Kalachowki is not a small place like a small colony and unless it is shown that he or the owner of the taxi have any nexus with the police particularly with the ATS, it will not come in the way of believing him, nor lead to brand him as a got up witness. Nothing has been brought on record during the cross-examination of the prosecution witnesses to show that there was a public outcry as to why the police were not being able to find the culprits of the bomb blasts. In fact, the arrest of as many as seven accused were made in July itself and till the time this witness was examined, all the accused had been arrested. So, there was really no need for the police to stop the public outcry, if there was any. Of course, the witness turned down the suggestion that he was not a taxi driver, that he was not driving the taxi on alleged date and time and that he is an informant of the ATS, for which suggestion there is no base.

453. The only omission that was brought on record during his cross-examination is about he having not stated to the police that the person who was 30-35 years of age, was the person who had the

bag in his hands and who caught the handles of the bag in the taxi. This has been already explained earlier in view of the explanation given by the witness further that he had described the two persons but had not stated their roles. The material thing is not who had held the bag from the back seat, but that it was so held. The only contradiction is the portion Ext. 1791, which infact is not a contradiction, because the witness has explained that as he might have stated so to the police it is so written in his statement. Thus, the single omission and contradiction are not material and have not affected his credibility.

454. As I have already observed it is not unnatural and unlikely that a taxi driver like Rajesh Satpute, PW-77, had seen the A3 and his companion on 11/07/06 when he carried them in his taxi from Carter Road, Bandra to Churchgate Railway Station with their black rexine bag. It is also not unnatural that his memory must have been triggered or sparked when he was inquired with on 03/11/06 and then he could recollect the face of the A3 on 07/11/06 and identify him in the test identification parade and then unhesitatingly identify him in the court, which is the substantial evidence. This witness being disclosed on 03/11/06 is also not unnatural or artificial in view of the reasons given by the investigating officer.

455. Thus, I have no hesitation in accepting the evidence of this witness as a cogent and truthful evidence. As against this, when the A3 was put questions during his statement under section 313 of the Cr. P. C. about evidence of this witness, his answers in respect of the event of carrying two passengers is that he does not know about it,

in respect of the witness identifying him in the test identification parade, his answer is that it is false and in respect of the witness identifying him in the court, his answer is that the witness was instructed by the ATS. In his written submission Ext. 2821, the case of the A3 about this witness is only that he is a regular witness of the police, that he stays near the ATS, Kalachowki office and the owner of the taxi also stays there. There is no explanation about his whereabouts on 11/07/06 and his defence about the blasts is only of general denial and having no knowledge about it.

456. In view of the above discussion, it will have to be held that Rajesh Satpute, PW-77, has given a very straightforward evidence, it is not artificial, it is not articulated or decorated with any fantasies or falsehood and he has not made any tall claims. To my mind, if the investigating machinery, i.e., the ATS wanted to fabricate such type of evidence practically at the end of investigation, because the chargesheet was filed on 30/11/06, it would not have stopped at only two taxi drivers. Nothing prevented them from creating such type of evidence of taxi drivers to give evidence against some more accused. The ATS could have done this earlier also. Why wait till 03/11/06? This shows the naturalness. Hence, it will have to be held that by the evidence of Rajesh Satpute, PW-77, the prosecution has proved that on 11/07/06, the A3 alongwith one more person had travelled in a taxi from Carter Road, Bandra at 3.30 to 4.00 p.m. to a subway of Churchgate Railway Station, reaching there at about 5.00 p.m. and that they were carrying a black coloured bag with them which was of rexine. **This is the first circumstance proved by**

the prosecution against the accused. It is the first circumstance against the A3.

457. The second taxi driver is Santosh Singh, PW-63, whose role is of carrying the A13 and his companion from Perry Cross Road, Bandra to Churchgate on 11/07/06. It has come in his evidence that on that day at about 3.15 to 3.30 p.m., two passengers for Churchgate came, one of them had a black heavy bag and umbrella, they sat on the back seat in his taxi keeping the bag between them that he took them to Churchgate, that *en route* they told him to drive the taxi carefully as the articles they had with them were delicate, that they asked him that how much time it will take and he told them that it will take about one hour and if there is a traffic, it would require more than that, that he left them near the subway by which one can go to Churchgate Station, that the fare was Rs. 180/-, they gave him a note of Rs. 500/-, he did not have the change to give the balance amount and told them that he would bring it and they should wait for two minutes, however, they were in hurry and told him to keep the change and they got down taking the bag with them. It has also come in his evidence that this was his first experience about the passengers keeping such a big amount of change, that normally before they take the passengers, they look at the passengers and *en route* one of the passengers was talking in Mumbai Hindi language and other was talking somewhat in Punjabi language. He described the built and approximate age of the passengers. It has come in his evidence that he was called by the police on 07/11/06 and he identified the A13 in the parade

conducted by SEO Barve, PW-82, as one of the persons, who had travelled in his taxi on that day. SEO Barve, PW-82, then asked the accused his name which he told as Asif Bashir Khan. He clarified that he had identified the person who had a bag and umbrella with him and had travelled in his taxi on 11/07/06 and who had paid the fare. The discussion about the test identification parade will be made subsequently, but the witness has identified the A13 in the court unhesitatingly after looking around the court room which is a substantive evidence. His evidence is fluent and unhesitating, however, as many as nine portions from his statement were confronted to him and were proved as Exts. 1854 (1 to 9) during the cross-examination of PI Wadmare, PW-175. Some statements made by him in his chief-examination were also brought on record as omissions to state before the police. The first contradiction is Ext. 1854(1) in respect of the sentence in his statement 'your statement dated 03/11/06 at Hill Road, Bandra when you were waiting for passengers, police were inquiring with the taximen' was put to him as a question as to whether it had so happened and he answered that police had made inquiry on the Hill Road and he had not stated that portion, the emphasis being on the portion, 'my statement dated 03/11/06 at 3.00 p.m. at Hill Road, Bandra'. He could not assign any reason as to why it is so written in his statement, but it is obviously a wrong construction of words and the learned SPP clarified at that stage itself that the witness has stated that on 03/11/06 at 300 p.m. police had made inquiry with him at Hill Road and his statement is taken at Bhoiwada on computer. The next

contradiction is the sentence in his statement that he was the owner of that taxi and when confronted he stated that he had not stated so to the police. However, his explanation thereafter shows that the contradiction is meaningless because he stated that the reason why it is so written in his statement is that the permit was in his name and his father was the owner as he had paid the price. The next contradiction is Ext. 1854(3) and when confronted he stated that he cannot assign any reason why it is so written in his statement and that it did not happen that on 03/11/06 he was on the Hill Road at Bandra and there police were making inquiries and they inquired with him and asked him whether at any time he had taken two young persons with a big bag from that place. To my mind, this portion cannot be termed as a contradiction, except for the words young persons because in chief-examination he has stated about it and this portion from his statement is at the end of his statement in connection with the inquiries that the police were making on 03/11/06. It does not materially affect his credibility. The next contradiction Ext. 1854(4) is in respect of the portion from his statement, 'Tyane mala tyana ase sangitale ki'. Obviously, it is once again a wrong construction of words or unnecessary use of the word 'tyana' and it is not material. The next contradiction is the portion Ext. 1854(5) about his statement to the police that he takes only those persons whom he finds decent. In this respect, the witness stated that he does not remember that he had stated so to the police and could not assign any reason why it is so written in his statement. Once again it is also not a material contradiction in respect of the actual

event. Next contradiction is portion Ext. 1854(6) that the person who was talking Hindi with Punjabi accent was a Pakistani. About this the witness stated that he does not remember whether it was so written in his statement and could not assign any reason why it is so written. The fact is that in the said portion in the statement, a possibility is expressed, but the witness did not state so in his chief-examination. This contradiction is also not material because both persons were unknown to the witness on that day and even if we consider it either way, it does not affect its credibility. Next contradiction is Ext. 1854(7) about which he stated that he did not state to the police that one of the person had a black bag and the other was having an umbrella and could not assign any reason why it is so written in his statement. In his chief-examination he stated that one of the two persons had a black heavy bag and an umbrella. So this is a contradiction proper, but the fact remains that he has stated about the black heavy bag and an umbrella. I do not know for what purpose the further questions were put to the witness, because they are in the nature of giving details about the transaction of fare and about which the witness stated that he had stated to the police and it did happen that one of the two passengers asked him about fare, he told him that it is Rs. 180/- and he gave him Rs. 500/- note. In his chief-examination he only stated that the fare was Rs. 180/- and they gave him a note of Rs. 500/-. The next two omissions Ext. 1854(8) and (9) are included in the statement in the portions where the witness has described the two persons one after the other and the witness stated that he cannot assign any reason why it is so

written in his statement though he had not stated to the police when he described the two persons, that one was talking English mixed Hindi in Mumbai style and one was talking in Mumbai Hindi. Now these two portions are obviously not in consonance with the earlier portions in the statement Ext. 1854(6), wherein it is mentioned that the second person was talking in Punjabi style Hindi. That is the main portion of the statement and in his chief-examination he has specifically stated that the other was talking in somewhat Punjabi language. Thus, even these two portions cannot be said to be contradictions in the proper sense of the term.

458. Now insofar as the omissions part is concerned, which are in paragraphs 14 and 15 during the cross-examination by the learned advocate Wahab Khan for the A13, the witness candidly admitted that he had not stated certain portions, but firmly said that he had stated certain portions and he was not controverted in respect of those portions. These omissions were also put to PI Wadmare, PW-175, and in respect of some portions he explained in paragraph 6 that they are written in other words and in continuation and gave a very acceptable explanation that some things have not been written in statement because the witness was stating many things and he took down the gist of the information that he gave. It seems that the important omission put to Santosh Singh, PW-63, is that at about 3.15 to 3.30 p.m. two persons for Churchgate came, that one of them had a heavy black bag and an umbrella, that *en route* they told him to drive the taxi carefully as the articles that they had with them were delicate and the next sentence stated by the witness that

he left them at the subway by which one can go to Churchgate Station. This is also corroborated by PI Wadmare, PW-175, and the sentence that at about 3.15 to 3.30 p.m. two passengers for Churchgate came has not been put to PI Wadmare, PW-175. In the next omission in the next sentence, the emphasis is on the words '*en route*'. It appears that the omission that at about 3.15 to 3.30 p.m. two passengers for Churchgate came and one of them had a heavy bag and an umbrella, is in view of the statement made by the witness in his chief-examination, but it is not that it is not at all there in his statement. As mentioned earlier the fact is that the two persons had a black bag and an umbrella and may be the witness incorrectly stated that one of them had both the articles. However, insofar as the aspect of he carrying two passengers on that day, there cannot be any dispute and there is no contradiction about it.

459. Thus, the omissions discussed above do not amount to contradictions that go to the root of the evidence of the witness and discredit him and in view of the plausible explanation given by PI Wadmare, PW-175, that the omissions part are not written in the statement because the witness was stating many things and he took down the gist of the information that he gave, I do not think that it materially affects his credibility. To my mind, a witness makes a statement to the police and it is commonly observed that the police do not take down the statement in the words of the witness, but write it as per their understanding and style. However, the rendering is by the court as the witness goes on giving evidence and the rendering is in English though the witness gives evidence in Marathi

or Hindi. Thus, this sort of omissions are not much material and do not affect the credibility of the witness, if they are considered without considering the other cross-examination.

460. Santosh Singh, PW-63, was cross-examined in detail about the knowledge about roads and places in Mumbai, the time required for travelling from Lokhandwala area in Kandivali to Kandivali Station and other places. He was then inquired about where he plies his taxi, the distance between Andheri and Trombay and then he was cross-examined in detail about the fares that he collected from different passengers on that day in order to show that his evidence that he did not have change to give the balance amount to passengers is false. Learned advocate Wahab Khan calculated the days receipts of fares on the basis of answers elicited from the witness during his cross-examination as a total amount of Rs. 440/- and submitted that even if it is considered that the witness has four notes of Rs. 100/-, he was in a position to give at least Rs. 300/- back to the passengers considering the fare of Rs. 180/-. In my humble opinion, a specific suggestion on this line was not put to the witness and the submission is untenable if one considers the normal expenditures of taxi driver like having lunch and most important of all is filling petrol or gas in the vehicle, which can be anywhere in between Rs.100 to 500/- on a particular day.

461. Next aspect is about the documents of the taxi or the copies of his licence and badge being not collected and log book, etc. Santosh Singh, PW-63, specifically answered that police did not see the documents of his taxi and they did not ask for it. In respect of the

log book he stated that driver has to maintain the log book containing the particulars about the driver and driving the taxi on particular days. But this aspect was left there and earlier the witness in answer to the question as to whether he is required to maintain a log book had answered that the owner is not required to maintain a log book. Now this aspect has been severely criticized by the learned advocate of the accused on the basis of the information that the accused got from the RTO office under the RTI Act, i.e., Ext.1853, which shows the owner of the taxi as Satish Kumar K. Singh. Defence has not examined the PIO of the RTO office to prove the contents of this simple letter sent to him containing the information sought by him. Even otherwise the possibility cannot be ruled out that the staff of the RTO office may have mistakenly written Satish Kumar instead of Santosh Kumar and therefore this document is of no importance and not relevant and cannot be relied on.

462. The witness gave very specific answers as to the timings when he took out the taxi on each day from 10/07/06 to 16/07/06 and it has come in his cross-examination that the taxi no. MRK 8286 is now scrapped, that it was scrapped around 9th or 10th November, 2006, that there was no permission to ply it after it was scrapped and he did not deal with the scrap dealer about it and it was parked after it was scrapped. He turned down the suggestion that he was not driving it on 03/11/06 when the police inquired with him. Again it has come in further cross-examination that the taxi was scrapped as its condition had deteriorated and not that it was 15-20 years old and also that the customers were preferring cool cabs. As discussed

above, he had given a good explanation in respect of the contradiction Ext. 1854(2) about the reason why it is written in his statement that he was the owner of a taxi. There was a considerable cross-examination to him about who had purchased the said taxi, what model it was, who was the previous owner and who used to get it passed from the RTO. The witness stated that the previous owner was one Anil Kumar, who is no more. Learned advocate submitted that the information under the RTI Act does not mention the name of said Anil Kumar Singh as a previous owner. Obviously, the learned advocate has not carefully gone through the contents of Ext.1853, because the information that is provided is from 2001 upto the date of that letter, i.e., 14/12/11, and it has come in the cross-examination of the witness that he took permit in 1995 and his father used to get the taxi passed from the RTO from 1989 to 1994. The witness has rightly answered that the taxi was not transferred in his father's name at any time till today. This can mean that the taxi was purchased in the name of witness himself. In any case that does not affect the material evidence of the witness in respect of the main event of carrying two passengers, one out of them being A13, on the alleged date and time in his taxi from Perry Cross Road, Bandra to Churchgate. In respect of the police approaching him on 03/11/06, he gave very clear and specific answers that two policemen were making inquiries at the Hill Road, that he does not know their names and buckle number, that he did not give the entire information to them and this is important that he had seen them making inquiries with about 5-6 taximen. PI Wadmare, PW-175, is

the very person who came across this witness Santosh Singh, PW-63, at the Hill Road, Bandra, after searching for 15 days for taxi drivers at the taxi stands at Bandra, Govandi, Andheri and the taxi stands on the way. It was brought in his cross-examination that he did not make any station diary entry on 03/11/06 about going in search of taxi drivers and after he returning back or about such efforts during the period of 15 days prior to 03/11/06. He admitted that he did not take any copy of driving licence and badge of the witness and did not examine the log book of the taxi, did not take photographs of the taxi, did not examine it or seize it, but he stated that he did not feel it necessary to do so. The reasoning that is given for explaining similar type of lacuna in the investigation while discussing the evidence of first taxi driver Rajesh Satpute, PW-77, is squarely applicable to the case of this witness also. The taxi is a public vehicle. He, however, stated that he had seen the licence of the witness.

463. Now insofar as the investigation done by this witness is concerned, viz., to search for taxi drivers, he has deposed in his chief-examination that his superiors had directed him to search for taxi drivers, who may have taken some persons from Bandra to Churchgate on date of the blasts and alongwith two constables he searched for taxi drivers at various taxi stands and after searching for 15 days he came across Santosh Singh, PW-63. In this connection he admitted in his cross-examination that he did not maintain any official record about his visits to various places for 15 days, but stated that he was not in a particular team that was investigating a

particular crime and that DCP Bajaj and ACP Patil, PW-186, had given directions to search for taxi drivers in a general meeting and not particularly to him and in that meeting other investigating officers were also present.

464. ACP Patil, PW-186, corroborated his version by stating that the constables had made inquiries with the taxi drivers at his instance, that he had directed number of officers and constables in general to make inquiries to find out the taxi drivers, that this direction was given 15 days prior to 03/11/06. These statements have come in his cross-examination. Subsequently, there was a considerable cross-examination to PI Wadmare, PW-175, as to who used to be present in the meetings, the number of meetings, etc., but all that is a fishing expedition. He gave detailed and specific answers to the questions in respect of the events on 03/11/06 as to when he started from his residential quarters for doing the search work, etc., and all his positive statements in cross-examination have not been controverted in further cross-examination. He again stated in his cross-examination and explained in detail as to what he did when he reached Bhoiwada and met ACP Patil, PW-186, first briefed him about the witness Santosh Singh, PW-63, who stood outside the office, he then called the witness inside and introduced ACP Patil, PW-186, and *vice versa* and ACP Patil, PW-186, inquired with him in his presence but did not record his statement.

465. It has come in the evidence of ACP Patil, PW-186, that Santosh Singh, PW-63, had come to Bhoiwada office on 03/11/06 and had met him, that he inquired with him and PI Wadmare, PW-175, was

present on that day. In connection with these statements made by these two investigating officers, learned advocate Wahab Khan submitted that they are lying because Santosh Singh, PW-63, has specifically stated in his cross-examination that he did not meet ACP Patil, PW-186, on that day, but first met him 07/11/06 in the Bhoiwada office. Learned advocate submitted that this shows that the witness is a got up witness. It cannot be said so, because in his chief-examination, Santosh Singh, PW-63, stated that he went in his taxi to Bhoiwada Police Station alongwith the police who had met him at the Hill Road, Bandra, they took him to some office behind Bhoiwada Police Station, upstairs there were some officers and they made inquiry with him. The answers given by ACP Patil, PW-186, in cross-examination that he does not remember whether he had introduced himself as ACP Patil, PW-186, takes away the force of supposedly inconsistent statements made by Santosh Singh, PW-63. Therefore, these statements by Santosh Singh, PW-63, cannot be said to inconsistent with the evidence of both the investigating officers nor does it prove that they are lying.

466. PI Wadmare, PW-175, was further cross-examined on the aspect of not preparing sketch of the unknown suspect and about a personal diary being maintained by police officers, but it is not material and does not affect his evidence and he denied the suggestion that he did not go for search of taxi driver, before, on and after 03/11/06, therefore it is not written in the personal diary. He stated that he used to go for the search in the government Bolero vehicle, but cannot tell its number and admitted that he did not

make entries or the driver did not make entries in the log book in his presence, but also stated that he did not take the same vehicle on all the days. He denied all the suggestions in connection with the said witness and also the specific suggestion that he is a false witness planted on the instructions of CP Roy, PW-185, Jt. CP Raghuwanshi, Addl. CP Jaiswal and DCP Bajaj.

467. In further cross-examination Santosh Singh, PW-63, was again asked about his work of driving the said taxi in shifts and it has come in his cross-examination that during this period he had gone to Hill Road and Perry Cross Road, that he had seen the regular local taxi drivers on those stops, that during this period he did not get any information from them that the police are inquiring about the passengers being taken by them to Churchgate and that on 11/07/06 on three occasions he took pairs of passengers. Now the last statement is a very specific statement which shows that the memory of the witness is triggered even during cross-examination after so many years of the incident. His further cross-examination is in respect of the alleged lacuna in the investigation about police not preparing sketch of the bag or the two persons with his help, that he had not described the length and breadth of the bag, that police did not ask him about the log book and did not tell him that they want to see and search the taxi and he did not take the police and police also did not ask him to take them to the stops to show from where he took the two passengers and where he left them. To my mind, if the police have not done so, it is not fault of the witness and even otherwise it does not materially affect his evidence. What could have

the investigating officers done if he would have shown the spots to them? In respect of the inspection and search of the taxi, the observations made while discussing this issue in respect of Rajesh Satpute, PW-77, are squarely applicable here.

468. Learned advocate Wahab Khan submitted that this witness had important information about the incident of bomb blasts and it has come in his cross-examination that he came to know about the bomb blasts in the night of 11/07/06, he saw the news on the TV, but till 02/11/06 he did not think that he had some important information about the incident of the bomb blasts. In reply, learned SPP submitted and rightly so, that there was nothing unusual for a taxi driver to carry two passengers from Bandra to Churchgate even on the day of the blasts and to co-relate it with the bomb blasts, because the bomb blasts had not taken place at Churchgate. Learned advocate Wahab Khan further attacked the veracity of this witness in view of his answer that it is true that after about a week it is difficult to remember a passenger and it becomes more difficult after a month also. To my mind, the submissions of the learned SPP Raja Thakare in connection with this, that the memory of a person is triggered when the facts are refreshed, is once again applicable to this witness also and this answer does not affect the veracity of the witness. Santosh Singh, PW-63, denied all the suggestions in respect of the evidence that he gave about the events on 11/07/06 and also denied a very strange suggestion that before 03/11/06 police had shown the A13 to him when he was in the police custody and had shown him his photographs and video clips. He also denied the

usual suggestion that he identified the accused in the court on the say of the police and has deposed falsely.

469. Learned advocate Shetty during his cross-examination of this witness asked about the distances between Hill Road and Perry Cross Road from Carter Road and the witness gave the distance as two and half kilometers and one kilometer respectively in clear terms and also stated that he was taken from Mehboob Studio at Hill Road. This shows his specific knowledge about the area in Bandra. His answers further that 2-3 officers inquired with him in the office at Bhoiwada, but he cannot tell their names or who inquired with him and who wrote and who signed the statement, once again take away the force of the supposedly inconsistent statement made by him about not meeting ACP Patil, PW-186, on that day, but meeting him on 07/11/06 for the first time. He also gave the specific time of dropping the passengers at Churchgate, i.e., at about 4.45 to 5.00 p.m. and gave the specific time required from Perry Cross Road to Churchgate, about the traffic *en route*, about there being heavy traffic at Peddar Road and Opera House, about he requiring 45 minutes from Haji Ali Junction to Churchgate *via* Peddar Road and Opera House and some more things. These specifications are not controverted and they show that the witness is not shy of giving answers to the questions and has exact knowledge about the roads and the distance, etc., and is a truthful witness.

470. In the cross-examination by learned advocate Rasal some more details have emerged about the length of the Hill Road, etc., but it is not material.

471. Learned advocate has criticized the evidence of Santosh Singh, PW-63, on the basis of the so called omissions and contradictions, on the basis of the alleged confusion about the ownership of the taxi and the inconsistencies in his evidence read with the evidence of PI Wadmare, PW-175, and ACP Patil, PW-186. I have already held that the omissions and contradictions are not material to the factual aspects of the events about which the witness gave evidence and there is no inconsistencies in his evidence vis-a-vis the evidence of the two investigating officers. Learned advocate also criticized the evidence of PI Wadmare, PW-175, on the basis of his conviction in Special Case No. 53 of 2001 and questioned as to whether the prosecution could not get a better witness and officers other than this? In this respect he relied on the further cross-examination of PI Wadmare, PW-175, that was conducted as per the order of the High Court dtd. 30/01/14 in Criminal Appeal No. 1194 of 2013. His evidence was recorded on 04 and 05/01/12 and after more than two years his further cross-examination was done. He admitted that the crime was registered against him by the ACP, Mumbai when he was attached to the Narcotic Department in February, 98 on the allegation that he had threatened the complainant that he would involve him in the false Narco case and tried to extort Rs. 30,00,000/- for not implicating him, that chargesheet was filed and by the judgement dtd. 20/11/10 in Special Case No. 53 of 2001, the court had convicted him for the charge under section 342 of the IPC and had released him on the point of good conduct for the period of a year instead of imposing any sentence on him. The witness

volunteered that he was acquitted of the main charges and was held guilty for an offence for which there was no charge, therefore, he filed an appeal in the High Court, which is pending. He further clarified that five police persons were his co-accused and they all are acquitted. Now after all these things he was given a very unacceptable and baseless suggestion that the ATS helped him to secure an acquittal in this case, which, to my mind, is casting aspersions on the court that gave judgement. All these things are rendered ineffective by the answers given by the witness in the re-examination done by the learned SPP Raja Thakare, because the witness answered that he was a PSI when the case was filed by the ATS and he is now a Sr. PI having got two promotions. Perusal of the certified copy of the chargesheet Ext. 4294 shows that the crime was registered in the year 1998 and the officer has not been removed from service or penalized, but on the other hand has been promoted as a Sr. PI. Secondly, it is not shown how this case has affected his credibility as a police officer and his investigation in this case. Thus, this aspect is of no consequence and does not affect his capacity as a police officer and does not affect the investigation done by him in this case.

472. ACP Patil, PW-186, was also cross-examined in detail in respect of this witness and he turned down the suggestion that false witnesses have been introduced after the accused retracted their confessional statements. Now this suggestion is inapplicable insofar as the A13's case is concerned, because he declined to make a confessional statement and therefore there is no question of any

retraction by him. In fact the A13 was arrested on 03/10/06, that to from Belgaon in Karnataka. There is nothing in his cross-examination to discredit either his evidence about the investigation concerning this witness or the evidence of the witness.

473. Learned SPP Raja Thakare submitted during his arguments that the rule of log book is today only on paper and now a days there is a fixed remuneration to the taxi drivers. In respect of the entries in the station diary about taking statements of the witness, he submitted that it is not necessary for the investigating officers to record everything, he is not writing a thesis. Supposing a witness gives a statement to the police that on 11/07/06 he reached two passengers from Bandra to Churchgate, that thereafter the police called him for test identification parade on 07/11/06 and he identified one person. These statements will be construed as mugged up because the real part of the evidence that is germane to the fact in issue is only this much. The investigating officer takes it a little bit elaborately though the witness may describe it in great details. In court, the prosecutor conducting the trial takes the evidence of the witness in the manner that he feels would be better. Therefore, any discrepancy in respect of the peripheral material cannot be looked at as if the witness is fabricating the case or is deposing falsely. If one examines the evidence of any witness side by side with his statement under section 161 of the Cr. P. C. and if it is not verbatim then it is argued that there are omissions and contradictions. However, no other meaning is reflected if words only are considered without understanding the meaning of the entire sentence. He submits that

this witness was found by chance and questions as to whether it would not have been easier for the investigating agency to prop a taxi driver who used to be regularly at the said taxi stand, if they really wanted to fabricate the evidence. He submits that an outsider cannot give a better information than the person who is regularly there and is in a better position to be used as a truthful witness. In respect of the question asked to the witness as to whether he did not feel that he had some important information in connection with the blast, he raised a question as to how a man would think of co-relating the fact that he had carried two passengers when the bomb blasts have taken place at some places far away from Churchgate and that too not in the proximity of the time at which he had dropped them at Churchgate.

474. In my humble opinion it is clear from the above discussion that the evidence of Santosh Singh, PW-63, is a cogent and convincing evidence and his credibility has not been impeached during his cross-examination. The most important fact is that he has no criminal antecedents, no history of he having acted as a panch or a witness in any other case and no contact with the police, which rules out the possibility of he being a pliable police witness. Therefore, it will have to be held that he is not at all got up witness and his evidence is not fabricated. He is surely a total independent witness and his evidence inspires confidence. I have, therefore, no hesitation in accepting his testimony as a truthful. Hence, it will have to be held that by his evidence prosecution has proved that on 11/07/06 the A13 alongwith one more person had traveled in a taxi

from Perry Cross Road, Bandra at about 3.15 to 3.30 p.m. to a subway of Churchgate Railway Station, reaching there at about 4.45 to 5.00 p.m. and that they were carrying a black heavy bag with them. **This is the circumstance no. 2 proved by the prosecution against the accused.** It is the first circumstance against the A13.

475. Though by the above evidence the prosecution has proved a circumstance against the A13, the A13 has taken the specific defence of alibi and it will, therefore, be necessary to consider the oral and documentary evidence given by him. To most of the questions during his statement under section 313 of the Cr. P. C. in respect of the evidence given by Santosh Singh, PW-63, PI Wadmare, PW-175, and ACP Patil, PW-186, the A13 expressed his lack of knowledge and at the end to one question he answered that Santosh Singh, PW-63, gave false statement to PI Wadmare, PW-175, that he is the owner of the taxi, because the document under the RTI Act, Ext. 1853, shows that some other person is the owner. In respect of the question relating to the identification in the test identification parade, he answered that three persons were brought on 31/10/06 when he was in police custody and he was shown to them and they were told that he is Asif Bashir Khan and they should remember him.

476. In his written submissions Ext.2834 the A13 has stated that he is innocent, has no concern, even remote, with the bomb blasts, does not know any of the co-accused, has no concern with them, has never met them, has never heard of them and has never told about them to anybody, that he saw them only in the police custody for the first time and had no contact with any co-accused on mobile phone.

In respect of the date of incident, i.e., 11/07/06, he has submitted that he reached his office, i.e., the site of his Lokhandwala Construction Company at Kandivali, where he used to work as billing engineer, at 09.05 hours and was doing the office work thereafter and made calls and received calls from his mobile. Prior to this he also stated that on 7th, 8th and 10th of July he went to his office as usual and worked there upto 1820 hours as usual and his mobile used to be continuously with him from which he used to make calls and receive calls. It is further stated by him that the ATS called his office staff and inquired with them in his presence and they also confirmed that he was working in the office for the whole day on 11/07/06. He stated that he finished his office work at 1825 hours and started for going home at 1825 hours and before he reached Kandivali Station, he came to know that the trains are not running, therefore, by bus he reached home at 2030 hours and during this period his family members and persons from office were calling him and inquiring about his well-being. He has alleged that ATS officers Patil and PSI Kisan Gaikwad brought some persons to the Bhoiwada lock-up and showed him to them saying that see him properly and he is Asif Khan. He became frightened and he informed about this to the court by giving the application Ext. N. He has alleged that he came to know thereafter that Mohd. Alam, PW-59, Kishore Shah, PW-60, and Santosh Singh, PW-63, are the chargesheeted and false witnesses of the police. He has stated that as per the attendance muster record and pay slips record, Exts. 2088 to 2094, he was present during the entire month of June, 2006 at

the place of his work and from 0905 to 1825 hours on 11/07/06. This falsifies the evidence given by the above three witnesses and he has further stated that Santosh Singh, PW-63, has falsely stated about carrying him in his taxi during 1530 hours to 1700 hours from Carter Road, Bandra to Churchgate subway. He has finally stated that Ext.1853, which is the document obtained by him under the RTI Act from the PIO of the RTO office, shows that the taxi no. MRK 8286 is not owned by Santosh Singh, PW-63, and it proves that this witness is a false and dummy witness.

477. A13 gave elaborate evidence on oath as DW-49 in respect of the entire prosecution case, about how he is falsely involved in this case at the behest of DCP Bajaj and in great detail about his activities and whereabouts from 08/07/06 to 11/07/06, which is the material evidence in respect of the allegations about the prosecution about the bomb making process and planting of bomb. This evidence of his alibi and the other voluminous evidence will be considered subsequently. He deposed about obtaining employment in Lokhandwala Construction Company at Kandivali and joining the company on 20/03/06 and the procedure of his entry in his office by signing the muster and putting the time in the presence of security guard and the muster keeper. Alongwith considering his evidence in respect of his whereabouts and activities on 11/07/06, it is also necessary to consider his evidence in respect of the three dates prior to 11/07/06 because he has relied on the CDR of the mobile number 9867209894 of Airtel Company, the sim card of which he claims to have taken from his friend Shaikh Mohd. Ayyub, who was residing

in the adjacent building and was doing the work of mobile repairing in a shop and had the business of selling mobiles. In his written submission Ext. 2834, he has stated that in July, 06 he had with him an Airtel mobile no. 9867209894, which was in the name of his friend Ayyub and which he used personally at his Kandivali office and at his house and used to contact his family members, the staff of his office, the civil work contractors and the head office of his company at Santacruz and as he was a civil billing engineer, he was always in contact. It has come in his evidence that he used to have his mobile handset with him continuously at the job and at the house and did not keep it switched off at any time.

478. It has come in his evidence that on 08/07/06 he left his house at his regular time, resumed his job at 9.00 a.m., did the work of civil billing engineering during the whole day during which period his mobile was with him for the whole day and he was receiving and making calls from his mobile and returned home at 6.30 p.m. after duty. In respect of 09/07/06, he stated that he was at his house with his family, was receiving and making calls from his mobile during the day and that he did not go to Shivaji Nagar on 8th and 09/07/06. His evidence in respect of 10/07/06 is similar to his evidence about 08/07/06 and in addition he has stated that his Sr. Engineer S. T. Deshpande told him that they have to take a meeting on 11/07/06 as there is overload of work and bills are not being passed and that chief facilitating officer Shetty, who had received complaints from the contractors, would also come for the meeting.

479. I will first consider his evidence about these three days and

the documentary evidence on which he relies because his evidence in respect of the ill-fated day, i.e., 11/07/06, will have to be discussed separately. It has come in his evidence that after his arrest and during his investigation, the investigating officers brought the said Shetty from his company, who had brought all original documents including his application form, muster, pay slips, Lokhandwala appointment form and copy of Times of India containing the advertisement, that his detailed statement was recorded and his mobile number was verified from him. These documents had been produced by the prosecution alongwith the chargesheet and the defence admitted them, hence they were marked as Exts. 2088 to 2094. Then he stated about his colleague Santosh Gosai being called, inquired with and about recording his statement. He pointed out to the details in the documents, his name at sr. no. 12 in the muster and the entry on 11/07/06. It has come in his evidence further that he was inquired with by PSI Wadke and Bagwe in respect of his mobile number and on 15/10/06 they gave him a bunch of CDR printout which was having his name and mobile number. He referred to the CDR Ext. 3767 and explained that he had made and received calls, most of them being of his colleagues and contractors in the Lokhandwala Construction, showed the landline numbers of the Santacruz and Lokhandwala office and he gave those numbers. He stated that he was asked to show his whereabouts on 7th, 8th and 10/07/06 on the basis of the locations of the CDR and he showed them that he was at Mira Road and Kandivali and the locations of his calls on 09/07/06 are of Mira Road as it was Sunday

and they checked the CDR with the locations showed by him.

480. In connection with his evidence, his advocate Wahab Khan submitted during his arguments that the cell ID showing the tower locations in the entire CDR does not show that the accused had visited Bandra or Shivaji Nagar, Govandi prior to 08/07/06 and then he has pointed out to the particular calls starting from 06/07/06 stating that they are incoming calls showing the locations of his place of work at Kandivali in between 9.45 a.m. to 6.37 p.m. on 06/07/06, in between 9.47 a.m. to 9.03 p.m. at Kandivali and Mira Road on 07/07/06, in between 10.45 a.m. to 11.03 p.m. at Lokhandwala, Kandivali and Mira Road, as it was Sunday at Mira Road on 09/07/06 and Mira Road and his place of work and also attending calls *en route* on 10/07/06.

481. In this respect the learned SPP submitted during his arguments referring to his cross-examination and to the documents of the employment of the accused, that though the muster role shows the timing of the A13 coming to the office and leaving the office, the tower location of the calls as reflected in the CDRs show that he was not always at his work place and was elsewhere also. The cross-examination on the aspect of the calls in the CDR is mainly in respect of 11/07/06 and 12/07/06.

482. Yogesh Rajapurkar, nodal officer of Bharti Airtel Company, DW-36, has proved the contents of the CDR Ext. 3767 pertaining to the mobile no. 9867209894 that was admittedly being used by the A13 and also proved the contents of the certificate Ext.3772 which he gave as per the law. The contents of the CDR will have to be

referred to as both sides have relied on the entire therein, though it is a question as to whether the witness is competent to prove the contents of the said CDR in view of his evidence that the data of calls is available on the server for one year, thereafter it is purged at the back end and archived in magnetic tapes and that they request the IT section to retrieve the data that is more than one year old. It has come in his evidence that they issue certificate to certify the data that is provided after verifying it, provided it is online, i.e., within one year and the more than one year data cannot be verified by them as it is provided by the IT section. This is again clarified in his further cross-examination that Bharti Airtel has outsourced the storing of the data to IBM, that the data that he produced has been received from the IBM, that no competent authority of the IBM has certified that the data that they have sent is accurate and complete, that he is not the competent authority to say that the data so sent by the IBM is accurate and complete and the certificate Ext. 3772 given by him is in respect of the data that was received by the IBM. This was also endorsed by the head of the IT department of Bharti Airtel, Anand Bhatnagar, DW-29, in whose evidence it has come that they are having backup system in the IT department, that the IBM is their strategic partner and they have outsourced their IT activities to them and they maintain the backup, data, systems and all IT applications. His evidence was not completed as the request of the learned advocate for the accused for declaring him hostile was not allowed. Thus the data that is provided by the nodal officer is the data that he received from the IBM and which he has not verified and this is

again endorsed by the answer in cross-examination that he is competent to give certificate about the authenticity of the data only in respect of the data that is online, i.e., within one year. However, as mentioned earlier, since both parties have relied on the contents of the CDR they are being discussed.

483. Nodal officer Yogesh Rajapurkar, DW-36, has explained the columns of the CDR, the first column representing the incoming or outgoing calls and sms, MOC indicating outgoing calls, SMT indicating incoming sms, SMO indicating outgoing sms and MTC indicating incoming calls. The relevant columns are the third column which indicates the date and time, the fourth column which indicates duration of the call, the fifth column which indicates called number or calling number, the sixth column which indicates the number of the subscriber, the eighth column is 'Cell First', which indicates the code of the tower from which the call started, etc.

484. Learned SPP pointed out to the entry in the muster role Ext. 2094 of the date 03/07/06 which shows the 'in timing as 9.00 a.m. and out timing as 6.25 p.m.' He submits that it is the contention of the accused that he used to be continuously in his office and his mobile used to be with him and he used to make and receive the calls. Learned SPP pointed out the CDR Ext. 3767(4) of 03/07/06 and to the transaction at 1644 hours, which is in respect of an incoming sms and the cell ID number is 60393, which as per Ext. 3767(5) is of Panch Ratna CHS, Naya Nagar, Masjid Galli, Mira Road (W). In respect of date 04/07/06, learned SPP submits that the muster role shows the 'in timing as 9.15 a.m. and out timing as 1200

hours'. However, the call at 9.43 hours, which is an incoming call shows the cell ID no. 14073, the address of which is Sai Riddhi, Opposite Mira Road Station, Near Shanti Nagar, Mira Road(E), Mumbai, which is the residential address given by the accused. Similarly, there were two calls, one at 1152 hours and the other at 1153 hours which show the tower location no.61143, address being near Dahisar Bridge, Dahisar (W) and the tower location no. 14071, which is again address of Mira Road given above.

485. In respect of the date 05/07/06 the entry in the muster role shows the 'in timing at 9.00 a.m. and the out timing at 5.30 p.m.', whereas the two incoming calls, one at 1628 hours and other at 1746 hours, show the tower locations no. 14073 and 19771, the address of the first being of Shanti Nagar, Mira Road and the address of the second being of Gita Nagar, Mira Road, Bhayander, Thane. Learned SPP submits and rightly so that from the entries in the muster role Ext. 2094 about the duty timings read with the tower locations of calls in the CDR, no inference can be drawn that the A13 used to be continuously in his office in Lokhandwala Construction Company at Kandivali during the working hours.

486. Now it is the case of the accused in his written statement as well as in his oral evidence that his mobile used to be continuously with him and he used to receive, and, this is important, make calls to his family members, staff members, etc., and particularly on 8th, 9th and 10/07/06. The aspect of he making calls has been brought out during his cross-examination as an untruth and it is also evident from the contents of the CDR Ext. 3767(4) that there is not a single

outgoing call or sms after 10.52 a.m. of 04/07/06 upto 1242 a.m. of 12/07/06, i.e., for a period of continuous 8 days and all the transactions during these 8 days are either incoming calls or incoming sms.

487. Now in respect of the date of the incident, he stated that he reached the office at 9.05 a.m. and left at 6.35 p.m., which is obviously as per the contents of the muster role Ext. 2094 and he stated that his mobile was with him and switched on and he started getting calls regularly after 9.45 a.m., that his colleagues were with him, that one Deshpande called him from the head office in Santacruz at 4.30 p.m. and he and manager came at 5.10 p.m. and had a meeting with him which continued upto 6.15 p.m. and then he left at 6.35 p.m. with his colleague Santosh Gosai and he put the time in the presence of the time keeper Sandeep Patil and at that time the security guard Ramsingh was present. In further evidence, he gave the landline numbers of the head office at Santacruz as 02226494592 and 02226487766 and the landline numbers of his office at Kandivali as 02226494492 and 02226491807, which he told to PSI Bagwe, who was inquiring with him. He gave the details of the calls that he got during the day of 11/07/06 and particularly a call from Deshpande from Santacruz office at 4.32 p.m., from his son at 7.54 p.m. when he was at S. V. Road, Dahisar. One more call at 8.05 p.m. when he had reached Mira Road, a call from his friend and colleague Santosh Gosai at 8.53 p.m. from landline no. 02232417058 and from one contractor Kale at 10.15 p.m. and at 10.16 p.m. from his mobile no. 09322690008. He stated that all

these calls were confirmed by many persons, who were called by the investigating officers on 16th, 17th and 18/10/06, who confirmed that they had called him and this is again important that they had received calls from him and their statements were recorded. As mentioned earlier there is no outgoing calls for a period of 8 days including on 11/07/06. In respect of the said friend Santosh Gosai he had stated earlier that the said friend had called him from his landline no. 02232417058, but in cross-examination he was asked about no. 02223052593, which he stated to be number of a PCO from which Santosh Gosai had called him on that day. He stated that he does not know the exact location of the PCO but his friend stays at Shuklaji Street. He admitted that the friend's name is Santosh Gosai, but does not know his exact residential address and when he was put the specific address of Kharghar, Navi Mumbai, he denied it and also expressed his lack of knowledge about the statement of Santosh Gosai being in the chargesheet. The number 02223052593 confronted to the witness is an obviously mistake by the learned SPP in stating the last four digits 2593 instead of 2953, which he allegedly later on showed to be of a PCO at the Faujia Medical and General Store, Near Faujia Hospital, Shuklaji Street, Mumbai. Though he admitted that Santosh Gosai had a mobile, but he did not remember its number though both have made many calls to each other from their mobiles. Though, it is positively asserted by him that Santosh Gosai had called him from the no. 02223052593, as put to him, which must be infact 02223052953, on 11/07/06, he had to admit after going through the CDR that he did not get a call

from that number on that day. His statement that he does not remember the mobile number of his friend Santosh Gosai, though he could remember the number of a PCO, is unacceptable and he is obviously deposing falsely. It is also obvious that the A13 has made up the story after the CDRs were received and he tried to explain each and every call.

488. In this connection, his learned advocate Wahab Khan submitted that the ATS recorded the statements of the concerned persons who were working with the accused, but the prosecution did not examine them and PI Sunil Deshmukh, who had recorded their statements, therefore, an adverse inference is required to be drawn. He submits that the reason for this is obvious, viz., that the muster role shows that the A13 was present throughout the day on 11/07/06 at his work place and it is impossible that he was at Bandra or Churchgate. In this connection learned SPP Raja Thakare submitted that to establish the defence of alibi, the A13 has relied on attendance register as well as the CDR of his mobile to show his presence at his office at Lokhandwala Construction Company at Kandivali on 11/07/06. However, though he has given the names of his colleagues Santosh Gosai, the name of senior engineer Deshpande from the head office, the name of security guard Ramsingh, muster keeper Sandeep Patil and contractor Kale, he has not examined them. He submits that the efforts of the investigating machinery as well as the prosecution should be taken into account. The investigating machinery inquired with the staff members in the office of the A13, took their statements and obtained the documents

Exts. 2088 to 2094, which though were not proved by the prosecution were admitted in evidence as the defence admitted them.

489. Perusal of the record shows that the prosecution applied for summoning the security guard Kisan Singh Laxman Singh by the application dtd. 10/03/11 Ext. 813 and for summoning Pappu Shetty, who was of the accounts department and who had produced the documents as well as alleged colleague and friend of the accused Santosh Gosai by the application dtd. 08/04/11 Ext. 892. It filed the report Ext. 2453 on 24/02/12 that the witness Pappu Shetty is dead, which is supported by the death certificate alongwith his report and that Kisan Singh Laxman Singh and Santoshsingh Bhimsingh Gosai were not found on the given address, the house of Santosh being found locked and the hut of Kisan Singh being demolished by the forest officer and though they came to know that Kisan Singh had shifted to Sangharsh Nagar, Sakinaka, he could not be found there also. Thus no fault can be found with the investigating agency or the prosecution and no adverse inference can be drawn. On the other hand an adverse inference is required to be drawn against the accused as he has not cited these three witnesses in his defence and in addition has not cited the senior engineer Deshpande or contractor Kale, or security guard Ramsingh or time keeper Sandeep Patil. It was very easy for the defence to summon these witnesses as defence witnesses considering the large number of defence witnesses for which summons were applied for and examined by the defence. Leave alone these four persons, he could have summoned and

examined any knowledgeable person from his work place who was working with him on that day to establish the fact that he was continuously working in his office upto 6.25 p.m.

490. Learned SPP submits that he is fully conscious of the fact that what the court can consider is admissible evidence, but exercising the powers that are vested in this court by virtue of section 165 of the Evidence Act, even for the limited purpose for getting satisfied about the fact, if the court feels it prudent, the court may peruse the statements of the three witnesses, who could not be examined by the prosecution. Though, section 165 of the Evidence Act cannot be called in aid for this purpose, out of curiosity, I perused the statements and I cannot help but commenting that if the prosecution would have been able to examine these three witnesses, their evidence would have buried the A13 deeper. The security guard Kisan Singh had stated to the police that engineers, who used to go outside during the office work, but did not return before the closing hours, used to sign on the previous days muster on the next day and put the time. Pappu Shetty has only produced the documents and the muster of all these three dates. The alleged colleague and friend of the A13 Santosh Gosai stated to the police that he recollected that the A13 was absent on 12/07/06 and this is important that infact he went earlier on 11/07/06 on 1330 hours saying that he is unwell. Admittedly, the contents of the statement of these witness cannot be considered for any purpose.

491. It is submitted by the learned advocate that the prosecution is giving a suggestion to the A13 that there is no outgoing call from

04/07/06 to 12/07/06 and, on the other hand, it is suggested that the mobile was not with him. In this connection, learned SPP submitted that it is the accused who has taken the specific defence of alibi and is placing reliance on his muster role at his work place and also on the CDR of his mobile. He submits that if the accused fails to give cogent evidence about it, then he fails to prove his defence of alibi. Learned SPP also submitted that in respect of CDR, the general proposition is that the CDR at the most shows the location of the handset and not of that person. To my mind, there cannot be a presumption that a mobile is always with the person and therefore, the locations in the CDR will not establish the location of the person using it, because a mobile is not a body part of any person. It is pertinent to point out that the CDR does not show any transaction of calls or sms for two hours and five minutes between 1632 hours to 1907 hours on 11/07/06 and there is no explanation or evidence by the accused about this period.

492. In my humble opinion, the oral and documentary evidence given by accused to prove his defence of alibi is not cogent and convincing and on the other hand his falsity is exposed in view of his one single bold statement that he was regularly making calls from his mobile to his family members or office staff, etc., when the CDR shows that there is not a single outgoing call or sms for a period of 8 days from 04/07/06 upto 12/07/06. Hence, it will have to be held that the A13 has failed to show a preponderance of probability about his defence of alibi about the dates 8th to 11/07/06 and to prove it and therefore the circumstance no. 2 proved by the prosecution is

unaffected. It will, therefore, have to be held that the A13 had taken a false plea of alibi. Hence, it is an additional circumstance in the chain of circumstances against all the accused. It is the first additional circumstance against all the accused. It is the first additional circumstance against the A13.

Travellers :-

493. This group will be of the four travellers in the local trains, Subhash Nagarsekar, PW-57, for A1, Devendra Patil, PW-62, for A3, Vishal Parmar, PW-74, for A4 and Kishore Shah, PW-60, for A13, who had allegedly seen the respective accused keeping big black rexine bags on the luggage racks and one below the seat in the first-class bogie of different trains in which they were travelling on 11/07/06.

494. It has come in the evidence of Subhash Nagarsekar, PW-57, that as it was Gurupournima on 11/07/06, he wanted to go for darshan to the Saibaba Temple in Vartak Nagar, Thane. Therefore, he sat in the first-class compartment that was the first from Virar side in the fast train going towards Churchgate, that he sat by the window side facing towards Virar, that he did not get down at Churchgate as he wanted to go to Dadar and then to Thane, that at Churchgate Station people entered the compartment, some people kept their bags on the racks, that at that time two persons entered the train from the left side door with a big rexine bag and kept the bag on the rack above him. It has come in his evidence that there was more crowd in the train, he inquired with his neighbour as to which train it was and was told that it was the 5.57 p.m. Virar fast

train, that the train had halted at Churchgate. He described the colour of the bag as blackish and stated that the two persons stood in the passage. In respect of the next part of the incident, it has come in his evidence that the train started at 5.57 p.m., it was slow upto Bombay Central, that as he wanted to get down at Dadar, before Bombay Central came, he went towards the left door and stood there, that there was a heavy rush at Dadar, therefore, at Dadar he got down from the corner immediately and stood by the side wiping his face by his handkerchief. It has come in his evidence that the person who had kept the bag there had also got down alongwith him at Dadar and that two persons were with him when he got down. It has come in his evidence that he then went to the Central Railway side and went to Thane by slow train, where there was a crowd at the Thane station and on inquiring came to know that there were bomb blasts in the Western Railways and after he took darshan in the temple, he returned home. On the same day he saw the news on the TV about seven bomb blasts taking place in the western railways ahead of Dadar and many people having died. It has come in his evidence that he read in the news papers in the first week of October that the ATS people had caught thirteen accused, that it was in the TV news that rexine bags containing bombs were kept in the first-class compartments and they went off and also that a bomb was kept in 5.57 p.m. Virar fast local train and it had gone off. It has come in his evidence that he then remembered that he was also in that train and thinking that he should go to the ATS office and inquire in which first-class compartment the bomb was

placed, he went to the ATS office at Bhoiwada on 18/10/06 and made inquiries, that he was directed to ACP Patil, PW-186, whom he met and informed that he was travelling in the first-class compartment of the said train and inquired in which first-class compartment the bomb blast had taken place and was informed that it had taken place in the 1st first-class compartment towards Virar. It has come in his evidence that police took his statement about his travel on that day and what had happened in his presence and he also told them that he could identify the person who had kept the bag, if they have caught him. He gave the description of the persons. His further evidence is in respect of the test identification parade conducted on 7th and 08/11/06, which will be discussed at a later stage, but it has come in his evidence that in the parade conducted by SEO Barve, PW-82, he identified the A1 by touching him as the person whom he had seen keeping the bag on that day on the rack in the train. It has come in his evidence that SEO Barve, PW-82, asked that person his name which he stated as Kamal Vakil Ansari. He unhesitatingly identified the A1 in the court, which is a substantive evidence. His further evidence is about the test identification parades on both days, telling ACP Patil, PW-186, that he remembered that the other person with the A1 was stout and having a beard and wearing black shirt and white pants and when the A1 got down at Dadar Station behind him two more persons had got down with him, but the stout person who was with him, had not got down, therefore, the A1 went towards the window of the train and was signaling someone inside the train by hand to come out and

most important of all, that when the A1 got down at Dadar Station he did not have the rexine bag with him.

495. The evidence of this witness is fluent and specific and he has not hesitated in giving the details and he unhesitatingly identified the A1 in the court, which is a substantive evidence. His voluminous cross-examination has not revealed much and the only contradiction insofar as his statement dtd. 18/10/06 is concerned, which was proved during the cross-examination of PI Mandge, PW-172, as Ext. 1834 is in respect of an answer that he gave in cross-examination that he had a three monthly railway pass of first-class, whereas the portion in his statement shows that he had stated that during that period he used to purchase monthly pass. Now he had not stated about having monthly or three monthly pass in his chief-examination and, to my mind, whether it was a monthly pass or three monthly pass, the fact remains that he did have a railway pass of first-class and the evidence about this fact is not controverted. The improvements that were made by him insofar as his statement on that day is concerned, were brought on record as omissions and proved during the cross-examination of PI Mandge, PW-172. The first is about he having not described the bag as 'big square', which he subsequently rectified and stated that it was rectangular. The omission is not in respect of the colour of the bag, i.e., blackish or the material of the bag, i.e., rexine. Therefore, to my mind, this omission is not material and does not amount to a contradiction. The witness did not state in his chief-examination that it was a square bag. Next omission is about his statement in chief-

examination that he was sitting facing towards Virar. Assuming that this is an omission, it does not materially affect his evidence about he having travelled in the train on that day and infact during his cross-examination some more specifications in respect of his sitting location in the train have been brought on record and relying on those answers, submissions have been made about the possibility of the witness having seen the A1 and others from his sitting position. Thus, it does not go to the root of the case. Next is his statement that he went to the left door at Bombay Central and stood there and at Dadar from the corner he got down immediately and stood by the side. In this respect, PI Mandge, PW-172, clarified that it is written in the statement that after the local started from Mumbai Central Railway Station he got up and stood near the left door and that he got down at Dadar Station in the crowd somehow. Thus the omission, if any, is in respect of he standing by the side and wiping his face by handkerchief, which to my mind is infact not an omission and it is only in the nature of description about his conduct. Subsequent omissions that are brought on record are in respect of his evidence that on 18/10/06 on making inquiry with the ATS office, he came to know that the blast had taken place in the 1st first-class compartment of the Virar local, that about retiring from service, etc., about the two persons having stood in the passage, that the train started at 5.57 p.m., it was slow upto Bombay Central, that he went by slow train to Thane, that he saw the news on the TV, that there had been seven bomb blasts in the western railways ahead of Dadar and many people had died, that he was quiet thereafter, that

in the first week of October it was in the news that the bomb was kept in the 5.57 p.m. Virar fast local, that he remembered that he was also in that train and the thought of going to the ATS office and making inquiry, etc. In my humble opinion, all these statements are in respect of peripheral matters and not touching the main incident in the train except that the two persons stood in the passage, which to my mind, is not material because passengers normally stand in passage or in between the benches. Unfortunately, a statement under section 161 of the Cr. P. C. cannot be read. I am sure that if read, the contents would have shown that these things are written in some other words and not necessarily in the exact words in which the witness gave evidence. These are the only omissions in respect of the statement of witness dtd. 18/10/06 and some contradictions and omissions have come on record in respect of his statement dtd. 07/11/06, which will be dealt with later on when the evidence about the identification parade is discussed. It is clear that the single contradiction and a few omissions in his statement dtd. 18/10/06 are not so material so as to discredit the testimony of Subhash Nagarsekar, PW-57.

496. His cross-examination is in great detail and though in his written submission Ext.2822 filed with his statement under section 313 of the Cr. P. C. the A1 has taken the defence of alibi, his learned advocate Rasal, who was representing him at that time, did not put up that defence and did not give a single suggestion that the A1 was not in Mumbai on 11/07/06 and was at Madhubani, Bihar. It is only learned advocate Wahab Khan for some other accused, who gave the

suggestion to the witness that on that day, the A1 was at Madhubani, Bihar, which Subhash Nagarsekar, PW-57, turned down. Now the cross-examination to the witness by learned advocate Rasal is in respect of the company in which he used to serve, his education, his current estate broker business and income tax return, etc. He admitted that there is a Swami Samarth temple and two Saibaba temples in Girgaon, out of which one is famous and is about 10-15 minutes from his house. Now the witness going to a particular temple of Saibaba at Thane, which is at quite a long distance from his house, rather than he visiting the nearest Saibaba temple, cannot lead to the inference of his falsity, because though there are temples of different deities scattered around towns, a person goes to the particular temple though it may be far away as he has faith in the deity there.

497. He expressed his ignorance as to whether trains going to Churchgate do not stop in the station between Bombay Central and Churchgate as people board the trains for going towards Virar and it was suggested to him in further cross-examination that he did not board any train at Charni Road Station and that the 5.57 train going to Virar does not stop at Charni Road while going towards Churchgate, which suggestion he turned down. No material has been brought on record by the defence to back this suggestion, though a railway officer has been examined and certain schedule of trains have been proved. Thus, this line of cross-examination and further questions to which he expressed ignorance, viz., that people travelling to Virar beat the passengers of stations in between and

people who want to get down at the middle stations do not normally travel in Virar trains and change the train at Churchgate station, has not impeached his credibility. In further cross-examination he was asked and he gave a very positive answer that he was a bit anxious when he came to know from the passengers by his side that the train is the 5.57 p.m. Virar fast train, because he wanted to get down at Dadar. This is not an omission or contradiction and he has not told about it in chief-examination, but it has shown that the witness is honest, though the effort of the learned advocate was to show that because of the anxiety the witness was in worried state of mind and could not have noticed other details including the accused. He was asked about locals starting from particular platform number, whether there is a common platform and then it has specifically come in his cross-examination that at Charni Road he entered the compartment, turned left and sat by the window facing towards Virar and at that time the window was on his right side. This is in accordance with his statement in chief-examination and this aspect is considerably agitated during the submissions by the learned advocates and he was also cross-examined by learned advocate Shetty during which the number of seats and the exact position where the witness sat has come on record, viz., that he sat on the east side in the window seat that was the end of the coach with his back to Churchgate and there was no seat behind him in that compartment. It is in respect of these answers that it was submitted during the arguments that he could not have seen the accused and the persons with him coming inside the bogie. To my mind, the

answers by the witness in this respect have infact fixed the position where he sat in the bogie, which to my mind, may have enabled him to see the persons coming inside from the doors. It can be said that he was at a vantage place where he could have easily observed the passengers coming in and going out. This can be ascertained if a sketch is drawn on the basis of these answers and which I did.

498. He was cross-examined further in respect of the number of seats that were occupied before reaching Churchgate Station, the number of seats that were vacant, whether there was a big crowd at Churchgate and the compartment filled up, for what duration the train halted, whether the seats were vacant and some people were standing during this period, whether he felt it necessary to get down from the train and go and sit in the slow train considering his age, about people coming in and going out during the period the train was at the station, whether the passengers who had boarded at Charni Road and Marine Lines were seated, whether the compartment was full when it reached Bombay Central, whether he remembers the age and clothes of his neighbour sitting by his side, the number of passengers standing in the passage, the make and colours of briefcases/small bags kept by people on the racks, number of persons who got down at Dadar and their description, etc. The witness expressed lack of knowledge in answer to some of the questions, denied certain questions and gave specifications to some questions. All these things though asked during his cross-examination, to my mind, do not discredit his version in respect of the incident as no co-relation to that evidence has been pointed out.

Infact positive answers have come on record that people were keeping their briefcases and small bags on the racks, that the train had halted for about 7-8 or 10-12 minutes and though some seats were vacant, some people were standing. He did not commit an error while stating the position of the person to whom he had asked about the train, because he correctly stated that the said neighbour was sitting on his left side. This is correct because it has come in his cross-examination that the window was on his right side. He confirmed that it did happen that as he wanted to get down at Dadar, he was a bit worried when his neighbour told him that the Virar train is always crowded. Another positive statement made by him is that no one took objection to the A1 keeping the bag there.

499. In respect of the situation at Dadar also, he gave answers to the questions which he knew and expressed his lack of knowledge about some questions. Though, the witness in his chief-examination has not given many details in respect of getting down at Dadar from the train, positive sentences have come on record during his cross-examination that there was a huge crowd of passengers at Dadar, that as soon as the train stopped there, there was a rush of persons from the crowd to enter the train, that he was the first person to get down on that day, that he got down when the train was about to stop, that it was not necessary for him to run with the train when he got down and at that moment people were trying to get in and get down from the train. These positive statements have not been controverted. In further cross-examination again some more elaborations have come which show that he is a honest person,

because he stated that because of his advanced age, at Dadar he went to platform no. 4 to avoid climbing the staircase, that it did happen that when he reached Churchgate from Charni Road, as soon as the train stopped at Churchgate, people entered the compartment and it became full, that he was engrossed with the thought of getting down at Dadar when the train left Bombay Central and he went to the door. Now a specific explanation has come as he stated that after the train passed Bombay Central, the crowd came in his compartment and after the local started, he immediately got up and went to the left side door and stood there, there was a considerable crowd there also. Now this is not exactly consistent with his statement in his chief-examination that he went towards the left door before Bombay Central as he wanted to get down at Dadar. However, the positive statement in the cross-examination has not been controverted.

500. Now much stress is laid on the sentence in paragraph 17 of his cross-examination that it did happen that when he got down at Dadar and stood there wiping his face with handkerchief, he saw 'a person' keeping a bag on the rack and the other two with him coming out and then immediately the local started and left. Relying on this, the learned advocate Wahab Khan submits that this indicates that the bag was kept at Dadar and not at Churchgate. It appears that instead of the word 'the person', 'a person' has been typed. It is neither a contradiction nor an omission and therefore does not affect his evidence about the actual incident. Now in respect of his statement in his chief-examination that the person had kept the bag

on the rack above him, it has been again repeated when an omission was pointed out in respect of some other persons and it is repeated in paragraph 21 and a specific clarification has come in cross-examination that the rack was above the window and not above his back. Now this specific answer shown his *bonafides* and takes care of the submissions of the learned advocate Wahab Khan that there is no rack above the 7 seat bench, i.e., at the end of the coach. For a limited purpose, the contradiction Ext. 2512(2) also mentions that the bag was kept on the right side rack. It has further come in his evidence that other people had kept bags on that racks, but they were small type of suitcase bags or small bags of tiffins. He also admitted that many persons in that compartment had kept their luggage on the racks and the person who had kept the bag and other person with him stood in the passage between the two doors. The last sentence is a positive sentence in cross-examination, because this was not stated by him in chief-examination. However, it was tried to be used for the purpose of submitting that if the person had stood in the passage he could not have seen them. Now obviously this is an incorrect submission because he must have seen those persons when they came near him and kept the bag over his head. Considering the fact that it was a big bag, i.e., a bag bigger than small types of suitcase bags or small bags of tiffins, it is but natural for any person to be more conscious of it and in that process to look at the face of the person who is keeping that bag. Thus, on the other hand this answer has helped in endorsing the inference that he is a truthful witness. The above positive statements which have come in

his cross-examination are in respect of the situation that are quite normal.

501. Insofar as the omissions discussed earlier, a very beautiful statement was made by this witness in paragraph 20 during his cross-examination that on 18/10/06 his statement was read over to him and it was generally correctly written as stated by him. Now this is the apt description of what the police do when the police take statements of witnesses, as is submitted by learned SPP. He also gave answers about the locations of the platform at Dadar, about he being required to go to platform no. 4 at Dadar to avoid climbing staircase and about the entrance at the Charni Road Station, the road adjacent to it, foot over bridge entrance, gates, etc. These answers show his knowledge about the details of the railway stations and show that he is a regular traveller.

502. Placing reliance on some statements made by the witness in paragraph 28 of the cross-examination that it was submitted that if the witness wanted to avoid climbing stairs then he could have gone to Thane from CST and could avoid climbing stairs, which shows that he is a got up witness. In this connection, he again reiterated the fact of he having a pass of CST, Churchgate *via* Dadar, stated that he was and is suffering from high blood-pressure and diabetes and he was in difficulty to climb staircase at that time and denied the suggestions that he did not have any ailment at that time. He submitted that if he would be at the CST, he used to go home by bus, that the buses were frequent and he used to get down at Thakurdwar. He admitted that if one goes from CST, one is not

required to climb the stairs and answered that he had not decided before hand to go by the western line and knew that by doing so he would be required to change the train and climb the stairs and that he did not realize on 11/07/06 that he can avoid climbing stairs by going by bus to CST and then to Thane. Now this witness stays at Thakurdwar and any Mumbaikar will, as a natural usual practice, go to his nearest railway station rather than by travelling by bus and going to a railway station which is far away. This aspect will therefore not affect his credibility. The above discussion about his evidence in respect of the incident on that day shows that his credibility has not been impeached and he is not shown as an untruthful witness and/or an unnatural witness, i.e., that he is a got up witness. Strange questions were asked to him as to whether he came to know on seeing the news as to in which portion of the compartment the blast had taken place and whether the blast did not take place in the portion of the compartment in which he was sitting. To my mind, he is not the investigating officer and has not visited the site of the blast and more than that the blast did not take place in his presence.

503. His cross-examination in respect of his activities after coming home on that day was done in order to show that he is a got up witness, as he went to the police on 18/10/06, i.e., after a period of nearly three months after the incident and this delay affects his credibility and shows that he is a got up witness. It is in his evidence that he saw the news about the seven bomb blasts on the TV and also that a bomb was kept in 5.57 Virar fast local and it had gone off

and then he remembered that he was also in that train. This is reiterated by him during his cross-examination, however, the relevant thing is that on the day of the blasts he had only come to know about the blast taking place in the 5.57 Virar fast local train. What prompted him to go to the police on 18/10/06 is his statement that he read in the newspaper in the first week of October that the ATS people had caught 13 accused and it was in the TV news that rexine bags containing bombs were kept in the first-class compartments and the bombs had gone off. Thus, the trigger for his memory was provided by the information in the newspaper as well as in the TV that rexine bags containing bombs were kept in the first-class compartment. There was considerable cross-examination to him in respect of his access to newspaper, the newspaper he reads, he seeing TV and the news about bomb blasts being continuously shown on the TV. The suggestion that he was following the news about the bomb blast to gather the information, which he denied, is to my mind not an acceptable suggestion. On the other hand he specifically answered that upto the first week of October, he did not think it necessary to find out the persons who were responsible for the blasts and to my mind infact it was not his job. He also denied the suggestion that the names and photographs of suspected persons caught by the police were published in the newspaper and also shown on the TV. He reiterated the fact of he acquiring knowledge in the first week of October that the bomb blast had taken place in the first-class compartment in which he had travelled. However, he had told his wife when he returned home and

saw the news that he had travelled in the 5.57 Virar train. There is a distinction between the knowledge that a bomb blast had taken place in the 5.57 Virar train and the knowledge that rexine bags containing bombs was kept in the first-class compartment in that train. He denied the suggestion at the end of the cross-examination by learned advocate Rasal that he did not go by any train at Charni Road Station, that the 5.57 train going to Virar does not stop at Charni Road Station while going towards Churchgate, that he deposed falsely as the police did not have any evidence against the persons who were in the custody and the usual suggestion that he identified the A1 in the court as he was shown to him outside the court. In respect of this aspect in the cross-examination by learned advocate Wahab Khan a positive statement has come on record that he did not come to know on the next day on reading the newspaper and on watching the television that the blasts had taken place in the first-class compartment towards the Virar side.

504. Other than the above cross-examination there is nothing to discredit his version in respect of the incident and his conduct on the day of incident as well as going to the police on 18/10/06. Thus, this means that there is no delay in recording the statement of this witness, because he had gone to the police for the first time on 18/10/06 with the knowledge that he had.

505. It was argued by the learned advocates for the defence that it is only after the retraction of the confession by the A1 that the police created the evidence of this witness and therefore this witness is a got up witness and for that purpose they are relying on his cross-

examination in respect of his work of income tax, his mobile as well as landline phone and his alleged association with Arun Gawali, but, to my mind all these are peripheral things and do not discredit his version. Initially, at the start of his cross-examination by learned advocate Rasal the witness stated that he does not want to tell in which company he used to serve after he had done the turning course in ITI in 1967 from Mumbai ITI and that was the only service that he did. He truthfully answered that the proprietorship of the estate broker business is not in his name, that he does not file income tax returns and has no documentary evidence to show that he does that business. In this respect in the cross-examination by learned advocate Wahab Khan he answered that he is filing income tax returns since last four years from 2005, wherein he has not shown his business as estate agent. His explanation about it that this is because there was not much income from it, is acceptable. Prior to that it has come in his evidence that he has a pan card. He got it before four years by showing his business as catering and he was not inclined to tell the name of his business, about which he could not tell the yearly volume of transaction and that he has not registered it anywhere else, but does it in Mumbai wherever he gets the order and has 3-4 labourers. He made a positive statement that he has never given any catering service in any police programme and has not received any cheques from the police about that business. He also stated that his main source of income is catering business and estate agent and he was further cross-examined in respect of his business as estate agent, but that, to my mind, is not much relevant.

He made a positive statement that he can give the exact locations of the properties about which he had made the transactions. Thus this line of cross-examination is ineffective in discrediting his testimony. His reluctance to give the name of his business or his mobile number can be accepted considering the nature of the case. In respect of his mobile number, it has come in his cross-examination that he had a mobile of Reliance Company which was in his name and he gave that number and a positive statement has come in his cross-examination that on that day his mobile phone was not with him and it was at his house. He volunteered that it was with his daughter as she was to go to Bhandup side on that day and he could not say that whether he had left the mobile at his house as she was go to Bhandup and does not know whether she was at Bhandup taking the mobile with her at that time. It has come in his cross-examination that he had purchased two mobile sim cards on his house address and expressed his reluctance to give the number of the second mobile that was with him on the day of the incident, which can be accepted for the same reason as stated above. Whether or not he had a mobile with him, whether it was carried by him or by his daughter is of no significance as nothing has been brought on record in respect of the calls that were received and made on both mobiles on that day. He specifically turned down the suggestion that the said mobile was with him and that he had gone to Bhandup on that day. His apprehension about disclosing his mobile number or the name of his business is apparent from his answer that he feels danger to his life if he discloses the number of his other sim card.

506. At one place he made a statement that he never took any landline in his name and denied the suggestion that landline no. 23811910 is in his name on the address of his house. Now this has come in his cross-examination and his clarification further is that it may be that this landline number was obtained by giving his name and address and it may be that he had rented his house and tenant by name Deepak wanted to take the landline number, that the mobile is in his name and also clarified that it was not for him. He candidly admitted that he used to use the landline sometimes, but never paid the charges and also admitted that he had given cheque for the charges to take the connection and had signed on the application form. In further cross-examination he admitted that the mobile number that he is using now was not being used by him in 2006 and it is not in his name, but he was not ready to give that number. He denied that in 2006 there was a sim card in the name of his daughter and a positive statement has come on record that he never had any contact with the ATS offices from his two mobiles or landline till his statement was recorded. All this cross-examination is just in the air and does not lead to any inference about the falsity of the witness because he has not hidden anything and is not shy of giving details wherever he does not apprehend danger to his life.

507. The last aspect is about his connection with Arun Gawali and it has come in his cross-examination that the labour union in his company was headed by Arun Gawali, that he, i.e., the witness was an ordinary worker of that union, that the company was ordered to give Rs. 4/- crores to the union in a settlement between the union

and the company owner before the High Court and he knows that the Arun Gawali is a notorious criminal and is in custody and had given him about Rs. 4,00,000/- before the blasts. He denied the suggestion that he deposited the cheque of Rs. 4,00,000/- after the blast. Now, if this is the case, then there is absolutely no co-relation between his connection with the said Arun Gawali, if there is any, and the happening of the blast or he giving evidence in this case. He naturally turned down the suggestion that he is associated with Arun Gawali and deposed falsely on his say and on the say of the police.

508. The above is the entire cross-examination of the witness on all possible aspects and it is clear that nothing is revealed from his cross-examination to discredit his version or impeach his credibility. The submissions of the learned advocates of the accused have been covered at the appropriate places and it will suffice to mention a few submissions about the factors that were pointed out by the learned advocates. Learned advocate Shetty for the accused submitted that when a person travels in the train at such peak hours, he comes in contact with so many persons and therefore it is not possible to remember the individual features of any person, keep him in the mind for a long period and to identify him. This submission is covered by the learned SPP's submission in respect of the taxi driver and how the memory of a person is triggered if certain facts are provided. It is submitted by the learned advocate that nothing uncommon had happened in the presence of the witness, because railway commuters enter in the train or go out and the bag is not

uncommon. He is perfectly right in submitting that nothing unusual had happened in his presence. But insofar as the bag is concerned, in view of the answer by the witness that there were small brief cases and tiffin bags on the luggage racks, it is clear that a bigger bag is something uncommon. About the submission of the learned advocate that no document has been produced by the witness either to the police or before the court about his travel in the train, the reasons given in respect of the documents of the taxi driver are once again applicable to this witness also.

509. Learned advocate Wahab Khan laid much stress on the answers given by the witness about his mobile and landline phone, about his business and about receiving certain amount from Arun Gawali, etc. It will not be incorrect to say that the connection of this witness with Arun Gawali is absolutely irrelevant and it was nothing but a fishing expedition. I have already discussed about the reluctance of the witness to give the name of his business and his mobile number, etc. A baseless submission was made that the witness has worked as a panch for the police in 2013. There is no evidence for this. Thus, at the cost of repetition it will have to be said that the evidence of Subhash Nagarsekar, PW-57, in respect of the incident in question, is unimpeached and is a cogent evidence. He has withstood the test of cross-examination and nothing material has been brought on record to discredit his version. That the witness is a totally independent witness, is absolutely clear from the most important fact that he has no criminal antecedents and no prior connection with the police either as an accused or a witness or a

panch. This rules out the possibility about he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. I have, therefore, no hesitation in accepting his testimony as truthful. **This is the circumstance no. 3 proved by the prosecution against the accused.** Hence, it will have to be held that by his evidence prosecution has proved that on 11/07/06 the A1 had kept a big rexine bag in the first-class compartment of the 5.57 p.m. Virar fast train at Churchgate and he was accompanied by a person, who did not get down at Dadar. It is against the A1.

510. Though by the above evidence, the prosecution has proved a circumstance against the A1, the A1 has taken the specific defence of alibi in his written submission and as pointed out in the discussion above, there was only one suggestion to Subhash Nagarsekar, PW-57, in his cross-examination in respect of this defence by learned advocate Wahab Khan that the A1 was at Madhubani, Bihar on 11/07/06, which means that he was not in Mumbai on that day, which suggestion the witness turned down. The accused is relying on the CDR of his mobile Exts. 3031 to 3033, the contents of which were proved by Sandeep Sahay, DW-14, Principal Circle Nodal Officer, Bihar & Jharkhand of Bharti Airtel Ltd. During his evidence the tower locations of the calls from 09/07/06 to 12/07/06 were brought on record as being in Madhubani District in Bihar and learned advocate Wahab Khan pointed out to the tower locations in support of his submissions that the A1 was at his native place in District Madhubani during the relevant period. However, there were

no submissions on this point by learned advocate Shetty, who represents the A1. At the cost of repetition it is a question whether the witness is competent to prove the contents of the said CDR and whether his evidence can be accepted as cogent evidence. This is because in cross-examination he admitted that he works in the nodal department, which is separate from the information technology department, which looks after the computer and information system and is the custodian of the entire record, that he is not concerned with the information technology department, that he is not in a position to tell about the type of computer system and the system that was in place in their company prior to 13/08/07 and that he is not in a position to tell the name of the officer who was having the authority to use password and access the data. His subsequent answers have shown that the contents of the CDR of the mobile of the accused cannot be accepted as an evidence proved as per law, because he has answered that the company has a standard format of certificate that he gave in this case, that he obtained the printout from the IT department and it is true that he issued the certificate without verifying the record after he obtained the CDR from the IT department. Thus, his evidence as well as the evidence by way of CDR Exts. 3031 to 3033 is of no help to the A1. Even otherwise the A1 has not stepped in the witness box and has not explained about particular calls and the learned SPP is justified in submitting that the accused wanting the court to draw an inference on the basis of the CDR that he was at a particular place, makes the CDR an inferential evidence, whereas the prosecution has led primary evidence of a

person who has seen the A1 on the day of the incident and the evidence of the witness has been tested by rigorous cross-examination.

511. The accused denied the knowledge of most of the questions put to him in respect of this witness during his statement under section 313 of the Cr. P. C. and in respect of the question about the identification parade, about the witness identifying him he stated that it is false and the witness identified him on the say of the ATS. In answer to a question in respect of the mobile of the witness, a strange answer was given that he, i.e., the A1 was at his village and in Nepal on 11/07/06 about which there is an entry at the border. Infact, no submissions have been made by his learned advocate in respect of his alibi and though it is mentioned in his written submission Ext.2822 filed alongwith his statement under section 313 of the Cr. P. C. that there was a marriage of his cousin's daughter on 10/07/06 in his village in which many relatives and villagers had participated and that on 11/07/06 he was at his village Basopatti and had gone to Nepal for four hours to meet his relatives about which the evidence is the entries in the entry register showing his name, driving licence number and number of the two wheeler, no evidence has been led by the accused to substantiate this story. He could have very easily called for the entry register to prove that he had gone to Nepal on that day and could have easily called any of his relatives particularly his cousin with the marriage invitation card to prove that he was in his village on 10/07/06 and had gone to Nepal on 11/07/06.

512. Similar contentions are made in his application Ext. A in respect of he going to Nepal on 11/07/06, but the application does not mention his cousin's daughter marriage on 10/07/06.

513. Thus, the A1 has failed to show a preponderance of probability about his defence of alibi on the dates 10th and 11/07/06 and it will have to be held that he has taken this false plea of alibi. This is an additional circumstance in the chain of circumstances against all the accused. It is the first additional circumstance against the A1.

514. Next traveller is Devendra Patil, PW-62, and at the start itself it can be said that his evidence is a clear and natural evidence and there are no falsities and nothing appears to be fabricated notwithstanding the omissions and contradictions in his statement. He is concerned with the A3 and it has come in his evidence that on the day of the incident after finishing his work at the Custom House in Fort, he went to Churchgate Station at 5.15 p.m. as he wanted to go to Goregaon-Malad, that when he reached the platform, the Churchgate-Borivali 5.36 p.m. slow local was coming on the platform, that he walked towards the Borivali side as he wanted to get down on the front side and boarded the first-class bogie that was fourth from the motorman cabin when the train stopped on the platform no. 2. It has come in his evidence that he stood near the last row of seats in between the gap of the two rows of the seats, that some people were sitting, that there were some vacant seats, that two persons boarded the train alongwith him, out of whom one had a black coloured bag with him and after entering the train they

turned right and went towards the seats on the east side and the person who had the black bag with him, tried to keep the bag on the rack, but there were some small bags already on the rack, therefore, he could not keep his bag there and kept it below the seat near the window that was facing towards Churchgate and sat on that seat and the other person stood in between the two rows of the seats. Now this witness did not get down at some stations in between, but was in the bogie when the blast took place and it has come in his evidence that the crowd in the bogie increased at 2-3 stations thereafter, that he was pushed back because of which he could not see those persons. In respect of the incident, he stated that the train reached at Jogeshwari after about 6.15 p.m. and after it started from Jogeshwari, there was a loud explosion, that there were tall persons in front of him, that he was thrown down in the train and people fell on him and he did not know for 2-3 minutes what had happened and after moving for some distance the train stopped. In his further evidence, he described as to what he did after he came to his senses,, viz., that he somehow got up, saw people severely injured, got down on the west side, caught an autorickshaw, went to Dahisar Check Naka and caught another rickshaw for going to Mira Road and after reaching Mira road, he went home. It has come in his evidence that his ears were affected for half an hour because of the explosion and he had sustained dumb injuries to his back because of the fall, but had not sustained any injuries as persons had fallen on him. He stated that there was only whistling sound in his ears and therefore he did not go to any doctor and also did not go to the

police and he came to know when he reached home that there had been a series of seven bomb blasts. This is his evidence about the incident of bomb blast on 11/07/06.

515. In respect of he approaching the police on 20/10/06, it has come in his evidence that it was in the news that some persons had kept black bags containing bombs in the trains and the blasts had taken place, that he thought that he had seen the person who had kept the bag in the train and therefore, he should go to the police, thereafter, he went to the ATS office, Bhoiwada on 20/10/06, met ACP Patil, PW-186, gave him the information and some officer took his statement.

516. As mentioned earlier his evidence is clear and unhesitating and it has come in his evidence that he participated in the test identification parade that took place on 07/11/06, the evidence of which will be discussed subsequently and, in the parade conducted by SEO Barve, PW-82, he identified the A3 as the person who had kept the bag in the train on the day of the blast. He stated that SEO Barve, PW-82, called that person and asked his name and that person told his full name, but the witness could only remember his name as Faisal. He unhesitatingly identified the A3 in the court which is a substantive evidence.

517. In respect of his evidence about boarding the train, what happened in the train and what he saw in the train, his cross-examination in paragraph 15 by learned advocate Shetty is to elicit the information about the rush in the local trains during that time, occupancy of seats and number of doors and windows in the bogie

and he has given the answers as per his understanding and knowledge and has expressed ignorance about certain things that he did not know. Initially he stated that there are six doors to a first-class compartment, but candidly stated further that he cannot contradict the learned advocate if he says that there are no six doors, but only four doors. He confirmed that there are partitions between the compartments by the sides of the two pairs of doors and the middle compartment, but very clearly denied the suggestion that because of the partition, one will not be able to see a person who is standing near the window in the middle compartment if he, i.e., the witness is standing near the window at the end of the compartment. Learned advocate wanted to show from the answer that this witness was not in a position to see the accused keeping the bag below the seat. However, it is not that the witness was sitting in the train, but he was standing in the gap of the two rows of the seats and it is easily possible for a person who is standing to see what the other passengers are doing.

518. In the next paragraph he was asked about the time at which he entered the train on that day, after what time the train started and he stated the details. He could not tell the exact number of persons who entered the coach during this period, the number of persons who entered at stations like Charni Road, Marine Lines, etc., how many got down, who entered the coach with bags at Churchgate and at the further stations, etc. Obviously, he could not tell this things because no one can tell this. The material answer is that in the coach in which he was, the luggage racks were full. It has

come in the next paragraphs that he had no confrontation with the two persons who came with the bag and that the two persons entered the train behind him after 20-25 seconds. Now he is giving the timings of entering the train and the period after which the two persons entered the train behind him and when the train started as he was asked and I do not think that any person can be specific about it, not that any relevance of this has been pointed out during the arguments.

519. Learned advocate Shetty attacked the credibility of this witness on several counts on the basis of the answers given by him in the cross-examination and learned advocate Wahab Khan also made submissions on the same lines on those points. He submits that it cannot be believed that though so many persons in that bogie died and were injured, this witness does not even sustain a slightest injury, does not go to the doctor and for the first time he goes to the ATS office after about three months and gives his statement. In this connection in his chief-examination itself Devendra Patil, PW-62, had explained that after the train started from Jogeshwari, there was a loud explosion, there were tall persons in front of him, he was thrown down in the train and people fell on him. In this connection, he was not asked as to at what distance the bag was kept from him which could have shown the distance of the place where the bomb had been planted. Now, it has come in his evidence that for 2-3 minutes he did not know what had happened and when he came to his senses and because of the explosion his ears were affected for about half an hour and he had sustained dumb injuries and this is

important that as persons had fallen on him he had not sustained any injuries, which could mean that he had not sustained any visible injury because of the blast. He explained further that as he had not sustained any injury and there was only whistling sound in his ears, he did not go to any doctor or to the police. I do not think that this is something unnatural or unbelievable, because of the nature of the injury, though it was not visible, the witness did not think it necessary to go to the doctor. One often comes across news of accidents, in which nearly all except one person of a vehicle are killed and the person who survives is unscathed, he does not even get a single bruise. Apart from this, the chargesheet shows that there were 142 persons injured in the blast at Jogeshwari, but it could prove only injury certificates of 100 persons as per the Table No. 10 supra. That does not necessarily mean that the remaining 42 had not sustained injuries and had not travelled in that train. Now out of this Jayprakash Gurav, PW-14, is also an injured. Surprisingly, this witness was not a passenger in that train, but he was standing on the platform no. 2 of the Jogeshwari Station for going to Dadar and the blast took place on the platform no. 1. So whether it can be said that Jayprakash Gurav, PW-14, was not an injured in the said blast because he was not travelling in that train. His friend Arvind Chikane was with him at that time and he died because of the injuries sustained in the blast. He figures in the list of the dead persons as per the Table No. 9. The nature of injury sustained by Jayprakash Gurav, PW-14, is left leg from knee down was totally cut off at that time. It appears that the learned advocates for the

accused have not gone through the injury certificates that are proved by the prosecution particularly in respect of this blast. If they would have done so, they would have found many certificates that show simple injuries like contused lacerated wounds (CLW) as less as one CLW, hearing loss of one ear or both ears only and no visible injury, but only dumb injuries. Noticeable amongst this is the certificate Ext.2731 (62) in respect of injured Pramod Kumar Thakor issued by the medical officer of Siddharth Hospital, Goregaon (W), Municipal Corporation of Greater Mumbai, which describes the finding or examination as 'no any fresh external injury seen on body, blunt trauma all over body and tenderness present'. One is Ext. 2731(44 and 45) issued by Vijay ENT Hospital of Virar in respect of patient Supriya B. Kheratkar showing the history as 'ear SN loss alleged during train bomb blast on 11/07/06' and the finding 'normal ear drum' and advised the audiogram-right ear and the finding after the audiogram is that 'right ear severe SN loss'. As a sample case, the injury certificates at Ext.2231(2) and (40) show one or more minor CLWs. The contents of the injury certificate at Ext.2731(20) only show loss of hearing. Most of the certificates show ear pain, loss of hearing and bleeding through the ear. Thus, this aspect alone does not discredit the witness.

520. Learned advocate Shetty's submission on the next point is in respect of the delay made by the witness in going to the police and the police taking his statement. He submitted that it is not that the delay in giving the statement before the police in such a case is unexplainable, but the explanation that the witness has given cannot

be accepted and giving all the latitude to him, one can imagine if there is a delay of a day or two in such a case, but it definitely cannot stretch beyond three months. He submitted that the witness was travelling in the same compartment in which the blast took place, several persons died and several were injured, but he did not sustain even a slightest injury and for the first time he goes to the ATS on 20/10/06, after about three months of the blast and the police officer also records his statement. He submits that undoubtedly the witness is a got up witness to create some material against the arrested accused when the investigating machinery failed to have any concrete evidence against them. The behaviour of the witness is not expected, because what was expected from him was that after seeing the blast in the bogie in which he was travelling, unlike the other witness and on seeing the several dead bodies and having a person seen keeping a bag, he should have gone to the police immediately and made a report. This conduct speaks volumes and it in itself is sufficient to reject his evidence. He submits that the witness gives a hopelessly vague description of the persons and therefore while evaluating and appreciating his evidence, the court is required to approach it with utmost care and precaution. Learned SPP Raja Thakare submitted that when the witness must have approached the investigating officer after about three months of the date of the incident, the first and foremost question that would have come in the mind of the investigating officer would be as to what is the object of the witness in approaching them and whether he is expecting any benefit for the same and giving certain information so

that he can get some compensation. He also questions whether the police would fabricate the evidence of such a person belatedly when they are aware of the fact that sooner the evidence, the more it is acceptable. This is the normal criteria. If the investigating agency in this case wanted to fabricate the evidence, they could have done so immediately a few days after the incident. He questions whether any police officer in his senses would think of creating a good eyewitness, that too false and that too so late? He submits that while appreciating the evidence of such witness, the test of reasonableness will have to be applied.

521. In my humble opinion, as mentioned at the start of the discussion of the evidence of this witness, his evidence is a clear and natural evidence and nothing appears to be fabricated. This can be gathered from his evidence, because it is in his evidence that after some days it was in the news that some persons had kept black bag containing bomb in the train and the blast had taken place and he thought that he had seen the person keeping the bag in the train and therefore he should go to the police. Now this evidence has not been controverted or shown as omission or contradiction and it has come in his cross-examination that he came to know about the reason for the bomb blast 3-4 days before he went to the ATS office. This came in paragraph 13 during his cross-examination by learned advocate Shetty and there are further positive uncontroverted statements that no one told him to go to the office of the ATS at Bhoiwada, that he contacted the control room on 18/10/06 from his mobile and inquired about the ATS office, that he did not ask the name of the

officer who talked to him, but the witness was asked his name and particulars. These things are clarified in paragraph 43 in further cross-examination by learned advocate Wahab Khan in which he was grilled about his activities in October, 2006 and he again stated that from 18/07/06 he started going for work, he used to go sometimes whenever he had work and used to watch television and read the newspapers during the one week when he was at home and he does not remember whether during that period police were asking for persons having information to contact them. Now the further sentence is that during that period he did not think that he had some important information that he should tell the police, that he was regularly attending his work in Mumbai one week after the blast and upto 19/10/06, that he came to know about the reason for the blast on 17th or 18/10/06, that he contacted the control room on 17th or 18th on phone number 100 in between 5.00 to 6.30 p.m., that he did not tell about the entire incident on phone and at that time he got the address of the office of the ATS. Now all these things have come in his cross-examination as positive statements and they have not been controverted and they infact reflect the *bona fides* of the witness and show the acceptable reason as to why he went to the police so late. Obviously, as he had not sustained any injury, there was no question of he making any claim or compensation and he could not have any other purpose in mind in going to the police except that of giving the information that he had about the bomb blast to them. Thus, infact there is no delay made by the witness in approaching the police or the police recording his statement and the

above observations as well as submissions by the learned SPP are sufficient to condone the delay, if it is so construed. Thus this aspect does not come in the way of accepting his evidence.

522. The recording of his statement is also disputed and the details that he gave during his cross-examination by learned advocate Shetty were clarified more when he was asked about the same thing during the cross-examination by learned advocate Wahab Khan. In paragraph 21 he denied the suggestion that at the time of his statement police did not ask him to show the spot where he was standing and where the two persons were standing and sitting in the bogie or a sketch of the bogie and volunteered that he himself marked those places and kept that paper on the table and he had prepared the said rough sketch when he was telling the information before his statement was recorded. He has further stated that the statement was written after he gave the entire information, that he does not remember the name of the officer who recorded it, that there were 2-3 officers present, that except ACP Patil, PW-186, he cannot tell the names of the others and all of them were making inquiry with him. He expressed his inability to tell about which officer asked what questions or his name, or the name of the officer who typed the statement or who signed it or who read it over to him, which, I do not think, can be expected from any person who goes to the police station. At the end of the cross-examination by learned advocate Shetty he turned down the suggestion that he did not describe any person on his own but was shown the photographs and tutored by the police, hence he gave the description, that police

showed him photographs of some persons and accordingly he gave his statement, that he had not travelled in that train on 11/07/06, therefore he did not show his pass to the police and did not go to any doctor or police. Lastly, a baseless suggestion was given that he is connected to the police, therefore, he was called by them and they recorded his false statement and he deposed falsely to help them. There is no evidence to back this suggestion and nothing has been brought on record to show his connection with the police. On the other hand, these suggestions mean that it is understood that his statement was recorded on 20/10/06. During his cross-examination by learned advocate Wahab Khan he has reiterated many things about going to the ATS office on 20/10/06 and giving the statement. He was grilled further and he gave positive answers that he first went to the Police Station Bhoiwada on 20/10/06 where he inquired about the ATS office, first he met the guards, then some officers, at that time ACP Patil, PW-186, was not in the office, the officer who he met made inquiries for about 10 minutes, took him to ACP Patil, PW-186, who inquired with him for about 45 minutes, but did not take down anything in writing and then turned down the suggestion that his statement was not recorded on that day. The last suggestion, to my mind, is again a suggestion made for the sake of making it because when a witness is asked about what he did on a particular day and the witness gives the answers, which are not controverted or shown to be false, there can be no question of giving such a suggestion. Now, ACP Joshi, PW-163, who recorded his statement was also cross-examined about this aspect and it has come in his

evidence that on the instructions of ACP Patil, PW-186, he had recorded the statement of this witness. Devendra Patil, PW-62, as well as ACP Joshi, PW-163, were cross-examined about the timings as to when he reached the ATS office, from what time to what time he was with ACP Patil, PW-186, who made inquiries with him and at what time his statement was recorded and there are some discrepancies in the timings given by both the witnesses. Apart from that, ACP Joshi, PW-163, specifically mentioned that he did not mention in the station diary about recording of the statement. These things came during his cross-examination by learned advocate Shetty and his cross-examination by learned advocate Wahab Khan has practically cleared any doubt about recording of his statement because he was asked to go through the case diary and on going through it, he stated that it is mentioned in the case diary dtd. 20/10/06 that he had recorded the statement of Devendra Patil, PW-62, though the time of recording of statement is not mentioned. He turned down the suggestion that he was supposed to make a station diary entry and that timing of recording of statement is required to be written in the case diary. What more clarity is required and this removes any doubt about the recording of statement of Devendra Patil, PW-62, on 20/10/06.

523. ACP Patil, PW-186, was asked in his cross-examination about entry in the case diary and station diary about the timings of going for remand work in the court and with particular reference to 20/10/06, he stated that there is no such entry in it. But on going through the case diary he stated that there was judicial custodial

remand on 20/10/06. In subsequent cross-examination, he stated that Devendra Patil, PW-62, had come to his office on 20/10/06, that he did not inspect his travel documents, that the witness did not produce any travel document and stated that he does not remember whether he did not show any travel documents to him and whom he contacted, etc. However, he positively stated that ACP Joshi, PW-163, recorded his statement on his direction. He also stated that he did not verify from the passengers of the trains, whose statements were recorded, about their travel documents like season pass or railway ticket of that day as he did not feel it necessary to verify them. Thus, his answers do not disprove the fact of the statement of witness Devendra Patil, PW-62, being recorded on 20/10/06 and this can be said with certainty because ACP Joshi, PW-163, when asked to go through the case diary, stated that recording of his statement is mentioned therein. In this respect ACP Joshi, PW-163, was shown Sub-Rule 5 of Rule 135 in Chapter-IV of the Bombay Police Manual, 1959, Vol-III and he stated on reading it that the Sub-Rule requiring superior officer to initial the panchanamas, statements of witnesses and case diaries, is not a hard and fast rule and officers are required to do so to show their presence during the investigation. He made a positive statement that it is not mandatory that recording of statement of witness should be mentioned in the corresponding case diary. He denied the suggestion that he prepared the false statement of Devendra Patil, PW-62, on the instructions of his superiors. The above discussion shows that there is no possibility of he being a got up witness.

524. Next point urged by learned advocate Shetty is in respect of the witness going to Churchgate from Fort, then he going to Churchgate for boarding the train and that this conduct of the witness raises a question as to whether he actually had travelled in that train on that day. Now this can be easily explained by the evidence of the witness that as he wanted to go to Goregaon-Malad, therefore, he went to the Churchgate Station. Thus, this aspect will not come in the way of believing the witness. Placing reliance on the cross-examination by learned advocate in respect of the work that the witness claimed to be doing at that time, both learned advocates submitted that the answers given by the witness show that he could not have been in Fort as he was not doing any such work and this also shows that he is not a natural witness and he does not inspire confidence. In his chief-examination, Devendra Patil, PW-62, stated that he had gone to the Custom House in the Fort at about 3.00 p.m. on 11/07/06 as he had some work there. This evidence is not brought on record as omission or contradiction. What is brought on record is the sentence in his statement that he does the work of custom clearing agent independently, which was confronted to him and proved as Ext. 1753(3) during the cross-examination of ACP Joshi, PW-163. However, he had not stated so in his chief-examination, but gave his occupation as custom clearing agent. In any case, this omission does not amount to a contradiction as he had not stated about it and he answered that he does not remember whether he had stated so to the police. Thus, this aspect of contradiction will have to be ignored as it does not affect his

credibility.

525. He was grilled on the aspect of his occupation during his cross-examination by learned advocate Wahab Khan from paragraphs 31 to 33 and in 39 and the witness gave straightforward and candid answers to all questions without any hesitation. Though, he admitted that he does not have licence of custom clearing agent, did not have an independent business and never did the custom clearing work independently, the particulars about the procedure of the work of a custom clearing agent was explained by him in great detail and very clearly without any hesitation. I do not think it necessary to reproduce or comment on the answers that he has given in respect of his work in view of his admission that he did not have licence of custom clearing agent and did not do the work independently, but suffice it to say that the work that he was doing does not appear to be a work which is something out of the way and unknown to him. This is because of single sentence in his cross-examination that his father was serving in the Bombay Port Trust. Now it is common knowledge that because of the knowledge of some relative or family member doing any particular work, persons do venture into that field and do the work. It is also not uncommon and there may be thousands of such persons in Mumbai doing the work of custom clearing agent, RTO agent, excise agent, passport agent and concerning some other government departments, who do not have a licence, when it is required or who do such work though it is not authorized. There was considerable cross-examination to him on the aspect as to whether he works alone, where his office is,

in whose name is the leave and licence agreement of that premises, etc., but all these things have come in the cross-examination and they do not affect his testimony. On the other hand, it has come on record that the leave and licence agreement of his office premises is in the name of his friend Sandeep Tadkar, who is a custom licence holder, which evidence has not been controverted during further cross-examination. He did not have any record to show that he was doing the work of custom clearing agent, that he did this work for certain number of parties before October, 2006 and that he had gone to the Custom House at Fort on 11/07/06. This is but natural because he is not a licenced custom clearing agent. However, in further cross-examination he has specifically stated that he can tell for what work he had gone to the Custom House, Fort on 11/07/06 and explained that he had to give documents to his friend Dinkar, who is a licenced custom clearing agent, that the documents were given by a party and that thereafter he was to go to Goregaon-Malad where there was a new party, his name was Amit Patel with whom he wanted to discuss about the goods. At the cost of repetition, it will have to be stated that these things have come in his cross-examination because he was asked questions and they are not controverted and therefore on the basis of these answers it cannot be argued that he is a false witness or that he had not gone to the Custom House in Fort on 11/07/06.

526. Next submission of the learned advocate Shetty is in respect of the prosecution having not produced any document to show that Devendra Patil, PW-62, had travelled in that train on that day and

therefore his oral evidence only about it is unacceptable. It has come in his cross-examination in paragraph 14 that he used to go to Churchgate from Mira Road for his work everyday, that he always used to travel by first-class, used to take quarterly pass, his pass at that time was valid upto 22/08/06, therefore, he again purchased a pass in August, 2006. He admitted that he did not produce his pass before the police when he gave his statement on 20/10/06 and his explanation further that police also did not ask for it is a natural conduct and shows that it is not his fault. He admitted that except that pass, he had no other material or document to show that he was travelling on that day in that train, however he could state about the cost of the quarterly pass of first-class from Mira Road to Churchgate via harbour line. All these positive statements have come in his cross-examination and have not been controverted further and in respect of this submission by learned advocate, the reasons given in respect of non-collection of documents of taxi drivers as well as Subhash Nagarsekar, PW-57, are once again applicable to this witness also.

527. Learned advocate Shetty submitted that the witness is untruthful because his evidence that he boarded the first-class bogie that was fourth from the motorman's cabin is inconsistent with the evidence of the motorman Anand Desai, PW-7, and this will have to be read in conjunction with the panchanama of spot Ext.494. It is true that Anand Desai, PW-7, stated that the coach that was affected by the explosion was the third coach from the motorman's cabin. However, the contents of paragraph 2 of the panchanama of the

affected bogie, Ext. 494, the contents of which are admitted by the defence, describe the affected bogie as the fourth from the motorman's cabin and it being a gents first-class bogie. Even Anand Desai, PW-7, has stated that it was a first-class coach. Now in view of this it may be that Anand Desai, PW-7, committed a mistake, but Ext. 494 is an admitted document and its contents corroborate the evidence of Devendra Patil, PW-62. In this connection Dy. SP Raskar, PW-139, proved the contents of the map of the spot, Ext. 1536, which he got prepared from his constable and this evidence has not been controverted during his cross-examination. It shows the affected bogie as the fourth coach. Thus, this aspect does not affect the credibility of the witness and does not show that he is a untruthful witness which in turn does not lead to an inference that he was not a traveller of that train. On the other hand his evidence is corroborated by the contents of the admitted panchanama.

528. Next submission by learned advocate Shetty is that the investigating agency kept everything vague while describing the condition of the bogie and if they would have given a clearcut description of the damage to the bogie and would have given evidence to fix the seat of the bomb, it would have co-related with the position of the witness in the bogie and this was relevant to appreciate his evidence. As mentioned earlier, this witness was cross-examined in respect of the sitting capacity, doors and windows, etc. It has come in his evidence that he was not sitting in the train, but he was standing in between the gap of two rows of the seats and was in a position to see what the other co-passengers are doing. Dy.

SP Raskar, PW-139, is the investigating officer of the Railways, who prepared the panchanama of spot, Ext. 494, and during the discussion of his evidence it is observed that he admitted that he did not take the measurements of the compartment/middle portion or of any points inside the bogie or of the distance between the damaged portion of the roof, other portions of the bogie and the doors or seats, that he admitted that it is necessary to locate the spot where the bomb was placed and he had investigated in that direction. It is observed that he gave a proper explanation for all these shortcomings, that he did not do these things or did not mention in the panchanama as there was extensive damage to the bogie and the entire bogie was damaged. Thus, this aspect will not affect the credibility of the witness.

529. This also covers the specific submission of the learned advocate that the investigating officer could have visited the Kandivali car shed where the affected bogies were taken and could have drawn a clearcut panchanama. It also takes care of the submission by the learned advocate that it is the evidence of the prosecution that seats and doors were broken and the roof was blown off and if at all this had happened then in all probability, the bomb must be on the rack and not below the seat and even assuming that the roof can be blown off even if a bomb is placed below the seat, then it was necessary to pinpoint the portion of the roof to show the seat of the bomb. It was submitted by learned advocate Wahab Khan that if the evidence of this witness that the bag was kept below the seat is accepted then the spot panchanama,

Ext. 494, does not show any damage to the floor portion. In respect of this, it can only be said that there cannot be a straight jacket formula about the effects of a bomb and the damage that it may cause to the surroundings. Even otherwise, in my understanding as a layman, the floor portion of the railway train must be more thick and stronger than the roof portion. Thus, this aspect alone will not make the evidence of Devendra Patil, PW-62, untruthful. Considering the contents of the spot panchanama Ext. 494, and the answers given by Dy. SP Raskar, PW-139, it cannot be held that there was failure on the part of the investigating agency to bring on record the actual condition of the affected bogie, which in turn discredits the version given by Devendra Patil, PW-62, and affects its credibility.

530. The main attack on the evidence of Devendra Patil, PW-62, by learned advocate Wahab Khan is in respect of his evidence that the train was on platform no. 2, he entered the bogie from the direction of Hutatma Chowk, that the Churchgate-Borivali 5.36 p.m. slow local was coming to the platform when he reached the Churchgate Station on 11/07/06 after 5.15 p.m. He submits that the information obtained under the RTI Act, i.e., the Note, Ext. 3053, proved by Avdheshkumar Shukla, DW-16, Chief Controller of Mumbai Division, Western Railways and the PIO under the RTI Act shows that the bomb blast took place at Jogeshwari Railway Station in train BO 619 DN on 11/07/06, that the scheduled departure of this train was 1736 hours and it departed right time at 1736 hours from platform no. 1. He also pointed out the contents of the train control chart

proved by the same witness, Ext. 3052(2), and submitted that the scheduled and actual time of departure of the said train was 1736 hours and this shows that Devendra Patil, PW-62, is lying by stating that the train was 2-3 minutes late and it shows the possibility that he may have boarded some other train. This was also brought on record as an omission to state when Devendra Patil, PW-62 gave his statement to the police. The witness boarding the train from platform no. 2 is also brought on record as an omission to state before the police. In this connection, in his cross-examination by learned advocate Rasal, Devendra Patil, PW-62, stated that he does not remember which train was standing on platform no. 1 and in his cross-examination by learned advocate Wahab Khan, he stated that he cannot tell the exact time when the train started from the Churchgate Station and admitted that the train that he caught did not start at 1736 hours. However, he denied the suggestion that he did not catch the 1736 train that had left the station at 1736 hours and that it was not late on that day and it left the station on time. Learned advocate submitted that if the train control chart is seen then the other trains going towards Borivali from Churchgate around the 1736 train are not far apart in timing, which means that the witness may have boarded some other train going to Borivali. I do not think that this can be so understood or interpreted because the train control chart Ext. 3052(2) shows an earlier train going to Borivali at 1730 hours, which actually left one minute late, then there is a train BO 617 for which there are no timings upto Bandra and the subsequent is BO 627 at 1739 hours, which left one minute

late and then is BO 629 at 1742 hours, which left one minute late. Thus, I do not think that there is any confusion in the mind of the witness about the timing of the train. Now, insofar as the platform number is concerned it is a fact that at the terminus like Churchgate or CST, i.e., the starting or ending point of local trains the platform no. 1 comes after one enters the entry of the railway station, thereafter is the first track, thereafter is the platform no. 2, thereafter is the platform no. 3, thereafter is the second track and so on. So a person can board the train standing on track no. 1 from the platform no. 1 or the platform no. 2 also. Thus, considering this situation and in view of the discussion upto now, it cannot be said that Devendra Patil, PW-62, did not travel in that train on that day.

531. The improvements made by this witness were brought on record as omissions to state before the police while giving his statement and portions from his statement were proved as Exts.1754 (1 to 5). The improvements that when he, i.e., Devendra Patil, PW-62, reached the platform, the Churchgate-Borivali 5.36 p.m. slow local was coming to the platform, to my mind, is not material. The subsequent omissions that when the train stopped he boarded the first-class bogie that was fourth from the motorman cabin and that the train was on the platform no. 2, have been discussed earlier and it has been held that it is the correct position. It is only in the nature of explanation and does not amount to contradiction that affects the credibility of the witness. Subsequent improvement that he entered the bogie from the direction of Hutatma Chowk and stood near the last row of seats in between the gap of two rows of

seats is also by way of explanation and cannot be construed as an improvement or a material omission. Same can be said about the next omission that after entering the train they, i.e., the two persons turned right and went towards the seats on the east side towards the Hutatma Chowk side (emphasis on 'towards the Hutatma Chowk side'). ACP Joshi, PW-163, stated that the witness had stated to him that that person kept his bag below the seat near the window that was facing towards Churchgate. This positive statement is in respect of the material event about the accused keeping the bag below the seat. Subsequent omissions are in respect of his activities prior to and subsequent to he boarding the train and, to my mind, they are not so material to affect the evidence of the witness in respect of the main incident.

532. Now in respect of the contradictions, first is portion Ext. 1754(1) in respect of Devendra Patil, PW-62, stating about the blast taking place when the train started from Jogeshwari, whereas it is in his statement that it took place when the train reached Jogeshwari. Though it *prima facie* appears to be a contradiction his evidence is corroborated by the evidence given by the guard of the said train Anand Desai, PW-7, who stated that after the train started and only the three rear coaches were on the platform, there was a loud explosion. Thus, this contradiction does not affect the material evidence of the witness in respect of the incident of there being a loud explosion and also there is no dispute about it from the side of the defence. The map Ext. 1536 that was drawn by Dy. SP Raskar, PW-139, also shows that the train had crossed the platform. The

second contradiction Ext. 1754 (2) is the statement of Devendra Patil, PW-62, that it did not happen that after leaving Churchgate there was a heavy crowd at subsequent stations and his coach was jam-packed with people. This, to my mind, cannot be said to be a contradiction because, the witness stated that he does not remember whether he had stated so to the police and he admitted that it did happen that because of the crowd of the people he could not see those two persons from the place where he was standing. In respect of the next contradiction Ext. 1754(3) it has already been explained and discussed. About the contradiction Ext. 1754(4) it is in his statement that some days after the blasts he came to know from newspapers and television that the ATS had caught some accused who had done the blasts, whereas he stated in his cross-examination that it will be incorrect to say that after some days he came to know that police had caught some persons. To my mind, this cannot be said to be a contradiction because the witness did not state about it in his chief-examination. He acquired the knowledge some days after the blasts that the ATS had caught some accused who had done the bomb blasts. Hence, this contradiction, if it is so construed, does not materially affect his evidence and it is not in respect of the material event in the train. The next contradiction is the portion in his statement Ext. 1754 (5), that he came to know after some days from the news that the accused who were caught had kept black bags in the local trains at Churchgate and had caused the blasts (emphasis on 'the accused who were caught'). He stated that he had not stated so to the police. The witness has stated in his chief-examination that

after some days it was in the news that some persons had kept black bags, etc. Instead of words 'accused' who were caught he had stated 'some persons'. I doubt whether this can be said to a contradiction and once again at the cost of repetition it will have to be said that it does not concern the material event in the train.

533. It is clear from the above discussion that the improvements made by the witness that were brought on record as omissions to state before the police when he gave his statement and the so called contradictions, do not materially affect his evidence about the actual incident in question. The witness did not say that the A3 and the other person with him got down at some station in between and to my mind, if he was a got up witness, he could have stated about it. The material portions of his evidence of seeing the person keeping a bag below the seat is not an omission or a contradiction.

534. Learned SPP Raja Thakare is justified in submitting that every answer that is obtained in chief-examination, if not in the statement under Section 161 of the Cr. P. C., cannot be equated to an omission amounting to contradiction and insofar as contradictions are concerned, there are bound to occur when the cross-examination is lengthy and tiring. It is submitted by him that the prosecutor may get some more details in the chief-examination though they may not be in his statement under Section 161 of Cr. P. C.

535. As against this in his written submissions Ext. 2824, the case of the A3 about this witness is that he is a liar and is a regular panch and witness of the ATS. There is no evidence for this and nothing is brought on record during his cross-examination. It is his case further

that he has given false evidence in the court, which is established by the information about the train timings obtained under the RTI Act and the number of platform from where it had started. These things have been already considered and it is held that they do not affect the credibility of the witness. To the questions put to him in respect of the evidence given by this witness in his statement under section 313 of the Cr. P. C., the A3 again repeated the same things and to some questions he stated that he does not know about it and stated that the witness had not traveled in the said train, but has deposed falsely as instructed by the police. In answer to the question about the witness identifying him in the test identification parade he stated that it is false. As mentioned earlier while discussing the evidence of Rajesh Satpute, PW-77, there is no explanation by the accused about his whereabouts on 11/07/06 and his defence about the blasts is only of general denial and having no knowledge about it.

536. In view of the above discussion, it will have to be held that Devendra Patil, PW-62, has given cogent and convincing evidence. Considering the fact that no criminal antecedents or his connection with the police or he having acted as a panch or witness or as an accused in some case have been brought on record, it will have to be held that he is an independent witness. This rules out the possibility of he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. I have, therefore, no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A3 had kept a black coloured bag in the first-class

compartment of the 5.36 p.m. Churchgate-Borivali slow train at Churchgate and he was accompanied by one more person. **This is circumstance no. 4 proved by the prosecution.** It is against the A3. It is the second circumstance against the A3.

537. The third traveller is Vishal Parmar, PW-74, and his evidence has evoked and considerably crossfire from the A4 like documents under the RTI Act, witnesses to prove the contents of those documents, his own oral evidence, etc.

538. It has come in his evidence that on 11/07/06 he had gone to an ENT Hospital in front of Hutatma Chowk at 4.30 p.m., that after his work was over and on getting a call from his employer directing him to go to the BMC Bank at Dadar, he went to Churchgate Station at 5.15 p.m. and went to platform no. 3, stood near the first-class bogie that was in front and saw the indicator on the platform that was showing a Virar train of 5.19 p.m. It has come in his evidence that two persons came there and asked him whether Virar fast train would go from there, he looked at indicator and confirmed it, that out of them the person who had asked him the train and time had a black rexine bag with him, that they stood there, that 2-3 minutes thereafter the train came, those two persons started to board the train before him and when he was boarding the train, the rexine bag hit his leg and though he wanted to catch the window seat, he could not do so and sat on the long seat having 7 seats facing Churchgate, at the third seat from Hutatma Chowk side. It has come in his evidence that the two persons stood in the passage in between at some distance and when he looked at the bag when the train

started, he thought that it was a big bag being carried in the first-class compartment. It has come in his evidence that the bogie became crowded at Bombay Central and as he wanted to get down at Dadar, he started going towards the door after the train had passed the Elphinstone Station. The two persons got down in front of him and were walking fast empty handed, about which he did not think much at that time as he was engrossed in the thought of his work. Thereafter his evidence is about he meeting the client in the BMC Bank in front of Plaza Cinema at Dadar and coming to know after half an hour that there were blasts in the trains. Now in respect of he approaching the ATS on 02/11/06, it has come in his evidence that after some months there were news that some accused had kept bombs in black colour bags in the trains and it struck to his mind that on that day he had also seen the two persons keeping a black coloured bag in the train. It has come in his evidence that on searching in the newspapers he came to know that the ATS police of Bhoiwada are making the inquiry about the blasts. Therefore he went there, met officer Patil and told him about the incident and then his statement was recorded by officer Khandekar, PW-174.

539. This is his evidence about what he saw on 11/07/06 and in what circumstances and for what reasons he reported the matter to the ATS and it has come in his evidence that he participated in the test identification parade that took place on 07/11/06, the evidence of which will be discussed subsequently and in the second parade conducted by SEO Purandare, PW-80, he identified the A4 as the person whom he had seen with the black rexine bag at Churchgate

and when the A4 and the other person got down at Dadar, they did not have the bag with them. It has come in his evidence that SEO Purandare, PW-80, asked the A4 his name and he told it as Ehtesham Siddique and he, i.e., Vishal Parmar, PW-74, unhesitatingly identified the A4 in the court which is a substantive evidence.

540. As mentioned earlier, his evidence has evoked considerable crossfire from the side of the defence. His oral evidence concerning the incident on 11/07/06 and his reporting about it to the ATS office is only of three pages and his evidence about the test identification parade is of four pages, but the cross-examination runs into 35 pages. Not only this, the written arguments concerning this witness in volume III submitted by his learned advocate Sharif Shaikh run into almost 100 pages. So, it will be necessary to take up the points of arguments in the written arguments one by one to assess the evidence and credibility of witness. In the entire written arguments submitted in five volumes running into as many as 839 pages, the evidence given by concerned witness in chief-examination as well as in cross-examination has been reproduced extensively. Same is the case in the submissions under the point in respect of the evidence given by this witness as well as Sr. PI Tajne, PW-161, PI Khanvilkar, PW-168 and ACP Patil, PW-186. It is alleged that these three investigating officers avoided to admit that Vishal Parmar, PW-74, is an employee of Mukesh Rabadia, which shows that they are hiding something and it is established from their evidence itself that Mukesh Rabadia is a regular witness for Sr. PI Tajne, PW-161. It is submitted that Vishal Parmar, PW-74, pleaded ignorance regarding

the relation of Mukesh Rabadia with the police, that Mukesh Rabadia has acted as a panch witness in many cases, which is evident from the certified copies of panchanamas, Exts. 716, 2886, 3295 and one more panchanama that is produced alongwith the application Ext. 4553, that Sr. PI Tajne, PW-161 is the common police officer in all four panchanamas (which is not correct as it is seen that he is only present at the time of two panchanamas). It is submitted that Ext. 716 is the panchanama in this case in respect of search of the house of the A6 on 29/09/06 at Govandi. Then Ext. 2886 is in respect of LAC No. 03/06, which is MCOC Special Case No. 16/06, the panchanama is dtd. 14/05/06. Ext. 3295 is dtd. 31/12/99 and is in respect of the crime no. 02/2000 of DCB CID and the panchanama Ext.4453 is of LAC No. 01/06 of ATS Police Station dtd. 14/01/06. It is submitted that Sr. PI Tajne, PW-161, did not deny having used Mukesh Rabadia as a panch witness, but pleaded ignorance which is very difficult to believe because he was using Mukesh Rabadia as a panch since 1999, when he was in the Crime Branch, which shows that Mukesh Rabadia was in his regular contact. It is submitted that PI Khanvilkar, PW-168, was present at the time of the panchanamas in this case as well as in LAC No. 01/06 of ATS Police Station, that he admitted that Vishal Parmar, PW-74, was employee of Mukesh Rabadia and it is difficult to believe that he does not know Mukesh Rabadia. It is submitted that the connection of Mukesh Walji Rabadia with the police cannot be ruled out in view of he having acted as panch witness as described above, that too alongwith the said officers. It is therefore alleged

that Vishal Parmar, PW-74, who is an employee of Mukesh Rabadia can be influenced to become a witness and is a witness provided by him for implicating the A4 in this bomb blasts case and therefore his deposition is not reliable and is required to be discarded.

541. Learned advocate Wahab Khan also discussed the details of the said four panchanamas in which Mukesh Rabadia is seen to have acted as a panch witness and submits that because of this background the prosecution felt that it could not use Mukesh Rabadia as an eyewitness, therefore through him, Vishal Parmar, PW-74, was introduced as an eyewitness and who following the footsteps of his employer acted as a witness for the police.

542. Learned SPP submits that even if it is accepted that Mukesh Rabadia is a person having a bad character or a criminal record having cases against him or having acted as a panch, the question is whether this incapacitates this witness, i.e., Vishal Parmar, PW-74, who has given straightforward answers to all the questions relevant to the fact in issue. He submits that even if the court comes to the conclusion that this witness is suppressing the facts about his employer, then it should be understood that he is doing so because his employer is providing him with his daily bread and butter. He also submits that even if it is accepted that Mukesh Rabadia is a regular panch witness, that by itself does not disqualify this witness from travelling in western suburban trains and narrating what he had seen. The witness had appeared before the court and deposed and has faced searching cross-examination by a battery of lawyers. He submits that the evidence of Vishal Parmar, PW-74, cannot be

discredited unless it is demonstrated that both, he and his employer, had the common intention to fabricate false evidence.

543. In his cross-examination Vishal Parmar, PW-74, stated that the ATS police did not call Mukesh Rabadia at any time after he gave his statement on 02/11/06, that he does not know whether his employer has acted as a panch witness in this case on 29/09/06, that he does not know whether he was called before 02/11/06, that he does not have any knowledge about his relations with the police and does not know whether police had called him to act as a panch witness in any other case prior to 02/11/06. In further cross-examination he made a positive statement that he has not signed alongwith Mukesh Rabadia on any panchanama prepared by the police and to my mind this question was just in the air. He expressed lack of knowledge to the inquiries about any crime being registered against his employer during the last 2-3 years and whether his employee and 3-4 other persons were arrested in a murder case, were in prison and later on released on bail and whether his employer was in prison for 4-5 months. He made positive statements that his employer never talked with him about his relations with the police and that he did not see whether police of Crime Branch or ATS used to come to visit him. He expressed lack of knowledge as to whether his employer has worked as a panch witness many times since 1999 for the Crime Branch and later on for the ATS and again made a positive statement that his employer did not tell him that he had acted as a panch witness in the case of train blasts. In this respect, the learned SPP Raja Thakare is justified in submitting that

there is really no reason for the witness to know whether his employer was called earlier by the police, consequently whatever is asked to him is of no consequence.

544. To my mind, the aspect of Mukesh Rabadia, employer of Vishal Parmar, PW-74,, having acted as a panch witness in several cases, including in this case, will not *per se* discredit the evidence of this witness, unless, as is rightly stated by the learned SPP, it is demonstrated and shown specifically that he is a witness provided by Mukesh Rabadia. It does not affect the evidence of Vishal Parmar, PW-74, because it is not shown that at the instance of his employer or under the influence of his employer, Vishal Parmar, PW-74, gave false evidence. Infact, Vishal Parmar, PW-74's evidence was recorded in March, 2011 and it has come in his evidence that his employer died in the year 2010, therefore, there was really no need for him to give false evidence. The influence, if any, would have been removed when he gave the evidence. Not only this, to my mind such an inference cannot be drawn considering the nature of his work and the business of his employer as well as the location of the office of his employer. There is nothing unnatural in this witness travelling in the western railways for the purpose of his work.

545. Next point is Vishal Parmar, PW-74, himself being a regular panch witness. In this respect the defence has heavily relied on the answers given by the witness in cross-examination dtd.08/03/11 in paragraph 21 that he has not worked as a panch witness in any case and has not given any evidence in the court at any time *vis-a-vis* his answers in re-cross-examination dtd. 29/08/12 that he was called by

Tardeo Police Station where he stated to the officer there that he had acted as a panch witness in an accident case that had occurred at Mahalaxmi Race Course and he is denying having acted as a panch witness for a recovery panchanama in C. R. No. 11 of 2006 of the Crime Branch, Unit-II. This plus his admissions that he has acted as a panch witness for test identification parades in the Byculia Prison on 21/01/12 and in the Arthur Road Prison on 17/03/11 relating to the cases of the Crime Branch and again in the Arthur Road Prison on 03/09/11. In this respect he has denied the suggestion that he is the regular and stock panch witness of the police, Crime Branch and the ATS, therefore, he is being called to act as a panch and be a false witness and that he deposed falsely. This further cross-examination was done as per the order below application Ext. 3024 filed on 17/08/12 after the defence had examined 13 defence witnesses and the prayer was made on the basis of documents that they had obtained from the courts and under the RTI Act. Thus, a period of about one and the half years had gone by since the witness had given the evidence and in the order dtd. 23/08/12 allowing this application Ext.3024 as well as Ext. 3040 to 3042, I mentioned the closure of the prosecution case on 04/04/12 and the numerous applications moved by the defence advocates for issuing summons to defence witnesses as well as recalling some prosecution witnesses and observed that this practice by the defence of giving applications from time to time after realizing something later on is not a correct practice and it will become endless to recall witnesses or to summon witnesses, if some new material comes in the hands of the defence

by way of information under the RTI Act subsequently. I allowed the application with a view to give full and fair opportunity to the defence.

546. The witness candidly admitted the suggestion in respect of he having acted as panch witness prior to this case and subsequent to this case. However, insofar as he having again acted as a panch witness in an accident case of Tardeo Police Station, the evidence is at Ext. 2908, contents of which are proved by Sr. PI Ajendrasingh Thakur, DW-1, who had given information to the ACP, who is the public information officer. The contents of the said letter do not specify in what crime Vishal Parmar, PW-74, had acted as a panch witness and on the other hand the information is given on the basis of the inquiry made with Vishal Parmar, PW-74, himself. This cannot said to be the evidence about the witness having acted as a panch witness as it has come in the cross-examination by the learned SPP that after the appellate authority under the RTI Act called for the information, they diligently searched their entire record and made inquiries with the district hawildar and court clerk, but did not find any record about Vishal Parmar, PW-74, and then he was personally called to the police station and a detailed inquiry was made about his involvement as a witness or accused in any case. Thus, this evidence can be described as vague and uncogent evidence.

547. The next piece of evidence is about Vishal Parmar, PW-74, having acted as a panch witness in LAC No.11/06 of the Crime Branch, Unit-II and this is proved by the information written in Ext. 3071, contents of which are proved by PI Nishikant Patil, DW-20,

which mentions that Vishal Kishore Parmar has acted as a panch witness in LAC No. 11/06 for the offences under section 3 punishable under section 25 of the Arms Act. It is also proved by the certified copy of the panchanama Ext. 4555, the contents of which was proved by Vishal Parmar, PW-74, when he gave evidence on 27/01/14 in C. C. No. 675/PW/06 before the ACMM, 37th Court, Esplanade, Mumbai, as per the certified copy of his deposition Ext. 4554. In this respect it is submitted in the written arguments that API Kolhatkar, PW-18, is involved in the preparation of the panchanama and that he is a tainted officer as he was suspended for attending party at Chembur Gymkhana that was organised by Rajan gang and because of this allegation he is under suspension which he has admitted. Hence, he is not an honest officer and his close link with Vishal Parmar, PW-74, cannot be ruled out and therefore the evidence of Vishal Parmar, PW-74, has to be discarded. API Kolhatkar, PW-18, was examined in this case and the defence recalled many prosecution witnesses from time to time, however, after Vishal Parmar, PW-74, gave evidence in March, 11 and was further cross-examined in August, 2012, API Kolhatkar, PW-18, was not recalled in respect of this specific allegation by the defence that he is closely linked with Vishal Parmar, PW-74, and even Vishal Parmar, PW-74, was not given such a suggestion. Thus, this is a single instance when Vishal Parmar, PW-74, has acted as a panch witness before this case, that too for the Crime Branch and merely because, API Kolhatkar, PW-18, has prepared the said panchanama and subsequently he was involved in the investigation in this case

also, it cannot be said that Vishal Parmar, PW-74, has close links with him. As per the contents of the said panchanama Ext. 4555, the said crime is of DCB, CID, Unit-II and API Kolhatkar, PW-18, as per his evidence, was deputed to the ATS on 17/07/06 as an additional help in the investigation in this case and his role is limited to the extent of the arrest of the A1 and the recovery at his instance. It will be far fetched to link such witnesses to the police officers merely because they have appeared as panch witnesses earlier in some cases. Police officers in Mumbai are transferred to different police stations during their service period. The witness is a resident of Mahalaxmi area, within the jurisdiction of Tardeo Police Station. Hence, it is not improbable that he may have been taken as a panch witness at that time and it is also not improbable that he might have travelled in the affected train on the alleged date and time. This aspect, therefore, does not affect his credibility though he has denied having acted as a panch witness in that case.

548. The three instances of Vishal Parmar, PW-74, having acted as a panch witness for test identification parade are of the year 2011 and 2012, as per the certified copies of the final reports Exts. 3826, 3827 and 3828. The concerned certified copies of the panchanamas issued by the Sessions Court are Exts. 3296, 3297 and 2883, all of which are unproved documents, as they are not proved in those cases upto now. Even otherwise since these instances are of a period subsequent to the present case, to my mind, they are of no consequence and will not lead to the inference that Vishal Parmar, PW-74, is a got up and false witness or a stock witness of the police. It is a fact that people

do not come forward to act as witnesses even as panch witnesses when the police call them and if such a witness has come into contact with the police in the manner in which Vishal Parmar, PW-74 has come, the probability cannot be ruled out that his help was taken subsequently.

549. In this respect the authority in the case of **Ron Chayak V. State of Goa (cited supra)** is relied upon by learned advocate Sharif Shaikh wherein it is observed that '*the public panch is a habitual panch would certainly weigh with the Court if it finds that the evidence of police witnesses is not free from blemish*'. As against this, the learned SPP has relied on the observations laid down in the case of **State of Maharashtra V. Mahesh s/o. Janardhan Gonnade (cited supra)** that simply on the count that a witness has given evidence as a panch in court in 5-6 cases and he resides in front of police colony, his evidence cannot be disbelieved. It was held that it is difficult to believe that a person is still acting as a police panch and signing the panchanama blindly simply because of his admission that till 1981 he was acting as a police panch. Now this judgement was challenged in the Supreme Court and by the judgement in the case of **Mahesh s/o. Janardhan Gonnade, appellants V. State of Maharashtra, respondent (cited supra)** this observation has been accepted and endorsed by the Supreme Court.

550. Thus, in my humble opinion, Vishal Parmar, PW-74, having acted as a panch witness once before he being a witness in this case and thrice subsequently, will not make him a regular panch witness of the police or a pliable witness in the hands of the police.

551. In the next point it is alleged that Vishal Parmar, PW-74, deposed falsely by giving wrong address on oath and hence his evidence is not reliable and required to be discarded. The address given by the witness and his statement in chief-examination that he resides at the given address since his birth is tried to be falsified by his answer given in further cross-examination that he is not staying at the address given by him after 2006. In this respect the addresses of this witness in certified copies of documents, viz., Ext. 3830 an FIR, Exts. 3296, 3297 and 2883, memorandums of test identification parade, are mentioned and it is submitted that they are the same as given by the witness in his deposition. However, the information obtained under the RTI Act Ext. 2908 discloses that he was not residing at the said address since last four years. This proves that the witness gave false address before the court on oath. It is submitted that the learned SPP tried to fill up this lacuna during the cross-examination of Sr. PI Ajendrasingh Thakur, DW-1, during which he stated that Vishal Parmar, PW-74, informed them that he is a witness in this case and because of the fear of the accused, he left his residence and is residing elsewhere and requested that his present residential address should not be given to anyone. It is alleged that Sr. PI Ajendrasingh Thakur, DW-1, did not depose in his chief-examination about the apprehension felt by Vishal Parmar, PW-74, nor he mentioned in the letter Ext. 2908 and it is alleged that Sr. PI Ajendrasingh Thakur, DW-1, being a police officer is tutored by prosecution for deposing so and hence this theory is also not believable. It is also submitted that though the witness stated in the

first sentence in his further cross-examination that he is not staying at the address given by him after 2006, in re-examination by the learned SPP he expressed his apprehension that he has fear in his mind as he is a witness in this case, therefore, he gave his old address and did not give his new address, where he lives after 2006. It is pointed out that during re-cross-examination it is brought on record that the witness did not apply to the Commissioner of Police or to any police authority to give protection to him as he fears for his life, etc., and did not tell to the court when his evidence is recorded earlier that he is giving a different address as he fears for his life. Learned advocate Wahab Khan submitted in this respect that true address of the witness is reflected in Ext. 4557 which is a report given by the Head Constable to the Sr. PI of DCB, CID and after acting as a witness in this case he has acted as a panch witness for three subsequent memorandums of test identification parade giving the same address. He has alleged that the suppression of the identity of this witness by the prosecution is not for security reasons because that is never explained by the witness and it is only to suppress his association with the police.

552. To my mind, all these submissions are very candidly and forthrightly explained by Vishal Parmar, PW-74, as well as Sr. PI Ajendrasingh Thakur, DW-1. This was not an issue during the initial cross-examination that was done from 03/03/11 to 08/03/11 and it is only after collecting the documents that the witness was recalled for further cross-examination as per the order on the application of the defence Ext. 3024. Now, Sr. PI Ajendrasingh Thakur, DW-1, was

examined by the defence on 23/07/12 and though it is not mentioned in the letter Ext. 2908 issued by him to the Public Information Officer under the RTI Act, this information came in the cross-examination by the learned SPP. Now on that date the application for recalling Vishal Parmar, PW-74, was not even moved. It was moved on 17/08/12 and Vishal Parmar, PW-74, was further cross-examined on 29/08/12. If the defence called a police officer as their defence witness, they should be prepared for the cross-examination by the learned SPP, which would be as of right. These submissions are apparently afterthought, because if what Sr. PI Ajendrasingh Thakur, DW-1, stated in his cross-examination about calling Vishal Parmar, PW-74, and he stating about his fear, etc., is not mentioned in the letter Ext. 2908, there was no attempt from the side of the defence to re-examine him to point out the improvement made by him, not that it can be called as an improvement because it has come in the cross-examination as positive statements which are uncontroverted. On the request of the learned SPP that he wants to get an explanation from the witness about he giving an address though he does not stay there after 2006, which request was consented to by the learned advocates for the defence, Vishal Parmar, PW-74 was re-examined by the learned SPP and he gave the explanation about the apprehension that he feels in giving his correct address. Considering the straightforward and candid answers given by the witness in his further cross-examination that he is not staying at the address given by him after 2006 and considering the above discussion, to my mind, no fault can be found with the

witness in not giving his current address. Therefore, I doubt whether on this count he can be condemned as an unreliable witness. It is but human for a common man to be apprehensive about his life in a case of such gravity and therefore this fact will not make him an unreliable witness.

553. Based on the answers given by Vishal Parmar, PW-74, in respect of he having travelled by the train on that day, it is submitted that he is a chance witness. It appears that the term 'chance witness' is not properly understood by the defence because it is always to be taken in the positive manner. It is submitted that Vishal Parmar, PW-74, is not a regular traveller of the local train, that he did not have a fixed routine of travelling, hence, he is a chance witness and therefore his testimony is required to be examined more cautiously and evaluated. Some answers given by the witness in cross-examination are reproduced, viz., that he was not a regular traveller by the train, that from the talk and behaviour of the passengers sitting around him he did not think that they were regular travellers by train, that he does not know whether a casual passenger can be identified amongst the other passengers and whether it is doubtful for a person to keep light handbag on the rack, etc., and it is submitted that this shows that he does not know anything about the regular passengers and their behaviour, that he is not a regular traveller and this inference is based on the admission that persons who are new in Mumbai will board a fast local going to Virar for going to Dadar, because normally regular travellers would catch a train going to Bandra, Andheri, Borivali or a slow train for going to

Dadar and this conduct shows that he has not travelled in the train in question. To my mind, this inference cannot be drawn in view of the fact that the witness is a Mumbait and as already observed above there is nothing unnatural for him to travel in the western railways considering the nature of his work, the business of his employer and the location of the office of his employer. Not only this, in some part of cross-examination he has specifically admitted that it is a common thing on the platforms of the railway stations in Mumbai for persons to make inquiries about trains, their timings, that it is a common thing to carry luggage in the train and to be pushed around in the trains and quarrels and abuses are common in the train. These answers show that he has a clear knowledge about the travel in the local trains and being a Mumbait, I do not think that the witness would have given a second thought for boarding a Virar train for going to Dadar. This aspect, therefore, does not make him an unreliable witness and at the cost of repetition it can be said that he is a chance witness and it is the quality of his evidence that matters.

554. There is considerable agitation in the next point in respect of Vishal Parmar, PW-74, stating in his cross-examination the name of the person, whom he had gone to meet in the ENT Hospital, as Baban Rankhambe. The agitation is on the basis of the information and the documents obtained under the RTI Act. At the outset, it can be said that this aspect is in respect of a peripheral matter and not relating to the main evidence and is, therefore, of not much consequence. Even, otherwise, Vishal Parmar, PW-74, only stated in his chief-examination that he had gone to an ENT Hospital in front

of Hutatma Chowk at 4.30 p.m. on 11/07/06, which statement is not an omission or contradiction. It is in his cross-examination in paragraph 12 that he was asked and he gave the specific name of Baban Rankhambe as the person whom he had gone to meet on 11/07/06 and to further questions he submitted that he knew his name on 02/11/06, i.e., when his statement was recorded and does not remember whether police inquired with him about his name on that day and stated that he had gone to meet with him in connection with loan. In paragraph 15 of the cross-examination he gave some more clarifications that he was at the ENT Hospital for 10-15 minutes on that day, the person whom he had gone to meet was working as a compounder there in the dispensary alongwith 4-5 other persons, that as it is a BMC Hospital, it is open for the whole day, the duty hours of that person were from 3.00 p.m. to 11.00 p.m. and there is no register in that hospital for visitors to make an entry if they want to meet any employee. Thus alongwith questioning the existence of a person by name Baban Rankhambe, the defence has also raised a question about the visit of Vishal Parmar, PW-74, to that hospital on that day and in that connection he denied the further suggestion that names of visitors, time of visit are required to be written and an entry has to be made at the time of leaving the hospital in the register. He was only given a suggestion at the end of the cross-examination by learned advocate Rasal that he had not gone to the ENT Hospital on that day, but there is no suggestion in respect of the existence of Baban Rankhambe as an employee of that hospital and rightly so, because this was disclosed in his cross-

examination. Now other than this cross-examination, there is absolutely no cross-examination or suggestion to Vishal Parmar, PW-74, about the said Baban Rankhambe.

555. The non-existence of a person by name Baban Rankhambe was tried to be established by the evidence of Dr. Dipika Rana, DW-18, who proved the contents of her letters, Exts. 3062 and 3063, by which she had given the information and Ext. 3064 by which she supplied the certified copies of the documents. The documents that she supplied are the attested true photocopies of charge handing over book of the security guards, Ext. 3065 (1 and 2), of visitors entry book Ext. 3066 and register containing the entries of emergency patient, Ext. 3067 (1 to 3), the last being irrelevant. Now assuming that the information that was given is proved that Baban Rankhambe is not an employee of ENT Hospital and is also not a security guard and was also not on duty as a security guard who are not on the roll of the ENT Hospital, but were provided by the security department of the 'A' Ward of the BMC, this information and the documents are not in respect of a person who was working as a compounder in the dispensary of that hospital, as per the evidence given by Vishal Parmar, PW-74. Thus, the information and the documents received under the RTI Act are irrelevant and of no use.

556. This is very much obvious by the answers given by Dr. Dipika Rana, DW-18, in her cross-examination by learned SPP that person by name Baban Rankhambe was not employed in their hospital in 2006, that she had not heard his name at any time except when the application under the RTI Act came to them. Next is important that

the security department of 'A' Ward provides the security guards on rotation basis to their hospital. Such security guards are the employees of the BMC and their record is not available in their hospital.

557. Now the documents Exts.3062 to 3067 had been obtained by the A4 in the year 2010 and 2011, Dr. Dipika Rana, DW-18, was examined on 28/08/12 and she proved the contents of the letters and the documents. Vishal Parmar, PW-74's, main chief-examination and cross-examination by all advocates for all the accused was conducted in between 03/03/11 to 08/03/11. He was further cross-examined on 29/08/12 as per the order below the application Ext. 3024 made by the defence for recalling him, which was filed on 17/08/12. Thus, as on the date of his further cross-examination, i.e., on 29/08/12, the application for recall Ext. 3024, the information and the documents obtained under the RTI Act and the evidence of Dr. Dipika Rana, DW-18, was in hands of the defence, however, not a single suggestion was given to him on 29/08/12 in his further cross-examination that there is no person by name Baban Rankhambe working in the ENT Hospital of the BMC at Churchgate as a compounder or a security guard. The answer to the question as to why such a suggestion was not given and could not have been given by the defence to the witness can be found in the documents that were produced by the learned SPP as well as by the defence. On the last day of the cross-examination of A4, i.e., on 13/06/13, learned SPP produced several documents alongwith his application Ext. 3928 and the documents which are at pages 353 and 355, contain a

letter by ACP, ATS, Mumbai dtd. 14/05/13 to the CMO, ENT Hospital of BMC, Fort, Mumbai stating that the eyewitness Vishal Kishore Parmar had stated in his evidence that he had gone to the ENT Hospital on 11/07/06 to meet an employee by name Baban Rankhambe, but on inquiry with him it was revealed that it was Baban Rongya Kamble, who used to work in the dispensary/laboratory of the said hospital in 2006 and is working even today and thereafter he asked three questions to which reply was given, which is at page 355, that employee by name Baban Rongya Kamble is working in that hospital from 09/05/88, was working as a laboratory assistant in the Laboratory Department of the hospital in 2006 and is working as laboratory assistant in the same laboratory now. Though, the prosecution had closed its side and though no attempt was made by the prosecution to call a witness to prove these documents, the A4 in his over-anxiety or over-zealousness sent an application under the RTI Act and obtained the information in the letter Ext. 4391 and true copy of muster Ext. 4392, both of which are not proved by calling the witness, but they indicate that Baban Rongya Kamble was an employee of the ENT Hospital and was working in the laboratory as an assistant. It appears that and there is a strong probability that the witness may have stated the name Baban Rongya Kamble, but while taking it down, because of similar phonetics, it was mistakenly understood by all and dictated to the typist as 'Baban Rankhambe'. The defence realized the risk of giving a suggestion to Vishal Parmar, PW-74, in his further cross-examination on 29/08/12 that no such person as Baban Rankhambe

was an employee of the said hospital, because there was a possibility that the witness would have explained that he had not stated the said name, but had stated the name of Baban Rongya Kamble. The information in the letter Ext.4391, the contents of which are not proved, show that the said Baban Kamble was on night duty, i.e., from 10.00 p.m. of 11/07/06 to 7.00 a.m. of 12/07/06 and as per the records he was absent on the said night duty. The learned SPP has rightly submitted that even if this is accepted, the explanation give by Vishal Parmar, PW-74, in his cross-examination in paragraph 11 is, that for his employer to give a loan to a person, it is necessary that such a person is a member of the BMC Bank and therefore whether or not Baban Rongya Kamble was on duty on that day or not is not an issue that would arise. Same is the case about the visitor's book. Though the contents of the certified copy of the visitor's book are proved by Dr. Dipika Rana, DW-18, learned SPP is right in submitting that though there is a provision in normal hospitals to make entries in the visitor's book, this rule is seldom followed. True it is as it is even my personal experience that no visitor's book was placed before me whenever I visited government hospitals like JJ Hospital, St George Hospital or BMC hospitals like KEM Hospital or even renowned hospitals like Bombay Hospital or Hinduja Hospital in Mumbai. No entry was made and no signatures were taken. Thus, defence has not succeeded in proving that Vishal Parmar, PW-74, has lied about going to meet a person at the ENT Hospital on 11/07/06 and even otherwise what is important is that it is in respect of a peripheral aspect and not about the main event.

In this respect it is submitted in the written notes of arguments that PI Khanvilkar, PW-168, who had recorded the statement of Vishal Parmar, PW-74, as well as the chief investigating officer ACP Patil, PW-186, did not verify the truthfulness of the statement made by Vishal Parmar, PW-74. Now in this respect the explanation given by both these witnesses has been reproduced before making the submission and it is self-explanatory and acceptable. Though PI Khanvilkar, PW-168, admitted that he did not verify with the ENT Hospital and with the client whom he met in the BMC Bank at Dadar, ACP Patil, PW-186, stated that it is not necessary to verify the material information given by the witness if he does not appear to be an untruthful witness. He denied the suggestion that Vishal Parmar, PW-74, gave false information and he had not gone to the ENT Hospital, Churchgate nor he visited the BMC Bank at BMC office at Dadar.

558. The conduct of Vishal Parmar, PW-74, travelling by Virar train for going to Dadar is questioned in the next point as being doubtful on the basis of the answers given by him in paragraph 12 of his cross-examination and on the basis of the information and train control chart, Ext. 3052 (1 to 4) that were proved by Avdheshkumar Shukla, DW-16. It was submitted that a person who has some common sense would not travel by Virar fast local as there is a heavy rush in that train and passengers are abused and moreover it is easy for a prudent man to catch a slow train or catch the Borivali fast train which may reach within the same time at Dadar or will take one or two minutes more and it is also questioned as to why he

waited for four minutes for travelling in the Virar fast train though at the same time Borivali fast local of 5.15 p.m., which departed at 5.16 p.m., was already standing there. To my mind, drawing an inference that the evidence of Vishal Parmar, PW-74, is doubtful because of his conduct in choosing the Virar train will be far fetched and will amount to disbelieving the witness only for the sake of disbelieving him. As already noted earlier, the witness is a Mumbait and it is only a Mumbait who will dare to go by any train he likes though he may be knowing that he will encounter a heavy rush in such a train. Moreover, it is common knowledge and it has been brought on record during the evidence of several witness that all trains at the evening time have heavy rush because those are the peak hours when commuters are returning to their homes from South Mumbai to western suburbs. Hence, it will be absurd to draw such inference and to hold that the testimony of Vishal Parmar, PW-74, is not reliable and should be discarded. It is not that Vishal Parmar, PW-74, was a daily commuter. In that case he would have chosen a specific train or specific bogie to travel. However, he was a regular traveller.

559. Next topic is an attempt by the defence to say on the basis of information of the arrival and departure timings of the concerned train that the answers given by Vishal Parmar, PW-74, prove that he did not travel in that train and has given false evidence at the behest the ATS. Vishal Parmar, PW-74, stated in his chief-examination that he went to Churchgate Station at 5.15 p.m. as he wanted to go to Dadar. Now this sentence alongwith the earlier sentence that he got

a call from his employer who directed him to go to the BMC Bank at Dadar, therefore, he went to the Churchgate Station, was brought on record as omission to state before the police. However, it is only the previous sentence that is an improvement. In respect of the timings he stated next that the indicator on the platform was showing a train of 5.19 p.m. going towards Virar and that two or three minutes thereafter the train came there. In his further cross-examination his statement that the indicator on the platform was showing a train of 5.19 p.m. was brought on record as an improvement. However, the word 'specifically' is mentioned in his answer as to why he cannot assign any reason why it is not in his statement. In paragraph 28 of his cross-examination he has stated that he did not see the train coming on the platform, that it came there 3-4 minutes after 5.15 p.m., did not see his watch before catching the train, does not remember whether it came at 5.18 or 5.19 p.m., whether it started on time or whether it was late and does not know whether the scheduled time of arrival of 5.19 p.m. Virar fast train at Churchgate Station was 5.07 p.m. and whether on that day it had arrived at scheduled time and left at 5.20 p.m. He, however, specifically denied the suggestion that it halted for only one minute and then started again, which to my mind, is a wrong suggestion if it is the case of the defence that the train had come at 5.07 p.m. at the Churchgate Station. He made a positive statement that the train halted for 2-3 minutes on the platform and denied the suggestion that he had not boarded the 5.19 p.m. train on that day.

560. To my mind, insofar as the scheduled timings of arrival and

departure of trains are concerned, the foremost question is as to how the witness is expected to know the scheduled timings and whether the train had come late. The cross-examination on the point of timings is a general cross-examination having no impact on the evidence of the witness. Insofar as his answers in paragraph 26 are concerned, he has given candid answers by accepting whatever he does not know. Now this evidence is sought to be controverted by the oral and documentary evidence given by the defence by examining Avdheshkumar Shukla, DW-16, who proved the train control charts, Exts. 3049, 3052(2) and 3051(4) alongwith Ext. 3049, which is a note issued by the said witness on the basis of the train control charts mentioning the particulars. In the written submission by learned advocate Sharif Shaikh the contents of this note are relied to show that rake of VR556 was utilized to work as VR607 Churchgate and it reached on platform no. 3 of the Churchgate Station on 1707 hours on 11/07/06 right time and actual departure time of VR607 Churchgate is 1719 hours and it departed right time and the bomb blast took place in that train in between Mira Road and Bhayandar. No doubt such are the entries in the train control chart, however, this is the information that is received by the accused under the RTI Act, the contents of which are proved by Avdheshkumar Shukla, DW-16. However, his cross-examination by the learned SPP is interesting and as is rightly submitted by the learned SPP the witness has admitted in his cross-examination that the work of giving the information asked for under the RTI Act is like a postman and they gave the information as per

the record. Now, insofar as the entries in the train control chart are concerned, he stated that the chart is not filled up manually, but it is filled up automatically as per the system and this is important, that he does not have technical information about the system that operates to feed the data and cannot tell if there is any technical fault in the system. Now if this is the position, it is a question as to whether the entries in the train control chart can be relied upon implicitly for holding that the witness is giving false evidence or that he did not travel in that train on that day. In respect of the note Ext. 3049, the contents of which are described above, he stated that its contents are correct as per the record that was available with him and that he has brought the original record with him. In this connection, in the cross-examination, he admitted that the entries in the train signal register brought by him to the court are made manually, that he does not make the entries in the register, that different persons at different control towers make the entries and this is important that he cannot tell whether there is any error by such persons in the details, which means that he has not denied that there may be errors. Thus, again it is a question as to whether the entries in the train control charts can be relied upon implicitly to discredit the evidence of this witness.

561. In my humble opinion, it is too much to expect a person to know the scheduled timings of arrival and departure, whether it arrived on the scheduled time and departed a minute late, etc. The learned SPP submitted that no two watches will show the same time and it is in this connection that the two statements that the witness

made in his cross-examination show that he has stated approximate timings. He made positive statements that he did not see the train coming on the platform and did not see his watch before catching the train. This supports the inference that he is giving approximate timings and it is not expected from him that he should give perfect timings. Going ahead, even if it is considered that the witness has given incorrect answers about the timings, it does not mean and no inference can be drawn only because of this that he is a false witness or that he did not travel in that train. It is the totality of the evidence of the witness that is to be seen to appreciate whether he is a truthful and believable witness. Hence this aspect alone will not prove that he is a false witness and that he had not travelled in that train on that day. Some omissions and contradictions that are brought on record during the cross-examination of Vishal Parmar, PW-74, have been pointed out alongwith the cross-examination of PI Khanvilkar, PW-168, who had recorded his statement and it is submitted that the omissions are material and they amount to contradictions which show that he is a false witness and his evidence has to be discarded. The relevant portions of the cross-examination of both the witnesses have been reproduced, but it is not necessary to reproduce them here because it will be sufficient if the evidence of PI Khanvilkar, PW-168, is discussed. This is because Vishal Parmar, PW-74 candidly told whatever portion he had stated and whatever portion he had not stated and whatever portion he does not remember he stated so and he could not assign any reason why those are not mentioned in his statement. In respect of the first

omission pointed out, his answer is that he cannot assign any reason why these things are not mentioned 'specifically' in his statement. (emphasis on the word 'specifically'). This is pointed out because it has a relevance to the answers given by PI Khanvilkar, PW-168. The answers given by him in his cross-examination in respect to the omissions have come on record as positive statements. He stated that Vishal Parmar, PW-74, had stated to him that he stood near the first-class bogie that was in front, that the indicator on the platform was showing the train of 5.19 p.m., that two persons came there and asked him whether Virar fast train would go from there, that he looked at the indicator and told them that such a train will go from there. He positively stated that the second part of the above omission is written in the statement and what is not written is the first part about the witness having stood near the first-class bogie that was in front and the indicator showing the train of 5.19 p.m. To my mind, it was but natural for this witness to stand at the place where the first-class bogie would come, because it is in his evidence in cross-examination that he always travels by first-class, that he had purchased the pass on the 1st or 2nd of June, 2006 at Churchgate and told about the cost and that it was with him when he went to the ATS office and this evidence has not been controverted. Thus infact it is not an omission but is by way of an explanation. The omission in respect of the indicator on the platform showing the train of 5.19 p.m. cannot also be said to be an omission in view of the words in his statement that are brought on record, that he looked at the indicator and told the two persons that such a train is going from

there. The indicator does not only show the number and destination of the train, but it also shows the time.

562. PI Khanvilkar, PW-168, next stated that Vishal Parmar, PW-74, had stated to him that 2-3 minutes thereafter the train came there, but it is written that the train came thereafter some minutes. I do not see how this can be an omission and as already observed earlier that a person will not go on looking at his watch to see whether the train has come right time or it has come late. Once again it can be said that it is only by way of an explanation. PI Khanvilkar, PW-168, next stated that the witness had stated before him that 2-3 persons had got down and he was about to board, which is not written in the statement, but he explained that all passengers got down from the train. Now I think that if there were only 2-3 passengers then they could be described as all passengers. However, the explanation given by him is meaningful. While admitting that he did not change the words of the witness on his own, he explained that he took whatever is important. To my mind, this is exactly what the police officer does and is expected to do and again he was grilled about this aspect and he answered that it did not happen that he did not write something that the witness told as they were not important and very fairly conceded that there is no record other than the statement and his memory about what the witness actually stated. In my humble opinion, the defence is trying to play the game of cat and mouse. The witness is asked for an explanation as to why certain thing is not in the statement or why it is not in particular words and when he gives an explanation, it is submitted that it is not acceptable. This

line of cross-examination will not lead us anywhere. This also explains the contradicted portion Ext.1792(6). A submission is made that it is very common in Mumbai especially at Churchgate at the time of heavy rush, i.e., evening time, that when a train arrives at Churchgate, first all passengers waiting at the platform board the train and then the passengers inside alight from the train. I must say that this is very strange and unacceptable and even if it is so, it is not a rule and it cannot be considered to hold that Vishal Parmar, PW-74, has falsely deposed that some persons or 2-3 persons got down first from the train. Next is a typical example of how the defence is trying to twist the things though the record does not bear it out. PI Khanvilkar, PW-168, admitted that it is not written though the witness had stated to him that out of those two persons, the person, other than the person who had asked him about the train and the time, had a black rexine bag with him. The explanation that he gave is very important. He stated that it is not written in these words, but it is written in the statement as 'tyapaiki dusrya ismachya hatat kalya rangachi handbag hoti'. This is exactly what can be gathered from the chief-examination of Vishal Parmar, PW-74. The first sentence is that two persons came there and asked him whether Virar fast train would go from there. Subsequently he stated that out of those two persons, the person other than the person who had asked him about the train and time, had a black rexine bag with him. To my mind, the officer has given an exact explanation which means this is infact not an omission.

563. PI Khanvilkar, PW-168, very candidly stated that he did not

remember whether the witness had stated to him that the two persons had started to board the train before him. As noted earlier, some things are by way of explanation and this is one of them. The further question and its answer by PI Khanvilkar, PW-168, shows how without application of mind the questions were asked to the witness as well as the police officer because PI Khanvilkar, PW-168, positively stated that the witness had stated to him that when he was boarding the train the rexine bag hit his leg. What is infact an omission is the description of the bag as of 'rexine' and to my mind it is not material. Again, PI Khanvilkar, PW-168, admitted that it is not in the statement and he does not remember whether the witness stated that after the train started he looked at the bag and thought that it was a big bag being carried in the first-class compartment. Once again it can be said that this is by way of something that the witness may have seen, had stated to the police, but was not written in his statement for the reasons given above. The submission that the material part of the evidence regarding the position of the bag and about boarding the train in an omission and that it amounts to a contradiction, is not acceptable for the reasons given above. Again the next so called omission is a play of words because PI Khanvilkar, PW-168, explained that it is in the statement as the witness stated to him but not in the exact words that the two passengers got down in front of him at Dadar and they were walking fast empty handed. This explanation is not controverted and infact it has to be mentioned here that wherever such type of explanations were given by the police officers who conducted the investigation in this case,

they have not been controverted or shown to be wrong or incorrect. It is only during the arguments that it is being said that the officers are giving false explanations. The next contradicted portion is Ext. 1792(2) which says that alongwith him many others also entered the said bogie and Vishal Parmar, PW-74, answered in his cross-examination that it did not happen that many people boarded the train at the same time when he boarded it and he did not state so to the police. Now can this be called as a contradiction, because one cannot imagine many people boarding the train at the same time. It may be that considering the width of the door of the local train 3-4 persons may be able to board it at the same time, but when the witness has not stated about it in his chief-examination how can it be a contradiction. In the first place he was specifically asked in cross-examination in paragraph 18 and he stated that it did not happen that many people boarded the train at the same time when he boarded it and then the said portion was confronted to him and marked, but to my mind, it will not amount to a contradiction as he did not state about it in his chief-examination and if assuming that he had stated so to the police, he boarding the train cannot be disputed as is submitted in the written submissions by learned advocate Sharif Shaikh.

564. Next comes a very funny submission that four injured persons, i.e., Murarilal Parekh, PW-137, Vijay Nair, PW-187, Balam Rane, PW-190 and Kiran Kini, PW-191, have deposed that they boarded the train from Marine Lines Railway Station, whereas Vishal Parmar, PW-74, deposed that after starting from Churchgate the train had

halted at Bombay Central. It is submitted that it is the fact that every Virar train departing from Churchgate after 4.00 p.m. is slow upto Mumbai Central. The funny thing is that the witness has not stated that the train did not halt at Marine Lines and he was not asked whether the train halted at Marine Lines and was not given such a suggestion. I do not know how an inference as submitted can be drawn from the above that he had never travelled in that train on that day.

565. In this context it is submitted by learned advocate Wahab Khan that Sr. PI Tajne, PW-161, and PI Khanvilkar, PW-168, appear to be very smart officers because when they, i.e., the defence tried to prove omissions, they explained that the witnesses had told them, but they told the witness to tell about it in the court. He submits that the officers are indulging in such an exercise by saying that though the witness stated something, but they did not write, whereas, as per the law they have to record whatever the witness says and it is not their claim that the things were irrelevant. The learned SPP has very nicely explained this. He submits that if the court comes to a conclusion that whatever things the witness had stated are not written in their statement with minute details, then the court may disbelieve the witness. But if they do not affect the caliber and quality of the evidence that the witness gives in respect of the main issue then he will have to be believed. He submits that the investigating officer will not record minute details like the witness may have stated to him that he got down at Dadar, had a tea at the stall, etc. The relevant important thing that would be is that whether

the witness had got down at Dadar or not. He submits that everything verbatim whatever a witness has stated cannot be termed as an omission. What is worth appreciating is that if such type of omissions are to be found in the evidence of one witness then probably the court can come to the conclusion that there is something abnormal about the witness. But in this case omissions have come in the evidence of a number of witnesses. This demonstrates the generality and the behaviour of any common man and such evidence of any witness does not smack of any artificialness. We go to a jogging park, we find everyone going in a clockwise direction, but if somebody goes anticlockwise it is different. When any witness is in the witness box, he is virtually given a free hand to depose whatever he wants to say. The evidence that is recorded is what falls from the mouth of the witness and what is recorded by the court. But a statement recorded by the police under section 161 is to that extent a restrictive statement, in the sense that the officer would normally take the important aspects. Does this mean that the witness should also state to the police whether he had water or he went to a washroom and where?

566. He submits that in all the cases and in all the statements under section 161 it is either written that my statement is read over and found to be correct or that he has read it and found it to be correct. The general impression of a layman who goes to the police station and gives a statement is that whatever police have written is correct. Though it is written that his statement is read over to him or given to him for reading, ordinarily no person tries to make any

correction. The police also do not attach much importance to this, because ultimately the statement under section 161 has got no evidential value, it cannot be admitted in evidence and can be used only under section 162 for the purpose of contradiction. By and large the statement under section 161 gives a general idea as to what the witness is narrating about what he saw.

567. He further submits that interpreting the meaning of a statement under section 161 in the light of minor contradictions and omissions may result in miscarriage of justice. The yardstick that is to be applied for the appreciation of evidence is to find out whether the witness has a tendency of making a false statement deliberately or suppressing the truth or whether his answers are innocuous or have come in a casual manner or giving specifications or details-that is the test and that is how it is to be appreciated. Looking from this angle the contradictions that are brought or even marked as portions do not make any sense. This is in reference to the questions that are asked like who was standing next to you, the colour of the bag, etc. These questions are in the nature of testing the memory of a witness.

568. To my mind, if the witness says that he does not remember whether he had stated a portion to the police and if it is shown as omission it will not amount to a contradiction, because he does not state that he had not stated so to the police. If the officer recording the statement of a witness gives explanation about certain omissions and positively states that some sentences that the witness spoke were not recorded in the statement, then that will have to be accepted as there is no other means to verify, because the statement

under section 161 cannot be looked into.

569. In view of the above discussion, in my humble opinion, so called omissions and contradictions will not affect the credibility and truthfulness of the witness. In this respect the observations in the case of **Krishna Mochi & Ors., appellants V. State of Bihar, respondent (cited supra)** relied upon by the learned SPP that minor discrepancies in the evidence of the witness have to be ignored is relevant and applicable. It is also held in the case of **State of Rajasthan v. Smt Kalki and Anr. (cited supra)** that '*in the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person*'. These observations are also relevant and applicable in respect of this witness.

570. Vishal Parmar, PW-74's statement that he wanted to catch a window seat, but did not get it, is tried to be proved wrong on the basis of the evidence of Murarilal Parekh, PW-137. Vishal Parmar, PW-74, denied the suggestion in his cross-examination that a window seat was vacant and it was occupied by the passengers who boarded the train at Marine Lines. To my mind, it is absolutely impossible that window seats at any station remain vacant, much less at the starting stations. It is no doubt true that Murarilal Parekh, PW-137, stated that he boarded the first-class bogie towards Virar

side from the front door and sat in the window seat on the east side in the row of seven seats on Virar side. However, it is not clarified as to whether he occupied the seat immediately when he boarded the train at Marine Lines or he got that seat at some stations ahead. Hence, this aspect does not prove that Vishal Parmar, PW-74, did not travel in the said train.

571. The next submission is that if a person wants to get down at Dadar, he must stand on the gate of the door and if he goes inside the compartment, then he may be thrashed by the passengers, but Vishal Parmar, PW-74 pleading ignorance about this, shows that he does not know about a common thing that happens in the train, hence, his evidence should be discarded. It is already observed that Vishal Parmar, PW-74, has stated that he travels regularly by the local trains, but it is not that he is a commuter travelling daily by local trains, therefore, this submission will not affect his testimony.

572. It appears that the defence is confused or is creating confusion to mislead by pointing out to the evidence of several injured witnesses to show that Vishal Parmar, PW-74, could not have sat on the third seat from Hutatma Chowk side on the seven seats bench facing towards Churchgate as per his evidence. But infact the cross-examination of those witnesses does not establish this and on the other hand it leads to the inference that in fact Vishal Parmar, PW-74, may have sat on the seat as stated by him. Though, Devendra Chavan, PW-123, did not state in his affidavit as to on what seat he was sitting, it has come in his cross-examination that he sat on the second seat from the window on the east side, on the

northern side of the coach in the row of the seven seats towards the side of Virar and it is in his evidence that his colleague and friend Kiran Kini, PW-191, sat by his side. This Kiran Kini, PW-191, had become deaf and is not able to speak properly, because of the loud explosion in the compartment and the injuries that he had sustained because of which his hearing was severely impaired. Therefore, the defence advocate was asked to write questions one by one and the witness wrote the answers. He has filed his affidavit Ext. 1347 as was filed by Devendra Chavan, PW-123, at Ext. 1389 and they were cross-examined. He admitted that Devendra Chavan, PW-123, is his friend, that he boarded the first-class compartment from Virar side in the Virar fast local of 5.22 p.m. from Marine Lines Railway Station. However, he denied the suggestion that he sat on the seven seater seat facing towards the Churchgate and that his friend, Devendra Chavan, PW-123, was also sitting on the same seat, though he admitted that he sat besides Devendra Chavan, PW-123. In answer to further question he admitted that Devendra Chavan, PW-123, was sitting at serial no. 2 from the eastern side and he was sitting at serial no. 3, but again denied the suggestion that the serial no. 2 was from the eastern side, but reconfirmed that he answered correctly in the question that Devendra Chavan, PW-123, was sitting on the eastern side. He also denied the further suggestion that he as well as Devendra Chavan, PW-123, gave their seats to other passengers. Realizing that these answers were not helping the defence, he was suggested and he denied the suggestion that ATS officer Mohite talked with him about this case and conveyed to him

that he should say that he and Devendra Chavan, PW-123, did not stand or got up at Borivali Railway Station and that they were sitting on serials no. 2 and 3 respectively on the side of the seven seats bench facing towards Churchgate and also denied the suggestion that he is giving false answers as he was tutored by ATS officer Mohite. Thus his evidence does not establish that he immediately sat on the seat no. 3 near Devendra Chavan, PW-123, when he boarded the train at Marine Lines Railway Station and it does not corroborate his evidence. Naresh Kalokhe, PW-126, is one more traveller and it is in his affidavit that he boarded the first-class compartment in Virar fast local at Dadar and in his cross-examination it has come that he sat on the row of seven seats with his back to Virar when the second or third person got up. It is not clarified during his cross-examination as to whether he got a seat at Dadar itself or at some station ahead and the seat number is also not obtained from him. It is submitted that the inference is that Kiran Kini, PW-191, got up at Borivali and gave his seat to Naresh Kalokhe, PW-126, who sat on the third seat. I do not think that such an inference can be drawn because it is a considerable distance from Dadar to Borivali and one cannot jump to such a conclusion, moreso when Naresh Kalokhe, PW-126, was not asked as to where he got the seat. On the other hand Kiran Kini, PW-191, has specifically denied that he and Devendra Chavan, PW-123, gave their seats to other passengers at Borivali. The evidence of Atmaram Dalvi, PW-136, is taken help to show that a 10 years old boy was sitting by the window on the west side on the seven seats bench in front of him. It has come in his

cross-examination that he sat in the window seat on the left side facing towards Virar in the row of three seats in front of the row of seven seats. By this it was tried to be shown that one more seat in the seven seats bench was occupied. A wrong suggestion was given to him that it is written in his affidavit that he was sitting in the window seat on the left side facing towards Virar. His affidavit has established that there was a boy sitting on the western most seat on the seven seats bench, which was a window seat. Then again it was established in the cross-examination of Vijay Nair, PW-187, that he was sitting in the second seat from the western side on the seven seats bench on the Virar side and it is established by the evidence of Balam Rane, PW-190, that he was sitting on the middle seat on that bench facing towards Churchgate. It has come in the cross-examination of Abhay Shrivastav, PW-192, as a positive statement that he was sitting on the three seats bench on the western side, that was in between the two doors. He made a positive statement that he was not sitting on the three seats bench facing the seven seats bench that was towards Virar and a wrong and misleading suggestion was given to him that he had stated to the police that he was sitting in the portion of the bogie towards Virar side after the door where there were three seats benches and a seven seats bench. Though, he denied this, that portion from his statement, if any, was not confronted to him and got proved. Thus his evidence does not take us anywhere and it is clear from the answers given by Kiran Kini, PW-191, that the evidence of Vishal Parmar, PW-74, that he sat on the third seat from the eastern side on the seven seats bench facing

towards Churchgate has not been controverted or proved wrong. The contents of the statements under section 161 of the Cr. P. C. of five witnesses are relied upon to show that total nine persons had sat on the seven seats bench and it was not possible to make space for a 10th person, i.e., Vishal Parmar, PW-74, and though it is submitted that the statement under section 161 of the Cr. P. C. cannot be used for proving the guilt of the accused, a strange submission was made that it can be used for the innocence of the accused. There is no need to make any comment on this and some submissions are made in respect of the answers given by ACP Patil, PW-186, about the above witnesses, but they are irrelevant.

573. An improvement made by Vishal Parmar, PW-74, and certain portions from his statement with which he was confronted and proved as contradictions are the basis of the submissions that his evidence is not reliable and is required to be discarded and therefore his whole deposition becomes doubtful. If one goes in detail then the three sentences that the witness stated in his chief-examination are the subject matter of the omissions and contradictions. They are, (i) 'I got down at Dadar', (ii) 'two persons got down in front of me at Dadar and were walking fast empty handed', and (iii) 'as I was engrossed in the thought of my work, I did not think much about the persons walking away without taking their bag with them'. In respect of the first sentence, it is clear that he did not state from which door he got down. However, in cross-examination in paragraph 29 on being asked he stated that he got down from the same door by which he boarded the train. Thus this is an

explanation given by the witness, that too in cross-examination and cannot be termed as an improvement. However, immediately he was asked and he stated that it did not happen that he got down from the last door of the bogie, but then stated that he does not remember whether he had stated so to the police. This portion was marked as Ext.1792(3). To my mind, it is immaterial whether he got down from the front door or the back door so long as it is stated by him that he got down at Dadar and it cannot be construed as a contradiction moreso when it is not stated by him in his chief-examination before the contradiction can be pointed out. This nullifies the submission that it is very difficult for a person to cross the entire gangway during the rush hours and any sensible person will not do so, which shows that he did not alight from the train as he never travelled in it. In respect of the second sentence it is submitted that the witness could not assign any reason why it is not mentioned in his statement and though PI Khanvilkar, PW-168, explained that the witness had stated so to him and it is in his statement but not in the exact words, it is submitted that this is a wrong deposition given by PI Khanvilkar, PW-168, because it is not written in the statement of Vishal Parmar, PW-74. Next is the portion that was confronted and marked as Ext. 1792(4) about which the witness stated that it will not be correct to say that when he started going towards the bridge he saw those two persons walking ahead of him, that he had not stated so to the police and in this respect PI Khanvilkar, PW-168, stated that he had stated so. Now this portion will have to be read in the context of his answers that he gave before

the said portion was confronted to him that he says that he saw two persons at Dadar when he and they were walking, there was no other person in between them on the platform, they were four steps away from him, they were walking fast, he was also walking fast and the bridge was at a distance of 10-15 steps from the spot where he got down. It is obvious that one will see only the persons who are walking in front and not the persons who are walking behind him and it is but natural for any passenger to climb the bridge for going out of the station. The relevant part is he having seen the persons walking fast empty handed and the contradiction, particularly about going towards the direction of the bridge is infact not a contradiction, but a continuation of his earlier evidence. In respect of the third sentence when he was confronted with the portion Ext. 1792(5) he stated that he had not stated it to the police.

574. To my mind, if the three sentences reproduced above uttered by the witness in his chief-examination are read *vis-a-vis* the confronted portions Exts. 1792 (3) to 1792(5), because they are also consecutive sentences, they will definitely convey the same meaning as the evidence given by the witness though not in those exact words and sequence, except the witness stating about getting down from the back door. These portions, i.e., Exts. 1792(3) to 1792(5), was consecutively read as follows :-

'When the Dadar Station came, he got down from the back door on the western side alongwith the other passengers, that there was pushing, that when he got down on the platform and started going towards the bridge, at that time he saw the two persons also

walking in front of him in speed, however both of them were walking fast moving their hands and he realized that the black bag was not in the hands of any of them, that he became suspicious about it, however, as he was thinking about his work at that time he neglected it and started climbing the bridge'.

Thus, infact, these are not omissions and contradictions and infact they corroborate his evidence rather than contradicting it, because they give some more details and are by way of explanations. Hence, the so called omissions and contradictions do not affect the credibility of the witness and do not make his evidence doubtful.

575. In continuation of the same topic the evidence given by Vishal Parmar, PW-74, in paragraphs 2 and 3 of his evidence about he going in front of the Plaza Cinema to the BMC Bank at Dadar, meeting his client, coming to know after about half an hour where there was a talk in the public about the blasts in the trains and he returning home, about he realizing that he had seen the two persons keeping the black coloured bag in the train when there were news after some months that some accused had kept bomb in the black coloured bags in the trains, he searching in the newspapers about the investigating machinery and coming to know about it, is reproduced and his cross-examination on that point and the answers given by him in his cross-examination are also reproduced and it is submitted that so many things happened to this witness in connection with the blasts, but he never approached the police, that being an aware citizen and having contact with the police he should have approached to the police station when he got suspicious and

the reason why he did not do so is that he never travelled in the said train and is a got up witness of the ATS. It is obvious that the defence is missing the point that this evidence given by the witness has not been shown as omissions or contradictions and on the other hand he has unhesitatingly given sufficiently detailed explanation about the actions after the blasts and upto the point when he realized about what he had seen on that day. So rather than impeaching his credibility, the explanations given by him in cross-examination in paragraphs 18, 31 and 39 have supported his evidence and shown that he is a truthful witness. The important answer that he gave is that he did not feel that he had any important information with him before he read in the newspaper about the bag and he came to know about it from the news that was given by the police. It was not suggested to him that he had come to know about the persons placing the bags in the trains immediately on the day of the incident or within a few days after it. Hence, there is no question of drawing an inference that he never travelled in the said train and he deposed falsely.

576. The conduct and evidence of Vishal Parmar, PW-74, after getting down at Dadar is criticized on the basis of the answers given by him in cross-examination and the information obtained under the RTI Act in respect of the person whom he had gone to meet. It has come in his chief-examination that he went to the BMC Bank in front of Plaza Cinema and met the client. Thus, he did not state the name of the client whom he had gone to meet, nor, did he state that the said client is an employee of the BMC Bank. This is more clear from

the answers in his cross-examination that he goes to the BMC Bank on the date of disbursement of loan by the BMC Bank and calls the employee there and after he gets the money, he takes him to the office of his employer for repayment of the loan, that he had gone to meet Lalit Waghela at BMC Co-operative Bank at Dadar and police did not ask him and he did not tell the name of the person whom he had gone to meet. A fruitless exercise was made by the A4 to call for information from the BMC Bank under the RTI Act, which is at Ext. 2911 and to prove it by examining Ankush More, DW-2. By the information in the letter, A4 was informed that Lalit Waghela is neither employed in the said bank nor in G/North branch of the bank. It has come in his cross-examination that any municipal employee can become member of the bank. It is alleged in the written submissions in respect of the answers given by him in cross-examination that they show that he is a witness who is tutored by learned SPP. This is obviously a silly and baseless submission because the witness is an employee of the BMC Bank and more importantly he was called by the defence as a defence witness. Now as his evidence did not help the defence, the defence examined Sukhlal Rathod, DW-24, who proved the contents of letter Ext. 3083 and the certified true copy of attendance books, Ext. 3084, though Ext. 3083 is not signed by him, but it is signed by his superior who is transferred. Thus it is a question whether the contents of Ext. 3083 can be relied upon? Even otherwise, the information given by him shows that Lalit Waghela was employed as a motor loader in the 'G' North Department of the BMC and on 11/07/06 he was absent. This

information is relied upon to show that Vishal Parmar, PW-74, could not have met Lalit Waghela on that day because he was absent from his duties on that day. However, this submission is ignoring the material that has come on record during the cross-examination of Sukhlal Rathod, DW-24, that the working hours of the BMC Co-operative Bank are from 11.00 a.m. to 3.30 p.m., that from the attendance book, certified copy of which is at Ext. 3084, they can only tell whether an employee has attended his duty from 10.00 a.m. to 1.15 p.m. and cannot tell where he has gone after 1.15 p.m. and whether he has gone to BMC Bank. This removes any doubt about Vishal Parmar, PW-74, having met Lalit Waghela at the BMC Bank, because it is only after the Virar fast local left Churchgate at 5.19 p.m., that he met Lalit Waghela at Dadar when he got down which may be around 5.40 p.m. on that day. Again it is in the cross-examination of Sukhlal Rathod, DW-24, that Ext. 3084 is the main attendance record and entries are made in the main attendance book by copying the entries in the spot muster book after 15 days, which is not his duty, therefore, in the absence of the spot muster book he cannot say whether the person who has copied the entries has copied them correctly or not. Thus, the information in the documents Exts. 3083 and 3084 are absolutely of no help to the defence to show the probability that Lalit Waghela would not have been at the BMC Bank around 5.40 p.m. on 11/07/06 and for this reason an inference can be drawn that Vishal Parmar, PW-74, had not gone to meet him on that day. His evidence about it is brought on record as an omission to state before the police, but PI

Khanvilkar, PW-168, who had recorded his statement, positively stated in his cross-examination that the witness had stated to him that at Dadar he went to BMC Bank in front of Plaza Cinema and met the client, but it is not in the statement and it remained to be written not because it is not important, but because, he, i.e., PI Khanvilkar, PW-168, told Vishal Parmar, PW-74, to state about it in the court. This explanation by PI Khanvilkar, PW-168, is also criticized though it has come in the cross-examination and it is submitted that it shows that he is making a mockery of the law of the land and the omission amounts to a contradiction, because it is a material part of the statement. To my mind, PI Khanvilkar, PW-168, has given a very good explanation and as is submitted by the learned SPP Raja Thakare that it is not that the investigating officer is required to take down each and every word that the witness states and he takes what is relevant. This is a very important submission because the question is not whether Vishal Parmar, PW-74, met his friend or client at Dadar, whether the person was an employee of the BMC Bank or an employee of the BMC and whether he was on duty or not, but the question is whether he got down at Dadar and in that respect his evidence is clear and not controverted and no inference can be drawn that because of the above things it will have to be held that he did not get down at Dadar.

577. The next submission about the conduct of Vishal Parmar, PW-74, after the blast about coming to know as to who is investigating the case after several months is criticized by submitting that it is not a natural conduct of a normal person if he does not talk

with a close person after the incident and though he was keeping himself updated with the news, he was required to search as to who was investigating the case and hence his evidence is false and not reliable. This aspect is already considered and in this respect his answer in cross-examination that he did not feel that he had any important information with him before he read in the newspapers about the bag, is the thing that sparked his memory taking him back to the incident that had taken place on 11/07/06 and co-relating it with the facts that he had seen and perceived. Thus, he cannot be discredited for the only reason that he had not disclosed about what he saw in the train to the persons close to him or to his employer immediately after the blasts.

578. It is alleged in the next submission that there is a delay of nearly four months after the blast after which the statement of Vishal Parmar, PW-74, was recorded and even if his explanation that it struck to his mind that on that day he had also seen two persons keeping a black coloured bag in the train when there was news after some months that some accused had kept bombs in black coloured bags in the train is considered. It is the only explanation of delay which is not believable as the news of the bag was published on 01/10/06 and thereafter there is a delay of 33 days. It is alleged that there is a substantial delay in recording his statement and that it was recorded after all accused were remanded to judicial custody and they had retracted their alleged confessional statements. The submission that news of the bag was published on 01/10/06 is obviously baseless because it is nowhere brought on record that it

had so happened. Now insofar as the evidence given by the witness, it is not an omission or a contradiction and in my humble opinion it is a most natural evidence and what more explanation of knowing about a particular thing can be expected? So infact there is no delay in recording his statement, much less a delay of four months because as soon as he came to know about it he approached the police on 02/11/06. In this connection learned SPP has relied on the observations of the Supreme Court in the case of **Sheo Shankar Singh, Appellants Vs. State of Jharkhand and Anr., Respondent (AIR 2011 SC 1403)**. It is observed in paragraph 49 that, *'the legal position is well settled that mere delay in the examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect. It depends upon circumstances of the case and the nature of the offence that is being investigated. It would also depend upon the availability of information by which the investigating officer could reach the witness and examine him. It would also depend upon the explanation, if any, which the investigating officer may offer for the delay. In a case where the investigating officer has reasons to believe that a particular witness is an eye-witness to the occurrence but he does not examine him without any possible explanation for any such omission, the delay may assume importance and require the Court to closely scrutinize and evaluate the version of the witness but in a case where the investigating officer had no such information about any particular individual being an eye-witness to the occurrence, mere delay in examining such a witness would not ipso factor render the testimony of the witness suspect or affect the prosecution version'*.

Learned SPP has also relied on the observation of the Supreme Court in the case of **Shyamal Ghosh, Appellants Vs. State of West Bengal, Respondent (AIR 2012 SC 3539)**. It is observed in paragraph 38 that the, *'the delay in examination of witnesses is a variable factor. It would depend upon a number of circumstances. For example, non-availability of witnesses, the Investigating Officer being pre-occupied in serious matters, the Investigating Officer spending his time in arresting the accused who are absconding, being occupied in other spheres of investigation of the same case which may require his attention urgently and importantly, etc. Some delay was bound to occur in recording the statements of the witnesses whose names came to light after certain investigation had been carried out by the Investigating Officer'*. On the strength of the observations of the Supreme Court, it will have to be said that the explanation given by Vishal Parmar, PW-74, for approaching the police on 02/11/06 is a very valid and acceptable explanation and I have already held that infact there is no delay in recording his statement.

579. The next aspect is in respect of the evidence by Vishal Parmar, PW-74, that officer Khandekar took his statement, whereas, it is clarified by ACP Patil, PW-186, as well as PI Khanvilkar, PW-168 that he had recorded the statement. It is submitted that this is a contradiction in the evidence of Vishal Parmar, PW-74, and the police officers and the only inference that can be drawn is that his statement was prepared by ATS officer and not recorded as narrated by him. In my humble opinion, no doubt Vishal Parmar, PW-74, has wrongly stated the name of ACP Khandekar, PW-174, as the officer

who had recorded the statement, but this aspect rather than discrediting his version shows that he has no pre-acquaintance with any of the officer and the names of Khandekar and Khanvilkar are somewhat similar. This aspect does not affect his evidence.

580. A large number of pages are devoted to describe the evidence that is against PI Khanvilkar, PW-168, and it is alleged that the evidence shows that he was a tainted and corrupt officer. Suspension of API Kolhatkar, PW-18, and Sr. PI Tajne, PW-161, are also relied upon to show that all these three officers are tainted officers having criminal background and being suspended during service, therefore, their connection with Vishal Parmar, PW-74, is established and this shows that the evidence of Vishal Parmar, PW-74, is liable to be discarded. The credibility of police officers *vis-a-vis* their suspension, etc., will be discussed subsequently, but, to my mind, insofar as the evidence of Vishal Parmar, PW-74, is concerned I fail to see how the bad patches in the career of the police officers will affect the evidence of Vishal Parmar, PW-74, when it is not shown that any corrupt practice was used for propping up this witness. There is absolutely no material by the defence to show that these three police officers have prepared this false witness. Subsequent to this some other submissions about real eyewitnesses being dropped by the ATS, etc., are made, but that is not relevant for the purpose of assessing the evidence of Vishal Parmar, PW-74. There are also allegations that before the test identification parade, the A4 was shown to Vishal Parmar, PW-74, outside the court when he was produced from jail custody without veil and also submissions about

identification in the test identification parade.

581. In respect of the identification of the A4 by Vishal Parmar, PW-74, in the court, it is submitted in point no. 31 that A4 in his deposition stated that he was also pointed out to him by some other officers when he came to the court for giving evidence, therefore, he falsely identified him. It is also submitted that Vishal Parmar, PW-74, resides beside the Arthur Road jail and has easy access to see the A4 very clearly, that in the court the accused are made to wait outside the court room where the witness also have a chance to see the accused and can be pointed out by the ATS officers. Hence, the identification in the court has no value. These submissions on the face of it are vague and baseless and there is only a single suggestion to Vishal Parmar, PW-74, which he turned down, that he identified the A4 before the court since he was shown by Sr. PI Tajne, PW-161, and his photograph was shown to him in the ATS office.

582. It is clear from the above discussion that though the defence tried hard to discredit the evidence of Vishal Parmar, PW-74, by the answers given by him in cross-examination and by the evidence of defence witnesses and the documents obtained under the RTI Act, it has not been successful in doing so and Vishal Parmar, PW-74, has withstood the test of cross-examination thereby rendering his evidence as a cogent evidence. The answers given by him in paragraph 11 in his cross-examination about the business of his employer and the answers given in paragraph 28 about day-to-day working, banks, names of employees and the manner in which the said business was conducted show that he has full knowledge about

his work and he told the details unhesitatingly and clearly. This evidence is not controverted which shows his *bonafides* and establishes his honesty.

583. It is clear from the above discussion that in respect of the incident in question the evidence of Vishal Parmar, PW-74, is unimpeached and a cogent evidence and looking at the facts and circumstances of the case it cannot be said that he is a got up witness or that his evidence is fabricated. I have, therefore, no hesitation in accepting his testimony. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A4 had a black rexine bag with him when he boarded the first-class compartment of the 5.19 p.m. Virar train at Churchgate and he was accompanied by one more person and when they got down at Dadar, they did not have the bag with them. **This is circumstance no. 5 proved by the prosecution.** It is against the A4.

584. Though by the above evidence the prosecution has proved a circumstance against the A4, the A4 has taken the specific defence of alibi and in this context Vishal Parmar, PW-74, was asked and he expressed ignorance as to whether on that day from morning to evening the A4 was at Mira Road. This is the only suggestion given to the witness and in comparison much more evidence and submissions are made by the A4 in his written submissions Ext.2825 and considerable oral evidence is given by him and also of defence witnesses and the written submissions are also extensive. In the written submissions Ext. 2825 filed alongwith his statement under section 313 of the Cr. P. C., the A4 has described what he did on

11/07/06, viz., getting up at 0500 hours at his house, offering namaz in Shams Masjid, starting the work of his business at his house on his computer, visiting cyber cafe for internet surfing after lunch, returning to his house at 1600 hours, offering namaj in the same Masjid at 1745 hours and coming to know about bomb blasts at Mira Road and Bhayander from the public when he was going to offer Maghrib namaj and talking with his mother and wife, who were at his house at U. P. from his mobile phone. All these things are reiterated by him in his oral evidence, but there is an inconsistent statement that his mother called him on his mobile after sometime from the village to ask him about his whereabouts and they talked for 5-6 minutes. He did not speak about coming to know about the blast at Bhayander and talking with his wife and that he had made the phone call and talked with his mother and wife. Further he deposed that he talked on his mobile with his business contacts from 08/07/06 to 11/07/06 as usual and sent SMS for news and he can show this from the calls in the CDR Ext. 3765(3), which is of the mobile he was using and the tower locations from 07/07/06 to 11/07/06 are of different locations and a call that his mother made is at 8.45 p.m. on 11/07/06.

585. Nodal officer Yogesh Rajapurkar, DW-36, proved the contents of the CDR and cell ID addresses Ext. 3765, of the mobile no. 9867139179, admittedly used by the A4. His evidence has been discussed in paragraphs 482 and 483. In point no. 22 of the written arguments the evidence given by the A4 in respect of what he did on 11/07/06 is reproduced. Specific details of calls alongwith the tower

locations are described on the basis of the CDR Ext. 3765(4) and (5) and it is submitted that they show that he was at Mira Road at 1530 hours and 1914 hours and could not have been at Bandra at 1530 hours and could not have travelled in a taxi to Churchgate, alighting at Dadar and going back to Mumbra within 3 hours and 45 minutes. It is submitted that he had made a complaint before this court by Ext.3798 on 03/11/06 in which he stated that he was at his house when the blast took place and was about to go to the spot of the blast for helping the injured, but returned back as he came to know that police are not allowing anyone to go there. The statements in Ext. 3798 do not show what he did on the whole of the day on 11/07/06 and it is not possible to except that he would be at the site of the bomb blast at the time of the bomb blast, because in that case he would have been injured.

586. Learned advocate Wahab Khan reiterated the above submissions and has submitted that even before the CDRs were obtained the A4 had given the details of what he did on 11/07/06 and his evidence on oath is subsequent to the obtaining of CDRs. Hence, his oral evidence is corroborated by the contents of the CDRs which show that he is speaking the truth. Learned SPP Raja Thakare submitted that if the cross-examination in respect of the mobile that was admittedly used by the A4 is considered, then it is clear that he was using a sim card that was not in his name but was in the name of some other person and this is why he alleges that it was used for his nefarious and anti-national illegal activities. He submits that there is a reference of one Nathuram Tedgure from whom he

purchased a Nokia mobile handset with sim card which he was personally using, but the accused/the defence did not take any steps to call the said person for giving the evidence. Perusal of the written submissions Ext. 2825 shows the contention of the A4 that he had purchased a Nokia mobile handset with sim card from his friend Nathuram Tedgure, the number being as mentioned above, that he was personally using it for his personal and official work and contacting his family members, friends and business parties and it has been with him all the time till 27/07/06. During the evidence, the A4 stated inconsistently that he was acquainted with the said Nathuram Tedgure in connection with the printing business and he purchased his mobile handset as he was going to Qatar. In this respect, the learned SPP grilled him in cross-examination and the only conclusion that can be drawn from the answers is that the A4 is not honest and has not shown his *bona fides*. Though it is not stated by him anywhere earlier, it came out that he had a landline phone at his residence since 2003 or 2004, which was in his name, that he was receiving telephone bills once in six months as the phone was under a scheme, that he had given the address of his residence for the bank accounts and the passbooks of his bank accounts show his address and his name was registered in the voter's list and admitted that he had sufficient documentary evidence to show that he had a fixed residential address. He admitted that he is aware about the nature of the documents required for obtaining a sim card and sim cards of every service provider are available in every nook and corner of the place where he resides. Now here comes the twist in

the story made up by the A4 wherein he tried to wriggle out when faced with any awkward question. The learned SPP asked him as to whether it is correct that inspite of having sufficient documentary evidence about his residence, he did not obtain a sim card in his own name. He answered that he had a mobile in 2004 and the sim card was in his name and in respect of the mobile of Nathuram Tedgure, he stated that he got it cheap with the sim card, so he purchased it. Now again he goes on making up the story that he sold the mobile that he had in 2004 when he went to U.P. and surprisingly said that he destroyed the sim card. Realising his folly, he corrected himself and again said that the sim card was misplaced. He was obviously caught on the wrong foot. He had to admit that he could have obtained a sim card with the same number from the service provider and that he had given that number to all his relatives, acquaintances, friends and business contacts and surprisingly does not remember the mobile number of that sim card and also admitted that he did not apply for obtaining the sim card with the same number. I do not think that these answers will show the *bona fides* of the A4. On the other hand they show *mala fides* and that he is hiding some things.

587. In respect of the said Nathuram Tedgure he admitted that he neither produced any documents about purchase of the said mobile nor he cited him as a defence witness. Thus, it is obvious that though the defence has made strenuous efforts to examine a large number of defence witnesses, it did not even apply to summon Nathuram Tedgure or even cite him as a defence witness. A4 was

specifically cross-examined about certain landline numbers reflected in the CDR of his mobile, but all that is not so relevant insofar as his defence of alibi is concerned. The most important thing is that there is no incoming or outgoing call for a period of 3 hours and 45 minutes on 11/07/06 from 1530 hours to 1914 hours, the exact period when the alleged operation of carrying the bombs from Bandra to Churchgate and travelling from Churchgate to Dadar and getting down at Dadar took place. Though it is submitted in the written arguments that it is not possible to travel so much in this period, the travel timings are not elaborated to explain this. On the other hand from the evidence of taxi drivers Rajesh Satpute, PW-77, and Santosh Singh, PW-63, it can be gathered that the travel time from Bandra to Churchgate is about 1 hour and 15 minutes by taxi and the travel time from Churchgate to Dadar by train may be not more than 20 minutes. This travel time can easily fit in between the blank period of calls in the CDR of the A4. Thus no inference can be drawn on the basis of the entries in the CDR of the mobile that was admittedly used by the A4 that he may not have been in the concerned train at the relevant time. The accused has stated that he had done the evening namaj at 5.30 p.m. at Shams Masjid. Except his words there is no evidence for it. He could have brought some witness, if he was so sure, to say that he was present at the masjid for namaj from 5.30 p.m. onwards.

588. Learned SPP's submissions on the basis of the above answers are very much logical and legal and therefore acceptable. He submits that A4 was using that phone benami to conceal his identity

and at the cost of repetition he submitted that mobile is not a body part and will at the most show the location of the handset and not of that person. In this respect my observations in paragraph 491 supra are squarely applicable again to this case wherein I have held that there cannot be a presumption that a mobile is always with the person and, therefore, the locations in the CDR will not establish the location of the person using it, because a mobile is not a body part of any person. The important submission by the learned SPP is that the onus is cast on this court to weigh two things. On the one hand it is the evidence in the nature of abstract things like locations of the mobiles for which there would not be any means to ascertain who actually was possessing it at the relevant time. As against this, on the other hand, the court has before it a concrete physical evidence in the nature of deposition of a witness whose version can be tested on the touchstone of cross-examination and the cardinal principle of appreciation of evidence. He submits that there is a total imbalance in these two types of evidence and by its very nature the evidence of an eyewitness will have weight over the inferential evidence about location of mobile towers.

589. The learned SPP is perfect in making his submissions. On the basis of the contents of the CDR of the mobile that was being used by the A4 no inference can be drawn that he was at Mira Road at the time when Vishal Parmar, PW-74, saw him in the train at Churchgate as well as at Dadar and no negative inference can be drawn that he was not at Churchgate or Dadar at those times. Thus as mentioned earlier, the A4 has not given any explanation about the blank period

of 3 hours and 45 minutes, except that he was at his house, for which there is no means to ascertain and there is no evidence about it.

590. In my humble opinion, the oral and documentary evidence given by the A4 to prove his defence of alibi is uncogent and unconvincing and does not even show a preponderance of probability about it being true. Hence, it will have to be held that he has failed to prove his defence of alibi and therefore the circumstance no. 5 proved by the prosecution is unaffected. It will have to be held that he has taken this false plea of alibi, which is an additional circumstance in the chain of circumstances against all the accused. It is the third additional circumstance against all accused. It is the first additional circumstance against the A4.

591. The last witness in this group is Kishore Shah, PW-60 and it can be said that by far he is the best witness out of the four travellers considering the fact that he had gone to the Borivali Railway Police Station on 14/07/06, i.e., two days after the incident and reported his suspicion. He is the first witness in time, which *prima facie* makes him a reliable witness. It has come in his evidence that he boarded the first first-class compartment towards Virar side of the 5.37 p.m. Virar fast local on platform no. 3 and stood in the middle of the two doors as there was no place for sitting, that two persons entered the compartment about two minutes before the departure time of the train and said that they wanted to go inside and he moved aside to let them go and they went inside, that one medium built person out of those two was having a black coloured

bag having chain, which they kept on the right side luggage rack, if one stands facing towards Virar in the train. It has come in his evidence that there was more crowd in the compartment at Marine Lines, that after Bombay Central those two persons tried to go towards the door, had some exchange of words with other passengers, who asked them where they want to get down and they told them that they want to get down at Dadar, that the other passengers asked them as to why they were standing inside the compartment and that there were many trains for going to Dadar and why they caught the Virar train, that he also thought similarly, that those persons said that they are new and thereafter they got down at Dadar. This witness is an injured in the blast as he traveled upto Borivali and it has come in his evidence that he went towards the opposite door as he wanted to get down at Borivali and was waiting for the platform no. 4 to come and when the train reached at Borivali at about 6.30 p.m. and was about to stop, there was a loud explosion and he alongwith other persons who were standing near the door were thrown on the platform. It has come in his evidence that he did not know as to what had happened, people were falling on each other and there was chaos and commotion, that he lost his spectacles, purse, mobile and a handbag of clothes and his pant was torn, that he sustained injuries on his forehead, lips, both elbows and legs and people started saying that there was a bomb which he also realized. It has come in his evidence that he wanted to go to the platform no. 6, but there was a huge crowd on the bridge and he did not have the strength to go through it,

therefore, he crossed the railway tracks, went to the platform no.6 and then went out of the railway station, that he wanted to catch an autorickshaw but a policeman approached him on seeing that he is injured and told him that he would take him to the Bhagwati Hospital, which he declined and asked him to engage an autorickshaw for him so that he can go home. It has come in his evidence that a couple was going by an autorickshaw, the policeman asked them to come out and made him sit in that rickshaw and then he went home and from his home he went to his family doctor, Dr. Gohil and in the same night he went to an ENT doctor, who advised him to take rest. This is his evidence about the incident.

592. It has come in his evidence that he had a doubt about the two persons, that he went to Borivali Railway Police Station on 14/07/06, i.e., after two days, and told them about his doubt and that he was injured in the blast, his statement was taken during which he gave some description of the two persons. He waited there for some time as the police told him that they were calling a person to prepare a sketch, but as that person did not come he went back. It has come in his evidence that police visited his house to meet him 2-3 times in between, but he was not at home, therefore, in the last week of October, 06 he went to the ATS office to inquire, was taken to officer Patil who told him that they had caught some persons and asked him whether he could identify the persons about whom he had stated in his statement and he said that he could do so if they were brought before him.

593. His evidence is clear and unhesitating and it has come in his

evidence that he participated in the test identification that took place on 07/11/06 and in the parade conducted by SEO Barve, PW-82, he identified the A13 as the person who had kept the bag in the train on the day of the blasts. SEO Barve, PW-82, asked A13 his name and he told it as Asif Bashir Khan. The evidence in respect of the identification parade will be discussed subsequently. However, he unhesitatingly identified the A13 in the court, which is a substantive evidence, as the person whom he had seen keeping the bag on 11/07/06 and whom he had identified on 07/11/06.

594. Learned advocate for the A13 attacked the credibility of the witness on various grounds. First is his prior association with the police, particularly, PSI Kisan Gaikwad and Sr. PI Tajne, PW-161, on the basis of the certified copies of two earlier chargesheets. First is Ext.2502, which is the certified copy of chargesheet of C. C. No. 40/P/03 in connection with C. R. No. 129/02 of L. T. Marg Police Station. It shows PSI Kisan Gaikwad as the investigating officer and the case is for the offences punishable under sections 420 and 414 of the IPC read with 34 of the IPC and the fourth accused is shown as Kishore Popatlal Shah, who was discharged from that case as per the order dtd. 25/06/09, certified copy of which is at Ext. 4382. Now in this respect the learned SPP has rightly submitted that except the similarity of the name, the age and the address of this person and of the witness are totally different. Kishore Shah, PW-60, gave his age as 57 years when he gave evidence on 04/01/11 and his residential address of Borivali(E). The person Kishore Popatlal Shah described in the chargesheet in Ext. 2502 is shown to be of the age of 39 years

when he was arrested on 11/07/02. Thus in 2011 his age would have been 48 years, which does not come anywhere near the age of Kishore Shah, PW-60 in 2011, which is 57 years. There is a difference of nine years. A difference of one or two years would have been acceptable. The address given in the chargesheet is of Bhiwandi, Dist. Thane, which was verified by the police. A strange and baseless submission was made that this address is of a godown of the accused. There is nothing to show this and on the other hand the address that is given appears to be a residential address. Infact the address of the accused no. 1 Kamlesh Velji Shah in that case is also of Bhiwandi. Thus it cannot be concluded that the said accused no. 4 in that case is the witness Kishore Shah, PW-60.

595. Next is Ext. 3418 which is the certified copy of judgement and other case papers in C. C. No. 1246/PW/06 which clearly shows that the accused in that case is Kishore Shah, PW-60, because the address is the same, i.e., of Borivali(E), and his age on the date of arrest on 10/03/07 is 53 years in the year 2011, which makes it 57 years in the year 2011, which is what is stated by Kishore Shah, PW-60. However, this case is in respect of the complaint lodged by his wife under section 498-A of the IPC and it is of Police Station Kasturba Marg and it does not show that PSI Kisan Gaikwad and Sr. PI Tajne, PW-161, were the investigating officers.

596. It is clear from the above discussion that the submissions of the learned advocate that Kishore Shah, PW-60, was connected with some police officers, who were later on deputed to the ATS and who introduced him in the case, is not substantiated by the documents

that are produced. This also takes care of his submission that non-examination of Kisan Gaikwad, a cited witness, is to suppress his connection with the accused. Sr. PI Tajne, PW-161's, cross-examination on this aspect has not revealed anything. The important thing here is that all this is being said behind the back of the witness without applying for recalling him and confronting him with the documents and without calling PSI Kisan Gaikwad as a defence witness since he was not examined by the prosecution. You cannot condemn a witness only on the basis of the documents without confronting him with them. A lame and unacceptable submission is made that the defence could not give suggestions about the previous cases because documents were obtained later on. He could have been recalled like so many other witnesses who were recalled.

597. Learned advocate for the A13 submits that Kishore Shah, PW-60, was not injured and the medical certificate Ext. 2733(71) is false, duplicate and the date is changed and it is filed by back door and not proved by examining the doctor, who had issued it. However, Kishore Shah, PW-60, does not say that he had given it to the police officer and Dy. SP Ahir, PW-144, and ACP Patil, PW-186, do not say that he gave it or they collected it from somewhere. An absurd submission is made that no family member of the witness is examined to prove that he was injured in the blast. All these submissions are obviously made ignoring the record. By the application Ext. 1551, the learned SPP prayed under section 294 of the Cr. P. C. for exhibiting the injury certificates of injured persons in all the seven blasts that were filed alongwith the chargesheet. The

advocates for the accused did not give say to the application though they were asked to do so. Therefore, in view of the fact that there is no dispute about persons being injured in the seven blasts, the application was allowed and as many as 759 injury certificates were received in evidence and marked as exhibits. This was done on 07/04/12 and insofar as all the remaining injury certificates are concerned, no dispute has been raised. So the dispute about this certificate cannot be accepted and non-examination of the doctor who examined the witness does not mean that the certificate is not proved. It is apparent that the investigating agency collected the medical certificate later on and the doctor issued a duplicate certificate mentioning the date on which he issued it. The contents of Ext. 2733(71) show the description of the injury sustained by Kishore Shah, PW-60, which gives rise to the inference that he is a honest witness. It is in his evidence that he had gone to the door of the bogie for getting down at Borivali and when there was a loud explosion he alongwith the other persons, who were standing in the door, were thrown on the platform and he sustained injuries on his forehead, lips, both elbows and legs. The contents of Ext. 2733(31) describe the injuries as abrasion at both knee joints, abrasion at left elbow joints and few abrasions on lips. The important injury is rupture of left ear drum, which is a classical symptom of effect of explosion. Hence, the submission of the learned advocate are not borne out from the record and on the basis of it, it cannot be said that the witness never travelled in the train in which the blast took place.

598. Kishore Shah, PW-60's evidence that he had sustained injuries on his face and on left hand and that he took the treatment from Dr. Maliya, was brought on record as omission to state before the police. In this connection Dy. SP Ahir, PW-144's evidence and explanation in cross-examination covers up this omission and shows that infact is not an omission. In paragraph 10 of his cross-examination he stated that the witness (Kishore Shah, PW-60,) may have stated before him that he had sustained injuries to his face and left hand, that he had taken treatment from Dr. Maliya's hospital, but he did not write all these things in his statement and the explanation for this is given in the earlier portion of the same paragraph that he wrote only the things that appeared important to him and he might not have written these things in his statement as they were not important and he wrote whatever was relevant out of the narrative that he gave, but did not write whatever was irrelevant. No doubt, this aspect of witness regarding sustaining injuries was also relevant, but his one answer in cross-examination has shown as to what exactly was relevant with the help of this witness, viz., he was an important witness out of the witnesses whose statements he recorded. He got an idea from his statement about the culprits as he had given the description of the two persons and therefore he was like an eye-witness. The important explanation is in paragraph 10 that in connection with the witness the description of the suspect was more important. This was in connection with the loss of articles and tearing of pant, etc.

599. Kishore Shah, PW-60's evidence that he lost his spectacles,

purse, mobile and a handbag of clothes is brought on record as an omission to state before the police when he gave his statement and when asked about it in cross-examination he answered that he cannot assign any reason why these things are not written in his statement. He however gave a sound explanation by explaining that he thought that they, i.e., the police, must be taking down whatever they thought necessary. Now, it has come in his cross-examination that he came to know about the loss of said articles when he was on the platform itself, but the police did not ask him about his railway pass on that day and even officer Patil did not ask about it upto the identification parade. His credibility is endorsed by his answer in his cross-examination about the officer who took his statement about which he stated that he does not know whether the officer was having two stars or three stars, that he was not in uniform and he does not know whether he was an inspector or a constable. The important thing that he stated that he was of railway police station. The cost of articles that he lost was asked and he stated that the mobile was purchased at a cost of Rs.2,500/- or Rs.3,000/-, there were two pants and one shirt in the bag, the value of which may be maximum Rs.1,000/- and there was around Rs.3,500/- in the purse. The last answer that he gave in paragraph 12 of his cross-examination throws light on his honesty and what a common man thinks about loss of his articles in such an incident, because he stated that as his life was saved, he did not think that the articles that he lost were valuable.

600. Learned advocate for the A13 submitted that the witness is

lying about the articles, which shows that he had not travelled in that train because an inventory, Ext. 1586, of the articles found at the spot after the blasts was prepared and its contents do not show any of the articles that the witness claims to have been lost. Perusal of the inventory shows that the articles therein are described alongwith the names of the owners wherever available and they comprise of steel tiffins, calculators, mark-lists, bank passbooks, ATM cards, cash amounts and miscellaneous articles and there is no article having the name of the witness. To my mind, the articles that the witness lost, i.e., clothes, spectacles are inconsequential and insofar as the cash amount, mobile is concerned there is a possibility that they may have been stolen. The list does not include clothes and it cannot be said that all articles that were lying at the spot must have been collected before police took the inventory and the possibility cannot be ruled out that someone out of the persons, who had rushed there to help for carrying dead bodies or the injured, may have picked the valuables. One cannot expect a mathematical accuracy in such a big incident considering the chaos and commotion that would have been there after the blast. One cannot expect an account of each and every article and say that it should be found to indicate the presence of the witness at the time of the explosion. Thus, to my mind, an inference cannot be drawn that just because no article of the witness is in the inventory Ext. 1586, that he had not travelled in the said train. Hence, this aspect does not discredit the witness particularly in view of his explanation that he did not think that the articles that he lost were valuable as his life

was saved.

601. Learned advocate submits that the evidence of Kishore Shah, PW-60, that the bag was kept on the luggage rack is falsified by the evidence given by Dy. SP Ahir, PW-144, in his chief-examination that the tin of the western side of the bogie was torn apart and this was also clarified from ACP Khandekar, PW-174, in his cross-examination that platform no. 4 was on the east side of the train and the blast had taken place on the western side of the bogie and that if one stands there facing Virar, the site of the blast is on the left side. To my mind, these submissions are obviously made on the basis of the evidence given by Kishore Shah, PW-60, in his chief-examination that the bag was kept on the right hand side of the luggage rack, if one stands towards Virar side in the train. However, the submissions overlook the answers given by the witness in cross-examination in paragraph 16 that he had kept his bag on the luggage rack, that he was facing towards the Churchgate side when he was standing in the train and had kept the bag on his right side towards the direction of the Law College and this is important, which is on the west side. The next sentence is most important that the person who had kept the black bag had kept it on the luggage rack on the same side, which means on the west side. These answers are uncontroverted. In view of these answers, I fail to understand how the learned advocate has made these submissions and on the other hand the answer given by Dy. SP Ahir, PW-144, that the tin of the western side of the bogie was torn apart and the answer given by ACP Khandekar, PW-174, that the blast had taken place on the

western side of the bogie read with the contents of the spot panchanama Ext. 540, which shows that the western side was destroyed completely, corroborates the evidence given by Kishore Shah, PW-60. Thus, this submission is incorrect and is made without considering the entire oral and documentary evidence on this point. The submission about the evidence of Kishore Shah, PW-60, that the bag was kept on the luggage rack is falsified by the evidence of police officers is also obviously incorrect, if one considers the answers given by Dy. SP Ahir, PW-144, in paragraph 8 of his cross-examination in which he has stated that all the four benches of western and eastern side were totally damaged and that the flooring of the bogie was damaged, but was not pushed down or broken, that the portion of the bogie above the windows upto the roof of the bogie had blown outside towards the west side and his answers in paragraph 9 that the flooring below the blown up portion was damaged, but not pressed down. Thus, one can gather that the bomb was not placed nearer to the floor, but it was placed nearer to the roof of the bogie, thereby causing more damage to the upper portion of the bogie.

602. Kishore Shah, PW-60, stated in his chief-examination that he started from his shop at about 5.00 p.m., went through the subway to the Churchgate Station and boarded the 5.37 Virar fast local, which was already standing on platform no. 3. In his cross-examination he stated that he could not tell the exact time when he reached the Churchgate Station, but the 5.37 Virar local was standing there. Then he was asked as to whether he had stated to

the police that he reached the Churchgate Station at 5.30 p.m. and the train was already there and he stated that he cannot say whether he stated so to the police and why it is so written in his statement. That portion from his statement was confronted to him and proved in the evidence of Dy. SP Ahir, PW-144, and marked as Ext. 1589(5). Placing reliance on these answers *vis-a-vis* the contents of the train control charts, Exts. 3051(4), which show that the scheduled time of arrival of this train at Churchgate was 1730 hours and it arrived two minutes late and departed right time at 1737 hours as per the contents of Ext. 3052(2) and as also specifically given in the Note Ext. 2098, it is submitted by the learned advocate for the accused that the witness stating to the police that he reached Churchgate Station at 5.30 p.m. at which time the train was already there is obviously false and shows that he did not board that train on that day. In my humble opinion, these submissions are based on the specific suggestion that he had stated to the police that he reached the Churchgate Station at 5.30 p.m., whereas, the portion Ext. 1589(5) reads that he came into the Churchgate Railway Station in the evening at about 1730 hours, which, to my mind, does not mean that he reached exactly at 1730 hours. Hence, this submission does not affect the evidence of the witness that he boarded the 5.37 Virar fast local. Infact, the question that was asked after the portion from the statement was confronted to the witness and the specific answer that was given, explains this very nicely. He was suggested in the question that the 5.37 Virar fast local was not standing on the platform no. 3 in the Churchgate Railway Station and the

unhesitating answer that the witness gave that he does not know when that train came but when he reached there, it was standing. At the cost of repetition, it will not be out of place to reiterate my observations about reliability of the entries in the train control charts proved by Avdheshkumar Shukla, DW-16, in paragraph 560 supra wherein after discussing the evidence of the said witness, I have observed that it is a question as to whether the entries in the train control charts can be relied upon implicitly for holding that the witness is giving false evidence or that he did not travel in that train on that day.

603. Learned advocate for the accused submits that Kishore Shah, PW-60, stated in his chief-examination that there was no place for sitting and in cross-examination he also stated that when the two persons entered the train it was full and people were standing, however, it has come in the cross-examination of ACP Khandekar, PW-174, that two passengers, i.e., Nilesh Amrutlal Soni and one more person, whose statements he had recorded, had stated to him that they boarded the train from platform no. 3 at Marine Lines and Nilesh got a window seat and the other person got a seat on the seven seats bench. This shows that seats were available at Marine Lines and therefore the evidence of Kishore Shah, PW-60, about there being no place for sitting shows his falsity. In my humble opinion the submission is baseless because ACP Khandekar, PW-174, was asked to refer to the statements under section 161 of the Cr. P. C. that he had recorded and their contents. The contents of such statement cannot be considered as per law and the evidence about

the contents cannot be given or even considered. The defence could have very easily asked the prosecution to call these two witnesses for cross-examination or could have examined them as defence witnesses in order to disprove the evidence of Kishore Shah, PW-60, that there was no place for sitting. Hence, this submission is not legal.

604. It is alleged by the learned advocate that the case diary in respect of Kishore Shah, PW-60, is tampered because it is admitted by Dy. SP Ahir, PW-144, who recorded the statement of this witness, that he did not put the dates below his signatures in the statements of 28 witnesses, but he put the date only below the signature of the statement of Kishore Shah, PW-60. At the cost of repetition it will have to be pointed out that this submission is baseless ignoring the other evidence given by the witness. Dy. SP Ahir, PW-144, denied the suggestion that PI Tajne and Khandekar of the ATS prepared the statement of Kishore Shah, PW-60, and asked him to sign it. He was asked to go through the case diary and he stated that there is an entry in the case diary that he had called him, that he is an important witness, that he is not coming and he orally informed all these things to PI Khandekar of ATS, but did not think it necessary to inform this in writing to the ATS as they were constantly meeting them everyday. He was not suggested that there is no entry in the case diary dtd. 14/07/06 about Kishore Shah, PW-60's statement being recorded on that day, however, he admitted that there is no entry in the case diary about that witness after 14/07/06. Out of curiosity, I perused the case diary dtd. 14/07/06 of C. R. No. 156/06

of Borivali Railway Police Station and found that it contains the entry about Kishore Shah, PW-60, having come to give the information about two persons, etc. The aspect about Dy. SP Ahir, PW-144, signing the statement of this witness only can be explained by his answers in paragraph 6 that he was an important witness out of the witnesses whose statements he recorded, that he had got an idea from his statement about the culprits, that he had given the description of two persons in his statement and therefore he was like an eyewitness. To my mind, this was the first witness in time who gave some clue about the suspects in the crime and there is nothing abnormal in the police officer in putting the date below his signature in the statement of this witness only.

605. It is necessary to consider a submission made by learned advocates for the accused time and again that the case diary in this case is tampered and tailored. Learned advocate for the A13 submits that he has pointed out from the evidence of PI Bavdhankar, PW-152, how the names of witnesses whose statements he claims to have recorded are not found in the case diary. He has pointed out to the cross-examination of ACP Khandekar, PW-174, and submits how he dropped an important witness. The cross-examination of PI Bavdhankar, PW-152, on this point is in paragraph 11 and it is in respect of PWs 43 to 47 and though he admitted on going through the case diary of C. R. No. 77 of 2006 that the facts of recording the statements of these witnesses and their names is not written therein, he explained that he had not maintained the case diary, but Sr. PI Rathod, PW-176, had maintained it and he handed over the

statements, panchanamas and the documents that he had seized to him. This does not concern Kishore Shah, PW-60.

606. In the cross-examination of ACP Khandekar, PW-174, on this point in paragraphs no. 14 and 15 of his deposition, though he admitted initially that there was no other witness other than Kishore Shah, PW-60, and Suresh Suvarna, who stated about any suspects, that on reading the statement of Suresh Suvarna, initially he felt that he was an important witness, at the end of the said paragraph he stated that he did not think it necessary to call said Suresh Suvarna for identification parade as the witness did not give him any important information. The cross-examination in paragraph 15 shows that the submission of the learned advocate for the accused that case diary is tampered and tailored is not correct because he admitted that a police constable had been injured in this blast, though he does not remember his name as Santosh Prakash Khanwilkar and when asked to go through the case diary and state when his statement was recorded, he went through it and stated that his name is mentioned in the case diary of 22/07/06. Now about the submission of dropping this witness, it has come in his cross-examination that though it was revealed in the statement of the witness that he had seen the suspect who had boarded at Bandra and who alighted at Andheri Station, he, ACP Khandekar, PW-174, did not have any suspicion after reading his statement because, this is important, he had not stated about the alleged suspect having anything in his hands. He explained that he did not call him for identification parade and did not prepare any sketch as he did not

feel that he was an important witness, because such things happen many times in the Virar train.

607. Learned advocate for the A13 submits that Kishore Shah, PW-60, identified the A13 as the A13 was shown to him when he was in the police custody in the Bhoiwada lock-up. He submits that the A13 was arrested on 03/10/06 and was in police custody upto 03/11/06 and it has come in the evidence of Kishore Shah, PW-60, that he went to the ATS office behind Bhoiwada Police Station in the last week of October, 2006, where officer Patil told him that they had caught some persons and asked him whether he could identify the persons about whom he stated in his statement. He submits that ACP Patil, PW-186, admitted in his cross-examination that ACP Khandekar, PW-174, had produced Kishore Shah, PW-60, before him and it was in the first week of November and that A13 was in the police station in the last week of October, 2006 and lodged in Bhoiwada lock-up and Kishore Shah, PW-60 had come to the Bhoiwada office. He submits that A13 in his first complaint Ext.4280 that he made on 09/11/06, stated that he was shown to some persons and he elaborated in his written submissions Ext.2834 filed with the statement under section 313 of the Cr. P. C. and also elaborated it when he gave evidence as DW-49. He submits that Amir Khan, PW-49, and Khurshid Begum, PW-51, have stated that photographs of the accused were shown and all these things show that the investigating officers showed the A13 to the witnesses.

608. In respect of the witnesses Amir Khan, PW-49, and Khurshid Begum, PW-51, it is only Amir Khan, PW-49, who has admitted that

when he was in the ATS office he was shown photographs of the A13, however, a wrong submission is made that Khurshid Begum, PW-51 was shown a photograph. She flatly denied this in her cross-examination, but she admitted that police had shown the A13 to her. The relevant thing here is that both these witnesses have not been put up in the test identification parade in respect of any of the accused including the A13 and the A13 has not named them in his written statement Ext. 2834 or in his evidence. Thus, whether or not they had their photographs with them and whether he was shown to them in police custody, is immaterial insofar as Kishore Shah, PW-60, is concerned. Kishore Shah, PW-60, has flatly denied that he was shown the A13 on the day of test identification parade, i.e., on 07/11/06, and further denied that he identified the A13 in the court as the ATS police showed his photograph to him and showed the A13 to him in the office and that the ATS officer came to his house twice or thrice and showed him the photograph of the A13 saying that he is the person to who he has to identify. ACP Patil, PW-186, also denied a similar suggestion. As against this, the A13 has vaguely mentioned in his application/complaint Ext. 4280 that during the police custody, police brought several people and showed him to them and told them to remember that it is Asif, who is involved in the blast. No date, period or month is specified though the application was given as early as on 09/11/06, immediately after his police custody period was over. It is obvious that he improved his version subsequently after prosecution witnesses had been examined by mentioning in his written statement Ext. 2834 that in the last

week of October, i.e., on 31/10/06, ATS officer ACP Patil and Kisan Gaikwad brought some people to the Bhoiwada lock-up and showed him to them and told them that he is Asif Khan and they should see him properly and subsequently he came to know them to be the witnesses Mohd. Alam, PW-59, Kishore Shah, PW-60, and Santosh Singh, PW-63. Though he mentioned Kisan Gaikwad in his written statement, during his evidence he did not mention him and he made an improvement by saying that S. L. Patil and staff brought some people to Bhoiwada lock-up and those people had his postcard size colour photograph in their hands, ACP Patil asked them whether they know him and they said no and then he told them to see him properly and that he is Asif Bashir Khan and he came to know their names as Mohd. Alam, PW-59, Kishore Shah, PW-60, and Santosh Singh, PW-63, when they gave evidence in court. It is obvious that he has gone on improving the story as the case progressed and considering the fact that Amir Khan, PW-49, and Khurshid Begum, PW-51, have not been put in the identification parade and Santosh Singh, PW-63, has not been given a suggestion that the A13 was shown to him in the Bhoiwada lock-up or his photograph was shown to him, the story put forward by the A13 is obviously made-up and not acceptable. Hence, the submission of the learned advocate on this point is not acceptable and does not affect the credibility of the witness.

609. Learned advocate submits that the defence of alibi was put to the witness and he stated that the A13 may be on duty upto 6.25 p.m. at Kandivali on 11/07/06. Other than this, the learned

advocate did not make any submission as to what inference should be drawn from this and to my mind, considering the evidence of Kishore Shah, PW-60, that two persons got down at Dadar which may be around 15-20 minutes after 5.37 p.m., i.e., when the local left, he could have probably reached Kandivali before 6.25 p.m. In any case, it is an innocuous answer by a person who may not be knowing that this is the defence of alibi and the legal implications of his answer and it does not carry much significance, considering the straightforward evidence given by Kishore Shah, PW-60, about seeing the A13 placing the bag on the luggage rack in the train at Churchgate before the train started.

610. Some untenable submissions are made by the learned advocate. One out of which is that the witness cannot describe the officer, who took his statement and though the sketch of the person whom he identified later on was not drawn on the day when he gave the statement, he could identify him. To my mind, remembering the face of the person without seeing him and remembering the face of the person on seeing him are different aspects and cannot be equated. One may remember the face of the person and his identity immediately on seeing him after many days, but one may not be able to recollect his face before seeing him, which is a normal phenomena. Dy. SP Ahir, PW-144, as well as Kishore Shah, PW-60, have stated that as the sketch drawer did not come early and Kishore Shah, PW-60, was not in a condition to wait long, therefore the sketch could not be drawn. The second submission is that Kishore Shah, PW-60, went to the police station three days after the

incident, which is a big delay considering the seriousness of the case. It is not three days, but it is two days after the incident that Kishore Shah, PW-60, went the police station and that too because the doctor had advised him rest. One can just imagine his mental condition because of the psychological trauma that he must have received when the blast took place. He is the first important witness in time and he going to the police station two days after the incident cannot be said to be a delay at all.

611. Learned advocate pointed out to the contradictory statements made by the witness Exts. 1589 (1 to 5) and submitted that these are material contradictions that affect his evidence. Learned SPP submitted that the contradictions are in respect of the minute details and it is irrelevant whether the witness goes home first or to the doctor, so far as the medical certificate shows that he had gone to a doctor, that in respect of the description of the two persons as medium built, it is in his evidence that he had given the description and had said that he would help in making the sketches, therefore, at that time he did not describe them in detail. In other words whatever cannot be verbally described, would have been probably pointed out visually, that only shows that in his mind the concept was clear that there were two persons and he could have identified them both or one of them.

612. Insofar as the contradicted portion Ext.1589(5) is concerned, it is already discussed by me. The contradicted portion Ext.1589(1) shows that the witness had stated to the police that after keeping the bag on the luggage rack, those persons stood in between the rows of

seats, but denied the suggestion that it had so happened and that he does not remember whether he had stated so to the police. In this respect it is the evidence in chief-examination that is material, because the witness had stated that he was standing in the middle of the two doors and when the persons entered the compartment, they went inside and kept their bag on the luggage rack and thereafter they came there and stood near him. Now the rows of seats and the passage in between the two doors are not so far apart so as to differentiate them and in the crowd one may be standing in between the rows of seats as well as near the persons who are standing in between the two doors.

613. The next contradicted portion Ext. 1589(2) says that the witness had stated to the police that he used to take monthly first-class pass of the railway, which he denied during his cross-examination when suggested. In this connection he had not stated anything about the pass in his chief-examination and his denial of it does not necessarily mean that he did not have a monthly pass and he was not even given such a suggestion. The contradicted portion Ext. 1589(3) reads that he first went to the doctor and then he went home, which he denied. In this connection, submission of the learned SPP is correct. Same is the case in respect of the next contradicted portion Ext. 1589(4) about he describing to the police that both persons were medium built about which he stated in cross-examination that the two persons were not similarly built. The submission of the learned SPP on this point is correct, because what is material is that there were two persons and that he could have

identified them. Thus, to my mind, all these contradictions and they are very few, are not material and do not affect his credibility and except the contradiction about the persons standing in between the rows, all other are in respect of peripheral matters and are not in respect of the actual incident about which he deposed, and, therefore, do not materially affect his evidence.

614. Learned advocate read out the number of improvements made by the witness over his statement that he gave to the police, which were got proved during the evidence of Dy. SP Ahir, PW-144, and submitted that the nature of the omissions shows that all are material and they affect the credibility of the witness. Learned SPP submitted that the omissions are about minute details and they do not change the quality of the evidence, which matters most. He also referred to his submissions in respect of a statement given by the witness to a police officer and the evidence given by him in the court. In this connection, the explanation given by Kishore Shah, PW-60, as well as the explanations given by Dy. SP Ahir, PW-144, are very relevant. When asked about the improvements, he consistently stated that he does not remember that he had stated so to the police and in paragraph 22 he gave a very normal and acceptable explanation that he does not remember today what he had stated to the police and what he had not stated. It will suffice if some improvements that are important to the defence are only discussed and remaining are skipped in view of them being very minor or omissions in respect of the peripheral matters not relating to the incident. I have already explained about his evidence that the two

persons came back after keeping their bag on the luggage rack and stood near him upto Dadar. The last portion of the improvement is infact incorrect, because it is not so stated by the witness that the persons stood near him upto Dadar. Next is his description of one of the two persons as being slightly fat and one of them being medium built. This, to my mind, will again not be a material omission in view of there being not much difference between medium built and slightly fat and the fact that the witness was ready to help in preparing the sketch when he went to give the statement. His statement in cross-examination that he stated to the police that he had sustained injuries on face and left hand is infact not an improvement, because Dy. SP Ahir, PW-144, corroborated his version and in view of the medical certificate being on record, it cannot be termed as an omission that would materially affect this case. About the description of the persons, he candidly admitted and gave a very good explanation that except describing the two persons as medium built and slightly fat, he did not give their any other description as they, i.e., the police, did not ask him and he had consented to help the police to prepare the sketch, but the sketch drawer did not come early, therefore, he left.

615. Next is the confusion about the left side or right side and east side or west side and it is submitted by the learned advocate for the accused that this confusion of the witness shows that he is not a truthful witness. In this respect the witness has very candidly admitted that he does not remember whether he had stated to the police that the bag was kept on the right hand side luggage rack, if

one stands facing towards Virar in the train and then explained that he is getting confused between east and west, that he was not confused about the direction on 14/07/06, that when he gave his statement to the police he had stated the direction referring to the east and west side and candidly answered that he is confused between right and left, therefore, he is stating about right and left and when he gave evidence a day before he was confused about right and left side even then he referred to the right and left side, but did not refer to east and west side. The position of the witness and the side on which the bag was allegedly kept has been discussed in paragraph 601 and it is observed that the witness was correct in stating about it and this confusion, if any, does not affect his evidence.

616. Next improvement is about the witness having not stated to the police that there was no crowd in the compartment at Marine Lines, that after the Bombay Central the train was to directly halt at Dadar, that the two persons had some exchange of words with other passengers who asked them where they wanted to get down and they told the persons that they wanted to get down at Dadar, that the other passengers asked them as to why they were standing so much inside the compartment, etc. To my mind, these things comprise of minute details and may not have been recorded by the police officer, who recorded the statement or they are in the nature of explanation while giving evidence in court, where the witness is probed by the prosecutor to elicit more and more information. The next improvement made by the witness is that he also thought as to

why they had boarded that train and 'troubled others'. The entire portion of this sentence is not an improvement, but the words in inverted commas is the only improvement. It was lastly submitted by the learned advocate for the accused that the witness has improved by stating that he met a policeman on the platform, whereas, it is in his evidence that a policeman approached him when he went out of the railway station. His evidence about what he did after the blast after he had fallen on the platform because of the blast upto the point when he went to the ENT doctor in the night is brought on record as omission, but to my mind that evidence is more by way of elaboration of his activity after the blast and in fact it is in the proved portion Ext. 1589(3) that he had gone to Dr. Gohil and had taken treatment there. The contents of medical certificate Ext. 2733(71) issued by Dr. Gohil corroborates his version. Another improvement is the witness stating that on that day he started from his shop at about 5.00 p.m. and went through the subway to the Churchgate Station. If one considers the contents of the proved portion Ext. 1589, which shows that he went into the Churchgate Railway Station at about 1730 hours, it must be that he must have left his shop sometime before 5.30 p.m. It is not permissible to read and reproduce the contents of the statement under section 161 of the Cr. P. C., but if one peruses the portion just before Ext. 1589(5), it shows that it was his birthday on that day and in order to celebrate it with his family members he had decided to go home.

617. The above are some of the omissions that are material from the side of the defence and as discussed by me they are not so

material so as to affect the quality and credibility of the witness. In this respect, submissions made by the learned SPP in paragraph 473 during the discussion of Santosh Singh, PW-63, in paragraph 534 during the evidence of Devendra Patil, PW-62, and in paragraphs 565, 566 and 567 during the evidence of Vishal Parmar, PW-74, are squarely applicable to the omissions and contradictions of this witness as well as all other witnesses. The relevant contradictions and improvements that can be termed as omissions will be those that are in respect of the main incident about which the witness has deposed and in that respect the evidence of this witness is unscathed.

618. One more important thing that is pointed out by the learned advocate for the accused is a contradiction in the statement of Kishore Shah, PW-60, in his statement dtd. 07/11/06 after the identification parade, which was proved as Exts. 2513 (1 and 2), wherein he has mentioned about identifying the A13 in the parade conducted by SEO Purandare, PW-80, whereas, the A13 was put up in the identification parade allegedly conducted by SEO Barve, PW-82, as per the memorandum of test identification parade Ext. 844. In this respect the learned SPP pointed out the evidence given by ACP Patil, PW-186, that the witness had stated that SEO Barve asked the accused his name and he told it as Asif Bashir Khan and then ACP Patil, PW-186, explained that it is wrongly typed by him as SEO Purandare and he realized this mistake when he filed the chargesheet. A strange and unprocedural question was asked as to why he did not file any application to correct the statement. He

stated that PI Mohite is appointed as a court liaison officer, but turned down the suggestion that PI Mohite has taken notes at the time of the evidence of every witness and has tutored him, therefore, he is giving the explanations and that PI Mohite is appointed to tutor witnesses. It is therefore submitted by the learned SPP and rightly so, that it is obviously a typographical mistake for which the investigating officer has given an explanation and questions as to whether this blame can be attributed to the witness, who is very categorical about it and he can understand if he would have been asked that he pointed out to SEO Purandare and said that in the parade conducted by him he identified the A13. The witness had categorically stated that it was in the parade conducted by SEO Barve, PW-82, that he identified the A13 and the confusion is only in the name of the SEOs written in the statement prepared by the investigating officer and for this reason the witness should not be disbelieved.

619. An unacceptable submission is made by the learned advocate for the accused that through out the remand period of the initial seven accused and the subsequent four accused, nowhere there is a single whisper that the police had a witness with them who had seen the planter. This shows that Kishore Shah, PW-60, is a witness who is planted by PSI Kisan Gaikwad and Sr. PI Tajne, PW-161, and case diary was tampered with. I have seldom seen police mentioning names of witnesses in the remand reports and at least one cannot expect this in such a serious case. Mentioning of the name of any eyewitness in the remand report would have obviously put the life of

the witness in risk.

620. Learned advocate for the accused submitted that the presumption in favour of the police officer that they are duly discharging their duties is not available in respect of Dy. SP Ahir, PW-144, in view of a departmental inquiry against him in which his increment was stopped for one year as per the contents of Ext. 4291. Dy. SP Ahir, PW-144, admitted in his further cross-examination as per the order of the High Court dtd. 30/01/14 in Criminal Appeal No.1194/13, that Ext.4291 is certified copy of the order withholding his increment for one year. Though he admitted it, this document is obtained under the RTI Act and has not been proved by calling the signatory of the document or by calling the original for comparing in the court. Even otherwise, the explanation given by the witness during the further cross-examination itself takes away the force out of that order, because he denied that there was a departmental inquiry against him as the accused were acquitted in a case under the Prevention of Corruption Act that he had investigated and volunteered that he got a letter in 2006 that there were lacunae in his investigation and his explanation was asked, that the lacunae were that the complainant and the panch witness no. 1 did not support the prosecution and he had kept some lacuna in the investigation, that he had asked for the concerned document at that time itself, but they did not provide him, that he gave explanation in September, 2011, but it was rejected on the last day of his VRS notice stating that his one increment was stopped. He further stated that he has challenged the said order before the Director General of

Police and Home Ministry and it is not yet decided. This explanation shows that *prima facie* a proper procedure was not followed and he denied the suggestion that he is a master in manipulating the investigation in this manner, therefore, he was taken by the ATS as one of the investigating officers. This suggestion is washed out by his answer in re-examination by the learned SPP that he was not attached to the ATS when he did the investigation in this case and voluntarily added that the order withholding his increment for one year was the first punishment to him in his 28 years of service. It is in his evidence that he was working as Sr. PI of Borivali Railway Police Station in 2006 and had recorded the statement of Kishore Shah, PW-60, on 14/07/06 in that capacity and it is not that he was subsequently transferred or deputed to the ATS. On the other hand, it has come in his evidence that he handed over the papers of investigation to the ATS on 21/07/06 in compliance with the order of the Director General, Maharashtra and once he handed over the charge of the investigation, he ceased to be the investigating officer of that case. In my humble opinion, the aspect of withholding of one increment of witness Dy. SP Ahir, PW-144, does not at all affect his credibility and it is also not shown as to how it has affected the investigation done by him in this case.

621. In view of the above discussion, it will have to be held that there is absolutely no reason why this witness should not be believed as an honest and truthful witness. He has withstood the test of cross-examination and his evidence is cogent and convincing beyond any shadow of doubt. He is a fully reliable and trustworthy witness and

this inference is fortified by a single statement made by him in his evidence, that too in his cross-examination, though he did not state about it in his chief-examination. It has come in his cross-examination in paragraph 16 that those persons did not have the bag with them when they got down at Dadar. This statement has not been controverted during further cross-examination. This statement came after his answers that the person had kept the black bag on the luggage rack on the same side on which he had kept his bag, that after the train crossed Andheri, he took his bag as he wanted to get down at Borivali and at that time he saw that black bag, which was at a small distance from his bag. It is in respect of this statement that the learned SPP submitted that he does not know whether he will have to part with part of his fees to the defence for bringing this evidence on record.

622. It is clear from the above discussion that the evidence of Kishore Shah, PW-60, is an unimpeached and cogent evidence and as is alleged by the defence, it cannot be said that he is a got up witness, because he went to the railway police station on 14/07/06, i.e., two days after the incident when the ATS was not investigating the crime. He has no criminal antecedents, he had not acted as a panch witness or a witness in any previous case thereby having no contact with the police. I have, therefore, no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A13 had kept a black coloured bag having chain in the first-class compartment of the 5.37 p.m. Virar fast local at Churchgate and he

was accompanied by one more person. **This is circumstance no. 6 proved by the prosecution. It is against the A13. It is the second circumstance against the A13.**

623. A13 has taken the defence of alibi and the oral and documentary evidence given by him has been discussed while discussing the evidence given by Santosh Singh, PW-63, and it is held that he has failed to prove his defence of alibi. Thus it is not necessary to re-discuss it and the evidence of Kishore Shah, PW-60, remains unaffected.

624. With this, we come to the end of the discussion of the evidence of the two groups of witnesses, i.e., taxi drivers and travellers. A threadbare discussion was necessary in view of these six witnesses being the most important witnesses from the side of the prosecution as well as from the side of the defence and considering the heavy cross-examination that they faced and the oral and documentary evidence given by the defence to discredit them. To my mind, if the investigating agency wanted to fabricate the evidence by propping such witness, it would have propped some more witnesses for some more accused though not for all the 13 accused. The script of falsity would have been exposed if there would have been a similarity in the evidence or story given by these witnesses. What we find and what lends credence to their credibility and shows their honesty and truthfulness is the dissimilarity in the events comprising of the incidents about which they gave evidence. Out of the two taxi drivers Rajesh Satpute, PW-77, says that he got the two passengers at Carter Road, Bandra, whereas, Santosh Singh, PW-63, got the

passengers from Perry Cross Road, Bandra. Though, Rajesh Satpute, PW-77 did not state the time at which he took the said passengers and the time when he reached them at Churchgate Station, it has come in his cross-examination in paragraph 11 that the two persons engaged his taxi at Carter Road at about 3.30 to 4.00 p.m. and he left them at Churchgate at about 4.45 to 5.00 p.m. Santosh Singh, PW-63, stated in his evidence that the two passengers for Churchgate came at 3.15 to 3.30 p.m. when he was at Perry Cross Road, but it has not come in his evidence and also not brought in cross-examination as to at what time he reached the two passengers at Churchgate Station. Both these witnesses have stated that they stopped the taxi near the subway from which one can go the Churchgate Station. Now in respect of the subway, to my knowledge, there are three subway entrances, one from the south side and two from the east side, by which one can go to the Churchgate Station, other than two entrances from two roads on east and west side of the Churchgate Station. By the subway on the south side and by the subway on the east south side one goes below a road that is east west and comes in a common subway by which one can go to the terminus or ends of all the four tracks. There are no questions to both these witnesses about the locations or directions of the subway at which they purportedly dropped the passengers. Santosh Singh, PW-63, was only asked in paragraph 27 of his cross-examination and he stated that he does not know whether at Churchgate there are subways for crossing the roads and also for going to the Churchgate Station. He admitted that he did not take police to the spot to show

from where he took the passengers and where he left them and added that police also did not ask him to do so, which means that it is not his fault. Thus, the two taxi drivers have taken passengers from two different places in Bandra, but the common thing is that they reached those passengers at the subway. Both have elaborated the route by which they went from Bandra to Churchgate and this information has not been controverted or proved to be wrong.

625. Next comes the travellers. Subhash Nagarsekar, PW-57, travelled in the 5.57 Virar fast local in which the blast took place at Matunga at 1624 hours. He saw the A1 keeping the bag on the luggage rack and getting down at Dadar alongwith the two persons, who were with him and he remembered later on that the A1 went towards the window of the train and was signaling someone inside the train by hand to come out and when the A1 got down at Dadar Station he did not have the rexine bag with him. This witness has got down at Dadar, therefore, there was no question of he being present when the blast took place and sustaining injuries.

626. Next is Devendra Patil, PW-62. He boarded the 5.36 Borivali slow local in which the blast took place at Jogeshwari at 1824 hours. He had seen the A3 keeping a bag below the seat near the window. He did not get down at some station in between, but was in the bogie when the blast took place, but was not injured. He has not stated about the A3 and the person with him getting down at Dadar or at any other station.

627. Next is Vishal Parmar, PW-74, who travelled in the 5.19 p.m. Virar fast local in which the blast took place at Mira Road at 1823

hours. He saw the A4 and one more person with him boarding the train with a rexine bag. He did not state that the A4 kept the bag on the luggage rack or anywhere else. However, it has come in his evidence that he got down at Dadar and the A4 and the person who was with him also got down at Dadar and the bag was not with him.

628. Last is Kishore Shah, PW-60, who boarded the 5.37 p.m. Virar fast local, in which the blast took place at 1828 hours. He saw the A13 keeping a bag on the luggage rack and the A13 and one more person with him getting down at Dadar. He was present in the train when the explosion took place and had sustained injuries. He did not state in his chief-examination that they got down empty handed, i.e., without the bag. However, it has come in his cross-examination in paragraph 16 that those persons did not have the bag with them while they got down at Dadar.

It is clear from the above discussion that there is a noticeable dissimilarity in the events about which the two taxi drivers and the four travellers gave evidence. Their evidence is not copybook and it does not appear to be fabricated. To my mind, if the evidence of more than one witness on similar points is fabricated, there is always a risk of finding it out, because of some similarities in their evidence. I have already accepted the evidence of all these six witnesses as cogent and reliable and the dissimilarity in the events about which they gave evidence is an additional factor lending credence to their credibility and showing their honesty and truthfulness.

Recovery of bombs making articles :-

629. It is alleged by the prosecution that bombs were prepared in

the house of A6 at Shivaji Nagar, Govandi on 8, 9 and 10/07/06 and some of the accused were entrusted with the work of collecting the bomb making articles. For this purpose, it is relying on the recoveries of explosives, traces of explosives, chemicals, granules, detonators and circuits from some of the accused. First in time is the recovery of RDX from the house of the A1 at Basopatti, Dist. Madhubani, State – Bihar on 20/07/06. Sr. PI Tajne, PW-161, gave evidence about it that he gathered the information from reliable source on 19/07/06 that the user of 9934610679, viz., Kamal, i.e., A1, from Basopatti, Bihar, is involved in C. R. No. 77/06 of Mumbai Central Railway Police Station, the investigation of which he was assisting, that after he passed on this information to his superiors, he was directed to proceed for investigation to Patna and went to Patna by air alongwith API Kolhatkar, PW-18, and PSI Sachin Kadam and made station diary entry no. 6, Ext.1713, the contents of which he proved and which corroborate his version and is an unchallenged contemporaneous record. It has come in his evidence that on reaching Patna, he contacted the Sr. Superintendent of Police and on his request Kotwali Police Station was directed to provide assistance and accordingly PSI Rajan Kumar and two more officers and staff and vehicle was provided and they left Patna at about 8.00 p.m. and reached at Basopatti at 2.00 a.m. on 20/07/06. They reported to the local Basopatti Police Station, requested PSI Rajan, PW-107, then arranged a trap near Prasad Cinema Hall in Basopatti after preliminary inquiry and at 3.50 a.m. they accosted the A1 and one Khalid, that PSI Rajan, PW-107, identified the A1 and he confirmed

it, two panchas were called, mobiles and cash amounts were found with both persons, Arts. 37 and 38, in their personal search respectively and they were seized under panchanama Ext. 467 that was prepared with the help of panch witnesses Ashok, PW-22, and one more. He identified the A1 in the court. His evidence is corroborated by the evidence of the panch witness Ashok, PW-22, PSI Rajan, PW-107, and API Kolhatkar, PW-18.

630. It has come in his evidence that thereafter he made inquiries with the A1 about his residence and the A1 led them there on foot, that panchas were summoned as they wanted to carry out the house search, the A1 knocked the door of his house, which was opened by his wife, whom he identified and then they took the search and found a plastic bag containing black coloured powder weighing about 500 grams behind old clothes and an empty oil box kept below a wooden cot in the room. He stated about drawing 10 grams sample from the powder, wrapping it in a khaki paper, labeling and sealing it and keeping the remaining powder in a plastic jar, tying it with thread and labeling it with his and pancha's signatures. He seized all these articles under panchanama Ext. 500. He identified the plastic jar Art. 39 and powder Art. 40 in the small plastic bag Art.40A. His evidence is corroborated by API Kolhatkar, PW-18, and panch witness Ashok, PW-22, and both of them also identified the articles. PSI Rajan, PW-107, also corroborated his version and identified the plastic jar and black powder in Art.39.

631. Sr. PI Tajne, PW-161, then gave evidence about the house search of the accused Khalid and preparing panchanama there, but

nothing incriminating being found. Therefore, that panchanama was not brought on record and not proved and also because the said Khalid was discharged later from this case. It has come in his evidence that he put the A1 and Khalid under arrest, intimated his wife that they are taking the A1 to Mumbai and also intimated PSI Rajan, PW-107. It has come in his evidence that he and PSI Sachin Kadam brought the persons to Mumbai by air. It has come in his evidence that when they found the plastic bag containing black powder, they inquired about it with the A1 on suspicion and as he failed to give any satisfactory account of the powder, they suspected that the powder was explosive substance. API, Kolhatkar, PW-18, as well as PSI Rajan, PW-107, corroborated his version and it is, therefore, that he deputed API Kolhatkar, PW-18, to carry the seized explosive powder by road as they wanted to go back to Mumbai by air and it was not possible to carry it in the aeroplane. API Kolhatkar, PW-18, corroborated his version and stated that he reached Mumbai on 22/07/06 and handed over the seized suspected substance to ACP Shengal, DW-51, and made entry in the muddemal register in the Kalachowki office of the ATS. Sr. PI Rathod, PW-176, deposed about sending the sample of black powder to the FSL, Kalina alongwith his forwarding letter Ext.596, the contents of which he proved, alongwith HC Auti, PW-41. HC Auti, PW-41, stated that Sr. PI Tajne, PW-161, gave him a sealed packet and a forwarding letter Ext. 596 on 31/07/06 at Kalachowki office of the ATS for reaching it to the FSL, Kalina and he handed over the packet and letter and obtained acknowledgment. He identified the envelope Art. 40C that

contained the sample. Though he so stated, it has come in the cross-examination of Sr. PI Rathod, PW-176, that the letter was to be signed by the ACP, but as he was not present, he, i.e., Sr. PI Rathod, PW-176, signed it and it was sent by Sr. PI Tajne, PW-161. It has come in the evidence of Sr. PI Rathod, PW-176, that the report of the FSL, Ext. 469 in connection with the sample was received and it revealed that the sample was containing RDX. The contents of Ext. 469 show that Cyclonite (RDX) and Charcoal are detected in the exhibit, which contains Cyclonite (RDX) 85% and Charcoal 15% and that RDX is used as high explosive.

632. Thus by the evidence of these four witnesses, the seizure of RDX from the A1 is established. All these witnesses have been cross-examined heavily in respect of all the aspects, but their evidence has remained unshaken. Before discussing the evidence of Sr. PI Tajne, PW-161, a short reference to the evidence of the panch witness Ashok, PW-22, will be sufficient. It has come in the cross-examination of Sr. PI Tajne, PW-161, in paragraph 19 that they were carrying the sealing and writing material with them when they went to Basopatti, that the ATS did not have the brass seal on that day and he did not carry any seal with him, that he used only lac seal there, that Basopatti Police Station had a rubber seal, but not brass seal and he did not use that rubber seal. Basopatti Police Station having a rubber seal and not having a brass seal is also stated by PSI Rajan, PW-107, in his cross-examination in paragraph 7 and it has also come in his cross-examination that the Mumbai police did not ask for lac seal from him, they had brought their own seal that was

used to seal the articles that they had seized at the house of the A1. In this connection the panch witness Ashok, PW-22, only stated that the sample and the jar was packed, tied, labeled and the label was pasted for sealing, however, it has come in his cross-examination as a positive statement that police had affixed red seal in his presence on all the seized articles. When he was shown the jar Art. 39, he admitted that there is no lac seal on it and then made a very positive statement that the jar was not sealed by the lac seal, but the lac seal was put on the khaki paper. He described in detail as to how the sample powder was sealed by stating that the sample powder of approximately 10 grams was put in the plastic bag, then it was wrapped in the khaki paper, tied with thread and then sealed, but the label was not sealed. Art. 40B is the polythene bag that has been identified by three witnesses and Art. 40C is the khaki paper that was also identified by them and it shows that it is tied by white thread crisscross, there being a white paper label on one side, one lac seal on the cross behind and one lac seal near one end.

633. Ashok, PW-22, committed a mistake by stating that both panchanamas, i.e., Exts. 467 and 500, were written by the same officer who did not sign on the panchanamas. However, it has come in the evidence of Sr. PI Tajne, PW-161, as well as API Kolhatkar, PW-18, that API Kolhatkar, PW-18, wrote the panchanama Ext. 467 and PSI Sachin Kadam wrote the panchanama Ext. 500 on his dictation and Sr. PI Tajne, PW-161, signed them alongwith the panchas. Reverting back to the evidence of Ashok, PW-22, it is revealed in his evidence that he knew the A1 who is of his village

and his evidence about the search in the house of the A1 corroborates the evidence of Sr. PI Tajne, PW-161, and API Kolhatkar, PW-18, and the contents of the panchanama Ext. 500 corroborate the evidence of all these four witnesses. This witness knows the A1 since his childhood as he is his neighbour and though he admitted that there was a marriage of Tayyab's daughter in the village on 10/07/06, who this Tayyab is, is not put to him and he flatly denied the suggestion that on that day the A1 was in the village. A baseless suggestion was made to him that he deposed falsely because he is inimical with the A1's family and he denied the suggestion that there was no search in his presence and nothing was seized. In respect of the writing and sealing articles, he denied the suggestion that at the time of search and seizure, police did not have paper, carbon or stationery with them to write the panchanama. He specifically stated that the police officer from Mumbai, who signed on both the panchanamas, is Vasant Tajne, i.e., PW-161. There is some issue about the colour of the ink of his and other pancha's signature on Art.40C, but he answered earlier that local police officer Ranjankumar gave him a pen on both occasions and after signing, he gave back the pen to him and does not know with which pen Rameshwar Purve signed and he did not give the pen to Rameshwar Purve after he signed, which means that some other pen may have given to the other panch. Other than these things, there is nothing in his cross-examination to discredit his version and he is a totally uninterested witness and his evidence is trustworthy. In respect of the plastic jar Art. 39, though, Sr. PI Tajne, PW-161, did

not state from where he brought it or that it was with him and though he was not asked about it in cross-examination, Ashok, PW-22, was asked in his cross-examination that the plastic jar was not in the house of the accused and he denied it. Same is the case about API Kolhatkar, PW-18, and it has also come in the evidence of PSI Rajan, PW-107, that the remaining powder was put in a plastic jar that was in the house, which he reaffirmed in cross-examination and which was not controverted.

634. As mentioned earlier, API Kolhatkar, PW-18, has fully corroborated the evidence of Sr. PI Tajne, PW-161, and his cross-examination has not revealed anything adverse that would affect his testimony. On the other hand, during cross-examination he gave the approximate distance from Basopatti to Patna and that Malmal and Basopatti are two different villages, that A1 was not arrested at 4.00 a.m. and as a local police station officer was with them, there was no question of informing the local police about the seizure of the powder and arrest of the accused as they had gone to the police station and made an entry. Certain things were asked to him as to whether he had given a report to the Police Station Basopatti or to the Sr. Superintendent of Police, Patna about finding of the suspected substance and he frankly stated that he had not given such a report or does not know whether his senior officer, i.e., Sr. PI Tajne, PW-161, gave it or PSI Sachin Kadam gave it. To discredit his version, he was asked and he admitted that he is presently under suspension because of a departmental inquiry against him, DCP Salvi, ACP Wani and others about attending a party of underworld

criminal gang. It is submitted that this shows that he is not a truthful witness. To my mind, it is not shown as to how the departmental inquiry against him affects his evidence when it has been tested by cross-examination. Thus, his evidence about the search and seizure at the house of the A1 is fully credible and it corroborates Sr. PI Tajne, PW-161's evidence and the contents of both the panchanamas, Exts.467 and 500 corroborate his version. He gave a correct description of the household articles like table, green coloured landline telephone on the table, cot, suitcase, etc., in the room on the ground floor of the house of the accused and also stated correctly about the procedure by which the plastic jar Art.39 was tied with a white thread and the cap pasted with label.

635. PSI Rajan, PW-107, who was attached to Special Task Force, Patna, Bihar when he gave evidence, was the SHO (Station House Officer) of Police Station Basopatti, District Madhubani, Bihar in 2006 and as mentioned earlier his evidence has fully corroborated the evidence of Sr. PI Tajne, PW-161. He has deposed about the ATS officers of Mumbai with police officers of Patna coming to his police station at 2.30 a.m. on 20/07/06, making the request for help in arresting the A1 and Khalid, whose names they told and he, on making inquiry with local sources, coming to know that A1 was not at his house and might come in the morning to his house. He proved the contents of the station dairy entry no. 335 in Ext. 1096 about the arrival of the ATS officers which is a contemporaneous uncontroverted evidence. He then deposed about laying of the trap and the A1 and the other person Khalid Aziz being accosted,

searched and then going to the house of the A1, making the search there and finding black colour powder from which approximately 10 grams sample was taken out and sealed and remaining black powder being put in the plastic jar Art. 39, which he identified. He proved the contents of the station diary entry no. 336, which is also part of Ext. 1096, about departure from the police station for the purpose of the trap. He also proved the contents of the station diary entry no. 339, which is also a part of Ext. 1096, which he made on returning to his police station after the Mumbai and Patna police went back. He identified the A1 in the court. His cross-examination is covering many points, some concerning the population of Basopatti, the market area, nearest court, nearest superior officer and the location of the spot where the accused were accosted. He gave specific answers without hesitation. Insofar as the seal of his police station and lac seal and as to what was used by Sr. PI Tajne, PW-161, at the time of seizure and how the search was conducted, his cross-examination has not revealed anything adverse that would affect his testimony. The evidence of Sr. PI Tajne, PW-161, about use of lac seal for sealing khaki paper in which the plastic bag containing approximately 10 grams of black powder that was taken out from the approximately 500 grams of black powder has been discussed earlier and the evidence of PSI Rajan, PW-107, corroborates his evidence. In respect of the identification of the A1, it has come in his cross-examination that there were three chowkidars at Basopatti, the local chowkidar who was with them first identified one of the two persons as A1 and all three chowkidars knew him and identified

him. In respect of locating the A1, it has come in his chief-examination and it is elaborated in his cross-examination that he made inquiries about the A1 in that night itself by telephoning his sources after the Mumbai police came there and when questioned as to whether he did not feel it necessary to go to the house of the A1 and verify whether he was or was not in the house, he gave a very sound explanation that he did not feel it necessary as it was an important case and his visit to the house of the A1 would have alerted him.

636. He admitted that all the things described by him took place within the jurisdiction of his police station but he did not prepare any panchanama about the articles that were found, did not register an FIR in his police station and did not feel it necessary to take the accused to the nearest magistrate and for all these he gave a very good explanation that he did not feel the necessity to do so as he had not arrested the accused. He also correctly explained that he did not register a case as no case was made out at that time. To my mind, I do not think that any officer of other police station will interfere in a matter of national importance and though the Mumbai ATS has jurisdiction in the State of Maharashtra only, it is but natural for police outside Maharashtra to render all possible help to such organisation investigating terrorist act. The main issue is in respect of his name being not mentioned in both the panchanamas, i.e., Exts. 467 and 500, however, the uncontroverted official record, i.e., the station diary entries in Ext. 1096, clears this aspect. Another issue is the name of PSI Ranjankumar about which he stated that he

does not know who he is and admitted that he did not know PSI Anandkumar of Bihar before 2006, but he met him on that day and did not meet him thereafter. However, this confusion is cleared by the evidence of Sr. PI Tajne, PW-161, as well as by the contents of station diary entry in Ext.1096. It has come in the evidence of Sr. PI Tajne, PW-161, that Kotwali Police Station, Patna provided ASI Ranjankuar, one more officer by name Anandkumar, PSI Choudhari and staff and vehicle and when they reported to local Police Station Basopatti, it is PSI Rajan, PW-107, to whom they requested for assistance. There is no cross-examination to him on this point. The contents of station diary entry no. 335 in Ext. 1096 show that PI Vasant Tajne, PSI Sachin Kadam, API Kolhatkar, other staff, PSI Anandkumar, PSI Choudhary and staff from Patna had come to the police station in search of the suspect A1, etc. The contents of the station diary entry no. 336 in Ext. 1096 show that he, i.e., PSI Rajan, PW-107, accompanied the Mumbai ATS police alongwith his six armed personnel for the purpose of assistance in the arrest. The contents of the station diary entry no. 339 shows that he returned to the police station alongwith armed police and this diary explains in detail as to where the A1 and Khalid Aziz were accosted and searched and what was found with them. Thus, there is no doubt as to whether PSI Rajan, PW-107, accompanied Sr. PI Tajne, PW-161, for the search and seizure on that day. Thus, the evidence of PSI Rajan, PW-107, is a cogent evidence and his cross-examination has not affected it and it has fully corroborated the evidence of Sr. PI Tajne, PW-161.

637. Sr. PI Tajne, PW-161, was cross-examined extensively, but nothing adverse has come out in his cross-examination so as to affect his credibility or the credibility of the evidence that he gave about the search and seizure at Basopatti. Insofar as the identification of the A1 is concerned, though it has come in his cross-examination that they were not aware when they reached Basopatti as to which Kamal was using the mobile number, but on making preliminary inquiry they came to know of it and he made a positive statement that he came to know it from one local chowkidar constable and admitted that it was an important clue for them and he was an important person giving such information, but he did not record his statement. PSI Rajan, PW-107, has corroborated his evidence as he stated that he came to know about the A1 from the local chowkidar constable and this is further fortified by Sr. PI Tajne, PW-161, who stated that the preliminary inquiry that he made was with the local police station officers and the staff. The recovery of mobile and the contents of the CFSL report, Hyderabad pertaining to the data in the said mobile of the A1 are not relevant as nothing incriminating was found therein. Therefore, the cross-examination in that respect is inconsequential except insofar as it pertains to the A1 being accosted at that particular time.

638. There is an issue about sealing the khaki paper in which the polythene bag containing the sample of black powder that was found in A1's house and the evidence of Sr. PI Tajne, PW-161, as well as PSI Rajan, PW-107, has been discussed above. That evidence has come in the cross-examination of both the witnesses and it means

that Sr. PI Tajne, PW-161, was carrying sealing and writing material with them and he used only lac seal to seal the khaki paper Art.40C without embossing the lac seal by any brass seal. In further cross-examination, he was shown the forwarding letter Ext.596 alongwith which HC Auti, PW-41, had taken the said sample to the FSL at Kalina on 31/07/06 and he stated that he had not used the seal, the impression of which is on Ext. 596, that the seal impression is of Police Station Kalachowki and they used the seal of that police station till they received their own seal. In further cross-examination he admitted that there is a prescribed procedure for sealing the articles that are seized during the investigation to rule out the possibility of tampering and at Basopatti after taking the charge of articles he put the sample of black powder in separate small plastic bags, wrapped them in separate khaki paper, pasted labels containing his and panchas signatures, tied thread and put lac seal on the knot. He wrongly answered that it did not happen that he only tied thread on the khaki packets and when shown the packet Art. 40C, he admitted that thread is tied on the packet first and then label is pasted.

639. Insofar as the brass seal impression on the khaki paper packet Art.40C is concerned, it is on the back side near the lac seal and is not on the lac seal and is obviously of Police Station Kalachowki. The two lac seals having no brass seal impression on them corroborates the evidence of Sr. PI Tajne, PW-161, PSI Rajan, PW-107, Ashok, PW-22, and API Kolhatkar, PW-18. Ext. 596 is the forwarding letter and it contains a similar impression of lac seal. It is

not the case of the prosecution that impression of the brass seal of Police Station Kalachowki was put on the lac seal on this sample. It has come in the evidence of HC Auti, PW-41, that on receiving the sealed packet from Sr. PI Tajne, PW-161, alongwith forwarding letter Ext. 596, he had checked the lac seal and brass seal on the packet and signatures on the letter and its copy and it has positively come in his cross-examination that in July, 2006 they were using the seal of Police Station Kalachowki because there was no seal for the ATS. His evidence is unshaken and it corroborates the evidence of Sr. PI Tajne, PW-161, and the contents of Ext. 596 corroborate the evidence of both of them. The contents of Ext. 596 are proved by Sr. PI Rathod, PW-176.

640. Based on the documents obtained from Police Station Kalachowki under the RTI Act, Exts. 2007 to 2009, a suggestion was given to Sr. PI Tajne, PW-161, that it was only once, i.e., on 07/07/06, that the brass seal of Police Station Kalachowki was used by HC-14438 of the ATS. However, to my mind, there is a difference between giving the brass seal of the police station for use outside the police station and someone going to the police station and taking the seal on a sealed packet. Even otherwise, the suggestion presupposes that the sample of RDX was prepared as early as on 07/07/06, i.e., four days before the blast and it is this sample that was sent to the FSL. I am afraid one cannot stretch one's imagination to such an extent and consider it as a probability.

641. In respect of the A1 being identified when accosted, it has come in the evidence of Sr. PI Tajne, PW-161, that PSI Rajan,

PW-107, identified one of them as suspect Kamal and it has come in the evidence of PSI Rajan, PW-107, that the local chowkidar, who was with them, first identified one of the two persons as Kamal Ansari and it came in the cross-examination of Sr. PI Tajne, PW-161, that the constable chowkidar who knew the accused was present with them during the entire proceedings. Sr. PI Tajne, PW-161, stated the exact timings of both the panchanamas and his entire cross-examination has not caused any dent in his evidence. The contents of both the panchanamas Exts. 467 and 500 corroborate his version.

642. Insofar as the search in the house of the A1, where there were two women, in the absence of any lady police person, Sr. PI Tajne, PW-161, denied the suggestion that he did not feel it necessary to call a lady constable, that he had inquired at the police station and had come to know that no lady constable was available. In this respect, it has come in the cross-examination of PSI Rajan, PW-107, that there was no lady police member in that team, that they had offered their searches to the members of the house, wife, mother and 4-5 children of the accused were in the house, that there was no male member in the house, that he cannot say whether a Muslim woman can take search of the person of male police officers. He positively stated that he and Sr. PI Tajne, PW-161, asked the woman to take their search and also told them that they can get their searches done from anyone, if they wish. Thus, his evidence corroborates the evidence of Sr. PI Tajne, PW-161, and though the fact of offering their search is not mentioned in the panchanama Ext.

500, their evidence is cogent and infact the A1, husband of one of the woman in the house, was present with the police and she could have asked him to take their searches on her behalf. Thus, this aspect does not affect the credibility of the evidence of search.

643. Sr. PI Tajne, PW-161, was further grilled about there being no record of the source of information that he had received about the A1, about monitoring of STD and ISD calls, whether ATS was suspecting a particular SMS, the details about their travel from Mumbai to Patna by air and coming back, their reporting to Patna at the office of Sr. SP, the journey period from Patna to Basopatti, etc., and he gave satisfactory answers and clarified all the things that he knew. He was asked about his mobile, when he stated that he intimated his superiors immediately after the arrest of the accused in the morning of 20/07/06 from his mobile no.9324282188, and, it has come in his evidence that the mobile was not in his name, it was in the name of his friend, who was a businessman whom he had met when he was at L. T. Marg Police Station, etc., and a suggestion was given to him that the said person's name was Kishore Popatlal Shah, i.e., PW-60, and he denied that he introduced the said Kishore as eyewitness. However, he denied knowledge about whether the said person's name is Kishore Popatlal Shah. He is not even aware whether the said person is a witness in this case.

644. His evidence was tried to be discredited by asking him about his suspension in 1989-90 and he admitted that he was under suspension from 21/03/89 to 04/03/91 when he was in the Crime Branch. He admitted that there was a departmental inquiry.

However, he clarified that it was a false anti-corruption case, which is so mentioned in the judgement, by which he was honorably acquitted in that case and it is proved on record that he was not involved. Thus, this aspect does not affect his evidence.

645. A strange suggestion was given to him that the A1 was in his custody prior to 20/07/06 and as per the plan chalked out by the ATS, he prepared the panchanama and station diary entry. In my humble opinion, it does not appeal to the reason that within nine days from the bomb blasts the ATS had chalked out the master plan of first involving the A1, who was a resident of Basopatti in Dist. Madhubani, Bihar and of showing the recovery of RDX from him. The arrest of the A1 is first in time and by no stretch of imagination it can be accepted that the investigating machinery, i.e., the ATS, started manufacturing the evidence right from the day one when they were entrusted with the investigation of the bomb blasts.

646. Other than the above, there is nothing in the evidence of Sr. PI Tajne, PW-161, to discredit his version about the search and seizure of black powder that was found in the house of the A1, which turned out to be RDX. One Bharatlal Mandal, PW-20, Mukhiya, Basopatti Paschimi, was examined to prove that the A1 lives in the house from which the recovery of RDX was made and he proved his certificates Exts. 491 and 492 and the voter's list Ext. 493. There is no dispute from the side of the accused about his residence in House no. 83, Ward no. 8 and that his name is entered in voter's list at sr. no. 550.

647. Learned advocate Shetty representing the A1 submits that the present accused have been arrested in this case and the evidence has

been manipulated and planted just to cool down the public outcry. To my mind, there is no evidence from the side of the defence that there was a public outcry and there could not have been a public outcry because within a period of 10-15 days seven accused were arrested and the investigation was going on speedily. Learned advocate submits that the recovery of the alleged RDX from the A1 has no connection to the RDX that was used for committing the present blast and cannot be linked to the blasts in Bombay even through the confessional statements. Secondly, even if the entire material is taken as it is, nowhere it is established by the prosecution that the A1 is a person who was a part of the conspiracy and had participated in it. Even according to the prosecution he was a totally new person so far as Bombay is concerned, having no association or relation with the rest of the accused. He questions the probability of the RDX kept by the accused in his house by raising a question as to whether it is possible that a man having a family, consisting of wife, mother and four children, knowing very well that he is in possession of explosives will keep it in his house so openly when according to the prosecution it was given to him in May, 2006 and he retained it till his arrest on 20/07/06. He submits that it is not that the house of the A1 is isolated and that nobody else was residing there.

648. In my humble opinion, it is established by the prosecution by cogent evidence that RDX was found in the house of the A1 and it is for the A1 to explain how he kept it and why he kept it there. It is not that an explosive powder catches fire or explodes just by handling it. It has to go through some other process to be able to

explode and the investigating machinery cannot be found fault with as it was incumbent upon them to explore all possible leads and this was the first in time. In my humble opinion, whether or not the RDX found with the A1 was used in the blast in this case is not the question. The important thing is what is found and its relevancy or commonality to what is found at the sites of the blasts and with the other accused.

649. In respect of the seizure and sealing, learned advocate submits that the entire material about it is not reliable. I have already discussed this and found that it is a reliable evidence. Now, insofar as the plastic jar Art. 39 is concerned, it is submitted by learned advocate for the defence that it was not sealed and pointed out the manner in which it is tied and labeled to show that it is not tamper proof. Perusal of the plastic jar Art. 39 shows that obviously it does not have a lac seal. However, the manner in which it is tied and the manner in which the label is pasted across the lid and upon the body of the jar at the ends of the label show that it is as good as sealed. One will not be able to remove the label and refix it in the manner in which it is fixed. One will not be able to remove the thread that is tied crisscross around eight times and knotted on the top of the lid below the label that is pasted, without cutting the thread. Thus, this aspect will not affect the seizure of the RDX and on the other hand if at all the defence wanted to challenge this evidence by showing that the sample was not from the black powder in the plastic jar Art.39, it could have very well asked for sending a sample from it independently to ascertain it.

650. Next submission by learned advocate is that though the alleged RDX was found within the jurisdiction of a local police station, no report was given and though there was a doubt about the powder, it was not given in the possession of local police station and approximately 500 grams was carried by road and deposited two days subsequently. He submits that no concrete proof is necessary for registering the case even on the basis of suspicion. I have already discussed this aspect pointing out that it was a case of national importance and the evidence of Sr. PI Tajne, PW-161, API Kolhatkar, PW-18, and PSI Rajan, PW-107, in respect of registering the FIR on 05/09/06 at zero number after obtaining the FSL report shows that they were conscious about their duty. Not only this, Sr. PI Tajne, PW-161, submitted a report to his superior to transfer the investigation of this crime to Police Station Basopatti and the contents of the true photocopy of the station diary entry no. 1717 corroborates his version. He had taken the statement of API Kolhatkar, PW-18, as an FIR and had registered the case against the A1. PSI Rajan, PW-107, has given the evidence about it and about the investigation that was done by one of his colleagues and then about transfer of all the original papers of the crime to the ATS, Mumbai as per the order of the Supreme Court. It has come in his evidence that PSI Yogeshwar Chaudhari lodged formal FIR no. 102/06 dtd. 09/09/06 and gave the investigation to PSI Upadhyay. He proved the contents of the true photocopies of the station diary entires in Ext. 1097 and the photocopy of the FIR Ext. 1098 and the letter Ext. 30 and the documents accompanying it. Thus, it cannot

be said that the investigating machinery in this case is at fault in not registering a case immediately at Basopatti and waiting for such a long period.

651. His next submission is that signatures of local police have not been taken on any of the panchanamas. Obviously, this submission is made ignoring the fact that names of the officers and staff from the Kotwali Police Station, Patna are written in both panchanamas and the contemporaneous record by way of station diary entries made by PSI Rajan, PW-107. Thus, learned advocate's submission, that all these factors weigh against the prosecution making the entire search and seizure suspicious and artificial, is not correct.

652. Learned advocate again repeated his submissions about Sr. PI Tajne, PW-161, not taking any action at Basopatti Police Station after suspecting that the black powder found was explosive. During his submission in respect of the evidence of Sr. PI Tajne, PW-161, he submits that if the police officer had a doubt about the powder that it may be an explosive and if he has aware that possessing an explosive substance is banned in Bihar, then if at all any offence was committed it was committed at that day and that too within jurisdiction of Basopatti and not in the jurisdiction of Mumbai. Even then this officer neither makes a report nor hands over the concerned contraband to the local police station and this goes to the root of the case and shows that on 20/07/06 nothing was found in the house of the A1. The officer was not forbidden from lodging the complaint, giving a sample of the contraband alongwith copy of panchanama to the concerned police station. Since it has not been

done it will show that no black powder or contraband as alleged has been recovered or found on that day in that house. He submits that the evidence and the manner in which the investigation is carried out makes it clear that it was not done with seriousness, the approach was very casual and no safeguards were taken and the accepted procedure and guidelines that ought to have been taken are not there. I have already dealt with this aspect. Though it is true that Sr. PI Tajne, PW-161, did not lodge any complaint or give sample to the local police station, the fact remains that station diary entries have been made about the search and seizure and also about finding black powder like substance. The station diary entry no. 339 in Ext.1096 is about it. In this connection the learned SPP has rightly submitted that the contemporaneous record made by a different police station is important, because assuming there is discrepancy in the evidence of the witnesses, it does not go to the root of the matter. The law cannot be taken to an absurdity that everybody is managed and the record of Basopatti is also managed. In my humble opinion, there is no procedural lapse, because when the explosive was found in the house of the A1, it was *prima facie* in connection with CR No. 77/06 of Mumbai Central Railway Police Station concerning the blast that had taken place. Hence, there was no question of lodging a report or giving any sample to the local police station.

653. Learned advocate Wahab Khan's submission in respect of this search and seizure is mainly pertaining to the sealing aspect and the use of brass seal of Kalachowki Police Station on the khaki packet,

Art.40C, which I have already discussed. He referred to the information Exts. 2007 to 2009 obtained from Police Station Kalachowki under the RTI Act submitting that the station diary at 7.10 a.m. on 07/07/06 shows that the brass seal was given to HC-14438 of the ATS on that day. However, in connection with this aspect, I have mentioned earlier that there is a difference between giving the brass seal to the police station for using outside the police station and someone going to the police station and taking the seal impression on a packet. Sr. PI Rathod, PW-176, has explained this in his cross-examination in paragraph 96 that the seal impression of Police Station Kalachowki on the letter Ext. 596 may have been affixed by Sr. PI Tajne, PW-161. In his evidence the documents Exts. 2007 to 2009 obtained from the Kalachowki Police Station under the RTI Act were marked as exhibits and they were shown to him in respect of station diary entry dated 07/07/06. These documents are not proved as per law by calling the person who had given the information alongwith the original information. No doubt the certified true copy of station diary entry can be read in evidence, but as explained earlier there is a difference between giving the brass seal of a police station for using outside the police station and someone going to the police station and taking the impression of the brass seal on a sealed packet. This was exactly the procedure that seems to have been followed by the officers of the ATS, because the office of the ATS at Kalachowki is by the side of the building of the Police Station Kalachowki. Sr. PI Rathod, PW-176, volunteered in his cross-examination that seal of the Kalachowki Police Station was

used once by going to the police station to seal the sample of black powder collected from the house of the A3 and, this is important, that station diary entry was not made to that effect. Thus, the submission of learned advocate on this point that sample was not properly sealed by the investigating machinery is not proper and acceptable. In this connection, the learned SPP Raja Thakare submitted that one more very crucial step that was taken shows the absolute honesty of the investigating agency. After the arrest of the A1, recovery of black powder, sending it to the CA and report showing it to be RDX, the conduct of the investigating agency was that even then they were not too sure or convinced that this would be the evidence against the A1 in this case. Therefore, the normal step that they took is as deposed by Sr. PI Tajne, PW-161. It has come in the evidence of Sr. PI Tajne, PW-161, that on receiving a copy of the FSL report, Ext.469, on 05/09/06 from ACP Patil, PW-186, that the black powder was high explosive RDX, he recorded API Kolhatkar, PW-18's, statement as an FIR, registered a case against the A1 at Sr. No. 0 as the powder was found in Bihar, submitted a report to his superior to transfer the investigation of the crime to Police Station Basopatti and made station diary entry, certified true copy of which is at Ext. 1717. It has come in his cross-examination that he was entrusted with the investigation of this crime and API Kolhatkar, PW-18, and PSI Kadam were assisting him in the investigation. His evidence about the registration of the FIR Ext.468 is not challenged in his cross-examination and in fact there is no cross-examination to him on this aspect. API Kolhatkar, PW-18,

corroborated his version and proved the contents of Ext.468. Though there was objection by learned advocate Shetty for receiving it in evidence on the ground that it is a statement under Section 161 and not an FIR under Section 164 of the Cr. P. C., there is no submission about it during the arguments. His cross-examination on this point has not discredited his version and it has only come that he saw the report of the CA on 05/09/06 in the Kalachowki Unit, that he was not going through the case diary of this case everyday and no one instructed him to give complaint. The CA report Ext. 469 was shown to him and he admitted that it was received on 11/08/06. Though he was given the suggestion that there is delay in giving the complaint, his explanation earlier that he was not the investigating officer, but was a member of the investigating team and had not seen the case papers of the investigation from 11/08/06 to 05/09/06, shows that in fact there is no delay. PSI Rajan, PW-107, corroborated the evidence given by both these witnesses on this aspect. It has come in his evidence that he received the letter dated 05/09/06 from Addl. Commissioner of Police, ATS, Mumbai on 09/09/06 that the black powder that was seized from the house of the A1 was RDX and as he was on leave on that day, PSI Chaudhary made station diary entry, certified true copy of which is at Ext.1097 and lodged formal FIR No.102/06, certified copy of which is at Ext. 1098 and gave the investigation to PSI Upadhyay. It has come in his evidence that as per the order of the Supreme Court all the original papers were sent to the ATS, Mumbai alongwith the letter Ext. 30. Now some positive statements made by him in his cross-examination

are the best answers to the submissions by the learned advocate Shetty that the offence of possessing explosive, if any, was made out on 20/07/06 itself at Basopatti and not when the FSL report was received. He stated that he did not register the case on 20/07/06 as no case was made out at that time and correctly explained that the case was made out on 09/09/06 when he received the letter from Mumbai police. His specific cross-examination on this point has not revealed anything and a positive statement made by him once again clarifies this aspect, that it is only when it is proved that some substance is an explosive substance, then it becomes an offence to possess it in his jurisdiction. His cross-examination in paragraphs 20 and 21 is in respect of the format of the FIR, the details that are to be filled in, the preparation of the FIR, etc., and he has given all the answers and denied the suggestion that the date of sending the copy of the FIR to the magistrate is not mentioned and pointed out that it is at the top right corner of Ext. 1098. This witness had brought to court the original first information register and he proved the contents of the copy Ext. 1098. Nothing adverse has come out from his cross-examination.

654. Learned SPP then submitted that it is only at a later stage when the investigation progressed, when the provisions of the MCOC Act were applied and the clues were received, that it was noticed that the RDX found in the house of the A1 could be connected to the present case and therefore it is a muddemal property in this case and therefore the application was made to the Supreme Court and the Supreme Court passed the order Ext.29 on

05/04/07. He has rightly submitted that this action of the ATS officers, shows that the act of the ATS was not preconceived one done with a predetermined state of mind. It also shows that there was no predetermined concept about involving the A1 in this case and therefore, the case was sent to Basopatti on 05/09/06, but finally it was required to be called back by applying to the Supreme Court.

655. In view of the above discussion, it will have to be held that the prosecution has proved that RDX was found in the house of the A1 on 20/07/06. This is the circumstance no. 7 proved by the prosecution. It is against the A1. It is the second circumstance against him. To my mind, it is a relevant circumstance considering the proximity of the date of his arrest to the date of the blast and finding of RDX in his house immediately after his arrest.

656. Subsequent in time is the finding of traces of RDX in the house of the A3 on 28/07/06, immediately on the next day of his arrest on 27/07/06. It has come in the evidence of Sr. PI Rathod, PW-176, that after receiving a memo on 27/07/06 from Crime Branch, Unit-II about taking the A3 and A9 in their custody in connection with C. R. No. 77 of 2006 of Mumbai Central Railway Police Station, he and his squad went to that office, made inquiry with the accused and arrested them under panchanama Ext. 1941 and the crime branch gave them a covering letter Ext. 1942 and certified true copy of station diary Ext. 1943 about inquiring with the said accused and handing them over. It has come in his evidence that they returned to the office and made station diary entry no. 14, certified true copy of

which is at Ext. 1944, produced the accused on the next day before the concerned court and obtained their police custody upto 09/08/06 and in the evening of that day itself, i.e., on 28/07/06 proceeded with both the accused, i.e., A3 and A9, to Bandra alongwith ACP Shengal, DW-51, PSI Kshirsagar and staff after making station diary entry no.10, true photocopy of which is at Ext. 1947. It has come in his evidence that he went near the house of the A3 in Bandra, that some people had gathered at the Perry Cross Road, Carter Road, Bandra(W), Mumbai, that he told his staff to call persons to act as panchas and his staff brought two persons who consented to act as panch witness and told them about the purpose of the search, that the veil of the A3 was removed, he was shown to the panchas, his name was told and the panchas were told that his house search was to be taken. The panch witness Sanford Fernandes, PW-31, corroborated his version and it has come in his evidence that the other veiled person was kept in the jeep. It has come in the evidence of both that the A3 led them to his house on the 3rd floor in the Lucky Villa Building, that the room was on the right side and found to be locked and on inquiry with the A3 about the key of that lock, he took it out from a gap/crack on the right side above the door. Police asked him before entering the room whether he wanted to take their and panchas search, the accused said no and then they entered the flat. Both described the search and finding of the articles that are described in detail in paragraph 90 of the judgment. Both identified all the articles in the court and the panch witness also identified the A3. Both identified their signatures on the

panchanama Ext. 533 that was prepared in respect of the search and seizure of the articles and the contents of the panchanama corroborate their version fully. The important and relevant articles that were recovered are black powder that was wiped by cotton swab, Art. 146, registration book of Bajaj Pulsar motor cycle No. MH-01-TA-9542 in the name of the A9 and certificate of insurance Arts. 148 and 148A, receipt dated 10/01/05 for the amount of Rs. 59,500/- issued by Bajaj Choice Center in the name of the A9 Art. 148C, photocopies of certificate of insurance, registration certificate and driving licence in the name of the A9 and A3 Arts. 148D to 148F, photocopy of leave and licence agreement Art. 149, i.e., Ext. 537, eight books allegedly issued by SIMI organisation Arts. 150 to 152, map of Mumbai Art. 153, learning licence and driving licence in the name of the A3, Arts. 155 and 156 and an international map Art. 161, i.e., Ext. 1486. The mobile and notes are not so relevant and important. 30 Saudi Riyals of the denomination of 500 each were also recovered. They are not before the court.

657. Sr. PI Rathod, PW-176, and panch witness Sanford Fernandes, PW-31, then deposed about the search and seizure at the house of the A9 at Mira Road. That part of the evidence will be considered subsequently, but it has come in the evidence of Sr. PI Rathod, PW-176, that they thereafter returned to the office and station diary entry no. 10 dated 29/07/06, certified copy of which is at Ext. 1951, was made as it was after mid-night and, this is important, that the seized property was deposited with the muddemal clerk. The contents of the station diary entries Exts. 1944, 1947 and 1951

corroborate their version of having gone for the search and what was found in the search of both the accused.

658. There is voluminous cross-examination to Sr. PI Rathod, PW-176, and also searching cross-examination to Sanford Fernandes, PW-31, however, except the mistake that Sanford Fernandes, PW-31, committed in respect of there being no terrace on the 3rd floor, rest of his cross-examination has not discredited his version or impeached his credibility. On the contrary, he has given additional positive information during his cross-examination which shows his credibility. This witness has no criminal antecedents and nothing was brought out in his cross-examination to show his connection with the police or that he had acted as panch witness or a witness for the police or the ATS at any time prior to that day. His evidence inspires confidence and I have no hesitation to accept his testimony as truthful and corroborating the evidence of Sr. PI Rathod, PW-176. An effort was made during the cross-examination of Sr. PI Rathod, PW-176, to show that ACP Shengal, DW-51, who accompanied them for the search and seizure, was connected with the panch witness as the panch witness is from Bandra and ACP Shengal, DW-51, was attached to Bandra Police Station. Sr. PI Rathod, PW-176, admitted that he had worked as Sr. PI of Bandra Police Station, but he expressed ignorance as to whether Lucky Villa and Perry Cross Road are within the jurisdiction of that police station. However, he turned down the suggestion that both the panchas were known to ACP Shengal, PW-51, and had acted for him as panchas earlier, for which there is no evidence and is obviously a baseless suggestion. On the

other hand, Sanford Fernandes, PW-31, was not given the suggestion that he was acquainted with ACP Shengal, DW-51, but he was suggested that he is well acquainted with police officer Rathod who took his signatures on the already prepared panchnamas, which he denied. As mentioned earlier there is nothing in the cross-examination of Sanford Fernandes, PW-31, to discredit his version and on the other hand some positive information has come in his cross-examination, which though not stated by him in his chief-examination, is found in the panchanama Ext. 533, i.e., the name of the ground outside which he was standing on that day, i.e., Bharat Krida Mandal ground and the name of the other panch witness as Christopher. He correctly stated that they were in the flat for about two hours. There is obviously a wrong admission by him in respect of the maps Arts. 161 and 165 that the nos. 885 and 887 were on them when they were seized, whereas those numbers are obviously the numbers of the papers in the chargesheet. The learned SPP has rightly submitted that this witness has no antecedents, no vested interest, no previous connection with the police and he has not exaggerated anything, which shows that his evidence is of a sterling quality and he is not a person who is pliable at the hands of police.

659. Sr. PI Rathod, PW-176, as well as the panch witness Sanford Fernandes, PW-31, have stated something more in respect of the collection of the black powder, which is not written in the panchanama. They stated that they noticed black powder on the floor of the upper compartment of a cloth cupboard that was having a zip. Sr. PI Rathod, PW-176, stated that they did not get any

satisfactory answer on inquiry with the A3 about the black powder and as it was necessary to collect the powder a head constable was sent outside to bring cotton, that he brought it, it was divided in 2-3 swabs and the powder was wiped with the swabs. Collecting the powder by cotton swabs is written in the panchanama, however sending a head constable to bring cotton, etc., is not in the panchanama. In my humble opinion, there was no reason for both these witnesses to say this and they could have simply stated that the black powder was wiped with cotton swabs, because it has come in the cross-examination of Sr. PI Rathod, PW-176, that the writing pads, papers and packing material were with them when they started from the office, which could have included cotton swabs also. If, as alleged by the defence, this evidence of search and seizure of incriminating articles is fabricated, to my mind, it was very easy to mention in the panchanama that they had cotton swabs with them. On the other hand, Sr. PI Rathod, PW-176, candidly admitted that he had not taken cotton swabs when he started for the search and it is not in the panchanama that a head constable was sent to bring the cotton. Thus, merely these things being not written in the panchanama will not affect the consistent testimony of both the witnesses.

660. Learned advocate Wahab Khan gave very funny suggestions to Sr. PI Rathod, PW-176, during his cross-examination in respect of most of the evidence given by him being improvements over the statement that he gave to ACP Patil, PW-186, when he handed over the papers of his investigation to him. The major portion of his chief-

examination was shown as omission to state before ACP Patil, PW-186, but in my humble opinion, Sr. PI Rathod, PW-176, is not an ordinary witness. He is an investigating officer and I do not think that anyone will expect an investigating officer to give a detailed statement about the investigation that he has done, more particularly in such a voluminous case. It is foolish to expect this. The cross-examination in this respect from paragraphs 71 to 89 consisting of as many as 35 pages is nothing but unnecessary burdening of the record. Learned SPP has rightly submitted that it was not at all necessary to record his statement as he was an investigating officer and with particular reference to a statement that is recorded under section 161 of the Cr. P. C., the learned SPP submitted that such statement is ordinarily recorded of a person supposed to be acquainted with the facts of the case, which means of a person who is privy to particular facts. To my mind, recording of statement under section 161 of the Cr. P. C. will not cover the statement of an investigating officer and ACP Patil, PW-186, may have done so to apprise himself of the investigation that was done by Sr. PI Rathod, PW-176. In this connection, the learned SPP has drawn my attention to the evidence of Sr. PI Rathod, PW-176, that he gave his statement in brief to ACP Patil, PW-186, therefore, such omissions will not affect the truthfulness of what he deposed. In addition, it will not be out of place to point out that Sr. PI Rathod, PW-176, has very attentively given explanations to some questions. Whatever he had not stated he said so, whatever he had stated he said so, whatever he stated in brief conveying the same meaning he

stated and he also explained at places that some things are written in other words. He also explained that though he stated some things, ACP Patil, PW-186, did not write them saying that there are station diary entries about it. To my mind, these explanations and certain portions from his statement that were pointed out, have clarified this aspect and has shown that the alleged improvements and omissions are in fact not so and they do not affect his evidence.

661. It has come in the evidence of Sr. PI Rathod, PW-176, that after returning back to the office he deposited the seized property with the muddemal department, i.e., on 29/07/06 and had sent the cotton swabs containing the black powder to the FSL alongwith his forwarding letter, office copy of which is at Ext. 598 and subsequently he received the report of the FSL Ext. 599. Before that he stated that he had sent the cotton swabs to the FSL, Kalina on 03/08/06 alongwith his forwarding letter, but the packet was returned as it was not sealed and it was informed that they should affix lac seal of any police station and send it back. Therefore, PC More, PW-42, was sent to the Kalachowki Police Station on 04/08/06 to put the lac seal on the said packet. He did as directed and reached the sample with the original forwarding letter, office copy of which is at Ext. 598. His cross-examination on this point has not revealed anything adverse. The letter Ext. 598 is dated 03/08/06, he stated that he signed it on 04/08/06. The contents of Ext. 598 corroborate his version, because the date 04/08/06 is in his handwriting below his signature at the end of the letter. He stated that he did not go to the police station Kalachowki and put seal on

the packet and again repeated what he stated in the chief-examination that PC More, PW-42, went to police station Kalachowki, put the seal of that police station on the packet and the specimen of seal on the forwarding letter and its copy. Contents of Ext. 598 and the seal on Art.40C corroborate his version. It has already come in his cross-examination that the packet was not given to him on 04/08/06, but it was in the malkhana on that day and this evidence is corroborated by the evidence of PC More, PW-42. He had recorded the statement of PC More, PW-42, and certain improvements were tried to be brought on record about the evidence of PC-More, PW-42, that he had told the inward clerk of the CA office that the packet is from the ATS and as there is no lac seal, the label containing the signature is affixed on it, but he did not accept it and he told him to get the lac seal of any police station on the box and then he would accept it, therefore, he, i.e., PC More, PW-42, returned back and deposited the box with the muddemal clerk. Sr. PI Rathod, PW-176, explained that this is written in other word concisely, viz., that it is written that when he went to Kalina, the officer there returned it as the box did not have lac seal, therefore, he brought it back, made station diary entry and deposited the box with the muddemal. Thus, infact the evidence of PC More, PW-42, about what had happened on 03/08/06 is not by way of improvement, but it is explaining the events of what had happened on that day. Sr. PI Rathod, PW-176, stated that he had handed over the original and the office copy of forwarding letter dated 03/08/06 to ACP Patil, PW-186, which are at Exts. 601 (1 and

2). They are dated 03/08/06 and bearing outward no. 748, which is the same number that was put on Ext. 598. Thus, his cross-examination has not discredited his version about sending the sample to the FSL. The brown packet Art. 40C contains a label on the front side containing the description of crime number and the contents of the packet and signatures of Sr. PI Rathod, PW-176, and panchas and it is pasted on white thread which is tied criss-cross on the packet. On the back side there is a lac seal obviously on the junction of the four threads running crisscross and it is of Police Station Kalachowki. The label is covering the knot of the threads on the top side.

662. PC More, PW-42, has corroborated the evidence of Sr. PI Rathod, PW-176, in all respects. It has come in his evidence that Sr. PI Rathod called him in his office at Bhoiwada on 03/08/06, gave him a forwarding letter and the office copy for giving to the CA, FSL, Kalina, told him to go to the muddemal clerk at the office of the ATS at Kalachowki, collect a box wrapped in a brown paper, sealed and with label and to reach it to the office of the CA and gave a chit to be given to the muddemal clerk. He went there, gave the chit, took the box that he gave, made entry in the muddemal register and also made a station diary entry in the ATS police station at Kalachowki. It has come in his evidence that when he tried to hand over the box to the inward clerk at the office of the CA, he did not accept it saying that it should have lac seal and though he told him that it is from the ATS, etc., the clerk told him to get the seal of any police station on the box and then he would accept it, therefore, he returned back

and, this is important, that he deposited the box with the muddemal clerk at Kalachowki, made an entry in the muddemal register as well as station diary and went to the office at Bhoiwada and told the events to Sr. PI Rathod, PW-176. It has come in his evidence that on the next day, i.e., on 04/08/06, Sr. PI Rathod, PW-176, made some necessary changes in the letter, told him to go to Kalachowki, collect the box, go to Police Station Kalachowki, put the lac seal of the police station on that box and ink impression of the seal on the original letter and on its office copy and then to take the box to the CA. He did so accordingly, deposited the box and obtained acknowledgment on Ext.598, returned to Bhoiwada office and gave Ext.598 to Sr. PI Rathod, PW-176, who took his statement on 13/08/06, as he, i.e., Sr. PI Rathod, PW-176, was busy on that day and PC More, PW-42, was attached to that unit itself. His cross-examination has not revealed anything except that he did not make entry on 04/08/06 in the muddemal register. He could not say what happened to the letter of 03/08/06 and its office copy. Therefore, Exts. 601 (1 or 2) were produced during his cross-examination and in fact their contents corroborate what he had stated. Strangely he was given a suggestion and he admitted that on 3rd and 04/08/06 Sr. PI Rathod, PW-176, did not take out the packet from his possession and hand it over to him and he made a very positive statement that on both days he took the box from the muddemal clerk. He honestly replied that when he took the packet from muddemal clerk on 03/08/06, he had realized that there was no lac seal, but did not go to Sr. PI Rathod, PW-176, and tell him about it. The procedure of

sealing any article by lac seal and brass seal has been described by him perfectly. In respect of his omission that he did not tell Sr. PI Rathod, PW-176, when he gave his statement about the events of 03/08/06, he gave a very good explanation that as he had given the information to Sr. PI Rathod on 03/08/06 about it, he did not tell it again on 13/08/06 when he gave his statement. Some other improvements are brought on record in respect of what transpired on 04/08/06, but the record, i.e., office copy of forwarding letter Ext.598 and the brown paper, Art. 40C, corroborate what he has explained. In connection with his visit to Police Station Kalachowki, he was cross-examined by learned advocate Wahab Khan and he stated that he did not take any letter of Sr. PI Rathod or any other officer to Police Station Kalachowki about putting the lac seal, that he did not give any application to the police station about it, that Kalachowki Police Station did not take his signature in their record and did not make any entry about his visit and the work that was done. The last is a positive sentence as is stated by Sr. PI Rathod, PW-176. PC More, PW-42, further stated that he had never seen the seal of Police Station Kalachowki at the ATS office. Thus, his evidence is unimpeached and it fully corroborates the evidence of Sr. PI Rathod, PW-176. There are no contradictions in his as well as in the evidence of Sanford Fernandes, PW-31.

663. In connection with the photocopy of the agreement of that flat/room between the A3 and flat owner Sajid, PW-48, Sr. PI Rathod, PW-176, stated that as per the agreement Ext. 537, part of the amount was to be paid by cash and part by cheque, therefore, he

called for the statement of the bank account from the ICICI bank and ACP Tawde gave the letter to the bank, office copy of which is at Ext. 1948 dated 31/07/06 and got attested copy of the bank account that is in the name of the father of the A3, Ext. 1950, and stated that from this it should be gathered that the cheque given by the A3 to the flat owner Sajid, PW-48, was from the bank account of his father and the said entry is reflected in the statement. Though Sr. PI Rathod, PW-176, did not state in his chief-examination that he took the statement of Sajid, PW-48, in his cross-examination some portions that were confronted to the witness were got proved from him. It has come in the evidence of Sajid, PW-48, that his statement was recorded by the police and at that time he produced the original agreement Ext. 632 and the zerox copy of his bank passbook Art. 263. It is in his evidence that he rented out one part of the flat no. 24 on the terrace of Lucky Villa, 'A' building and during their talk about the terms and conditions, the customer who was initially introduced by the broker as Sameer, told him his name as Faisal Shaikh and explained that he is fondly called as Sameer. It has come in his evidence that the agreement was executed for 11 months and he got the token amount of Rs.22,500/- in cash, cheque of Rs. 50,000/- and balance deposit of Rs.27,500/- in cash and stated about the terms of rent. It has come in his evidence that the cheque amount was credited to his account in the Abhyudaya bank, Link Road, Bandra(W) branch. He identified the A3 unhesitatingly. His cross-examination is mainly concerning the description of the flat, its area, etc., and in further cross-examination it has come on record

that at the time of agreement the A3 said that his name is Faisal, but he is fondly known as Sameer. His cross-examination has not revealed much except the contradicted portions Exts. 2002 (1 and 2), the contents of which, to my mind, are not such that they affect his evidence or impeach his credibility. There is no dispute from the side of the accused about he having taken the said flat on rent, because there is not a single suggestion to this witness that he had not given the said flat to the A3 by leave and licence agreement. Thus, some improvements made by him or some contradiction that is brought on record, does not materially affect the fact that the A3 had taken the said flat on leave and licence from Sajid, PW-48. It is in this respect that the learned SPP submitted that there is nothing to disbelieve the fact that the A3 is the person who had occupied the said flat from where the incriminating articles were recovered. To my mind, the fact that the flat was taken by the A3 by the agreement Ext. 632 on 21/07/05 at some place other than his residence is very important and relevant, as it can be said to be the start of the conspiracy of taking a different flat nearly one year before the bomb blasts, which indicates a long drawn out conspiracy.

664. Thus, by the cogent evidence of Sr. PI Rathod, PW-176, and Sajid, PW-48, prosecution has proved that the A3 had taken the flat in Lucky Villa on rent. The thoroughness of the investigation done by the ATS officers is apparent by the evidence of Sr. PI Rathod, PW-176, that a letter was sent to the Superintendent of Stamps to verify whether the agreement that was found in the house of the A3 was registered, office copy of which is at Ext. 1953, and the reply,

Exts. 1954 (1 and 2), was received from the said authority that the said agreement had been registered and the flat owner had deposited the stamp duty of Rs.750/-. Sajid, PW-48, obviously did not know this. He admitted that he does not know when the red stamp of franking was put on the agreement, but explained that Albert Fernandes, a broker, about whom he stated earlier, did it but he does not know when and from where. He candidly admitted that he had not registered the agreement with different tenants in the Registrar office, but came to know 3-4 years before that they are required to be so registered. The cross-examination on this point to Sr. PI Rathod, PW-176, in paragraph 170 does not disclose anything and though he admitted that there are no particulars about the person Sajid Shaikh in the reply Exts. 1954 (1 and 2), the contents of Ext. 1953, i.e., the office copy of the letter written by the ACP, ATS, refer to leave and licence agreement between Sajid Shaikh (licensor) and Faisal Shaikh (licensee). Thus, it is obvious that the reply was in connection with the said agreement. Thus, it is established by the prosecution by documentary evidence that the A3 was staying in the flat in Lucky Villa building.

665. Learned advocate for the A3 attacked the evidence of Sr. PI Rathod, PW-176, with respect to the manner in which he made the search and seizure and also attacked his credibility. First submission is that there is no satisfactory evidence about the arrest of the A3 and A9 from the Crime Branch on 27/07/06 and in this respect he submitted that it has come in the cross-examination of Sr. PI Rathod, PW-176, that he had recorded the statement of friend of A3 by name

Shah Faisal Alam, in whose statement it had come that A3 was arrested by Crime Branch on 21/07/06 and he questions as to why the accused had not been produced immediately before any magistrate though he was arrested six days before. This submission obviously cannot be considered because learned advocate is placing reliance on the evidence given by Sr. PI Rathod, PW-176, in respect of the statement of a witness that was recorded under section 161 of the Cr. P. C. about which, to my mind, no evidence can be given or the evidence given about it cannot be considered. The defence did not ask the prosecution to examine this witness and did not summon him as a defence witness. On the other hand, if the covering letter and the certified true copy of station diary Exts. 1942 and 1943 respectively are perused they do not indicate that the A3 and A9 were arrested by the Crime Branch on 21/07/06. The covering letter Ext. 1942 reveals that on the basis of reliable information the inquiry was made with the A3 and A9 and it was revealed that they are connected with the L-e-T organisation and had illegally entered Pakistan and took the training of disruptive activities and, therefore, they are taken in custody and are being handed over to the ATS for further action. The contents of the station diary entry are in more detail. It shows that on the inquiry that was made with the A3 and A9, it was revealed that they had entered Pakistan *via* Iran and had obtained the training of operating automatic weapons, preparing bombs, exploding bombs and to recruit and train new members. It was also revealed that they had entered into a big conspiracy to do bomb blasts in Mumbai and other places and as a part of that

conspiracy they might have committed the bomb blasts in the western railways and therefore they have been taken in custody. It is no doubt true that Sr. PI Rathod, PW-176, admitted that he did not record the statement of any officer of the Crime Branch in connection with the inquiry that they had made, but explained that he did not feel it necessary, therefore, he did not record them and a positive statement was made by him that PI Hargude and Dabhade of the Crime Branch had taken them in custody on suspicion of their involvement in the bomb blasts case. He was suggested and he admitted that except this fact no other details are mentioned in the letter and in the station diary, but to my mind, what more details were expected in view of the contents of the station diary reproduced above. Thus, this aspect does not affect the credibility of the investigation done by him and even otherwise it is an action that was prior to the arrest by the officers of the ATS. It also shows that the Crime Branch satisfied itself about the involvement of the A3 and A9 and they had suspicion and therefore they handed over both the accused to the ATS.

666. Next submission by the learned advocate is of the police not taking the seal and the required material while going for the house search. Now in this respect it has come in the evidence of the prosecution witnesses that the ATS did not have its own brass seal upto 12/08/06 and insofar as not using the lac seal at least for sealing the envelope Art. 40C in which the black powder sample was packed in a box, to my mind, if at all the police wanted to fabricate such evidence, they would have done it in a perfect manner without

leaving any lacuna. Admittedly, lac seal was also not used and the investigation has proceeded ahead as per the procedure that has been adopted for taking the sample and packing it, which reflects the honesty. This aspect has already been discussed.

667. Next submission by the learned advocate is about the key of the flat being in a crack or niche above the door of the flat of the accused from where he allegedly took it out. He submitted that this is unimaginable, unnatural and artificial. Nobody will keep the key of his house like that and there is no sense in locking the door if the key is kept in such a fashion so that anybody will go and open the door. One can understand that the key was with a neighbour or that it was lost or a key maker was required to be called to prepare a duplicate. He submits that this is the height of unnaturality. To my mind, at the cost of repetition it will have to be said that this is not an uncommon phenomena. The relevant thing is that the fact that the key was in the niche was within the knowledge of the A3 and it is so written in the panchanama and Sr. PI Rathod, PW-176, and the panch witness Sanford Fernandes, PW-31, have given consistent evidence about it. There was nothing to prevent Sr. PI Rathod, PW-176, to introduce a story of taking the key from a neighbour or calling a key maker. He wrote and deposed whatever that had happened without worrying as to whether it would be unnatural or unimaginable. Thus, this submission has not discredited his evidence.

668. Next submission by the learned advocate is that sealing of the cotton swabs was compulsory and in the absence of this, the

evidence about finding the RDX is not credible. It will be pertinent to point out that there is no suggestion to Sr. PI Rathod, PW-176, that the sample was tampered. The only suggestion is that it was planted. It has come in the evidence of Sr. PI Rathod, PW-176, that immediately after returning back from the search, all the articles that were seized including the sample, were deposited with the muddemal clerk and the station diary entry no. 10, certified true copy of which is at Ext. 1951 (5 pages), was made about the search and seizure. This is a contemporaneous record, which has not been challenged or controverted and its contents corroborate his version. It has come in his evidence as well as in the evidence of PC More, PW-42, that the box containing the sample was collected by PC More, PW-42, from the muddemal clerk from the office of the ATS at Kalachowki on 03/08/06, that he gave it back as it was not accepted in absence of lac seal by the clerk of the office of the CA and that he again took it from the muddemal clerk of Kalachowki, ATS office on 04/08/06. Thus, it was not in the custody of Sr. PI Rathod, PW-176. Thus, this shows that there was no scope for tampering with the sample and as is rightly submitted by the learned SPP, that possibility is one thing and whether it is tampered is another thing. In this respect the learned SPP referred to the evidence given by the CA Daundkar, PW-189, who was not examined by the prosecution, but was called at the request of the defence for cross-examination. He submits that the answers given by this witness in paragraphs 1 and 11 are very important particularly the question and the answer in paragraph 1. Daundkar, PW-189, stated that police and the

investigating agency do not send copies of the seizure panchanama, that specimen copy of the seal affixed on the forwarding letter is verified with the seal on the packet that is sent. In reply to a question as to whether copy of label signed by the panchas is required to be sent with the forwarding letter for comparing with the label on the packet, he answered that the details of the labels on the packet are already mentioned in the forwarding letter and they compare it with the label on the packet, i.e., CR number, name of the police station, etc. He made positive statements which have not been controverted in further cross-examination, that it is not necessary to send the copy of the label signed by the panchas though there is a column in the forwarding letter, that it is not compulsory for the forwarding authority to fill all the columns in the forwarding letter, because there is an alternative as the details are mentioned in the forwarding letter and, this is important, that they only verify the seal that is on the forwarding letter with the seal on the packet, though the seal may be of a different authority than that which sent the parcel. In paragraph 11 he stated that it is necessary to seal the articles that are collected from the spot or recovered at the instance of the accused, if they are sent for chemical analysis and this is the precaution to be taken to prevent any tampering with the articles. He stated that whenever any articles that are not properly sealed or labeled are received, they return them and if they are sent again properly sealed, then they receive them. It is in this context the submission made by the learned SPP that possibility of tampering is one thing and whether it is tampered is another thing, assumes

importance. Learned SPP has submitted that the investigating officer is not shy of stating of what has happened or concocted anything and if he really wanted to concoct this type of evidence, he could have prepared the evidence as is usually found. Hence, to my mind, this aspect does not affect the evidence about the seizure and drawing of the sample and it being examined by the CA, because the evidence of Sr. PI Rathod, PW-176, and PC More, PW-42, is a cogent evidence.

669. Next submission by the learned advocate is that a purposeful lapse is committed by the investigating officer by not recording the statements of neighbours of the alleged flat of the A3 or residents of that building, which shows that no search was made. In my humble opinion, when the investigating machinery has gone to the extent of recording the statement of the owner of the flat, i.e., Sajid, PW-48, and collecting documentary evidence about letting the flat to the A3, non-recording statements of the neighbours or residents of that building cannot be an issue and on this count it cannot be said that bogus search was made or that the entire search is bogus, vitiated or unreliable.

670. Next submission by the learned advocate is that the panch witness Sanford Fernandes, PW-31, has stated that there was no nameplate on the flat and there was no terrace on the third floor, which is totally contradictory to the evidence of the owner of that flat, which shows that he had not gone there. I do not think that such an inference can be drawn merely because there was no nameplate on the door of the flat or because Sanford Fernandes,

PW-31, erred in stating that there was no terrace on the third floor.

671. Next submission is that according to the panch witness Sanford Fernandes, PW-31, the cupboard was being searched by one constable and he took the cotton from the person who had gone to bring it. Now, Sanford Fernandes, PW-31, has not stated that it was a constable, but stated that it was a policeman. In this respect the learned advocate further submitted that this procedure of sending a constable to bring the cotton is wrong, then the cotton being not shown to the panchas is also wrong and unnatural evidence, which shows that the black powder was planted on the accused. If one considers the cross-examination of Sanford Fernandes, PW-31, he has given minute details of what has exactly happened, viz., that the policeman who had brought the cotton gave it to the policeman who had searched the cupboard and at that time officer Rathod was standing at the distance of five feet from the cupboard and the policeman after taking the cotton, put it in the cupboard and showed them the black powder and that was the first occasion when he saw the black powder on the cotton. The next statement made by him clarifies all doubts, because he stated that when he had gone to the cupboard he had seen the black powder, that it was not removable by hand and he and the other panch did not touch it. Thus, all doubts have been cleared and there is no reason to infer that the black powder was planted.

672. Next submission by the learned advocate is that no person who deals in such activity will keep such an evidence like this after the act has been executed and the investigation is going on. To my

mind, it is not that the black powder was in bulk, similar to what was found in the house of the A1, not even lesser quantity kept in a box or a polythene bag. They were just traces, not noticeable to a common person in the usual course of life. A3 could have known about them provided he knew that they were there.

673. In respect of the next submission of the learned advocate that the search of the vehicle was not given to the panchas and when the constable came back with the cotton his search was not taken, once again it will have to be mentioned that whatever had happened has been written in the panchanama and I have already discussed this aspect. No doubt, when he came back with a cotton, his search should have been taken to ascertain whether the cotton bundle that he brought was factory packed and unopened. Both the witnesses have not stated that loose cotton was brought, but they have stated that cotton bundle was brought, which means most probably factory bundle of cotton must have been brought. Hence, the submission of the learned advocate on this count cannot be accepted. To my mind, the search of the house of the A3 immediately on the next day of his arrest shows that there was no delay in making the search. It shows the promptness in the investigation and rules out any possibility of deliberate planting of such type of evidence to falsely implicate the accused. If really the officers who went for the search had in their mind to fabricate the evidence in such a manner and they went there with some black powder/RDX with them and sprinkled it in the corner of the upper compartment of the cupboard, they could have easily carried cotton for collecting the said powder as well as

the sealing material with them to make the evidence watertight. Hence, I do not find any substance in the submission of the learned advocate.

674. Learned advocate has pointed out to another aspect, viz., it has come in the evidence that after the search, the flat was locked and the policeman kept the key in his pocket, but it was not put in an envelope and this was done to pressurise the owner of the flat, i.e., Sajid, PW-48, to give evidence as per their dictates. There is no suggestion to either Sr. PI Rathod, PW-176, or Sajid, PW-48, in this respect and one cannot draw such an inference.

675. Next submission by the learned advocate is that assuming that the A3 had taken the flat on 20/07/05, then the period of agreement in Ext. 632 is of 11 months, i.e., from 21/07/05 upto 20/06/06, and there is no evidence to show that this agreement was renewed. This submission is overlooking the aspect that in that case it was for the A3 to first come out and say that he had taken the flat on rent as per the agreement and had handed over the possession on 20/06/06 or on any other date, but before the search was conducted on 28/07/06. There is no cross-examination on this point to Sr. PI Rathod, PW-176, or Sajid, PW-48, and no suggestion has been given that the A3 was not in possession though as a lessee holding over after the expiry of the period of the lease agreement. Mere submissions are not sufficient and this fact would have to have been admitted and then the A3 should have come with a specific case that he had given up possession.

676. Learned advocate then questions as to what had happened to

the sample between 28/07/06 when it was allegedly taken and upto 04/08/06 when it was handed over to the FSL. This is already explained by the evidence of Sr. PI Rathod, PW-176, and PC More, PW-42, that it was with the muddemal clerk.

677. The above sums up the attack by the learned advocate in respect of the evidence of the search and seizure. Sr. PI Rathod, PW-176, denied the suggestion about planting black powder or concocting the evidence and on the other hand a positive statement has come in his cross-examination that he did not visit Lucky Villa, Bandra prior to the arrest of the A3 or after his arrest, but prior to his house search. This practically clears any doubt about the veracity of the evidence in respect of the search and recovery of the RDX from the house of the A3. Sr. PI Rathod, PW-176, has candidly admitted that he did not take cotton swabs with them and positive statements are made that he had sent PC Jagdale buckle no. 1956 to bring the cotton and he brought the bundle of cotton and that it was PSI Kshirsagar, who collected the powder by the swabs. These positive statements have infact given the details that Sr. PI Rathod, PW-176, did not write in the panchanama Ext. 533.

678. Infact the A3 is not in a position to disown the possession of the flat, because his personal documents have been found during the search alongwith the black powder, viz., photocopy of the agreement with the landlord Ext. 537, which contains his signature and the original of which Ext.632 is proved by a signatory of that agreement, i.e., owner of the flat Sajid, PW-48. In addition, photocopies of driving licence Art. 148F and original learning licence and driving

licence Arts. 155 and 156 in his name were found. Not only this, registration book of a motorcycle, certificate of insurance, photocopies of certificate of insurance, receipt of Bajaj Choice Centre in the name of the A9 and registration and driving licence of the A9, who is his brother, were also found.

679. In view of the above discussion, it will have to be held that by the cogent and convincing evidence given by Sr. PI Rathod, PW-176, panch witness Sanford Fernandes, PW-31, the carrier constable PC More, PW-42, and the owner of the flat Sajid, PW-48, the prosecution has proved that the flat from which the black powder was found, which as per the FSL report Ext.599 is RDX, was in possession of the A3 and that RDX was found in that flat. **This is the circumstance no. 8 proved by the prosecution.** It is against the A3. It is the third circumstance against him.

680. At this stage itself, it will be convenient to consider the seizure of the other articles from the house of the A3 that were found alongwith the finding of the RDX, because it is only the evidence of Sr. PI Rathod, PW-176, and panch witness Sanford Fernandes, PW-31, about it. It can be directly referred subsequently at the appropriate places as having been considered.

681. I have already held that the evidence about search and seizure given by both these witnesses is a cogent and convincing evidence. After his evidence about taking the sample of the black powder, Sr. PI Rathod, PW-176, described accurately what was found in a red handbag that was by the side of the cupboard. Sanford Fernandes, PW-31, also accurately described the other articles that were found

and then unhesitatingly and specifically identified each and every packet, the labels thereon, his signature and the signatures of the police officers and of the other panch on the labels and each and every article in the packets, which were also identified by Sr. PI Rathod, PW-176. Both described how the articles were packed and labeled. The other important and relevant article that was seized is the photocopy of the leave and licence agreement Art. 149, Ext. 537, the original of which is proved by Sajid, PW-48, as Ext. 632 and the evidence of its relevance has been discussed above.

682. Then are the articles, the relevance of which will be discussed at the appropriate stages. They are (i) 30 notes of 500 Saudi Riyals each, which are not before the court, (ii) 8 books allegedly relating to SIMI organisation, Arts. 150 (1 and 2), Arts. 151 (1 and 2) and Arts. 152 (1 to 4), (iii) map of Mumbai, Art.153 and (iv) photocopy of international map Art.161, Ext.1486. The other articles include registration, insurance documents and receipt of Bajaj Pulsar motorcycle in the name of A9, Arts. 148, 148A, B & C, photocopies of insurance, registration certificate and driving licence of the A9 and A3, Arts. 148D, E & F, two currency notes of Rs. 1,000/- each, Arts. 154 (1 and 2), learning licence and motor driving licence in the name of A9, Arts.155 and 156, the key of the flat, Art.162, mobile, battery and sim card, Arts.163, 163A & B respectively. These documents have not been disputed and they show that A3 was residing there and obviously as the A9 is his brother, his documents were also there.

683. The cross-examination of Sanford Fernandes, PW-31, by

learned advocate Wahab Khan is mainly related to the knowledge of the witness about the locality and what happened and what was done during the panchanama, but nothing was elicited to discredit his testimony. Cross-examination by learned advocate Shetty for the A3 covering this point has also not discredited his testimony. It has only come in his cross-examination that he did not take the other articles in his hands, that he did not sign on the books, that he did not take any book in his hands and read its contents about which he cannot say whether they are original or colour xerox copies, that the books that are stapled did not contain pages in serial and are without any names or handwriting of any person and appear to be new and unused, that maps like Art. 153 are available on the railway platforms, with the hawkers and in any shop and that the names of the spots where markings are made on the maps are not mentioned in the panchanama. These answers do not discredit his evidence, because he has deposed correctly what documents he signed, i.e., the maps and what documents he did not sign. It has come as positive statements that he and the other panch did not personally search both the flats, but he took the maps in his hands for signing and saw them. The cross-examination of Sr. PI Rathod, PW-176, has also not revealed anything to discredit his testimony and he admitted about not obtaining signatures of panchas on the railway tickets, insurance papers, registration book, driving licence, that name of the A3 is not mentioned on the railway tickets and he does not know who the persons mentioned in the reservation slips Arts. 159 (1 and 2) are. In this respect he explained that the

addresses were not verified as they were incomplete. He admitted that signatures of the panchas were not taken on the books, that he had not read them and cannot say whether they are coloured photocopies of originals and admitted that except Arts. 152 (1 to 4) the pages in the other books are not in order and admitted that colour of the two books is different from the other two books. He gave a perfect explanation about not obtaining signatures of panchas on the books by stating that he did not obtain the signatures as the books were put in the envelopes and label containing their signatures was pasted on the envelopes. Insofar as the Saudi Riyals are concerned, he admitted that he did not note their serial numbers, which, to my mind, is unnecessary because Indian currency notes are required to be identified by serial numbers, but finding of Saudi Riyals is something uncommon. The cross-examination concerning the mobile of the A3 is not relevant as the prosecution has not led any further evidence about it. At the end he denied the suggestion that the said house was not in possession of the A3 and they planted all the articles to create false evidence to involve the accused in the crime. This cross-examination was in paragraphs 155 and 156 and in further cross-examination in paragraph 164 a common suggestion in respect of the recovery from the house of the A3 and A9 was given that the panchanamas Exts. 533 and 534 are falsely prepared and both the panchas were known to ACP Shengal, DW-51, and had acted for him as panchas earlier. Of course, he denied both the suggestions and nothing is brought on record to show the connection of both panchas with ACP Shengal,

DW-51. About the maps that were found, he admitted in paragraph 146 that all the international maps that were seized were photocopies and about the mobile numbers written on the maps, he made positive statements that they are from some Gulf country, but he did not try to verify them by calling from his mobile and, this is important, that on making inquiry with an STD booth through his staff he came to know that they are of Saudi Arabia. He naturally denied the suggestion that they planted all the maps of Mumbai and the international map and the books on the accused.

684. Learned advocate Shetty submitted in respect of the seizures of all these articles, that it was necessary that they were packed and sealed and the impression of the seal of the authorities affixed on the lac seal. He submitted that giving all the latitude to the prosecution that the ATS did not have their brass seal at the time of seizure, Sr. PI Rathod, PW-176, who was the investigating officer at that time was from Bombay Central Railway Police Station and nothing prevented him from using the seal of that police station or of Kalachowki Police Station, which was near the ATS office, by adopting appropriate steps. This was not done and these are the suspicious factors which cast serious doubt about this incriminating material and it does not make out any case against the accused and the planting cannot be ruled out and thus this material is a suspicious and doubtful circumstance against the accused, hence, it is an unreliable circumstance. He submits that possibility of planting the books cannot be ruled out and the seizure of the books cannot be accepted as reliable material and in all probability, these are the

books that are planted by the police after obtaining them from Bhopal police, however, they did not notice the name of the arrested accused in the case in Bhopal appearing on the books and there is no further investigation as to in what way the books are anti-national and affects the sovereignty, integrity of the nation and causes conflicts and that they are prohibited. In this respect the learned SPP has rightly submitted that these books are obviously published by the SIMI organisation and were found in the year 2006, whereas, SIMI was banned in the year 2001. There are no submissions in respect of the evidence of Sr. PI Rathod, PW-176, in respect of the maps because there was not much cross-examination about it.

685. In respect of the seizure of Saudi Riyals, the learned SPP has rightly submitted that it is not the case of the defence and it is practically impossible that some Saudi Riyals are brought and dumped in the house of the A3 and at that stage of the investigation at least nobody could have envisaged that this circumstance exists or if it exists, it will be crucial to nail the accused. To my mind, the recovery of Saudi Riyals was very very early in the day to draw the inference of planting and fabrication. Learned SPP submits that three very very important incriminating circumstances arise from the house search of the A3, i.e., (a) black powder that turned out to be RDX, (b) recovery of Saudi Riyals and (c) the international map on which a route was marked as well as the map of Mumbai having marks at specific places. He submits that alongwith this if the recovery of leave and licence agreement, which *prima facie* indicates that a different flat other than the residence of the accused was

taken on rent at some other place about one year before the blasts is considered, it shows that it was the start of the long drawn out conspiracy.

686. In my humble opinion, no inference about fabrication and planting of the RDX, books, Saudi Riyals and maps can be drawn as the investigating machinery was just seventeen days in the investigation and it cannot be visualized that only one investigating officer, out of seven, hatched a conspiracy of fabricating the evidence like the Saudi Riyals, the books and the maps and planting it on the A3 and the other accused in this case.

687. Learned SPP submits that the evidence of Sr. PI Rathod, PW-176, shows that he has not suppressed anything and if at all the submissions of the defence that this evidence is fabricated and planted is considered, then it was very easy for him to fabricate the evidence in a perfect manner so as to leave no room for doubt. He submits that this is one of the strongest evidence that has come on record against the A3 and has rightly submitted that no ambiguity is left as regards the issue of sealing, no lingering doubt remains about the premises from where the incriminating articles were seized and the recovery of the incriminating articles like Saudi Riyals, books and maps is proved beyond doubt.

688. In view of the above discussion it is clear that the evidence of Sr. PI Rathod, PW-176, as well as the panch witness Sanford Fernandes, PW-31, in respect of the recovery of the articles other than the RDX, is a cogent and convincing evidence. Hence, it will have to be held that the prosecution has proved that on 28/07/06,

15000 Saudi Riyals, books relating to SIMI Arts. 150 to 152, map of Mumbai Art. 153 and photocopy of international map Art. 161 Ext. 1486, were found in the flat in possession of the A3. **This is the circumstance no. 9 proved by the prosecution. It is against the A3. It is the fourth circumstance against him.**

689. Next in time is the recovery of three chemical bottles containing Hydrogen Peroxide, Acetone and Sulfuric Acid from the locker of the A2 in Sabu Siddiqui hospital where he was working. It is an admitted position by the A2 in his written submission Ext.2823 as well as in his oral evidence as DW-41 that he was working in the said hospital at that time as Medical Registrar and had a locker in a room on the left side of the ICCU unit. The only question is whether the three bottles of chemicals were found there. It has come in the evidence of Sr. PI Rathod, PW-176, that during the interrogation of the A4 immediately after he was arrested on 12/08/06, the A4 had disclosed that the A2 was going to teach them how to prepare the bombs with the help of chemicals. Though the A2 was in custody in C. R. No. 41 of 2006, with the permission of his superiors and Sr. PI Wadhankar, PW-167, who was the investigating officer, he interrogated the A2, who gave a voluntary statement that he is ready to show the bottles of chemicals that he has kept in the locker of Sabu Siddiqui hospital. Chandrakant Shigwan, PW-17, and one more had been called and the A2 made a statement before them and the memorandum of a statement Ext.457 was prepared. He as well as the panch witness Chandrakant Shigwan, PW-17, proved the contents of the said memorandum, about which station diary entry

no. 16, certified true copy of which is at Ext. 1803, was prepared. He deposed about going for the search alongwith the packing and sealing material to the said hospital as per the directions of the A2, the A2 leading them to the ICU department on the first floor, Dr. Atiya, PW-53, being present there and accounts manager Salamatullah Khan coming there and then the accused taking them to the room, taking out the key Art. 33 from below the mattress on the cot and producing the three bottles of chemicals of Sulfuric Acid, Art. 34, Acetone, Art. 35 and Hydrogen Peroxide, Art. 36 and Sr. PI Rathod, PW-176, putting the bottles in separate boxes, wrapping them by khaki paper, putting the key in an envelope, affixing signed labels on the boxes and on the envelopes and sealing them under the panchanama Ext. 458 that was written by PSI Gaikwad, PW-169. PSI Gaikwad, PW-169 corroborated his evidence about the search and seizure and about he writing the memorandum and the panchanama and Chandrakant Shigwan, PW-17, also corroborated their evidence. The contents of the memorandum and the panchanama Exts. 457 and 458 respectively, corroborate the version of all these three witnesses. All three witnesses identified the articles, i.e., the key, the cover, in which the key was kept, the bottles and the boxes and the signatures of Sr. PI Rathod, PW-176, and Chandrakant Shigwan, PW-17, as well as the other panch. Infact, Sr. PI Rathod, PW-176 and, Chandrakant Shigwan, PW-17, also stated that the signatures of the accused were taken on the memorandum and seizure panchanama and both identified his signatures. It has come in the evidence of Sr. PI Rathod, PW-176, that he had sent the

bottles of the chemicals to the FSL immediately on the next day, i.e., on 13/08/06, alongwith his forwarding letter, office copy of which is at Ext. 908, the contents of which he proved, alongwith HC Padval, PW-91, who corroborated his evidence and stated that he had taken the sealed carton on 13/08/06 and Sr. PI Rathod, PW-176, had told him to take it carefully as there were bottles in it. The report of the CA Ext. 909 was received in his evidence and his evidence about carrying the sample is practically unchallenged. On the other hand, positive statements have come on record during his cross-examination that he had seen the seal of the ATS with PI Rathod and he denied the suggestion that the ATS was not given any seal upto 13/08/06. It has come in the cross-examination in paragraph 113 of Sr. PI Rathod, PW-176, that official seal was not allotted to the ATS Bhoiwada office, but every individual investigating officer was given seal, that Sr. PI Tajne, PW-161, had given him the official seal from Kalachowki office on 11/08/06 by a memo and it was with him on 11 and 12/08/06. This has come in cross-examination and I do not know why suggestions were given that there was only one brass seal at the Kalachowki office, etc., which of course he denied. The contents of the FSL report Ext. 909 confirmed the contents as per their labels and in response to the question no. 3 in Ext. 908, the CA opined that Hydrogen Peroxide is a strong oxidizing agent, that Acetone is highly flammable liquid and as per literature concentrated Sulphuric Acid is used as initiator with Chlorate in explosive mixture.

690. Thus, by the evidence of the above four prosecution witnesses

and the documents, the prosecution has proved the recovery of the three bottles of chemicals and has proved the link with the FSL report with cogent evidence. The cross-examination of PSI Gaikwad, PW-169, in paragraphs 18, 19 and 46 is in respect of the arrest of the accused, interrogation, station diary entries and the lockers in that room, but nothing is revealed to discredit his testimony and it was just a fishing expedition. His cross-examination in paragraph 28 is in respect of search and seizure and again it has not discredited his version.

691. Insofar as the panch witness Chandrakant Shigwan, PW-17, is concerned there was a considerable cross-examination to him and it has come on record that police had taken photographs of the bottles. The only thing that is brought on record is his admission that the accused did not say anything before him and that he put all his signatures in the office of PI Rathod. Obviously, the later is a vague suggestion and he was not specifically suggested that he signed on the memorandum and the panchanama in the office of Sr. PI Rathod and in respect of the first admission, he was not specifically suggested that the accused did not state before him that he has some chemicals and that he is ready to show them. There is no suggestion to him that the chemical bottles were not seized from the locker of the A2. Learned advocate Wahab Khan for the accused pointed out to the inconsistency in the evidence of this witness as well as the two police officers in respect of the vehicle in which they had gone for search because he stated that it was a private Maruti van, whereas, it has come in the evidence of both the police officers that they went in

government vehicle. This aspect does not affect his credibility because the possibility cannot be ruled out that the vehicle being a vehicle of a specialized agency, like the ATS, might not be bearing the identification of a police vehicle like name or any beacon light, etc. Learned advocate Wahab Khan submitted that it has come in the cross-examination of this witness that the police did not show him the articles that they had taken with them when they left the police station and that they had a carry bag with them, which was in the hands of a constable and police did not offer their searches to them and did not take their searches. Learned advocate submits that in this connection PSI Gaikwad, PW-169, stated that panchas took their searches, but did not find anything, which is inconsistent with the evidence of this witness. Obviously, he is reading part of the sentence because what PSI Gaikwad, PW-169, stated in his cross-examination is that the panchas did not find any objectionable thing, which is different from not finding anything and on the other hand he has specifically stated that the articles required for seizure like thread, papers, envelopes, polythene bags, etc., were with them and Sr. PI Rathod, PW-176, has also endorsed this by stating that they took packing and sealing material with them and on his asking the panchas took their searches and the search of the vehicle. Of course, Chandrakant Shigwan, PW-17, did not admit this, but PSI Gaikwad, PW-169, has also specifically stated. The cross-examination of Sr. PI Rathod, PW-176, has also not revealed anything so as to discredit his version and most of it is in the nature of a fishing expedition about entries in respect of taking out the accused from the lock-up, giving

memo to the lock-up incharge, making station diary entry about taking the A2, about calling station diary entry register to Bhoiwada from Kalachowki office, etc. It is in this respect that the learned SPP pointed out to the contemporaneous record by way of station diary entry Ext. 1803, which was prepared after the accused gave the statement and his memorandum was prepared and Ext. 1804 when they returned with the seized articles, the contents of which is that after returning, the property was deposited with the muddemal clerk and registered at sr. no. 54/06.

692. In connection with the seizure of the three bottles of chemicals, the answers given by Dr. Atiya, PW-53, in her cross-examination are relied upon by the learned advocate for the accused to say that there was no such recovery and the bottles have been foisted on the accused. He points out to the evidence given by the witness that she does not know how the police opened the locker because she was not present at that time and she denied the suggestion given by the learned SPP that the accused took out a key from below the bed and opened the second locker from the middle row and took out the articles that were seized. He points out to the answers in her cross-examination that she did not see who took out the key, who took out the articles from the locker and what articles were taken out and that police did not involve her in the procedure of search by asking her to remain present when the locker was opened and that the panchanama was not prepared in her presence nor any person signed on it in her presence, etc. Though he has relied on these answers, to my mind, her relevant evidence is that

the ATS police had come to the hospital on 12/08/06 at 4.00 p.m. for their investigation, that an inspector, two panchas and 2-3 other persons had come, that the A2 was with them and they had come to check his locker, that they took all the things in the locker and, this is important, that she saw some bottles in the articles that they had taken. There is no direct suggestion to her that the police or the A2 had not taken out the bottles from the locker of the A2 and that the bottles were not seized from the locker. Infact, she identified the bottles as well as the key and during her cross-examination by the learned SPP, after she was permitted to be declared hostile she admitted that in her chief-examination she was read over the panchanama and she said that its contents are correct and at that time did not point out to the court that any portion is not correct. She has identified the panchanama Ext. 458 and her signature and the signatures of the A2, panchas and the inspector, however, she stated that her signature was taken after a few days when the police came with the panchanama. In this respect, in cross-examination she admitted that she put the date 12/08/06 below her signature and similarly same date is written below the signatures of others and obviously during her cross-examination she admitted that she did not dare to say no to the police, who told her to put the backdate. Obviously, because the learned SPP suggested to her that she stated about signing on the panchanama a few days after the visit of the police and about other things as the A2 is her colleague.

693. Leaving this aside, even if her evidence about the actual act of going to the locker room and taking out the bottles is kept aside, the

fact remains that she has stated to the police that police had come to the hospital with the A2 on that day and they took all the things from his locker, which included the bottles Arts. 34 to 36.

694. Learned advocate Wahab Khan criticized the evidence of this search and seizure from the A2 on several counts. He submits that the first alleged recovery is made on 01/08/06 as per the voluntary disclosure made by the A2 and this is the second recovery and it cannot be accepted that the accused made disclosures in piecemeal. In this respect an explanation given by Sr. PI Rathod, PW-176, is appropriate and it answers the submissions of the learned advocate because he stated in his chief-examination itself that from the time of his arrest, the A2 was not disclosing all the things at one time, that first he stated about his wife, then about his passport and then about the books and maps. Thus, this disclosure cannot be said to be a delayed or an isolated one and in answer to a question in cross-examination as to whether the accused were co-operating in inquiry, he stated that the accused were misleading them, were not giving the entire information at one stretch, but bit by bit. This also covers the submission of the learned advocate that the A2 was arrested on 23/07/06 and on the count of this delay it is required to be discarded.

695. Next he submitted that the prosecution has not shown that the said chemicals have been used in the present blast by showing that their ingredients were found at any spot. In this respect the learned SPP submitted that the significance of the recovery of these chemicals is apparent from the evidence of API Revle, PW-154, read

with the report of CA. API Revle, PW-154, while explaining examples of explosives and their effects stated that Hydrogen Peroxide is used as bleaching agent, e.g., for colouring the hair, Acetone is used as varnish or nail paint remover and Sulfuric acid is an acid. He further explained that from these chemicals TATP (Tri Acetone Tri Peroxide) liquid explosive can be created and the most important characteristic of this explosive is that it is highly sensitive to friction and impact, because of which it does not require detonator and as there is no detonator in it, it cannot be detected by metal detector and such type of explosives are used in the middle-east by terrorists. This evidence has not been controverted during his cross-examination and the learned SPP submits that the offences under the MCOC Act do not merely cover direct acts, but also cover preparatory acts and therefore this discovery is important and relevant. Learned advocate submits that as per the contents of the remand applications of this period Exts. 4461, 4462, 4467 and 4469, the seizure of Nitric Acid, Hydrogen Peroxide, Sulfuric Acid and Ammonium Nitrate is shown, but seizure of Acetone is not shown and the panchanama does not show that Nitric Acid and Ammonium Nitrate were recovered. He submits that this leads to the inference that initially the investigating machinery wanted to plant all these chemicals and therefore these statements were made in the remand applications time and again, but later on they could arrange only the three chemicals which were allegedly seized at the instance of the A2 and which they planted on him. This is because all these items are easily available in the market for medicinal and domestic use. In my humble opinion, it may be

that there is a difference between what is stated in the remand applications and what is actually recovered under the panchanama from the A2, but that alone will not lead to the inference that what was easily available in the market was planted on the A2. If, as alleged by the defence, RDX was also planted on some of the accused, it was not difficult for a prime agency like the ATS to secure Nitric Acid and Ammonium Nitrate and to plant it on the A2. Thus this submission does not hold water. Learned advocate submits that none of these chemicals come within the purview of the Explosive Substances Act or the Explosives Act and has pointed out to the evidence of sanctioning authority Valsa Singh, PW-151, in paragraph 10 of her cross-examination that these three chemicals could be used in hospitals. To my mind, this is one of the use of which the chemicals can be put to, but the CA has opined as well as API Revle, PW-154, has given evidence as to for what other purpose the said chemicals can be used.

696. A meaningless submission was made by the learned advocate that if the evidence of Chandrakant Shigwan, PW-17, is seen, it shows that the chemical bottles were not in sealed condition and it is only the carton that is found to be sealed, which is not mentioned in the panchanama Ext. 458. Meaningless I said because the three boxes in which the bottles of chemicals were put and sealed had been sent to the CA for analysis and they must have been opened there. During the evidence of Chandrakant Shigwan, PW-17, a sealed carton on which a white label dtd. 16/12/06 is pasted and which describes C. R. No. 77 of 2006 and the other details, was

opened and it was found to contain three open boxes containing labels and three bottles, one in each box. The bottles are Arts. 34, 35 and 36 and the boxes are Arts. 34A, 35A and 36A. He has identified his signatures on the labels on all the three boxes and signatures of other panch and of the police officer by the side. Now the sealed carton in which the three boxes containing three bottles were found is Art. 36C and its label is Art. 36D. The label is describing the contents, viz., that the chemicals in the three bottles that were recovered at the instance of the A2 were sent to CA and thereafter the chemicals have been destroyed and the empty bottles alongwith the packing are in the box. The label also bears some markings of red lac seal on both the sides and the box was apparently packed by brown packing tape on all the sides. Perusal of record shows that articles were produced by the prosecution by the list Ext.16 on 14/12/06 and by the application Ext.17 learned SPP applied for destroying corrosive chemicals. My learned predecessor Mrs. Mridula Bhatkar (now Hon'ble Justice of the Bombay High Court) made a noting that three bottles of the three chemicals are before the court, they being corrosive in nature are allowed to be destroyed and report of destruction be submitted and bottles be preserved. Hence, the packet of three bottles were returned to the investigating officer and as per the report Ext.18 filed on 26/12/06 the investigating officer submitted the report of destruction alongwith panchanama. Thus, this aspect is cleared by the above noting. Thus this submission is of no consequence.

697. Learned advocate submits that Chandrakant Shigwan, PW-17,

stating that the panchanama was over by 1500 p.m. is contradictory to the contents of the panchanama Ext. 458, which shows that it was over at 1710 hours. To my mind, it is not contradictory, but it is inconsistent and it appears that it is a mistake in rendering the evidence or in typing the timing because at the start of his evidence itself the witness has stated that he was called to the lock-up of Bhoiwada Police Station at about 3.00 to 3.15 p.m. Even Dr. Atiya, PW-53 has stated that the police had come to the hospital at 4.00 p.m. Thus this submission is of no consequence and it does not affect the evidence about the seizure.

698. Next learned advocate submits that the police officers knew what was to be recovered which is apparent from the answer given by Chandrakant Shigwan, PW-17, that when he was called to the police station, he was taken to an officer who told him that an accused is arrested in the bomb blast case and recovery is to be made. This submission is ignoring the next sentence that the witness stated, viz., that the officer did not tell him what is to be recovered and from where it is to be recovered. Even otherwise it has come in the evidence of Sr. PI Rathod, PW-176, that during his interrogation of the A2, the A2 stated that he would tell something and therefore he called the two panchas. From this it can be said that the investigating officer was expecting the accused to make the statement about some articles considering his experience of the accused that he was giving information in bits from time to time.

699. Next submission by the learned advocate that the bottles could not have been sealed as there was no seal at Bhoiwada office and it

has come in the evidence of Sr. PI Rathod, PW-176, PSI Gaikwad, PW-169 and panch witness Chandrakant Shigwan, PW-17 that from Bhoiwada they had directly gone to the hospital, is obviously overlooking the evidence of Sr. PI Rathod, PW-176, in his cross-examination that every individual investigating officer was given the seal and Sr. PI Tajne, PW-161, had given him the official seal on 11/08/06 by a memo.

700. Learned advocate next submitted that there is no investigation in respect of the source of the bottles from where the A2 had obtained them or purchased them. To my mind, the bottles were factory packed containing the description of their contents alongwith the name of the company. Thus, there was no need for the investigating officer to do any further investigation as possession of these chemicals is admittedly not an offence under any Act in view of the medicinal and domestic use that they can be put to.

701. Learned advocate submits that the A2 in his evidence as DW-41 has claimed that from Bhoiwada he was taken to Bombay Central Railway Police Station, that Sr. PI Rathod, PW-176, collected some heavy bag and then they went to Sabu Siddiqui Hospital, which is corroborated by the entries in the log book at page 39 of Ext. 3928 and the A2 had stated about this in his written submissions Ext. 2823 that he had filed with his statement under section 313 of the Cr. P. C. It is true that the entry dtd. 12/08/06 in the log book of vehicle no. MH-01-BA-669, which is the vehicle by which the police had taken the accused to that hospital, shows that from Bhoiwada ATS the vehicle had traveled to Quilla Court, to

Bhoiwada ATS, to Mumbai Central Railway Police Station, to Dongri, to Kalachowki ATS, Bhoiwada ATS, etc. However, it is obvious that this accused as well as all the other accused moulded their defence as per the alleged flaws in the evidence of the prosecution witnesses and on the basis of the documents obtained under the RTI Act including the certified copies of the log books. No doubt, in his written submissions Ext. 2823, A2 stated that Sr. PI Rathod, PW-176, took him from the lock-up at Bhoiwada with other staff, that he was taken to Mumbai Central Railway Police Station, that Sr. PI Rathod, PW-176, got down from the white Maruti vehicle with a thick plastic carry bag and went inside the police station, that he came out after 15-20 minutes with the same plastic carry bag containing something in it. Then he stated about he being taken inside the hospital and to the locker, etc., and he was forced to sit in the vehicle thereafter for about 20-30 minutes and thereafter Sr. PI Rathod, PW-176, came to the vehicle carrying the said plastic thick carry bag containing something heavy in it. He has accordingly deposed, but has made improvements, because in his written submission he did not state that when Sr. PI Rathod, PW-176, came out of the Mumbai Central Railway Police Station with the thick plastic bag which contained something heavy, but he stated so in his evidence under section 315 of the Cr. P. C. To my mind, the observation and inference that the accused moulded their defence as per the alleged flaws in the evidence of the prosecution witnesses and on the basis of the documents obtained by them is fortified by a single fact that this story of the accused that he must be knowing since the beginning

was not put to any of the prosecution witnesses who were present during the search, i.e., panch witness Chandrakant Shigwan, PW-17, PSI Gaikwad, PW-169, and Sr. PI Rathod, PW-176. Thus, the entry in the log book about the vehicle having been gone to the Mumbai Central Railway Police Station is absolutely inconsequential.

702. In view of the above discussion, it is clear that by the cogent evidence of Sr. PI Rathod, PW-176, PSI Gaikwad, PW-169, and panch witness Chandrakant Shigwan, PW-17, which is corroborated by the contents of the memorandum of the voluntary statement Ext. 457 made by the A2 and the contents of the seizure panchanama Ext. 458, the prosecution has proved the seizure of the bottles of Sulfuric Acid, Acetone and Hydrogen Peroxide, Arts. 34, 35 and 36 from the possession of the A2. The findings of the CA in his report Ext.909 and the evidence of API Revle, PW-154, prove that these chemicals can be used for preparing explosive mixture. Hence, this recovery is relevant. Learned SPP submitted that he can understand if the accused would have taken the defence that the bottles belonged to the hospital and the police took them from there and prepared the record. He rightly submits that it is common knowledge that these bottles are not valuables that they should be kept in lockers in the exclusive use and possession of the A2 and the significance of the recovery can be seen from the evidence of API Revle, PW-154, who has explained that a potentially high liquid explosive TATP can be prepared from these explosives. To my mind, there was no reason for the A2 to keep the bottles in his locker considering the fact that they are easily available in the market. Admittedly, he does not have

a private clinic where he could have used the said chemicals and obviously he must be using these types of chemicals belonging to the hospital when doing his duty in the hospital. Acetone, to my mind, cannot be used for any medicinal purpose and though Hydrogen Peroxide is used to wash wounds, to my knowledge, Sulfuric Acid has no medicinal use. Thus, it is a question as to why the accused kept them in the locker and the only inference that can be drawn is as submitted by the learned SPP and as per the evidence of Sr. PI Rathod, PW-176, that the search was made in pursuance of the information given by the A4 during interrogation that the A2 was going to teach them how to prepare the bombs with the help of chemicals. Hence, it will have to be held that the prosecution has proved that on 12/08/06 bottles of chemicals, i.e., sulfuric acid, acetone and hydrogen peroxide, Arts. 34, 35 and 36 respectively, were seized from the locker of the A2 in the Sabu Siddiqui Hospital where he was working and that the chemicals can be used for preparing explosive mixture. **This is the circumstance no. 10 proved by the prosecution.** It is against the A2. It is the first circumstance against the A2.

703. Then comes the most important recovery, which is of the investigating officer noticing black and white spots on the inner side of a wooden box bed in the house of the A6, samples of which were taken and which turned out to be RDX.

704. It has come in the evidence of Sr. PI Tajne, PW-161, that alongwith ACP Shengal, DW-51, PI Khanvilkar, PW-168, PSI Sachin Kadam and staff, he took the A6 for his house search to Govandi on

29/09/06 leaving the office at 6.00 p.m. after making station diary entry no.15, certified true copy of which is at Ext. 1720, that when the accused pointed out his residence at Shivaji Nagar, Plot No. 33, T-2, two panchas were summoned, accused was introduced, the accused knocked the door of his room, it was opened by his wife and they entered the house with the panchas and in the hall amongst other things they saw a wooden box bed there, the search of which revealed old clothes, suitcase and one Kanchan pressure cooker and on further minute observation of the bed they noticed black and white stains which they suspected to be of some explosive substance. Hence, they wiped them with the help of clean and dry separate cotton swabs, Arts. 301 and 302, which were put in small plastic bags, labeled and sealed and the pressure cooker Art. 303 was also labeled and all these articles were seized under panchanama Ext. 716. He proved the contents of the panchanama and identified the A6 in the court, then stated about returning to the office and making station diary entry no. 22, certified true copy of which is at Ext. 1721 (2 pages). Panch witness Pritam Mhatre, PW-58, fully corroborated his version except that he stated that he was taken from Bhoiwada Police Station and he specifically described what articles were there in a showcase, which was not deposed by Sr. PI Tajne, PW-161. He also identified the cotton swabs and cooker and both witnesses also identified their signatures on the labels and the panchanama and the signature of the A6 on the panchanama. The contents of the panchanama Ext. 716 corroborate their version. The contents of the station diary entries Exts. 1720 and 1721 corroborate

their version and they are uncontroverted contemporaneous record.

705. PI Khanvilkar, PW-168, did not depose in his examination-in-chief about the said search though he was amongst the search party, and, though his credibility as a police officer has been tried to be impeached by showing his involvement in corruption cases, etc., he was not given a single suggestion that he had not gone for the said search on that day. Same is the case about ACP Shengal, DW-51. Both these witnesses were not given any suggestions on the line of the defence taken by the A6 in his written submissions Ext. 2827 that he filed alongwith his statement under section 313 of the Cr. P. C. and in his evidence as DW-42. PI Khanvilkar, PW-168, was asked in his cross-examination by learned advocate Rasal about the surroundings of the house of the accused in Govandi and he gave all the details correctly and positive statements have come on record that there are some shops in the lane of the A6, which was the second house in that lane and he denied a suggestion that he had never gone to that area, therefore, he is not able to give any information about it. This suggestion is not backed up by any material or information that would contradict the statement made by him. There is nothing else in his cross-examination.

706. It has come in the evidence of ACP Patil, PW-186, that three teams were formed for searching the house of the A6, A7 and A8 after their arrest on 29/09/06 and on the same day the team consisting of ACP Shengal, DW-51, Sr. PI Tajne, PW-161, and staff took the house search of the A6, came back to the office, handed over the panchanama Ext. 716, made the report about seizing a

cooker and noticing two black and white spots in the box type cot in the house, of which the swabs were taken and seized. It has come in his evidence that the said articles were deposited in the muddemal room and he sent the cotton swabs to the FSL for analysis under a forwarding letter, office copy of which is at Ext.796, the contents of which he proved, alongwith PN Kulkarni, PW-72, who corroborated his version and also identified the labels and the plastic bags Arts. 301 and 302B in which the cotton swabs were put. Though, he had not deposed about the cotton swabs in his chief-examination that came out in his cross-examination. His cross-examination has not impeached his testimony. The contents of the report of CA Ext. 2383 that was received in evidence during the evidence of ACP Patil, PW-186, show that cyclonite (RDX) and charcoal are detected on one swab and ammonium, nitrate and traces of cyclonite (RDX) are detected on the second swab. Cross-examination of ACP Patil, PW-186, by learned advocate Rasal is consisting of inquiry about the locality of the house of the accused and he denied the suggestions about the A6 being inquired with by the Crime Branch from 31/07/06 to 09/09/06 and at the Nagpada ATS office from 09/09/06 to 29/09/06 and during this entire period officers of the ATS and Crime Branch unit regularly visiting the house of the A6. He clarified that they may have visited his house for inquiring about him and turned down the suggestion that during such visits the officers take search of the house of the suspect to find out any incriminating article. This cannot be because unless a person is arrested a search of his house cannot be taken. He could not

describe what was around the house of the A6, because obviously he had not gone there, but turned down the suggestion that only 2-3 persons can stand or sit in that house and that the cooker that was seized was a cooker in use and it was seized from brother of the accused from the first floor. Surprisingly, he was only given the suggestion that the cooker is planted, which he obviously denied, but he was not given a suggestion about planting of the RDX though he was the chief investigating officer at that time. Now, in respect of the search and seizure, Sr. PI Tajne, PW-161, was cross-examined and during his cross-examination by learned advocate Wahab Khan in paragraphs 40 and 41, again the details of what is around the house of the A6, at what distance it is from the office of the DCB CID in Kurla and the Shivaji Nagar Police Station, etc., were asked and he gave specific answers that show his knowledge and prove that he had really gone there. In chief-examination he had stated that after reaching the house of the accused they summoned two panchas, which is not as per the contents of the panchanama Ext. 716. However, this mistake was corrected in his cross-examination wherein he deposed that they were taken from Bhoiwada. In his chief-examination he stated about wiping the black and white spots with the help of clean and dry separate cotton swabs, whereas, the panchanama says that the cotton swabs were slightly dampened by water and then it was used to wipe the spots. This mistake has been corrected during his cross-examination by learned advocate Wahab Khan during which he stated that the dry cotton was dampened with some water and alongwith this positive sentence he also stated that

the cotton swabs were in the investigation kit bag with the staff. His cross-examination by learned advocate Rasal in paragraphs 40 and 41 has not revealed anything adverse to discredit his version and he as well as Pritam Mhatre, PW-58, correctly stated that the cot was on the left side after entering the room and he denied the suggestion that the cot was of iron and stated that it was a wooden box. It will not be out of place to mention here that Shaikh Hazrat Ali, DW-4, brother of the A6, has strangely stated in his cross-examination by the learned SPP while admitting that there is a bed and showcase in the house, that the box type bed is of iron. I have never seen any box type bed made of iron. Sr. PI Tajne, PW-161, denied the suggestions denying the aspect of the search and seizure of the articles. In further cross-examination in paragraphs 61 to 64 by learned advocate Wahab Khan, nothing was revealed except the questions about the panch witnesses, i.e., Pritam Mhatre, PW-58, and the other panch Mukesh Walji Rabadiya who is not examined. Again the aspect of calling panchas has been cleared by answers in cross-examination that he did not call the panchas at Bhoiwada office before going for search as the panchas were required at the residence of the accused and he had decided to call them there and, this is important, that he saw Pritam Mhatre, PW-58, in the vehicle while going to the house of the accused as his constable had picked him up after their vehicle started from Bhoiwada and he took the said panch as he was a good person though he had seen him once and knew that he had acted as a panch witness in another case sometime before. He was shown the panchanama Ext. 748 dtd.

12/07/06, Ext. 749 dtd. 17/06/06 and Exts. 1745 (1 to 4) and he admitted that Pritam Mhatre, PW-58, has acted as panch witness in this panchanamas and it is in the first two panchanamas only that he, i.e, Sr. PI Tajne, PW-161, is the investigating officer. However, it is explained by him that Pritam Mhatre, PW-58, was a good person, therefore, he used him again and further explained that they used to face difficulties for obtaining panch witnesses at the spot, which shows the practical difficulty the police face during investigations. He was given the suggestion and he denied that he planted the pressure cooker, but he was not given any suggestion that the black and white spots were also planted or put by him or any of his officer. It has come as a positive sentence in his cross-examination that he had asked the accused about the patches, but he kept mum. Though he admitted that this is not written in the panchanama though it was an important thing, it has come in his cross-examination and cannot be construed as an omission. His evidence has not been discredited during his cross-examination and it proves the search and seizure. Same is the case about the evidence of panch witness Pritam Mhatre, PW-58, whose evidence in chief-examination about the search and seizure is clear and giving all the details about the articles in the house of the A6 as well as procedure of the search, collecting the articles, sealing them and seizing them. His cross-examination has not discredited his version about the search and seizure and he candidly admitted that he knew officer Khanvilkar, who was the PI in Bhoiwada Police Station and there is only one thing which he admitted that it did not happen that he was not

called at Shivaji Nagar, Govandi and if it is so written in the panchanama then it is wrong. Of course, his answers about the locality in which the house of the A6 is situated and about the articles in the house of the A6 proves that he had gone to the house of the accused on that day and the details that he gave are positive sentences in cross-examination that are corroborated by the contents of the panchanama Ext. 716. It has come in his chief-examination that the cotton swabs were first wetted and then the stains were scrubbed, but in cross-examination he specifically denied the suggestion that the cotton swabs were entirely wetted and his statement earlier that the stains did not go away after the swabs were taken shows that he is a truthful witness. He correctly stated that officer Shengal asked the woman to take their searches as is mentioned in the panchanama and though it is not mentioned in the panchanama, he made a positive statement that other than the woman, the accused was asked there whether he wanted to take their searches. In respect of the cooker he specifically stated that it was a new and unused cooker, which he had stated in his chief-examination. The cross-examination by learned advocate Wahab Khan, that was done on 14/12/10, is mainly in respect of he having acted as a panch witness earlier in the cases of Bhoiwada Police Station as well as of the ATS and he candidly admitted all these things and also admitted in his further cross-examination that was done on 07/01/11, about having acted as a panch witness for some more panchanamas for the Kalachowki Police Station as well as for the ATS.

707. It is this aspect of Pritam Mhatre, PW-58, having acted as a panch witnesses in many earlier cases, on the basis of which the credibility of his evidence is tried to be impeached alleging that he is a habitual panch witness of the police and ATS and, therefore, the evidence of search and seizure is not reliable. In this respect the learned SPP has submitted that irrespective of his evidence and *dehors* his evidence and even if the court comes to the conclusion that the evidence of Pritam Mhatre, PW-58, is a bit shaky, for the reasons that he has acted as a panch witness for the ATS earlier, the evidence of Shaikh Hazrat Ali, DW-4, brother of the A6 has proved the panchanama. Therefore, the evidence of Pritam Mhatre, PW-58, being a bit shaky does not affect the case of the prosecution about the search and seizure. He pointed out to the evidence of Shaikh Hazrat Ali, DW-4, stating that he has stated only about the events of 8, 9 and 10/07/06, but it is in his cross-examination that he admitted that police had come to his house after his brother was arrested, that it is true that they had come on 29/09/06 at about 9.00 p.m. and this is important, that they had taken something. Though he stated further that no panchanama was prepared he admitted that during the period of one and half hours some police were standing outside, some were inside the house and they were writing something. He admitted the signature of the A6 at the end of Ext. 716 and stated that it is true that he had signed when the police had come. Thus, this evidence leaves no room of doubt about the evidence of Pritam Mhatre, PW-58, being a truthful evidence and by his evidence and the evidence of Sr. PI Tajne, PW-161, prosecution

has proved the contents of the panchanama Ext.716 beyond any shadow of doubt. Further the contemporaneous record, i.e., the station diary entries, Exts. 1720 and 1721, also prove this fact.

708. Learned advocate Wahab Khan for the accused criticized the evidence in respect of this search and seizure on several points. He submits that the investigating machinery had recorded the statements of Shaikh Hazrat Ali, DW-4, brother of the A6 and his wife on 28/10/06, but they were not cited as witnesses in the chargesheet, however, later on the prosecution produced additional documents and they were cited as prosecution witnesses and this shows that the conduct of the prosecution is improper. He submits that the defence was not shy of examining one of the two witnesses in support of their case and his cross-examination by the learned SPP has not revealed anything and his evidence clearly falsifies the case of the prosecution on the point of drawing of panchanama in the house of the A6 as well as seizure of traces of stains. To my mind, whatever may be the procedure by which the prosecution filed the statements of the said two witnesses, the fact remains that they were filed and obviously learned advocate is banking upon certain statements made by Shaikh Hazrat Ali, DW-4, during his cross-examination, but is overlooking the fact that he admitted the signature of the A6 on the panchanama when it was shown to him and that the police had written something. Plus the fact that in his chief-examination he has not stated anything about the events of the date of the panchanama, i.e., 29/09/06. Thus, this submission is of no use and learned advocate's submission to link the event of

29/09/06 to the evidence of Shaikh Hazrat Ali, DW-4, in respect of 8, 9 and 10/07/06 and submitting that since the evidence of those three dates discards the case of the prosecution, then the evidence of search and seizure on 29/09/06 loses its evidential value. I am afraid but no such inference can be drawn merely on the basis of the evidence given in chief-examination by Shaikh Hazrat Ali, DW-4. His entire evidence is required to be accessed and his evidence about the said three dates will be discussed subsequently.

709. Learned advocate submitted that PI Khanvilkar, PW-168, is involved in the said panchanama and considering his background of corruption cases the presumption about the official act will not be applicable. I have already discussed his evidence as well as the evidence of ACP Shengal, DW-51, and it is found that both were not given a single suggestion that they had not gone for the said search on that day. Learned advocate submits that the evidence of Shaikh Hazrat Ali, DW-4, clearly falsifies the search and seizure as he was not given any suggestion that some stains were collected from the house and the witness has claimed that old pressure cooker was taken away, but the prosecution did not bother to confront him with the pressure cooker Art. 303 that is before the court and he was not confronted with his signature on panchanama Ext. 716. These submissions are obviously ignoring the fact that Shaikh Hazrat Ali, DW-4, was shown the panchanama Ext. 716 and it is also ignoring the evidence of the prosecution witnesses and contents of the panchanama Ext. 716, which specifically show that a new pressure cooker was found and seized.

710. A strange submission was made by the learned advocate that though ACP Shengal, DW-51, was cited as a prosecution witness, he was not examined by the prosecution and because he was not truthfully answering the questions when he was examined by the defence, he was declared hostile and even from him the prosecution has not brought on record the seizure of the cooker and finding of stains from the house of the A6. I do not know how such submission can be made. The witness was examined as a defence witness and he being a police officer would not naturally support the case of the accused as it was put to him. There was no need and it would not have been correct for the prosecution to cross-examine him and to question about the search and seizure. For that the prosecution has led the positive evidence of the officers who prepared and signed the panchanama and the panch witness who was present there.

711. Next submission by the learned advocate that the evidence of the panch witness Pritam Mhatre, PW-58, does not inspire confidence, that the panchanama is not a panchanama under section 27 of the Evidence Act, therefore, it was necessary for the prosecution to examine the inmates of the house. Of course, the defence is entitled to say that the evidence of Pritam Mhatre, PW-58, is not reliable, but how could the prosecution examine the inmates of the house and who are the inmates? They were wife and brother of the accused and their statements have been recorded, but obviously they would not have supported the prosecution.

712. Next submission of the learned advocate is that the prosecution has produced the confessional statement of the A6 Ext.

1071 in support to their case, but there is nothing in it to show that anything was kept in the wooden box and on one side the prosecution claimed that the work of assembling was done on 8, 9 and 10/07/06 and about two and half months thereafter they claim to have seen two stains and the cooker, which is required to be discarded on the ground of delay. To my mind, the confessional statement given by an accused is a voluntary statement made by the accused and if at all the ATS had fabricated it, it could have easily introduced this aspect. That two stains separate from each other, one black and one white in colour, were noticed has been proved by the prosecution as cogent evidence and its existence now has to be explained by the accused. These stains are not like the black powder in substantial quantity that was found in the house of the A1 or a small quantity of black powder found in the house of the A3. These are stains and if really the ATS wanted to fabricate, the officer could have sprinkled the black powder directly rather than only saying that two separate stains, one black and one white, were noticed. There is infact no delay because the house of the A6 is searched immediately on the day of his arrest and stains of chemicals on wood do not go away easily. The existence of the stains can be explained by the contents of the confessional statement made by the A6 Ext. 1071 that the A3 had brought RDX to his house and remaining articles like eight rexine bags, ammonium, nitrate, detonators, watches, etc., were already brought by A13 and kept at the house of the A6. Considering the evidence given by the prosecution witnesses, except the place in the wooden box type cot,

there would have been no place to keep/hide such type of articles in the house of the A6.

713. His next submission is that there is no evidence in respect of the investigation in respect of the source of the pressure cooker. True it is, but it has to be accepted that the pressure cooker is an item of daily household use and recovery of a new pressure cooker is being relied upon by the prosecution as one of circumstance. Therefore, finding of a new pressure cooker would be a relevant fact rather than from where it was purchased, because purchasing or possessing a pressure cooker is not a crime, but if it is put to some illegal use, then its seizure is a relevant fact.

714. Next submission by the learned advocate is that antecedents of the stains that they were not contaminated and adulterated and before their use on that day they were in sealed condition has not been proved by the prosecution. Hence, possibility cannot be ruled out that the swabs were taken from the 490 grams RDX that was available with them, which was seized from the house of the A1. This submission presupposes that the RDX was found in the house of the A1, but it overlooks that it was only black powder that was found and not white powder also. Secondly, except asking Sr. PI Tajne, PW-161, about wetting of the cotton swabs, etc., there is no cross-examination and no suggestion was given to him that the swabs were not in a sealed condition before they were used on that day. On the other hand a positive sentence has come in his cross-examination that the cotton swabs were in the investigation kit bag that was with the staff. It is common knowledge that such types of

swabs are there in the investigation kits of the police or the other investigating agencies and they are unused and packed in such a manner that they cannot be touched by human hands, to eliminate the possibility of contamination or adulteration. Thus, this submission does not discredit the evidence of the use of cotton swabs.

715. Next submission by the learned advocate is that the prosecution was not prevented from producing the malkhana register extracts and examining clerk of the ATS to prove that all the articles were deposited there immediately after their seizure. In this respect the contents of the station diary entry no. 22, certified copy of which is at Ext. 1721, about return of the police party that had gone for search are self speaking. At the end it is noted that the exhibits, i.e., cotton swabs and pressure cooker, were stored vide MM No. 63/06. ACP Patil, PW-186, also deposed that the said articles were deposited in muddemal room. It has come in his cross-examination in paragraph 180 that the ATS malkhana is in the Kalachowki office. They call it muddemal room and the muddemal register is maintained there, but denied the suggestion that some seized articles are not taken from Kalachowki office. Except this there is nothing. This oral and documentary evidence has not been controverted. Thus this submission is of no avail and it does not affect the evidence given by the prosecution because even the office of the FSL found the seals put on the packets to be intact and that evidence is also not controverted.

716. Next submission by the learned advocate that panch witness

Pritam Mhatre, PW-58, admitting his association with PI Khanvilkar, PW-168, shows that he is not an independent and impartial person, is not correct. Pritam Mhatre, PW-58, has not admitted his association, but has only stated that he knows PI Khanvilkar, PW-168, and his evidence in respect of the panchanamas is already discussed above. His next submission is that it is unnatural on the part of an offender/culprit to leave such stains in his house when the ATS officers were visiting his house in connection with the inquiry of the bomb blasts. This submission obviously overlooks the presumption that the A6 knew that there are stains in that wooden box. As is observed while discussing the finding of black powder in the house of the A3, its existence can be known, provided the accused knows that it is there. Relying on the answers given by Pritam Mhatre, PW-58, in paragraph 22 of his cross-examination wherein he admitted having acted as panch witness in some earlier cases, the details of which were provided to him by the learned advocate, it is submitted that without tutoring this witness, he could not have deposed. The cross-examination of this witness was adjourned on 14/12/10 and was resumed on 07/01/11 and obviously the witness gave these answers because learned advocate gave him an opportunity to think over what he had stated earlier and no fault can be found in it. Of course, his evidence is already discussed.

717. The last submission is that Shaikh Hazrat Ali, DW-4, stated that nothing was found on the ground floor, which falsifies the evidence given by the prosecution. In this respect it has come in his

evidence that A6 used to stay on the ground floor with his family and he, i.e., Shaikh Hazrat Ali, DW-4 and one more brother Muktar Ahmed used to stay on the first floor with their families. It is in the evidence of Sr. PI Tajne, PW-161, as well as Pritam Mhatre, PW-58, that after the search of the ground floor, they went to the first floor where A6's brother and his wife were present. Thus, obviously Shaikh Hazrat Ali, DW-4, was on the first floor and he could not have known what transpired on the ground floor. Thus, his evidence that nothing was found is a vague evidence, whereas, it has come in his cross-examination that they had taken something and he is obviously trying to support and save his brother, the A6, by stating that the bed which is box type bed is of iron, which is impossible. His evidence rather than supporting the defence of the A6, has helped the prosecution in proving the panchanama about the seizure.

718. Learned SPP in his submission pointed out the aspect of different colours of the stains indicating that there were different coloured powders stored there, which is unlike the other discoveries where only black stains were found and pointed out to the report of the CA that shows that the swabs of the white coloured stains contain Ammonium, Nitrate and traces of Cyclonite. He submits that the line of cross-examination was to show that the place was crowded and only 2-3 persons could have sat on the ground, but the cross-examination of Sr. PI Tajne, PW-161, and others does not show that it was so small place.

719. In view of the above discussion, it will have to be held that the

prosecution has led cogent evidence to prove finding of black and white stains in a wooden box type cot in the house of the A6 which turned out to be Cyclonite (RDX), Ammonium, Nitrate and traces of Cyclonite and has also proved the seizure of new pressure cooker, Art. 303. **This is the circumstance no. 11 proved by the prosecution. It is against the A6. It is the first circumstance against the A6.**

720. Next in time is the recovery of seven cooker rubber rings, five cooker whistles, some electric wires, circuits and plastic bags on which Cyclonite (RDX) was detected and it was found that the electronic circuit with the electronic device could be used to form a triggering device, at the instance of the A3. It has come in the evidence of PI Tonapi, PW-155, that when the A3 was being interrogated at the Juhu Unit by him and ACP Dhawale, PI Deshmukh and staff on 08/10/06, he volunteered to make a voluntary statement, therefore, two panchas were called by one HC Patil, they were explained the brief facts of the case, they consented, they were taken to the room where the accused was kept, the accused gave his name and made a voluntary statement that he is ready to show the place where he had thrown remaining articles like pressure cooker rings, whistles, circuits, while going to Mira Road by train and he, i.e., PI Tonapi, PW-155, wrote the memorandum of his statement Ext. 1108 made by the A3 and the statement of the accused in Hindi verbatim. Panch witness Kirtiraj Dalvi, PW-109, corroborated his version and even stated specifically that a person by name Patil stopped him on that day when he had gone to the

Indian Medical Association building at Juhu and told him that he works in the ATS office, which shows his truthfulness. He corroborated the evidence of PI Tonapi, PW-155, about the accused making the statement before him and both these witnesses identified the said memorandum, his signature and the signatures of the other panch and of ACP Dhawale. It has come in the evidence of PI Tonapi, PW-155, that panchas took the search of the police party and the vehicle as per their practice, finding nothing objectionable except the investigation kit and sealing material and proceeding to Dahisar sub-way as per the direction of the accused, getting down and accused leading them towards the railway tracks and then to the western railway tracks for quite some distance and pointing out to the places where he felt that he had thrown the articles and at one place pointing out to a place, which was near an electric cabin bearing no. L-16 in the marshy land where they saw a brown plastic bag partly submerged in the mud, it being taken out, brought to a clear area, finding a white plastic bag inside that was torn at some places and finding seven black rubber cooker rings inside it Arts. 331 (1 to 7), five stainless steel cooker whistles with black plastic caps having the name Kanchan on them, Arts. 332(1 to 5), number of electric wires, a printed circuit board, Art. 334, in the plastic box Art. 334A, cleaning all the articles as they were muddy, putting them in separate plastic bags, labeling and sealing them and he writing the panchanama Ext. 1109 about the search and seizure, the contents of which he proved. His evidence is corroborated by the evidence of Kirtiraj Dalvi, PW-109, and both identified his and the

other panchas signatures and signatures of ACP Dhawale as well as the signature of the A3, because it has come in the evidence of both that thereafter photocopy of the panchanama was taken out and was given to the accused. Both identified all the articles accurately and specifically and both identified the A3 in the court. PI Tonapi, PW-155, proved the contents of the true photocopies of station diary entries no. 3 and 7, Ext. 1667 (two pages), first of which was made before leaving the police station and the second that was made after returning to the police station. It has come in his evidence that he handed over the articles to the muddemal clerk and gave the panchanama to ACP Patil, PW-186. It has come in the evidence of ACP Patil, PW-186, that on that day PI Tonapi, PW-155, handed over the memorandum and panchanama Exts. 1108 and 1109, reported about finding of the said articles, deposited the articles in the muddemal room and he sending all the articles to the FSL on 11/10/06 alongwith PC Santosh Salunkhe, PW-97, with forwarding letter, office copy of which is at Ext. 972, contents of which he proved and it has come in his evidence that the reports Exts. 973 and 974 were received and they shown that Cyclonite (RDX) was detected on the plastic bags and the PCB can be used to form a triggering device, etc. PC Santosh Salunkhe, PW-97, corroborated the evidence of ACP Patil, PW-186, and identified the forwarding letter and the plastic packets that he had taken to the FSL. His cross-examination has not discredited his version except insofar as his buckle number not being written in the office copy of the forwarding letter Ext. 972 about which he explained that it was written in the

register with the receiving clerk. Some positive sentence supporting the evidence of PI Tonapi, PW-155, and Kirtiraj Dalvi, PW-109, have come on record during his cross-examination that the officers had inquired with the accused in his office, i.e., the Juhu Wing of the ATS where he was attached since 2004 and insofar as the panch witnesses are concerned he stated that they were brought in connection with the disclosure statement made by the accused. It has also come in his cross-examination that he had helped at the time of preparation of panchanama, that it was two days before he went to Kalina, that ACP Dhawale, PI Deshmukh and other staff were present at that time, that the panchanama was in connection with the accused by name Faisal and this was on 08/10/06 and to top it all that he had seen the plastic packets in the hands of the officers when they returned from the spot. It is very surprising that such things are asked in cross-examination and they fortify the evidence given by other witnesses. There is no cross-examination to ACP Patil, PW-186, on this point. Thus, by the evidence of ACP Patil, PW-186, and PC Santosh Salunkhe, PW-97, and the forwarding letter and the FSL report, the prosecution has established the link between the seized articles and the report of the FSL.

721. The evidence of PI Tonapi, PW-155, about the search and seizure has not been discredited by his cross-examination. Some questions were asked by learned advocate Wahab Khan about possession and movement of the seal and positive statements are made by him in paragraph 12 that brass seals were received by all units in August, 2006 by an allotment letter. He denied the

suggestion that there was only one seal and it was kept in the head office and admitted that no record was kept about the movement of the seal. Explaining the custody of the seal, he said that the seal was in the custody of the unit incharge and if the officer of that unit wanted to use it, it was not necessary for him to give a requisition letter. This evidence is similar to the evidence of Sr. PI Rathod, PW-176, in his cross-examination. There is some cross-examination in respect of the station diary entires Exts. 1666 to 1670 and 1672 about officers like Sr. PI Tajne, PW-161, PSIs Awari and Gaikwad resuming their duty on 08/10/06, but his name being not mentioned in it, about which he volunteered that these officers were attached to Kalachowki Police Station and Kalachowki unit, but he was not attached to the Kalachowki unit of the ATS, but was attached to the ATS Police Station of Kalachowki and denied the suggestion that he was not on duty on 31/07/06, 08/10/06 and 23/10/06. Strange questions were made in response to which he answered that the duties are not assigned one day or two days before in the ATS. Then again in respect of the station diary entry no. 3 in Ext. 1667 he admitted that name of ACP Dhawale is not written in it and that the entires do not show from where they started and where they returned, which should have been mentioned. He denied the suggestion that ACP Dhawale and PI Deshmukh were not present at Chandanchowki on 08/10/06 and pointed out that the names of the officers including the incharge officer are mentioned in the panchanama. The contents of the memorandum Ext. 1108 as well as the panchanama Ext. 1109 shows

that the names of these officers are mentioned therein alongwith buckle numbers of the subordinate staff and infact it is ACP Dhawale, who signed on both the documents, which were written by PI Tonapi, PW-155, himself. It has come in his cross-examination in paragraph 21 that he reached at Chandanchowki at 8.00 or 8.30 a.m. and when he reached there ACP Dhawale and PI Deshmukh were interrogating the A3, who was already there and answering the questions, but the panchas were not present at that time. Now in his cross-examination by learned advocate Shetty he was again asked as to when he reached Chandanchowki office on that day and he stated that he does not remember the exact time, but it must be between 8.00 to 8.30 p.m., which is obviously inconsistent with his answer in paragraph 21. An attempt was made to show that he was not present for the said search and seizure by asking him questions about his knowledge as to when the A3 was arrested, since how long he was in custody, whether he attended the remand work, whether any identification parade was conducted, but all these things are irrelevant insofar as he is concerned. He reiterated what he stated in chief-examination that the accused had expressed his desire to make a voluntary statement and ACP Dhawale asked him to arrange for the panchas and thereafter he told head constable to bring panchas. That head constable is one HC Patil as per his evidence in chief-examination. He gave the names and the number of staff members present when the accused made a statement. He was inquired about his knowledge as to where the A3 was detained from 03/10/06 to 06/10/06 and whether he was taken before a DCP for recording his

confessional statement before that day and he expressed his lack of knowledge, which to my mind, has to be expected in view of the fact that he was not the investigating officer of any particular crime. Very positive statements have come in his cross-examination that the accused made the voluntary statement within 5-10 minutes after the panchas arrived in the Chandanchowki office, that ACP Dhawale had told him to state whatever he wanted to state and nobody was asking any questions to him and the accused made the statement in Hindi and ACP Dhawale dictated the entire panchanama to him, i.e., PI Tonapi, PW-155. He specifically stated that the wordings written in the panchanama are as per the narration of the accused and they were not dictated by ACP Dhawale and again explained that it was as per the narration of the accused and as per the dictation of ACP Dhawale. Thus, these positive sentences in cross-examination have supported his evidence in chief-examination about the voluntary nature of the statement made by the accused.

722. Next he was asked about recovery of any pressure cooker or any part of any pressure cooker and he expressed ignorance about it though he admitted that as a member of investigation team he was required to go through the papers of the investigation, but had not gone through the physical papers and explained that he was supposed to assist the concerned investigating officers and during the briefings the details of the investigation were shared and each member of the team was assigned a particular task, therefore, he had not gone through the case papers. While admitting that it is not written in the memorandum that the accused told about 'pressure

cooker ring', he admitted that it is not written, but that the word 'ring' is written therefore he stated that the accused had stated 'pressure cooker ring'.

723. Now an issue was raised during the cross-examination of PI Tonapi, PW-155, as well as Kirtiraj Dalvi, PW-109, about police asking the panchas to take their searches and search of the vehicle and this being not mentioned in the panchanama. He admitted that it is not so written and it is also not written that they took the search and did not find anything objectionable except the investigation kit and sealing material. For this, he gave a very good explanation that as the search is routine practice, it was not written. His cross-examination about the spot has not revealed anything adverse, but on the other hand, it has shown his knowledge about the locality and the conditions of the spot. He candidly admitted that the rings like Art. 331 and whistle like Art. 332 are easily available in the market in utensils shop and he volunteered that the rings were not submerged in mud, but the plastic bag containing the rings were submerged in mud. He could not say whether the circuit Art. 334 and the cord attached to it is of a mobile and candidly admitted that wires like Arts. 333 (1 to 5) are easily available in any electrical shop. He was given an iron scale and asked to measure the wires and the measurements were recorded. Finally, he denied the suggestion that A3 did not make any voluntary statement and did not lead them to any place and all these articles were not recovered at his instance.

724. In my humble opinion, the cross-examination of PI Tonapi,

PW-155, has not revealed anything that would discredit his version or impeach his testimony. He as well as the panch witness accurately identified all the articles and described the situation at the spot, which proves that they had gone to the spot. The cross-examination of Kirtiraj Dalvi, PW-109, in respect of his work, income-tax returns, PAN card and car, etc., is, to my mind, irrelevant. He gave a detailed description of the spot as to where they stopped, how they went to the spot, from where the copper brown plastic bag Art. 335 was taken out and this evidence has not been controverted during his cross-examination and he has stated some more details. In respect of the process about accused making a voluntary statement in his presence, he correctly described about officers ACP Dhawale and PI Tonapi being present and only officer Dhawale giving instructions and he being in the ATS office for one hour, which is corroborated by the contents of the memorandum Ext. 1108. He specifically stated about ACP Dhawale dictating the contents of both parts of the panchanama to officer Tonapi as per the events that were taking place after he went to that office. Again some positive statements have come during his cross-examination that he came to know that they were to go to Dahisar after the accused made the statement, that the intention behind going to Dahisar was to see what can be found and to prepare panchanama about it, but he denied the suggestion that, therefore, they took the searches of vehicle and police personnel. As is rightly submitted by the learned SPP it cannot be accepted that the panch witness would not know why the search of vehicle and police personnel is to be taken. Kirtiraj Dalvi, PW-109,

admitted that he could not assign any reason why the aspect of they taking the search of the officers and vehicle is not mentioned in the panchanama, but, to my mind, the panchanama is not a statement under section 161 of the Cr. P. C. and PI Tonapi, PW-155, explained this that it is a matter of routine practice, hence it was not written. It has come in his cross-examination that the search was going on about 2 to 2½ hours, which will have to be accepted as the total timing of the memorandum and panchanama is 1030 hours to 1715 hours. His evidence that the spot was found 2-3 ft. from the tracks is slightly inconsistent with the evidence of PI Tonapi, PW-155, that it was 7-8 ft. from the track, but obviously the panchanama does not give the distance and these are approximate distances, but other than that he has given all details in his cross-examination about the condition of the plastic bags, the spot/small pit from which the bag was removed, etc. He was asked about the inner diameter of the cooker rings and whether the whistles were measured, whether he had taken them in his hands and denied the suggestion that his three signatures on Exts. 1108 and 1109 are different from one another. He admitted that except Nokia headphones, which is generally available in the market, he does not have knowledge about electrics and cannot describe any other item in the plastic bag, which is correct because he is a layman and it cannot be expected that he has specific knowledge about electric items. He admitted that the five pairs of wires were measured and gave their approximate lengths and also admitted that they may be available in any electrical shop. He does not know whether it is mentioned in the

panchanama that ACP Dhawale told the driver to take the vehicle as per the directions that the accused would give, whether ACP Dhawale asked the accused where to go and could not assign any reason why these things are not in the panchanama. However, the contents of Ext. 1109 show that police directed driver of the jeep to drive as per the direction given by the accused Faisal Shaikh. It has come in his chief-examination that the accused was searching for the place where he said that he had thrown the articles from where the construction of a building that was going on was visible. This evidence was brought on record as an omission to write in the panchanama, but to my mind, it is more by way of an explanation, because in his chief-examination itself he has stated that at one place near a railway pole the accused pointed out a copper brown plastic bag that was lying there and said that, that was the same bag that he thrown. The contents of Ext. 1109 show that while searching, the police reached railway electric pole bearing distance marked as 37/146 and there was a small metal cabin bearing no. L-16 and when searching in the area adjacent to the pole from cabin the accused pointed out to a plastic bag that was partially submerged in mud and water. Thus, the explanation given by him clears this aspect and though he admitted that the area was marshy, lined by grass, however, it was not covered by black mud and there were no bushes, he again corrected himself by stating that he does not remember whether there was black mud and bushes in that area and therefore he cannot say whether it is so rightly or wrongly mentioned in the panchanama.

725. Nothing was revealed in his cross-examination by learned advocate Rasal to shake his testimony and on the other hand positive statements have come on record that the articles were taken out from the bag in the clearing and they went to the vehicle after about 1 hour and 15 minutes after the bag was found and they were eight people at the spot. His statement that it will not be correct to say that construction of a building complex was going on and it was visible from the spot can be understood if one considers that the bag containing the articles that were found was thrown sometime in July, whereas the recovery was made three months thereafter in October, till that time the building must have been completed, because his next sentence is that there was only one building there and as there was no one there, the officer did not inquire with any person. Cross-examination by the learned advocate Wahab Khan in respect of Pan card and his work as labour contractor is already discussed as being irrelevant and in further cross-examination he made positive statement that the accused did not sign before him in the ATS office, but he signed when he received the copy of the panchanama and this was not at the spot where the recovery was made. This clears the evidence of both the witnesses because they deposed inconsistently, i.e., this witness stating that photocopy of the panchanama was given to the accused when they returned back to the office and PI Tonapi, PW-155, stating that it was given to him after they came out of the spot by obtaining a photocopy from a nearby shop and before they sat in the vehicle. Those inconsistencies apart, the fact remains that giving a photocopy to the accused is not

challenged by the accused denying his signature thereon. The witness was not ready to give his personal details like pan card number, nature of business, etc., which to my mind, was irrelevant and not necessary unless it could have been shown that he was doing such a business that would have affected his evidence. He was given a baseless suggestion that he signed on readymade panchanama as he is an informer witness of the ATS.

726. Thus, Kirtiraj Dalvi, PW-109, has withstood the test of cross-examination and as is rightly submitted by the learned SPP he is a totally independent witness as nothing has been brought on record to discredit his version by showing that he has criminal antecedents, that he has some connection with the police and with the ATS or that he had acted as a panch witness for the police or as their witness. Thus, he is a fully reliable witness and his evidence has corroborated the evidence of PI Tonapi, PW-155, and the contents of Exts.1108 and 1109 corroborate their version. Thus, by the cogent evidence of these two witnesses and the contents of the memorandum and panchanama the prosecution has proved the recovery of the articles described in the panchanama at the instance of the accused.

727. In connection with this recovery, learned advocate Shetty for the A3 attacked the credibility of the witness on several counts. His main attack is about the date of the alleged recovery in respect of which he submits that it was made two and half months after the arrest of the A3 after prolonged police custody and after so much of interrogation and 3-4 days after his so called confession being

recorded. Hence this recovery cannot be said to be in pursuance of a voluntary statement and he submits that the contents of the confessional statement which was recorded upto 07/10/06 do not show that the accused has spoken about throwing the articles. Till that time he does not speak anything about it, but as soon as it is completed he desires to make a statement under section 27 of the Evidence Act. He submits that this is the height of artificiality of the evidence leading to the one and the only inference that the material against the accused is concocted. If the accused had knowledge about these articles, he would have disclosed it in his confessional statement considering the fact that he has given the datewise details of his activities. The accused was being continuously interrogated by several efficient senior officers since 27/07/06 in seven different crimes and as per the case of the prosecution before 08/10/06 he had volunteered to make the confessional statement. As against this, the learned SPP submitted that admittedly there is no reference in the confessional statement of the accused about the articles, but it would have been a different case, if it would have been mentioned in it, in which case, the submissions of the learned advocate would have been acceptable that as it is in the confessional statement the recovery was fabricated. Therefore, it cannot be said that the evidence of search and seizure is fabricated or is an outcome of pre-meditated thinking. In this context he points to the recovery of some articles at the instance of the A7 and submits that the recovery of the articles from the A3 was after his confessional statement, whereas, the recovery of articles from the A7 was before his confessional

statement. In my humble opinion, if at all the confessional statement of the accused was concocted or fabricated as alleged by the defence and on top of it if at all the evidence of the recovery and seizure of the articles under the panchanama Ext. 1109 was also to be fabricated and concocted, then the ATS could have very easily introduced this aspect in the confessional statement of the A3 by putting the words in his mouth as to what he did with the remaining articles. Thus, to my mind, on this count only it cannot be said that the evidence is artificial and created by the police.

728. In respect of the evidence given by PI Tonapi, PW-155, learned advocate pointed out to the statement made by him in paragraph 31 that he had reached Chandanchowki office in between 8.00 to 8.30 a.m. which is inconsistent with the time mentioned in the panchanama. He also submitted that though this answer is also part of investigation, if one sees the tenor of his evidence, except the particular aspect about which he deposed, he feigned ignorance about the rest of the matters, which shows that he has suppressed the truth from this court and not deposing as the matter stands. Insofar as the timing stated by the witness in paragraph 31 is concerned it is obviously a mistake in rendering or typing or a mistake while giving evidence. But his evidence in paragraph 21 in the cross-examination is that he reached Chandanchowki at about 8.00 or 8.30 a.m. This evidence has not been controverted and it is apparent that it is a mistake as mentioned above. Insofar as the answers given by the witness expressing ignorance about certain factors of the investigation being conducted by other officers, it is

clear from his evidence that he was not the investigating officer of any particular crime, was not head of the unit of the ATS, but was only assisting in the investigation. If the large canvas of the investigation of the present case is considered, then it does not appear probable that an officer like PI Tonapi, PW-155, who was just assisting the investigating officers of the seven crimes, would have knowledge about all factors or aspects of the investigation. Thus, he cannot be found fault for answering the questions in this manner and it cannot be held that he is suppressing the truth. On the other hand, he having written the memorandum and the panchanama is not challenged.

729. Learned advocate next submitted that there is a discrepancy in the description of the articles during his evidence and the articles that are produced before the court and the measurements of the electric wires do not tally, which shows that something is wrong somewhere and this casts a serious doubt about alleged recovery and directly affects the credibility of the evidence and shows that the investigation of the case is not straightforward, not upto the mark and not fair, hence it does not inspire confidence and is required to be rejected. In this connection the learned SPP submits that the evidence of discovery has remained unchallenged inspite of the searching cross-examination by all the advocates. To my mind, except the inconsistencies in the lengths of two wires, i.e., Arts. 333(3) and 333(5), the lengths of the other wires are the same and the possibility cannot be ruled out that they may have been cut in the FSL when they were being examined and analyzed. Of course,

there is no evidence about it, but this possibility remains and as mentioned earlier, except this inconsistency, the description of all the remaining articles is perfect and is according to their description in the panchanama. To my mind, this alone will not cast any doubt about the material produced before the court particularly when it was duly packed, labeled and sealed, when they were put in the five separate plastic bags and when the CA has found the five sealed parcels with seals intact and as per copies sent, as per the contents of the report Ext. 973, which evidence has not been challenged. The contents of the forwarding letter Ext. 972 and the FSL reports Exts. 973 and 974 and the evidence of ACP Patil, PW-186, and PC Santosh Salunkhe, PW-97, has also proved that the seized articles were carried in the same form in which they were found in sealed condition and the sealed packets received from the FSL have been opened in open court during the evidence of panch witness Kirtiraj Dalvi, PW-109, and the sealed packets have been identified during the evidence of PC Santosh Salunkhe, PW-97. Hence, this aspect of the matter does not affect the credibility of the evidence about the search and seizure.

730. Learned advocate submits that the police custody of the accused probably got over on 9th or 10/10/06 and it does not appear probably that at the fag end of the police custody, the A3 remembers one aspect to discover the bag and on this background the evidence has to be appreciated. To my mind, it cannot be said that because of this aspect only the recovery is suspicious. On the other hand, it can be understood that because of the prolonged sustained interrogation

and confrontation of the evidence that had been collected till that time, the A3 gave his confessional statement and also volunteered to make the discovery after the confessional statement was over. The contents of the confessional statement Ext. 1218 are not in great detail in respect of the bomb making process and he has not stated any details about the bomb making process and events on the days of the bomb making process and thereafter. Hence, on this point the evidence of recovery cannot be discarded.

731. Learned advocate has attacked the evidence of Kirtiraj Dalvi, PW-109, pointing out to the improvements made by him in respect of the police offering their searches and search of the vehicle and the panchas taking the search, but these things not finding place in the panchanama, about there being no mention in the panchanama that it was given to the accused for reading, that though the witness is a businessman he is unable to tell the details of his business which shows that he is not telling the truth. Hence, his evidence is unreliable evidence and therefore the evidence about the delayed recovery from the A3 cannot be believed and it cannot be a circumstance against the accused pointing towards his involvement in the crime, and secondly, even otherwise the recoveries are not relevant as connections of the articles with the alleged crime has not been pointed out. In my humble opinion, as mentioned earlier while discussing the evidence of this witness that his credibility has not been impeached during his cross-examination and his evidence is found to be fully trustworthy and reliable for the single reason that he appears to be a totally uninterested person having no criminal

antecedents, no connection with the police and no material to show that he had acted as a panch witness earlier for the police or the ATS or was an accused in any criminal case and hence he is a person liable at the hands of the police. On the other hand, the witness described in detail the area where they had gone and stuck to that description during searching cross-examination and gave some more details unhesitatingly.

732. Lastly, the learned advocate submits that the contents of the memorandum Ext.1108 at the end of paragraph 1 are ‘police requested us to act as panch witness to the voluntary statement of the accused and ‘subsequent discovery’ – if any to which we agreed’ shows that the police had prior knowledge as to what articles were to be discovered and in his submissions if the articles that were discovered are known then it cannot be admissible under section 27 of the Evidence Act and cannot be relied upon. In respect of this submission, learned SPP submitted that he does not understand why these things are asked and submits that the A3 was being interrogated for long and therefore there is nothing wrong if it is written in the memorandum ‘and subsequent discovery –if any’. It has come in the evidence of PI Tonapi, PW-155, that the accused had volunteered to make a statement and, to my mind, obviously the police know that generally voluntary statements made by accused are followed by discoveries and recoveries. Hence, there is nothing wrong in writing this in the memorandum and this aspect does not mean that the police knew what were to be the articles that were to be discovered.

733. There is some discrepancy in the description of the copper brown plastic bag Art.335 and white plastic bag Art.336 in respect of they being described as torn at one place, two places or three places in the panchanama and in the evidence given by Kirtiraj Dalvi, PW-109. To my mind, it is not of much consequence considering that much time has elapsed from the date when they were seized till the date when they were opened in the court. They must have been handled in the office of the CA and it is not that the panchanama mentioned that the two plastic bags were new and not torn and the panch witness would have stated so and then it would have been found that they were torn at certain places. This aspect is, therefore, of no consequence. Same is the case about bags being covered or stained with mud, but to my mind, the evidence about the sealing of the five bags and they being found in sealed condition by the FSL and the sealed packet of the FSL being opened in the court, shows that the link between the seized articles with the articles that were examined by the FSL and with the articles that were produced before the court has been duly established leaving no room for doubt.

734. In view of the above discussion, it will have to be held that by the cogent evidence of PI Tonapi, PW-155, Kirtiraj Dalvi, PW-109 and the contents of the memorandum Ext. 1108 and seizure panchanama Ext. 1109, which corroborate their version, the prosecution had proved the seizure of the articles described above at the instance of the A3. **This is the circumstance no. 12 proved by the prosecution. It is against the A3. It is the fifth circumstance**

against him.

The findings of the CA are relevant to be noted at this stage itself. Cyclonite (RDX) was detected on the two stained plastic bags as per the report Ext.973 and regarding physical examination of rubber rings, metallic whistles, electric wires and circuit board, the technical report alongwith the supplementary report Ext. 974 shows that the electronic circuit with electronic devices in it can be used to form a triggering device. The technical report of the said electronic circuit describes how the electronic circuit Art. 334 can be used and what exactly it contains. It mentions that the electronic circuit contains Dual Tone Multi-Frequency (DTMF) receiver integrated circuit (IC) alongwith mobile wire, power wire and other components, that these types of ICs are commonly used in the telephone circuits, that the IC converts DTMF (tone) signal into its equivalent Binary Coded Decimal (BCD) code, that a mobile phone or a specially built receiver circuit must be used alongwith the said electronic circuit to provide the necessary trigger for the detonator, that any action in the mobile phone like call from other phone (landline or mobile), alarm feature of mobile phone, etc., can trigger the detonator, that also most mobile phones can be set to emit a special ring tone when a call comes in from a specific phone number and the ringing of that tone can trigger the detonator. Learned SPP submitted in this respect that the components of the circuits match the components of the recovery that were made from the A7 and this much latitude will have to be given to the prosecution that this cannot be fabricated or premeditated thinking. To my mind, the

police officers are not technical experts to chalk out a plan of planting such type of articles in order to show the recovery of such type of articles subsequently from the A7 and to link them with this recovery. There was no reason for them to wait for so long because they could have shown this recovery immediately after the arrest of the accused on 28/07/06 that too from his house alongwith findings of the black powder, which turned out to be RDX.

735. Further step in the investigation concerning the recovery of the six pressure cooker rubber rings and whistles, is collecting of a sample pressure cooker ring and whistle of Kanchan Company from that company. It has come in the evidence of ACP Patil, PW-186, that the letter Ext. 1258 was received from the FSL for procuring original rubber gasket and whistle of pressure cooker from Kanchan Company and forward them to it for the purpose of comparison, that he gave this letter to PI Deshmukh and directed him to do the needful. It has come in the evidence of PI Tonapi, PW-155, that the FSL wanted an original cooker ring and whistle from the Kanchan Cooker Company for comparison. Hence, the letter dtd. 14/10/06 was prepared, panchas were called and they went to Raju Industrial Estate, near Dahisar Check Naka, to that company, that PSI Kandharkar started writing the panchanama Ext. 1259 at the Juhu Unit and they handed over the letter Art. 341 to Prashant Kothari, Administrative Head of that company and after he produced a sealed packet of pressure cooker ring and stainless steel whistle, it was packed in a brown paper separately, labeled, sealed and seized under the panchanama Ext. 1259. PSI Kandharkar was not

examined, but the panch witness Simon Devinadan, PW-120, was examined and he deposed as per the evidence given by PI Tonapi, PW-155, identified the letter Ext. 1258, delivery challan Arts. 340 and 341 and proved the contents of the panchanama Ext. 1259. He identified his signatures on the labels on the envelopes Arts. 342B and 343A and also identified the Kanchan Company polythene bag Art. 342A that contains gasket Art. 342 and whistle Art. 343. His cross-examination has not discredited his version and there are no submissions about his evidence. On the other hand he unhesitatingly gave the address where he had gone to Juhu on that day from his residence in Vasai and described the locality of the factory as well as the details of the events that happened and a positive sentence has come in his cross-examination that police did not carry any article with them like the gasket and whistles Arts. 342 and 343 when they went to the factory. How such question was asked is itself a question in my mind and the only inconsistent thing that he stated that no portion of the panchanama was written till they left the Chandanchowki Police Station. This does not affect his evidence about the search and seizure considering the fact that no antecedents or connection with the police have been shown. PI Tonapi, PW-155, identified their signatures and also identified the articles, i.e., whistle Art. 343 and the plastic bag of the Kanchan Cooker Company containing the pressure cooker ring Art. 342A. He also proved the contents of the true photocopies of the station diary entries no. 11 and 17, Ext. 1668 (two pages). It has come in the evidence of ACP Patil, PW-186, that he sent the said articles to the

FSL on 16/10/06 with PC Tanaji Patil, PW-148, who corroborated his version and proved the office copy of forwarding letter Ext. 1599 that bears the acknowledgment of the receiving clerk and his buckle number. He also identified the packets Arts. 342A and 343A and stated that they were in sealed condition when he had taken them. There is nothing in his cross-examination about the work that he did. There is nothing in the cross-examination of PI Tonapi, PW-155, to dispute the seizure of the pressure cooker rubber gasket and whistle from Kanchan Cooker Company. In fact this aspect is material only to see whether the seven rubber rings and five whistles that were seized at the instance of the A3 were of the Kanchan Cooker Company or not and the FSL report in this respect Ext.2388 shows the opinion of the CA that the rubber gasket and whistle procured from the Company do not tally with rubber gasket and whistles recovered from the A3 in respect of the markings and physical characteristics. ACP Patil, PW-186, stated that this in other words means that the rubber gasket and whistles recovered at the instance of the A3, though bearing the markings of Kanchan Company, were duplicate.

736. Next in time is the recovery of white powder, granules, ten aluminum tubes, to which wires were joined, which they found to be detonators, and, powder, which was subsequently found to be RDX at the instance of the A13. It has come in the evidence of Sr. PI Tajne, PW-161, that he prepared the memorandum of the voluntary statement Ext. 664 made by the A13 on 09/10/06 after the accused expressed his desire to make it during interrogation and after two

panchas were called. He proved the contents of the said memorandum and then before proceeding for going to the place, which the accused was going to show, he made the station diary entry no. 8, contents of which he proved and true photocopy of which is at Ext. 1722. He then deposed about going to flat no. 101, that was shown by the accused in the 'A' Wing of Poonam Park in Naya Nagar, Haidar Chowk and gave evidence about the search and seizure of the articles, which is described in detail in paragraph 161 of the judgement. He proved the contents of the seizure panchanama Ext. 665 and it has come in his evidence that the photocopy of the panchanama was obtained, given to the accused and his signature was obtained on the panchanama. In his evidence, he has stated about drawing two samples of 10 grams each, Arts. 280 and 283, from the plastic bag containing white granules, putting them in small separate plastic pouches, labeling and sealing them. He also deposed about finding of ten aluminum tubes joined with wires, Arts. 281 (colly), which were found to be detonators and kept them in plastic bottles and labeled and sealed them also. It has also come in his evidence that the rexine bag Art. 279 was also seized. He also deposed about seizure of the other articles, which are not much material except for the key Art. 299. It has come in his evidence that he returned back to the ATS office, reported the seizure to the chief investigating officer, gave him the original panchanama and the articles and made station diary entry no. 13, contents of which he proved and true photocopy of which is at Ext. 1723. It has also come in his evidence that during the search and

seizure, the secretary and the chairman of that building had come there, introduced themselves and identified the accused as the tenant of that flat. Panch witness Kevalkumar Jain, PW-55, gave evidence corroborating the evidence of Sr. PI Tajne, PW-161, and deposed in detail as to what statement the accused made, how the memorandum of his statement was written, what articles were taken by police with them when they started for the search, about they searching the vehicles and the police personnel and the accused leading them to the said flat and about preparation of the key of the locker with the help of key maker and finding of the articles described above. He described all the articles in detail and proved the contents of the memorandum Ext. 664 and the seizure panchanama Ext. 665. He as well as Sr. PI Tajne, PW-161, identified their signatures on both these documents, signatures of the other panch and the signatures of the accused on both the documents. Both identified the accused in court and both identified all the articles accurately and specifically. Thus, his evidence corroborates the evidence of Sr. PI Tajne, PW-161, and the contents of the memorandum Ext. 664 and the seizure panchanama Ext. 665 corroborate their version. The contents of the station diary entries Exts. 1722 and 1723 also corroborate their version. Nothing adverse was revealed in the cross-examination of Kevalkumar Jain, PW-55, to discredit his version or to impeach his credibility. The submissions about his evidence by the learned advocates during their arguments will be considered subsequently. Suffice to say that he has withstood the test of cross-examination and most part of his cross-examination

is general in respect of what the police did not do, i.e., making inquiries with the chairman and the secretary of that society, about the person by name Zakir Umar Shaikh whose documents were found in the flat. It is in his evidence that a camera was taken by the police when they started for the search, but during his cross-examination he stated that he does not remember whether the camera was used at the flat and whether there were any photographs in the memory of that camera. The panchanama mentions that a digital camera was taken by the police with them and in further cross-examination the witness expressed his ignorance as to whether police took photographs of the door before opening it and whether they took photographs of the room before touching any article, but made a positive statement that police had taken photographs when the accused took out the articles and also about his presence in the flat when the articles were seized and sealed. Learned advocate Wahab Khan for the accused called upon the prosecution to produce all the photographs, whereupon, the learned SPP submitted that though the photographs were taken at that time, but a new camera was given to the ATS and though the officer took the photographs they could not be printed because of some technical fault. To my mind, photographs of search and seizure is not a big issue.

737. Kevalkumar Jain, PW-55, was generally cross-examined about his work, about the panch Jitendra Jain, but all this is not much relevant and nothing has come on record to show that he is a regular panch witness. A positive statement was made by him in

connection with his business of stationery that he never supplied stationery to the ATS office. He is a resident of Bhandup and it is in his evidence that on that day he was going towards Apana Bazar from Govind Keni Road, Naigaon. When asked as to how he was at Naigaon on that day, he explained and this has come in cross-examination, that his brother has a room in Naigaon, where he was not residing at that time and it was vacant and he had taken his friend Devraj there, as he wanted the room on rent. His further answers about the locality in Bhoiwada and about the distance of the ATS office from that room and other details show his knowledge about the locality and indicate his truthfulness. About signing below the memorandum, he correctly described the sequence of the accused giving the statement, police writing his name and address and thereafter what the accused narrated. He also specifically stated in paragraph 33 of his cross-examination that the accused made his signature first after the writing of the memorandum was completed, thereafter, the officer signed and then they panchas signed.

738. He committed a mistake in his statement when he stated that when the accused was asked about the key of the flat, he said that he had thrown it. However, he corrected this mistake in paragraph 33 of his cross-examination by stating that the accused said that he lost it and the accused did not say that he had thrown the key. This evidence has not been controverted.

739. He correctly stated about the secretary and chairman of that building coming there, introducing themselves and on being asked whether they know the accused, they saying that they know him and

he used to stay there. Specific questions were asked in cross-examination about these two persons and he stated that the secretary and the chairman came in the flat at about 4.00 p.m., i.e., about one hour or one and half hours after they reached there and that they were stopped before entering. Infact, it has come in his cross-examination that the process of seizing and sealing the articles was going on when they came. About the aspect of sealing the articles, he correctly described how the articles were packed, labeled and sealed. It has come in his cross-examination that all the packets were sealed and about the rexine bag in which the articles were found, he deposed that it was wrapped in a khaki paper and it was sealed. This evidence has not been controverted. He being a truthful witness is established by a statement made by him in cross-examination that it was revealed during the inquiry with the neighbours, watchman, chairman and secretary that Zakir Umar Shaikh was the owner of that flat and when police asked those persons about his whereabouts, they stated that he had sold it to a woman. This is also what is stated by Sr. PI Tajne, PW-161. Admittedly, Sr. PI Tajne, PW-161, did not take the statement of the key maker who was called there and this the witness stated that police did not take his signature anywhere. He denied the suggestion that police did not pay any charges to him, but he did not see how much charges the key maker was paid and that the charges were not agreed and paid in his presence. Again some positive sentences have come on record during his cross-examination that police had given information that the wires and powder can be used for preparing

bombs and that the accused had not signed at any place on the panchanama in the flat. Obviously, because a photocopy was obtained after they came below the building and then it was given to the accused. A baseless suggestion was given at the end of the cross-examination by the learned advocate Wahab Khan that since two months before 09/10/06 the flat was in the possession of the ATS and that he deposed falsely as he is tutored by the police and identified the accused and the articles at the instance of the police.

740. His evidence that the police asked him and the other panch to take their searches and they took their searches, but except their personal articles did not find anything else, is obviously not in the panchanama, because the contents of the panchanama only show that police asked the panchas to take the search of the vehicle. This was brought on record as an improvement as it is not written in the panchanama. However, he described in detail as to which persons he had searched including Sr. PI Tajne, PW-161, and which persons the other panch had searched. His honesty is further revealed from a positive sentence made by him in cross-examination when asked about the names of the chairman and secretary, because he stated that someone out of the chairman or the secretary was by name Kasambhai. The contents of the panchanama shows that one Mohd. Kasam Mohd. Hussain Shaikh, secretary of the society, had come there alongwith chairman Yunus Dawood Patel.

741. As mentioned earlier his lengthy cross-examination has not revealed anything that could discredit his version or impeach his credibility. Nothing is brought on record to show that this witness

has any criminal antecedents or connection with the police, having acted as a panch witness earlier or as an accused, etc. Thus, he is an absolutely uninterested witness, not pliable at the hands of the police and though there may be some minor inconsistencies in his evidence vis-a-vis the contents of the panchanama and evidence of Sr. PI Tajne, PW-161, they do not affect the quality of his evidence as they did not go to the root of the case.

742. Thus, by the evidence of Sr. PI Tajne, PW-161, and panch witness Kevalkumar Jain, PW-55, the prosecution has proved the recovery of white granules and detonators from the said flat at the instance of the A13.

743. It has come in the evidence of ACP Patil, PW-186, that Sr. PI Tajne, PW-161, had come to him on 09/10/06 and handed over the memorandum and recovery panchanama, Exts. 664 and 665, reported about what they had recovered at the instance of A13 and that the articles were deposited in the muddemal room, which included samples of white granulated powder in two separate polythene bags. It has come in his evidence that he sent one of these sample packets and the handbag Art. 279 to the FSL on 11/10/06 alongwith his forwarding letter, office copy of which is at Ext.1756, the contents of which he proved and which he had sent with PC Dinesh Gaikwad, PW-164. PC Dinesh Gaikwad, PW-164, corroborated his evidence, proved the contents of the office copy of the forwarding letter Ext. 1756 and also identified the khaki wrapper Art. 279A and 283B in which one sample packet and the handbag had been sent. There is nothing in his cross-examination to

disbelieve him and in respect of his answer in cross-examination that the malkhana of the ATS was at Bhoiwada and the packets were given to him at Bhoiwada and his denial that the malkhana of the ATS was at Kalachowki and admission that he did not take the packets at Kalachowki, it was submitted by the learned advocate Wahab Khan for the accused that he is obviously a tutored witness, because it has come in the evidence of other witnesses that the malkhana was at Kalachowki. To my mind, this aspect will not affect the veracity of the evidence, because what matters is the FSL finding the parcels to be in sealed condition with seals intact, as per its report Ext. 2389. Thus, by the above oral and documentary evidence, the prosecution has proved the link between the articles that were seized from the above described flat at the instance of the accused and the articles analysed by the CA. The contents of the FSL report Ext. 2389 describe what articles were sent, the first being the blackish oily lumps in a rexine bag having printed label 'Hindustan ki kasam' marked as 'अ' and second being the white granules in a polythene bag wrapped in paper marked as 'ब-1', the seals of which were found to be intact. The result of the analysis is that the lumps in the rexine bag contain 82.34% RDX Cyclonite, 8% Charcoal and 9.17% Petroleum Hydrocarbon Oil and Ammonium and Nitrate Radicals were detected in the white granules.

744. Admittedly, the documents or the articles that were recovered from the said flat do not indicate that the flat was owned or possessed by the A13 on rent and for this purpose the prosecution examined the owner of the flat, i.e., Khurshid Begum, PW-51, and an

estate agent Amir Khan, PW-49.

745. It has come in the evidence of Khurshid Begum, PW-51, that she had purchased flat no. 101 in Poonam Plaza, Hyderi Chowk, Mira Road in 2005 or 2006, which is not a disputed position as the photocopy of an agreement by which she rented the flat to one Irshad or Harshad, i.e., Art. 264 Ext. 654, is not disputed by the defence, because learned advocate Wahab Khan submitted at one place that the prosecution has proved the said agreement. It shows that she is the owner of that flat. Her evidence about renting the flat in 2006 to the said Irshad or Harshad through an estate agent Amir Khan, i.e., PW-49, etc., and Amir Khan, PW-49's evidence about it, is therefore not disputed in view of the prosecution proving the agreement. The contents of agreement Ext.654 show that it was for the period from 01/02/06 to 31/12/06. The dispute is about both these witnesses having seen the A13 in that flat with a woman and two children. The evidence of both these witnesses about this aspect is consistent in nature. It has come in the evidence of Khurshid Begum, PW-51, that after renting the flat, she had first gone to it in the first month of rainy season, where, she saw the said man with the woman and two children in the flat and that the said man was some other person than Irshad to whom she had rented the flat. She went inside it and before that she had phoned Amir Khan, PW-49, and told him that some other person is staying there and had taken him and Kasambhai, secretary of the society, to the flat. She described what happened when she knocked on the door. She stated that a woman opened the door and Amir Khan, PW-49, and

Kasambhai waited outside. She went inside the flat, saw the man, woman and two children in it and on seeing her the man went inside and the man was having a beard and she asked the woman as to who they are and told her that they are not the person with whom she done the agreement. The woman told her that they are relatives of that man and the person who had taken the flat on rent is her brother-in-law. Her cross-examination on this aspect has not revealed much and she emphatically denied the suggestion that the A13 was not in her flat any time, that he was shown leisurely to her in the ATS office, that she did not see that man correctly, though she admitted that police had shown A13 to her in the office of ATS at Kalachowki on the first occasion and told her that his name is Asif Khan Bashir Khan, who was caught from her flat and articles for preparing the bomb were found from her flat, she turned down the suggestion that therefore she identified him in the court. Two portions from her statement were confronted to her and were marked as 'A' and 'B', but could not be proved by the defence as prosecution did not examine ASI Sachin Kadam, who had taken her statement. However, portion marked 'A' is in connection with her tenant Irshad and is not material. Now though the second portion was confronted to her that she said that it did not happen that she had asked that person, i.e., A13 about her tenant Mohd. Irshad and A13 told her that he is his brother, he has gone out of station, would come in a week and at that time she had seen her wife and children. Nothing further was asked and suggested about that portion as to why it is in her statement and that she had stated so to the police.

Remaining part of the cross-examination is not so material and about the main aspect her evidence in chief-examination is again reiterated while answering questions in cross-examination wherein she stated that Amir Khan, PW-49, and Kasambhai were with her when she knocked the door, that she entered the flat after the woman opened the door and at that time she saw her and the man also and when she entered the flat the man had gone inside and she saw the man briefly (zalak) and when she said that she is the owner of the flat, he went inside. She denied the suggestion that at that time she felt that there was a man in the house, but she did not see. She described the ages of the children and said that the police did not ask her to describe the woman, the man and the children. There is some cross-examination to her about the inquiry at the ATS office, her visits to Kalachowki ATS office, etc., but again that is not much material. She unhesitatingly identified the A13 in the court.

746. Amir Khan, PW-49, corroborated her version in respect of renting out the flat to Mohd. Irshad Mohd. Kasam and the agreement being executed, rent being deposited in his office, she collecting the rent, etc. Though, Khurshid Begum, PW-51, could not state the exact date or month in which she had gone to her flat and seen the A13, Amir Khan, PW-49, stated that she phoned him in June, 2006 and told him that some other person is staying in her flat, therefore, alongwith her, he and Kasambhai, the secretary of that society, went to that flat and it has come in his evidence that a bearded person, a woman and two children were in the flat. Khurshid Begum, PW-51, asked them where the person to whom she

had rented the flat was and they told her that he had gone out of station and then he said that he had seen the bearded person in the flat and identified the A13 in the court unhesitatingly. Most of his cross-examination is in connection with his work as an estate agent, how agreements are prepared, how keys are prepared if they are lost, about the collection of the rent of that flat by Khurshid Begum, PW-51, and about the tenant Mohd. Irshad and his family members and the execution of the agreement. Though he was not specific in his chief-examination about the time, date and or week in June, 2006 when he went to that flat of Khurshid Begum, PW-51, it came in his cross-examination that they had gone on a working day in the afternoon at about 2.30 or 2.35 p.m. probably in the second week of June. Both these witnesses have stated that the secretary Kasambhai was present and it has come in his evidence that Khurshid Begum, PW-51, came to know from Kasambhai about some other persons staying in the flat. He candidly admitted and it is consistent with the evidence of Khurshid Begum, PW-51, that he did not have any talk with the inmates of the flat, did not enter it, did not call any person outside the flat and, this is important, that he and the secretary did not go inside of the flat and Khurshid Begum, PW-51, told him what talk she had inside. Now it has come in his further cross-examination that he had gone to the office of the ATS office at Kalachowki where his statement was recorded and made a positive statement that the A13 was not sitting there. At that time, the officers told him that they would show the accused to him, but he told him that it was not necessary and they did not show the accused to him and he had not

seen the accused there, however, police showed photographs of the accused to him. In respect of the concerned portion from his statement he was asked and he answered that it did not happen that police showed him one person and asked him whether he was residing in the said flat and he identified him as brother of Mohd. Irshad and stated that he had not stated so to the police, but then his naivety is apparent because he then stated that if it is so written in the statement then it is correct. It is, therefore, that the said portion was not confronted, but, to my mind, this cannot be an admission so as to wash away his evidence about having seen the A13 in that flat. Seeing a person physically and seeing his photograph is something different and it has come in his cross-examination itself as pointed out above, that he told the police that it is not necessary to show the accused to him and they did not show the accused to him.

747. Thus, by the evidence of the above two witnesses the prosecution has proved that the A13 was residing in the said flat, i.e., flat no. 101, 'A' Wing, Poonam Park, Naya Nagar, Hyderi Chowk, Mira Road, though he was not the tenant to whom Khurshid Begum, PW-51, had rented the said flat.

748. Next consequent step was of ascertaining whether the granules were explosives and whether the detonators were live detonators. Sr. PI Tajne, PW-161, deposed about the procedure by which the granules were inspected by the BDDS team comprising of API Revle, PW-154, and the dog Max, as described in paragraph 162 of the judgement and also deposed about preparing panchanama Ext.667 and making the station diary entries no. 16 and 14, certified

copies of which are at Exts. 1727 and 1728, and which corroborate his version. There is nothing in paragraph 70 of his cross-examination on this point to discredit his evidence about it and most of the answers are positive statements and it has come in his evidence that they had returned from Mira Road directly to Kalachowki office on that day, i.e., on 09/10/06, *via* Bhoiwada, but, this is important, that they did not stop there and A13 was not put in the Bhoiwada lock-up before going to Kalachowki office. Why such baseless questions were asked is a question to me because there is nothing to contradict his evidence on record and on the other hand it has strengthened his evidence about taking the accused to Kalachowki and the inspection of the granules and detonators taking place in the presence of the accused. Of course, he turned down the suggestion denying his evidence and though he admitted that there is no entry in the station diary about depositing the detonators and granules in the muddemal room after they were inspected, it does not lead to anything. Panch witness Kevalkumar Jain, PW-55, corroborated his evidence totally in all respects and both witnesses identified their signatures on the labels on the packets that were sealed and on the panchanama Ext. 667. His cross-examination on this aspect has not affected his evidence and on the other hand positive statements have come on record that he had reached the ATS office at about 6.45 p.m., was there upto 9.30 p.m., that the dog squad came at 8.00 p.m., only one sample packet was opened, that before the police dog was given the sample powder to smell, the dog squad persons had stated about the powder being explosive. He

denied the suggestion that the accused was not present at that time and admitted the factual position that the accused was not asked to sign anywhere at that time. Thus, his evidence is unscratched and as observed time and again, a baseless suggestion was made that since two months before 09/10/06 the flat was in the possession of the ATS. There is no evidence for this by the defence. Therefore, I said baseless.

749. The contents of the panchanama Ext. 667 corroborate the evidence given by Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55, and it is also corroborated by the evidence of API Revle, PW-154, who deposed about going to the ATS office at Kalachowki with his officers and staff on 09/10/06 on being called, meeting Sr. PI Tajne, PW-161, who gave him a sealed khaki envelope that had a label containing signatures of panchas and being asked to examine the material and to say whether it was an explosive. It has come in his evidence that he took the envelope to the open space behind the Kalachowki ATS office, opened it, found it to contain white coloured granules in a plastic bag, asked the handler to direct the dog Max to sniff the granules, which the dog did and gave a positive message by barking that it was explosive substance. It has come in his evidence that as explosive substance basically contains high oxygen, they also do a test by lighting it to see how it burns, therefore, he took some granules from the packet and lighted it and they burned while melting, which *prima facie* confirmed that it was explosive. It has come in his evidence that he was asked to inspect articles that were in a sealed plastic bottle, which he opened and which was found to

contain ten small aluminum cylinders, about 1 or 1½ inches long and two white electric wires being attached to each cylinder and at the ends of cylinders where wires were attached being crimped and the other ends were pressed inside, i.e., concave and on the basis of his experience he realized that they are detonators. He knew that there is an ASA compound in the detonator, i.e., in the cylinder which is of the weight of 0.35 grams and there is composition explosive of about 0.55 grams in it, which is a primary high explosive, sensitive to heat, shock and any impulse. Therefore, he separated them in two bunches of five each, wrapped them in cotton and put them in half cut separate plastic bottles and gave them to the ATS as they are highly sensitive and can explode even if they fall on a hard surface and as it was risky to keep the ten detonators together.

750. His cross-examination on this point by learned advocate Shetty in paragraph 19 has not revealed anything adverse to affect his testimony except that his statement was not recorded on that day. But he denied the suggestion that no panchanama was prepared when the articles were shown to him and he inspected them. He has made a positive statement that the granules were approximately 1½ to 2 kgs., he had inspected the plastic bags containing the granules, regarding the seal and label, that the date on the label was 09/10/06, that the weights of the contents of the cylinder about which he stated are standard as the detonators are factory made. In further cross-examination in paragraph 27 his evidence about explosive substance basically containing high oxygen, therefore, they

doing the test by lighting it and that the ends of cylinders were crimped and he realized because of his experience that they are detonators, etc., was brought on record as improvement. His evidence about taking some granules from the packet and lighting them, the granules burning while melting which *prima facie* confirmed that it was explosive, was brought on record as omission to state when he gave his statement to the ATS officers. To my mind, the improvements and omissions are in the nature of explanations and they do not affect his testimony because the contents of the panchanama Ext. 667 describe the procedure. His cross-examination by learned advocate Rasal has also not revealed anything adverse to affect his testimony. On the other hand, though he admitted that even if five detonators together would have fallen it could have been dangerous, he did not keep each one separate as he wrapped them in a cotton and took the necessary safety measures.

751. Thus, the evidence of API Revle, PW-154, fully corroborates the evidence of Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55, and the contents of the panchanama Ext. 667 are proved and they corroborate the version of these three witnesses.

752. It has come in the evidence of Sr. PI Tajne, PW-161, that he handed over the original panchanama Ext. 667 and the articles to the chief investigating officer ACP Patil, PW-186. The evidence in connection with ACP Patil, PW-186, about sending one of the sample packets and the hand bag to the FSL is already discussed.

753. Next subsequent step was of disposal of the detonators as they were hazardous for storage and it has come in the evidence of ACP

Patil, PW-186, that he applied and got the permission from the special court to defuse them and directed Sr. PI Tajne, PW-161, to do the needful. Sr. PI Tajne, PW-161, deposed about API Revle, PW-154, and staff of the BDDS team arriving at the Kalachowki office on 20/10/06 on being summoned for destroying the detonators, handing over the two plastic bottles containing the detonators to him and going to Girgaon Chowpaty with panchas, one of them being Ajit Singh, PW-158, showing the court order to them and API Revle, PW-154, and the procedure that API Revle, PW-154, adopted for destroying the detonators one by one and then he collecting the remaining pieces of detonators and wires, packing them, labeling them and sealing them under the panchanama Ext. 1692 that was prepared by PSI Kisan Gaikwad and then going back to the Kalachowki office and PSI Kisan Gaikwad making the station diary entry no. 9, certified copy of which is at Ext. 1730, the contents of which corroborate his version. His cross-examination with respect to this aspect in paragraph 17 has not revealed anything adverse to discredit his version. Same is the case about the cross-examination of ACP Patil, PW-186, on this point.

754. Panch witness Ajit Singh, PW-158, corroborated the evidence of Sr. PI Tajne, PW-161, and API Revle, PW-154, identified the articles, i.e., the remaining wires of the cylinders Arts. 281 (colly), pieces of aluminum metal Arts. 282 (colly) and pieces of red sticking tape stating that after the persons who had come there to destroy the bombs blasted the cylinders, the police had collected these articles from the pit in which they were blasted. He identified his

signatures on the khaki wrapper Art. 282 and the signature of the other panch also and on the panchanama Ext. 1692. His cross-examination has not revealed anything adverse that would affect his evidence about the events of destruction of detonators. His inconsistent evidence that he was called at the ATS office at Kalachowki at 3.00 p.m., whereas, the panchanama shows that he was called at Girgaon Chowpaty, does not affect his testimony as nothing is brought on record to show that he is a person who is pliable at the hands of the police or that he is a habitual witness or accused.

755. Thus, by the evidence of Sr. PI Tajne, PW-161, API Revle, PW-154, and Ajit Singh, PW-158, the prosecution has proved that the ten detonators that were seized at the instance of the accused were destroyed on 20/10/06 at Girgaon Chowpaty as per the order of this court. The contents of the panchanama Ext.1692 corroborate their evidence.

756. It has come in the evidence of ACP Patil, PW-186, that Sr. PI Tajne, PW-161, handed over the panchanama Ext.1692 and the residue of the defused detonators seized by him under the said panchanama, which he deposited in the muddemal room and that he sent the residue to the FSL for analysis on 27/10/06 alongwith his forwarding letter, office copy of which is at Ext.886, the contents of which he proved and that he had sent it with HC Jagannath Golhar, PW-86, who corroborated his version. A portion from his statement was confronted to him and proved as Ext.2518 during the evidence of ACP Patil, PW-186, which reads that ACP Patil had given

the letter to him on 27/10/06 and he was directed to collect him on 30/10/06. This though inconsistent with his evidence in chief-examination that he was given a letter dtd. 27/10/06 on 30/10/06, does not affect the fact of he having taken the said letter and the sealed parcel to the FSL which is also proved by the contents of the report of the FSL Ext.2390, which shows that one sealed parcel, seals intact, was received in that office on 30/10/06 with a letter dtd.27/10/06 alongwith head constable buckle no.951, which is the buckle number of HC Jagannath Golhar, PW-86. Other than this, it has come in his cross-examination that PI Mohite of the ATS had given his statement for reading and as many days had gone by, he read it, therefore, he was able to state about the dates. However, the next sentence is that he had read it 2-3 months before the date of his evidence. I do not think that there is anything wrong in doing so as he is a police witness and not a witness about some event and if necessary the statement may have been given to him for remembering the dates. That does not affect his evidence and also the fact that he had reached the forwarding letter and sealed parcel to the office of the FSL. In spite of all this cross-examination, there is no suggestion to him that he had not done the work as deposed by him. The opinion of the FSL report Ext. 2390 is that nitrite and lead radicals (post explosion residues) were detected in the ten defused detonators with electrical wires, metallic pieces and adhesive pieces.

757. Thus by the evidence of Sr. PI Tajne, PW-161, Kevalkumar Jain, PW-55, API Revle, PW-154, ACP Patil, PW-186, Ajit Singh, PW-158, PC Dinesh Gaikwad, PW-164, and HC Jagannath Golhar,

PW-86, and by the contents of the memorandum and voluntary statement made by the A13 Ext. 664, panchanama Ext. 665 and the other panchanamas, office copies of the forwarding letters and the reports of the FSL, prosecution has proved the link between the white granules, a hand bag and detonators that were seized from the said flat at the instance of the accused and by the evidence of Khurshid Begum, PW-51, and Amir Khan, PW-49, it has proved that A13 was residing in that flat, sometime in the second week of June, 2006.

758. Learned advocate Wahab Khan for the A13 criticized the evidence in respect of this search and seizure on several counts. His main contention is about there being no evidence by the prosecution in respect of the connection of the A13 with the said flat. He submits that in the chargesheet Ext. 2451 two addresses of the A13 are given, one is of Jalgaon and one is of Belgaum, but there is no reference to this address and there is no reference of that address in the confessional statement of the 11 co-accused as a place of his residence. He submits that A13 gave evidence as DW-49 and gave his residential address of Shanti Nagar, Mira Road, Dist. Thane, which is corroborated by the documents produced by the prosecution in respect of his employment Exts.2088, 2090 and 2091. He submits that the address of Poonam Park Apartment, Naya Nagar, Mira Road, as deposed by Khurshid Begum, PW-51, and Amir Khan, PW-49, is not the address as per the case of the prosecution and as stated by the A13. During the discussion of the evidence of Khurshid Begum, PW-51, and Amir Khan, PW-49, learned advocate has made

a statement that a leave and licence agreement Ext. 654 is proved by the prosecution and this court can read it. In this respect, he submitted that Mohd. Irshad, the person with whom the said agreement was made, would have been the best person to throw light that anyone else other than him was having access to that flat, but surprisingly this link in the chain is missing as he is not made a witness and there are no efforts by the prosecution to search for him and examine him.

759. In my humble opinion, these submissions overlook the aspect of the A13 having led the police to that flat, which was not in their knowledge. It is not that the address of Poonam Park, Naya Nagar, Mira Road was the address that was given by the accused earlier or that it was known to the police prior to he making the voluntary statement on 09/10/06. In this respect the learned SPP submitted that the A13 is a resident of Jalgaon, he was staying in Shanti Nagar, Mira Road, working at Andheri, but was found at Belgaum, that too after a considerable lapse of time. He submits that the evidence of Amir Khan, PW-49, and Khurshid Begum, PW-51, prove that Khurshid Begum, PW-51, owns the flat in Poonam Park, Naya Nagar, Mira Road and both these witnesses have stated about seeing the A13 with a woman and two children in that flat probably, his wife and children, sometime in the second week of June, 2006. He submits that every circumstance is to be judged by applying the test whether the story appeals to a man of ordinary prudence, in other words, the court will have to come to the conclusion that this woman, i.e., Khurshid Begum, PW-51, is a got up witness, who is

claiming the document and the flat of somebody else, however, there is nothing in her cross-examination to show that she did not purchase the flat and she did not rent it out to anybody. So, what was the reason for her to say something against the accused?

760. To my mind, the evidence of Khurshid Begum, PW-51, and Amir Khan, PW-49, is a cogent evidence, they are totally uninterested witnesses having no criminal antecedents or previous contacts with the police and there is no reason for them to give false evidence to implicate the A13, whom they did not know till that date. Learned SPP submits that he has made the said submissions for testing the theory of plantation and he asks a question to himself as to why would the ATS try to create evidence in respect of the premises that was unconnected to the A13? The answer to this is that it is the A13 who led the police to that flat. He then asks a question as to what is the reason or occasion for the police to go to that flat which is of some unknown person and rented to someone else? He poses the question as to what would have been natural for the police to foist the discovery? Would they not have done it at the residential address given by the accused? He submits that the entire story of the prosecution inspires confidence in respect of the discovery of the articles from the A13 and the findings of the FSL report corroborate and match with the finding of articles from the co-accused and the articles seized from the sites of the blasts.

761. In my humble opinion, the submissions of the learned SPP are correct. There was no reason for the investigating machinery to show the recovery of such type of articles from some premises that

were unconnected with the A13 and about which they could not gather any documentary evidence. Therefore, irrespective of the evidence of Amir Khan, PW-49, and Khurshid Begum, PW-51, the evidence of Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55, gives rise to the only legitimate inference that it was the A13 who had showed the flat and the consequent recovery of the incriminating articles were made at his instance. The inference can also be drawn that the flat was not given to him on rent, but it was given to someone else, probably the said Mohd. Irshard and he may have given it to the A13 to be used as a shelter. Learned advocate submits that the facts that accused was arrested on 03/10/06, was taken to the flat on 09/10/06 and he did not have the key of the flat and instead of keeping his identity secret till he was put in the prison, he or his photograph were shown to the witnesses, which shows that the evidence of both Amir Khan, PW-49, as well as Khurshid Begum, PW-51, is required to be discarded. In my humble opinion, there is a ring of truth in the evidence given by these two witnesses read with the evidence given by Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55. There is no explanation as to why out of the blue moon these two witnesses were inquired with and examined by the police. They have no antecedents or links with the ATS or police. Therefore, I have no hesitation in accepting the evidence of these four witnesses as truthful.

762. Learned advocate next submitted that the CDR Ext. 3767 of the A13 shows that in June, 2006 on working days he is at his place of work and the salary record Ext. 3093(2) of that month shows full

salary of thirty days. To my mind, drawing of full salary of thirty days is inconsequential and it does not prove the full attendance for whole of the month and insofar as the entries of calls in the CDR Ext. 3767 of the mobile of the A13 are concerned, they are more harmful to the defence of the A13 rather than being helpful. This is because the location of as many as 50 calls in May, 2006 are from near the tower at Naya Nagar, Mira Road, as against only 5 calls from the location of Shanti Nagar, Mira Road. Whatever calls were retrieved for the month of April, 2006 there is one call located at Naya Nagar, Mira Road. There is no CDR from 1st to 15th of June, which gives rise to many inferences and subsequently there is only one call located at Shanti Nagar, Mira Road in that month. In July, 2006 there is one call located at Naya Nagar and six calls located at Shanti Nagar, Mira Road. The numerous calls in May, 2006 are at odd hours in the night giving rise to the inference that the A13 was staying there or going there temporarily. Thus, the submission of the learned advocate on the basis of the CDR is incorrect.

763. Learned advocate submits that A13 was unknown to Amir Khan, PW-49, and Khurshid Begum, PW-51, and therefore the police should have got his identity confirmed from these two witnesses in the identification parade, on the contrary, he was shown to the witness and his photo was shown. It is true that Amir Khan, PW-49, has stated that the photograph of the A13 was shown, but he denied the suggestion that therefore he identified him in the court. Khurshid Begum, PW-51, admitted that the A13 was shown to her on the first occasion, but denied that she was shown his photographs

and also denied that she had not seen the A13 properly when she went in the flat and also denied that he was not in the flat at any time. Both these witnesses unhesitatingly identified the A13 in the court and there are no allegations against them and no suggestion was given to them that the A13 was pointed out to them on the date of their evidence or prior to it or that his photograph was shown. They being uninterested witnesses having no connection with the police in any manner shows that they are truthful witnesses and though they were not put up in the identification parade, it does not materially affect the quality of their evidence. The substantive evidence is identification in the court.

764. Learned advocate submits that the log book entry in Ext. 4180(1) supports the claim of the A13 that after his arrest he was taken to his residential address of Shanti Nagar. Perusal of the said entry shows that PI Deshmukh and staff had gone from Chandanchowki, to Mira Road, to ATS Nagpada, to Kalachowki, to Vikhroli Chowki, to Chandanchowki. However, it does not show that they had gone to the house of the A13 or that he was with them. This is nothing but taking advantage of the entry dtd. 03/10/06 in the log book, which mentions Mira Road. No inference can be drawn that the police had gone to the house of the A13. Even otherwise they would have gone to his house in Shanti Nagar, because it was also in Mira Road and that was the address he had given. It is submitted by the learned advocate that the A13 has in his evidence as DW-49 explained about the events on that day. Of course, those are only his words and obviously there was no panchanama drawn.

Even if it is considered that he was taken to the house as stated by him and there is no recovery on that day, if the chronology of the events that he had stated is taken, it shows that the police had come with his brother to the house where he was staying at Belgaum at about 12.30 or 1.00 a.m. on 03/10/06 and they started with him at 1.00 p.m. and it is in the next paragraph that he was taken to Chandanchowki at 10.30 a.m., which means on the next day, i.e., on 04/10/06. That apart this evidence is meaningless and does not affect the evidence given by the prosecution witnesses.

765. Repeated submissions are made by learned advocate Wahab Khan in connection with the non-production of muddemal register and station diary entries, not mentioning the exact details of the work for which the police officers and their staff started from the office and about the work that they had done after they returned. In my humble opinion, the station diary entries corroborate the evidence of the witnesses in respect of the search and seizure and deposit of muddemal articles, and the reports of the FSL say that whatever packets and parcels were received alongwith the forwarding letters, the seals were found to be intact. Thus this submission does not affect the evidence of the prosecution.

766. To discredit the panch witness Kevalkumar Jain, PW-55, learned advocate is relying on the certified copy of the chargesheet in C. C. No. 319/06 in C. R. No. 80/06 of Parksite Police Station, Ext. 3928 and in this connection he points out to the cross-examination of Sr. PI Tajne, PW-161, in paragraph 46, however, there is nothing in the cross-examination of Sr. PI Tajne, PW-161,

because he denied that Kevalkumar Jain, PW-55, is linked to Sr. PI Tajne, PW-161. Perusal of the certified copies of Roznama and all other documents of C. C. No. 319/PW/06 pertaining to the 34th Metropolitan Magistrate Court, Vikhroli, Mumbai, shows that one Kevalkumar Dalchand Jain is an accused and he is chargesheeted alongwith other accused for the offences under section 420 read with 34 of the IPC. It does not indicate the involvement of Sr. PI Tajne, PW-161, anywhere and is therefore irrelevant. Learned advocate submits that this witness is giving his name as Kevalkumar Tarchand Jain in this court, but in the panchanamas Exts. 664 and 667 it is Kevalkumar Dalchand Jain which shows that he is an untruthful witness. To my mind, there is a possibility that while rendering or hearing the witness the word Tarchand is understood to have spoken by him and accordingly rendered and typed, but even otherwise, it does not make any difference so long as he has identified his signatures on the panchanama and his identity has not been disputed during cross-examination. It is apparently a genuine mistake in writing his father's name. Learned advocate submits that his identity was suppressed to hide the fact that he is a regular panch witness, but the above documents showed that he is giving two different addresses and though he is a resident of Bhandup, he was called from Bhoiwada area. To my mind, no such inference can be drawn and Kevalkumar Jain, PW-55, has given the reason for his presence in Bhoiwada area on that day. Thus, this submission does not affect his evidence and the witness was not given any suggestions on this line.

767. Next, it is submitted that the other panch Jitendra Champalal Jain is of Kalachowki and Ext.71 in S. C. No. 719/06, which is obtained under the RTI Act, shows that he has acted as panch witness for Sr. PI Tajne, PW-161 and ACP Shengal, DW-51. To my mind, may be the said witness is being repeated, but his residence in the said panchanama is of Kalachowki and in this connection the learned SPP pointed out to the cross-examination of A13 in paragraph 86 wherein he admitted that the said witness has not given the evidence in this case and that he knows that the Sewree Court had convicted the accused in the case in which he, i.e., Jitendra Jain gave evidence. To my mind, this witness has not been examined by the prosecution and this aspect does not come in the way of disbelieving the other evidence of the prosecution.

768. Next submission by the learned advocate is that the prosecution has not explained the delay as the accused was arrested on 03/10/06 and this recovery was made on 09/10/06 and it has not proved the voluntariness because it is the case of the prosecution that the A13 volunteered to make a confessional statement, but refused before the DCP. I fail to understand how such submission can be made. The statement was made on 09/10/06 as a result of interrogation about five days after his arrest and I do not understand how it can be connected with the aspect of he having volunteered to make the confessional statement, which was purportedly made on 20/10/06, i.e., subsequent to the voluntary statement in Ext. 664.

769. His next submission is in respect of the discrepancy in the evidence of Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55, as to

where and how many panchas sat in the vehicle. It is a minor discrepancy and will have to be ignored on the background of the Kevalkumar Jain, PW-55, being a witness having no antecedents or links with the police. Learned advocate submits that the watchman of the building and key maker have not been examined by the prosecution though they are cited as the witnesses. To my mind, it is the prerogative of the prosecution and if the prosecutor found the evidence that had been led in that respect to be sufficient, there is no need to duplicate it. Same is the case about the chairman and secretary of that society. They were also cited as witnesses.

770. Learned advocate next submits that there was no investigation in respect of the educational and other documents that were found, which mention one Ansari Mohd. Imran and the copy of the agreement that was found shows that the tenant Irshand had attended the police station and his identity was verified. This submission is missing the point that the investigation is limited to the extent of recovery of incriminating articles at the instance of the A13 from a place which he pointed out and the investigation in respect of the documents that are not connected with him is not relevant.

771. Learned advocate submits that the activity in which API Revle, PW-154, has been indulging is required to be seen. A crime is registered against him as per the order of the magistrate under section 156(3) of the Cr. P. C. and for this he points out to the documents that are produced alongwith the application Ext.4600. This application was moved on 28/03/14 and the documents that

are produced were obtained under the RTI Act. They have not been proved and exhibited. Hence they cannot be considered. Even otherwise the order of the investigation is of April, 2013 and it does not relate to the evidence that he has given here. This type of exercise is just an attempt of character assassination of the police witnesses. To my mind, the police officers are required to deal with the members of the public day in and day out and during their discharging of public duties they have to work under the pressure from all possible corners. If a crime is registered against the police officer, that does not necessarily wash away his entire career or brand him as a dishonest person.

772. Learned advocate submits that the A13 while giving his evidence as DW-49 has denied the seizure of the articles from him and in this connection he complained to the court as early as on 09/11/06 by his application Ext. 4280 and explained these things in his written submissions Ext. 2834 filed with his statement under section 313 of the Cr. P. C. It will be fruitful to consider these things chronologically. The contents of Ext. 4280 do not mention the date 09/10/06 and it is only alleged that he was interrogated at Chandanchowki, Juhu, that during interrogation police officers tortured and beat him brutally and obtained signatures on the blank papers and also obtained signatures and acknowledgment for receiving the panchanama, but no copy was given to him and his signatures were obtained on the two copies by coercion with dire consequences. Thus, these allegations in paragraphs 2 and 3 of the application are obviously vague. In his written submissions Ext.

2834 it is stated that he did not give any disclosure statement during police custody to the ATS officers, did not show any place, did not take them there and did not produce any article before them and it is alleged that the ATS police prepared false panchanama dtd. 09/10/06 putting names and signatures of false witnesses and asked him to sign at two places and when he refused and asked them to give it to him for reading, PI Tonapi, PW-155, Sachin Kadam and Shelke gave him third degree torture, starved him, threatened him and because of the torture, he signed in the night of 13/10/06 and because of the torture his condition worsened and he was required to be admitted in a hospital in an emergency condition for which the document is at Ext. 2340 where he told the doctor that police had given him third degree torture. So, it is clear that he has not involved Sr. PI Tajne, PW-161. As against this, in his evidence in paragraphs 25 and 26 he has stated about PI Deshmukh and PI Tonapi, PW-155, inquiring with him about his job and the persons from his office being called and his identity, etc., being verified from them and then in paragraph 27 about he being taken to Kalachowki on 10/10/06 and PI Tonapi, PW-155, telling him that he has to sign some documents, i.e., panchanamas, that ACP Tawade and Sr. PI Tajne, PW-161, giving him some documents and asking him to sign and he being threatened and some persons with his photograph being brought there and he being shown to them including Amir Khan, PW-49, and Khurshid Begum, PW-51, and he being tortured on that day as well as on 11th and 12th and his signatures being taken on 13/10/06 when his brother was brought with his file and

tortured in his presence and he was also tortured and forced to sign and put the date 09/10/06. He has described the torture and then has stated about being taken to the hospital on 14/10/06 when his condition deteriorated.

773. Thus, it is clear that the first document in time, i.e., the complaint Ext. 4280, is vague and the details of torture and persons who tortured him as well as he being admitted in the hospital in an emergency condition are not mentioned in it, though it was just one month after the alleged incident of torture and admission in the hospital. The twisting of the story is apparent from his evidence in paragraph 30 of his evidence that he told the doctor that he was heavily tortured, there were injury marks on his body, the doctors asked the ATS officers about it, who told him that it is a matter of national security and he should not write his complaint and he refused to put his thumb impression on Ext. 2340 when doctor told him to do so saying that he has not considered what he told him. These things do not find place either in his complaint Ext. 4280 dtd. 09/11/06 or in his written submissions Ext. 2834 that were filed in the court in July, 2012. Admittedly, the entry in the OPD register Ext. 2340 does not mention finding of any injury or that he was brought there in an emergency condition and was admitted in the hospital and it only mentions that he was referred for investigation. This document was proved during the evidence of Dr. Gond, PW-182. After Dr. Gond, PW-182 proved the OPD case papers and certified copies of register, he stated at the end that none of the patients examined by him and as per the record examined by the other

doctors, had complained of ill-treatment and torture at the hands of the police. He proved the contents of the said entry and stated that Dr. Dhiraj Dongre had examined him and during cross-examination he admitted that A13 was also referred to EMS for investigation, that the findings of the CMO and history and reason for referring him to EMS for investigation is not mentioned, that the findings of the EMS are not on record and he can state about the investigation on going through it only, but, he explained that he does not know whether that record is deliberately removed. He specifically denied the suggestion that the patient had complained of police torture and there were visible marks of his injuries on his person, therefore, he was referred to the EMS. Thus, nothing is brought on record during his cross-examination to indicate that the A13 had sustained injuries, was taken to the hospital in an emergency condition and was admitted there as his condition was bad. Except the words of the accused and the inconsistent statements made by him, there is nothing to substantiate his allegations. On the other hand, there is cogent evidence of Sr. PI Tajne, PW-161, and Kevalkumar Jain, PW-55, in respect of the search and seizure and also of Khurshid Begum, PW-51, and Amir Khan, PW-49, about his residence there. Thus, this submission of the learned advocate is not substantiated by the documents of the accused as well as the evidence given by the ATS.

774. Learned advocate submits that the panch witness Kevalkumar Jain, PW-55, has stated that Sr. PI Tajne, PW-161, was writing *en-route*, but Sr. PI Tajne, PW-161, has denied this. This submission is

obviously overlooking the subsequent evidence given by Kevalkumar Jain, PW-55, that Sr. PI Tajne, PW-161, told them that he is writing about the route and Sr. PI Tajne, PW-161, stated in his cross-examination that the panchanama was not being written in the vehicle during travel, but he had noted the route roughly.

775. Learned advocate then submits that burning of granules to ascertain whether they are explosives is a novel and unheard idea by the ATS officers. To my mind, there is no suggestion as to what is the correct scientific method to ascertain this and this evidence by API Revle, PW-154, is not challenged as being unscientific or improper. It would have had been different case if the defence would have come with a specific suggestions about a particular method being followed for ascertaining whether the granules are explosives. Merely criticizing something is not sufficient. He further submits that the detonators were not shown to the defence and not deposited in the court before their disposal and photographs were not taken during the procedure of disposal. To my mind, defusing of the detonators was during the period of investigation when the chargesheet was not filed and it was done with the order of the court. Thus, there was no question of showing it to the defence or depositing it in the court. Insofar as the submission about photographs not being taken, it is nothing but the ingenuity of the learned advocate to substitute some other procedure than the usual one. The destruction of the detonators was done in the presence of police officers and panchas and panchanama is prepared. There is no necessity of taking photographs.

776. The last submission of the learned advocate that there is a delay of three days in sending the articles to the FSL is not worth considering because it hardly matters as the FSL found the packets to be in sealed condition.

777. Thus there is really nothing to disbelieve the evidence given by the prosecution in respect of the A13 making the voluntary statement, in respect of the search and seizure of incriminating articles, in respect of ascertaining from experts whether they are explosives, in respect of destroying detonators and in respect of documentary evidence by way of findings of the FSL about the granules, lumps in the handbag, about residue of the detonators and in respect of the presence of the A13 in that flat and most important of all is the A13 himself leading the police to that flat. The cross-examination of Sr. PI Tajne, PW-161, is general in nature and more concerned as to what he did not do, viz., about not taking the statements of neighbours of the flat, etc., and nothing adverse is revealed from his cross-examination to discredit his version. Insofar, as the evidence of Khurshid Begum, PW-51, and Amir Khan, PW-49, is concerned, it can be summed up by simply stating that their evidence is innocuous evidence. It is only about seeing the A13 in the flat owned by Khurshid Begum, PW-51. Both these witnesses did not know him prior to that date and their evidence does not show for what period he was residing there. As mentioned by me earlier there was no earthly reason for the investigating officer to collect such type of evidence to bring these two witnesses out of the blue moon.

778. In view of the above discussion, it will have to be held that the prosecution has proved that the A13 had been residing in flat no. 101, Poonam Park Apartment, Naya Nagar, Mira Road, that Cyclonite (RDX) was detected in a handbag that was recovered at his instance and white granules were also recovered and they were found to be consisting of Ammonium and Nitrate radicals, and, nitrite and lead radicals (post explosion residues) were detected in the ten defused detonators that had also been recovered at the instance of the A13. **This is the circumstance no. 13 proved by the prosecution. It is against the A13. It is the third circumstance against him.**

779. Next in time is the recovery at the instance of the A12 of Maruti car no. MH-01-V-9568 in which the blackish spots were seen in the boot compartment and in between the driver seat and rear seat, which were wiped by cotton swabs and on chemical analysis were found to contain RDX amongst other things. PI Khanvilkar, PW-168, gave evidence about the A12 expressing his desire to disclose certain important information concerning the crime on 22/10/06 and he directing HC Ghag to call two panchas in the presence of whom the accused made a statement that he is ready to show the places where he had gone, to show the spot where he had kept the car and to show the person to whom he had given the key of the car on the instructions of the accused Sajid. This is obviously a mistake because the contents of the memorandum of the statement of the accused Ext. 636 show that the A12 had stated that he had done so on the instructions of the accused Faisal, i.e., A3. He proved

the contents of the memorandum Ext. 636 and identified the A12 in the court and also proved the contents of the station diary entry no. 8, certified true photocopy of which is at Ext.1782. He has deposed about how they went to the different spots as per the directions of the accused after the panchas searched the vehicle and PSI Sachin Kadam preparing the rough sketches of the spot Exts. 637 to 640, which were of Shivaji Nagar, Govandi, Lucky Villa building on Carter Road, Bandra, Al Mizab building in Millat Nagar, Andheri and from there to the Al Hatim building in Millat Nagar, Andheri, where the A12 pointed out to a white Maruti 800 car amongst other cars that were parked by the side of south compound wall and said that it was the car of the A3. They went near the car, found it to be locked and as A12 told him that the person who had the key of the car resides in that building, they went to the fourth floor to the flat no. 403 as the accused led them there and obtained the key from one Rizwan Khot, came down below, opened the car with the key, found documents and audio cassettes in the glove compartment. It has come in his evidence that he minutely examined the vehicle and in the boot compartment saw blackish spots and also saw similar spots in between the driver seat and rear seat. He described the procedure by which he wiped the spots from places in the boot as well as in between the driver seat and rear seat and how he packed, labeled and sealed them and marked them for identification. He also deposed about wrapping the documents and audio cassettes, labeling them and sealing them and covering the spots in the boot, and in between the driver seat and rear seat by khaki paper and

labeling them. It has come in his evidence that he verified the engine number and chassis number of the vehicle by chalk and wrote the numbers in the panchanama and seized the key of the car, affixed the label to it, but did not seal it and then seized the car and prepared the panchanama Ext. 641, contents of which he proved. He asked the said Rizwan Khot to come to the office for statement and recorded his statement on the same day. Panch witness Shrikrishna Pawale, PW-50, fully corroborated his version and insofar as the statement made by the accused, he briefly mentioned that the accused stated that he is ready to show the places where he had reached his companions and where he had kept a Maruti car. He as well as the PI Khanvilkar, PW-168, identified their signatures on the memorandum Ext. 636 and the signature of the other panch and he unhesitatingly identified the A12 in the court. He deposed about the further proceedings of going for the search and seizure, preparation of the maps at four places, accused pointing out the Maruti car, police obtaining a key from a person on the 4th floor, to whose house the accused had led them, whose name was probably Khot, police inspecting the car, finding black spots on the back side of the drier seat and in the boot and of the procedure by which the police wiped the spots and packed, labeled and sealed them alongwith the papers of the car. He as well as PI Khanvilkar, PW-168, identified their signatures on the sketches Exts. 637 to 640 as well as on the seizure panchanama Ext. 641 and they deposed about seizing the car and taking the key. During his evidence, six sealed khaki envelopes, sealed by lac seal of the ATS and the FSL, were opened and he

identified his signatures on the labels on all the envelopes and packets and the signatures of the other panch and police officer and also identified the cotton swabs Arts. 265 to 270, key, Art. 271 and certificate of registration of the car Art. 272, xerox copy of certificate of insurance, Art. 273, PUC certificate Art. 274 and a bill Art. 275 as well as the audio cassettes Arts. 276 (1 to 3). On the request of the learned advocate for the A12, the car was brought to the court and learned SPP and learned advocates for the accused went with the panch witness to the car that was below in the court compound and he identified it as the same car which was given article number as Art. 277 and he also identified the photographs Arts. 278 (1 to 3) as that of the car, that were taken by PC Vishal Barge of the ATS at the spot where it was in the compound of the ATS office. Thus, his evidence in chief-examination about the A12 making the voluntary statement and leading them to the spots and the subsequent discovery and recovery of the articles corroborates the evidence of PI Khanvilkar, PW-168. PI Khanvilkar, PW-168, also identified all the above articles unhesitatingly and also identified the A12 in the court.

780. It has come in the evidence of PI Khanvilkar, PW-168, that he returned with the accused, handed over the seized articles to the muddemal clerk, made an entry in the muddemal register in his own hand at sr. no. 67 and also made station diary entry no. 12, true photocopy of which is at Ext. 1783, the contents of which he proved.

781. It has come in the evidence of ACP Patil, PW-186 that PI Khanvilkar, PW-168, handed over the memorandum and seizure

panchanama Exts. 636 and 641 alongwith sketches Exts. 637 to 640 and reported about the seizure of the Maruti car at the instance of the accused and taking samples and seizing the documents. It has come in his evidence that the car was kept in the compound of the ATS and the other articles were deposited in the muddemal room and he sent the six cotton swabs and the Maruti car to the FSL on 26/10/06 for analysis alongwith his forwarding letter, office copy of which is at Ext. 1686, the contents of which he proved, alongwith PC Bagwe, PW-157. During his evidence the report of the FSL Ext. 2391, in respect of the six cotton swabs as well as the car was received in his evidence containing the findings abovementioned. His cross-examination on this point in paragraph 286 by learned advocate Shetty for the A12 has not discredited his version and on the other hand, candid and factual answers have come on record that the stains that were found in the car were not sealed when the car was sent to the FSL. An acceptable explanation was given by him that the purpose behind covering the stains with brown paper was to see that dust or other articles are not intermingled with the stains and to prevent tampering. He admitted that FSL report Ext. 2391 does not show that the portions of the car where the stains were found were covered with brown paper and how the samples were taken from the stains. To my mind, Ext. 2391 is just a report of chemical analysis and is not a statement or panchanama wherein all these things are to be described. It has also come as positive statements during his cross-examination that he was having information that the car was last used on 10/07/06 and it was

disclosed in the investigation that it was not used from that date upto 22/10/06. I do not know why such things are asked in cross-examination when none of the witnesses have stated anything about it in their evidence. The importance of this evidence as a link is discussed subsequently. Rest of his cross-examination is not material and he denied the suggestion that there were no stains in the car and the car was planted on the accused. The last suggestion was not given to PI Khanvilkar, PW-168.

782. PI Khanvilkar, PW-168's evidence is corroborated by the evidence of PC Bagwe, PW-157, and there is absolutely nothing in his cross-examination to affect his testimony in any manner. He identified the office copy of the forwarding letter Ext. 1686 and the acknowledgment of the inward clerk of the FSL on it. He also identified the six sealed packets Arts. 265B, 266B, 267B, 268B, 269B and 270B and the key Art. 271. It has come in his evidence that an expert officer from the FSL came with him to the car, inspected the boot and the seat behind the driver seat and the space in between the front seat and back seat and, this is important, that all these places were covered by brown paper. He could identify the key Art. 271 because obviously he had driven the said car from the ATS office at Kalachowki to the FSL at Kalina. It has come in his evidence that the expert officer of the FSL removed the papers, made the inspection with magnifying glass and then took swabs of some spots by cotton from these places. He was then asked to take back the car and he took it back to the office, parked it in the office compound, gave the key to the muddemal clerk and made station diary entry.

He proved the contents of the station diary entries no. 7 and 10 in the original station diary, photocopy of which he proved at Ext. 1688 (2 pages), the contents of which corroborate his version. This is the contemporaneous record which is uncontroverted and which corroborates his version. First one mentions that HC Patil alongwith PC Bagwe, PW-157, went to the FSL at Kalina with the property that was at sr. no. 67 at the muddemal register alongwith the car no. MH-01-V-9568 and second one shows that they returned with the car after it was examined and deposited the other articles in the laboratory. Some positive statements have come on record during his cross-examination that he was given six packets, that brown paper was fixed on the borders of the floor of the boot and the door of the boot could be opened without disturbing the brown paper and that brown paper behind the driver seat was of the size of the space between that seat and the rear seat and the FSL officer took the brown papers after they removed them. It has also come that the clerk to whom he handed over the packets, told him that the officer who was there is an expert officer and he came with him and checked the vehicle. He was shown the seals on the packets and asked to read the words and he could read some words, but there is no submission about this in the arguments. In his cross-examination by learned advocate Wahab Khan he explained that as he had taken the car and brought it back, it is not mentioned in his statement that the key was taken and deposited back. Thus, his evidence fully corroborates the evidence of ACP Patil, PW-186, as well as PI Khanvilkar, PW-168.

783. The next step was to ascertain the ownership of the Maruti car and it has come in the evidence of PI Khanvilkar, PW-168, that on the instructions of ACP Patil, PW-186, he gave a letter to the RTO, Mumbai on 27/10/06 to get the information about the ownership of the car. He proved the contents of the office copy of the letter Ext. 1784 and stated that the RTO gave the report Ext. 1785 on the same day that the car is of one Gulamraze M. Badam. He called that person to the office and recorded his statement and that person produced photocopies of the transfer forms that he had given to the A9 Muzzammil and the receipt by A9 of having paid the amount Exts. 1786 (1 to 10). It has come in his evidence that he called Afzal Alwani, PW-39, on 02/11/06 as he had arranged for selling the car and then he recorded his statement. This Afzal Alwani, PW-39, is the son-in-law of Gulamraze Mohd. Ali Badam and he deposed about the transaction of sale of the Maruti car to the A9 in the first week of June, 2006 for an amount of Rs. 62,000/-. He identified the A9 in the court unhesitatingly and it has come in his evidence that all the transfer forms were duly signed by his father-in-law and he gave them to the A9, keeping copies of all the signed documents with him, which he had with him when he gave evidence. The defence did not dare to ask him to produce them and the photocopies of the said documents, i.e., receipt given by the A9 and the transfer forms Exts. 1786 (1 to 10) are not disputed. It has come in his evidence that he called A9 from his mobile phone after 10-15 days to check whether he had transferred the vehicle in his name. His cross-examination has not discredited his version and there is no

suggestion to him that he is not son-in-law of the owner of the vehicle. He has described in detail that he had given the transfer documents, registration documents of the car and RTO documents to the purchaser. He had not stated about the nature of the documents in his chief-examination and on being asked in cross-examination he described them, even then he was asked and he answered specifically that he did not describe the specific documents that he had given to the purchaser when he gave his statement. His evidence identifying the A9 is unchallenged and infact there were no suggestions by the learned advocate for the accused about the evidence given by these witnesses. The registration certificate of that car Ext. 642 and letter from the RTO Ext. 1785 shows that it still stands in the name of Gulamraze M. Badam. By the evidence of Afzal Alwani, PW-39, and PI Khanvilkar, PW-168, and the documents Exts.1786 (1 to 10) the prosecution has proved that car no. MH-01-V-9568 was sold to the A9 on 04/06/06, but the A9 did not transfer it in his name. As per law, it is the responsibility of the seller as well as the purchaser of any motor vehicle to intimate and get the vehicle transferred in his name. By the evidence of Afzal Alwani, PW-39, it is proved that A9 did not do so in the period about 10-15 days after the sale and it is only after the ATS called them, i.e., Afzal Alwani, PW-39, and his father-in-law, in respect of some problem about the vehicle, that his father-in-law gave a letter to the RTO that they had sold the vehicle. The intention of the owner of the vehicle to complete the transaction can be inferred from the fact of he having obtained the entire price of the vehicle and handing over possession

of the vehicle. No doubt, it is also a lapse on his part not to get the vehicle transferred legally in the name of the A9, but equally it was the responsibility of the A9 to get it transferred as he was handed over all the transfer forms alongwith the original certificate of registration and other documents of the vehicle. He having not done so is an inference about his *mala fide* intention in keeping the record of the vehicle as it is or it means that thereafter the bomb blasts took place on 11/07/06 and he did not have the opportunity to get the vehicle transferred. In any case, it is proved that the possession of the vehicle was handed over to the A9 and this evidence of Afzal Alwani, PW-39 is unchallenged and uncontroverted. Hence, it will have to held that the prosecution has proved that the A9 had purchased Maruti car No. MH-01-V-9568 on 04/06/06 and was handed over its possession. **This is the circumstance no. 14 proved by the prosecution against the accused. It is against the A9. It is the first circumstance against him.**

784. During his cross-examination by learned advocate Wahab Khan, Shrikrishna Pawale, PW-50, admitted that the car that he saw in the court compound does not have number plate and the C. R. number and muddemal number as per photograph Art. 278(3) and nothing is written on the bonnet of the car as per the photographs Arts. 278 (1 and 2) and that now C. R. number is written on the bonnet by yellow pen. This plus other things that were asked in respect of identification of the car are not followed by any suggestion that the car Art. 277 is not the car that was seized at the instance of the A12. During his cross-examination by learned

advocate Shetty he admitted that a vehicle has chassis number on the basis of which it can be identified and that chassis number of the said car was written in the panchanama and then he was shown page 4 of certificate of registration Art. 272. Hence it was received in evidence and marked as Ext .642 and was asked to read the chassis number which he read as SB-308-IN-1252498 and he admitted that he did not verify it with the number that was written in the panchanama. In this context PI Khanvilkar, PW-168, had stated that he verified the engine and chassis number of the vehicle by chalk and wrote the numbers in the panchanama. Learned advocate Shetty submitted during his arguments that the chassis number written in the panchanama Ext. 641 is not the chassis number that is found in the registration certificate Ext. 642. It appears that one digit is wrongly mentioned. The chassis number in the registration certificate Ext. 642 is SB-308-IN-1252498, whereas, in the panchanama in the serial number it is 1272498, i.e., the third digit is written as 7 instead of 5. It is common knowledge that the engraved engine number and chassis number on vehicles are not easily readable and this might be a genuine mistake in writing the third digit. This inference is fortified by the engine number that is written in the panchanama as F8B1754094, which is the same as is written in the certificate of registration Ext. 642 and the letter of the RTO Ext.1785. Thus, on this count it cannot be said that some other car was seen. There is no suggestion about the engine number. During his cross-examination by learned advocate Wahab Khan, Shrikrishna Pawale, PW-50, described the surroundings of the places which were

shown by the accused and there is nothing to contradict him, which shows his knowledge about the places and his truthfulness about having gone to these places, which is also fortified by his statement that police did not seize anything at these three places except the car at Al Hatim building and that other than on the maps his signature was not taken on any paper at three places that they visited earlier. He honestly said that he will not be able to give perfect answers by looking at the maps and from his memory and correctly described the Al Mizab building as of four floors and that it touches the road. He has also made positive statements in cross-examination that police had opened the boot of the car in his presence and told him that they had found some spots. There was searching and repeated cross-examination as to at how many places he signed and where he signed them and first he stated that he signed at seven places and corrected himself and stated that he did not count therefore he cannot tell at how many places he signed. However, he was sure that he signed at Al Hatim building at seven places on the panchanama. This aspect has not been pointed out as being incorrect and he obviously committed a mistake by stating that his signature on the last page and also in the margins of Ext.641 was made at Al Mizab building, that sealing was done near that building, which is as per his evidence in chief-examination. He also admitted that he also put his signatures on the panchanama and all labels in the ATS office. Even if this is considered as being a wrong statement made by him inconsistent with the contents of the panchanama and the maps, the fact remains that he has denied the suggestion that accused did not

take them anywhere, police did not seize anything, that police did not take the key, did not take the cotton swabs from the spots in the car and did not seize the car. This plus his admission in cross-examination by learned advocate Shetty that at Shivaji Nagar, Bandra and near Al Mizab building, he was just standing near the police vehicle and did not go anywhere is incorrect insofar as the visit at Bandra is concerned, does not affect his testimony or discredit his version. He described the route in detail during his cross-examination on the basis of his knowledge and where he could not do so he stated that he does not remember or does not know about it. About he being particularly called as a witness out of many persons on the road at that time, he gave a perfectly acceptable explanation that police were asking some other persons before they asked him, but they were not willing to become witness. There is some cross-examination to him about his work, but it is irrelevant insofar as the aspect of search and seizure is concerned and whatever information that he gave about his work is not controverted or shown to be false. About the work of preparing maps, he made a positive statement that the maps were prepared by keeping the paper on the bonnet of the vehicle, i.e., the police vehicle and police told him that they are the maps of the spots. It has also come in his cross-examination that the person by name Khot was there for about 45 minutes. Now, though PI Khanvilkar, PW-168, did not state in his chief-examination about using a torch for searching the insides of the car, it has come in his cross-examination that there was ample daylight at that time, that he

started the inspection of the car at about 1805 hours, that he required 20-25 minutes to inspect the entire vehicle, which he did with the help of natural light and wherever there was cavities, he called for the torch in the kit and with the help of the torch he inspected the cavities, i.e., the portions below the front and rear seats. This has come in his cross-examination and is not written in the panchanama, but it is uncontroverted. On the other hand, Shrikrishna Pawale, PW-50, deposed about it in his chief-examination and it was brought on record as omission to mention in the panchanama that he called for the torch that was in the kit, which is undisputed. One more omission is brought on record about his evidence that one staff member of the police had some stationery articles in a bag like papers, tape, small plastic bags, etc. Admittedly, it is not there, but the panchanama Ext. 641 mentions that PI Khanvilkar, PW-168, asked the accused to take search of the seal and sealing material kit that was with HC Ghag buckle no. 2327 and to take search of the police staff also and the accused inspected the kit, but did not search the police persons. Thus, this is not an omission and it does not affect his evidence and the only thing that the witness did not state is the word 'kit' and what it refers to in the panchanama. However, he has described the contents of that kit. He correctly stated that police did not ask them, i.e., the panchas, to take their personal searches. He also correctly stated that they started from the Al Hatim building at 7.30 or 7.45 p.m., which is as per the time mentioned at the end of the panchanama and his evidence in the said cross-examination in paragraph 29 that they

started from Al Hatim building corrects his earlier mistake that he signed on the labels near Al Mizab building and sealing was also done there.

785. Other than the above, there is nothing more in his cross-examination to discredit his version and the best part of this witness is that nothing is brought on record to show that he is an interested witness or a person pliable at the hands of the police as no criminal antecedents or he having acted as a panch witness or as an accused prior to this date is brought on record. Thus, he is a totally truthful witness and inspite of some minor mistakes that he committed because of the confusion in the names of buildings, he has withstood the test of cross-examination and I have no hesitation in accepting his testimony as truthful.

786. The evidence give by PI Khanvilkar, PW-168, is corroborated by station diary entries no. 8 and 12, certified copy of which is at Exts. 1782 and 1783, and his evidence is fully corroborated by the unimpeached and credible evidence given by the panch witness Shrikrishna Pawale, PW-50. His cross-examination by learned advocate Wahab Khan is about the cases against him, the interrogation of the A12 and what was not done by him, like not taking the signature of the accused below the memorandum Ext. 636 and not writing at the end of the panchanama Ext. 641 as to at what place it was over. It is not a procedure laid down anywhere that signature of a person making a voluntary statement is taken below the memorandum. It is done by the police by way of abundant caution. Insofar as the cross-examination by learned advocate Shetty

is concerned, nothing adverse about the fact of the A12 making the statement and the consequent discovery and seizure was brought on record to discredit his version. The aspect about use of torch being not mentioned in the panchanama is admitted by him, but that is already explained. He correctly gave the details about the localities at all the three places, the timings at which he went there and the periods for which he was there at the three places and honestly admitted that he did not offer the search of the vehicle to the accused. It has also come that he had interrogated with the A12 on 21/10/06 from 11.00 a.m. to 4.00 p.m. and on that day the accused did not volunteer to make any voluntary statement or to make a confessional statement. He admitted that he had gone to the house of the A6 at Govandi on 29/09/06 at about 1830 to 1900 hours. This must be when the search of the house of the A6 was taken on 29/09/06 as per the panchanama Ext.716. The contents of the Ext. 716 show that the police had gone there with panchas at that time and the panchanama was over at 2030 hours. Thus his testimony has remained unshaken in his cross-examination.

787. Learned advocate Shetty submitted during arguments that PI Khanvilkar, PW-168, deposed wrongly that the A12 had stated that he had kept the car on the instructions of the accused Sajid, i.e., A7, instead of stating the name of the A3. It appears to be a slip of tongue because during his further evidence wherever there is a reference about the A12 having stated about the A3 he has stated so and the important and relevant amongst them is the parking of the white Maruti 800 car in the compound of Al Hatim building, about

which he stated that the A12 said that it was the car of accused Faisal. Now in respect of the wordings in the memorandum Ext. 636 that the panchas were told that the accused is making a statement voluntarily and a panchanama is to be prepared about it, it is submitted by learned advocate that everything was known to the officers before they called the panchas. Therefore, this will not be covered by section 27 of the Indian Evidence Act, because if you already have the knowledge, you cannot discover a thing. I do not see how such a submission is made because calling of panchas and thereafter preparing memorandum of statement made by the accused is preceded by the inquiry or interrogation about which PI Khanvilkar, PW-168, stated. Next submission by the learned advocate is on the point of delay and he submits by pointing to the cross-examination of PI Khanvilkar, PW-168, in paragraph 28 that A12 was probably arrested on 30/09/06, was in police custody for about 20-22 days, had been interrogated by ACP Joshi, PW-163, and was interrogated twice on 30/09/06 and 21/10/06, but there was no statement of disclosure before 22/10/06. I do not understand the point the learned advocate wants to make. It can be said that the accused was prompted to make the voluntary disclosure on 22/10/06 as a part of sustained and persuasive interrogation and merely because it was made 21 days after his arrest or that he was interrogated one day before does not make much difference.

788. Learned advocate attacked the evidence of the witnesses about the accused showing the places at Shivaji Nagar and Bandra, submitting that police had already visited those places earlier,

therefore, they had knowledge about those places and thus they cannot be said to be discovered and it does not stand to the scrutiny when the house of the A6 at Govandi and of the A3 at Bandra were known to the investigating machinery very well. Learned advocate is correct in his submissions, but the fact remains that it is a voluntary statement of disclosure made by the A12 and he had shown the places where he had some role to play. It cannot be said that he might have been appraised of the visits of the police officers to those places earlier on that day. In this context learned SPP submitted that the evidence shows that the A12 showed where he had gone and in such circumstances it would not have been proper for the investigating officer to tell him that he should first take them to the car at Andheri. In that case the voluntariness would have vanished. Therefore, the evidence of PI Khanvilkar, PW-168, and Shrikrishna Pawale, PW-50, and the contents of the panchanama is what they perceived and in the final analysis while appreciating the entire evidence and considering the facts that are established by the confession and the other evidence, the places at Govandi and Bandra are relevant for the case of the prosecution in respect of conspiracy. Therefore, taking of the vehicle at Shivaji Nagar and Bandra, though is not a disclosure under section 27 of the Evidence Act to establish the knowledge of the A12, they are very relevant and crucial facts that are established by the evidence of these two witnesses. To my mind, on this count only the entire search and seizure cannot be said to be vitiated.

789. It is then submitted by learned advocate that the blast took

place on 11/07/06 and the car was recovered on 22/10/06 nearly three and half months after the blast and it has come from their own witness that the car was being driven by Rizwan and not by any defence witnesses. He submits that it cannot be accepted that in such a situation the car would be kept unused for such a long duration and under such circumstances the statements of the residents of the building and the statement of Rizwan Khot and their evidence assumes importance and they are relevant witnesses and adverse inference is required to be drawn against the prosecution for not having examined them and the entire material about the seizure of the car and finding stains cannot be believed and should be discarded. Learned advocate did not mention the name of the witness who had stated so, but he is probably referring to the statement made by Mohd. Alam, PW-59, at the end of paragraph 7 that one Khot who used to drive the car. This statement was brought on record as an omission to state before the police. To my mind, these submissions, though appear to be logical are made ignoring the factual position. As per the voluntary statement made by the A12, he had kept the car on the instructions of the A3 on 10/07/06 and had given the key to a person. Thus it was on 10/07/06 that the car was kept at the place where it was found on 22/10/06. The bomb blasts took place on 11/07/06 and the A3 was arrested as early as on 27/07/06. If Mohd. Alam, PW-59, is to be believed, Rizwan Khot also used to accompany him, A3 and A12 in that car. So Rizwan Khot must have the knowledge that it was the car purchased by the A3. Rizwan Khot must have come to know on

27/07/06 or soon thereafter that the A3 is arrested in connection with the bomb blasts case. Which sensible person would dare to use the vehicle of such a person after knowing his involvement in such a serious case? It is not that the prosecution shied away from examining the said Rizwan Khot. By the application Ext. 841 given on 30/03/11 it prayed for issuing summons to him alongwith six others out of whom four have been examined. By the report Ext. 2453 it was reported that a policeman had gone for serving the summons on the said Rizwan Khot at Flat No. 401, 4th Floor, Al Hatim building, in front of Al Heera building, Millat Nagar, Andheri, that one Smt. Umja Khot was found living there and on making inquiry with her she informed that she does not know where he lives, therefore, he was not found at the given address. This report is not challenged though the accused were directed to take note of it.

790. Learned advocate submits that the accused were always kept at Chandanchowki specially the A3 and many panchanamas have been drawn there and the recovery on 08/10/06 made at the instance of the A3 was also from Chandanchowki. Thus looking at the nature of the evidence that has been brought through these witnesses it cannot be said that this recovery is a true recovery inspiring confidence and that the evidence stands the scrutiny and is thereby acceptable, therefore, it is required to be discarded. He submits that the A12 had explained all the circumstances that have come against him in his evidence and his explanations are very natural and plausible. Learned advocate made submission about the evidence by A12 in respect of his confession. To my mind, merely

because some recoveries start from Chandanchowki office of the ATS will not lead to the inference that it does not inspire confidence. It is one of the unit of the ATS and one cannot expect a rule that the start of the panchanamas should always be from the Kalachowki or the Bhoiwada office of the ATS. Thus, this submission is not proper and not acceptable.

791. Learned advocate next submits that several accused were subjected to narco analysis test by taking them to Bangalore and evidence about this has come not only from the accused, but also from the police officers, but the prosecution has not produced the reports of the narco analysis. This will be another factor which will show innocence of the accused so far as the present crime is concerned. He submits that here the question is not of the admissibility or reliability of the reports of the said test, but once you carry out certain investigation then these reports are required to be placed before the court, specially when they are scientific reports and not placing them before the court and withholding them from the court points towards the innocence of the accused. To my mind, it is settled law that reports of scientific test like narco analysis are inadmissible in evidence and I do not know how we would have been in a position to read them if they are inadmissible in evidence and to arrive at any conclusion against or in favour of the accused or the prosecution. To my mind, it is not necessary for the prosecution to put forth each and every bit of information collected during the investigation before the court and what is relevant and admissible is only required to be placed before the court. Thus, this submission is

of no use.

792. Similar submissions are made by the learned advocate in respect of production of the CDRs of the mobiles seized from several accused either during their personal search or their house search, but, call details were not verified, no record of dialed, received and missed calls or SMS have been verified, that it is the case of the prosecution that they called for the CDRs from respective authorities and time and again custody was sought on the ground of calling the CDRs to find out the location and whether the accused were interconnected with each other, but finally the prosecution failed to produce the CDRs. He submits that inspite of several queries to the investigating officers, no clearcut answer came in the evidence and no explanation has come as to why it has not produced the CDRs? Ultimately, full efforts were made to suppress these documents, which compelled the accused to call the CDRs of their mobiles and when the CDRs came they gave a distorted version and are not exhibiting the correct position. Therefore, on this count also adverse inference can be drawn against the prosecution because these are the documents which have been collected and which would have been gone to the root of the matter and for the reasons best known to it the prosecution chose not to disclose this vital material to the court as well as to the accused. This factor further substantiates the contentions of the defence and the accused that the entire case is manipulated to suit the allegations of the prosecution and also shows that the investigation is not free from suspicion and bias. Learned advocate fairly submitted that he is not suggesting that the

CDRs would have given a clearcut picture in as much as a mobile of a person does not remain with him throughout, but at the same time we see in all the cases that these are the materials that are collected and relied and placed before the court. It is submitted that it is the bounden duty of the investigating machinery to produce such material before the court once it is collected and if it is not so done, then obviously an adverse inference is warranted.

793. The above are obviously general submissions made by the learned advocate because insofar as the A12 is concerned he had not called for his CDR and he did not give his mobile number during his chief-examination as DW-48 though he had given it in his written submissions Ext.2833 that he filed with his statement under section 313 of the Cr. P. C. However, during the cross-examination by learned SPP he admitted that he was using the mobile phone no. 9866772114 prior to his arrest, that he himself did not ask for CDR of his mobile number, did not ask any of his co-accused to particularly call for it and it was not called for in the common application. Consequently, he was suggested that he did not call for the CDR of his mobile number as he knows that it would clinch his involvement in the present case. Thus, insofar as the A12 is concerned, submissions by the learned advocate about the CDRs are of no consequence. As mentioned in respect of the narco analysis test, it is the choice of the prosecution to produce before the court the material that the investigating agency has collected during the investigation and the prosecution cannot be forced to produce some material on which it does not want to rely. There has been

considerable cross-examination to the investigating officers in respect of the CDRs and one thing that has emerged is that hard copies of the CDRs were obtained and the CDRs have not been produced as nothing material about the location of the accused on particular days was revealed from the CDRs. Hence the submission is not applicable insofar as the A12 is concerned.

794. In continuation of his earlier submissions about the delay by the A12 in making the voluntary disclosure, learned advocate submits that the process of recording the confessional statement of the A12 had started prior to he making the voluntary disclosure and the recording of the confessional statement started on 23/10/06, i.e., on the next day of the voluntary disclosure made by the accused, though he had not made any voluntary disclosure or expressed his desire to give any confessional statement before 22/10/06. To my mind, it may be that the process of recording of the confessional statement started before 22/10/06 but as observed by me earlier, the accused making a voluntary statement in respect of some discovery is an entirely different aspect than he expressing his desire to give a confessional statement. It has come in the evidence of ACP Patil, PW-186, that the team of officers interrogating the A12 informed him on 19/10/06 about his willingness to make a voluntary confessional statement. So it can be gathered that the accused was being interrogated and it is as a result of sustained interrogation that he may have expressed his desire on 22/10/06 to disclose the important information concerning the crime. Merely because the dates are one after the other or places

near to each other does not raise the inference of concoction or fabrication. During the interrogation of the accused police may have confronted him with the recovery of incriminating articles from the other accused, with the other evidence against the other accused and with material in the confessional statements made by his co-accused. Therefore, the accused may have realized that everything is over and the police have found out everything and have the evidence and then he may have given the voluntary statement and also subsequently the voluntary confessional statement.

795. Learned SPP submitted during his arguments that the admissible portions in respect of this search and seizure are the discovery of the car and the key. He submits that the evidence of the panch witness Shrikrishna Pawale, PW-50, and also of PI Khanvilkar, PW-168, that these places which the accused showed were public places is a fact which is relevant and it corroborates the fact in issue. He submits that the panch witness had not made any tall claims about seeing anything else and in the context of the statement made by the accused and the route chosen by him and he showing the three places which he had visited earlier, is a circumstance in favour of the prosecution. He also submits that the last part of the search is the actual discovery of the car and the fact that the accused led them to the house of Rizwan Khot, got the key from him and that the key was of the car, shows that these things were discovered or disclosed because they were within the exclusive knowledge of the accused and any amount of cross-examination in respect of the surrounding circumstance has not been able to displace the evidence of the panch

witness. Even assuming that there were many cars at the spot, the relevant is the pointing out of the particular car by the accused. He submits that these submissions are acceptable insofar as the discovery of the car and finding of the stains is concerned. I have already discussed the credibility of the evidence of both the witnesses.

796. Learned SPP submits that a reference has come in the evidence of Mohd. Alam, PW-59, about the A3 and A12 using this car, so all things, individual bits and pieces of evidence formed a chain and importantly the factum of discovery of this car at the instance of the A12 is established by the evidence of Shrikrishna Pawale, PW-50, and consequently the evidence of finding of traces of RDX on the cotton swabs that were collected from the car is again a strong circumstance pointing towards the guilt of not only the A12, it also takes in its cover the A3 as well as the A9.

797. Learned SPP submits that the contemporaneous record in the nature of the station diary entries establish the factum of search and seizure and he submits that if everything is looked with suspicion then he will have to start the evidence of a witness asking him about his date of birth, birth certificate, school leaving, graduation, etc.

798. In view of the above discussion it will have to be held that by the cogent and convincing evidence of PI Khanvilkar, PW-168, and Shrikrishna Pawale, PW-50, the prosecution has proved the seizure of the white Maruti car bearing no. MH-01-V-9568 Art. 277 at the instance of the A12 and of finding the blackish spots in the boot compartment as well as in between the drive seat and rear seat,

which were wiped by cotton swabs. It will also have to be held that by the cogent evidence of ACP Patil, PW-186, and PC Bagwe, PW-157, and the documentary evidence in the nature of office copy of forwarding letter Ext. 1686 and the report of the FSL Ext. 2391, the prosecution has proved the link between the black spots that were found in the car and the material that was analyzed by the CA. The findings of the CA report Ext. 2391, which are in paragraph 167 supra, show that Cyclonite (RDX), Petroleum Hydrocarbon Oil and Charcoal were detected on three cotton swabs and Ammonium, Nitrate and Nitrite radicals were detected in the other three swabs. It was opined that Cyclonite (RDX), Ammonium, Nitrate, Nitrite, Petroleum Hydrocarbon Oil and Charcoal were detected in the car, which is in connection with the swabs that were taken by the expert officer of the FSL when the car was taken to that office. Thus, **this is the circumstance no. 15 proved by the prosecution against the accused.** It is against the A12. It is the first circumstance against him.

799. The last recovery of the incriminating bomb making articles is from the A7 on 23/10/06. PI Tonapi, PW-155, gave evidence about the search and seizure on 23/10/06 that was made at the instance of the A7. It has come in his evidence that during the course of the investigation the A7 was being interrogated at Juhu unit by him, PI Deshmukh and staff and on that day he expressed his desire to make a voluntary statement, whereupon the panchas, i.e., Raju Tapi, PW-129, and one more were called, explained the brief facts of the case and the accused made a statement in Hindi before them that he

would show the places where the articles used for making timer circuit device are kept. It has come in his evidence that he wrote the said memorandum Ext. 1479 and he identified his signature and that of panchas and proved its contents. It has come in his evidence that thereafter the panchas took the search of the police party and the vehicle and nothing other than the investigating kit and sealing material was noticed by them and then they went in a vehicle to gate no. 6 at Malwani and accused asked them to stop the vehicle near Mother Teresa School and after getting down, led them to a nearby structure which was ground plus one and which had a paper board 'Tanzeem-e-Walidaen' in English, that the accused led them to the office on the first floor by climbing the staircase, they saw the place, that is the office divided in two parts and portion containing some computers on tables and an old man sitting there. It has come in his evidence that PI Deshmukh introduced himself to the old man, told him the purpose of their visit and on being asked that man gave his name as Mushtaq Ali, incharge of that office and accused asked him to give the keys of his drawer which he gave and the accused opened one of the drawers of the computer table, took out a plastic bag with name Priya Gold and took out the articles from that bag and put them on the table. He described all those articles, i.e., Arts. 345 to 359, as are described in paragraph 169 supra and deposed about putting the articles in separate plastic bags, labeling them with the signatures of PI Deshmukh and panchas, tying them, sealing them and seizing them under the panchanama Ext.1480, which is also in his handwriting, the contents of which he proved by

identifying the signatures of PI Deshmukh and panchas and also of the accused and the person Mushtaq Ali, who were given the photocopies. He also identified the handwriting on all the labels, i.e., Arts. 345A, 346A, 347A, 348A, 349A, 350A, 351A, 352A, 353A, 354A, 355A, 356A, 357A, 358A and 359A separately and signatures of the panchas and PI Deshmukh on them. It has come in his evidence that he then returned to the police station, made station diary entry, handed over muddemal to the muddemal clerk and gave the panchanama to ACP Patil, PW-186. He proved the contents of the station diary entries no.4 and 9 in the original station diary, true photocopies of which are at Exts. 1669 (two pages). He also identified the accused in the court. Panch witness Raju Tapi, PW-129, gave evidence corroborating the evidence of PI Tonapi, PW-155, and identified his signatures on the memorandum Ext. 1479 as well as on the panchanama Ext.1480 and the signatures of the other panch and police officer. He described in detail as to by what route they went to Malad and to the gate no. 6 in Malwani as per the directions given by the A7 stating that officer Deshmukh had told the driver to take the vehicle as per the directions that would be given by the A7. He correctly stated about the A7 asking the police to halt the vehicle near Mother Teresa School and leading them to a chawl in front of that school, comprising of one plus one floor, going to a small lane by the side of a ladder and he stated about there being a board outside the house containing the words in English 'Valid Tanjeem'. He stated about following the accused inside the room on the first floor where an old person was sitting, there being

two parts in that room, the old person sitting in one part and there being 5-6 computers in the other part and officer Deshmukh calling the old man and telling him that he is a police officer and showing his identity card and A7 asking for a key from him which he gave from the bunch of keys that was with him and the A7 opening the drawer that was below a computer by the key and taking out a plastic bag. He then stated about A7 taking out several articles from the bag and he stated the names of the articles that he knew and then deposed about officer Deshmukh putting each article in a separate plastic pouch, wrapping, labeling and sealing them and a panchanama being prepared and photocopy being given to the A7 after they obtained it when they got down. He identified his signature and the signature of the other panch and the police officer as well as the signatures of the accused and the old man on the panchanama Ext.1480. It is during his evidence that a sealed box, at sr. no. 20 of list Ext.16F, of the FSL, State of Maharashtra, Mumbai bearing the description 'Case No. K-398/06 Exts. 1 to 15, CR No. 05/06, Anti Terrorist Squad, Mumbai M-505/06', was opened at the request of the learned SPP and on opening it, it was found to contain a big transparent plastic bag containing a soldering gun and 14 pouches containing the assorted articles. The witness identified all the articles and his signatures as well as the signatures of the other panch and of the police officer on all the labels. He identified all the articles in the pouches and soldering gun, i.e., Arts. 346 to 359, and also the polythene bag Art. 345. He correctly stated that all this was over at 1200 hours and then unhesitatingly identified the

A7 in the court. Thus, his evidence fully corroborates the evidence of PI Tonapi, PW-155 and the contents of the panchanama corroborate their version.

800. It has come in the evidence of ACP Patil, PW-186 that PI Tonapi, PW-155, gave memorandum and seizure panchanama Exts. 1479 and 1480, reported about the recovery of soldering gun, wire, paste, one PCB, multimeter and other electronic components at the instance of the A7, deposited the articles in the muddemal room and that he sent those articles to the FSL for analysis on 27/10/06 alongwith HC Ranpise, PW-146, alongwith his forwarding letter, office copy of which is at Ext. 1596, the contents of which he proved. He stated about receiving the reports of the FSL Exts. 2392 and 2393 later on. HC Ranpise, PW-146, corroborated his evidence and identified the office copy of forwarding letter as well as the 15 packets by identifying the labels and transparent plastic bags. His cross-examination has not discredited his version and several irrelevant things were asked to him in respect of deputation of officers to the ATS from all over Mumbai, whether there was muddemal property room at Chandanchowki and how many brass seals the ATS had, etc. He was asked whether he has seen the A7 at Chandanchowki on 22 and 23/10/06 and he admitted that he had seen the accused, but stated that he does not remember whether he had marks of injuries on his person. The only thing that could affect his credibility is his admission that he had read copy of his statement two days before at his house on the basis of which he told all the dates and details. However, he explained that he had taken a copy of

his statement on 27/10/06 when it was recorded and denied the suggestion that the ATS officer gave him his statement two days before and tutored him to give evidence. The witness admitting that he read a copy of his statement two days before at his house shows his honesty and no exception can be taken for this conduct because his evidence was recorded on 30/09/11, i.e., five years after the work that he made. During his cross-examination by learned advocate Shetty he was shown the back side of the labels and he admitted that it does not show gum marking and does not remember whether the labels were affixed on the plastic bags or were put inside them. This aspect, however, does not affect his evidence because the report of the FSL Ext. 2392 shows receipt of 15 sealed parcels, seals intact and as per the copy sent alongwith PN no. 22795 which is the buckle number of HC Ranpise, PW-146. There is no cross-examination to ACP Patil, PW-186, in respect of his evidence about sending the articles to the FSL. Thus, by the evidence of PI Tonapi, PW-155, ACP Patil, PW-186, and HC Ranpise, PW-146, and the contents of the FSL report Ext.2392, the prosecution has established the link between the articles that were seized at the instance of the A7 under the panchanama Ext.1480 with the articles that were analyzed by the CA.

801. The cross-examination of PI Tonapi, PW-155, by learned advocate Wahab Khan in respect of general aspects like muddemal register, seal, etc., is already discussed in paragraph 721 of the judgement while discussing the recovery at the instance of the A3 and insofar as his evidence about the search and seizure is

concerned, which is in paragraphs 18 and 19, there are suggestions denying the search and seizure and as to what the police officers did not do, viz., of not recording the statement of the incharge of the institute Mushtaq Ali, not bringing him with them in the vehicle etc., but it has not affected his evidence and insofar as taking the A7 to his house on 22/10/06, he made a very positive statement that on that day they had taken the accused to his house at Mira Road to verify his house and he had accompanied PI Deshmukh, etc. He denied the suggestion that he planted the PCB Art. 349 on the instructions of his superiors and that the A7 did not make any disclosure statement on 23/10/06, but admitted that a mobile handset has a circuit and soldering machine, wire and paste, mobile parts are available in the market. He denied the suggestion that PI Deshmukh was not with him on 22 and 23/10/06 and denied that the A7 did not make any statement on 23/10/06, did not disclose anything and he and PSI Kandharkar with his staff took the accused to the institute without the panchas on 23/10/06 and collected the mobile repairing articles, except Arts. 349 and 353, and returned to the unit without making any panchanama there. His cross-examination has not discredited his version. Now there was considerable cross-examination to the panch witness Raju Tapi, PW-129, and it was revealed during his cross-examination that he has acted as panch witness in a case where a revolver was found with an accused, which is correct as per the contents of the certified copy of a panchanama marked as Ext. 20 in S. C. No.598/10, Ext. 3336. Though, PI Tonapi, PW-155, was given the suggestion that he

and his staff collected the mobile repairing articles from the institute on 23/10/06 and no panchanama was prepared there, he was not suggested that they were not sealed. The main thrust of his cross-examination is in respect of the allegations of the A7 about he being tortured and beaten and having injuries on his person which were noticed by his mother when he was taken to his house on 22/10/06 and about which she complained to the court, but surprisingly Raju Tapi, PW-129, was not given any such suggestion. Raju Tapi, PW-129, admitted that he has acted as a panch witness earlier in one or two cases and that he gave evidence once in Mazgaon court before this case, but does not remember the date, etc., or the police officer and this was in respect of S. C. No. 598/10, wherein, a revolver was found with a wanted accused. Thus, it does not discredit his version and same can be said about a bond that he gave in the office of the ACP in D. N. Nagar Police Station about which he explained that it was the case of their complaint against the builder by name Kiran Hemani and that bond was taken from his mother and wife also. Admittedly, bonds are taken in chapter cases, though he stated that he does not know whether it was a chapter case and even if it is so considered it does not mean that he is a criminal and obviously it was a complaint made by them against a builder and he denied the suggestions that police had registered a case against him, arrested him and filed the chargesheet and therefore his bond was taken. There is no evidence to back these suggestions.

802. He was inquired about his occupation of electrician and about his work and called upon to produce his licence, which was

produced by the learned SPP by the application Ext.1495 on 12/08/11, i.e., on the next day of his evidence. What is produced with the application is a photocopy of an application Ext.1496 dtd. 14/10/10 by the Industries Energy and Labour Department about having received the application for the examination of electrician and Ext. 1497 is issued by the Electrical Inspector of that Department on 12/08/11 that he has passed electrical examination that he gave in November, 2010 and that his licence and certificate number bearing no.265089 will be given in a short time. This shows his honesty and though it is submitted during arguments that this letter is of 12/08/11, i.e., of the date on which it was produced, the fact remains that he had given the examination in November, 2010, which reflects on his honesty and about which he had unhesitatingly given the details in paragraph 14 of his cross-examination though, to my mind, it was not so relevant. His evidence about going to the office, seeing the officers, that the officers asking him and other panch to take their searches and he searching PI Sunil Deshmukh and finding the articles as described by him in his chief-examination, the place where the accused sat in the vehicle, which was searched by them and several other details were brought on record as being not written in the panchanama, but insofar as the search of the police and vehicle is concerned PI Tonapi, PW-155, has stated about it by stating that the panchas took the search of the police party and the vehicle as per their practice, but nothing objectionable was found except the investigation kit and the sealing material. This evidence given by him has not been controverted and there was no

suggestion to him that the panchas did not take the search of the police party and the vehicle. About other things stated by Raju Tapi, PW-129, that were shown as omissions to write in the panchanama Ext. 1480, to my mind, they are more by way of giving the details as to what had happened and they do not affect his evidence. On the other hand there are several things that have come on record during his cross-examination by way of positive statements which prove that in fact he was present at the time of search and seizure. Though he had not stated so in his chief-examination it has come in his cross-examination in paragraph 17 that a constable had a bag with the sealing articles and he had brought bag in the room at Malwani, that it was emptied on the table, that there was a candle, a red coloured stick, a seal, white thread and small and big white papers, that the articles were in the plastic bag and it was carried to the room alongwith them. What does this denote except the honesty? He denied the suggestion that nothing was sealed in his presence. He admitted that most of the articles that were shown to him are easily available in the market and are used in repairing mobiles, taperecorders, radios, etc. About obtaining photocopy of the panchanama, it has come as a positive statement that a constable had gone for obtaining a photocopy, that the photocopy shop was two minutes from the house. Once these two positive statements have come in his cross-examination, there is no point in giving a suggestion that there was no xerox shop in front or nearby that house. He had made the positive statements as he was asked. So that is the end of the matter. One more positive statement is that

officer Tonapi wrote the panchanama in his own handwriting, of course, he committed a mistake when he stated that some other officer by name Kandharkar had written it in the police chowki, but this mistake is insignificant and does not show that he is dishonest considering the other evidence given by him and it being not shaken his cross-examination. He denied all other suggestions denying the aspect of disclosure and seizure and identification of the articles and the accused. Again during his cross-examination by learned advocate Shetty he correctly stated that probably the name of other panch is Godfi, which is phonetically similar to the first name of Godfray of that panch in the said documents. Other than this there is nothing in his cross-examination to discredit his version.

803. Thus by the cogent evidence of PI Tonapi, PW-155, and Raju Tapi, PW-129, prosecution has proved the factum of A7 having made the disclosure statement written in Ext. 1479 and the seizure of the articles as described in the panchanama Ext. 1480 at his instance.

804. Learned SPP submitted during his arguments that infact the seizure of the articles from the institute at Malad is as good as admitted by the A7 in view of the suggestion given to PI Tonapi, PW-155, in paragraph 19 of his cross-examination and in view of the story put forth by the A7 in his written submissions Ext.2828 and in his oral evidence as DW-46. On going through the evidence of the A7 and his written submissions, it is obvious that the A7 is admitting that he was taken to the said institute on 23/10/06 and not all, but some of the articles had been taken by the police from there and those articles are mobile repairing instruments. Paragraphs 21 to 28

of his written submissions Ext.2828 contains the story of the dates 19 to 23/10/06 as to how he was tortured and that the alleged recovery from him being totally false and baseless. It is alleged by him that he was taken to Chandanchowki on 22/10/06 at about 4.00 p.m. and then at about 5.30 or 6.00 p.m. he was taken to his class at Malad by PI Tonapi, PW-155, and PSI Kandharkar and some other constables, but officer Sunil Deshmukh and panch witnesses were not accompanied them and as it was Sunday, his classes at Malad were closed. The last aspect though deposed by him in his evidence has come out as a falsity during his cross-examination by the learned SPP in paragraph 98 during his answer to a question that was unconnected with him. He stated that his institute used to be closed on Saturdays.

805. Learned SPP submits that the fact that the accused was working in the institute at Malad is not disputed by him and what is tried to be suggested by him is that the articles found at his instance are the articles that can be used for mobile repairing and he used to do the said work, therefore, the inference can be drawn from this is that the recovery itself has been admitted. He submits that if the accused said that these are the articles that are used for repairing the mobiles, then it can be said that he is not disputing the recoveries. If he says that they are easily available in the market and wants to say that they are planted, the question is why would police plant something that could be explained by the accused? In other words, if it can be pointed out by the accused that the articles are such that could not have been found in his possession or at the place

where he was working, it can be said that such things are planted. If there is some odd thing amongst them, then there will be scope for presuming that it is planted. He points out the evidence given by the accused in paragraph 33 and submits that this means that the accused is not owning Arts. 349 and 353 and submits that this is exactly why he was saying that it is admitted that they had gone for the recovery, but the only thing the accused is saying that the said two articles are planted. Out of the above two articles Art. 353 is the empty packet of Airtel recharge card, in respect of which he submits that as to whether this is to be fabricated or is it a subject of a design of plantation? That card is the odd man out, then it should be explained what was the object of planting it. It is alleged that the printed circuit board Art. 349 is planted, but the accused does not talk of other things and in this context he points out to the evidence of the accused in paragraph 34 wherein the accused admits being taken to the institute, police taking charge of the articles from that place and person by name Mushtaq being there and then he says that from there they went to Lamington Road for which he has relied on the entries in the log book. This means that the accused is saying that some of the articles that are before the court have been taken from his institute.

806. In this respect A7 has stated in paragraph 34 of his deposition that officer Kandharkar and some constables took him in the vehicle on 23/10/06, but Sunil Deshmukh and panch witnesses were not with them, that he was taken to the institute at Malad and PI Tonapi inquired about him with the supervisor Mushtaq, that they asked

him where his mobile repairing tools are and told him to produce them and Mushtaq produced those tools which included some computer repairing CDs, that they also collected data cables and filled all the articles in the plastic bag, but did not label it or seal it and no panch witness came there and no panchanama was prepared. Thus, it is clear that the A7 was admitting that the police officers including PI Tonapi, PW-155, who has written the memorandum and the panchanama, Exts. 1479 and 1480, had taken him to his institute at Malad and had taken charge of some articles out of the articles that are shown to be recovered from him. Now, it is his further evidence that he was taken to Lamington Road from there, i.e., from Malwani, Malad, which is in Girgaon area and where computer components and electrical items are available, that they purchased some items, i.e., Arts. 349, 354, 355, 357, 358 and 359, from there and showed them to him and he identified all the components as his background is of electronics. For this, he relied on the entries in the log book of the vehicle no. MH-01-BA-4331 that was produced by the prosecution, Ext. 4179 (1 to 3), and stated that the entry of 23/10/06 shows that PSI Kandharkar had taken that vehicle from Chandanchowki, to Malwani, to Girgaon, to Kalachowki, to Naigaon, to Chandanchowki. This means that officer Sunil Deshmukh was not with them and they had gone to the Lamington Road. Admittedly, the entry shows that the vehicle had gone to Girgaon, but Lamington Road area is near Girgaon, but not a part of Girgaon. No doubt, name of officer Sunil Deshmukh is not mentioned in the entry in the log book, but so also it does not

mention the name of PI Tonapi, PW-155, and the other staff, who according to the story in the written submissions Ext. 2828 in paragraph 28, had alighted from the vehicle near Grant Road Station and purchased some electrical components and material and came back and sat in the vehicle. In his evidence he has not named PI Tonapi, PW-155, specifically as having purchased some electronic components and material and it is not in his written statement that the electronic components and material were shown to him and he identified them. In fact, in his oral evidence he has not even stated that some electronic components and material were purchased. To my mind, no inference can be drawn only on the basis of the entry dtd.23/10/06 in the log book of MH-01-BA-4331 Ext.4179(3), that the vehicle was taken to Lamington Road, that PI Tonapi, PW-155, got down there, purchased some electronic components and that PI Sunil Deshmukh was not with them during the search and seizure. Leaving aside all these things, the accused stating his story in his written submissions Ext. 2828 means that he knew about it, but the most surprising thing and which has exposed his falsity is that there is not even a single suggestion to PI Tonapi, PW-155, or to the panch witness Raju Tapi, PW-129, about it. It is obvious that the accused went on developing their case as the trial progressed, as the evidence was led by the prosecution and as the documents were filed by the prosecution as well as obtained by the accused under the RTI Act. It is alleged by him that PI Sunil Deshmukh was not with them at the time of search and seizure, but PI Tonapi, PW-155, has produced a false station diary about it. Now, the memorandum and

the panchanama Exts. 1479 and 1480 bear the signatures of PI Deshmukh who had signed them. The contents of the station diary entries no. 4 and 9, true photocopy of which is at Ext. 1669, shows that PI Sunil Deshmukh was in the police party that had conducted the search and seizure. What more evidence would there be to prove the presence of a police officer? This is the best evidence possible including his signatures on the memorandum and panchanama and also on the labels that were affixed to the bags in which the articles were put and sealed. On the basis of log book entry Ext. 4179(3), the A7 contended in his evidence that the said vehicle is used on 23/10/06 by PSI Kandharkar only and Sunil Deshmukh was not with him on that day. So what about the driver of the vehicle, what about PI Tonapi, PW-155, and what about the other staff, who were admittedly with him when they had taken to his institute? It is by way of office procedure that a vehicle is allotted to a particular officer and he is incharge of that vehicle and he has the responsibility of signing the log book. Thus, the contentions and allegations of the A7 are not borne from the documentary evidence and are not acceptable.

807. Before giving evidence about 23/10/06, the accused gave evidence about he being taken to his institute at Malad on 22/10/06, police asking him to show the road, but as the institute was closed as it was Sunday, they took him to his house at Mira Road, where Iqbal Qureshi, DW-9, saw him. Now, insofar as this evidence that the institute was closed on Sunday, I have already pointed out that in his cross-examination in paragraph 98 he has

stated that the institute used to be closed on Saturdays. Iqbal Qureshi, DW-9, though has stated about police having brought the accused to the house in their building two or three days before Ramzan Eid, has not stated about the exact date, i.e., 22/10/06. Even otherwise, PI Tonapi, PW-155, has admitted in his cross-examination that on that day they had taken the accused to his house at Mira Road where they had gone to verify his house and, this is important, that he had accompanied PI Deshmukh. The main contention of the accused herein that PI Deshmukh was not with them on that day also and for this purpose he is relying on the entries in the log book of the vehicle no. MH-01-BA-4255 produced by the prosecution, Ext. 4180 (1 to 3) and has stated that it shows that the vehicle was used by Sunil Deshmukh on 22/10/06 from 1230 to 1550 hours from Chandanchowki to Kalachowki to Chandanchowki Juhu and does not show that it had gone to Mira Road on that day and the entry dtd. 23/10/06 shows that the vehicle was used by Sunil Deshmukh from 1000 to 1820 hours from Chandanchowki to Kalachowki to Chandanchowki Juhu which shows that he was not with him on that day, but had gone elsewhere. Similar observations as above will apply to the interpretation of the log book entries of the said vehicle that must have been allotted to PI Deshmukh and no inference can be drawn only on the basis of these entries that he had not gone to the house of the A7 on 22/10/06 and to his institute on 23/10/06 with the accused. This leads to the inference that PI Deshmukh must have gone in the vehicle that was allotted to PSI Kandharkar.

808. It is clear from the above discussion that the A7 has failed to substantiate his allegation about plantation of some articles particularly Arts. 349, 354, 355, 357, 358 and 359 by the police, who purchased them from Lamington Road in his presence. In this context the learned SPP submits that if at all the police wanted to fabricate the evidence, if the investigating officer knows with certainty about what are the articles that are necessary and what they are looking for and they are to be planted on the A7, then he would have first gathered all these articles and then would have gone to the place of the accused. Here what the accused is saying that they had gone with him to his institute and then they went to Lamington Road. The story of the accused that the officer purchased some electronic items postulates that the officer had knowledge as to what evidence is required to be collected and whatever items he had collected from the institutes are of no use. He submits that the officer is not a technical person who will understand what are the articles and for what they are made for. There is nothing to suggest that he consulted with somebody as to what are the articles that are required or that they asked the accused what is required and he told them and then they purchased. The whole story that is tried to be painted by the accused, does not stand to the reason and logic.

809. Learned SPP has lastly submitted that the defence taken by the A7 about the discovery, he is stating on the basis of the entries in the log book that the vehicle had gone to Girgaon. However, the entry does not show that it had gone to Lamington Road, but let us take it that it is correct. He submits that he is only on the test that is

differently applied, whether the test stands to scrutiny and it is acceptable to a man of ordinary prudence. A7 went to his institute with PI Tonapi, PW-155, and panchas, but what he says in his evidence in paragraph 35 that all his articles that were picked up on 23/10/06 are not amongst the articles that are shown to be recovered from him in Ext. 1480. Learned SPP submits that he is a person who is dishonest to the court, he wants to fabricate something and he wants to use it against a man. What would a prudent man do? Do I obtain them, procure them or purchase them in the absence of that man or do I do so in his presence keeping him as a witness? He submits that it does not stand to logic by any means. He submits that what the accused says is that in that entire recovery the empty Airtel packet is brought from his house and put in this panchanama. Learned SPP submits that he scratched his head repeatedly as to why the investigating officer would do this and how it is an incriminating thing that would clinch the issue? In my humble opinion, the submissions of the learned SPP are to the point, logical and fully acceptable. If one goes by the story put forth by the A7, then it would mean that PI Tonapi, PW-155, purchased the electrical items from Lamington Road, keeping him as a witness and not only he was shown those articles after the purchase, he identified all the components as his background is of electronics. This absolutely does not stand to the reason, more particularly when PI Tonapi, PW-155, and Raju Tapi, PW-129, have not been given a suggestion about going to Lamington Road or cross-examined on the aspect of the return to the office.

810. In view of the above discussion, it will have to be held that by the cogent evidence of PI Tonapi, PW-155, and Raju Tapi, PW-129, and by the contents of the memorandum of the statement of the A7 Ext. 1479 and the seizure panchanama Ext. 1480, by the contemporaneous record in the form of station diaries and more importantly by the admissions given by the A7 in his written submissions Ext.2828 as well as in his oral evidence, it will have to be held that the prosecution has proved the seizure of the articles described above at the instance of the A7, viz., soldering gun Art. 346, soldering wire Art. 347, box of soldering flux Art. 348, printed circuit board Art. 349, resistors Arts. 354 (1 to 22), capacitors Arts. 355 (1 and 2), transistors Arts. 357 (1 to 8), LEDs Arts. 358 (1 to 9), diodes Arts. 359 (1 to 6) and yellow multimeter Art. 350, tweezers Arts. 351 (1 and 2) and screw driver Art. 352. It is already held that the prosecution has established the link between the articles that were seized at the instance of the A7 under the panchanama Ext. 1480 with the articles that were analyzed by the CA. Hence, it will also have to be held that prosecution has proved that the resistors Arts. 354 (1 to 22), the capacitors Arts. 355 (1 and 2), the transistors Arts. 357 (1 to 8), the LEDs Arts. 358 (1 to 9) and the diodes Arts. 359 (1 to 6) can be used to build a timer/triggering device to trigger the detonator. **This is the circumstance no. 16 proved by the prosecution. It is against the A7. It is the first circumstance against him.**

811. Learned SPP pointed out to the relevance of the findings of the CA in the reports Exts. 2392 and 2393 read with the evidence of

API Revle, PW-154, and the contents of the report of the CA Ext.974 in respect of the electronic circuit recovered at the instance of A3. He pointed out to the forwarding letter Ext. 1596 and submits that the investigating officer asked as many as 18 questions in it and the last question is relevant, viz., 'any other opinion relevant to the case, which expert may deem fit' and in that respect the CA reported that the components in Exts. 10 to 15 except Ext. 12 appear to be similar with some of the components used in the electrical circuit Ext. (4) of MLC K-381/06 and hence they can be used to built a timer/triggering device to trigger the detonator. This MLC K-381/06 is the case number of the articles that were seized from the A3 as per the report Ext. 974 and the technical report of electric circuit Ext. (4) of that MLC number has been discussed earlier. It is pertinent to note that though much hue and cry was raised about the printed circuit board that was seized at the instance of the A7, the CA has not given any opinion about it as per the opinion given in Ext. 974 and he has only opined that it is found in working condition. This reflects upon the honesty of the investigation. Learned SPP showed all the articles that were seized from the A7 to API Revle, PW-154, and also showed Art. 334 which is the printed circuit board seized at the instance of the A3. API Revle, PW-154, also gave opinion about the printed circuit board Art. 334 that it in itself cannot be termed as a triggering mechanism, but it can be used for DTMF ICs (Duel Tone Multi Frequencies) for receiving a tone and converting it into binary code and if it is connected to a mobile handset and if that mobile handset is called or an alarm is set in the

mobile, then the circuit gets activated, it draws power from the battery and sends the electric current to the detonator. About the electronic components seized from the accused that were shown to him, he stated that bomb triggering mechanism can be prepared with the help of printed circuit board Art. 334 and the other electronic components that he described in his cross-examination. He candidly admitted that he cannot say whether the printed circuit board Art. 334 is of a mobile phone or a walkie-talkie or radio, but in paragraph 32 of his cross-examination he gave all the details as to how a circuit cannot be completed without power source and made positive statements that such can be prepared from the mechanism Art. 334 and explained that the function of a switch is that the circuit is broken if it is switched off and it is completed if it is switched on. Again he admitted that he cannot say whether all the components required for making a complete switch are in the printed circuit board Art. 334, but stated that maximum components are there. His evidence in chief-examination as well as in cross-examination is not controverted and is not shown to be incorrect. Thus the learned SPP has shown the connection between the electrical articles that were seized at the instance of the A7 with the electronic components on the printed circuit board Art. 334 that was seized at the instance of the A3.

812. Learned SPP as well as learned advocate Sharif Shaikh had submitted some authorities in respect of search and seizure and the authorities relied upon by the learned SPP have been mentioned before starting the discussion of the evidence. The law laid down in

the case of **Anter Singh, Appellant v/s. State of Rajasthan, Respondent (AIR 2004 Supreme Court 2865)** is in support of the submissions of learned advocate Sharif Shaikh in respect of what is a discovery of fact. The law as to what amounts to a discovery and what is admissible and what are the requirements of section 27 have been laid down in this authority and this law has to be strictly applied. Learned advocate relied on the authority in the case of **Salim Akhtar @ Mota, Appellant v/s. State of U. P., Respondent ((2003) 5 Supreme Court Cases 499)** in support of his submissions that the incriminating articles that are seized or recovered at the instance of the accused have to be sealed on the spot. The fact in that case was the recovery was made from an open place accessible to all and everyone and the only public witness (a photographer) examined was not only intimate but was also obliged to the police party and though a pistol was alleged to have been recovered, it was not sealed and its number or make, etc., were not mentioned in the recovery memo or FIR to fix its identity. To my mind, these are not the facts in our case, because there is no recovery of any arms or any such identifiable article on which there are numbers and markings. Hence this authority is not helpful to the defence. On the other hand, the authorities at sr. no. (vi), (ix), (x), (xi) and (xii) described in paragraph 426 supra are relied upon by the learned SPP. Insofar as the law in the case of **Shanti Devi** is concerned it is in respect of appreciation of circumstantial evidence and knowledge of an accused about a relevant fact. The learned SPP submitted in this respect that this authority is in the context of what was recovered

from the A3 and submits that it is the case of the accused that it was predetermined and he questions as to where was the necessity to get the discovery of material on 08/10/06 when they already had sufficient material against the A3. He submits that this court will have to consider that the investigating officer can only collect whatever is found at the relevant stage and whatever the FSL reports were received they were just incorporated in the chargesheet. There was no opportunity for the investigating officers to co-relate the FSL report of the articles seized from the A3 with the FSL report of the articles that were seized from the A7. He submits that it would be too much to give credit of the intelligence of the officers that they first saw and studied what are the things recovered from the A7 and then they plant something and show it as the recovery from the A3. He submits that the recovery from the A3 on 08/10/06 was in pursuance of the exclusive knowledge of the A3. He submits that till the time his arguments started, it never occurred to him that the recoveries from the A3 and A7 are matching.

813. The law laid down in the case of **Ganesh Lal** is discussed earlier at sr. no. (ix) in paragraph 426 and it is in connection with the false answers given by the accused providing a missing link for completing the chain of circumstantial evidence and failure of the accused to offer any satisfactory explanation for the possession of incriminating articles in his statement under section 313 of the Cr. P. C. The next authority in the case of **State of Maharashtra, appellants V. Sayeed Mohd. Hanif Abdul Rashim & Ors., respondents** discussed at sr. no. (x) in paragraph 426 is in respect

of aspect of sealing of articles at time of seizure. This is the case of blast at Gateway of India and observations of the Supreme Court in paragraphs 19 and 20 in the case of Bilal Ahmed Kaloo vs. State of A. P. reported in (1997) 7 SCC 431. In this context the learned SPP submits that an issue is made out of proportion by the defence in respect of the sealing of or absence of lac seal or brass seal and on the basis of these submissions they want this court to discard the evidence of discoveries and recoveries. He submits that in the first case this court will have to take judicial notice that till 08/08/06 the ATS, Mumbai did not have any brass seal. Secondly, unless and until it is demonstratively shown that absence of the lac seal goes to the root of the matter and whether there is *per se* presumption of tampering. He submits that the issue is this, but the court has to appreciate is that if there is no lac seal then it may be tampered. He submits that he asks a question to himself that even if an envelope is sealed by lac, can it not be tampered by resealing it? Therefore in a given case unless it is demonstrated that a particular sample has been tampered, merely a possibility of it being tampered cannot be a ground for rejecting it on that count. This principle applies to the 10 grams sample that was taken from the black powder that was recovered from the house of the A1. He submits that this aspect has been considered by the Supreme Court and for this the learned advocate for the defence will say that it will amount to putting aside the authority. He submits that he is only putting this question for appreciation of the court because he is on section 3 of the Evidence Act regarding appreciation of evidence. For this two things will have

to be borne in mind :- (i) that in none of the cases the seals were used and (ii) that out of 10/20, in one or two they are not used, but for the rest that are used. He submits that in such circumstances if a reasonable explanation is available then can justice be made sterile by discarding such evidence without taking into consideration the explanation that is given and available.

814. In respect of the recovery from the A1 he submits that the team goes from Maharashtra to Bihar on some tip off to arrest the accused. In such circumstances it can not enough lie in anybody's mouth that a person from Bihar is to be brought and shown as arrested accused. Secondly, at that primitive stage of investigation unless you have in hand some immediate eyewitness, it would be difficult to envisage that the police officer or the investigating officer would know the role played by such a person. Can it be said that the police got some information, therefore, they decided that they must go to Bihar to get the A1 and plant RDX on him? He submits that he remembers the words of the Supreme Court that the proceeding in a court is not a fairy tell where anyone can tell stories. It is not a market place where anybody can sell anything therefore the court will have to accept this *prima facie* that it was predetermined that the officer would go there and arrest the A1 and that he would be shown as a planter and therefore, they must carry RDX with them and plant it on him. In respect of the questions to the police officers who had gone to arrest the accused and also to the police officer of Basopatti about not having put the seal of Basopatti Police Station, he submits that supposing an ATS team goes from Bhoiwada or

Kalachowki to Bhayander or Mira Road, recovers something, goes to Pune, recovers something there, but they do not have their own seal, therefore, they go to Police Station Wanwadi, obtained their seal and put it on the seized articles and return back to Mumbai. This seized articles are required to be forwarded to the FSL for analysis. The procedure is that the forwarding letter should have an impression of the same seal that is used for sealing the article. In the case of the recovery from the A1, the ATS would have been required to send back a team with the forwarding letter to Bihar and obtain the impression of the brass seal on the letter and then come back and send the articles to the FSL. Thus, will this not lead to an absurdity?

815. He submits that as we say there is a long distance required to be traveled before a fact that may be proved and a fact which is proved, here similarly there is a vast difference to be traveled between the submissions that the samples were tampered or could have been tampered and that they were actually tampered. In that case the court has to come to a positive finding that infact the samples have been tampered with, then and then only such evidence can be discarded. He points out that the investigating officer in this case have not been suggested that the samples were tampered with when they were lodged in their office.

816. The observations in the authority of **Khet Singh** relied upon by the learned SPP have been mentioned at sr. no. (xi) in paragraph 426 and learned SPP submits that it is observed that there was no allegation or suggestion by the accused that the contraband article was in any way meddled by the officers and therefore the appellant

was rightly found to be in possession of the contraband. In respect of the reliance on the authority in the case of **Hardip Singh**, he submits that in our case when the samples of the black powder recovered from the house of the A1 were sent to the CA, the CA found that the seals were not affixed, therefore, it was sent back and then the seal of Kalachowki Police Station was put on it.

817. He submits that there is one more safeguard of which the court should take the judicial notice. It is that in all such cases, it is not one but two samples that are drawn and questions as to which officer will run the risk of being caught if the other sample is sent. Apart from that so far as the RDX that was brought from Bihar, the entire jar of about 1/2 kg. of RDX is before the court. The accused who are so vigilant about their rights, could have made an application to send a fresh sample from the contents of the jar. They have not done so.

818. In my humble opinion, the submission of the learned SPP and the authorities relied on by him are squarely applicable to the facts in the present case. Not only this, it is clear from the discussion of the evidence given by the prosecution that it has given cogent oral and documentary evidence to prove all the seizures.

819. With this, we complete the evidence given by the prosecution in respect of the seizure of the bomb making articles at the instance of different accused. It is throughout alleged by all the accused that the articles that are shown to be recovered from some of them are planted and the entire evidence is fabricated. I do not think that such an inference can be drawn if one considers the diverse type of

recoveries of diverse articles made from different locations from seven accused. The 1st is recovery of RDX powder from the house of the A1 on 20/07/06 immediately following his arrest on that day. The 2nd is the finding of traces of RDX in the house of the A3 on 28/07/06 immediately on the next day of his arrest on 27/07/06. The 3rd is recovery of three chemical bottles at the instance of the A2 from Sabu Siddiqui Hospital on 12/08/06 though the A2 was arrested on 23/07/06, but it was made in pursuance of information gathered from the A4 immediately after he was arrested on 12/08/06. The 4th is noticing of black and white spots on the inner side of a wooden box bed in the house of the A6, which turned out to be of RDX, which were seized on 29/09/06 after the arrest of the accused on 28/09/06. The 5th is the recovery of printed circuit board, cooker rubber gasket and whistle and the polythene bags in which they were kept, which also revealed traces of RDX and the technical report in respect of the circuit board showed that it can be used as a triggering device of detonator if it is used alongwith a specially built receiver circuit on mobile phone, from the A3 on 08/10/06 though he was arrested on 27/07/06. The 6th is the recovery of white granules that turned out to contain ammonium and nitrate radicals and the lumps in the rexine bag to contain RDX as well as the post-explosive residue of the detonators that were seized to contain nitrite and lead radicals, which was done on 09/10/06 at the instance of the A13 from a premises *prima facie* unconnected to him after his arrest on 03/10/06. The 7th is the seizure of Maruti car in which blackish spots were seen and were

found to contain RDX amongst other things at the instance of the A12 on 22/10/06 though he was arrested on 30/09/06. And the last the 8th is the recovery of electronic components and PCB on which no explosives were detected at the instance of the A7 on 23/10/06 though he was arrested on 29/09/06.

820. Considering the fact that this is a case of circumstantial evidence, every suspicious type of recovery or every type of recovery that was made was placed before the court and as submitted by the learned SPP, the case of the prosecution is unfolded not by way of a story, but by way of evidence that was gathered during the investigation.

821. I cannot but resist the temptation of making an observation at this stage itself that it appears that rather than their advocates deciding the course of action as to how to fight the case, it was the accused who thought that they are knowledgeable enough to defend themselves. This has led to inconsistent stands in the cross-examination of the prosecution witnesses, in the written submissions made by the accused, which they filed alongwith their statements under section 313 of the Cr. P. C., in their oral evidence as well as when they examined defence witnesses. Obviously, it is a blunder committed by them and rather than falsifying the prosecution case and the evidence given by the prosecution, this approach or effort has falsified their defence and fortified the prosecution case.

Procurement of RDX :-

822. The allegations of the prosecution in the final report are reproduced in paragraphs 218 to 252 and the relevant allegations

concerning procurement of explosives and explosive devices, are in paragraphs 219, 220 and 221. The relevant allegations are that as a part of the conspiracy to cause explosions in the western railway local trains, wanted accused Azam Chima took the responsibility of sending RDX and Pakistan based terrorists, including those who would be experts in assembling the explosive devices and as a part of the conspiracy, the A5 of Kolkata and the A1 from Bihar were entrusted the responsibility of bringing Pakistani terrorists into India through Indo-Bangladesh and Indo-Nepal borders respectively. It is alleged that in pursuance of the said conspiracy and in order to achieve its object, the A5 made arrangements in May, 2006 and ensured the infiltration of six wanted accused, who were Pakistani nationals, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan, i.e., wanted accused no. 8 to 13, into India through Bangladesh border and these accused traveled from Kolkata to Mumbai by train. It is alleged that the wanted accused no. 12 Ehsanullah brought RDX with him, which was used for causing explosions in Mumbai on 11/07/06. To prove this, prosecution is relying on the evidence of Mohd. Shakil, PW-70, who is also a resident of Kolkata.

823. It has come in the evidence of Mohd. Shakil, PW-70, that A5 is his childhood friend and he identified the accused unhesitatingly in the court. This is not controverted during his voluminous cross-examination. He has then given evidence about he knowing Asif, a relative of the A5, who stays in Bangladesh. This is also not controverted. His evidence that he had met Asif when he had come

to Kolkata in December, 2003 in the marriage of his uncle Asgar and Asif's friends had also come with him, etc., is brought on record as an improvement, which, to my mind, is inconsequential inasmuch as his earlier evidence that he knows Asif has not been controverted. It is only by way of some additional information or explanation. It has come in his cross-examination by learned advocate Shetty as a positive statement that he met Asif for the first time in the marriage of Asgar, but, thereafter did not develop regular friendship with him and he knows Tushar, Akbar @ Sami and Pappu through Asif. He has then given evidence about the visit of these persons in 2004 and they going to Delhi, about his three brothers there, about Asif asking him for money, and, his ATM card and bank account being sent by courier by the A5 after collecting from his house, etc. All these things are irrelevant and inconsequential and though most of this is brought on record as improvements, it is not concerning his evidence about the main aspect. Thus, it is unnecessary to consider the considerable cross-examination to him on that aspect, more particularly, because the prosecution is not trying to link it with the present crime.

824. His close association with the A5 is established by his evidence in paragraph 3 about they doing the business of spectacles powers for two years during 2003-2004 about his business transactions. Except the single statement that he made that the A5 was not attentive to the business in 2003-2004, which was brought on record as an improvement, there is nothing in his cross-examination to controvert his evidence about partnership business with the A5. On

the other hand his acquaintance with the A5 and his family members and his knowledge about the inmates of the family members, his house, his main business, marriage of the A5 has been asked in cross-examination and he gave all the details. In respect of the business, he admitted that only he had the knowledge of preparing power glasses, but the A5 had the knowledge of the business as he used to go to the market for purchases and denied the suggestion that he did not have the knowledge about preparing spectacles. Positive statements have come on record that they had taken premises on rent for the spectacles shop, that he and the A5 used to run that shop and the A5 used to work in the footwear shop also. His knowledge about Asif being a relative of the A5 is further proved by his answers in cross-examination that he was not treated as outsider at the house of the A5, but was treated as a family member and does not know whether many of his relatives are residing in Bangladesh, but he knows only Asif who is the son of sister of father of the A5. He candidly answered that he does not know whether Asif used to often come to visit Majid, but positively stated that Asif used to often come to meet his uncle Asgar in their mohalla and the said Asgar stays across the road and whom he knows since his childhood. In addition, the A5 has also admitted in his written submissions Ext. 2826 and has stated in his oral evidence as DW-43 that he was doing spectacles with Mohd. Shakil, PW-70, of manufacturing the optical glasses during 2003. Of course, his story and his allegation in his written submissions Ext.2826 is that during the year 2003 he came across the person by name Mohd. Shakil, i.e., PW-70, who was

residing in their locality and who tricked him into obtaining capital for the business of optical glass manufacturing, that he obtained the capital by taking the loan from his brothers and that Mohd. Shakil, PW-70, had agreed to deposit Rs.50/- per day for repayment of the loan, but he did not give proper accounts and did not make deposits as agreed, etc., and there being disputes between them after his brothers started demanding the repayment of the loan, that Mohd. Shakil, PW-70, misused the time given for repayment and there being five meetings etc. All these things are obviously afterthought just to malign the witness, because there is not a single suggestion to Mohd. Shakil, PW-70, about he taking the A5 in the business and cheating him. On the other hand as mentioned earlier several details in respect of the business have been asked in cross-examination, which the witness stated correctly. The inference that all these allegations are afterthought to malign the witness is quite obvious from the allegations made by the A5 in his oral evidence which do not find place in his written submissions Ext. 2830. He alleged in paragraph 4 of his evidence that grandfather of Mohd. Shakil, PW-70, used to do the work of matka, his father is addicted to liquor and charas and does not do any work, that his brothers have criminal record and his 2-3 younger brothers are involved in robbery cases, which he knew before his arrest in this case, that Mohd. Shakil, PW-70, had illicit relations with the sister of his friend Mohd. Shahid, etc. There is absolutely no material to support these allegations, and to my mind, they are baseless and made just for the sake of maligning the witness, because if at all they were true the

accused, who are so industrious, would have uncovered something if it was there in respect of this witness. This also proves that the witness does not have any criminal antecedents or record of he being associated with the police as a panch or witness or as an accused.

825. Then comes the material part of his evidence in paragraph 4 that Asif again came to Kolkata in February, 2006 and met him and the A5 and on asking him the reason he told that he had come for secret work about which he could not tell him, but had told the A5 and on Mohd. Shakil, PW-70, asking the A5 about it, was told that Asif had come to India for doing some work in connection with the plight of Muslims in India and that he also wants to do that work. This evidence is not brought on record as an improvement or contradiction during his cross-examination and same can be said about the last sentence in the said paragraph that during his talks with the A5 subsequently he came to know that he is in contact with some persons of L-e-T in Mumbai. The remaining portion in that paragraph is brought on record as improvements over his statement given to the police and even if it is not considered it does not affect his evidence about Asif having come to Kolkata in 2006 for some secret work in February, 2006 and having met him and A5. During his cross-examination by learned advocate Shetty the only words that were brought on record as improvements over his statement are 'about which he cannot tell me', but they are inconsequential.

826. Thereafter is his evidence in paragraph 5 that in May, 2006, A5 told him that he wants to do some work for Islam and whether

he would help him and then he said no. This is brought on record as an improvement. Even if it is not considered, his subsequent evidence has not been brought on record as improvement or contradiction, which is, that in the second or third week of 2006, the A5 told him that some persons are to be brought from Bongaon on the border of India and Bangladesh and he and the A5 went to Bongaon by train, that at that time the A5 was talking with Asif and Munna on his mobile and after they reached Bongaon, they went towards the Bongaon market area and after some time Munna came with six persons. The portion next that they greeted the A5 and told their names which he repeated, i.e., wanted accused no. 8 to 13, is brought on record as an improvement to state before the police during his statement under section 161 of the Cr. P. C. It has come during the cross-examination by learned advocate Rasal in paragraph 20 as positive statements that Munna had brought those six persons with him and he candidly admitted that he does not know from where he had brought them and he did not have any talk with any of those persons. To my mind, he stating the names of wanted accused is nothing but supplying some additional information. This is somewhat similar to the reasonable explanation that he gave in respect of an improvement that was brought on record in respect of he stating the names of friends of accused Tushar and the others about which he explained that he only remembers the name of Tushar and not the names of other friends when he gave his statement to the police, therefore, he had stated only his name, but, this is important, he remembered their names

when he gave the statement to the magistrate after about a month. Admittedly, that statement recorded by the ACMM is produced by the prosecution, but it is not proved, because the witness stuck to the contents of the statement given to the police under section 161 of the Cr. P. C. Out of curiosity, I perused the said statement under section 164 of the Cr. P. C. and therein he has given the names of the six wanted accused. Leaving aside these observations, his next evidence is that they went to a nearby hotel for tea, all of them were in between 20-30 years of age, all gave their passports to Munna and, this is important, he could gather from the passports that those persons were from Pakistan as the name Pakistan was written on their covers and Munna took the passports and left them. This evidence is not brought on record as an improvement over his statement under section 161 of the Cr. P. C. or not shown as contradiction. Thus, his earlier evidence that Munna came there with six persons and they were together for tea shows that he was with those persons for some time. This inference is endorsed by his answers in paragraph 20 in his cross-examination by learned advocate Rasal that he met Munna for the first time near Bongaon market in Bongaon, that they were in Bongaon for one hour, but were not together for the entire period and were together when they had tea. Obviously, he does not know whether there are many hotels in that market and could not tell the name of the hotel where he had tea and on which road it was. The questions on this line are ridiculous. He explained further that they were sitting on a long table in the hotel till they had tea and there may be 3-4 tables. Thus,

though some portion of his evidence mainly about the names of the six persons is shown as an improvement, the fact remains that Munna having brought six persons there is proved as it is not shaken during his cross-examination. On top of this is his cross-examination by learned advocate Shetty about the Pakistani passports and it has come in paragraph 24 as positive statements that he can describe the passports that were with those persons and then he went on to describe that the word 'Pakistan' was written on them and there was a 'chand' and 'tara' on top and the passports were green coloured. What more specifications one wants to arrive at a conclusion that he is an honest witness and his evidence is totally reliable and trustworthy? If at all he was tutored by the police or if he is a got up witness, these things would have been introduced in his statement when the police recorded it.

827. His evidence in paragraph 6 is brought on record as an improvement on his statement given to the police, in which he had stated about he, A5 and six persons going to the railway station by two rickshaws, A5 purchasing 8 tickets for going to Kolkata and during their talk, he coming to know that they are from Pakistan, sent by Azan Chima, commander of L-e-T, and he going to his house and the six persons going with A5 to his house after reaching Kolkata, that he is not ready to do that work, etc. Even if this evidence is not considered, to my mind, the aspect of the six Pakistani persons being brought at Bongaon and he and A5 meeting them is not controverted or disputed. Bongaon is in India and it is just adjacent to the Bangladesh border and is 72 kms. from Kolkata.

828. Only two portions from the statement of Mohd. Shakil, PW-77, were confronted to him and got proved from ACP Patil, PW-186, as Exts. 2516 (1 and 2). First is that after learning about the work for which the persons had come from Bangladesh, he reluctantly became ready to help them. I do not know how this will have any effect on his evidence on the factual aspects. Thus, it is of no consequence. Second is that they went by taxi to the railway station. To my mind, this portion also hardly makes any difference, because the fact that can be inferred from his evidence is that he, the A5 and the six persons came by train from Bongaon to Kolkata. Learned SPP submits during his arguments that if on a plain reading of the evidence of this witness, it does not show that there is anything which is apparently introduced by the police, then it is nothing but a truthful and honest evidence given by the witness and that his evidence has not been moulded in any other manner to give any specific role to the accused. In respect of the omissions and contradictions he referred to his submissions made by him earlier in respect of the statement under section 161 of the Cr. P. C. and submits that if contradictions or omissions are taken in bits and pieces they may depict the picture that the witness is not giving verbatim statement before the court. However, what needs to be appreciated is whether the relevant gist for which he was examined has come or not, whether there is any deviation or cracks in the material. He submits that the role attributed to the A5 is of a conspirator and it is settled law that in a conspiracy every conspirator need not know what the other person is doing. He is

only to perform a role attributed to him for furthering the conspiracy. He submits that the A5 doing the spectacles manufacturing business in partnership with Mohd. Shakil, PW-70, is also corroborated by the evidence of Mohd. Sajid, DW-23, brother of the A5, who has only stated to that extent and has not stated about Mohd. Shakil, PW-70, tricking the A5 into the business and playing fraud on him.

829. Learned advocate Wahab Khan attacked the evidence given by this witness on several counts and most of them have been repeated in the written notes of arguments submitted by learned advocate Sharif Shaikh in volume no. 4. His submissions about the evidence of Mohd. Shakil, PW-70, in respect of the visit of Asif in 2004 are unnecessary to be considered. It is submitted by him as well as in the written submissions by learned advocate Sharif Shaikh that the witness was called to the local ATS office at Kolkata and he stated that all that he stated in chief-examination and if he has given material information in respect of the crime, it should have had been recorded on the first day itself. However, no record has been produced in that regard and the silence of the prosecution in respect of that inquiry suggests that deliberately time was consumed to introduce a particular story from the mouth of this witness. To my mind, this inference cannot be drawn in view of his credibility being not impeached during the cross-examination and in view of his evidence that the information that he gave was not written, though he does not exactly remember about it. Now in his cross-examination by learned advocate Rasal in paragraph 16 he turned

down the suggestion that he does not know when his statement was recorded and gave a positive answer that it was recorded at Mumbai on 03/11/06, which is corroborated by the evidence of ACP Patil, PW-186. He was repeatedly put questions about this aspect and though he admitted that during this period the officers were making inquiry with him, that he was interrogated for about 2-3 hours everyday and was called again on 01/10/06 as well as on 03/10/06, but he turned down the suggestion that whatever was being inquired with him was taken down in written. He did not remember whether Mumbai police had come on the second occasion for making inquiries, but stated that even at that time his statement was not written. In addition, it has come in paragraph 8 of the cross-examination that the police had made some inquiries with him as to whether he knows the A5, etc. What this means is that the police may have been trying to collect the evidence about the activities of the A5 and as to who were the persons connected with him including Mohd. Shakil, PW-70. This inference can be drawn from his answer in cross-examination that the person by name Asgar, uncle of Asif, was called alongwith him to the ATS office at Kolkata. Once the investigating officer became sure that the evidence of Mohd. Shakil, PW-70, is relevant, he went ahead and recorded his statement. Thus, to my mind there is no delay and the investigating officer not drawing the sketches of the wanted accused with the help of this witness is also of no consequence. If his statement was not recorded on the other occasions, there is no reason for producing any record about the inquiry that was made with him.

830. A strange and unacceptable submission is made by the learned advocate that the evidence of this witness gives the impression that six persons were having Pakistani passports, which means that they are citizens of Pakistan and, therefore, they could have conveniently come to India from Attari or Wagha border, therefore, the evidence of this witness appears unnatural. I said that this is a strange and unacceptable submission, because it can be said that the fact that though they had Pakistani passports, they came clandestinely which shows that they had come for some ulterior motive and wanted to hide their identities. Thus, this submission is of no consequence.

831. Learned advocate next submits that the evidence of this witness appears very unnatural and improbable, because he does not claim or say that any of these persons was carrying a luggage or bag or pouch with him and in view of the claim of the prosecution that the wanted accused no. 12 brought about 15 kgs. of RDX, it was the bounden duty of the prosecution to establish this through the evidence of Mohd. Shakil, PW-70. He submits that 15 kgs. of RDX is not something that can be carried in the pant or shirt pocket and the witness has not stated that any of them had any bag of clothes with them. To my mind, the witness has not been asked in his cross-examination as to whether there was any bag or luggage with all the six persons or any one of them. Admittedly, he has not stated about it. Considering the allegations of the defence that he is a false and got up witness, to my mind, there was nothing to prevent the investigating agency to put this thing in the mouth of the witness, that the person by name Ehsanulah, wanted accused no. 12, was

carrying a big and heavy bag with him. It is clear that they just took whatever is stated and he deposed as per his statement. His evidence about the fact that six Pakistani persons were brought by A5 from Bongaon to Kolkata is enough to be a relevant fact. In this context, it is submitted by the learned advocate that as per the allegations of the prosecution, Ehsanulah, wanted accused no. 12 carried the RDX with him and he and the other five traveled from Bongaon to Kolkata and from Kolkata to Mumbai, but no one is suspecting them. Why would any one suspect persons traveling in train unless there is some specific information or unless police are on the look out of suspicious persons? There are hundreds, thousands and lacs of persons traveling in trains and other public vehicles everyday in India carrying voluminous luggage and I do not know how anyone can suspect a particular person to carry any explosive.

832. Learned advocate submits that it has come in the evidence of the witness that he used to be in contact with the A5 by mobile and on the day when they went to Bongaon by train, he was talking with Asif and Munna on mobile. This is also submitted in the written submission by learned advocate Sharif Shaikh and it is also submitted that it is the allegations of the prosecution that as per the instructions of the Azam Chima, mobiles were not to be used for operational purposes, which means that the A5 was not complying with the orders of the head of the syndicate and this is sufficient to discard his evidence. It is also submitted that Mohd. Shakil, PW-70, suppressed his mobile number by saying that he does not remember it and also does not remember mobile number of the A5 and failure

of the prosecution to produce the CDRs of both these numbers shows that it has not shown the link between the other accused and the A5. It is submitted by learned advocate Wahab Khan that the CDR of the A3 does not show that there are any calls from Kolkata to him or *vis-a-vis*. To my mind, whatever evidence the prosecution found has been placed before the court. A5 also did not mention his mobile number in his written submissions or in his oral evidence and also did not make an attempt to call for CDR of his mobile number to give positive evidence that he had no contact with the A3 or Mohd. Shakil, PW-70, or with Asif and Munna. Thus, this submission is of no avail.

833. Learned advocate next submits that though the person Asif was instrumental in bringing six persons by crossing the Bangladesh border clandestinely with the help of Munna, these persons are not made witnesses or wanted accused. Obviously, Asif is of Bangladesh and it is only on the basis of Mohd. Shakil, PW-70, that he said that Asif was involved. Insofar as Munna is concerned, he may be just a person to help the persons to cross the Bangladesh border. Nothing must have come out in the investigation to indicate their involvement in the conspiracy to commit the blast in the present case insofar as their knowledge about the entire plan. Even otherwise, they being not made witnesses or wanted accused does not have any impact on the evidence of this witness.

834. Learned advocate then submits that in respect of the term jihad, the witness has stated that he is not aware of its meaning and his answers in cross-examination that he is a Sunni and goes for

namaj in masjid as well as the dargahs shows that he is an untruthful witness. To my mind, it is not shown that the witness is a scholar or an expert in Muslim law. Therefore, whatever the answers he gave are not material and do not affect his evidence. However, the important positive statement made by him is that he being a Sunni, he does not eat Niyaz at the dargahs. Its relevance will be pointed out subsequently. The submission that the learned advocate made is that though he has no knowledge about jihad and as is also submitted in his written submissions by learned advocate Sharif Shaikh, why would such a person be shocked on hearing the word jihad and even then accompany the A5 to Bongaon and not disclose the said facts to anyone, but remain silent for about five months, which is contrary to a natural conduct and therefore is required to be discarded. To my mind, this aspect has been cleared in the cross-examination itself, because he admitted in paragraph 11 that he thought that he had some important information with him, but did not feel that he should go and give the information to the local police station about which he gave a reasonable explanation, that it was because the A5 was his friend. When suggested as to why he did not sever relations with the A5 as he had lost interest in the business, he said that it was not necessary to do so as the A5 was doing some other work. Thus, these submissions are of no avail to impeach his credibility or to show that his evidence is unnatural.

835. Learned advocate submits that if the witness had stated to the A5 that he is not interested in the work which the A5 wants to do for Islam, how he would have taken the witness to Bongaon with him.

Obviously, this is for the A5 to explain, but this had taken place in May, 2006, the specific date or week being not told by him and on the A5 asking him whether he would help in the work for Islam he said no. However, in the next sentence he stated that in the second or third week of May, 2006, the A5 told him that some persons are to be brought from Bongaon, therefore, he went with him. This evidence as pointed out by me earlier is not by way of improvement and nothing has come out on record to discredit his version.

836. Lastly, learned advocate submits in the light of omissions and contradictions that the witness is an accomplice and unworthy of credit, that he does not say that six persons entered clandestinely by illegally crossing the border, therefore, the silence of the investigating machinery to investigate this aspect with the border agency suggests that it was well within their knowledge that the story is concocted one and they are showing the crossing of the border as if the persons are coming from Sion and Kurla. Prosecution should at least have some correspondence to show their fairness and it appears that Salaskar and the ATS officers have planted the witness as well as Mohd. Alam, PW-59, in the case in order to introduce a concocted version and impress upon them that they are not going to give evidence about the bomb blasts and they have been introduced in the case after the accused retracted their confessions. To my mind, such an inference cannot be drawn from the cross-examination of this witness because no such suggestion is given to him and he has withstood the test of cross-examination. To my mind, he is one of the best witnesses of the prosecution being a

totally uninterested person having no criminal antecedents or connections with the police. He does not know about the intention or goal of these six persons for going to Mumbai. He has not stated that anyone was carrying anything in his hands that would have helped in the preparation of bombs. Thus, their role or intentions were not known to him and therefore the inference that the learned advocate wants to draw cannot be drawn.

837. The topics in the written submissions given by learned advocate Sharif Shaikh insofar as they are common with the submissions of the learned advocate Wahab Khan are not repeated and submissions about the visit of Asif and his friend in 2004 and their trip to Delhi are also not considered. An aspect of the evidence of the witness is pointed out to submit that he was a respectable guest of the ATS, tutored for seven days while he was there, threatened for giving false evidence against the A5 and therefore his entire evidence has to be discarded. The evidence given by Mohd. Shakil, PW-70, in paragraph 10 of his deposition is reproduced. It is in respect of he arriving on 07/02/11 in Mumbai, i.e., seven days before his evidence was recorded, staying alone in the guest house above the Kalachowki Police Station, not paying any charges of lodging and boarding, but being provided with tea and tiffin, etc. To my mind, the witness denying the suggestion that he was in the custody of the ATS for last seven days and pressurized and read over the statement to him, dispenses all doubts about it and it cannot be ruled out that for security and safety of the witness he was kept in the police guest house. This is not such a fact that would affect his

credibility.

838. It is then submitted that the witness kept changing his version. It can be gathered from his evidence in paragraph 4 and it is argued that it shows that Asif came for some work which he was not intending to inform anyone, then, why he disclosed to Mohd. Shakil, PW-70, that he had come for some secret work and why he disclosed it to the A5, who was the close friend of Mohd. Shakil, PW-70. Therefore, it is totally unnatural and not digestible. It is also argued that if Asif was not intending to tell about the secret work to Mohd. Shakil, PW-70, then he would have warned the A5 not to disclose anything about it to Mohd. Shakil, PW-70. I think that rather than the witness changing his version, it is the defence that is changing its version and asking the court to draw an inference from the positive evidence that the witness had given rather than showing how his evidence has been discredited during his cross-examination.

839. It is alleged in the written notes of arguments that Mohd. Shakil, PW-70, is a fraudster/just a business partner and the evidence of the A5 as DW-43 in paragraphs 3 and 4 has been reproduced extensively and is submitted that the witness was not a friend of A5, but a business partner, who cheated the A5 in business and is not a right person to be believed. The story narrated by the A5 in his oral evidence in respect of alleged fraud by Mohd. Shakil, PW-70, is obviously a new story put forth by the accused, there being not a single suggestion to the witness about it. Even if this is kept by the side for a moment, though number of witnesses were recalled, some twice, no effort has been made by the defence to

recall this witness after the accused made the statement under section 313 of the Cr. P. C. This submission is therefore absolutely untenable and does not show that the witness is an interested witness who deposed against the A5 in order to swallow his business.

840. The ineptness of the defence is evident from the last submission that Mohd. Shakil, PW-70, has deposed about Munna bringing the six persons at Bongaon, whereas, it is in the confession of the A5 that one Kallu had brought the six persons, therefore, this is the contradiction and both do not corroborate each other and therefore his evidence should be discarded. Of course, it should be discarded provided we accept one thing out of the two. Either we accept that Mohd. Shakil, PW-70, is telling the truth or the A5 has told the truth in his confessional statement. Of course, this is a subsequent aspect and will be discussed at the relevant time, but the fact remains that Mohd. Shakil, PW-70's evidence about Munna having brought six persons has not been impeached during cross-examination.

841. The learned SPP has submitted in brief about the evidence of this witness and there being no challenge about he going to Bongaon and coming to know the names of the wanted six accused and the A5 bringing them to Kolkata. In addition he has pointed out to the evidence of Jairam Shetty, PW-141, who was working in the hotel Heena of his brother at Bhendi Bazar. I will refer to this evidence at the relevant stage, because Asif being a relative of the A5 is not disputed during the cross-examination of this witness.

842. In view of the above discussion, it is clear that the evidence given by Mohd. Shakil, PW-70, is a cogent and convincing evidence and I have no hesitation in holding that he is a honest and trustworthy witness and to accept his evidence. Thus, the prosecution has proved by his evidence that sometime in the second or third week of May, 2006, A5 brought six persons, who were having Pakistani passports, from Bongaon, which is just adjacent to the Bangladesh border of India, to Kolkata for being further taken to Mumbai. The inference that the persons were Pakistanis can very well drawn from his evidence that they were having Pakistani passports. This is the circumstance no. 17 proved by the prosecution. It is against the A5. It is the first circumstance against him.

Assembling of bombs :-

843. It is alleged by the prosecution that between 08/07/06 to 10/07/06 explosive devices were assembled in the house of the A6 at Shivaji Nagar, Govandi and for this purpose it examined Amar Khan, PW-75, and PC Ambekar, PW-76. The incident about which they deposed is stated in brief in paragraphs 193 and 194 supra and Amar Khan, PW-75, gave evidence about it. His initial evidence is about the A8 and two others, i.e., Irfan and Imran, being his friends in the locality, A8 being a SIMI activist taking part in the programs and the activities of SIMI and he himself having gone on one or two occasions for attending the programs. He identified the A8 unhesitatingly and this evidence has not been disputed or shown as an improvement or contradiction, except the words 'one or two

occasions', which is of no consequence. It has also come in his evidence that he met the A2, A4 and A6 in the programs that he attended and he identified them in the court unhesitatingly. This evidence has not been shown as an improvement and has not been controverted and infact he knowing the A2, A4, A6 and A8 is an unchallenged evidence. Then his evidence is about aggressive and provocative speeches about jihad being made at SIMI programs and the jihad that they were talking about being in respect of atrocities committed on Muslims. His next evidence that the A2 and A4 used to give such speeches is brought on record as an improvement and then he has stated that it was his view that they should not talk like this, they used to say that if they want to do something they will take the help from outside and will do anything and since beginning it was his opinion that they should not use this language and should not think of doing such activities. He has then stated about his longstanding friend Ajmeri Shaikh, resident of Ghatkopar, but his evidence about the said Ajmeri accompanying him for the programs of SIMI for one or two times and his view of the activities of the SIMI was like his view, is brought on record as an improvement. His further evidence is about he, A8, Imran and Irfan being caught by Parksite Police Station in 2001 on the allegation that they are activists of SIMI. His further evidence is that at that time the A8 told the police that it is only he who does the work of SIMI and all others do not have any concern with it. All this evidence is uncontroverted and has not been brought on record as an improvement, on the other hand, in his cross-examination in paragraph 27, it is again put

to him and asked whether he had stated so to the police and he confirmed it, but the matter was left there.

844. His evidence in paragraph 4 is the main evidence in respect of which there is considerable agitation. It has come in his evidence that Ajmeri Shaikh used to do the work of plaster of paris (POP) and interior decorator and for that purpose he used to go on his motorcycle to Govandi for purchasing the material and he, i.e., the witness, used to accompany him on motorcycle. This evidence is also not brought on record as an improvement, but his evidence about going with Ajmeri on his motorcycle is disputed in the context of his answers in cross-examination that they both had gone on his motorcycle, i.e., the motorcycle of the witness. The subsequent evidence that he had so gone with Ajmeri 4-5 days before the blasts to Shivaji Nagar, Govandi is not brought on record as an improvement, but the only aspect about going there 4-5 days before the blasts was proved as contradiction *vis-a-vis* the portion in the statement Ext. 1657(5), which shows that they had gone 2-3 days before the blasts. How this contradiction is interpreted by the defence will be discussed subsequently. His further evidence is that he, i.e., Ajmeri, parked the motorcycle in that lane and they were walking in that lane, that house of the A6 is in that lane and Ajmeri said that they will go to his house as they had not met him since many days and would greet him and then go to their work. Again this evidence is not shown as an improvement over his statement under section 161 of the Cr. P. C.

845. His evidence about the main incident is that when they were

at some distance from the house of the A6, they saw the A2 standing outside his house looking around, at that time the A6 came out of the house in a hurry and said something to the A2, then they both went inside and at the same time the A4 entered the house from outside with a tea kettle. This evidence is tried to be shown as improvement during his cross-examination in paragraph 19 and when asked the reason why they are not in his statement, he said that he could not assign any reason, but the learned SPP submitted that it can be so gathered from the sentences. Admittedly, we cannot look into the statement under section 161 of the Cr. P. C., however, the submission of the learned SPP is not countered and the witness was not given a suggestion that he had not stated so to the police when he gave his statement and there is no further cross-examination about it. Thus, this evidence cannot be termed as an improvement. It is in his evidence further that they both entered the house behind the A4, he saw 3-4 more persons sitting there out of whom one was doing something with the wire, that there was white and black coloured powder on the newspapers and when they greeted those persons, the A6 said that they are busy in some work and they will meet afterwards, therefore, they came out of the house. Now again this evidence is not brought on record as an improvement or as a contradiction. There is considerable cross-examination to him in respect of this evidence. His cross-examination by learned advocate Rasal in paragraph 13 is in respect of the locality or surrounding of the house of the A6 and he described what is there and what is not and positive sentences have

come on record that they were at the house of the A6 on that day for hardly 3-4 minutes and that, this is important, he did not see the family members of the A6 there at that time and the persons were sitting on the floor. As against this *vis-a-vis* the evidence of Sr. PI Tajne, PW-161, and panch witness Pritam Mhatre, PW-58, and the panchanama of seizure Ext. 716, is his evidence about seeing a cot and it being in front of the door which they entered and there being a half wall near the cot. This evidence is obviously incorrect. There is nothing other than this in his cross-examination by learned advocate Rasal and he denied the suggestion that he never went to the house of the A6 and did not see any person in his house. In his cross-examination by learned advocate Shetty in paragraph 18 though initially he stated that he does not remember the exact day or date on which they had gone to Shivaji Nagar, Govandi, it has come in the cross-examination by learned advocate Wahab Khan in paragraph 26 that it was probably a Sunday and as mentioned earlier he stated in his chief-examination that he had so gone with Ajmeri 4-5 days before the blasts to Shivaji Nagar, Govandi which is not brought on record as an improvement and this is again repeated by him when repeatedly asked during his cross-examination by learned advocate Shetty in paragraph 17 as well as by learned advocate Wahab Khan in paragraph 26 and about which he stated that this was an important fact, but cannot state exactly whether it was 4-5 days before and the ATS officer did not ask him to tell the exact date when he took the statement and then he contradicted the portion from his statement Ext. 1657(5) wherein he had stated to

the police that he had gone 2-3 days before and could not assign any reason why it is not mentioned that he had gone there 4-5 days before. Thus, he has stuck with the version and submissions are made by the learned advocates for the defence and also in the written submission that 4-5 days before the date of the incident means 6th or 7th of July, 2006, which is not as per the allegations of the prosecution and this shows that the witness is deposing falsely and infact he did not go there on that day. In this respect the learned SPP submitted that this is just a manner of speaking and he can understand when a person gives a specific date and then it turns out to be not correct. To my mind, this can be termed as a figurative manner of speaking which departs from a literal use of words. This is commonly observed in India wherein people speak in general terms as speaking about the distance of a particular house or locality, they say as it is just four steps away or that it is just 10-15 minutes. Therefore, much will not turn or whether it is 4-5 days or it is 2-3 days though the witness denying that he had stated so to the police. Leaving all this aside, even if we count backwards from 11/07/06 the fourth day will be 08/07/06. Thus, no inference can be drawn from this inconsistency or contradiction to hold that the witness had not gone there at all.

846. During his further cross-examination by learned advocate Shetty in paragraph 18 he again described the locality around the house of the A6 and it is not controverted by pointing out something different. Here again he committed a mistake about the cot that he purportedly saw in the house, because he stated that he could not

tell the direction of the cot or its measurement and incorrectly stated that it was not box type and was horizontal to the door. This plus his answer that he did not enter the house, but he stood at the door shows that he had not entered the house of the A6. Similarly, in his cross-examination by learned advocate Wahab Khan in paragraph 28, it has come that no one stopped Ajmeri from going inside the room, that the door of the room was open, that they went there, that one could see the room inside from the door and he did not talk with Ajmeri when he was in the room. These admissions plus the portion Ext. 1657(7) which reads that he and Ajmeri were talking with the A6 and during their talks the A4 gave them tea, establish that he had not gone inside the house of the A6.

847. However, he having described the surroundings and locality near the house of the A6 during the cross-examination by all the learned advocates and his answers in cross-examination by learned advocate Shetty in paragraph 19 that he parked the motorcycle at a distance of 20-25 steps from the house of the A6 on the road outside the lane, that they were near the motorcycle when they first saw A2 outside the house of the A6, that they parked the motorcycle there for going to the house of the A6 and his answers in paragraph 28 during the cross-examination by learned advocate Wahab Khan that he had first seen the A2 from the distance of 20-25 steps and there was no other person there plus he being asked and he stating that it did not happen that he had stated to the police that at that time they had an occasion to go from the side of the house of the A6 whom they knew and who was connected with the SIMI organisation and,

this is important, that at that time the said mentioned SIMI activist, i.e., the A6, talked with the A2 outside his house, then again went inside, establish that he had in fact gone to the house of the A6 on that day. Irrespective of the inconsistencies about the days before the blast before which he had gone there, these things show that his evidence about going there is unimpeached as it has remained consistent even during searching and repeated cross-examination.

848. Another issue that was raised was in respect of whether he and Ajmeri had gone there on the motorcycle of Ajmeri or on his motorcycle. His evidence in chief-examination means that they had gone on the motorcycle of Ajmeri, but, it has come in the cross-examination by learned advocate Shetty that it was his motorcycle on which they had gone there. His evidence was over on 14/03/11 and after about one and a half years on obtaining the documents under the RTI Act, he was recalled and during his further cross-examination by learned advocate Sharif Shaikh it came that the motorcycle No. MH-03-AG-794 is registered in the name of his brother Sameer Khan, which he was using since 2006-07. This number was obtained from him during his cross-examination and then the research was made by the accused. however, it turned out to be futile because he turned tables on the defence by denying that he does not know which motorcycle he was using when he had gone to Govandi 4-5 days before the blasts and explained that he had a Splendor motorcycle that was also in the name of his brother Sameer Khan bearing registration no. MH-03-X-7550. This explanation and positive evidence has not been controverted. In fact

it appears that in his statement to the police the witness did not state about going on motorcycle to Govandi, either his or Ajmeri's, and this came during his chief-examination. Infact, as is again submitted by the learned SPP, the witness giving his motorcycle number as MH-03-AG-794 does not mean that he had gone on that motorcycle to the house of the A6. Learned SPP submitted that he is thankful to the learned advocates for clearing this ambiguity in their minds.

849. Other than the above there is nothing in the cross-examination of the witness to discredit his version particularly about the aspect of he having gone with Ajmeri on that day to the house of the A6. That he did not enter the house of the A6 is established as described above and it is in this respect that his evidence that he had seen the A7 joining the wires and he identified him in the court as the same person is inconsistent with the contents of the memorandum of the test identification parade Ext. 834 wherein he identified the A4 as the person who was joining the wires. During his cross-examination learned advocate Wahab Khan asked the A4 to stand up and asked the witness whether he had seen the A4 joining the wires, thereupon, he affirmed it initially, but again denied it and also denied the suggestion that he had identified the A4 in the prison as the person who was joining the wires. Alongwith this are his answers in further cross-examination in paragraph 40 on 04/02/14 that when they went to the lane he stood outside and only Ajmeri Shaikh went inside the house of the A6 and that he did not feel it necessary to go inside the house. A submission was made during the

arguments and in the written submission that in view of the answers given by the witness in further cross-examination on 04/02/14 that he was called in the Unit VII in the Crime Branch at Ghatkopar on 13/07/06 in connection with the bomb blasts that had taken place on 11/07/06, that he did not tell those officers that he visited the house of the A6, 4-5 days before the blasts and saw what he described earlier. Thereafter he was put a question that he did not tell this to the Crime Branch officer as he had not seen it personally, but was informed by Ajmeri Shaikh to which he answered in the affirmative. It is submitted that this means that the witness had not gone to the house of the A6 and it is only because Ajmeri Shaikh told him that he stated so. I do not think that such an inference can be drawn because his further statement that he did not tell it because Ajmeri Shaikh told him when he read the Mumbai Mirror means that the witness did not understand the connection of the question to the actual incident of he going to the house of the A6 and it appears that what Ajmeri is informing him about what he saw in the house of the A6.

850. In respect of he and Ajmeri Shaikh giving information about what they saw at the house of the A6 on that day, it has come in the evidence of Amar Khan, PW-75, that Ajmeri Shaikh came to him with a copy of Mumbai Mirror dtd. 01/10/06 Ext. 810 and told him that the photograph of A6 was published in the news item concerning the blasts, that he read it and at that time he and Ajmeri thought that they should tell someone about the incident that they saw 4-5 days before the blasts at the house of the A6 so that the real

accused would be caught. This evidence is not brought on record as an improvement or a contradiction, however, it is the subject matter of considerable agitation and cross-examination. It has come in paragraph 11 of his cross-examination by learned advocate Rasal as a positive sentence that it is only on 01/10/06 that his friend Ajmeri showed a news item in the Mumbai Mirror. He admitted that he came to know about the blasts on the same day at night, that he used to read in the newspapers about the blasts thereafter and used to watch the television news also, that Ajmeri used to meet him after the blasts, but he cannot tell how many times and he did not come to know during this time that the A2, A4 and A6 were arrested and he came to know about the A6 only when he read the news in the Mumbai Mirror on 01/10/06. A strange question is asked and he stated that he did not make any efforts to go to the house of the A6 and find out the factual position. Who will take the risk by going to the house of an accused, who is caught in a bomb blasts case? He candidly admitted that he did not come to know during the period from 01/10/06 to 28/10/06 as to which police station was inquiring into the blasts and did not think of going to the concerned police station and telling them about the incident when he came to know about the places where the blasts had taken place. I do not know how a person will co-relate the aspect of seeing certain persons at a particular place a few days before the blasts with the happenings of the blasts, though he may come to know that they were arrested in that case. This aspect can be explained and as is submitted by the learned SPP seeing of the photograph of the accused in the

newspaper might have triggered the memory of the witness to correlate the incident with the happenings of the blasts. It has come in his cross-examination by learned advocate Shetty that he identified the A6 on seeing the photograph in the Mumbai Mirror on 01/10/06 and, this is important, and is a positive uncontroverted statement made by him, that on reading the news item they thought that bombs were prepared in the house of the A6.

851. Of course, there was an issue about the entire issue of Mumbai Mirror dtd. 01/10/06 being given to the police when they went to the ATS office, because Ext. 810 consists of the first and the last page. In this connection he admitted in his cross-examination that they had taken the entire issue of the Mumbai Mirror with them on 28/10/06 and given it to the police, that Ajmeri did not read the news item to him on 01/10/06, that he was present when he produced the paper before the police, but did not read the news item to the police. A small portion was confronted to him and proved as a contradiction Ext. 1657(2) about he telling the police that Ajmeri read over the news item to him. This is not much material and does not affect his evidence about the issue of Mumbai Mirror Ext. 810 being handed over to the police. In this connection he also admitted that it is in the news item that the A6 was detained on 14/07/06 by Mumbai police in connection with the bomb blasts and that the news is continued on page 8, but that page is not before the court. To my mind, the contents of the news item further on page 8 about the investigation, etc., are not so material and to my mind what is material is the photograph of the A6 and the

information on the first page itself that the A6 was detained by the Mumbai police on July, 14, three days after the blasts and who told them as to how the bombs were put together. The news item as it is, does not have any evidential value and the relevant thing that triggered the memory of the witness is seeing the photograph and the information that the A6 had been arrested in connection with the blasts. Thus, whether or not the entire issue of Mumbai Mirror dtd. 01/10/06 is before the court and whether the evidence of Amar Khan, PW-75, read with the evidence of PI Alaknure, PW-153, that the witness had not given the newspaper to him and the evidence of PC Ambekar, PW-76, that this newspaper was given to the police, does not make much difference, because the fact remains that the page containing the relevant information, i.e., photograph of the accused and that he was detained in connection with the blast, is before the court and is not disputed as being false or concocted.

852. Thereafter comes the most disputed evidence by Amar Khan, PW-75, as well as PC Ambekar, PW-76. Subsequent to his evidence about Ajmeri telling him about the photograph of the A6 being published on 01/10/06 in the Mumbai Mirror, it has come in the evidence of Amar Khan, PW-75, that after thinking it in deep Ajmeri said to him on 28/10/06 that they would tell about this to PC Vijay Ambekar, i.e., PW-76, who resides in his area, therefore they went to his house, that he took them to the office of the ATS at Nagpada, talked with some senior officer, that they were called inside the cabin of that officer, they talked with him and told PC Ambekar, PW-76, to take them to the ATS office at Bhoiwada. This evidence is

not shown as an improvement or a contradiction and the only improvement that is shown is that family of PC Ambekar, PW-76, was present in his house, therefore, they called him outside and told him about the incident. This is not so material and infact it is corroborated by PC Ambekar, PW-76, in whose evidence it has come that Ajmeri Shaikh came to his house at 10 or 10.30 a.m. with his friend Amar Khan, PW-75, told him that he wants to tell him about something special and confidential and as there were children in the house they went outside to a secluded place. This evidence by him is also not brought on record as an improvement over his statement. Now though, Amar Khan, PW-75, did not say that they showed the issue of Mumbai Mirror Ext. 810 to PC Ambekar, PW-76, PC Ambekar, PW-76, stated about it and also stated that it was in the news item that 2-3 days before bomb blasts, bombs were prepared in the house of Mohd. Ali in the presence of some Pakistani persons and he identified Ext. 810. He admitted in his cross-examination that he did not see the news item in the Mumbai Mirror before Ajmeri Shaikh showed it to him on 28/10/06. He admitted that till today he has not read the Mumbai Mirror dtd. 01/10/06, but stated that the news item was on the front page and when given Ext. 810 and asked whether it is mentioned that 2-3 days before the blasts bombs were assembled in the house of the A6 by Pakistani nationals he admitted that on reading the first page these things are not in the news item. If this is read in context with his earlier answers that as Ajmeri personally told him about it he did not read the news item and he cannot tell what was in the news item, shows that he reading

the news item or not is not of much consequence, because the relevant fact is about Ajmeri and Amar Khan, PW-75, coming to him on that day with the said newspaper. Amar Khan, PW-75's evidence that they called PC Ambekar, PW-76, outside and told him outside, though is shown as an improvement, it is a natural conduct and has to be waived in view of his subsequent evidence that PC Ambekar, PW-76, told them that they should inform about this to the ATS officers. What they told PC Ambekar, PW-76, about the incident is described by PC Ambekar, PW-76, that Ajmeri Shaikh told him that 2-3 days before the blasts he and Amar Khan, PW-75, had gone to Shivaji Nagar in Govandi in the afternoon, that they had gone to the house of the A6, their friend, as they had not met him since many months, that when they went to his house they saw A2, A4 and three unknown persons present in his house, that he wondered how A6, A2 and A4 were together, that they saw an electric wire in the hands of one unknown person, who was joining them and there were heaps of black, gray and white powder in front of other two unknown persons. This evidence is not brought on record as an improvement over his statement under section 161 of the Cr. P. C. and is not also controverted.

853. The evidence of Amar Khan, PW-75, that PC Ambekar, PW-76, took them to the office of the ATS at Nagpada, talked with some senior officer and that officer also talked with them and told PC Ambekar, PW-76, to take them to the ATS office at Bhoiwada is corroborated by PC Ambekar, PW-76, and he explained that he met DCP Nawal Bajaj of the ATS, told him about the information that he

had received and also told him that he had brought those two witnesses with him, thereupon DCP Bajaj asked him to call the two inside his office, heard the information that they had, on their request he assured them that their names would be kept secret and asked them to help the police in the investigation and told him to take the two persons to ACP Patil, PW-186, of ATS at Bhoiwada. This conduct of PC Ambekar, PW-76, is criticized on the basis of his answers that in 2006 he was attached to the Anti Dacoity Squad at Kurla(W), that PI Vijay Salaskar was the head of the squad and his answers in further cross-examination that PI Vijay Salaskar was deputed to the ATS and he had seen him making the investigation in this case and even then he did not report either to PI Salaskar or to API Alaknure and PSI Dalvi, who were investigating this case. It is argued that this conduct is unnatural because the witness did not report directly to his superiors, who were also investigating the same case, but went to the ATS officers. However, in this connection he explained in further cross-examination that he did not call any of them as he thought that if he would take the witnesses to a higher officer he would get the credit, that he was appreciated but did not get any certificate or monetary reward. Thus, this aspect does not affect his credibility or conduct. On the other hand, it has come in the cross-examination in paragraph 24 by learned advocate Rasal that it was the first time before the DCP Bajaj, that the witnesses requested that their names be kept secret, which shows that he is a truthful witness.

854. Amar Khan, PW-75, further stated about PC Ambekar, PW-76,

taking them to the ATS office at Bhoiwada, telling about them and the information that they had to 3-4 officers who were sitting in the room, they being called inside the room and they telling all that they knew to a superior officer who was there, he telling the other officers to take their statements as he had to go out and an officer taking there statement and they handing over the newspaper to them. PC Ambekar, PW-76, corroborated his version, gave specific names of ACP Patil and 3-4 other officers being there and they being informed in detail about the information, ACP Patil being in a hurry to go out and telling API Alaknure to record the statements and accordingly PI Alaknure, PW-153, recording the statement of Amar Khan, PW-75, first, then of Ajmeri Shaikh and then his statement. That is the end of the evidence given by PC Ambekar, PW-76, and his evidence as well as the evidence of Amar Khan, PW-75, is tried to be shown as a false evidence on the basis of the answers given by him in cross-examination as well as on the basis of station diary entires of the Crime Branch. It is submitted during the arguments by learned advocate Wahab Khan as well as in the written submissions by learned advocate Sharif Shaikh that PC Ambekar, PW-76, did not go to the Crime Branch on 28/10/06 after their work at the ATS office was over and the station diary entries show this. In this respect Amar Khan, PW-75 stated in his cross-examination that they went to the house of PC Ambekar, PW-76, at about 10.00 or 11.00 a.m., talked with him for about half an hour, that he does not know exactly where he was on duty at that time, but that he was at Kurla, that he does not know on what duty he was on 28/10/06, but he

was with them throughout the day and returned with them after their statements were recorded. In respect of his visit to the ATS office at Nagpada, he stated that he does not know the name of the officer to whom they were taken there and his evidence that there was no other officer in his cabin at that time, that he did not send any officer with them to Bhoiwada, but he sent PC Ambekar, PW-76, and did not give any forwarding letter for the Bhoiwada office to take their statements, are all positive statements also corroborated by PC Ambekar, PW-76. Further it has come as positive statements and which corroborate the evidence given by PC Ambekar, PW-76, that it was officer Patil to whom they first told about the incident and it was officer Alaknure who took their statements.

855. In respect of duties of PC Ambekar, PW-76, defence is relying on the station diary entries of the Crime Branch Exts. 3271 to 3273 which show that PC Ambekar, PW-76, having buckle no. 10988 had reported on 26, 27, 28 and 29/10/06 for night duty and there is no entry that he was on day duty. As against this, PC Ambekar, PW-76, stated in cross-examination that he does not remember at what time he reported for his duty on 27/10/06, but answered that he reported to duty at 11.00 a.m. on 29/10/06, which is falsified by these station diary entires. In my humble opinion, relevant would be whether he was on duty during the day and more particularly between 10.00 a.m. to 3.00 or 4.00 p.m. on 28/10/06 and then only if the station diary entires would have shown him on duty during these timings on that day, it could have been said that he is deposing falsely about Ajmeri Shaikh and Amar Khan, PW-75, coming to him

on that day and whatever he and Amar Khan, PW-75, deposed about going to the ATS office, etc., being false. On the other hand, it definitely shows that he was not on day duty on 28/10/06 and may be because of lapse of nearly five years he stated offhand that he reported to duty at about 11.00 a.m. on 29/10/06, however his inability to remember at what time he reported for his duty on 27/10/06 and till what time he was on duty on 29/10/06 as many years have passed endorses this inference. It is at this stage itself that he made a positive statement that he did not report to duty in the morning or during the whole day on 28/10/06. To the questions in respect of making of station diary entires, his answers are that they report to an officer when they go on duty, but do not make any entry or report about going back from duty in any register, that incharge ASI or senior most HC makes the entry and he does not know whether the entires of he reporting the duty on 27, 28 and 29/10/06 are made or not. Thus, making of station diary entires in respect of policeman coming on duty is not by the concerned policeman, but by the person who is incharge of the station diary register. Thus, insofar as his absence in his office on 28/10/06 during the day, the station diary entires infact explain his absence by showing that he was on night duty.

856. Next aspect is whether really PI Alaknure, PW-153, had recorded the statements of these two witnesses and Ajmeri Shaikh. Now it has come as positive statements during the evidence of Amar Khan, PW-75, that it was PI Alaknure, PW-153, as he then was, who had recorded their statements and PC Ambekar, PW-76, has also

endorsed this. PI Alaknure, PW-153, did not state in his chief-examination that he had recorded their statements, however, on going through the case diary of C. R. No. 156/06 he stated that he had recorded the statements of these three witnesses on 28/10/06, but the timings are not mentioned in the station diary entry, that he does not remember whose statement he recorded first and at what time he started recording the statement, which is not much relevant. The portions that were confronted to Amar Khan, PW-75, and to PC Ambekar, PW-76, were got proved and the improvements that they made were also brought on record. The improvements in the evidence of Amar Khan, PW-75, were in respect of two or three words in a sentence and not the entire sentences. The improvements in respect of PC Ambekar, PW-76, is apparently inconsequential, because it states about PC Ambekar, PW-76, not having stated before him that he had gone from Nagpada to ATS office at Bhoiwada upto the recording of their statements by PI Alaknure, PW-153. Other than this, there was nothing in his cross-examination on this aspect till the date of his cross-examination was completed on 13/10/11. After obtaining certified copies of the station diary entries, he was recalled for re-cross-examination after a period of about ten months after his evidence was recorded on 13/10/06. He was confronted with the station diary entries concerning PC Ambekar, PW-76, of 27, 28 and 29/10/06. About himself he was suggested and he denied the suggestion that he was not present at ATS office at Bhoiwada between 1.00 p.m. to 3.00 p.m. and therefore did not record the statements of the said three witnesses. He explained that he cannot

say whether the station diary entries are correctly made, because they are made by the incharge head constable of the station diary. It was submitted during the arguments and even in the written submissions that entry no. 2 of 28/10/06, Ext. 3092, in the station diary register of the Crime Branch shows that he came on duty at 10.00 a.m. and the next entry shows that he left for going to the office of the ACP at Bhoiwada. The entry no. 4 shows that he was not at the office of the ATS at Bhoiwada when the statements of three witnesses were recorded, because as per Amar Khan, PW-75, they had gone to the said office at about 2.00-3.00 p.m. It may have been so stated by Amar Khan, PW-75, but PC Ambekar, PW-76, stated that he met PI Alaknure, PW-153, on that day at about 1.00 or 1.15 p.m. Amar Khan, PW-75, may have given the vague timings because the entries will not lie and because the station diary entries of the Crime Branch that are pointed out definitely show that PI Alaknure, PW-153, had gone to the office of the ACP, Bhoiwada on that day, may be reaching there some time before 1.45 p.m. PC Ambekar, PW-76's evidence about the timing is not controverted. In this context the learned SPP re-examined the witness in respect of entries about recording of statement of witnesses and it has come in his re-cross-examination that the fact of recording of statements of these witnesses is mentioned in the case diary, but not mentioned in the station diary. His re-cross-examination has not disturbed his evidence and for the sake of ascertaining myself I have perused the case diary of 28/10/06 of C. R. No. 05/06 of the ATS and it mentions about recording of statements of Amar Khan, PW-75,

Ajmeri Shaikh and PC Ambekar, PW-76, by PI Alaknure, PW-153, and the information that Amar Khan, PW-75, gave is reproduced in detail. Thus merely on the basis of inconsistencies in the timings in the station diary entries as well as oral evidence by the witnesses, does not make the evidence of either Amar Khan, PW-75, PC Ambekar, PW-76, or PI Alaknure, PW-153 suspect and it is honest and therefore reliable. I do not think that a police officer will go to such an extent to fabricate the evidence. PI Alaknure, PW-153, was cross-examined in respect of his association with PI Salaskar and about Ajmeri Shaikh being a witness on the point of conspiracy in the case of Gateway of India and Zaveri Bazar blasts that was investigated by ACP Walishetty and he expressed his ignorance about it and he denied the suggestion that on the say of PI Salaskar he planted these three witnesses in this case and recorded their statements. He admitted that they did not give the copy of Mumbai Mirror comprising of all pages to him and when shown Ext. 810, he stated incorrectly that the witnesses had not given this newspaper to him and does not remember whether the ATS showed it to him and answered that he did not give it to the ATS. As mentioned earlier the relevance of the said newspaper is only in respect of memory of Amar Khan, PW-75, being triggered and they co-relating what they had seen at the house of the A6 with the incident of the blasts on 11/07/06. Memory of the witness may falter but that does not make them entirely unbelievable and moreso when two witnesses, i.e., Amar Khan, PW-75, and PC Ambekar, PW-76, stated about it.

857. The above is the discussion in respect of the evidence given by

Amar Khan, PW-75, about what he saw on the day when he and Ajmeri Shaikh had gone to the house of the A6 and his evidence about what happened on 01/10/06 and on 28/10/06 is not impeached in his cross-examination and it is corroborated by the evidence of PC Ambekar, PW-76, and PI Alaknure, PW-153. The evidence of these three witnesses is criticized on several counts by learned advocate Wahab Khan during his oral submissions and by learned advocate Sharif Shaikh in his written submissions, which in respect of the witness Amar Khan, PW-75, runs into as many as 70 pages. Most of the points have been dealt with in the above discussion, but as he is an important witness from the point of view of the prosecution as well as the defence, I will deal briefly with the points. Learned advocate Shetty submitted in brief about the evidence of these two witnesses that PC Ambekar, PW-76, was attached to the same Cell of the Crime Branch as PI Alaknure, PW-153, and to the Cell of PI Salaskar, that Ajmeri Shaikh who had brought the newspaper is not examined. If Ajmeri Shaikh would not have come to him, Amar Khan, PW-75, would not have gone on his own and informed the police and at the same time it is clear that because of the previous cases against Amar Khan, PW-75, he is under the thumb of the police and has given the statement as per their request. This aspect is also submitted by the other advocates. It has come on record during the cross-examination of Amar Khan, PW-75, that he heard about the bomb blasts at Gateway of India and Zaveri Bazar and he and Ajmeri Shaikh had talked about them before 2006 during which Ajmeri Shaikh told him that he had given

the statement to the Crime Branch in that case against the two accused. In further cross-examination he admitted that Ajmeri Shaikh is married, but he does not know his wife's maiden name and also admitted that she is a converted Muslim. As against this PC Ambekar, PW-76, though admitted that he knows Ajmeri Shaikh since many years, denied that their Unit had investigated the blasts of Gateway of India and Zaveri Bazar. He also admitted that he knew Ajmeri Shaikh prior to the blasts and he was a witness in the case of both the blasts as Ajmeri Shaikh had so told him once. It has also come in his evidence that Ajmeri Shaikh is available today, i.e., on the day of his evidence. He expressed ignorance as to whether PI Salaskar was knowing Ajmeri since the Gateway of India, Zaveri Bazar and Ghatkopar blasts and made a positive statement that PI Salaskar had not called Ajmeri Shaikh to Kurla Unit in his presence before 28/10/06. He emphatically turned down the suggestion that PI Salaskar was pressurizing Ajmeri Shaikh to give evidence in this case as he had given in the earlier case, that he prepared a false story with his help. Learned advocate Wahab Khan made submissions that the investigating officer of those blasts was one ACP Walishetty and PI Salaskar was one of the assisting officer, that there were two accused, that they were exonerated by the POTA review committee and during the trial of that case Ajmeri was examined, etc., and alleged that the names of the witnesses in the copies of the chargesheet supplied to the accused were truncated, therefore, they could not pinpoint with accuracy, but on comparing the statement of Ajmeri Shaikh in this case with the statement in

that case, he realized that the pattern of the statement concerning the issue was substantially tallying and therefore the introduction of Amar Khan, PW-75, without examining Ajmeri Shaikh shows that Amar Khan, PW-75, is a got up witness and introduced by PI Salaskar. To my mind, all these submissions are not backed by any documents about Gateway of India and Zaveri Bazar blasts cases. The fact remains that Ajmeri Shaikh has not been examined, but Amar Khan, PW-75, who had equally witnessed all the events on the day when they had went to the house of the A6, except about going into the house, has given evidence, which has been proved to be a cogent evidence and corroborated by the evidence of PC Ambekar, PW-76. Learned SPP submits that there was no point in duplicating the evidence by examining a similar witness on the same point and even assuming that Ajmeri Shaikh is a witness in earlier cases, those cases were filed by the Crime Branch and it is not shown that Ajmeri Shaikh had any criminal antecedents or connection with the police. As I said earlier, the submissions on this point are not backed up by any document of that case and it is not shown that the evidence of Ajmeri Shaikh in that case was not believed or shown to be false. Same things are repeated extensively in the written submissions by learned advocate Sharif Shaikh and another baseless submission is made that Ajmeri Shaikh falsely deposed that his wife and in-laws are born by Muslims, which is disproved by the contents of the gazette Ext. 3393 obtained by the A4 under the RTI Act, which shows that Manisha Raghunath Patil is the wife of Ajmeri Shaikh and her name is changed to Amreen Ajmeri Shaikh. I can't but help

laugh at such submissions which are based on the documents that are not produced like certified copy of the deposition given by Ajmeri Shaikh in that case and the court holding that he has given false evidence. Thus Ajmeri Shaikh being not examined as a witness does not affect the evidence given by Amar Khan, PW-75, as well as PC Ambekar, PW-76.

858. Learned advocate then submitted about the newspaper Ext. 810, and the inconsistent answers given by PI Alaknure, PW-153, and ACP Patil, PW-186, in respect of Ajmeri Shaikh handing over the newspaper to PI Alaknure, PW-153. I have already considered this aspect. Learned advocate submits that as per the station diary entry no. 6 of 5.05 a.m. on 12/07/06 of Park Site Police Station, certified copy of which is at Ext. 3360, Amar Khan, PW-75, was called for inquiry with regard to the bomb blasts, his statement was recorded and he was allowed to go, which suggests that he himself was a suspect. He submits that if the witness would have seen anything suspicious as claimed by him during the surrounding days of the bomb blasts, he would have definitely reported to the police that 4-5 days before, he had gone to the house of the A6 and had seen what he deposed. He submits that he does not think that any prudent man will need anything more than this for expressing his suspicion, because it is his claim that he had seen A2 and A4 outside the house and in the house he saw black and white powder on the newspaper and some persons connecting wires and immediately on the next day morning he was picked up, but he does not say anything. He submits that his statement recorded by Park Site Police Station is not

produced with the chargesheet and his name is suppressed. In this connection the learned SPP submitted that what is important is for what purpose the witness was called and what was being asked and the witness has merely clarified this aspect. He submits that the defence has cleared whatever ambiguity was left in the evidence of this witness.

859. In his further cross-examination on 29/08/12, i.e., one and a half year after his deposition, Amar Khan, PW-75, stated that he was called to the Parksite Police Station for one or two days after the blasts for inquiry and his statement was recorded. He admitted that he had not stated about his visit to Govandi 4-5 days before the blasts to the police officer at that time. The reason that he gave for this is very very important, because he said that at that time he was not knowing its relevance and he came to know only when he saw the photo in the Mumbai Mirror. Again in his further cross-examination on 04/02/14 as per the order of the High Court, he admitted that he was called at the Unit VII of the Crime Branch at Ghatkopar on 13/07/06 in connection with the bomb blasts that had taken place on 11/07/06. What he stated further is again very important. He stated that the officers inquired with him in general about his mobile number and his whereabouts prior to and subsequent to 11/07/06 and asked him as to how he came to know about the blasts, inquired with him about his friends whether he had any cases against him and against his friends and he had stated about names of five friends. He also admitted that he was called to the Crime Branch many times for inquiry after 13/07/06. Learned

SPP re-examined him for clearing the ambiguity with regard to the inquiry and he reiterated what he stated earlier emphasizing on the aspect that the Crime Branch officers did not inquire with him about any other thing except his mobile number and his whereabouts prior to and subsequent to 11/07/06 and the other things. Thus, to my mind, since the witness had a background of being a SIMI activist, he must have been called to ascertain whether he had anything to do in connection with the bomb blasts. The contents of the true photo copy of station diary entry no. 6 dtd. 12/07/06 at 5.05 a.m., certified photo copy of which is at Ext. 3360, shows that API Tambe brought Amar Khan, PW-75, Irfan Abdul Salam and Hajim Rashid Kazi to the police station as they are on the record of the police and are accused in the case of banned organisation SIMI. They were found at their houses and were brought for inquiry. The station diary entry no. 7 at 1600 hours on 13/07/06 of the Unit-VII of the DCB CID, certified true photocopy of which is at Ext. 4210, shows that the SIMI activists Mohd. Hanif Abdul and Amar Khan, PW-75, were brought for inquiry to the office and after inquiry were asked to go back. These entries endorse my inference and submissions by the learned SPP that Amar Khan, PW-75, was called for making inquiries in respect of his whereabouts in view of his background as being a SIMI activist. I think that such a person will be more afraid when so called because of the fear of being implicated and there can be no reason for the police to have asked questions to him about seeing any suspicious activity, because till that time the police also do not know that the bombs were assembled in the house of the A6 on 8, 9

and 10/07/06. Thus, no fault can be found with the conduct of Amar Khan, PW-75, in not informing the police about what he had seen 4-5 days before, because infact he had only seen A2, A4 and A6 at the house of the accused and as per his evidence had seen some persons with black and white powder in front of them and a person joining wires. How he could visualize that it was a suspicious thing and/or that they were assembling bombs? This would have positively struck to him and triggered his memory only on seeing the photograph of A6 and caption on the first page that the A6 made all the bombs in his house and the news item that the A6 has emerged as the main person instrumental in assembling all the seven bombs that were triggered of on 11th July, 2006. No other inference but this can be drawn.

860. Learned advocate also criticized the conduct of this witness as well as Ajmeri Shaikh as being abnormal though they noticed how the A2, A4 and A6 were behaving on that day and though they noticed the white and black powder. The above observations cover these submissions and also the submission that even after seeing the news item on 01/10/06 they think it over for 28 days and this delay is not properly explained by the prosecution. In this context the explanation given by Amar Khan, PW-75 is very relevant and convincing. He admitted in paragraph 11 of his cross-examination that he met Ajmeri Shaikh many times from 01/10/06 to 28/10/06, but did not come to know which police station was inquiring into the blasts, that he came to know from the news at what places the blasts had taken place, but did not think of going to the concerned

police station and telling them about the incident, that he came to know about the progress of the investigation and as to who was investigating the case. His explanation to this is very reasonable and acceptable that as they were thinking about going through the proper channel to tell about the incident, they did not go to the authority investigating the case. Thus, this aspect explains the delay reasonably and does not discredit the evidence.

861. Learned advocate submits that the witness is lying about the cases against him which shows that he is in the habit of lying and it is his case that it is because of tutoring by the ATS, which is also evident from the changing stories about whose motorcycle was taken. I do not think that the witness has said anything about his association or one can say attendance at the programs of SIMI. It is in his chief-examination that he knew that the A8 was a SIMI activist and even then he had gone with him on one or two occasions. His evidence in chief-examination itself about what used to happen in the SIMI programs and about he being arrested by Parksite Police Station in 2001 alongwith A8 and Irfan on the allegation that they are SIMI activists makes it very clear that he is not hiding anything. This is also clear from the details that he gave about the SIMI programs in paragraph 16 of his cross-examination and though a portion from his statement was brought on record as contradiction in which he had stated that Irfan and Imran were active members of SIMI, he had not deposed about it. Thus whether it can be said to be a contradiction is a question. He admitted his arrest in C. R. No. 877/01 of Parksite Police Station registered on 28/09/01 for the

offences under sections 10 and 13 of the UA(P)A and also admitted that SIMI had conducted a morcha at Azad Maidan on 15/10/00 against Israel and he was in the photograph that was published in the Times of India dtd. 16/10/00. He denied a suggestion that he was arrested in C. R. No. 862/01 of Parksite Police Station for the offences under section 102 of the Bombay Police Act and in LAC Case No. 2361/00 under the Bombay Police Act for possession of weapons and on the allegation that they were doing SIMI activities. Thus, it cannot be said that he hid something. In this context in the written submissions by learned advocate Sharif Shaikh, the information under the RTI Act given by PI Pawar, DW-25, Ext. 3086, is relied upon to show the existence of the cases against him and he submitted that in a short span of two years these offences were registered against him and the evidence of this witness has gone unchallenged. The contents of Ext. 3086 establish that LAC No. 2361/00, 862/01 and 877/01 were registered against the witness. Of course, this is only an information under the RTI Act, but even if it is considered, except the allegations in LAC Case No. 877/01, the allegation in the other two crimes are under the Bombay Police Act in respect of the obstruction to traffic and breach of order of prohibiting assembling in public places. The list of arrested accused in LAC Case No. 877/01 which contains the allegations under the UA(P)A shows that A8 in the present case is the A1 in that case. I do not see how this will discredit the evidence of this witness. On the other hand, it can be said that this is the reason why he identified the A2, A4 and A6, who were alleged to be SIMI members and about

whom his evidence in chief-examination is not controverted wherein he stated that he had met them in the programs of SIMI that he attended. Once again a baseless submission is made in the written submissions by learned advocate Sharif Shaikh that this type of person can easily be approached by the police on the promise that if he becomes a witness and deposes as per their wish, the cases against him will be finalized and he will be acquitted and this is what has happened in the present matter because he was acquitted in all these three cases after his deposition in the case. No other evidence is pointed out in support of this submission. A8 produced certified copy of judgement in C. C. No. 847/PS/05 concerning the LAC Case No. 877/01, Ext. 4273, dtd. 09/07/13 by which the metropolitan magistrate acquitted the A8 and seven others including Amar Khan, PW-75. Even otherwise, cases are tried by courts and their outcome is not decided by the police officers. This aspect, therefore, does not affect his credibility.

862. Learned advocate submits that every time Ajmeri is a master, he takes Amar Khan, PW-75, to Govandi, he takes him to the house of the A6, he enters the house of the A6, Ajmeri comes to him with the issue of Mumbai Mirror on 01/10/06 and Ajmeri takes him to PC Ambekar, PW-76. He submits that the delay of 28 days from the date of the newspaper till their statements were recorded is not explained by the prosecution in the light of the fact that it can be gathered that Ajmeri Shaikh was a witness in the earlier bomb blasts. Thus the strategy that is used by the police is that once they had used Ajmeri Shaikh and now Amar Khan, PW-75, is the second person who is

used as a stepny (spare wheel). This is in respect of nearly all panch witnesses or eyewitnesses, who are either acquainted with the police having acted as panchas for them and this cannot be a co-incidence. To my mind, this has already been explained and merely because Ajmeri Shaikh was leading Amar Khan, PW-75, or it was because of him that Amar Khan, PW-75, went to the places, it cannot be said that he is a got up witness. His evidence is about what he perceived and he has faced searching and lengthy cross-examination and withstood the test of cross-examination.

863. Learned advocate submits that suppression of the names and identities of the witnesses prevented them from doing any research about them and on the other hand the ATS was blocking the information and they could get it under the RTI Act at the belated stage. This fact read with the evidence of the defence, i.e., the evidence given by the A2, A4, A6 and A7 and their CDRs, will show that the witness is not telling the truth. What evidence the accused gave in their defence will be discussed shortly.

864. It is submitted by the learned advocate that from all the above circumstances it can be gathered that Amar Khan, PW-75, is not telling the truth and Ajmeri Shaikh is instrumental in arranging him at the request of PI Salaskar and the pain that he is feeling can be gathered by his one answer as to why he has surrendered and he pointed out to the question and the answer in the further cross-examination on 04/02/14. The question was whether he is very much troubled in his entire life because of the cases in connection with SIMI against him to which he replied that one is always

troubled because of court cases. I think that rather than the inference that the learned advocate wants to draw from this answer, the positive inference can also be drawn that anyone is troubled because of the court cases. This does not lead to the inference that he was under the pressure of PI Salaskar.

865. Learned advocate pointed out to the contradictions Ext. 1657(1 to 8) in the statement of witness and submitted that therefore he is not a reliable witness. At the relevant stages the contradictions have been discussed and the question is whether they can be called as contradictions because the witness had not stated in his chief-examination the contents of the portions confronted to him and it was only during his cross-examination that he was asked about them to which he stated that he had not stated so. A pure contradiction would have been if the witness would have stated something in his chief-examination that was directly contradictory to what he had stated to the police. Even otherwise except the contradiction about the material aspect, i.e., going to the house of the A6, 4-5 days before the blasts and he and Ajmeri Shaikh going inside the house of the A6 and A6 talking with them and A4 giving tea to them, the others are not much material and do not amount to contradictions that would affect his evidence.

866. In respect of the evidence of PC Ambekar, PW-76, learned advocate Wahab Khan submits that the policeman himself is contradicting a portion of his statement. That portion is Ext.1658 and it says that his statement was recorded at the office of the ATS, Mumbai on that date. It has come in his cross-examination that the

Mumbai ATS office was at Nagpada and his statement was not recorded there. It has come in his evidence that he had gone to the office of the ATS at Bhoiwada and on the basis of this inconsistency it is so submitted by the learned advocate. To my mind, it is a minor thing because the ATS even has its office at Bhoiwada and the witness did not say that his statement was recorded at the head office. Learned advocate further submits that the evidence given by this witness in respect of going from Nagpada to the ATS office at Bhoiwada with the two witnesses and thereafter what happened there till the point of recording of his statement are improvements made by him, because he stated that he had stated all these things to PI Alaknure, PW-153. To my mind these things are unnecessary to be mentioned in the statement. Learned advocate relied on several station diary entries from 11/07/06 to 17/07/06 that are in the certified true copy of station diary entries of Crime Branch at Ext. 4214. The entries no doubt show that squad including PC Ambekar, PW-76, had gone at different places in connection with the investigation of the bomb blasts, however, that does not mean that the witness who is a police constable knew about what investigation was being made unless and of course his help was taken in preparing any panchanama or anything like that. He may have accompanied his superiors. Thus, this aspect will not discredit the evidence of PC Ambekar, PW-76.

867. The written submissions made by learned advocate Sharif Shaikh for A4 are required to be considered as they are running into as many as 70 pages, which consists of reproduction of nearly entire

deposition of all the three witnesses, however, it is unnecessary to discuss the similar points that have been raised by learned advocate Wahab Khan and have been discussed. Out of the 24 points that are discussed some are quite ridiculous. The first is the allegation that the witness Amar Khan, PW-75, has a communal background and the basis for this is that he is a member of BJP from 2007 to 2010. This means that he joined the BJP in the year 2002 after his arrest and release from prison in LAC Case No. 877/01. The allegation in that case is that he was a SIMI activist distributing the pamphlets and agitating demolition of Babri Masjid. In spite of this allegation he joined the BJP, the top leadership of which was accused in that case. This means that he switched from one communal organisation to another communal organisation and shows his mindset. It is also submitted that he was made a witness in this case in 2006 and it may be as a reward that he was made a ward president of BJP in 2007. This is nothing but ridiculous and it presupposes that SIMI as well as BJP are communal organisations. There is again some reference to Naroda Patia case in Gujarat which shows the involvement of BJP. It is totally irrelevant.

868. Next point is about Amar Khan, PW-75's evidence about attending SIMI programs and there being aggressive and provocative speeches about jihad in those programs and his cross-examination on that aspect. The questions are asked as to why he did not oppose the police though he was so vigilant when he realized that the speeches were provocative and aggressive and were anti national, why police did not catch any person and book him for the relevant

offence? This has not happened which means that there were no provocative and aggressive speeches. I do not understand why such questions are asked and how such inference can be drawn from the evidence of the witness. Even otherwise, it is not directly relevant to the fact in issue for which the witness is examined. It is then pointed out that the witness admitted that he does not know how many and who were the persons who gave the speeches on megaphone, which shows that he does not know anything about it and then it is alleged that the prosecution tried to improve the matter by re-examining the witness in the absence of the accused persons during which he stated that his statement in chief-examination relates to the aggressive and provocative talks of the A2 and A4 after the program at Azad Maidan, but at the same place when about 5-7 people were around and otherwise also whenever they used to meet, those two accused used to talk accordingly about jihad. A scandalous allegation is made that this improvement is made by the learned SPP in collusion with the witness, because in the earlier deposition he referred to speeches and now the speeches become talks and that too not in only two programs, but whenever they met and this improvement shows the falsity. It is pointed out that in the re-cross-examination the witness admitted that he did not state these things to the police when he gave statement. All these submissions are baseless and untenable legally because re-examination of a witness is not to cover up some lacuna in his evidence but it is only for obtaining an explanation about some ambiguity and it was done in the presence of the advocates for the accused.

869. One more ridiculous submission about his evidence about the last program of SIMI that was the morcha by SIMI activists that he attended being on 15/10/00, is inconsistent with the contents of the confessional statement Ext. 1060 allegedly given by the A4, wherein, it is mentioned that he started going to SIMI office in 2001. The defence has to accept one of the two things. Alongwith alleging that the false confession was prepared it cannot rely on the statement in it to disprove the evidence of this witness.

870. Next is about the cross-examination of Amar Khan, PW-75, in respect of his understanding the word jihad and it is submitted that when he says that the speeches or talks about jihad are anti-national, it shows that he is a got up witness. Learned advocate Wahab Khan has asked this thing to many witnesses and in my humble opinion irrespective of the dictionary meaning or the meaning that can be gathered from the holy Kuran, the meaning of this word as is used in common parlance nationally and internationally is something which is connected to religious war for the sake of Islam. One does not go about searching for dictionary or literally meanings of some words in order to understand them and use them. This aspect, therefore, does not affect his evidence.

871. Another baseless submission is that there is no shop that sells plaster of Paris material around the residence of A6, hence, there was no reason for Amar Khan, PW-75, and Ajmeri Shaikh to go to that area. I said baseless because no positive evidence has been led by the defence about the fact that is asserted that there is no plaster of Paris shop around the residence of the A6. About the inconsistent

statement made by the witness when he states in chief-examination that they went to Govandi to purchase plaster of paris material, but in cross-examination he stated that they had gone to meet labourers, it is alleged that this shifting of stand is only to improve and avoid questions in respect of address of the shop and therefore his evidence is not reliable. I said baseless because there is no cross-examination in that respect, on the other hand he was asked whether he knows the address of the house of the labourer, whom Ajmeri had gone to meet inside the lane.

872. It is alleged in respect of conduct of Amar Khan, PW-75, that he did not state in his oral evidence about police having called him to the Parksite Police Station on 12/07/06 in respect of Bomb blasts inquiry and he admitted it in his cross-examination, but he hid these things. I do not think how it is expected from Amar Khan, PW-75, to state about this, because that was not aspect for which he was examined and same can be said about the submission that he did not state about being called in the DCB CID Unit VII for inquiry on 13/07/06. Thus, no inference as is submitted can be drawn that the witness is hiding something and it is a cooked up story as they are got up witnesses. Next point is again a ridiculous point as it is submitted that the evidence of PC Ambekar, PW-76, is a hearsay evidence inasmuch as he stated that Ajmeri Shaikh had told him about the news item in the Mumbai Mirror and further about he and Amar Khan, PW-75, going to the house of the A6 and seeing the A2, A4, etc., and what some other persons were doing. As the prosecution did not examine Ajmeri Shaikh, who was the most

important witnesses, the evidence of PC Ambekar, PW-76, is hearsay. To my mind, how can it be hearsay when it is Amar Khan, PW-75, who had accompanied Ajmeri Shaikh to the house of the A6 and to the house of PC Ambekar, PW-76.

873. Another ridiculous submission is under the topic of falsity of PC Ambekar, PW-76, and PI Alaknure, PW-153. The cross-examination of both these witnesses in respect of the investigation of this crime by the Crime Branch at Kurla, more particularly by PI Salaskar's Unit, whether PC Ambekar, PW-76, remembers the faces of suspects A2, A3, A4, A10 and A11, whom he had taken to Bhabha hospital, whether PI Alaknure, PW-153 had seen the A2, A3, A4, A5, A9, A10 and A11 and witness Mohd. Alam, PW-59, in their office during 13/08/06 to 15/08/06 is reproduced in extenso. Placing reliance on the station diary entries in Ext. 3092, which mentions buckle numbers of policemen attached to that office and pointing out to the buckle numbers of the policemen mentioned in the medical papers of the Bhabha hospital Exts. 2061 to 2077, it is submitted that both these witnesses are running away from these aspects, hence their deposition is false and is required to be discarded. Thereafter, depositions of A4, A2, A6, A5, A10, A11 and A9 in respect of they being taken to the said unit of the Crime Branch, their alleged torture by the police officers, whose names are specifically mentioned and being taken to Bhabha hospital, where false records were prepared, are reproduced in extenso and it is submitted that now it is crystal clear from their evidence and the evidence of Dr. Ochaney, PW-179, that the said accused were taken

to the Anti Robbery Cell at Kurla and as both these witnesses are running away from accepting it, their evidence is not reliable, needs to be discarded and ultimately falsifies the evidence of Amar Khan, PW-75. To my mind, the ridiculousness of this submission is apparent. PC Ambekar, PW-76, has not denied the suggestion, but has answered that he does not remember. PI Alaknure, PW-153, has similarly answered some questions and denied some questions. The specific medical record showing PC Ambekar, PW-76, having taken A3 to the hospital, has not been confronted to him. How can you draw an inference from this that these two witnesses have deposed falsely and therefore they falsify the evidence of Amar Khan, PW-75? His evidence is an independent evidence decided by the cross-examination. How can the accused force and expect the police officers to accept whatever the accused are saying? Thus, this aspect alone will not discredit their version.

874. The possibility of the accused being shown to Amar Khan, PW-75, when they are produced before the court without veil and standing in the premises and corridor till called in the court is raised on the basis of the evidence of A4 as DW-38 that PI Mohite and some constables pointed him to the witness before his evidence. This is another ridiculous submission. Will it be legal to veil the accused even during the judicial custody? Can just such a possibility be used for discrediting the substantive evidence of identification by Amar Khan, PW-75, in the court? Obviously no.

875. In the next submission contents of the entires about calls in the CDRs of the mobiles of the A4 Ext. 3765(4) and of the A7 Ext.

4101 from 06/07/06 to 10/07/06 are pointed out in juxtaposition to the contents of the contradicted portion Ext. 1657(5) to submit that the CDR shows the falsity of the evidence of Amar Khan, PW-75, and the prosecution case. Submissions of the learned SPP about CDR need to be reiterated. He had submitted that the general proposition is that the CDR at the most shows the location of the handset and not of that person. It was observed by me that there cannot be a presumption that a mobile is always with a person and therefore the locations of the CDR will not establish the location of the person using it, because a mobile is not a body part of any person. In this connection the learned SPP submitted that direct evidence of Amar Khan, PW-75, is pitted against the inferential evidence by way of the entires in the CDRs. Learned SPP repeated the same submissions in connection with this submission made by the learned advocate for the accused and submitted that the onus is cast on this court to weigh these two things, on one hand is the evidence in the nature of abstract things like location of the mobile for which there would not be any means to ascertain as to who is actually possessing it at the relevant time. As against this on the other hand a concrete positive and physical evidence in the nature of deposition of witnesses whose version can be tested on the touchstone of cross-examination is before the court. This is the cardinal principle of appreciation of evidence and he submits that the court will find that there is a total imbalance in these two types of evidence and by the very nature of the evidence of the eyewitnesses this court will have to weigh it with inferential evidence. I will go in much more detail in respect of

entries in the calls of the CDRs of both the accused and the defence of alibi will be considered. Suffice it to say that the entries in the CDRs can be used only for drawing inference, whereas, oral evidence of a witness can be used in proof of a fact in issue. Obviously, the latter carries much weight and will prevail over the inferential evidence.

876. Next submission is that it is the prosecution case that bombs were assembled in the house of the A6 2-3 days before the blasts, however, Amar Khan, PW-75 has given evidence about what he saw outside and in the house of the A6, 4-5 days before the blasts. I have discussed this aspect already. However, again a ridiculous submission is made that the evidence of Amar Khan, PW-75, contradicts the confessional statement of A2, A3, A4, A6, A7 and A12 wherein they have mentioned that bombs were assembled on 8, 9 and 10/07/06. At the cost of repetition, I have to say that you have to accept one thing or the other thing. The evidence given by Amar Khan, PW-75, and PC Ambekar, PW-76, has been discussed independently and conclusion has been arrived at. This submission will rather work in the other way, which I will discuss at the relevant stage.

877. The last ridiculous submission relying on the station diary entires no. 8 dtd. 14/07/06 and 26/07/06, Exts. 4210 and 4206 respectively, in respect of inquiry with the A6 in the Unit-VII of the DCB, is that the only inference that can be drawn is that the whole story is cooked up and falsely prepared. How it is cooked up is not explained and merely because the A6 had been called on those two days for inquiry and allowed to go does not *ipso facto* mean that he

was given a clean chit. That was the inquiry by the Crime Branch and it is only when the ATS stepped in the picture and his complicity was revealed that he was arrested. It is not submitted as to how this affects the evidence given by Amar Khan, PW-75, and PC Ambekar, PW-76.

878. In respect of the evidence given by Amar Khan, PW-75, learned SPP submitted that what is significantly important is that this witness knows the A2, A4 and A6 as SIMI activists, but by pointing a finger at the others he cannot absolve himself, which is apparent from his deposition. He submits that he has made this submission because while appreciating the evidence of this witness, this court will have to consider the totality of his evidence on the background of this aspect and the probability that at that point of time, the witness may also be sharing the ideology of SIMI.

879. To my mind, the witness took the risk of saying that he had attended the SIMI programs. This can be shown as an admission in some proceeding against him and it can be inferred that he also was a SIMI activist. In fact he was arrested on the same allegation. So the question is as to why he took the risk? The only answer one can get is that he told whatever he saw and nothing more. He told whatever he knew about the A2, A4 and A6 as well as A8 and nothing more.

880. Learned SPP submits that Amar Khan, PW-75, has been cross-examined extensively on all possible aspects and he says in all fairness that there are some contradictions and some of them are even material, but not really very significant as to the fact in issue.

The discrepancies are many which can occur in anybody's evidence, e.g., in respect of the aspect of going to the house of the A6, whether he was driving or sitting on the pillion seat of the motorcycle, whether he saw the persons inside or outside, whether newspaper was given to the police or not, whether he read the news or not, etc. Several small small things are there and it appears that he was also called for inquiry and it is alleged that he did not disclose this fact to anybody at the earliest and his statement is after thought. He submits that everything that has come in the cross-examination and the answers are appreciated by taking a broader view. Even if the contradictions and omissions are taken into consideration, the fact that he knows these persons as being associated with SIMI, the fact that he was also associated with SIMI at some point of time and there is a case against him is also a factor, as a result of which the lurking fear is in his mind that he may also be looked at with suspicion as an associate of the arrested accused and with that hidden fear, probability of the answers that he gave are wavering type of answers. He submits that going to the house of the A6 and seeing some persons there would not click an idea in his mind that bombs were being assembled there. Unless a person's memory is triggered by something happening, a person would not ordinarily correlate two incidents that he may have seen or experienced. His triggering of the memory was the arrest of the A6 and in that context in retrospect he remembered having seen the persons, the black and white powder, wire, etc. Then it is probable that the memory may click and then they may think of reporting. He submits

that perhaps if he would not have seen the photograph of the A6 and read the news about it, he would never had gone to the police for giving the information. This conduct shows that he is not the kind of person, who would find out as to who is investigating and go and report to him directly. He adopts the safest course. He and Ajmeri were confirmed that what has occurred in the mind of one has also occurred in the mind of the other and if at all whatever struck them at that moment is true, then it is important, but even it turns out to be false, it is equally important and in that wavering stage of mind they, therefore, decided to go to a person known to them who is working in the police department. Thus, they adopt the safe course. I have already considered all these aspects and I have come to the conclusion that though the witness Amar Khan, PW-75, was called for inquiry immediately on the next day of the blasts and one or two days thereafter also, he was inquired only about his own whereabouts, his mobile number, etc. Till that time the police had no inkling that the bombs had been assembled in the house of the A6 at Govandi on 8, 9 and 10/07/06. There was, therefore, no question of making any inquiry with him and there was no reason for the witness to co-relate the activity of the accused to the happenings of the bomb blasts. It was only on 01/10/06 that his memory was triggered and then he co-related the incident.

881. Learned SPP submits that in the cross-examination of the witness in respect to SIMI, there are some sentences here and there, but it can be restricted to his attendance and acquaintance. He admits that it is not established that any of the accused gave

provocative speeches, but the fact that remains undisputed is their association with SIMI. To my mind, these submissions will be relevant in the discussion in respect of connection with the accused with SIMI, but what the learned SPP submits is the correct position.

882. In respect of the witness identifying the A7 in the court as the person who was joining wires, learned SPP submits that he was suggested that he had stated during the identification parade that he had seen the A4 joining the wires. He submits that ordinarily a man of prudence would have left the witness there and would not have given an opportunity to the witnesses to clarify and there is no reason to disbelieve what the witness stated before the court, specifically when it has come in his cross-examination. Therefore, the ambiguity if any that was available has been shut by their own evidence and the A7 gets entangled in it. I have already discussed the evidence of Amar Khan, PW-75, about he entering the house of the A6 and I have held that it is not established that he had gone inside the house of the A6. Thus, this submission by the learned SPP is not acceptable insofar as the witness seeing the A7 in the house of the A6.

883. Learned SPP further submits that Amar Khan, PW-75, and Ajmeri Shaikh did not go to PC Ambekar, PW-76, as a man who would be a proper man to guide them, but because he was a neighbour and acquaintance of Ajmeri Shaikh. The only hesitation for explaining the delay from 01/10/06 to 27/10/06 is that giving such type of explanation would construe that they are a part of the organisation considering they are SIMI background. To my mind, the

submissions of the learned SPP are logical and therefore acceptable. Learned SPP further submits that whatever deposition Amar Khan, PW-75, gave stands to reason. He has given explanation for every question that was put to him. There is no doubt about he knowing the A6, A2 and A4. He submits that there is again one more thing. If the court is to judge only on the basis of a solitary witness, then the appreciation of his evidence would have different dimensions. If this is the only piece of evidence for consideration perhaps the principal of benefit of doubt may be given to the accused. But otherwise, if it is decided on the touchstone of *falsus in uno falsus in omnibus*, then there is a substance in his evidence and it is very strong in nature implicating the accused. It is for this that then he discussed the evidence of PC Ambekar, PW-76, and submits that his cross-examination is focused only about the aspect of Ajmeri Shaikh coming to him and he taking them to the office of DCP Bajaj. All other things that are asked are of such nature that the answers given by these witnesses to any question in cross-examination do not affect the evidence of Amar Khan, PW-75. To my mind, the evidence of PC Ambekar, PW-76, is already discussed and accepted and his cross-examination also does not affect his evidence about taking Amar Khan, PW-75, and Ajmeri Shaikh to DCP Bajaj. His evidence establishes the fact that Amar Khan, PW-75, had approached the investigating agency through him.

884. In view of the above discussion, it will have to be held that the prosecution has not proved that Amar Khan, PW-75, saw some persons including the A7 in the house of the A6 a few days before

the blasts. However, it will have to be held that by the cogent evidence of Amar Khan, PW-75, PC Ambekar, PW-76, and PI Alaknure, PW-153, prosecution has proved that Amar Khan, PW-75 had gone to the house of the A6 a few days before the blasts and had seen the A2, A4 and A6 outside his house. **This is the circumstance no. 18 proved by the prosecution.** It is against A2, A4 and A6. It is the second circumstance against the A2, A4 and A6.

885. Though the abovementioned is the conclusion, the A2, A4 and A7 have taken the defence of alibi and have taken upon themselves the burden of proving that they were not at Govandi on 8, 9 and 10/07/06. A6 is saying that his family and the entire family of his brothers were in the house of all those days.

886. In respect of A2, the depositions in chief-examination of Dr. Abdul Sumar, DW-5, Dr. Aminuddin Abul Hasan Khan, DW-7 and his own oral evidence as DW-41 are reproduced in the written submission by learned advocate Sharif Shaikh to submit that as per their evidence the alibi of the A2 is proved. Hence, it is clear that he is not present at the house of the A6 between 08/07/06 and 10/07/06 and therefore the evidence of Amar Khan, PW-75, is false, concocted and fabricated by the ATS. I deliberately mentioned that the depositions in the chief-examination are reproduced, because there is no assessment of the cogentness of their entire evidence and the relevant answers given by them in cross-examination are not even mentioned. This observation will be applicable in respect of the similar submissions about the A4, A6 and A7.

887. Let us see what is the evidence. The relevant evidence given

by Dr. Abdul Sumar, DW-5, the honorary medical director of Sabu Siddiqui Hospital, is at Ext.2932, true copy of biometric attendance card, certified by him in respect of A2 for the month of July, 2006. When shown Ext.2932 he stated that the A2 had attended duties from 03/07/06 to 20/07/06, taken weekly offs on 9th and 16th July and was absent on 1st, 7th, 14th and 18th July and in respect of 09/07/06 he stated that in timing of the A2 is 11.41 a.m. and out time is 2258 hours. However, his cross-examination by the learned SPP has revealed that he does not have any qualification like degree or diploma in computers, that he has not taken any technical training in respect of biometric and computer and does not know the software that is used in the biometric machine. When confronted with the duty hours mentioned in Ext. 2932 as 0400 hours to 1100 hours, he denied that these were the duty hours of the A2 in July, 2006 and explained that the timings are just a format and actual timings of duties are mentioned in the columns 'in' and 'out'. He admitted that according to the record the A2 was absent from his duties on 07/07/06 though it was not his weekly off. He admitted that Ext. 2932 does not show on what date he signed it, but he must have signed it on 30/03/12 in view of the date mentioned in Ext. 2931, which is the covering letter. However he further stated that he took out the printouts and signed them after he received a letter from the advocate of the accused in February, 2012 and then he asked the computer department to take out the printouts of the biometric attendance system of the attendance of the A2 in July, 2006 and admitted that Ext. 2932 is generated on 21/09/10, i.e.,

one and the half years prior to Ext. 2932. He also admitted that if a printout is taken today, it will show today's date.

888. I do not see how this evidence can be accepted as a cogent evidence when Ext. 2392 shows the duty timings of the A2 as 0400 hours to 1100 hours, which means that they do not match with the duty timings of 'in' and 'out', when it shows that the A2 attended his duties on 09/07/06, though Dr. Abdul Sumar, DW-5, stated that he had taken weekly off. Learned SPP rightly submitted that this type of evidence does not establish that the A2 was continuously on duty. He pointed out to the entries in Ext. 2932 and in respect of 08/07/06 he submits that there is only incoming entry at 0802 hours, but there is no entry of going out. This will not establish his continuous presence in the hospital. About 09/07/06, he submits that he claims that it was his weekly off holding, but he was on duty. In respect of 10/07/06, 11/07/06, 15/07/06, 16/07/06 and 20/07/06 he submits that there is only one entry for coming in, but not going out. He submits that considering all these facts, the cumulative effect of this is that this evidence does not establish the alibi of the accused. Pointing out to the above entries and to the answers given by Dr. Abdul Sumar, DW-5, in paragraph 15 that there is no data and no provision in the biometric attendance system for keeping record of his staff members going out of the hospital for any purpose in between his duty hours, he submitted that this evidence cannot be accepted. To my mind, the evidence is brought by the accused himself, it is not brought by the prosecution. The rule of law is that if a person asserts a fact then the onus is on him to prove it.

Thus, the evidence of this nature cannot be accepted to hold that the A2 was continuously on duty on 8, 9 and 10/07/06 and was not at the house of the A6. The answer given by Dr. Abdul Sumar, DW-5, mentioned above is the most damaging aspects that affects the reliability of this evidence. It would have had been a different case if there was evidence that there is only one door for going in and coming out of the hospital, that it is electrically controlled and unless a person enters his biometric card in the given slot the door will not open, either while entering or leaving the hospital. Notes on the case papers of a patient of 4, 5 and 06/07/06 Ext. 2935(1 to 3) were proved during the evidence of Dr. Abdul Sumar, DW-5, which is in the handwriting of the A2. Considering the duty timings they are irrelevant. Moreover, the date 04/06/06 is written instead of 04/07/06. Thus, they are also unreliable.

889. One more witness Dr. Aminuddin Abul Hasan Khan, DW-7, medical administrator of that hospital, was examined by the defence to prove the alibi of the A2 by producing case papers Exts. 2946 to 2956. Learned SPP raised objection for receiving them in the evidence on the ground that separate pages from the entire case paper cannot be exhibited because it is a complete document and is not a public record. However, they were marked as exhibits in view of the submissions of the learned advocate that they be exhibited subject to objection. There are no submissions in this regard during the arguments by the learned advocates and considering the answers in cross-examination these documents cannot be read in evidence. This is because he admitted that there are no notings in his

handwriting in any of the files and he was not personally present at any time when any patient was examined. Even otherwise his cross-examination by the learned SPP on this point has shown that he is a useless witness to prove the continuous presence of the A2 in the hospital on 8, 9 and 10/07/06. He was shown the biometric record of attendance Ext.2932 and he admitted that there is no shift duty from 4.00 a.m. to 11.00 a.m., the timing of leaving duty on 08/07/06, 10/07/06 and 11/07/06 is not mentioned. He was confronted with the notings in the case paper and he admitted that some notings do not contain timings, some do not contain the dates and some do not contain either timings or the dates. He further admitted that name of the A2 is not mentioned in any of the case papers about which he explained that 'seen by Registrar' is mentioned. To my mind, the explanation given by Dr. Abdul Sumar, DW-5, that the timings 0400 hours to 1100 hours are just a format and the actual timings are mentioned in column 'in' and 'out', is obviously incorrect and unacceptable. This is because there is a column 'late' after the 'out' column and it exactly shows the hours by which the A2 came late for his duty. The submissions of the learned SPP in this context are to the point and acceptable. He submits that this witness, i.e., Dr. Aminuddin Abul Hasan Khan, DW-7, who is supposed to be conversant with the handwriting of the accused, could not find out all the entries that were supposedly made by the A2. Therefore, the A2 himself pointed out some of the entries claiming that they are in his handwriting. Therefore, on both counts, viz., that Dr. Aminuddin Abul Hasan Khan, DW-7 did not have any

opportunity to witness the notings being done in his presence or that therefore he could not have stated about the presence of the accused, because none of the papers contain his handwriting. Secondly, he is not thorough about knowledge of handwriting of the accused and he admitted that many of the notings that he claims to be in the handwriting of the A2 did not contain timings or dates at some places. Moreover, these are not public documents that would raise the presumption about the entires being made in the regular course business and lastly not even a single patient is examined to prove the fact that on a particular date and on a particular time the A2 had examined him during the timings when the prosecution says that he was present at the house of the A6 or the A3.

890. A2 gave evidence as DW-41 to prove the notings in the case papers and proved the notings Exts.2935 (1 to 3) of the dates 4, 5 and 06/07/06, which are irrelevant. The notings are in Exts. 4001 to 4015 and also in Exts. 2950, 2952, 2946, 2955, 2953, 2951, etc. In this context though he denied a suggestion that he has not examined a single witness from the hospital to show his continuous presence between 3rd and 11/07/06 from the time he entered the hospital till he left, it is clear from the evidence of Dr. Abdul Sumar, DW-5, as well as Dr. Aminuddin Abul Hasan Khan, DW-7, and Ext. 2932 that there are no entires about leaving the hospital on the relevant dates. He admitted further that he has not cited and examined any patient, who he says that he examined between 3rd to 17/07/06. Now leaving aside all these things, his answers in further cross-examination have shown how unreliable the evidence of the notings

in the case paper is. He denied the suggestion that date and time is required to be put below every endorsement in the case paper. If this is so then there was no point in denying the further suggestion by the learned SPP that therefore he agrees that the endorsement of a doctor on the case paper would not necessarily establish the presence or absence of a doctor at a particular time. These answers show that the notings of the case papers are not such evidence on which reliance can be placed to disbelieve the witness, who has given oral evidence. It is rightly submitted by the learned SPP that these are not public documents that would raise a presumption about the entires being made in the regular course of business.

891. It is clear from the above discussion that the A2 has failed to lead cogent and convincing evidence to prove that he was at place of his work, i.e., Sabu Siddiqui Hospital, continuously on 8th, 9th and 10/07/06. He has thus failed to prove his defence of alibi and it is found to be false. It is the fourth additional circumstance in the chain of circumstances against all the accused. It is the first additional circumstance against the A2.

892. In the submissions that are made in respect of the evidence given on behalf of the A7 to prove his alibi, likewise depositions in chief-examination of Bilal Kadiwala, DW-8, Mehmood Qureshi, PW-65, and of the A7 as DW-46 are reproduced and CDR Ext. 4101 of the mobile of the A7 is only mentioned to submit that hence alibi of the A7 is also proved. Again there is no reference to the cross-examination of these witnesses and whether their testimony is not discredited by their cross-examination. It has come in the evidence

of Bilal Kadiwala, DW-8, that he gave a counter 2' x 4' in his shop of xerox center and STD PCO booth, near Jogeshwari Railway Station to the A7 on rent in April, 2006 for mobile repairing business and that the A7 used to run it from 11.00 a.m. He also deposed about the events on 11/07/06, but at present we are not concerned with it. The evidence that is relevant to the defence of alibi is that the A7 used to work at his counter regularly before 11/07/06. So this covers 8th, 9th and 10/07/06. However, considering his evidence that his shop and the counter of the A7 used to remain close on Sundays, it is of no use in respect of 09/07/06. With respect to 10/07/06 he stated that he was at home on that day and does not remember what he did on that day. So that leaves only 08/07/06 to be considered. Thus, his evidence is apparently vague when he states that the A7 used to work at his counter regularly before 11/07/06. In this connection, the learned SPP pointed out to the answers in his cross-examination that no agreement was executed between him and the A7, that he had not even given the receipt about the deposit amount of Rs.5,000/- and he never gave any receipt of the rent to the A7. Learned SPP submitted that the family of the A7 is not of an illiterate person, but it is a well educated family. One brother is a doctor, one is a hydraulic engineer and the A7 himself is an engineer. They know their rights well and inspite of that, it would have been a clinching evidence, had it been true, if the witness or the accused would have produced some documents about renting the counter? He submits that this witness has been bought and he had obliged. To my mind, the evidence of Bilal Kadiwala, DW-8, can best be

described as vague evidence and in any circumstances, it cannot be relied upon to prove the presence of the A7 in the shop at Jogeshwari on 8th and 10/07/06. The evidence of A7 that he went to the shop at 5.30 p.m. on 08/07/06 falsifies the evidence of this witness that he used to work from 11.00 a.m. to 8.00 p.m.

893. Learned SPP submits that even if the evidence of Bilal Kadiwala, DW-8 is accepted then from the CDR of the mobile that the A7 was using, his locations show the places different than his shop. He submits that this cannot be the creation of the ATS. It is produced that the A7 himself and this intrinsic circumstance is the test to determine whether there is any substance in the defence of the accused.

894. It is in the written submission Ext.2828 of the A7 and he accordingly deposed that on 6th, 7th, 8th and 10/07/06 also he attended his classes at Malad at around 8.00 a.m. and his mobile repairing shop at Jogeshwari at around 11 a.m. and did not visit any place at Shivaji Nagar, Govandi on these days and on 09/07/06 he was at his house for the whole day and his sister and brother-in-law Mehmood Qureshi, PW-65, had come to meet them and were with them for the whole day and went back in the evening. However, he deposed inconsistently that he went to the shop at Jogeshwari at 5.30 p.m. on 08/07/06 and did not go to the institute at Malad on 10/07/06, but directly went to the shop at Jogeshwari. This evidence was recorded on 17/07/13. However, when he restarted giving evidence on the next day on 18/07/13 after the recess, he requested permission to state about some problem about his

memory while deposing about the events on 7th, 8th and 10/07/06 and on being permitted, stated about taking his wife to a hospital on 07/07/06 and going to the shop at Jogeshwari at 5.30 p.m. on that day. About 08/07/06 he clarified that his institute at Malad was closed on Saturday (which is already pointed out as inconsistent evidence) he worked in the shop from 11.30 a.m. to 9.30 p.m. About 10/07/06 he stated that he took his wife to the hospital at 9.30 a.m. and went to the shop at 3.30 p.m. and was there upto 9.30 p.m. His cross-examination by the learned SPP has completely discredited his testimony. He admitted that his written submission filed with his statement under section 313 of the Cr. P. C. is in his handwriting, running into 89 pages, that he did not write them at one time at a stretch and required one and a half week to write it. He denied the suggestion that he wrote it hurriedly. He admitted that he did not give any supplementary written submission, denied that he realized for the first time during his cross-examination that it is complete, but admitted that some important things have remained to be written. He then volunteered that he forgot to write some dates and about the business relations with the A4.

895. About the evidence that he gave on 18/07/13 after recess for correcting his evidence given on the earlier date, he explained that his wife came to meet him in the recess and on seeing her he remembered that at that time she was pregnant and he had not stated about it. Of course, he denied the suggestion that his co-accused pointed out to him that he committed a mistake while deposing about 7th, 8th and 10/07/06 and therefore he corrected

himself by giving different version. He admitted that nothing concerning his wife had happened on 08/07/06 and reiterated that he does not feel that anything important has remained to be written in his written submissions other than what he stated about. The explanation that he gave on 18/07/13 does not find place in his written submissions and the reason that he gave for remembering the events of 7th, 8th and 10/07/06 are obviously improvements. Thus, it is clear that his testimony is discredited because of his inconsistent evidence.

896. The matter does not stop here. With respect to the mobiles that he was using, he stated as per paragraph 2 in his written submissions that in 2006 he was using two mobiles, one 9224446830 in his name, which he used to keep at his house for contacting and other 9867244681, which he used to keep with him continuously wherever he used to go. He referred to the CDRs Exts. 3814, 4101 and 4102 respectively of the above two mobile numbers in his further evidence. In respect of 8th to 10/07/06 there is only one sentence that the tower locations of his mobile from 5th to 10/07/06 are at Mira Road, Malad, Jogeshwari and Borivali. It is obviously a vague statement and no specific calls from the CDRs are pointed out. As per his deposition recorded on 17/07/13 he went to his shop at Jogeshwari at 5.30 p.m. at 08/07/06, however, two calls at 3.44 p.m. and 3.48 p.m. in Exts.4101 and 4102 of his mobile no. 9867244681 show tower locations of Jogeshwari. In his deposition recorded on 18/07/13 he stated that he was at the shop for the whole day, i.e., from 11.30 a.m. However, there are no calls showing

the locations at Jogeshwari from 9.55 a.m. to 3.44 p.m. Though he stated about working upto 9.30 p.m., a call at 9.37 p.m. shows the tower locations of Mira Road. So he reached home in seven minutes from Jogeshwari to Mira Road? About 10/07/06 he initially stated about not going to Malad, i.e., to the institute on that day, but directly going to the shop at Jogeshwari, which means working there throughout the day. However, the calls in the CDRs upto 2.28 p.m. show tower locations of Mira Road, Borivali and Bhayandar. As per his specific version he went to the shop at 3.30 p.m. on that day, i.e., on 10/07/06. So how can there be a call at 3.20 p.m. located at Jogeshwari? It is obvious that the A7 kept on changing his version and made statements inconsistent with his written submissions. It is clear that he moulded his evidence as per the call data in the CDRs that came on record after the written submissions were filed. But it is obvious that he is going round and round, trying to explain every bit and piece, however, he is trapped in the circumstances by virtue of the very mobile data on which he wanted to rely. His explanation in his further chief-examination about taking his wife for check-up on 7th and 10/07/06 to a local doctor's hospital does not find place in his 89 pages written statement that are in great detail mentioning timings and dates specifically. He admitted in his cross-examination that he required one and half weeks to write his written statement but does not feel that anything important is remained to be written other than what he stated earlier, i.e., forgetting to write some dates and about his business relations with the A4. About corrections in his evidence that he made about these three dates, he admitted that

he remembered at that time what he had narrated from morning till lunch break and that when his wife came to meet him in the recess he remembered that she is pregnant and he had not stated about it. Of course, he denied the suggestion by the learned SPP that he corrected himself by giving a different version as his co-accused pointed out to him that he committed a mistake while deposing about 7th, 8th and 10/07/06. The most important admission that discredits his version is that nothing had happened concerning his wife on 08/07/06. This admission exposes him because he corrected his version about 08/07/06. Also incidentally he has not given any evidence about taking his wife to the doctor on 10/07/06.

897. Thus, no inference can be drawn from the call data in the CDR of the mobile no. 9867244681 that was used by the A7 that he was at the shop at Jogeshwari on 8th and 10/07/06 for the whole day from 11.30 a.m. as stated by Bilal Kadiwala, DW-8, and as initially stated by him or that he had gone there at 5.30 p.m. on 08/07/06 and at 3.30 p.m. on 10/07/06 and was there continuously till 9.00 or 9.30 p.m.

898. The evidence given by Mehmood Qureshi, PW-65, is relied upon to boost the defence of alibi taken by the A7. It has come in his cross-examination by learned advocate Wahab Khan that his in-laws are from Mira Road, that he had gone with his wife on 09/07/06, a Sunday and was there from 11.30 a.m. upto the dinner and the A7 was present in the house throughout the day. It is submitted that his evidence corroborates the evidence of the A7. It is pertinent to point out that this witness, though a prosecution witness, turned hostile to

the prosecution, obviously because he is related to the A7 and A8. Even if we accept this submission, the evidence of the A7 and Bilal Kadiwala, DW-8, and the CDR of his mobile about 08/07/06 and 10/07/06 discussed above is uncogent and unbelievable. But one thing is proved from his evidence that he was associated with SIMI and had acquaintance with the workers of the SIMI, viz., A8 and A4, amongst others. This evidence has not been controverted during his cross-examination by learned advocate for the A7 though he turned hostile to the prosecution in respect of story of the prosecution against the A8 and A4.

899. In view of the above discussion, it will have to be held that the A7 has failed to prove his defence of alibi about 08/07/06 and 10/07/06 and insofar as 09/07/06 it is only the evidence of his brother-in-law Mehmood Qureshi, PW-65, who is a witness hostile to the prosecution. Hence, it will have to be held that he has taken this false plea. This is the fifth additional circumstance in the chain of circumstances against all accused. It is the first additional circumstance against the A7.

900. Then comes the defence of alibi by the A4. It is sought to be established by his oral evidence and the contents of the CDR of his mobile. Reliance is placed on his statements in chief-examination that also find place in his written submissions, Ext. 2825, that he was at Mira Road, i.e., at his residence, on 08/07/06 and 10/07/06, and had gone to Mumbra on 09/07/06 and had never gone to Shivaji Nagar, Govandi to the house of the A6. His other evidence is the allegations that Amar Khan, PW-75, and PC Ambekar, PW-76,

deposed falsely about seeing him at the house of the A6, 4-5 days or 2-3 days before the blasts. At the cost of repetition, it will have to be pointed out that it is only his statements in chief-examination that are relied upon and there is no discussion about his overall evidence. Of course, this is his only evidence and except the data of the calls in the CDR of the mobile that he was using, there is no other evidence or witness examined by him, as was examined by the A2 and A7, to prove his alibi that he was at Mira Road on 8th and 10/07/06 and at Mumbra on 09/07/06. Even otherwise, he has not explained the blank periods of calls of about 2 hours and 24 minutes, i.e., from 0827 hours to 1051 hours, of 2 hours and 39 minutes from 1409 hours to 1648 hours and of 2 hours and 4 minutes from 1820 hours to 2024 hours on 08/07/06. Same is the case about the blank periods of 2 hours and 43 minutes from 0909 hours to 1152 hours on 09/07/06 and 6 hours and 11 minutes from 1249 hours to 1900 hours on 10/07/06.

901. The above discussion shows that the A4 is only relying on the absence of calls showing the locations of Shivaji Nagar, Govandi to prove that he was not there during these three days. Thus absence of calls, which is an abstract thing, is being taken help of to prove a negative fact, i.e., his absence at Shivaji Nagar, Govandi, on these three days, but except his words there is no other positive evidence to prove that he was at Mira Road and Mumbra as claimed by him. The evidence given by the A4 to prove his alibi on 11/07/06 on the basis of the CDR Ext.3765 of the mobile no. 9867139179 admittedly used by him is already discussed by me in paragraphs 584 to 589

and it is held that no inference can be drawn that he was at Mira Road at the time when Vishal Parmar, PW-74, saw him, after discussing his answers in respect of he acquiring the mobile handset and sim card which is not in his name. It is held that these answers do not show his *bona fides* and on the other hand they show *mala fides* and that he is hiding some things. The submissions of the learned SPP that mobile is not a body part and will at the most show the location of the handset and not of that person and my observation that there cannot be a presumption that a mobile is always with the person and, therefore, the locations in the CDR will not establish the locations of the person using it, are again squarely applicable here.

902. It is clear from the above discussion that the A4 has failed to prove his defence of alibi that he was not at Shivaji Nagar in Govandi on 8th, 9th and 10/07/06, but was at Mira Road and Mumbra. It is clear that his plea has been falsified. Thus, this is the sixth additional circumstance in the chain of circumstances against all the accused. It is the second additional circumstance against the A4.

903. It is the defence of the A6 that his entire family and entire families of his two brothers were in the house from 8th to 10/07/06 and for this purpose he is relying on the evidence of his brother Shaikh Hazrat Ali, DW-4, and his own evidence and it is submitted that it is next to impossible that bombs were prepared in the presence of 14 family members. It has come in the evidence of Shaikh Hazrat Ali, DW-4, that he and his younger brother Muktar

Ahmed are in private service and he gave the names, ages and occupation of all 14 of them including their children and the school timings of 8 children and has stated that his and the family of the A6 and of brother Muktar Ahmed were at their house on 8th, 9th and 10/07/06. Though he stated about the school timings of his children and the children of the A6, he did not state about the timings of his and Muktar's service. Obviously there must be some timings of their employment and it is common knowledge that private service timings are more than government service timings which are of 8 hours. It has come in his cross-examination by the learned SPP that he was working as a PRO in a private nursing home in 2006. One can guess what must have been his working hours and how he could be home on 8th and 10/07/06 for the whole day, they being working days, even if 09/07/06 Sunday is excluded. He has not stated anything about Muktar's employment and timings of his service. It is obvious that he has deposed so only because he is brother of the A6 and to support his story/defence. However, the most damaging statements that he made in his cross-examination by the learned SPP are that the A6 used to go for work everyday at 10.00 a.m. in the morning and return at 1.00 p.m., that thereafter he used to remain in the house and not go outside and did not use to go out of the house after 1.00 p.m. even for meeting his friends. Considering the occupation of the A6, viz., that of selling Tilisma Moti, it does not appear probably that the A6 would be at his house for the whole day, considering the fact that this occupation was the source of his livelihood. Even otherwise, these statements by Shaikh Hazrat Ali,

DW-4, are directly contradictory and inconsistent with the statements made by the A6 in his written statement Ext. 2827 that on 08/07/06 and 10/07/06 he sold Tilisma Moti from 9.00 a.m. and 8.00 a.m. respectively to 9.00 p.m. to 9.30 p.m. respectively, at various places. It is also directly contradictory and inconsistent with the similar evidence given by the A6 as DW-42. Thus, this statement falsifies his evidence. There is no other corroboration to the statements made by the A6 in his written statement and in his oral evidence. It has come in the evidence of the A6 that his brother Muktar gave a complaint Miscellaneous Application No. 309 of 2006 in the court through his lawyer on 07/11/06 as he, i.e., the A6, had told him on 06/11/06 when he met him in the prison, that he is falsely involved, that his signatures have forcibly taken on the confessional statement, that he was threatened of being involved in the Malegaon case and involving his family members in this case if he does not become approver, etc. In this connection during his cross-examination by learned SPP he admitted that his brother Muktar wrote all things in Miscellaneous Application No. 309 of 2006 on his instructions, but there is no allegation in it that police were pressurizing him to say that he and his family members were not residing in his house from 8th to 10/07/06. Though he volunteered thereafter that he had told his brother to write it, but he must have forgotten to write it, he admitted that it did not happen that he, i.e., the A6, did not tell him some things, but he wrote anything. Shaikh Hazrat Ali, DW-4, stated during his cross-examination by the learned SPP that he stays with his brother, i.e.,

the A6, since many years and the A6 shares all things with him. In this context, the learned SPP pointed out to the answer given by A6 in paragraph 62 of his cross-examination that he respects Shaikh Hazrat Ali, DW-4, and has faith in him. He denied the suggestion that he does not hide anything from him and that he confides in him. What this means is that A6 does hide some things from his brother and does not confide in him.

904. Thus, it is clear that the evidence of Shaikh Hazrat Ali, DW-4, is not a cogent evidence and it does not corroborate the story and the evidence given by the A6 in respect of 8th, 9th and 10/07/06.

905. Learned advocate Wahab Khan submitted that Shaikh Hazrat Ali, DW-4, is a prosecution witness and what must be the situation or reason to drop him can be gathered from his evidence. He submits that there is no cross-examination in respect of his evidence of 8th, 9th and 10/07/06. To my mind, this submission is not correct. The totality of the evidence of the witness has to be considered and after examining the witness in respect of his evidence of these three days, the learned SPP has finally given him a suggestion that he deposed falsely to save his brother.

906. Learned advocate submitted that there are two important issues in respect of this witness, one prior to the arrest and other is subsequent to his arrest, as alleged by the prosecution. As per the case of the prosecution bombs were prepared at his house on 8th, 9th and 10/07/06 and after his arrest they seized pressure cooker and found traces of RDX from his house. He submits that, therefore, from the angle of the prosecution case, the events of 8th, 9th and 10/07/06

are more important than the so called recovery. The ATS also inquired with the wife of the A6 and she is also concerned with these two issues as per the prosecution. Now in this respect, wife of the A6, Saidunissa, was summoned as defence witness by the defence and Shaikh Hazrat Ali, DW-4, admitted that she got the summons at her house. Before starting his cross-examination, learned SPP filed an application Ext. 2929 under section 231(2) of the Cr. P. C. for deferring his cross-examination till the chief-examination of the other witness, i.e., the wife of the A6, is recorded and when the application was allowed, learned advocate Wahab Khan submitted that he is not going to examine Saidunissa, wife of the A6. Thus, this submission is of no consequence. Learned advocate submitted that the prosecution did not seek permission to confront any portion from the statement of this witness to him and the only reason is that there was no any inconsistency.

907. He submits that the witness gave minute details of all the three dates and only suggesting that he was not residing there is not sufficient. He submits that he has to point out reasonable doubt about his theory and the evidence of Shaikh Hazrat Ali, DW-4, falsifies the case of the prosecution that the family of the A6 and his brother's families were not in the house. I have already held that the evidence of Shaikh Hazrat Ali, DW-4, is not cogent. It does not inspire confidence to raise a preponderance of probability about what he stated.

908. On the other hand, the learned SPP submitted that the falsity of the defence is exposed by the evidence of Shaikh Hazrat Ali,

DW-4. Though wife of the A6 was present in the court when summoned by the defence, she was dropped. He pointed out that Shaikh Hazrat Ali, DW-4, only says that the families of all the three brothers were in their house on the said three days, but he has not stated about 11/07/06 or thereafter. He has not stated that no guest came to their house during that period. To my mind, this can mean that he does not know about it as he was out of the house on these three days. Learned SPP then pointed out to the contradictory and inconsistent statements made by the witness in respect of work timings of the A6, which I have already discussed. Learned SPP submits that what is important is that this contradictory and inconsistent answers given by Shaikh Hazrat Ali, DW-4, are not corrected by re-examining him. He submits that whereas the accused wants to create some material which will appear to be believable, what has happened in fact is that all the accused have chosen to examine themselves only after they collected whatever information they could under the RTI Act and they tried to mould their evidence in such a manner that their depositions would be justified in the light of the evidence that they have collected. However, here the A6 is directly exposed when he talks about returning at 9.00 p.m.

909. Though the A6 stated about using prepaid mobile no. 9224253454 and called for the CDR, but when it came he stated that the CDR produced in the court is incomplete and is tampered on the say of the ATS. How this is done or is possible is not stated by him. Prashant Padvale, DW-39, nodal officer of Tata Teleservices (Maharashtra) Limited produced the CDR Ext. 3815 of the mobile

number of the A6 and the Cell ID addresses, Exts. 3817 and 3818. The CDR does not contain call data of July, 2006 and during his cross-examination by learned advocate Sharif Shaikh, when he was put a specific question as to whether he has provided the entire data asked for, he specifically answered that they provided whatever data that could be retrieved. He denied the suggestion that he deleted calls of the said mobile number and that he furnished tampered CDRs on the say of the ATS officers. Thus, there is no other evidence to corroborate the version of the A6.

910. In view of the above discussion, it will have to be held that the A6 has failed to show any preponderance of probability of his and his two brother's family members being present in his house continuously from 8th to 10/07/06 and it is proved to be a false story. This is the seventh additional circumstance against all the accused. It is the first additional circumstance against the A6.

911. Thus, it is clear that the defence of alibi taken by the A2, A4 and A7 and story put forth by the A6 has not been proved and no preponderance of probability about its existence has been shown which could disprove the evidence given by Amar Khan, PW-75. Therefore, the circumstance no. 17 proved by the prosecution is unaffected.

Conspiracy :-

912. It is alleged by the prosecution that wanted accused no. 1 Azam Chima and arrested A3 and A13 conspired sometime in the year 1999 to do terrorist acts and the acts against the Government of Maharashtra and Government of India and in pursuance of the said

conspiracy a meeting was held in the month of May, 2006 in the house of the A3 at Bandra(W) and the plan to cause explosions in the western railway local trains was finalized. To prove this meeting, the prosecution examined Mohd. Alam, PW-59, by whose evidence his acquaintance with the A3, A12, A13, A4, A2, A11, A12 and A9 and four Pakistani persons, i.e., wanted accused no. 14 and 5 and deceased accused no. 1 and 2 is tried to be proved. The material that was disclosed during his interrogation is briefly given in paragraphs 195 and 196 supra and the statement that he gave to the police was confirmed by him by giving a statement to a magistrate under section 164 of the Cr. P. C.

913. Mohd. Alam, PW-59, described how he got acquainted with the A12 sometime before 2005 and developing friendship with him and also stated about how he became acquainted with the A3 in September, 2005 and they becoming friends, he visiting his house and they going to dance bars together sometimes. This evidence is in paragraphs 1 and 2 of his chief-examination and insofar as his evidence about the A12 is concerned the improvements over his statements under sections 161 and 164 of the Cr. P. C. that are brought on record are that he used to attend the discos at Juhu whenever he got the time and about the A12 working in a call center at Hyderabad and going to Hyderabad for that work. Insofar as the A3 is concerned his evidence about his relative Ashraf Qureshi calling him to Bandra Railway Station and taking him to Carter Road, Bandra to his friend by name Sameer and when they met they becoming friends is brought on record as improvements over his

statements under sections 161 and 164 of the Cr. P. C. These things apart there is no suggestion to this witness by the defence that he was not acquainted with the A3 or A12.

914. Next comes the most important evidence and which is relevant in respect of the core issue of the entire prosecution case and the ideology of the accused. It has come in his evidence in paragraph 3 that he went to the house of Sameer to meet him, talked with him about his business, asked for financial help whereupon the said Sameer asked him as to why he is running after money, that money is not everything, that he should think of their religion, i.e., Islam, that said Sameer told him that for whatever atrocities are being committed on Muslims, the only way out is jihad which will solve their problems, that he was shocked on hearing this, that the said Sameer told him that he has given his life for jihad and then he disclosed his real name as Faisal Aatur Rehman Shaikh, i.e., the A3, and not Sameer and on asking the reason for this change, he told that it was to hide his identity. It has also come in his evidence that A3 told him that he had gone to Pakistan twice and had taken training in the camps of L-e-T, A3 also mentioned the name of wanted accused no.1 Azam Chima and told him that Azam Chima gives financial help to him and he himself, i.e., the A3, is a commander of L-e-T in Mumbai. This evidence has not been shown as an improvement over his statement under section 161 and 164 of the Cr. P. C. or as a contradiction. No doubt, it is being interpreted differently in relation to the subsequent conduct of the witness, but the fact remains that this evidence is uncontroverted.

915. His next evidence in paragraph 4 is about he going to the house of the A3 in February, 2006, seeing 5-6 persons there, who had gathered for a discussion on some special subject and were making preparations for namaj when he reached there, being invited for namaj and the A3 introduced them, i.e., A13, A2, A4, A10 and A9, the last one being brother of the A3. He then described what they did when they were sitting together, viz., that A13 took a Kuran and asked all to keep their hands on it and to take the oath that whatever discussion they had there will be secret. It is then that the A13 asked A3 about him, i.e., the witness, and the A3 told that he is his best friend and there is no tension about him, thereupon A13 asked him, i.e., the witness, to take oath, but he did not take it as he did not have any knowledge about the subject matter of the meeting and then he left. Till this point, his evidence in paragraph 4 is clear and has not been brought on record as an improvement over his statements under section 161 and 164 of the Cr. P. C. It is his only last statement that the A3 did not tell him anything when he asked about that meeting afterwards, which has been brought on record as an improvement. Next comes his evidence in paragraph 5 about the A3 coming to meet him at Mira Road near Shams Masjid in March, 2006 alongwith A13, A2 and A4, A3 asking him whether he could arrange for a house for 6-7 months for his friends, he expressed his financial difficulty and his lack of knowledge in order to avoid doing so, thereupon the A3 asking him to phone the A12 and to call him there which he did and A12 coming thereafter sometime and then the A3 asking him to leave that place saying that he wanted to talk

with the A12 and he, i.e., the witness, felt bad about being treated in this manner and leaving that place. This entire evidence in paragraph 4 is also not shown as an improvement over his statements under sections 161 and 164 of the Cr. P. C.

916. His next evidence in paragraph 6 is about the incident in May, 2006. The improvements made by him over his statements under sections 161 and 164 of the Cr. P. C. are about he noticing in May, 2006 that A3 was taking less interest in going to the dance bars and not talking much and appearing changed, thereafter is his evidence about seeing some guests in the house, his evidence that the A3 told him that they are his guests from Pakistan and have come for the good work for religion, of meeting him once or twice thereafter and of not sitting in his house for long and talking with the A3 outside his house as he could not sit in his house for long and could not talk with the A3 freely in presence of his guests. Other than this evidence, his evidence about asking the A3 about his changed behaviour, A3 telling him about being busy at that time as some guests from Pakistan had come to his house, he going to the house of the A3 once or twice and seeing the guests in his house and the A3 telling the names of those guests as Abdul Razzak, Abu Umed, Sohail Shaikh and one Salim, i.e., wanted accused no. 14, deceased accused no. 2, wanted accused no. 5 and deceased accused no. 1 respectively, and the guests not talking with him much. This evidence is practically uncontroverted.

917. His evidence thereafter in paragraph 7 is intact as not a single word or sentence is shown as an improvement over his statements

under sections 161 and 164 of the Cr. P. C. or contradiction. It is his evidence that A3 called him and A12 to his house in June, 2006, they all went to a disco bar and as they were there upto late hours, they halted at the house of the A3, that next day morning A3 told A12 to make some arrangements for the guests as his house is congested because of the guests, that after some days he came to know from the A12 that he, i.e., the A12, had made arrangements of two guests of the A3 at Millat Nagar, Andheri, that during that month A3 introduced him to one Rizwan Khot, that during that period, i.e., in June, 2006, A3 had purchased a white colour Maruti 800 car and that they three used to go around in that car, which used to be driven by Rizwan Khot. His further evidence in paragraph 8 is about meeting A3 on 02/07/06, coming to know in the news about the arrest of A3 and A12 as they were involved in the blasts and being called by the ATS police on 02/11/06 and his statement being taken and police showing him a photograph of a person who appeared to be caught in an accident and he identified that person as Abu Umed. He unhesitatingly identified the A12, A3, A2, A4, A9, A10 and A13 in that order. However, though he stated the names of the person whom he could identify, including the name of A11, he failed to identify him. It is not that the witness was asked to identify a single person or a single accused, therefore, I took it in the order in which he identified them after looking around the court room and pointing to the specific accused. Now in respect of this evidence it will have to be mentioned at this stage itself that except the suggestion during the cross-examination by learned advocate Rasal

that he identified the accused at the instance of the police and their names were given to him on 02/11/06, there is no allegation that the accused were shown to him or pointed out to him earlier either in the office of the ATS or outside the court before his evidence. Thus, this evidence is absolutely unimpeached and it being a substantiative evidence it has got a heavy weight.

918. I will not discuss in detail the cross-examination of this witness because as mentioned earlier except a few improvements that he made over his statements under sections 161 and 164 of the Cr. P. C., his evidence is practically unblemished. Moreover, his cross-examination is more on extraneous issues rather than the core issues. I will, therefore, directly go to the submissions made by the learned advocates of the respective accused. Learned advocate Shetty for the A1, A3, A8, A9, A11 and A12 submitted that he is not a reliable witness and though he is such an important witness in view of the events about which he deposed, he was not called for identification of the accused other than the A1 and A2 and though he took the name of A11, he could not identify him in the court inspite of efforts by the learned SPP. Learned SPP's submissions on this point are that the point that he is making is that had the witness being a tutored or got up witness, he would not have saved anybody and would have identified the A11 also. The fact that he was unable to identify the A11 only goes to show that he is a truthful and honest witness. To my mind, identification parade is not always necessary. It is settled law that identification parades are by way of assurance to the investigating machinery that they are proceeding in the right

direction. When the witness had an occasion to meet the accused more than once and when the investigating officer is satisfied that he would be able to identify them directly in the court, then there is no necessity of calling him for the identification parade. Moreover, his friendship with the A3 and A12 is not disputed in cross-examination. On the same lines, learned advocate Shetty submitted that the evidence on record about the investigation does not show that any accused were shown to him. To my mind, this is infact a good thing. If he would have been shown the accused in the office of the ATS then also the defence would have criticized it. Learned SPP submitted in this respect that the issue is that when the police have recorded his statement in a natural manner, then there is nothing artificial in this. Here is a man who gives the names, then the only inference is that he knows those persons and is in a position to identify them by their names. He has not expressed any doubt whether he will be in a position to identify them or not. Thus, this submission is not proper.

919. Learned advocate submitted that the evidence of this witness concerning the A9 and A11 is of no use to the prosecution, that he does not speak of the A9's involvement and only because the A9 is brother of the A3, it does not fix any culpability. To my mind, if he was a got up witness police would have put something in his mouth to involve the A9. It will not be out of place to point out that his evidence is relevant and useful to show the association of the accused whom he has named and identified. Learned advocate then submits that the witness does not refer to the house of the A3 in

Lucky Villa in Carter Road though he says that he knows the A3 and had gone to his house. The witness was not cross-examined about it and not asked the name of the building. However, it is an incorrect submission that he did not refer to Carter Road because he stated about going to Carter Road at Bandra.

920. Learned advocate submitted in respect of the evidence of the witness that he was shown a photograph in the ATS office and he identified it as that of Abu Umed, that if one analyses this evidence, it is crystal clear that this is the photograph of the dead body of Salim and not of Abu Umed. The truth has not come out and his memory is required to be tested, mainly because he identified some persons. This shows to what extent this witness can go to save himself and to help the police. These answers will show that he is not a truthful witness and his evidence cannot be accepted. He referred to the evidence of Sr. PI Rathod, PW-176, and submitted that as per his evidence he is the person who visited the site of Matunga blast and according to the prosecution a body above the chest portion was found at the site, the bodies were already removed and victims were also removed and then he changed his version that some bodies were lying there and they were removed, but does not speak anything about this body and does not give its description and the panchanama of the site of the blast is also silent on this aspect. He submits that Sr. PI Rathod, PW-176, specifically says that he inspected the site, but did not find any body part and even if it is assumed that the upper body part was removed by somebody to the hospital before he reached, then can it be said that the remaining

parts of the body like hands, legs, etc., will not be found at the site of the blast. He submits that nothing was found at the sites of the blasts at Matunga or Mahim by Sr. PI Rathod, PW-176, who was the investigating officer at both places. He submits that dead bodies lying at the spot are always removed by the police after preparing the site panchanama unless they find that there is an urgency of saving the life and if they are not sure whether the person is dead or alive. Nothing of that sort has come forward in this case and there is nobody who speaks that this dead body was removed from the site of the blasts at Matunga or Mahim. He submits that Mohd. Alam, PW-59, identifying the dead body of that of Abu Umed is a creation of the investigating machinery and it is without any substance. To my mind, parts of the body will be definitely found at the site of the blast provided they are not destroyed completely in the blast. The fact that only the upper part of the dead body was found indicates that the said person was so near to the site of the blast that the lower part of his body was blown off and there is every possibility that it may have been destroyed completely. It has come in the evidence of Sr. PI Rathod, PW-176, and the investigating officers and the panch witnesses of the railways that there were many body parts lying in the bogies as well as on the tracks and it has also come in their evidence that people from the public carried the dead and injured and whatever articles were left were also collected by them. Body parts, flesh pieces must have been collected and taken to the hospitals, because one can just visualize the uncontrollable situation at the spot and one cannot expect the members of the public to do

this work in an organised and scientific manner. Leaving aside all these things it has been established by the prosecution that the dead body was that of one Salim, a Pakistani national and this is the only mistake this witness has committed. Except this lapse, there is nothing in his cross-examination to discredit his version. On the other hand, during his cross-examination in paragraph 46, the witness explained that on seeing the photograph he thought that it was of Abu Umed, but denied the suggestion that police told him that it is his photograph. However, a positive statement has come in his cross-examination that the police told him that he was killed in the bomb blast in the train. What this means is that the witness has committed a mistake only about the name of the said dead body. To my mind, in view of his further answer in cross-examination that he was shown photograph of the entire body, the possibility cannot be ruled out that he was shown photograph of Abu Umed, who was killed in an encounter and not of Salim. This is an obvious mix-up and the learned advocate has mixed-up this issue because the witness did not state in his chief-examination that it was the photograph of a person who had been killed in the bomb blasts in the train. That came in his cross-examination. However, his evidence about it, as mentioned above, is not brought on record as an improvement or contradiction. Thus, he may have committed a mistake or he may not have committed a mistake and therefore it does not affect his evidence, more so he had stated in his chief-examination that the A3 had told him that the names of four Pakistani persons including Abu Umed and one Salim.

921. Learned advocate submits that it is the specific case of the defence that during the period which he is stating to be in India and visiting the house of the A3 at Bandra, he was not in India, but was in China and it is his case also that he was visiting China and foreign country. The last submission is wrong because the witness never said that he had gone to China or any foreign country. Learned advocate submits that the important document was his passport of 2006, which was valid and was in force during that period, at the same time the witness did not chose to produce it and gave evasive answers, but never denied that he had never visited China or other foreign country, but only says that during that period he was in India. He submits that therefore adverse inference is required to be drawn because of his refusal to produce the passport. These submissions are not correct because it has not come in the evidence of the witness either in chief-examination or in cross-examination that he had ever gone to China or any other foreign country. He also submits that though the witness is a resident of Mumbai, he gave an application for passport showing his address of Sambal, Bareli, which shows that this man is of a doubtful conduct and the transactions that he was making with the government officers has got no clarity. Learned SPP has submitted in this respect that this issue has been raked up by the defence in the cross-examination of the witness. To my mind, the submissions by the learned advocate are entirely baseless, because though the witness admitted that his elder brother Parvez used to visit China in 2006 and he, i.e., the witness, has lost his passport, he has made a positive statement that

he has never gone out of India and denied the suggestion that the passport was lost after he visited China in 2006. This came in paragraph 14 during the cross-examination by learned advocate Wahab Khan. There are no further questions and there is only a suggestion at the end of the cross-examination by learned advocate Shetty that he was in China during this period and therefore he is not producing his passport. To my mind, if the defence is asserting a fact it is for it to prove it. There is no reason why the witness should produce his passport. It is observed during the entire trial that the accused are very vigilant and have not left any stone unturned to discredit the prosecution witnesses and to prove their defence. It was not impossible for defence, to have called the information from the airports about foreign travels of the witness, if any. Hence, merely because a strange the defence is taken and merely because the A12 has stated about it in his oral evidence as DW-48, no adverse inference can be drawn against the witness. Even if one ventures to draw such an inference it is doubtful whether such an adverse inference would affect his cogent and straightforward evidence.

922. Learned advocate further submits that there is a serious doubt about the acquaintance of this witness with the A12 because he is not denying that the A12 was working at Hyderabad, but he says that he does not know and about working at Gurgaon he says that he does not know. If one considers the answers given by the witness on this aspect, it is clear that he has told whatever he knew correctly. It is not that his knowledge that A12 working at Hyderabad has been

controverted in his cross-examination. It is in his chief-examination that at that time the A12 used to work in a call center at Hyderabad. Though this has been shown as an improvement over his statement given to the police, however it has come in his cross-examination that he met A12 for the first time during 2004, that the A12 served in Hyderabad in 2005, but he has no idea since what month he started working there and he expressed his lack of knowledge as to whether the A12 was working in the General Electric Company in Hyderabad since September, 2004 continuously upto 2006 and prior to that from April to June, 2004 in the Saffron Global Limited. However, his positive statements about the places where the A12 worked in Mumbai, viz., in Pizza Hut in Lokhandwala, Andheri, in a Moonlight Club probably in the Golden Nest area on the highway in Mira Road and that he had gone to meet him at both places shows his exact knowledge about the A12. Leaving all these things aside it appears that the learned advocate has missed reading or has not mentioned the answers given by the A12 in his cross-examination. To my mind, the A12 may be working at Gurgaon or Hyderabad, but that does not mean that he never used to come to Mumbai. A12 has not given any evidence about it except his words. In this connection learned SPP pointed out to the last suggestion in paragraph 25 of the cross-examination of the witness and submitted that apparently this suggestion was given on the instructions of the A12. The suggestion to the witness is that he had gone to meet the A12 at Gurgaon. To my mind, even the suggestions in paragraph 49 to the witness that his girlfriend was caught in the raid in 2006, was put

into Chembur Remand Home in May, 2006, that in January, 2006 she became pregnant and tried to commit suicide and that he had got her abortion done, are all indications of A12 having given this personal intimate information to his learned advocate, which fortified the inference that he knows the accused and *vis-a-vis*. As I said earlier, learned advocate has missed or not mentioned what the A12 stated in his cross-examination and which conclusively establishes that the witness knew him. It has come in paragraph 26 of his cross-examination by the learned SPP that he was acquainted with Mohd. Alam, PW-59, since 1999, met him for the first time at Bhendi Bazar, that he used to work in an STD booth with a boy by name Imran and Mohd. Alam, PW-59, was his friend and he got introduced to him. This corroborates the evidence given by the witness that through one Imran he got acquainted with the A12. Not only this, the A12 has stated that they were on visiting terms with each other, that he used to meet Mohd. Alam, PW-59 at Cafe Coffee Day and Barista and it will be correct to say that the witness used to confide in him even for any small problem. I do not think that any other inference than the above can be drawn from these answers and about the China visit A12 has admitted that he has not mentioned it in the written submissions.

923. Learned advocate submits that there is a delay in recording his statement because assuming that what he says is true, it shows some serious thing including some plan or something going on, some doubtful conduct alongwith few Pakistani nationals, thereafter coming to know about the blasts on 11/07/06 and further coming to

know that his close friends have been arrested, then in that case there is no reason for this man not to approach the police and give a statement. The very fact that till 02/11/06 he did not give any statement to the police shows that he does not know anything and has not witnessed anything. His cross-examination shows that he came to know about the blasts on the very day, that he saw the news on television and read in the newspaper about the arrest of the A3 and A12, saw the A12 on the television also and ultimately he says that though he knew that his friends were caught by the police, he did not contact them upto 02/11/06. Learned advocate submits that if we see the tenor of his evidence, it does not stand to the scrutiny and it is required to be rejected. Learned SPP submitted in this respect that if a person is an informer of the police, he may go to the police to report about any suspicious thing. However, it is not necessary that any ordinary person will go to the police station to report about any suspicious thing. He questions as to who will think of involving himself in police matters? To my mind, the witness has not stated about anything suspicious going on or that he suspected something. Learned SPP submits that if his evidence in chief-examination is read, it does not show that there is anything artificial or exaggerated or imaginative because he has not drawn any conclusion, not drawn any inference and has only narrated what he saw and experienced. To my mind, the explanation given by the witness in paragraph 19 dispense any doubt about there being delay in recording his statement, because after admitting that it is the duty of every citizen to help the police and inform if a crime is done or

any person is doing anything wrong and it is necessary to keep distance from a person who is terrorist or involved in illegal activity, that he knows and has heard about terrorist activities against the nation and about L-e-T, an organisation in Pakistan doing terrorist activities, he declined knowledge of any such activities and said that he was not sure after January, 2006 that he had such information that he should tell the police and, this is important, because the A3 was his friend. Further, he stated that he did not think it necessary to tell the police even after the meeting of February, 2006 and, this is again important, because he did not know what had transpired in that meeting. Lastly, even after coming to know that persons from Pakistan have come to the house of the A3, he did not think it necessary to tell the police about it and, this is again important, because they did not say anything wrong in his presence. This shows that he is not prejudiced just because he saw some Pakistani persons in the house of the A3, because there is no ban on Pakistan nationals legally entering India though he may not be knowing whether they have really legally entered or not. I think that the reasons given by him are perfect, if one considers that the A3 and A12 were his friends and if one considers that they used to go to dance bars together. It is said that relations of liquor are thicker than blood. Secondly, if nothing transpired in the meeting in his presence and if nothing wrong was said in his presence, how could he co-relate the happenings of the bomb blasts and the arrest of the accused with those meetings.

924. The above aspect is also submitted in point no. 18 in the

written submissions in volume-4 given by the learned advocate Sharif Shaikh and point no. 19 is saying that the statement of this witness was not recorded by ACP Patil, PW-186. After reproducing substantial part of his cross-examination in this respect, it is submitted that it appears that the witness was in Mumbai on the date of the blasts till his statement was recorded, that the CDR Ext. 3768 of the mobile that was being used by the A3 shows that he was in regular contact with him even on 11/07/06 and then it is submitted that A4, A6, A10 and A12 have stated in their evidence that Mohd. Alam, PW-59, was called at the ATS office in August, tortured and interrogated. Thus the delay in recording his statement show that he has stated a false story. Reliance is placed on the answers given by ACP Patil, PW-186, in his cross-examination that the name of this witness was disclosed during the interrogation of the A3 and then it is submitted that A3 was remanded to judicial custody on 09/10/06, therefore, there is delay of 23 days, which, ACP Patil, PW-186, tried to explain, but it cannot be considered in respect of such an important witness. This submission obviously ignores the answers given by ACP Patil, PW-186, that it is not that in all the cases where the names of witnesses are revealed in the interrogation of the accused, the investigating officer contacts the witness immediately for verification. He also explained that they contact the witness as per their convenience and not at their whims and it will depend on the availability of the witness when the officer may be able to contact him. In this connection, the most important answer given by Mohd. Alam, PW-59, is that if police would not

have called him, he would not have gone and given his statement.

925. In my humble opinion, considering the reasons given by the witness in paragraph 19, I do not think that there is any delay in recording the statement and if at all it is there, to my mind, it does not affect the credibility of his evidence.

926. Learned advocate Shetty placed reliance on the answers given by the witness in paragraph 38 of his cross-examination in connection with recording of his statement before the police as well as before the court and questioned as to what is the indication when the witness was told on 02/11/06 that he has to state the same things before the court which he stated before the police. I do not think that there is anything wrong in the police asking the witness to state the same things before the magistrate, which he had stated to them on 02/11/06. Therefore, the sanctity of the statement recorded before the magistrate is not affected. Placing reliance on the statement made by the witness that he saw the A9 for the first time in February, 2006, thereafter he did not meet him and thereafter he saw him in the court only, learned advocate submits that therefore the participation and any assistance by the A9 is totally ruled out. I do not know how such inference can be drawn, because certainly the witness stated about seeing the A9 in the house of the A3 only in February, 2006 and not on any subsequent occasion in March, May, June or July, 2006.

927. Learned advocate pointed out to the inability of the witness to tell the date in June, 2006 when he came to know from the A12 that he had made arrangements of two guests of the A3 at Millat Nagar,

Andheri and during further cross-examination in paragraph 42 he tried to point out these statements as improvements on his statement under section 161 of the Cr. P. C. Infact the witness stated that he had stated so and in that connection the learned SPP submitted that it is in the statement that subsequently he came to know from Naveed that two of A3's Pakistani mehmans had been shifted to some house in Millat Nagar, Andheri (W), Mumbai. This submission has not been controverted and obviously one cannot read the contents of the statement under section 161 of the Cr. P. C., but learned SPP has made the submission and it is not shown to be incorrect. Thus, in fact this is not an improvement. In connection with this aspect learned advocate submits that coming to know from the A12 that two guests of A3 were shifted to some house in Millat Nagar is different than the A12 himself taking part in shifting two persons. Thus, the knowledge of the A12 about the two Pakistani guests being shifted in Millat Nagar does not show any criminal intent or *mens rea* on his part. He submits that this claim is made only to fix the A12 and therefore the two sentences cannot go together and the improvement made by the witness is a very vital improvement and therefore the evidence of the witness is not at all acceptable. I have already held that there is no improvement and the evidence by the witness is only what knowledge the A12 gave him. He has not imputed anything more to the A12 that the A12 told him that he had made the arrangements, etc. Thus his evidence is not on the point to show the involvement of the A12 in any activity of shifting the two Pakistani guests from the house of the A3 to Millat

Nagar, Andheri (W), but it is only to show knowledge of the A12 about the said activity. Learned advocate attacked the credibility of the witness on the ground that he produced two ration cards, one of village Sambal, Dist. Bareilly and other of Mumbai, which show that some bogus documents unconnected to him and as an afterthought have been produced by this witness. To my mind, this issue was raised and questions were repeatedly asked by multiple advocates during the cross-examination and the witness was directed to produce his ration card. Now when he has produced them, the defence is saying that they are bogus documents. There may be several reasons why names of persons are included in two ration cards, the one most probable being of having no knowledge about deleting one's name in the earlier ration card at some other place or this thing remaining to be done. This, to my mind, does not affect his credibility and does not show that he is an untruthful witness. Learned advocate Wahab Khan dissected the evidence of Mohd. Alam, PW-59, on several counts and insofar as his evidence about what happened in the house of the A3 in February, 2006, he submitted that the witness did not say that he did not take the oath, but the others who were present, took it and since the witness was not present during the discussion that had taken place before he went there, there was no question of asking him to take the oath and this shows that the witness is not stating the truth. To my mind, it is a strong possibility that as Mohd. Alam, PW-59, is a Muslim and as the A3 assured the A13 that he is his best friend, A13 asked him to take the oath but obviously he refused as he did not have any

knowledge about the subject matter of the meeting. Learned advocate next submits that the defence called for the CDRs of the mobiles of A3, A4, A7 and A13 and it can be gathered from the evidence of the investigating officers that the CDRs were already collected and studied, but when the A2, A4, A9 and A13 gave evidence, they were not suggested that their location in February, 2006 was in the house of the A3 and on the contrary the investigating officers are saying that there was nothing useful in the CDRs. To my mind, no doubt the accused gave evidence and relied on the CDRs of their mobiles, but the prosecution cannot prove its case only by giving such a suggestion to them in their cross-examination. It can only show the improbability of the defence, which is the same as it is necessary for the accused only to show the probability of their defence being true. On the same point he submits that there is no record of CDR of the mobiles that the locations of the towers show that the A2, A3, A4, A12 and A13 were at Mira Road in March, 2006. Much has been said and discussed about the evidence by way of entries in the CDRs and I do not think that this was for the prosecution to prove.

928. Learned advocate raises a question about conduct and credibility of the witness in the light of the evidence given by him that A3 had disclosed to him in January, 2006 about being a member of L-e-T, undergoing training in Pakistan, disclosing his real name and identity, but inspite of this he did not bother to separate himself or disassociate from him. To my mind, it would have been better if the witness would have been asked directly as to why he did not

sever relations with the A3 immediately in January, 2006 after coming to know about his activities and his contacts with Azam Chima of L-e-T. However, there is no questioning on this aspect and the answer given by the witness in his cross-examination that he was not sure whether after January, 2006 he had such information that he should tell the police, explains his conduct of continuing his contact with the A3. Not only that he has also explained that he did not go to the police because the A3 was his friend and not only just a friend, but they were together in their vices, which is a more bonding factor.

929. Learned advocate submits that though it is alleged by the prosecution that A3 sent boys for militant training to Pakistan, he does not ask this witness to go for training and that he would arrange for the passport and visa. To my mind, this is for the A3 to explain as to why he did not ask Mohd. Alam, PW-59, to take the call of jihad and go for militant training in Pakistan. It is obvious from the statement by the witness that he was shocked on hearing the views of the A3 about religion, i.e., Islam, atrocities being committed on Muslims, etc., that he did not approve of the views. Secondly it can be said that he did not have the common link, i.e., of being an activist of SIMI. It may be that therefore the A3 did not think of including him in their group or gang.

930. Learned advocate submits that Mohd. Alam, PW-59, saw some Pakistanis in the house of the A3 still he continues with his friendship and goes to bars and therefore the stories narrated by him about the information given by the A3 in January, 2006 and

meetings at Bandra in February, 2006, at Mira Road in March, 2006 and seeing some Pakistanis in the house of the A3 in May, 2006 is all a bundle of lies. To my mind, the evidence of the witness in respect of meetings is cogent and convincing and the improvements made by him are not such that they affect his credibility. It is not unusual for Pakistani persons to come to India on a valid passport. This witness did not know that those Pakistanis had entered into illegally and had come to Mumbai for some illegal purpose. Thus, there was no reason for the witness to discontinue his friendship with the A3 and the only reason for he continuing the friendship is apparently their common interest in going to the dance bars.

931. Placing reliance on the call data in the CDR Ext. 3768 of mobile number of the A3, i.e., 9833059249, learned advocate submits that as per the witness he lastly met the A3 on 02/07/06, but then there are calls on that day, on 5th, 6th and even on 11/07/06. In respect of calls on 11/07/06 he points out that one call is at 1523 hours of 132 pulse, then on the same day in the night there is a call at 2359 hours of 126 pulse. These were on the day of the blasts itself. Then there were calls on 14/07/06 and 18/07/06. Therefore, the claim of the witness that he lastly met the A3 on 02/07/06 is false, because even after that day he is continuously in touch with the A3. To my mind, meeting a person in person is different than calling him on mobile phone. There is nothing in the cross-examination of this witness in respect of his calls to the A3. It can be argued that the CDRs were obtained much later and therefore this witness could not be questioned about them. However,

the defence could have recalled him as it did in respect of several other witnesses. If the A3 was knowing about calls made by this witness to him continuously after 02/07/06 and even on 11/07/06, irrespective of the fact that the CDRs were obtained much later, the witness could have been given such suggestions and could have been cross-examined about it. This is not done and on the contrary phone contact of the A3 and the witness does establish that he was in closely acquainted with the A3.

932. Learned advocate submits that the A3 is shown to be arrested on 27/07/06, was in police custody till the provisions of the MCOC Act were applied, that study of the CDRs was going on and as there were two calls between him and Mohd. Alam, PW-59, he was called at the Kurla office, detained there and tortured and this is deposed by A2, A4, A6 and A10 when they gave evidence. It is deposed by the A12 and A13 that they saw him at Bhoiwada office and A12 has also stated that he saw him at the Kalachowki office. Thus, this does not show that the prosecution story is honest. To my mind, this is a baseless submission only on the basis of the oral evidence given by the accused. Baseless I said because if six accused knew about it, then there is no reason or no explanation why Mohd. Alam, PW-59, was not asked about it or given a suggestion that he was called to the Kurla office or Bhoiwada office, etc., and detained and tortured. Except the words of the accused, there is no other evidence and there is not even any suggestion to the witness or he is not even inquired about being called by the police for inquiry immediately after the blasts. Thus, this submission is of no use.

933. Learned advocate then submits that though the A3 disclosed his association with the L-e-T, Mohd. Alam, PW-59, continued association with him and it appears to be absolutely unnatural that though he called the A3 on the day of the blasts, it was after a period of about three months. There are no calls by him from February to April, 2006 and the first call by this witness is on 17/06/06, which fortifies their case that the witness was in China and therefore his evidence about the meetings in February, March and May is a false story because there is no call prior to 17/06/06. To my mind, the production and proving of the CDR and relying upon it as evidence is by the accused and not of the investigating agency. The witness was not suggested that he had not called the A3 from February to April, 2006 because he had gone to China. The CDR that is produced contains the call data of January, May, June and July, which means that the CDR of February, March and April is not retrieved and produced. The CDRs Ext. 3768 (1 to 4) for the months of January and May to July, 2006 were proved by nodal officer Yogesh Rajapurkar, DW-36, of Bharti Airtel Company and when he was asked he could not explain as to why data of some period is not in the CDR. However, his answers in paragraph 15 of his cross-examination show that whatever data was available was produced before the court and more than one year old data is purged and archived on magnetic tapes and there is no scope for manipulation of the archived data and whatever is retrieved is the correct data. This may also mean that A3 did not use his mobile from February to April, 2006 and therefore there is no call data of

that period. The absence of data cannot be interpreted to mean that Mohd. Alam, PW-59, did not make any call to him or that he was in China during that period. Thus, this aspect is immaterial and it does not affect his credibility.

934. A ridiculous submission is made by learned advocate Wahab Khan that though the witness has named the A2, A3, A4, A9, A10, A12 and A13 none of the accused have stated in their confessions that they know him and Amar Khan, PW-75, also does not say so. I do not see any reason as to why would the accused mention the witness in their confessional statements. The confessional statements are given by the accused voluntarily and for reasons best known to them they may not have made a mention about this witness. Considering the fact that the accused have alleged that all their confessional statements are false and are prepared by the ATS, if the ATS had really fabricated the confessional statements, they would have introduced this aspect in them. This is also a baseless suggestion because in his confessional statement, the A3 has stated that he, Mohd. Alam, PW-59, and A12 used to go to the dance bars and A12 also mentions him in his confessional statement. Thus, this submission is improper. Next submission by the learned advocate is inconsistent with the above submission, because he submits that once the confessions were recorded then this exercise of introducing witness to corroborate the confessions was undertaken. This submission is obviously self-contradictory and is of no consequence.

935. Learned advocate submits that it is the evidence of the witness that he came to know from the A12 that two Pakistani guests had

been shifted to Millat Nagar, Andheri, but there is no evidence about the said residence and on the other hand the prosecution is relying on the panchanama which shows that A12 pointed out a building saying that the Pakistanis used to reside there. Now would this not be the relevant evidence given by the prosecution? To my mind, it is the relevant evidence.

936. Learned advocate next points out the contradicted portion from the statement under section 164 of the Cr. P. C. of this witness and certain improvements made by him on his statement under section 161 of the Cr. P. C. The last sentence in paragraph 13 is not an omission, because he stated that he had stated so to the magistrate and the other omissions that are pointed out are mainly with respect to the statement made to the magistrate under section 164 of the Cr. P. C. and not in respect of statement under section 161 of the C. P. C. before the police. Those omissions are not material and insofar as the contradicted portion part A of his statement under section 164 of the Cr. P. C. is concerned, it has not been proved because the defence did not pray for calling the magistrate who had recorded it, though the prosecution did not examine him. Learned advocate submitted that no reliance can be placed on the evidence of such a witness, who is of a loose character indulging in drinking liquor, going to the bars and to prostitutes. Learned SPP submitted in this respect that what better evidence is expected from a person who is deposing honestly about his vices about being a womanizer and a drunkard. He submits that since the prosecution has not given him a certificate as a man having a good character, assailing his

character is irrelevant to the fact in issue in this case. In other words, there cannot be a proposition in law that a person who is habituated to liquor and womanizing is not reliable, trustworthy or believable witness. To my mind, though the witness is a Muslim, he has honestly confessed to what he was doing and this aspect is the link between him and the A3 and A12 and that is why they became friends.

937. Learned advocate next submits that the witness is lying about his China visit because though he had stated that he had applied for passport at Bareli, he did not produce the passport and the A4 applied to the Bareli Passport Office under the RTI Act and received the reply Ext.3088 that no passport had been issued to such person. Ext.3088 has not been proved by calling any witness. But even otherwise, the information that was given is that no passport was issued to the witness. It proves only this thing and nothing more and on the other hand if no passport was issued there is no question of this witness having gone to China. Thus, it cannot be said that the witness is lying and running away from this issue.

938. Learned advocate submits that Mohd. Alam, PW-59, has stated that the statement was recorded at Chandanchowki office of the ATS, whereas, ACP Patil, PW-186, says that he does not remember where he had recorded it. On the other hand the entries in the log book Ext. 4299 produced by the prosecution during the cross-examination of the A4, DW-38, in respect of MH-01-SA-131, shows that the vehicle had not gone to Chandanchowki on 02/11/06, which clearly shows that false statement has been introduced. It is

no doubt true that the entry in the log book of the said vehicle does not show that it had gone to Chandanchowki office of the ATS on 02/11/06. When ACP Patil, PW-186, was asked a question in paragraph 257 of his cross-examination whether the entries are made in the log books of vehicles when the ACPs, DCPs, etc., of the ATS go to the ATS units from the Head Quarter at Nagpada, he explained that log books are maintained for all the police vehicles for administration purpose to see that they are used for office work and not misused. The important explanation that he gave is that a vehicle assigned to an officer may be used by some other officer at any time. Thus, no adverse inference can be drawn from this aspect only that ACP Patil, PW-186, did not record the statement of Mohd. Alam, PW-59, and on the other hand though he admitted that it is not mentioned in the case diary as to whether the witness had come on his own or he was called, he volunteered that his name was disclosed during the interrogation of the A3. In this connection the evidence given by Mohd. Alam, PW-59, in paragraph 38 of his cross-examination is giving all the specifications as to at what time his statement was recorded, how it was recorded and who were the officers recording it, though he did not tell their names. This has come in his cross-examination and it has not been controverted and it is not that there is no mention in the case diary about recording of his statement.

939. Learned advocate submits that the witness did not give any particular date about meeting the accused or he going to the house of the A3, on the other hand, the defence evidence given by the A2

and the witness examined by him, i.e., Dr. Abdul Sumar, DW-5, and Dr. Aminuddin Abul Hasan Khan, DW-7, as well as Dr. Atiya, PW-53, have given the dates. I have already discussed and have arrived at a conclusion that the defence evidence given by the A2 is unreliable. This submission is obviously misplaced because the defence evidence given by the A2 is in respect of the dates 8th, 9th and 10/07/06. Hence, it is irrelevant insofar as the events about which this witness deposed. The last submission made by the learned advocate is clearly a ridiculous submission. He submitted that Mohd. Alam, PW-59, does not say anything about the bomb blasts, he has not stated that any of the accused told him about the bomb blasts and this is the criteria and the test to ascertain whether he is a natural or got up witness. To my mind, whatever the witness has deposed is about what he saw and his evidence is not spiced up to show that he knew anything more or had seen anything more. The cross-examination of ACP Patil, PW-186, has not revealed anything to discredit his version in respect of recording the statement of this witness and to discredit the evidence of this witness also.

940. The pointwise submissions in the written notes of arguments submitted by learned advocate Sharif Shaikh in volume-4 in respect of this witness have been mostly covered during the discussions of the submissions by learned advocates Shetty and Wahab Khan. In the 48 pages submission about this witness, again his deposition is reproduced in extenso and each and every sentence and word is given an adverse meaning and interpreted against him to show how he is not believable. The depositions given by the A2, A4, A10, A12

and A13 countering the evidence given by him are reproduced in extenso and it is submitted that inference be drawn that whatever be deposed is a false and fabricated story. His evidence is not reliable and is required to be discarded. To my mind, these submissions are presuming that the evidence given by the accused is cogent and truthful and has disproved the evidence of the witness. I do not think that such inferences can be drawn only on the basis of stories told by the accused in their depositions. Thus, only those issues that would affect the credibility of the witness in respect of core issue will be considered in order to avoid burdening the record.

941. Similar ridiculous submissions as were made in respect of Mohd. Shakil, PW-70, and Amar Khan, PW-75, are also made for this witness by placing reliance on the contents of the confessional statements of the A2, A3, A4, A6, A9, A10, A11 and A12 and it is submitted that they contradict the deposition of this witness, therefore, his evidence has to be discarded and also all alleged confessional statements are required to be discarded. At the cost of repetition, I have to mention as is mentioned while discussing the submission of the evidence of Amar Khan, PW-75, that the ineptness of the defence is evident from this submission and the defence has to accept one thing or the other thing. The evidence of Mohd. Alam, PW-59, has been discussed independently and it is practically unblemished insofar as the core issue is concerned.

942. In the point no. 9 after reproducing Mohd. Alam, PW-59's evidence in paragraph 4 about the meeting in February, 2006, the evidence in denial given by A2 as DW-41, A4 as DW-38, A10 as

DW-44 and A13 as DW-49 is reproduced and it is submitted that in view of their depositions, it is clear that A7 deposed that he had never gone to Bandra and had never met the A3. Hence, he was not present in the alleged meeting, that the evidence by A4 has not been challenged by the SPP, therefore, it is crystal clear that he had not attended the meeting at Bandra and similarly about the denials made by the A10 and A13. The evidence given by the different accused is only by way of denial and they have not given any positive evidence about they having never gone to Bandra. It is only their oral evidence and though they have taken the plea of alibi in respect of meetings, there is no evidence from their side to prove it.

943. Now in respect of the evidence of Mohd. Alam, PW-59, that the A13 took a Kuran and asked all to keep their hands on it and take the oath, it is submitted that the accused were alleged to be present for some work about their religion, they know very well that oath cannot be taken other than in the name of Allah and the police might have got this idea from films and actually a Muslim does not take oath on Kuran. Hence, his deposition is wrong and is tutored by the ATS. To my mind, the possibility cannot be ruled out that accused themselves got this idea as submitted. The witness has deposed what he saw and nothing more.

944. The particulars given by Mohd. Alam, PW-59, in his cross-examination about going to dance bars, having close relations with a particular dancer for about a month, having close physical relations with 2-3 girls, drinking liquor, staying out for the whole night and telling his parents that he was with his friends whenever he drank

beer and went to the ladies bars, are criticized as being prohibited by Islam, anti-Islam and against the basic principles of Islam. These things are alleged in the written submissions by learned advocate Sharif Shaikh and it is also alleged that he deposed falsely on oath, which is also a sin in Islam and this type of person doing all the above things can be lured by the police for giving false evidence, therefore, it is not acceptable and is required to be discarded. To my mind, this submission is untenable as this court is not a court to decide whether a person acted according to religion or not. It is a question in these modern days as to how many Muslims or for that matter Hindus or persons of any religion follow their religion scrupulously. If they would have followed their religion scrupulously there would not have been crimes of murder, rape and bomb blasts, etc.

945. It is alleged by placing reliance on his inconsistent answers about his place of birth that he is hiding his place of birth for some extraneous reasons, therefore, his evidence is not acceptable. What is the extraneous reason is not explained and just because the witness gave inconsistent answers that too in cross-examination, when being repeatedly asked about the same things again and again and again, it cannot be said that his evidence is not acceptable. Same is the case about whether his father had passport or not. It is irrelevant and immaterial and the submission is unacceptable that if he does not remember about it, how he remembers about his friends whom he had seen only one two occasions. The issue of two ration cards Exts.741 and 742, and the names of some family members not

appearing in one and the ages of brothers being different, etc., is also extraneous and not germane to the fact in issue. In respect of his evidence about names of his two brothers Javed and Fakre Alam and their family members being not included in the ration card Ext. 741, though they stay in their ancestral house, to my mind, the possibility cannot be ruled out that they may have obtained separate ration cards for obtaining cooking gas connections and for other government and official purposes. The next submission in the topic in respect of friendship with the A12 is downright, misleading and wrong and ignoring the relevant evidence and it has been discussed earlier.

946. On the basis of the oral evidence given by the accused, similar submissions are made in respect of meetings at Mira Road in March, 2006 and the incident of May, 2006. They are unnecessary to be discussed. Regarding the mention of Rizwan Khot, it is submitted that the said person is a very important person, who used to go around in the car with the A3, A12 and this witness, that the said person is a prosecution witness, but is not examined by the prosecution without giving any reason, which adversely affects the prosecution case. It may be that the witness Rizwan Khot was an important witness and a link to establish the recovery of the Maruti car at the instance of the A12, the fact remains that though he was not called by the prosecution and though the defence has made all out efforts to examine a large number of defence witness, they have not taken pains to summon this person and to examine him as a defence witness. This aspect obviously is an extraneous issue and

does not affect his evidence.

947. A ridiculous submission was made that it has come in his cross-examination that when he was called by the police he was frightened and therefore it is possible that he has become a false witness because of the threats given by the police. Thereafter the evidence given by the A12 about assaulting and threatening the witness by PI Khanvilkar, PW-168, is reproduced and it is submitted that it is proved that he was threatened and because of this any person can do anything. This submission is misplaced because it has come in paragraph 15 of Mohd. Alam, PW-59, while explaining some improvements, that the reason why these things are not mentioned in his statement before the police and magistrate is that he was afraid at that time and therefore he had forgotten to tell and he could not tell as he had gone to court first time. Thus, no inference can be drawn from the evidence given by the A12 that the witness was in fact threatened because no such thing has been put to him or suggested to him. No inference can be drawn that just because he was frightened on being called by the police or when he went to the court that it is possible that he has become false witness.

948. It is clear that the submissions made by the learned advocates have not shown as to why the witness should not be believed. In this respect the learned SPP submitted that he is a star witness and his cross-examination has not shaken his credibility and there is no dent to his evidence in cross-examination. In respect of the identification of the accused in the court, there is no suggestion that the accused were pointed out to him. He submits that if the chief-examination of

the witness is seen, there is no exaggeration or imagination and anything artificial about it because he has not drawn any conclusion, has not drawn any inference and he has narrated only what he has experienced.

949. Learned SPP made an important submission that whatever Mohd. Alam, PW-59, stated is a direct evidence. If the A3 tells him some thing, his evidence is the evidence of a person who directly hears it from the person who made the statement. So the A3 telling him about visiting Pakistan twice for taking training, meeting Azam Chima and being a commander of L-e-T, etc., is nothing but an extra judicial confession. These submissions have not been countered by any of the learned advocates for the accused and it is, therefore, that I said in the beginning that his evidence in paragraph 3 of his deposition is the most important evidence in respect of ideology of the accused.

950. Learned SPP also made an important submission in respect of recording of statements of witnesses under sections 161 and 164 of the Cr. P. C. He submits that there are three distinct methods and they are relevant for consideration :

(A) at the stage of investigation, the recording of statement under section 161 of the Cr. P. C. is directly in an inquisitive manner and a true and seasoned investigator will try to pump out maximum information from a witness by putting questions and tough questions and more importantly the investigating officer is equipped with certain information which he may have gathered in the process of collecting evidence or during the course of investigation of the

suspects or the accused or other witnesses. Normally, the statement of the witness so recorded give many details, many times and he points to sub-section (3) of section 161 of the Cr. P. C. wherein it is laid down that it is the discretion of the police officer to reduce the statement in writing. Section 161 does not cast a duty on the police officers to record verbatim every word that flows from the mouth of the witness. He can use the discretion to use the material coming from the witness which according to him may be relevant to the fact in issue. Many witnesses have got the tendency to tell too much things and at times the officers tell them that they can depose about it in court. Normally, the idea of recording a statement under section 161 of the Cr. P. C. is to get an idea of the background or the issue for which the witness is. Had the statement under section 161 been sacrosanct, then the legislature would not have provided for a bar under section 162 of the Cr. P. C.

(B) When the matter comes before the magistrate for recording a statement under section 164 of the Cr. P. C., the magistrate does not have an inkling as to the background and the circumstances and what the witness knows and for what he is making the statement and what he wants to say. He will only ask the witness to state whatever he wants to state. There is no question of inquisitive or probing questions or trying to get more information. As a result, 164 statements are not as much in detail as the statements under section 161.

(C) When the witness is being examined in the court by the prosecutor, though ordinarily the area of examination of the witness

is circumscribed by section 161, there is no legal bar for a prosecutor to pump out the requisite information in his own way without putting leading questions. He has to strike a balance that the witness does not go at a tangent to section 161. But latitude is available to him to examine him in such a manner that the best possible information comes out from the witness, who at times may deviate from his previous statement. He submits that finally it is the utmost responsibility on the shoulders of the court to appreciate the evidence of such witness or for that matter all witnesses on the background of these three categories. He submits that in other words every word or every sentence that is stated by the witness if not found in his previous statement does not lead to the conclusion that the witness is untruthful or unreliable.

951. In my humble opinion, the submissions by the learned SPP are very much valid for appreciating the evidence of all types of witnesses. Applying, these tests to the evidence of Mohd. Alam, PW-59, I have no hesitation to hold that he is an impeccable witness. He has no criminal antecedents, no connection with the police either as a witness or panch or accused and no animosity against any of the accused. Thus, I have no hesitation in accepting his evidence as truthful. Hence, it will have to be held that by his evidence the prosecution has proved : (i) that the A3 was concerned with the atrocities being committed on Muslims and was of the view that the only way to solve their problems was by way of jihad, (ii) that the A3 had gone to Pakistan twice and had taken training in the camps of L-e-T, (iii) that wanted accused no. 1 Azam Chima rendered

financial assistance to the A3, (iv) that the A3 was commander of L-e-T in Mumbai (v) that the A2, A4, A9, A10 and A13 had assembled in the house of the A3 in February, 2006, (vi) that the A2, A3, A4, A12 and A13 had assembled near Shams Masjid in Mira Road in March, 2006 and (vii) that wanted accused no. 5 and 14 and deceased accused no. 1 and 2 were in the house of the A3 in the second or third week of May, 2006 and later on they were shifted to the house of the A3 at Millat Nagar in Andheri (W), Mumbai. **This is the circumstance no. 19 proved by the prosecution.** It is against the A2, A3, A4, A9, A10, A12 and A13. It is the third circumstance against the A2. It is the sixth circumstance against the A3. It is the third circumstance against the A4. It is the first circumstance against the A9. It is the first circumstance against the A10. It is the second circumstance against the A12. It is the fourth circumstance against the A13.

Recovery of material indicating conspiracy :-

952. This is a sub-topic under the topic 'Conspiracy' and it is alleged by the prosecution that in pursuance of the criminal conspiracy done by wanted accused no.1 Azam Chima and arrested A3 and A13, A1, A2, A3, A6, A9, A10 and A11 went to Pakistan and received militant training in the training camp run by wanted accused no. 1 Azam Chima, that the travel plans were elaborately planned by the conspirators in order to ensure that passports of the accused did not bear the arrival and departure stamps into and out of Pakistan and during the course of investigation the A3, A9, A10, A11 and A2 were found in possession of maps showing travel route from Tehran to

Pakistan, etc. Thus, the prosecution is relying on the evidence by way of recovery of maps from the said accused as well as on the recovery of passports of A2, A9, A10 and A11 and the emergency certificate of the A3 by which he was deported from Saudi Arabia.

953. The first recovery in time is the recovery of passport of the A2 at his instance on 26/07/06, which was the first recovery from him after his arrest on 24/07/06. It has come in the evidence of Sr. PI Rathod, PW-176, that he went for the house search of the A2 alongwith the A2 and his staff and station diary entry no. 17 was made about it, true photocopy of which is at Ext. 1797, that panchas were called and he went to the house of the accused, that the door of the house was opened by father of the A2, that he searched his house, but did not find anything and then he prepared the panchanama Ext. 448. He proved the contents of the said panchanama and his evidence is corroborated by the evidence of panch witness Shridhar Gangan, PW-15. Both identified their signatures on the panchanama.

954. It has further come in the evidence of Sr. PI Rathod, PW-176, that thereafter he inquired with the A2 about his passport and on the A2 informing him that he had given it for visa to a travel agency at Fort, Mumbai and they went to the office of International Trade Links in Fort alongwith the same panch witnesses according to the directions given by the A2 and the manager was present there, the accused was in veil and he was shown to the manager by removing the veil. The manager recognized him as Tanveer and told them that he had given his passport for visa 4-5 months before and then he

produced the passport Ext. 449, which he, i.e., Sr. PI Rathod, PW-176, seized under the panchanama Ext. 450. He identified the passport and explained that it contains the stamps of arrival and departure and the visa of Iran is pasted on it. He proved the contents of the said panchanama and the evidence of Shridhar Gangan, PW-15, corroborates his version. There is nothing in the cross-examination of Shridhar Gangan, PW-15, to discredit his version and though at one point he admitted that the accused did not make any statement in his presence, his further statement is that the travel agency's office address was told in his presence and it has also come in his chief-examination that the accused was in veil and the face of the accused was shown to the person in the travel agent's office. Both these witnesses identified their signatures on the panchanama Ext. 450 and Shridhar Gangan, PW-15, also identified the passport Ext. 449. Sr. PI Rathod, PW-176, then stated about returning to the office and making station diary entry no. 20, true photocopy of which is at Ext. 1798. His cross-examination has not discredited his version and except a small inconsistency in his evidence in respect of taking panchas from their office or the panchas being called at the spot, there is nothing to discredit his version. It was argued by learned advocate Wahab Khan that the station diary entry no. 17, Ext. 1797, describes that they started with panchas, whereas, Sr. PI Rathod, PW-176, has stated that they called the panchas when they were at the house of the A2. This small inconsistency is of no consequence particularly when the panchanama Ext. 448 says that the panchas were called at the house of the A2 and Shridhar

Gangan, PW-15, has accordingly deposed and his evidence is uncontroverted. Secondly, learned advocate pointed out to the struck out the word 'nived' in the station diary entry no. 1797 and submitted that false station diary entry is made. I do not see how such an inference can be drawn. It is usual for a police party to go for search and seizure after an accused makes a statement, i.e., 'nivedan', and the possibility cannot be ruled out that the said word must have been started to be written by the SHO, but as it was not factually correct, it was struck out before it was written fully. Learned advocate also raised an issue about the name of PC Jagdale being not mentioned in the panchanama Ext. 450 as Sr. PI Rathod, PW-176, has deposed about it, but it is of no consequence. Sr. PI Rathod, PW-176, denied the suggestion that the house search of the accused was not taken and both panchanamas were prepared in the ATS office with the help of regular panchas. As mentioned earlier, the cross-examination of Shridhar Gangan, PW-15, is very short and there is absolutely nothing to show that he has any criminal antecedents or that he has any links with the police. However, learned advocate Wahab Khan referred to a photocopy of the panchanama in a crime of Police Station Kalachowki Ext. 3196, which is certified as a true copy by the PI of Kalachowki Police Station and was obtained under the RTI Act. This document is not proved as per the law and even otherwise it is of a subsequent date, i.e., of 11/09/07, and does not affect the evidence of panch witnesses.

955. The station diary entries Exts. 1797 and 1798, are the

contemporaneous record which corroborate the evidence of Sr. PI Rathod, PW-176, and Shridhar Gangan, PW-15. PSI Gaikwad, PW-169, had also accompanied them for the search and seizure and his evidence has also corroborated their evidence and the pertinent statements that are made by him are that of reaching the house of the A2, two panchas being called and the accused being taken in veil when they proceeded for the search, that on reaching the house of the A2, two panchas were called and they veiled the accused in his house and then came out of the house. He also identified both the panchanamas and stated that a person by name Prakash Krishna Pillai, i.e., PW-16, was present in the office of the International Trade Links and he identified the A2 and produced the passport Ext. 449, which he also identified. He also identified the A2 in the court. He also correctly stated that both the panchanamas contain the signatures of the A2, but committed a mistake by saying that the panchanama Ext. 450 contains the signatures of Prakash Pillai, PW-16, which is factually incorrect. There is nothing in his cross-examination about this evidence.

956. Learned advocate submitted during his arguments that the prosecution has not produced any official record about deposit of the passport with the said travel agency and as to period prior to which it was deposited. To my mind, this is inconsequential and there is no suggestion to Prakash Pillai, PW-16, that he was not working in that office and that he had not received the passport. The panch witness Shridhar Gangan, PW-15, as well as Prakash Pillai, PW-16, did not identify the A2 in the court and the learned advocate

submits that this shows that they had not gone for the search and the panchanamas were prepared in the office of the ATS. In this respect, the learned SPP submitted that whatever may be the drawbacks in the evidence about this seizure, the fact of the matter is that the document that is recovered pursuant to this panchanama is a genuine document, i.e., passport Ext.449, and there is no question of any fabrication in it. Frankly I should not have discussed the evidence of all these witnesses and should have directly held that the recovery of the passport is proved by their evidence, because it was really an innocuous recovery at that point of time. Till that time the *modus operandi* of the accused and the relevancy of the passport and the maps could not have been known to the investigating officers. It is unimaginable that at such an early point of time, the investigating machinery hatched a plan to create such type of evidence and then to show their recovery from respective accused. There is no allegation that the passport was collected from the house of the A2 or that the A2 himself produced it. Learned advocate Wahab Khan submits that this is a concocted evidence in view of the evidence given by the A2 as DW-41 and pointed out to the log book entry Ext. 3928. The contents of Ext. 3928 corroborate the evidence of Sr. PI Rathod, PW-176, that the said vehicle had gone to Agripada as well as to Fort. Not only this, the A2 has admitted in his evidence that he was taken to his house.

957. Thus it will have to be held that the prosecution has proved the seizure of the passport Ext. 449 at his instance. **This is the circumstance no. 20 proved by the prosecution. It is against the**

A2. It is the fourth circumstance against him.

958. Next in time is the recovery of maps from the house of the A3, the evidence of which has been discussed earlier while discussing the recovery of bomb making articles on 28/07/06, immediately on the next day of his arrest on 27/07/06 and that the evidence of Sr. PI Rathod, PW-176, and the panch witness Sanford Fernandes, PW-31, has proved the search as described in the seizure panchanama, Ext.533, which includes map of Mumbai, Art. 153 and an international map Art-161, i.e., Ext. 1486 and 8 books allegedly connected with SIMI, Arts. 150 to 152 and Saudi Riyals. Insofar as the maps are concerned, Sr. PI Rathod, PW-176, has deposed that on the map of Mumbai, i.e., Art. 153, there were marks at some places in green and red ink, that the other map was an international map of India, Pakistan, Iran, Muscat, Afghanistan, Tehran, etc., that a route from Mumbai to Tehran, Tehran to Zahidan and Zahidan to Muzzafarabad was drawn on the map. It has come in his evidence that he encircled this matter below the map that was in Urdu and also an international mobile number and e-mail address as guddu_sir @ yahoo.com. by red ink and he and the panchas signed both the maps. The panch witness Sanford Fernandes, PW-31, corroborated his version. There is practically no cross-examination on this point to Sr. PI Rathod, PW-176, and there is only a suggestion that the said house was not in possession of the A3 and that they planted all the articles in that house to create false evidence to involve the A3 in the crime. As mentioned earlier Sanford Fernandes, PW-31, identified both the maps and stated

about there being red and green colour markings on the map of Mumbai and a phone number and an e-mail ID on the other map. He identified his signature on the map Art. 161, i.e., Ext. 1486. He admitted in his cross-examination that map like Arts. 153 and 161 are available on railway platforms with the hawkers and in any shop and in respect of the international map, he admitted that police did not call the mobile number that was on that map, etc. There is nothing more in his cross-examination in respect of the said maps. I have already held this seizure to be circumstance no. 9 proved by the prosecution and that it is the fourth circumstance against the A3.

959. Next in time is the recovery of passport from the A9 and maps and certain books allegedly issued by the SIMI similar to those recovered from the A3 under the panchanama Ext.534. This recovery followed the recovery of the house from the A3 on 28/07/06, i.e., the next day of the arrest of the A3 as well as the A9. It has come in the evidence of Sr. PI Rathod, PW-176, that after the panchanama in respect of the search and seizure in the flat of the A3 was over, the A3 was made to sit in veil in another vehicle, that on his, i.e., Sr. PI Rathod, PW-176's, request the same panchas consented to act as panch witnesses for the search of the A9, that they were taken to the vehicle in which the A9 was and he was showed to them by removing veil and on asking his name he told the same. He described the procedure of search at the house of the A9 in the flat no. 203 on the second floor of the Tirupati Apartment in Mira Road (E), about the father of the A9 opening the door and then they entering the house and searching it and finding the articles that

are described in detail in paragraph 92 supra, the relevant amongst them being the map of Mumbai Art. 164 having markings at some places in green and red ink, photocopy of international map, Art. 165, i.e., Ext. 1487, showing similar route as was seen on the map Art. 161, Ext. 1486, passport Art. 178, Ext. 620 and four books Arts. 166 (1 & 2), 167 and 168 allegedly connected to SIMI. Sanford Fernandes, PW-31, corroborated his version totally and both witnesses identified all the articles separately and specifically and both identified their signatures on the panchanama as well as the signature of the A9 and proved the contents of the panchanama Ext. 534. Sanford Fernandes, PW-31, identified the A9 in the court unhesitatingly. It is already observed in paragraph 658 supra, while discussing the recovery on the very same day from the house of the A3, just sometime before the search of the house of the A9, that this witness has no criminal antecedents and nothing was brought in his cross-examination to show his connection with the police or that he has acted as a panch witness, etc., and I have concluded that his evidence inspires confidence and I have no hesitation to accept his testimony as truthful and corroborating the evidence of Sr. PI Rathod, PW-176.

960. Cross-examination of Sr. PI Rathod, PW-176, has not discredited his testimony except for certain things that he did not do, e.g., not obtaining signatures of the panchas on the books Arts. 166 (1 and 2), 167, 168 and the certificates Exts. 169 and 170 and not obtaining signatures of the inmates of that house on all the articles, which to my mind was unnecessary. His cross-examination

in respect of hard disk and two CPUs and how they were labeled, etc., is inconsequential as prosecution has not given any further evidence in that respect. He denied the suggestion that the panchanama Ext. 533 in respect of A3 and the panchanama Ext. 534 in respect of the A9 are falsely prepared. On the other hand positive statements have come on record during his cross-examination that A9 was not taken to the flat at Lucky Villa as that flat was of the A3, that A3 was kept below the building when they went to the flat at Mira Road as that flat was of A9 and they had gone there with all the articles that they seized. His knowledge about the building in which the flat of the A9 was situated and about the inmates of that flat prove that he had really gone to the said flat. He also described what type of rooms the flat was consisting of, viz., a hall, kitchen, a small bedroom and a bigger bedroom, and it has come as positive statement that they had carried packing material with them, but HC Padval was sent to bring boxes to pack the CPUs, etc. His cross-examination in respect of mobile that was found is also inconsequential and he candidly admitted that all the articles that were seized and packed were not sealed by lac seal. He denied the suggestion that he planted all the articles in that house and had not found them there, etc. To my mind, as is case in respect of A3, the A9 is also not in a position to deny the search and seizure because his personal documents, i.e., passport Art. 178, Ext. 620 and his educational documents, viz., statements of marks and passing certificate of the Maharashtra State Board of Secondary and Higher Secondary Education, Pune Arts. 169 and 170, his driving licence,

Art. 171 and his identity card of Oracle Company, Art. 173(1 & 2), were found in the said search, which could not have been planted. Thus, the cross-examination of Sr. PI Rathod, PW-176, has not revealed anything to discredit his version about the search and seizure.

961. In this respect, learned advocate Shetty rightly submitted during his arguments that the seizure of the computer, monitor, CPU has no relevance to this case as the prosecution did not bring out any material to show that they were used to hatch the conspiracy and to pass the messages and therefore their seizure is of no consequence and this material does not take the A9 nearer to the crime. In respect of books allegedly connected with SIMI, he questions as to what is there in the books that links the accused to the crime and in what way you can say that these are the books from where one can get knowledge of preparing destructive acts or that they inspire you to commit an offence. He submits that the prosecution did not lead any material to show that any individual will be influenced to commit such a crime and the genuineness of the books is in dispute. He submits that therefore the books and the maps appear to be planted. To my mind, the learned advocate has not made any submissions in respect of the passport and the educational documents of the A9 from his house and alongwith finding them the investigating officer also found the books connected to SIMI and the few maps which can be said to be a link of the A9 to the present crime. The main link is of course the passport.

962. Learned advocate submits that this recovery cannot be relied upon as it is not that the A9 is the only person residing in that house. In fact before his arrest the A9 was at his place of work at Bangalore, which is also admitted by Sr. PI Rathod, PW-176, and during this period his parents and other family members were in the house. Though taking out key from the bag is attributed to the A9, that does not show his exclusive knowledge of the articles because the key was not hidden anywhere, thereby giving access to everybody. To my mind, this recovery was not at the instance of the accused, but it was a regular house search. May be the A9 took out the key and then produced the articles, but relevance of this recovery lies in the nature of the articles that were found, viz., passport, maps and the books. Hence, this aspect does not weaken the evidence of the search and seizure.

963. Learned advocate questions as to what is the purpose of the marking on one map and the directions on the other map and from both maps nothing can be inferred that the marks and the directions indicate the involvement of the A9 in the crime. He also submits that the route or the directions are innocuous and not relevant at all because if one goes by air to Tehran, these directions are meaningless and even if one has to go by road, they are not helpful in the present advanced age of technology. He submits that all this will show that these are the concocted material created by the investigating officers. To my mind, if one looks at only one seizure of certain articles from only one accused, then the submissions by the learned advocate can be said to be correct, however, we have to

consider it as a circumstance alongwith all the other circumstances of such type of recoveries from the other accused and have to consider the allegations of the prosecution about there being a conspiracy.

964. Learned advocate criticized the procedure that was adopted by Sr. PI Rathod, PW-176, by pointing out to the cross-examination of Sanford Fernandes, PW-31, in paragraph 34, which shows that there was a man and two ladies in burkha in that house, that they, i.e., the panchas, did not ask the man whether he wants to take their searches and no lady panch or lady police officer was with them when they went to the flat. Similarly, when the constable brought the packing material from outside and after he returned to the flat, they, i.e., the panchas and the members of the house did not take his search. He submits that these are the admissions by the witness and they cannot be lightly brushed aside and all these factors will show that the material that the prosecution is saying is incriminating is nothing but a planted one. To my mind, these submissions are ignoring the fact that the police party alongwith the panchas had taken the search of the house of the A3 first and it has come in the evidence of Sr. PI Rathod, PW-176, that even the A3 was asked whether he wanted to take the searches of the police and the panchas before they entered the flat and it has also come in his evidence that when they went to the flat of the A9 and knocked its door, a man opened the door about whom the A9 said that he is his father and they introduced themselves and told him the purpose of their visit to search the house and asked him whether he wanted to

search them. Thus, there was no question for the panchas to ask the inmates of that house to take their searches. It is the work of the investigating officer.

965. Learned advocate then submitted that so far as the recovery of the mobile is concerned, it has not been ascertained as to whom it belongs, no CDR has been verified and this assumes importance because it will always have to be accepted that a mobile of a person always remains with the person/owner. These submissions are obviously baseless, because the CDR of the A9 has been called for mentioning the mobile number. Learned advocate submits that A9 was working at Bangalore, he was taken in custody and it is not explained from where he was taken, that all these things are in the dark and then you expect the court to believe that it is the mobile of that person, though the mobile remained in the residence of his father. He submits that this is an artificiality because normally and naturally every person carries such articles with him and you cannot say that they are recovered from his house search after several days and this is the artificial material that has been created. To my mind, to some extent I can agree with the learned advocate particularly in respect of the finding of mobile in the house of the A9 though he was picked up from his office at Bangalore. However, this can be interpreted the other way also as to how the mobile of the A9 was not with him and was in his house, which would also indicate the deliberate act on his part to keep his mobile away from him. Last submission by learned advocate is that the house search was not taken immediately after his arrest in such a case. Obviously, it is

ignoring the fact that the house search was taken immediately on the next day of the arrest of the A9 by the ATS.

966. Learned SPP also agreed with the submissions of the learned advocate about the recovery of the hard disks, CPU, etc., being inconsequential, but he submitted that relevant is the recovery of his passport, books and maps and he submits that the evidence of the search and seizure is supported and corroborated by the contemporaneous record in the nature of station diary entry no. 10, certified copy of which is at Ext. 1951(5 pages). It has come in the evidence of Sr. PI Rathod, PW-176, that before going for the search, station diary entry no. 10, true photocopy of which is at Ext. 1951, was made and after returning the station diary entry in Ext. 1951 (5 pages) was made and the seized property was deposited with the muddemal clerk. The contents of the station diary entry are in great detail describing each and every article that was found during the house search of the A3 and A9. This is a contemporaneous record which corroborates and proves the seizure and the fact of the police officers having gone for the search and seizure.

967. In my humble opinion, as mentioned earlier, while discussing the recovery of the passport of the A2, that this type of recovery from the A3 as well as A9 was really an innocuous recovery at that point of time. The investigation was being conducted by seven different officers of the ATS and it cannot be visualized and accepted that at such an early point of time, i.e., when it was only the 17th day of the investigation, that one of the investigating officer hatched a master plan to create such type of evidence and to show its recovery

from different accused, which will be relied upon and argued by the learned prosecutor as being evidence of conspiracy. Till that time the relevance of passports and maps could not have been known to the entire investigating machinery, i.e., the ATS, leave alone one single investigating officer of the rank of a Police Inspector investigating only one crime. Therefore, no inference can be drawn that these articles were planted and only one investigating officer did all these things and chalked out a master plan as to what evidence would be relevant to book the accused. In my humble opinion, the prosecution has proved the recovery of all the above described articles from the A9 by the cogent and consistent evidence of Sr. PI Rathod, PW-176, and Sanford Fernandes, PW-31, which is corroborated by the contents of the panchanama Ext.534 and the contemporaneous record. **This is the circumstance no. 21 proved by the prosecution. It is against the A9. It is the third circumstance against him.**

968. Next in time is the recovery on 30/07/06 from the house of the A10 of his passport, similar types of maps as were found in the house search of the A3 and A9 and books allegedly connected with SIMI, which followed the search and seizure at the house of Abdul Dawrey, PW-71, the house of the wanted accused no. 2 Rizwan Dawrey, both at Pune. The evidence of PSI Gaikwad, PW-169, about the search and seizure at the house of Abdul Dawrey, PW-71, and wanted accused no. 2 Rizwan Dawrey will be discussed subsequently. Suffice it to mention that the panchanama Ext. 758 about the search and seizure from the house of the A10 is in

continuation to the panchanamas Exts. 756 and 757. His further evidence is about going to the house of the A10 alongwith panchas, searching it and finding and seizing the articles as are described in paragraph 97 supra, under the panchanama Ext. 758. The relevant articles that were found and seized are the passport of the A10, Art. 251, Ext. 621, map of Mumbai and an international map Arts. 248 and 250, Ext. 1448 respectively and books Arts. 249(1 to 6) similar to those that were found and seized from the A3 and A9. This evidence is corroborated by the evidence of panch witness Alankar Mane, PW-61, who deposed exactly as per the contents of the panchanama Ext. 758. Both identified all the articles correctly and separately, identified signatures of API Kadam and panchas on the labels and their signatures and signature of the A10 and his brother on the panchanama. Both proved the contents of the panchanama Ext.758, the contents of which corroborate their version. Both identified the A10 in the court unhesitatingly. As mentioned above, this panchanama is in continuation of the panchanamas Exts. 756 and 757 with breaks at the end of each panchanama with the signatures of the officers, panchas, occupants of the concerned house and the accused. Ext. 756 contains the signature of Mohd. Hussain Dawrey by the side of the signature of the police officer and panchas, Ext. 757 contains the signature of Abdul Dawrey, PW-71, similarly of having received copy and Ext. 758 contains the signatures of A10 and his brother. This is sufficient to vouchsafe the authenticity of the panchanama Ext. 758.

969. PSI Gaikwad, PW-169, then stated about returning to Mumbai,

depositing all the seized articles with the muddemal clerk under entry no. 45/06 in the muddemal register and he making the station diary entry no. 1, true photocopy of which is at Ext. 1802, the contents of which he proved and which corroborate his version. The evidence given by PSI Gaikwad, PW-169, is corroborated by the panch witness Alankar Mane, PW-61, whose cross-examination is not discredited his version in any manner. He admitted that on the cover of the book Art. 249(5) there are faint words 'Mo. Akil' written in hand and on the covers of Art. 249 (1 & 2) there is a printed word 'Asia', about which he does not know as to in whose handwriting they are, whether they were written when the books were seized and whether they were seized in CR No. 256/06 of Police Station Kotwali, Khandwa in April, 2006 and whether the words pointed out above are written by them to distinctly identify the accused caught in that case. He emphatically turned down the suggestion that the ATS police took out colour xerox copies of those books from the Khandwa Police and planted them on the A10. This was a ridiculous suggestion because how could the witness have known about it. He candidly admitted that no article was sealed by putting lac and the seal of any police station and that the A10 did not make any statement of disclosure of all these articles to the police in his presence. He committed a mistake in further cross-examination about the panchanama being prepared in the Lashkar Police Station, but subsequently corrected himself and clarified after remembering that it was not written there. He made positive statements that the accused was veiled from the ATS office itself, that at both the police

stations the accused was sitting outside in the vehicle and also stated correctly about the timings upto which he was in the house of Mohd. Hussain Dawrey at the time of the first panchanama and at the house of Abdul Dawrey, PW-71, when asked during his cross-examination and this shows his honesty. He also correctly answered and made positive statements that A10 was not taken inside both these houses, was in the vehicle at that time with a veil and the person from the second house, i.e., Abdul Dawrey, PW-71, had come down with them. He stated that he went in the hall and bedroom in the first house, but not in the kitchen, toilet and in the bathroom and candidly stated that he does not remember whether the toilet and the bathroom were adjacent to the kitchen or to the bedroom or to the hall, whether the doors of the kitchen and bedroom were opening in the hall, etc. All this is inconsequential and he made a positive statement that there was no gallery to the hall, which is uncontroverted. He also specifically stated that signatures of the inmates of the house were taken. This statement and the timings that he stated are corroborated by the contents of the panchanamas Exts.756 and 757. Insofar as the search in the house of the A10 is concerned, he stated that they reached there at about 7.15 or 7.30 p.m. and was there for about one hour, which is correct as per the contents of the panchanama. He stated that there may have been only one room and a bathroom and a toilet by the side, which is not controverted and his inability to tell the measurements of that room or the directions of the front door or how many doors were opening in that room, etc., is inconsequential and does not affect his

evidence. Again a positive statement that he made is that he signed on one label in that house and before signing the labels at the two earlier places also, no parts of the panchanama were written. While he admitted that he had seen the photograph on the passport at the time of his chief-examination, he turned down the suggestion that therefore he identified the accused. He admitted that neither the police nor they panchas signed on the books and the xerox copies of the passport Arts. 304 to 306, viz., those of wanted accused Rizwan Dawrey. Other than this, there is nothing in his cross-examination to discredit his version. He was asked and he answered that he has not given any evidence in any court before that day and has not acted as a panch for the ATS before this. This witness has no criminal antecedents and nothing was brought on record to show that he has any links with the police or the ATS and was an accused in any case or acted as a panch witness or witness in any case. Thus, there is absolutely no reason why his evidence should not be accepted and believed. I have, therefore, no hesitation in accepting his evidence as a truthful one and corroborating the evidence of PSI Gaikwad, PW-169. By their evidence both have proved the contents of all the three panchanamas, i.e., Exts. 756 to 758, the contents of which corroborate their version.

970. Cross-examination of PSI Gaikwad, PW-169, concerning this search and seizure from paragraphs 22 to 26 by learned advocate Wahab Khan and paragraphs 41 to 45 by learned advocate Shetty has not revealed anything that could discredit his version or impeach his credibility. Nothing was pointed out by learned advocate Wahab

Khan for A10 in respect of his cross-examination in respect of these three panchanamas that would affect his credibility and finally he denied the suggestion that the maps and books were not seized from the house of the A10 and that the three panchanamas were prepared in the ATS office. In respect of the allegation of the defence that the books concerning SIMI are planted, he was given the similar suggestions as were given to the panch witness Alankar Mane, PW-61, and he denied them. He also admitted as was admitted by Alankar Mane, PW-61, that no article was sealed by using lac seal and brass seal at Pune. His cross-examination in respect of seizure of CPU from the house of wanted accused Rizwan Dawrey is inconsequential as no further evidence is led by the prosecution about it. Thus, his cross-examination does not affect the credibility of his version in respect of the search and seizure of the articles from the house of the A10.

971. Learned advocate Wahab Khan for the A10 submitted that the A10 was in the custody of the police, but he has not made any statement of disclosure and therefore the case of the prosecution with respect to his house search is not of exclusive possession and admittedly on that day nothing was sealed at the spot and they have put their case to both the witnesses, which consists of the police having taken photocopies of the books that were seized by Khandwa Police and planted them on the accused. In this connection, to my mind, it will not be out of place to point out that the A10 was arrested by the ATS on 25/07/06 under the panchanama Ext.1937 alongwith A11 and the house search was taken on 30/07/06, i.e.,

within a period of five days, and in addition to what I observed above about it being impossible for a single investigating officer of the rank of a Police Inspector to prepare a master plan to plant similar type of articles on some of the accused, i.e., the books and the maps, it will have to be observed that the seizure within five days cannot be disbelieved and discounted only because it was not followed by a voluntary disclosure made by the accused.

972. A ridiculous submission was made by learned advocate that the prosecution should have explained the source of the maps. To my mind, it is for the accused to explain the source of the maps. It is sufficient for the prosecution to prove the seizure of the maps and to try to show their relevance with the case of the prosecution. Next learned advocate criticized about taking of the panch witness, who is a resident of Kalachowki area, though the police wanted to go to Pune for the search and there is no pre-search panchanama in the ATS office. No such suggestion was given to PSI Gaikwad, PW-169, as to why he did not prepare a pre-search panchanama and did not take panchas from Pune.

973. In view of the above discussion, it is clear that no dent is caused in the evidence given by PSI Gaikwad, PW-169, in respect of his evidence about the search and seizure in the house of the A10 on 30/07/06. His evidence and the evidence of panch witness Alankar Mane, PW-61, is corroborated by the evidence of Abdul Dawrey, PW-71, about their visit to his house and the seizure of Saudi Riyals from him under the panchanama Ext. 757, which is in between the panchanamas Exts. 756 and 758 that were prepared in the house of

Mohd. Hussain Dawrey, father of wanted accused Rizwan Dawrey and the search of the house of the A10. Hence, it will have to be held that the prosecution has proved the search and seizure of passport Art. 251, Ext. 621, map of Mumbai, Art. 248, international map, Art. 250, i.e., Ext.1489 and books connected with SIMI, Arts. 249 (1 to 6) from the house of the A10 under the panchanama Ext. 758. **This is the circumstance no. 22 proved by the prosecution.** It is against the A10. It is the second circumstance against him.

974. Next in time is the recovery on 31/07/06 from the house of the A11 of his passport, similar type of maps as were found in the house search of the A3, A9 and A10 and similar books allegedly connected with SIMI alongwith his motor driving licence, ATM card, purse, etc., as described in paragraph 99 supra. The relevant articles of the seizure are the passport of the A11, Art.133, Ext.619, international map, Art.134, Ext.1488, map of Mumbai, Art.137, Ext. 1664, motor driving licence of the A11 Art. 140, books Arts.135 and 136, Exts.1678 and 1679 respectively, booklet titled latest road map of Mumbai and Navi Mumbai Art.138, Ext.1665 and ATM card Art. 141.

975. It has come in the evidence of Sr. PI Rathod, PW-176, that ACP Tawde directed PI Tonapi, PW-155, to take the search of the house of the A11 and it has come in the evidence of PI Tonapi, PW-155, that he conducted the search as directed and went to the house of the A11 as per his directions and then he described to which house they went, the nameplate on that room, the door being opened by mother of the accused, the accused leading them to a loft, opening a

wooden cupboard on the western side of the loft, taking out a passport from a drawer, two booklets and maps alongwith the sundry articles like black wallet, ATM debit card of Canara Bank, motor driving licence, etc. He deposed about asking the panchas to sign on the two books and on the maps and also putting his signatures and seizing all these articles under the panchanama Ext. 527. Panch witness Mukesh Jadhav, PW-30, corroborated his evidence in toto and specifically described what articles were found including three maps which he described. Now this is something unusual because from the other accused only two maps were recovered, viz., one a photocopy of an international map and the other the map of Mumbai. He described all the articles and how they were taken in possession and identified his signature on the panchanama Ext. 527 and the signature of the police officer and the other panch and also of the accused. Both, he as well as PI Tonapi, PW-155, specifically and individually identified each and every article, their signatures on the labels and the maps and the books and on the panchanama. PI Tonapi, PW-155, identified A11 in the court and Mukesh Jadhav, PW-30, identified him unhesitatingly. The articles that they are identified are more particularly described in paragraph 99 supra.

976. It has come in the evidence of PI Tonapi, PW-155, that he had directed the SHO to make station diary entries when they left the police station for the panchanama and after returning back and he proved the station diary entries no. 16 and 18 in the original station diary, true photocopies of which are at Ext. 1666 (2 pages) the

contents of which corroborate his version. This is an uncontroverted and contemporaneous record. The panch witness Mukesh Jadhav, PW-30, has withstood the test of cross-examination and nothing was revealed in his cross-examination to discredit his version about the factum of the search and seizure. Paragraphs 4, 5 and 6 are concerning his education, the work that he does, where he stays, etc., and though he could not tell the name of the building where his employer's office is situated or the phone number of that office, though there is some issue about his occupation in the panchanama being show as education and though he does not have any documentary evidence to show that he was working with a contractor of BMC for removal of encroachment, these things do not affect his unimpeached evidence about the search and seizure. He was able to tell the route by which they went to the house of the accused and he could also tell the description of the room on the ground floor and the size of the loft. He correctly admitted that the cupboard and the drawer from which the accused took out the articles was not locked. It is not the case of the prosecution that the cupboard and the drawer was locked. He expressed his ignorance whether the police were carrying any bag with them and from where they brought the plastic bag, envelopes and packing material, but for this PI Tonapi, PW-155, has explained that they had not kept the investigation kit in the vehicle, but were carrying it with them and he candidly admitted that it is not written in the panchanama that the panchas were offered their searches and of the vehicle and they saw only investigation kit containing the articles described by him

and further admitted that it was important, but it remained to be written. There is no further suggestion to him after obtaining this admission and therefore it is of no use to the defence, but it shows the explanation given by him. Mukesh Jadhav, PW-30, also candidly admitted that he did not personally open the maps and see them and therefore does not know where the markings were done and where the lines were drawn on the map. However, he denied the suggestion that police did not show him the points where there were markings and the lines thereon though he admitted that he did not understand the spots shown by the police. There is considerable cross-examination to him in respect of the books Arts. 135 and 136 as to whether they are original, whether they contain all the pages, whether it is not a complete book, whether they are stapled or not, etc. He admitted that at many places in the books the sentences are underlined and he saw the underlines for the first time that is in the court, but cannot say who did the underline and when. These admissions have been taken advantage by the defence, because in the next suggestion he admitted that the underline appears to be a photocopy. Whatever it is the fact remains that the books contain his signature and the signature of the other panch and PI Tonapi, PW-155. Of course, he denied the suggestion that the books were not seized from the house of the A11, but they were foisted on him by the police and their signatures were taken on the covers later on. In respect of the ATM card Art. 141 some more clarification has come out in his cross-examination, viz., that the full name Z A Latifur Rehman is written on it and that he admitted that police do

not make any inquiry about the person by that name. It is obviously the A11 whose name is Zameer Ahmed Latifur Rehman Shaikh.

977. Only issue about Mukesh Jadhav, PW-30, is his answer initially in the cross-examination that he has never worked as panch witness for any other panchanama and his subsequent answer in paragraph 13 that after this panchanama he had acted as a panch witness twice in the cases of the ATS at Kalachowki, does not remember the name of the police officers who had called him, but remembers the dates, i.e., 08/01/10 and 23/04/10, and what the panchanama dtd. 08/01/10 was about but could not tell the nature of the panchanama dtd. 23/04/10. It was submitted during the arguments by learned advocate Shetty that this shows that the witness is a regular panch of the ATS and therefore his evidence is not relevant. However, this submission is ignoring the fact that the said two occasions of he having acted as panch witness for the ATS are subsequent to this panchanama which is of 2006. Thus, he has no antecedents of having acted as panch witness before this panchanama. No other criminal antecedents or links with the police are also shown. He denied the suggestion that before giving evidence police gave the panchanama to him in the office and he was tutored and also denied the suggestion that as the police did not tutor him about subsequent two panchanamas, he cannot tell about their contents. This is not factually correct because he had described what had happened at the time of panchanama dtd.08/01/10. Thus, his evidence has remained unshaken and it fully corroborates the evidence of PI Tonapi, PW-155. The evidence of both these witnesses

is corroborated by the contents of the panchanama Ext. 527.

978. Now, insofar as the cross-examination of PI Tonapi, PW-155, in respect of this search and seizure is concerned, the cross-examination by learned advocate Wahab Khan in paragraphs 15 to 17 has revealed nothing except that the entries in the log book, certified true copies of which were produced and received in evidence and marked as Exts. 1676 and 1677 in respect of the police vehicle no. MH-01-BA-4328, do not show that he had gone in that vehicle to Worli. He was also given a suggestion that the books Arts. 135 and 136 are colour photocopies of all books that were seized from some accused by Khandwa police in C. R. No. 256/06 on 16/04/06 and they have been planted on the accused. It is also suggested that the map Art. 138 was planted on the accused. Insofar as the cross-examination by the learned advocate Shetty is concerned it is from paragraphs 26 to 30, but nothing adverse could be brought from his cross-examination except not mentioning that they had taken the investigation kit with them and panchas were offered their searches and search of the vehicle. He admitted that he did not put his signatures and did not ask panchas to sign on the driving licence, wallet, diary, ATM card, visiting cards, chits and currency notes, but in fact those are incidental seizures and driving licence Art. 140 and ATM card Art. 141 requires no particular identification and are by themselves documents of identification. His admission that generally persons carry their wallets and driving licence with them, rather than helping the accused, to my mind, helps the prosecution, because it is for the accused to explain as to

why these articles were not with him and why he had kept them in his house. Even assuming that these things were found in his personal search when he was arrested and were not recorded in his arrest panchanama, but their recovery was shown from his house, what about passport and the ATM card? An Indian citizen does not carry his passport with him whenever he moves around in India. His cross-examination in paragraphs 26 and 27 is inconsequential and he made positive statements that he went to the house of the accused to see whether he could find any incriminating article in his house. He was also cross-examined about the pages of the books Arts. 135 and 136, i.e., Exts. 1678 and 1679, whether the covers and pages are photocopies, whether the underlining in some pages are the photocopies, about which he stated that it may be off-set printing also and he frankly stated that the books cannot be stated to be original books as he understands them on the points of printing, binding, etc. All this is not so material and he denied the suggestion that the two books were not found in the house of the A11 and he planted them. Thus, except the issue about the vehicle not having gone to Worli and the log book entry not containing his name, his cross-examination has not discredited his version in any manner.

979. In respect of the evidence about this search and seizure, learned advocate Shetty for the A11 submitted during his arguments that this is the most unnatural piece of evidence which cannot be accepted, as the Arts. 139 to 144 which they found in the house of the A11 cannot be there because these are the articles that a man carries with him when he moves out. This very fact itself is sufficient

to show that the house search had not taken place and these are the concocted materials created by the prosecution to involve the accused in the crime. I have already explained this earlier that there is no explanation about the finding of the passport, which is a personal document and not normally carried by a person with him when he moves around in India. It is also observed that it is for the accused to explain why he kept these articles in his house.

980. Learned advocate submits that the books that are seized are incomplete and are obviously colour photocopies and this shows that they have been planted. To my mind, if the ATS wanted to plant the books, they could have very easily planted the complete books. The books and the maps contain the signatures of the panchas and the investigating officer. Thus whatever was found has been produced. Learned advocate submits that the prosecution has not brought out anything to show that under what circumstance and what material in the books are detrimental to the integrity of the nation and whether it is posing danger to the nation. The prosecution has also not shown the nexus of these books to the incident and had not shown the origin of the books. To my mind, obviously the prosecution is simply relying on the seizure of the books purportedly issued by or on behalf of the SIMI organisation after it was banned in 2001. Whether or not it contains material that is detrimental to the integrity of the nation, etc., is a matter to be considered subsequently. Insofar as their seizure is concerned, it has been proved by cogent evidence.

981. Learned advocate submits that the panch witness is a

professional panch because he has admitted that he worked as a panch witness, the evidence is not upto the mark, he had not seen the articles taken by the police and had not inspected them and the search of the vehicle was not taken and the panchanama does not show that some witnesses from that area were called whereas the panch witness is a resident of Bhoiwada where another ATS office is situated. To my mind, the police had started from their office with the intention of taking the house search of the A11, so no fault can be found with them in taking panchas from that area, etc. Though it is admitted by Mukesh Jadhav, PW-30, that he had not taken the articles in his hands and not inspected them, the maps and the books contain his signature and the label on the passport and the envelopes contain his signature and of PI Tonapi, PW-155. It is not for a panch witness to inspect the contents of any books or maps in detail, because he is concerned only with the seizure, recovery and it is for the investigating officer to read the contents and to interpret them. Thus, this submission is not acceptable.

982. Learned advocate next submits that in normal circumstances sealing of material is not always necessary, but where there are chances of manipulation or concoction then it is necessary that the articles must be sealed with lac seal, because chances of manipulation cannot be ruled out. He submits that maps are found, the investigating officer could have very well put the markings on the printed map in red and green ink, draw the line on the international map and if it is packed and sealed before the panchas and the evidence of the panchas is believable then the seizure can be

acceptable. Otherwise, it can always be said that these are the tampered documents. In my humble opinion, the articles that were seized consisted of papers, i.e., passport, maps, books, purse, etc., and there was no question of sending them to the laboratory for chemical analysis. They bear the signatures of the panchas and A11 has not disowned the purse, ATM card and passport, etc. In fact, these documents are very personal in nature and the very fact of finding them in the house of the accused is the most natural thing and it cannot be said that they have been planted, as can be said in respect of the maps and the books. However, the fact they were found alongwith the maps and the books lends credibility to the recovery and the seizure. It is also an admitted position that upto 12/08/06 the ATS did not have its own brass seal and it is not that the articles have been simply taken. Signatures of the police officers and the panchas have been made by them at the spot and also on the labels and they have been packed in the envelopes.

983. Learned advocate submits that in this connection the accused has examined himself before the court and has given plausible explanation and by his evidence he has falsified the prosecution evidence about the police visiting his house on that day. On the contrary, he had given the evidence that he was picked up from his shop on 21/07/06 and from then till 25/07/06 he was illegally detained and when the Crime Branch had picked him up they had seized all his articles like purse, motor driving licence and everything which is ultimately shown to be seized during his house search. This justifies the defence that the conduct of the

investigating machinery and the entire evidence about the house search is nothing but a fabrication. To my mind, such an inference cannot be drawn merely on the oral evidence given by the accused. As against this, it is the oral evidence of PI Tonapi, PW-155, and panch witness Mukesh Jadhav, PW-30, their signatures on the maps, books, labels, on the passport and the envelope and the contemporaneous record, i.e., the station diary entries which are uncontroverted. Thus, this submission is of no use.

984. Lastly, and the most agitated point is about the entry in the log book of the vehicle MH-01-BA-4328, i.e., Exts. 1676 and 1677, not showing that the vehicle had gone to Worli on that day and not containing the name of PI Tonapi. The submissions in this respect by the learned SPP came practically at the fag end of his submissions about the entire case and about the said log book entry he submitted that the only drawback is that the vehicle number that is mentioned in the panchanama does not match with the log book entries brought by the accused and submitted that the fact that the passport of the A11 was recovered or taken charge under this panchanama by which he is connected to the some witnesses, i.e., PW-43, PW-44 and PW-46, shows the honesty of the investigation. He submitted that with respect to this entry there may be some honest mistake and he is making his submission when he is almost at the fag end of his submissions and it is for the first time that he says that this may be an honest error. He submits that it is not that every shortfall in the evidence is being tried to be justified by claiming it to be an error. But if the quality of the evidence of PI Tonapi, PW-155, and Mukesh

Jadhav, PW-30, is appreciated and if the same inspires confidence then the court may consider that a log book is never considered as a sacrosanct document and merely because a particular entry does not match, it will be disastrous to discard the entire evidence in that behalf and that would be opposed to the standard norms of appreciation of evidence because ultimately this court has to weigh the evidence. These submissions are to the point and acceptable. The true photocopy of the log book entry of the said vehicle Ext. 1677 was obtained by the A11 under the RTI Act and it has not been proved by calling the person who had certified it or by calling the person who had made the entries therein. To my mind, absence of mention in the log book entry about the vehicle having gone to Worli on that day will not displace the oral and documentary evidence led by the prosecution about the search and seizure. There is no question of name of any particular officer being mentioned in the entry as having used that vehicle, because it is already explained that the vehicles are allotted to particular officers and it is only their names that are written in the column. As against this, there is uncontroverted contemporaneous record of the station diary entry Ext. 1666. Hence, as is submitted by the learned SPP, there may have been an honest mistake of writing the number of that vehicle in the panchanama or to my mind the driver of the vehicle may have omitted to make the entry about the vehicle being taken by PI Tonapi, PW-155, to Worli. Only this aspect therefore will not affect the entire evidence given by the prosecution.

985. Learned SPP has also submitted that the ATS was not a fully

constituted body at that time. It was not homogeneous, officers from various branches were called. The recovery of books, maps, etc., was at a very initial stage and at that time the entire story was not clear even to the investigating agency. So how could there be any fabrication or planting of evidence? I have observed in respect of similar recoveries from the other accused that these recoveries were quite early in point of time after the blasts and after the arrest of the accused and one single investigating officer out of seven could not have crafted a master plan visualizing what evidence would be required to connect the accused *inter se* and to prove the conspiracy by recovery of similar articles. In fact as mentioned earlier upto now there was recovery of one printed map of Mumbai and one photocopy of international map from the other accused. However, from the A11 one more map has been recovered, i.e., Art. 138, which is a road map of Mumbai and Navi Mumbai.

986. In view of the above discussion it will have to be held that the evidence given by PI Tonapi, PW-155, and panch witness Mukesh Jadhav, PW-30, is a cogent and convincing evidence and by their evidence and by the contents of the panchanama Ext. 527, the prosecution has proved the seizure of passport, driving licence and ATM Card, Art. 133, i.e., Ext. 619, Art. 140 and Art. 141 respectively of the A11, alongwith the international map, Art. 134, i.e., Ext. 1488, map of Mumbai, Art. 137, i.e., Ext. 1664, books connected with SIMI Arts. 135 and 136, i.e., Exts. 1678 and 1679 and road map of Mumbai and Navi Mumbai Art.138, i.e., Ext. 1665. **This is the circumstance no. 23 proved by the prosecution. It is against**

A11. It is the first circumstance against him.

987. Next in time is the recovery on 01/08/06 at the instance of the A2 in pursuance of his disclosure statement Ext. 484 from the house of his brother of map of Mumbai Art. 42, eight books connected with SIMI, Arts. 43(1 and 2), 44 (1 to 4), 47 and 48 and international map Art. 116, i.e., Ext. 1490, as are described in paragraph 101 supra under the panchanama Ext. 485.

988. It has come in the evidence of Sr. PI Rathod, PW-176, that A2 expressed his desire to make a voluntary statement when he was taken out for inquiry on 01/08/06, therefore, he prepared the memorandum Ext. 484 of his statement in the presence of the panch witnesses Rohit Warang, PW-19, and one more and then started for going to the place that the accused was going to show and for that purpose made station diary entry no. 14, true photocopy of which is at Ext. 1955. It has come in his evidence that they had taken packing material with them and on their asking the panchas had taken their searches and the search of the vehicle and they proceeded with the A2 in veil, went to his house first where the A2 called his mother and obtained the key of the house of his brother and then led them to another building, which he informed as Pila Mahal and led them to the room no. 35 on the second floor, opened the lock with the key and declined to take their and panchas searches when asked. It has come in his evidence that the accused produced one map of Mumbai, one international map and books, which he seized under the panchanama Ext. 485 after signing on both the maps. He deposed as to how the books and the maps were packed and labeled

and about the contents of the maps. It has come in his evidence that the room was locked after the panchanama was over and its key was given to the mother of the accused, who had come there and her statement was recorded and then they returned to the police station where station diary entry no. 16 was made, true photocopy of which is at Ext. 1956. It has come in his cross-examination that the said station diary entry was made by him and it is in his handwriting.

989. His evidence is corroborated by the evidence of panch witness Rohit Warang, PW-19, who deposed exactly about the accused making the statement, that he is ready to produce the maps and the books and the statement being written by the police and he signing it. He identified his signature and as well as the signature of the other panch, of the police officer and of the A2. He then described the route by which they went to the house of the accused and the accused obtaining a key of the house of his brother from his mother, taking them to the building by name Pila Mahal and to the house of his brother on the second floor, opening the lock and producing some maps and some books which police took in their custody under the panchanama Ext. 485. He as well as Sr. PI Rathod, PW-176, identified the two maps and the eight books separately and specifically. They also identified their signatures on the labels and on the maps and their signatures and the signature of the other panch and the accused on the memorandum Ext. 484 and the panchanama Ext. 485 and Rohit Warang, PW-19, unhesitatingly identified the A2 in the court.

990. The cross-examination of Sr. PI Rathod, PW-176, by learned

advocate Wahab Khan for the A2 in paragraphs 109 and 110 has not revealed anything that would affect his evidence about the search and seizure. His evidence in chief-examination is simple and clean. He admitted that the accused did not disclose anything to him before 01/08/06 and when asked to go through the station diary entry Ext. 1955 he admitted that it is not written that they were leaving as per the statement made by the accused. However, he clarified that it is not necessary that this should be mentioned in the station diary. He was cross-examined in respect of the books and he could not say whether they are coloured photocopies, that he did not inquire about it and did not feel that the printer whose name was on the books should be made an accused. However, he remembers that an inquiry was made and an offence was registered at Delhi and Bhopal against the publisher. He also admitted that he did not send the books to any expert to ascertain whether they are original or colour photocopies. I do not see any meaning in this because what is seized is seized. He also admitted that he did not use brass seal for sealing the packets and did not call for brass seal from the local police station. He expressed ignorance as to whether the original of the said books were seized by Kotwali Police Station, Khandwa in C. R. No. 256/06 on 16/04/06 and whether the names of the accused from whom they were seized were written on the books. He emphatically denied the suggestion that the books that he stated to be seized from the A2 are the colour photocopies of those books, that the coloured photocopies of the books seized by the Khandwa police were obtained and planted on the accused. Except

this cross-examination there is no other cross-examination to Sr. PI Rathod, PW-176, and not a single question was asked about the seizure of the maps or about the panch witness. I have mentioned this particularly at this stage because there is some agitation about somewhat inconsistent evidence given by Rohit Warang, PW-19. Thus the evidence of Sr. PI Rathod, PW-176, is a totally unimpeached evidence and nothing is revealed in his cross-examination to discredit it in any manner. The contents of the memorandum and the panchanama corroborate his evidence and the evidence of the panch witness and the contemporaneous record in the nature of station diary entries in Exts. 1955 and 1956 prove the fact of the search and seizure. Insofar as the case put up to him about coloured photocopies of books seized by Khandwa police being planted on the accused, I will take up that issue subsequently. Insofar as the seizure of the books is concerned, Sr. PI Rathod, PW-176's evidence is in itself sufficient to prove that the A2 had given the voluntary statement as well as the maps and the books were seized at his instance after he produced them.

991. Learned advocate Wahab Khan criticized the factum of the A2 giving the voluntary statement and making the discovery of the books and maps. He submitted that the passport of the A2 that is seized shows the date on which he had gone to Iran, but there is a wide gap from the day of his return from Iran upto the date of the alleged seizure of the map. He submits that in a world of Internet where everything is available at the click of the mouse, it appears improbable on the face of it that a man carries a map like in an old

Indian film as if to search for a treasure and in the same fashion in a Hindi movie they preserve the map. He submits that it appears to be one of the strategy of the investigating machinery, because now a days we find that they are involved in such type of activity. He referred to the attack on Mumbai on 26/11/08 and submitted that in respect of the two accused who were acquitted, the story of maps found with them was not believed. Similarly, there was an allegation in that case that the map contained handwriting of some of the accused which also shows a common strategy. He submits that he is on the point of conduct. To my mind, the maps, more particularly the international map Art. 116, Ext. 1490, were found immediately after the arrest. There was no time and no reason for concoction by the investigating machinery. Crime No. 76 of 2006 of Mumbai Central Railway Police Station was being independently investigated by Sr. PI Rathod, PW-176, and this voluntary disclosure and the consequent seizure from the A2 took place within seven days from the date of the arrest of the A2 on 24/07/06 by the ATS. By making the submission about the international map being retained for a long period from the date of return from Iran upto the date of the seizure, learned advocate is presuming that the international map was given to the A2 when he had gone to Iran and from there to Pakistan. Even if it is so accepted, the possibility cannot be ruled out that such type of maps may have been retained to help new recruits who were to be sent for training to Pakistan. Thus, no inference can be drawn that the possession of the map is an improbable thing.

992. Learned advocate next submits that a man has gone to Iran

one or two or three years before and has returned back for which his passport is the evidence and not the map which the ATS has planted to show the recovery. To my mind, if the ATS really wanted to create the evidence by planting such type of map, why it did so in respect of 4 or 5 accused only and not for all accused. Learned advocate submits further that the map is not referred to in the confessions of the accused is again a ridiculous submission because the confession is given by the accused and if at all as alleged by the accused, the confession is also a fabricated one, then there was no problem for the investigating machinery to introduce this aspect in the confessions also. He submitted further that the ATS was not having a seal on 01/08/06 and they also did not use the seal of any other police station but he will point out subsequently that the prosecution has produced the articles in sealed condition. This submission is factually incorrect because the packets that were shown to the panch witness Rohit Warang, PW-19, before they were opened were not in sealed condition, but only tied with white thread across and pasted with label containing the signatures of the investigating officer and panchas. Learned advocate further submits that on the day of the arrest of the A2 his address was known to the ATS and without any disclosure by him they had taken the house search therefore their claim that they came to know for the first time on 01/08/06 is improbable. Similarly, illegal detention of the A2 vitiates the voluntary nature of the disclosure. so also, the delay from 24/07/06 to 01/08/06 also vitiates the voluntary nature of the disclosure. He again repeated his submission that there was no reason to the A2 to

preserve the map for two years after returning from Iran in 2004 only for the ATS to recover it, which on the face of it, is unnatural. To my mind, the house search of the A2 was done immediately on the next day of his arrest and in this respect Sr. PI Rathod, PW-176, when cross-examined as to whether the accused made any statement of disclosure prior to 01/08/06, his explanation about it clears this aspect and shows that in fact there is no delay. It has come in his cross-examination in paragraph 104 that they had decided to go for the house search of the A2 on 25/07/06, but could not go on that day, therefore, they went on the next day and they had not intended to specifically go for seizing his passport, but that was one of the things that was to be done during the seizure because A2 had stated earlier that he had torn and thrown it. He admitted that he stated this for the first time but denied that it is not mentioned in the case diary and when he was asked to go through the case diary of 25/07/06, he went through it and stated that it is so mentioned in the case diary of that date. This has been mentioned earlier also and in paragraph 120 of the cross-examination while answering the question as to whether the accused were co-operating with the inquiry, he gave a very specific answer that the accused were misleading them, they were not giving the entire information at one stretch, but were giving it bit by bit. This explains why the voluntary disclosure was made by the A2 after a period of seven days after his arrest and in fact it cannot be said to be a delay. It must be the result of sustained interrogation and inquiry.

993. Again the submission by the learned advocate that the

confession shows that the man was received by hand to hand and therefore there was no reason for him to be given a map or to carry it, is also not an acceptable submission in view of the fact that confessions are given by the accused. Learned advocate submits that the panchanama does not show that two envelopes or bundles were prepared for wrapping the books and the maps, but the panch witness was shown two packets. To my mind, the panchanama also does not show that the books as well as the maps were wrapped in one packet and Sr. PI Rathod, PW-176, as well as Rohit Warang, PW-19, have identified their signatures on the labels and on two brown paper packets. Learned advocate further submits that the panchanama shows seizure of eight books whereas the reopening panchanama Ext. 566 prepared by Sr. PI Rathod, PW-176, shows that six books were taken out from the packet containing the articles seized from the A2. There is no cross-examination on this point to Sr. PI Rathod, PW-176, who did not state about the number of books while deposing about the said panchanama Ext. 566. However, he as well as Rohit Warang, PW-19, have identified eight books and there may have been a genuine mistake in writing the number of books in the panchanama Ext. 566.

994. Learned advocate attacked the credibility of Rohit Warang, PW-19, submitting that initially on 21/07/10 he denied having acted as panch witness before 01/08/06 and even thereafter and when specifically asked about a particular case of NIA and a statement made by an accused before him on 17/05/09, he has denied it. However, his cross-examination was deferred by an application and

it was continued after more than five months and on 07/01/11 he admitted that he was called in the ATS office for preparation of memorandum panchanama of Ravi Dhiren Ghosh in a fake currency case and DSP Ravi Gambhir of NIA had taken his statement on 10/10/09. He submits that this shows that the witness was lying on oath and it cannot be a coincidence that he is even connected with PI Khanvilkar, PW-168. For this purpose he placed his reliance on the certified copies of the panchanama in Sessions Case No. 674/09 issued by the City Civil Court and the certified copy of his statement dtd. 10/10/09. The certified copy of the panchanama shows that it is dated 17/05/09. Hence, it is obviously after a period of about three years after Rohit Warang, PW-19, having acted as a panch witness in this case. This also shows that as on 01/08/06 Rohit Warang, PW-19, had no criminal antecedents and nothing has been brought on record to show that he had any links or was connected with any police officer or as acted as a panch witness. It may be that he was taken as a panch witness later on, but that does not affect his evidence in this case.

995. Learned advocate submitted that it is in the panchanama Ext. 485 as well as deposed by Sr. PI Rathod, PW-176, that the accused lifted a TV that was kept on a sewing machine table and took out some books and maps from the cardboard below it, however, Rohit Warang, PW-19, is saying that the accused took out the maps and the books from the bag that was by the side of the sewing machine and in his cross-examination he stood firm to his statement. To my mind, his further answer that he does not remember whether there

was a cardboard below the TV and books were taken out below the cardboard explains that he is somewhat confused as to from what place the maps and the books were taken out. Again further while explaining his inability to tell as to why it is not mentioned in the panchanama that the books were taken out from the bag, he stated that he had stated whatever he remembered. Thus, this aspect will not affect this search and seizure more particularly when he as well as Sr. PI Rathod, PW-176, have specifically identified all the eight books and there is no cross-examination to Sr. PI Rathod, PW-176, on this point though he gave evidence about preparing panchanama Ext. 566.

996. In view of the above discussion, it will have to be held that by the cogent and unimpeached evidence of Sr. PI Rathod, PW-176, and the corroborating evidence of Rohit Warang, PW-19, and the contents of memorandum Ext. 484 and the seizure panchanama Ext. 485, the prosecution has proved the seizure of map of Mumbai, Art. 42, international map Art.116, i.e., Ext. 1490 and the books as described above from the A2. **This is the circumstance no. 24 proved by the prosecution. It is against A2. It is the fifth circumstance against him.**

Defence case about seizure of books of banned organisation from accused :-

997. It is alleged by the defence that the books allegedly connected with SIMI organisation seized from the A2, A3, A9, A10 and A11 are the colour photocopies of the books that were seized from some accused by police of Khandwa Police Station, Madhya Pradesh in C.

R. No. 256/06 on 16/04/06 and were planted on the accused. It will not be out of place to point out initially that suggestions about this were given to Sr. PI Rathod, PW-176, in respect of the seizure from the A2 under the panchanama Ext. 485, to PSI Gaikwad, PW-169, in respect of seizure from the A10 under the panchanama Ext. 758 and to PI Tonapi, PW-155, in respect of the seizure from A11 under the panchanama Ext. 527, which they turned down. However, no such suggestion was given to Sr. PI Rathod, PW-176, in respect of the seizure of similar books from the A3 and A9 under the panchanamas Exts. 533 and 534 respectively. Learned advocate Wahab Khan submitted that the books are seized in the Khandwa crime and Mohd. Akil and Asiya are the names of the accused in the crime from whom the books are seized. It is his case that names of those accused were written on the books to show from whom particular books were seized and it is also their case that colour xerox were obtained by the ATS and planted on the accused in this case. He submits that none of the accused in this case are chargesheeted in the crime at Khandwa. Therefore, it can be said that their case that the books seized from this case are the colour photocopies is substantiated. The defence is not required to prove this fact beyond reasonable doubt. The investigating officer of Khandwa crime is a witness in this case, but he is dropped by the prosecution. He submits that the defence team of that case is not required to put the case of the present accused to the witness in that case. One thing is clear that the books in the Khandwa crime as well as in this crime are the same, i.e., the original and colour xerox, and therefore

adverse inference be drawn for non-examination of Khandwa officer. He submits that the A4 while giving evidence has deposed about this and ACP Patil, PW-186, was confronted with the books, they have not been sent to the FSL for ascertaining whether they are original or colour photocopies.

998. In this respect the evidence of the A4 as DW-38 is in paragraph 76 wherein he has stated about Khandwa police coming to the ATS office on 26/07/06 with an accused, that they had brought many books with them and showed him one by one and asked him whether he had printed them and then it is his evidence that PI Dinesh Ahir took those books and asked a constable to get their photocopies. Subsequently, he deposed about obtaining the certified true copies of the cover pages of the magazines that were recovered in the case. He also deposed about the Khandwa police asking him whether he knew the person by name Ashiya, Rafia, Akil and Naeem. His cross-examination on this aspect by the learned SPP in paragraphs 115 and 116 has revealed that he has not stated as to whether Khandwa police showed him the original books, though he denied that he is not in a position to say so. It is very clear from his admission that he had no occasion to see the original books that were seized in that case. He admitting that he came to know from the chargesheet (i.e., the chargesheet in this case) about C. R. No. 256/06 registered at Police Station Khandwa goes to show that the investigating machinery has not hidden any aspect of their investigation. He admitted that he has gone through the copies of the panchanama and the deposition, but not thoroughly, however

copies of the panchanama are not produced in this case. He does not remember whether as per the allegations in that case, objectionable SIMI literature was recovered and though he admitted that there are more than one accused in that case, he does not know whether there was recovery of books from every accused. Out of the cover pages of the books Ext. 3226 to 3231, he admitted that two books are titled 'Tehrik-E-Millat' and one book is titled 'SIMI' and when asked whether such books are the subject matter of the present case he stated that copies of such books are the subject matter. This will be an aspect to be gone into when the prosecution case about the accused being members of SIMI will be considered. ACP Patil, PW-186, admitted in his cross-examination that statement of PSI Ghanshyam Malviya of Khandwa was handed over to him by one of his subordinates, but does not remember whether he has produced samples of some literature seized in their case, whether the case was in connection with C. R. No. 256/06 of Kotwali Police Thana, Khandwa dtd. 16/04/06 against 13 accused persons including Asia and Akil, whether he was informed that the names of these two accused were written on the books to identify as to from whom the books were recovered and had given sample colour photocopies of the books when he gave statement. He made a positive statement that the ATS officers had not given the sample colour photocopies of the books to him saying that they had received them from the said witness. When confronted with the book Art. 136, Ext. 1679, he could not say whether it is a colour photocopy or that it is not original or that original of the book is seized in the crime at

Khandwa and cannot say whether the writing below the word 'asiya' is the signature of the concerned accused. Now, though he did not deny, but only expressed his inability to say whether all the books that have been seized in this case are the photocopies or the originals, his positive statements in cross-examination that he had investigated in connection with the printing of the said books and his officers had gone to Makbara Police Station, Kotta, Rajasthan and had come to know that a case had been registered there in connection with the printing and publishing of the said books, throws light on the thorough investigation done by the ATS and also shows that the case put up by the defence is not correct. He denied the suggestion that he did not file any documents in connection with the said investigation and submitted that he has filed the statement of officer of Makbara Police Station and a copy of the FIR. These documents are in the bunch of additional documents that are produced subsequently.

999. In connection with this allegation of the defence, learned SPP submits that the aspect should be appreciated that even if there is a written word on the books, the person who is distributing it may have put his or her name on it and questions as to whether is it not possible that copies of the books will go to ten people? Secondly, the person who receives a copy may make some more copies and further distribute them particularly as the books contain objectionable material and are not easily available to all. He submits that even if it is assumed for the sake of arguments that in one copy the signature is made by the person from whose possession the copy was

recovered, he questions as to whether it is not possible for the same person to put the same name or initials on whatever copies he may otherwise have and in spite of the registration of the offence and seizure of the books he may continue with the distribution of the copies. He submits that whatever documents are produced by obtaining certified copies would not indicate that the copy was taken from the exhibit in that court and it was an original book containing the original signature. He submits that this completely explains that the submissions of the learned advocate for the accused are fallacious when he says that colour photocopies were obtained from the Khandwa police and planted on the accused. He submits that the handwritten word is not found on every book that is seized and there is another handwritten word 'Mo.' on Art. 249(5) and if what the defence says is correct then there would have been absolute similarities. He submits that the long and short of his submissions is that merely on the basis of the signature or name on the books that are before this court, it does not make out the case that they are taken out from the seized articles in the Khandwa court for the purpose of planting them in this case, because there would be a presumption that the judicial record that is maintained in that court would not be allowed to be accessed or tampered. To this submission, I put a query as to whether they could not have been obtained from the investigating machinery? Learned SPP replied that then this must be established and posed a question as to whether the officer of a police station would risk his job by allowing anyone to take copies of books that he had seized and the basic

presumption is that a public servant does his duty honestly and diligently. He submits that the question is as to what is the motive or reason for the investigating officer in that case to part with the copies and it will have to be appreciated that the investigating machinery is of a different State and it is too much to question the integrity of every policeman. To my mind, these submission are correct and I do not think that the ATS of Maharashtra would have any influence on the investigating machinery of another State.

1000. The learned SPP then referred to the contents of the copy of the application given by the A4 under the RTI Act, i.e., Art. 415 and submitted that since he is referring to its contents, the court will receive it in evidence. He pointed out to the item no. 4 in paragraph (3)(iii) of the said application and submitted that the A4 had asked for the information as to whether the name of the accused Asiya and his signature on the magazine Teherik-e-Millat were written at the time of recovery of those books. He pointed out to the reply given by the PIO Ext. 3225 that this information cannot be given as per the notification by the Madhya Pradesh Government and the endorsement of the High Court of Madhya Pradesh. He then referred to the chief-examination and cross-examination of PI B. M. Solanki, PW-23, in Sessions Case No. 180/06 pertaining to that crime of Khandwa, certified copy of which is at Ext. 3233 and to the certified copy of the deposition of the investigating officer DSP Malviya Ext. 3234 and submitted that there is no suggestion to them and it has not come in their evidence that names or signatures of the accused from whom the books were seized were put on the books at the time

of seizure.

1001. The submissions by the learned SPP are correct. Not only this, there is nothing in the depositions of both the witnesses to indicate that signatures of the accused in that case were taken on the books to indicate that they had been seized from them, but the most important thing is that the A4 had not asked and obtained certified copies of the panchanama under which the books were seized from around 12 accused including two girls Rafiya and Asiya. The police would certainly have mentioned in the panchanama that the names of the accused from whom particular books are seized are written on the front cover of the books and his/her signatures have been taken on them. Thus, as is rightly submitted by the learned SPP, accused has produced selective documents to mislead the court. To my mind, the fact that there are copies, may be colour photocopies, itself demonstrates that several copies were taken out for circulation and their possession by the accused in that case as well as in our case itself shows the line of thinking or the ideology of the persons with whom they were found. Thus, no inference can be drawn from the evidence of the A4, DW-38, or from the documents Exts. 3226 to 3234 that the ATS obtained colour photocopies of the books that were seized from some accused in C. R. No. 256/06 of Kotwali Police Thana, Khandwa, Madhya Pradesh and planted them on the five accused in this case. At the cost of repetition it will have to be said that the recoveries of such type of books was very early in the day and it cannot be visualized that the investigating machinery or a handful of the investigating officer hatched a master plan to think of

creating such an evidence to implicate the accused in order to show that they belong to the SIMI organisation. Hence, the defence taken by the accused is not justified and not acceptable. In this connection, the learned SPP has pointed out to a photocopy sent by the SHO of City Kotwali Police Station, Khandwa alongwith the forwarding letter Ext. 1513. As it is a photocopy of a statement made by the accused, though it is certified as a true copy by the SHO, it cannot be read in the evidence. However, it is pertinent to point out that by the letter Ext. 1513 the SHO informed the investigating officer of this case that C. R. No. 256/06 was registered against active members of SIMI for the offences under sections 3, 10 and 13 of the UA(P)A and sections 295 and 153(A) and (B) of the IPC and during investigation one Imran Ansari so called General Secretary of SIMI was arrested and interrogated and disclosed the fact that Ehtesham Siddique, resident of Mira Road, Mumbai, i.e., the A4, and others used to publish the 'Tehrique' magazine for SIMI and it is being supplied to various places in different States of India and is vulnerable and creating disturbance in communal harmony. A request was made to the investigating officer of this case to furnish the copy of the FIR of Crime No. 156/06 of Borivali Railway Police Station alongwith copy of seizure memo relating to unlawful activities of SIMI in Maharashtra. This letter is dtd. 22/10/06. To my mind, there is no recovery as such from the A4. Even, then he took upon himself to collect the information of that case. However, the contents of Ext. 1513 show that the source of books may be the A4 himself.

1002. Before the search and recovery of passport, books and maps

from the house of the A10, there were recoveries from the house of Mohd. Hussain Dawrey, father of wanted accused no.2 Rizwan Dawrey under the panchanama Ext. 756 and only photocopies of passports of wanted accused Rizwan Dawrey and his wife, Arts. 306 and 307 were found alongwith two books, Arts. 304 and 305. PSI Gaikwad, PW-169, deposed about it and his evidence is corroborated by the evidence of Alankar Mane, PW-61. Both identified the articles, the signature of PI Kadam and panch witnesses on the labels and the panchanama and on the books and the copies of the passports and the signature of Mohd. Hussain Dawrey to whom a copy was given. There was cross-examination to PSI Gaikwad, PW-169, in respect of the contents of the books, but nothing was brought on record to discredit his version. There is nothing in the cross-examination of Alankar Mane, PW-61, to discredit his version also. It is already held that their evidence is cogent. The contents of the panchanama Ext. 756 corroborate their evidence. However, this piece of evidence is of no use to prove the case of the prosecution, but I have discussed it only to show the truthfulness of the subsequent two panchanamas, i.e., Exts. 757 and 758. Ext.757 is the panchanama under which 22 notes of 500 denomination of Saudi Riyals and 1 note of 200 denomination Saudi Riyal were seized from Abdul Dawrey, PW-71. This concerns the allegation of the prosecution that the accused were given funds for carrying out their subversive activities. Therefore, from here we go to the next topic.

Funding for execution of conspiracy :-

1003. It is alleged by the prosecution that in pursuance of the

conspiracy, wanted accused no. 1 Azam Chima organised training camps in Pakistan for training of Indian Muslim youths in the handling of arms and explosives and for that purpose he sent money to India through various persons and means for funding their travel to Pakistan. It is further alleged that between 1999 and 17/07/06 wanted accused no.1 Azam Chima, through wanted accused no. 2 Mohammed Rizwan Dawrey and wanted accused no. 3 Rahil Aatur Rehman Shaikh, sent money through various means to India to the A3 for publishing jihadi literature, promoting anti-India sentiments and bearing the expenditure of the travel of those Indian Muslim youths who were to be sent for training to Pakistan and escape of those who participated in the bombing operations with an intention to achieve the objectives of the larger conspiracy. Specific transactions about the money by hawala by the wanted accused no. 1 Azam Chima, wanted accused no. 2 Mohammed Rizwan Dawrey and accused no. 3 when he was in Saudi Arabia to the A3 and A9 from March, 2002 to August, 2004 are mentioned. It is alleged that some of these amounts were received by Smt. Khalida Iqbal Shaikh, cousin of the A3 and A9, and handed over to or collected by the A9. The second last transaction is of 02/07/06 and it is alleged that wanted accused no. 2 Rizwan Dawrey sent 15000 Saudi Riyals with Hidayatulla Sundke, PW-64, for the A3.

1004. It has come in the evidence of Hidayatulla Sundke, PW-64, who is a resident of Pune, that he was working in Jeddah from 17/01/00 to 06/09/10, that 7-8 months before July, 2006 he became acquainted with wanted accused no.2 Rizwan Dawrey, who

was a resident of Pune and who used to come for Namaj in the masjid, that said Rizwan Dawrey came to India for vacation four months before July, 2006 at which time he, i.e., Hidayatulla Sundke, PW-64, had given his brother's mobile number to him and the mobile number of Rizwan Dawrey to his brother and his brother had given his spectacles and some sweets with Rizwan Dawrey for giving to him. It has come in his evidence that he came to Mumbai from Jeddah on 02/07/06 and when he had met Rizwan Dawrey on 30/06/06 at his house and when Rizwan Dawrey came to know that he is going on vacation to India, he convinced him to carry 15000 Saudi Riyals with him, which he refused at first saying that there is a risk in carrying this much large amount, but Rizwan Dawrey told him that he has collected the money for constructing a masjid in his village, therefore, he consented to take them with him. Rizwan Dawrey told him that he should give this money to his friend Muzzammil who stays in Kondhwa, Pune. It has come in his evidence that when he was proceeding to the airport in Jeddah on 02/07/06, Rizwan Dawrey called him on his mobile and told him that Muzzammil is not in Pune, but at present is in Bangalore. It has come in his evidence that he reached India on 03/07/06 and sent an SMS to Rizwan Dawrey on 04/07/06 asking for Muzzammil's mobile number as it had not been given to him, he did not get reply on that day, but he got a call on his mobile from one Bilal Shaikh, i.e., PW-66, who asked him about the money and when he asked Bilal Shaikh, PW-66, as to who had told him about it, he told him that Muzzammil had told him. It has come in his evidence that Bilal

Shaikh, PW-66, then came to his house and as he was apprehensive about handing over such a big amount, he asked him to let him talk with Muzzammil. Therefore, Bilal called Muzzammil from his mobile, he talked with Muzzammil and got the confirmation that Rizwan had given him, i.e., Hidayatulla Sundke, PW-64, the said amount and confirmed that it should be handed over to Bilal which he accordingly did. It has come in his evidence that the accused no. 2 Rizwan Dawrey called him on his mobile from Jeddah on 09/07/06 and confirmed receipt of the money. His cross-examination by learned advocate Shetty has not brought out anything adverse to affect his testimony. Though he admitted that Muzzammil, Rizwan and Bilal are common names in Muslim community and though it was submitted during the arguments that neither the A9 nor Bilal Shaikh, PW-66, was shown to him, it is Bilal Shaikh, PW-66, who has confirmed the identity of Muzzammil. There is not a single improvement made by this witness and not a single omission or contradiction has come and was brought on record during his cross-examination. His evidence is crystal clear and truthful that there is no trace of untruthfulness, basically because it is a totally innocuous evidence. He did not know the said Muzzammil or Bilal Shaikh, PW-66, prior to that day and therefore there is no reason for him to have any interest either way or for favouring the prosecution or for deposing against the accused. This aspect is endorsed by his answers in cross-examination that he never met Rizwan Dawrey in Pune, that he never has gone to his house in Pune and has no information about his family members, does not

know them and has never met them. It is also endorsed by his answer that before that day and even after that day he had not seen Bilal Shaikh, PW-66, does not know where he used to reside in Fatima Nagar, does not know the mobile numbers of Muzzammil and Bilal, etc. His inability to state his mobile number as well as mobile numbers of Muzzammil or Bilal also shows that he had no contact with them prior to or after the said incident. He even does not know their full names.

1005. He was cross-examined in respect of how much foreign currency one can bring in India and whether he has brought any money with him any time, etc., but that is irrelevant insofar as the fact about he carrying the Saudi Riyals with him to India is concerned. He admitted that he did not declare that he was carrying 15000 Saudi Riyals at the Jeddah airport or the Mumbai airport and that except his words he has no evidence to show that he had brought that amount with him. This is precisely what I was saying. His evidence is a totally innocuous evidence without any other evidence to corroborate his version about bringing the Saudi Riyals with him from Jeddah to Mumbai and handing it over to Bilal Shaikh, PW-66. There is no whiff of any untruthfulness in his evidence or in the act that he did. His cross-examination by learned advocate Wahab Khan is on general aspects about plight of persons working in Saudi Arabia and on the other hand it has come that Bilal Shaikh, PW-66, had brought officer Kshirsagar to his house, who made inquiry with him. This means that after the investigating machinery interrogated Bilal Shaikh, PW-66, they came to

Hidayatulla Sundke, PW-64, to complete the link. He was given a baseless suggestion that he did not come from Jeddah to India on 02/07/06 and that he deposed falsely because of the pressure of the ATS. What is the pressure of the ATS is not put to him and insofar as he coming to India on 02/07/06, it has come at the start of his evidence itself that he had his passport with him when he gave evidence, but the defence did not dare to see or ask him about it.

1006. Thus the evidence of Hidayatulla Sundke, PW-64, is totally unimpeached and I have no hesitation in accepting it as truthful. The blanks about the identity of the said Muzzammil being the A9 and of Bilal Shaikh, PW-66, have been filled up by Bilal Shaikh, PW-66, and Mohsin Khan, PW-67, because both these witnesses are relatives of A3 and A9 and the Muzzammil to whom Hidayatulla Sundke, PW-64, referred, is confirmed by both of them to be the A9 before the court. About the said transaction, it has come in the evidence of Bilal Shaikh, PW-66, that the A9 called him on his mobile phone from Bangalore on 04/07/06 (this date is relevant) and told him that A3's money has come and a person by name Hidayatulla, who stays at Salunkhe Vihar, has money and he gave the mobile number of Hidayatulla and asked him to collect the money from him, telling him that may be the A3 will come to him and collect the money. He, i.e., Bilal Shaikh, PW-66, in turn told A9 that he would call that person Hidayatulla Sundke, PW-64, on the next day, i.e., on 05/07/06 (the date is relevant) and accordingly called Hidayatulla Sundke, PW-64, and told him that the A9 had given him his number and that asked him to collect the money of

Faisal that had come to him, whereupon, Hidayatulla Sundke, PW-64, told him to come to his residence. I pointed out the above two dates as being relevant because they corroborate the evidence of Hidayatulla Sundke, PW-64, that he got a call on his mobile on 05/07/06 from Bilal Shaikh, PW-66. From this, it can be inferred that the mobile number of Hidayatulla Sundke, PW-64, was given to the A9, who must have got it from wanted accused no. 2 Rizwan Dawrey. It has come in the evidence of Bilal Shaikh, PW-66, that he went to the residence of Hidayatulla Sundke, PW-64, who came out of the house and gave him the money which was 15000 Saudi Riyals. This aspect of handing over the Saudi Riyals is proved by both these witnesses. The evidence of Bilal Shaikh, PW-66, further is somewhat inconsistent with the evidence of Hidayatulla Sundke, PW-64, because he stated that he was shocked on seeing the money, that as it was foreign currency he asked Hidayatulla Sundke, PW-64, about it who said that it is for the construction of masjid and that it was sent by wanted accused no. 2 Rizwan Dawrey, who was in Saudi Arabia at that time, that he therefore called Muzzammil on his mobile and asked him about the money and Muzzammil assured him that everything was fine. This evidence is inconsistent with the evidence of Hidayatulla Sundke, PW-64, but the fact about handing over 15000 Saudi Riyals to Bilal Shaikh, PW-66, on 05/07/06 at his house is proved beyond doubt and the inconsistent evidence given by both these witnesses does not affect its veracity. This is the end of this transaction insofar it relates to the role played by Hidayatulla Sundke, PW-64.

1007. It has come in the evidence of Bilal Shaikh, PW-66, that on the same day, Faisal, i.e., the A3 called him on his mobile and told him that he was not able to come to Pune and asked him to send the money to Mumbai with any person who is coming to Mumbai. At that time, Junaid Khan, i.e., maternal uncle of Bilal Shaikh, PW-66, who works as an inspector in the cleaning department of the JJ Hospital, was admitted in that hospital for some major operation and his son, i.e., Mohsin Khan, who used to stay in Pune was going to visit him at Mumbai. Bilal Shaikh, PW-66, knew this, therefore, he called him and told him that there is some money of Faisal, i.e., the A3, and he should take it to Mumbai and the A3 would collect it from him at the JJ Hospital. As per the sequence of this evidence given by Bilal Shaikh, PW-66, these events must have taken place on 05/07/06, however, it has come during the evidence of Mohsin Khan, PW-67, that Bilal Shaikh, PW-66, told him to carry the money on 06/07/06 when he had gone to visit his grandmother at the house of Bilal Shaikh, PW-66, and on that day he was to visit his father in Mumbai and he collected that money in the afternoon at 4.00 p.m. and went to Mumbai on the same day, i.e., on 06/07/06. There is considerable agitation about how and when Bilal Shaikh, PW-66, gave the message to Mohsin Khan, PW-67, on what date Mohsin Khan, PW-67, came to his house, etc., because in continuation of his evidence that A3 called him on the same day, i.e., on 05/07/06, Bilal Shaikh, PW-66, stated that he had contacted Mohsin Khan, PW-67, to take the money at Mumbai and at that time Mohsin Khan, PW-67, had come to meet his grandmother, but forgot

to take the money from his house, therefore, he again called him and inquired whether he had picked up the money, but Mohsin Khan, PW-67, said that he had completely forgotten the same and assured him that he would come after sometime and take it. It has come in his evidence that Bilal Shaikh, PW-66, was out of his house at his friend's birthday party and during that time Mohsin Khan, PW-67, went to his house and picked up the money and went to Mumbai on the next day with the money, that he came back after a week and on asking him told that Faisal had taken the money. Mohsin Khan, PW-67, corroborated his version stating that on the next day when he was in his father's ward in the JJ Hospital, A3 called him on his mobile phone, came there after sometime and took the money. This is his only evidence and it has fully corroborated the evidence of Bilal Shaikh, PW-66. Irrespective of the inconsistent evidence given by both of them about the give and take of messages and as to at what time exactly and on what date exactly Mohsin Khan, PW-67, had taken the money from the house of Bilal Shaikh, PW-66, the relevant facts that are proved are that Mohsin Khan, PW-67, had taken 15000 Saudi Riyals from the house of Bilal Shaikh, PW-66, at Pune and A3 had collected the said money from him in the JJ Hospital in Mumbai.

1008. Most of the cross-examination of Bilal Shaikh, PW-66, by learned advocate Wahab Khan is irrelevant and in the nature of a fishing expedition and absolutely nothing adverse was brought on record to discredit his version. On the other hand, when he attempted to show that the witness is tutored, Bilal Shaikh, PW-66,

specifically stated that Sr. PI Rathod, PW-176, did not contact him on phone at any time during the last 3-4 months (before the date of his evidence), that he did not receive any phone from the ATS office during this period and never went to the ATS office during this period. A fallacious demand was made from the witness to produce the CDR of his mobile phone. One positive aspect that he deposed is that an ATS officer Kshirsagar had come to him alongwith others and he had taken them to the house of Hidayatulla Sundke, PW-64. When asked whether his family members asked him why the ATS police had come, he gave a most natural answer that was expected from a relative, that they knew it as it was in the news that the A3 and A9 are arrested in connection with the bomb blasts. Some suggestions were made on the lines of the defence taken by the accused in respect of they being shown on the television giving confessions and Jt. CP Rakesh Maria giving interviews on the television and he made positive statements that he did not see whether the A3 and A9 were giving confessions on television and he had not watched Rakesh Maria giving an interview on the television that members of Indian Mujahedin had committed the blasts though he stated that he heard about it. During his cross-examination by learned advocate Shetty some improvements made by him have been brought on record, viz., that on 04/07/06 A9 had told him the name of Hidayatulla Sundke, PW-64, and that he stays in Saudi Arabia, that the A9 had told him that A3 will collect the money from him and he told the A9 that he will call that person on the next day, that the person came out of the house and gave him

15000 Saudi Riyals and he was shocked on seeing it as it was foreign currency and about his talk with A9 on his mobile in front of Hidayatulla Sundke, PW-64, and again that he had called Mohsin Khan, PW-67, and told him that there is some money of A3 and he should take it to Mumbai and A3 will collect from him at the JJ Hospital. Now, all these improvements have been washed out by the suggestion given to him at the end of paragraph 22 which he admitted and in which he had stated that it did happen that Mohsin Khan, PW-67, came to him to his house in the morning, he, i.e., Bilal Shaikh, PW-66, told him to take the money to Mumbai and give it to the A3, that Mohsin Khan, PW-67, asked him for what purpose the money is and he told him that wanted accused no. 2 Rizwan Dawrey had sent it from Saudi Arabia for construction of masjid and Muzzammil had called him on phone from Bangalore and told him to take it from a person by name Hidayatulla, that Mohsin Khan, PW-67, agreed and thereafter Bilal Shaikh, PW-66, went out of the house, that in the afternoon when he reminded him on phone, Mohsin Khan, PW-67, took the 15000 Saudi Riyals that he had kept with his grandmother. He stated that he had stated so to the police and police had written it correctly. So whatever inconsistencies or improvements might be there in the evidence of Bilal Shaikh, PW-66, or Mohsin Khan, PW-67, are covered by these statements and they conclusively establish the fact of Mohsin Khan, PW-67, having taken the Saudi Riyals from the house of Bilal Shaikh, PW-66. Thus, there are no contradictions in his evidence and there is no impediment in accepting it as a truthful evidence.

1009. Same is the case about Mohsin Khan, PW-67, whose evidence in chief-examination has been discussed earlier and again his cross-examination has not discredited his version in respect of relevant facts about he having taken the Saudi Riyals from the house of Bilal Shaikh, PW-66, and A3 having taken them from him at the JJ Hospital. Thus, the improvements made by them or the only contradicted portion proved through Mohsin Khan, PW-67, as Ext. 2003 consisting of his statement that he had started for going to Mumbai on 06/07/06 and he went to Bilal's house at 11.00 a.m., which he denied having stated to the police, does not affect his testimony. Sr. PI Rathod, PW-176, stated that Mohsin Khan, PW-67, had told him that Bilal called him at 4.00 p.m. on 06/07/06, he told him to take the money from their grandmother with whom he had kept it. He explained that it is not written in these words but it is in other words and those words are reproduced in bracket that Bilal phoned him and told him that the money to be given to Faisal was at his house and he should take it, therefore, he went to Bilal's house and took the 15000 Saudi Riyals from their grandmother Fatimabee and came to Mumbai on that day. What this means is that the witness may have not stated the exact timings when he received phone calls, but that will not affect his evidence which is corroborating the evidence of Bilal Shaikh, PW-66. Now some very positive statements have come in his cross-examination which show his truthfulness. While denying the suggestion that he did not know on 21/08/06 for what purpose police called him, he explained that he was aware that they were going to question him regarding the

Saudi Riyals, because one day back officer Kshirsagar had come with the summons and he had explained to him whatever had happened. He was given a baseless suggestion that he deposed falsely without showing the reason as to why he so deposed. There is again a baseless suggestion that he deposed falsely under the pressure of ATS officer to help them, without showing as to what pressure the ATS had exerted on him. Thus, there is nothing in his cross-examination to discredit his version or to impeach his testimony.

1010. In connection with the evidence of above three witnesses, A3 in his written statement Ext. 2824 has only referred to Bilal Shaikh, PW-66, and Mohsin Khan, PW-67, stating that he was not much in contact with them, but his brother, i.e., A9, was doing a job in Poona and his aunt had forced him to stay there and he stayed there as he had the experience of first job, though, their, i.e., the family of the A3 and A9, did not have good relations with the family members of Mohsin Khan, PW-67, and both had been illegally detained at Bhoiwada and were released after they became ready to give evidence. Surprisingly, these things are not put to both the witnesses during their cross-examination and his contention about the bad relations between the two families is falsified during the cross-examination of A9, who gave evidence as DW-47, that he had good relations with both of them as they are cousins and he also admitted that they had not stated before the court about beating and threats. The last suggestion is obviously in view of a contention in written his statement Ext. 2823 as well as in his evidence that he had seen them in the ATS lock-up and he never instructed them to collect

money on his behalf from any person either on telephone or in person. In connection with the evidence of these three witnesses learned advocate Shetty has asked certain questions to question the credibility of this type of evidence brought by the prosecution. He submits that there is no information as to in which village the masjid was to be constructed. This submission is obviously ignoring the fact that it was a ploy used by wanted accused Rizwan Dawrey to convince Hidayatulla Sundke, PW-64, to carry the Saudi Riyals with him. Learned advocate submits that other particulars of A9 except that he is resident of Kondhwa had not been provided. This submission or query is already covered as Bilal Shaikh, PW-66, and Mohsin Khan, PW-67, are relatives of the A9 and admittedly Hidayatulla Sundke, PW-64, had no concern whatsoever with any of them. His next submission is that Hidayatulla Sundke, PW-64, was not given the full particulars of A9 including his mobile number and even though he sent an SMS to wanted accused no. 2 Rizwan Dawrey on 04/07/06 asking for the mobile number of the A9, he did not get any reply, but suddenly on the 5th he got a call from Bilal, who asked for money and except his bare words, there is no other corroborating material about the talk and other details. At the cost of repetition it will have to be pointed out that the evidence given by Hidayatulla Sundke, PW-64, is fully corroborated by the evidence of Bilal Shaikh, PW-66. Thus this submission does not affect his credibility.

1011. Learned advocate made a ridiculous submission that there is no authentic record about Hidayatulla Sundke, PW-64, having

brought the money with him though he admitted that he does not bring his own money also in cash. Ridiculous I said because it was obviously brought at the instance of wanted accused Rizwan Dawrey without disclosing the possession of the money at the airports. Again a strange submission was made that he was not confronted with Bilal Shaikh, PW-66, in the court. I do not know whether this is a practice or whether it would have proved something because in that case the court would have been the witness. Learned advocate next submits that everybody is trying to save his skin and they are ready to accept the responsibility of carrying the foreign currency, but no CDR of their mobiles are produced to show talks between them. To my mind, it would be too much to expect the investigating machinery to collect the CDRs of mobiles of all the witnesses and to produce them in evidence to prove one fact out of several facts and even otherwise the evidence by way of call details is an inferential evidence whereas we have before us the direct evidence of three witnesses.

1012. Learned advocate then submits that it is not in the statement of Mohsin Khan, PW-67, that A9 had told Hidayatulla Sundke, PW-64, and Bilal Shaikh, PW-66, to give the money to the A3. He submits that the evidence of this witness is in total conflict with the evidence of Bilal Shaikh, PW-66, in respect of the aspect of going to his house and the timings. I have already considered this and have held that insofar as the relevant aspect of his evidence is concerned, viz., he going to the house of Bilal Shaikh, PW-66, collecting the Saudi Riyals from his house and A3 taking them from him at the JJ

Hospital at Mumbai, it is unaffected by the minor inconsistencies.

1013. In my humble opinion, considering the fact that Hidayatulla Sundke, PW-64, Bilal Shaikh, PW-66, and Mohsin Khan, PW-67, have no criminal antecedents and nothing was brought on record to show their previous connection with the police or the ATS and the fact that Bilal Shaikh, PW-66, and Mohsin Khan, PW-67, are relatives of the A3 and A9 and no enmity have been shown on their part towards the said accused, all these three witnesses are the most impartial witnesses and I have no hesitation in accepting their testimony as truthful. Hence, it will have to be held that the prosecution has proved that wanted accused no. 2 Rizwan Dawrey sent 15000 Saudi Riyals from Jeddah in Saudi Arabia to India with Hidayatulla Sundke, PW-64, on 03/07/06 for being given to the A9, that Bilal Shaikh, PW-66, collected this money from Hidayatulla Sundke, PW-64, on 05/07/06 on the instructions of the A9, that at the instructions of Bilal Shaikh, PW-66, the money was collected by Mohsin Khan, PW-67, and taken to Mumbai on the instructions of the A9 for being handed over to A3, that Mohsin Khan, PW-67, took the said money to Mumbai and A3 collected it from him at the JJ Hospital in Mumbai. The seizure of 15000 Saudi Riyals from the house of the A3 on 28/07/06, i.e., on the next day of his arrest, under the panchanama Ext.533 leads to the inference that they are the same Saudi Riyals that he had collected from Mohsin Khan, PW-67. This is the circumstance no. 25 proved by the prosecution. It is against the A3 and A9. It is the seventh circumstance against the A3 and fourth circumstance against the A9.

1014. The last transaction that is alleged by the prosecution is post blast, i.e., on 14/07/06 and it is alleged that even after the explosions, wanted accused no. 2 Rizwan Dawrey sent 11200 Saudi Riyals on 14/07/06 through one Afzal of Pune for handing over to Abdul Dawrey, PW-71, for onward handing over to the A3. These Saudi Riyals could not be delivered to the A3 as he was arrested prior to the delivery of the said amount. This amount was seized from Abdul Dawrey, PW-71, brother of wanted accused no. 2 Rizwan Dawrey. I have already held in paragraphs 969 and 973 supra while discussing the evidence about the search and seizure from the house of the A10 that by the evidence of PSI Gaikwad, PW-169, and panch witness Alankar Mane, PW-61, the prosecution has proved the contents of all the three panchanamas, Exts. 756 to 758, and insofar as the seizure of Saudi Riyals from Abdul Dawrey, PW-71, under the panchanama Ext.757, it is held that Abdul Dawrey, PW-71's evidence corroborates their evidence about their visit to his house and the seizure of the Saudi Riyals under the panchanama Ext. 757. The said panchanama also contains his signature.

1015. The investigating officer recorded the statement of Abdul Dawrey, PW-71, in connection with the seizure of the Saudi Riyals from him, but mainly for the purpose of showing the connections of the A3 and wanted accused no. 2 Rizwan Dawrey with SIMI. His evidence about it will be considered at the appropriate stage. It has come in his evidence that A3 and his brother wanted accused no. 3 Rahil Ataur Rahman Shaikh were friends of his younger brother wanted accused no. 2 Rizwan Dawrey and they used to visit his

house in 1996-97 and they got to know each other as Rizwan as well as Rahil were in computers. After his evidence about wanted accused no. 2 Rizwan's activities in connection with SIMI and he identifying the A10, A3 and A9, SIMI being banned in 2001 and Rizwan continuing meeting the said accused, he stated about Rizwan going to Jeddah in April, 2003, he going to Saudi Arabia for working in September, 2003 and working there upto January, 2005 and that A3 and wanted accused no. 3 Rahil coming to meet wanted accused no. 2 Rizwan Dawrey at Jeddah. It has come in his evidence that he returned back to India in January, 2005 and thereafter was in touch with wanted accused no. 2 Rizwan Dawrey by phone and e-mail and Rizwan used to send 500-600 Riyals for the expenses of his father, most of the time through the regular banking channels. It has come in his evidence that a family of Pune known to him was in Jeddah at that time and they were Gaffar and his brother Afzal Shaikh, who were residents of Kondhwa in Pune. It has come in his evidence that wanted accused no. 2 Rizwan Dawrey sent him an e-mail in the first week of July, 2006, that Afzal is visiting Pune on 12/07/06, that he is sending a parcel of medicines and sweets and about 500 Riyals with him for their father and he, i.e., Abdul Dawrey, PW-71, collected the parcel and 500 Riyals from Afzal on 17/07/06. It has come in his evidence that he found some medicines, dates and one closed envelope when he opened the parcel on returning home, that 500 Riyals were separately given and as Rizwan had not told him about the envelope he questioned him when there was a telephone conversation with him, thereupon

Rizwan told him to keep the envelope safe till he gives further instructions. So he safely kept it with him. It has come in his evidence that wanted accused no. 2 Rizwan Dawrey came on line on 26/07/06 and told him that the envelope was for Mustafa, i.e., Faisal, i.e., the A3. All the above is clear and except for his statement that 500 Riyals were separately given and wanted accused no. 2 Rizwan had not told him about the envelope, the other evidence has not been shown as an improvement or a contradiction on his statement. The relevant cross-examination by learned advocate Shetty for A3 is in paragraph 13 wherein positive statements have come on record that Rizwan used to intimate him in advance about the money sent by him and also used to inform a code number using which he used to the money from the exchange showing his identity proof. Again a positive statement has come on record that the money received from Afzal was the last money received from wanted accused no. 2 Rizwan. His cross-examination in paragraph 14 is in respect of his communication with wanted accused no. 2 Rizwan by chatting on the internet on 26/07/06 and he admitted that upto that date he had no knowledge as to what was in that envelope and for whom it was sent and he does not remember the description of the envelope, its colour and whether anything was written on it. Now, alongwith seizure of the said Saudi Riyals, a CPU, Art. 308, was seized from his house and it has come in his evidence that he used the said computer, it belonged to wanted accused no. 2 Rizwan and in that connection he admitted that he had not deleted the chatting that he had with wanted accused no. 2 Rizwan on 26/07/06 and the

e-mail received on 05/07/06. It is in this connection that the learned advocate submitted during his arguments that no evidence has been collected by the investigating machinery in respect of said chatting and e-mail therefore the evidence given by Abdul Dawrey, PW-71, is his only words and there is no corroboration to him. To my mind, the material evidence is about receipt of Saudi Riyals from Afzal and its seizure by the ATS. However, the evidence given by Abdul Dawrey, PW-71, has not been discredited or shown to be untruthful, because this witness is not shown to have any criminal antecedents or any prior links with the police and the ATS.

1016. His next evidence that on that day, i.e., on 26/07/06 Rizwan told him to dispose off the envelope and move out from Pune as Mustafa, i.e., A3, was picked up in connection with the 7/11 railway blasts and he told Rizwan that he has not done anything wrong, that he has got a family and cannot move out of Pune, is brought on record as an improvement over his statement to the police. Even if this is kept aside, his evidence further that the ATS officers visited his house on 30/07/06, questioned him about his brother, he revealed to them the discussion that he had with Rizwan and handed over the envelope to them is a clear evidence and it is not an improvement or a contradiction and is uncontroverted. His evidence further that the envelope, 500 Riyals and personal computer of Rizwan were seized, corroborates the evidence of PSI Gaikwad, PW-169, and panch witness Alankar Mane, PW-61. He identified the CPU Art. 308 and his signature at the end of panchanama Ext. 757. He denied the suggestion that he is deposing falsely in favour of the

police to save his brother wanted accused no. 2 Rizwan Dawrey. His cross-examination on this point has not revealed anything adverse that would affect his testimony and in fact though he had stated in his chief-examination that his father was present in flat no. 203 from where the CPU was seized, i.e., from the house of wanted accused no. 2 Rizwan Dawrey, under the panchanama Ext. 756, in paragraph 9 of the cross-examination this mistake was corrected because he stated that the CPU Art. 308 was taken from his living room. A contradiction was tried to be brought on record about he stating to the police that wanted accused no. 2 Rizwan Dawrey told him to keep the envelope of Riyals far away from the house about which he stated that he does not remember whether Rizwan had told him so and whether he had stated so to the police and then explained that it may be that he may have stated so to the police. So this will not amount to a contradiction. Moreover, he has not stated the opposite in his chief-examination. The only inconsistent answer given by him is in paragraph 31 during the cross-examination by learned advocate Wahab Khan wherein he stated that the envelopes containing the notes that he gave to the police was not opened in his presence at his house as well as at the ATS office, that the ATS officers did not tell him that it contains notes and did not give the notes in his hands saying that it is foreign currency found in that envelope. The contents of the panchanama Ext. 757 disclose that white colour closed envelope was opened and found to contain 22 Saudi Riyals of 500 denomination each and 1 Saudi Riyal of 200 denomination, which is also accordingly deposed by PSI Gaikwad, PW-169, as well

as panch witness Alankar Mane, PW-61. To my mind, this aspect alone will not discredit his earlier unimpeached evidence about receipt of the Saudi Riyals from his brother wanted accused no. 2 Rizwan Dawrey at the hands of Afzal and ATS police seizing it from him on 30/07/06, that wanted accused no. 2 Rizwan Dawrey had informed him on 26/07/06 that the envelope was for the A3.

1017. In this respect, learned advocate Shetty for the A3 submitted that the seizure of the CPU is inconsequential and his answer that he was using the computer which was of Rizwan, shows that he is not speaking the truth. Same is the case about his answers about purchase of the computer and his inability to tell the name of the shop from where he purchased it, which to my mind, is irrelevant to the fact in issue. The submission of the learned advocate that no connecting material has been established about the talk and the directions given by wanted accused no. 2 Rizwan as to whom the packet is to be given and for what purpose it had been sent, except the bare words of the witness, whom he called as a tainted witness and there is no evidence about chatting also is already discussed before this submission. Learned advocate submits that there is no material to substantiate the talks the witness had with his brother by e-mail or chatting, because though he admits that he had not destroyed the said material, the investigating officer has not produced any evidence about it and here is a witness who is apprehending problems for himself and his brother that probably they would be arrested, not for any other purpose, but for possessing foreign currency unauthorizedly. Therefore, in all probability to

safeguard himself and save himself, the possibility cannot be ruled out that his false statement was prepared as required by the police. To my mind, such an inference cannot be drawn particularly if one considers the evidence given by the witness in respect of his brother's association with SIMI and their views and the talks which the A3 and wanted accused no. 2 Rizwan had about the ban on SIMI and what had transpired at Jeddah between them. It is but natural for a person to extricate himself from such type of problems, but even then this witness has not done so because he stated that he used to go to the office of the SIMI on the first floor of the masjid where he and Rizwan used to go for namaj and where A3, wanted accused no. 3 Rahil, one Asif Khan and Firoz and others used to come and they used to be discussions about Muslim issues like arrest and atrocities on Muslims and all the persons named by him and the persons whose names he does not remember used to make discussions. It would have had been a different case if he would have just stated about knowing the activities of his brother wanted accused no. 2 Rizwan in connection with SIMI, rather he says that he also used to go to that office of SIMI. His honesty is disclosed from his evidence that he became frightened on listening the views expressed in the talks after the riots in Pune in 2001 after the ban on SIMI and then stopped meeting any of those persons, but wanted accused no. 2 Rizwan continued meeting them.

1018. Learned advocate Shetty also submitted that the witness has stated that his statement was recorded on 30/07/06 itself, when the Saudi Riyals were allegedly seized from him and it has come in his

cross-examination that his statement was again recorded two times thereafter and particularly officer Dinesh Kadam recorded it at the office of the ATS at Bhoiwada on 31/07/06 by typing it on computer. Learned advocate submits that he called upon the prosecution to produce the statement on 30/07/06, but the learned SPP submitted that there is no such statement but the witness referred to the panchanama. To my mind, the submission of the learned SPP is correct because the witness stated that his signature was obtained on the statement that was recorded on 30/07/06 from which it can be inferred that he is referring to the panchanama Ext.757 which bears his signature.

1019. It is clear from the discussion that the evidence given by Abdul Dawrey, PW-71, in respect of receipt and handing over the Saudi Riyals to the police is a cogent and clear evidence. Hence, it will have to held that the prosecution has proved that Abdul Dawrey, PW-71, had received 11200 Saudi Riyals on 17/07/06 from one Afzal of Pune which was sent by wanted accused no. 2 Rizwan Dawrey for being handed over to the A3. **This is the circumstance no. 26 proved by the prosecution. It is against the A3. It is the eighth circumstance against him.**

Seizure of Saudi Riyals by Enforcement Directorate :-

1020. The 15000 Saudi Riyals seized from the A3 under the panchanama Ext. 533 and the 11200 Saudi Riyals seized from Abdul Dawrey, PW-71, are not before the court. They were seized by the Enforcement Directorate and it has come in the evidence of Sr. PI Rathod, PW-176, that Arvind Kumar, PW-40, Assistant Director of

Enforcement Directorate had taken the permission from the court and inquired with and taken the statement of the A3 in connection with both the amounts of Saudi Riyals and on his request and authorization, the Saudi Riyals were handed over to him before panchas on 25/09/06 under the panchanama Ext. 1255. It has come in his evidence that he handed over 26200 Saudi Riyals to Arvind Kumar, PW-40, under the panchanama Ext. 1255 before the panchas and he proved the contents of the said panchanamas and identified his signature, signatures of the panchas and of Arvind Kumar, PW-40. It has come in his evidence that Arvind Kumar, PW-40, also prepared a panchanama about seizure of the Saudi Riyals and obtained his signature and of the panchas and he identified signatures of all on the panchanama Ext. 1256. His cross-examination by learned advocate Wahab Khan is in respect of whatever he stated in court being an improvement over his statement given to ACP Patil, PW-186, however, it was noticed that it was written in other words. His cross-examination by learned advocate Shetty for the A3 has not revealed anything adverse that would affect his testimony or impeach his credibility about the evidence that he gave. He made a positive statement that he did not inform the Enforcement Directorate about the seizure of the Saudi Riyals, they came on their own and asked for the Riyals which was preceded by their correspondence with the Jt. CP, ATS and they had come to know that the ATS had seized some Saudi Riyals and had asked for the documents in connection with the seizure and he, i.e., Sr. PI Rathod, PW-176, was directed to comply with that letter. His

statement further that the Enforcement Directorate got the information from the newspapers wherein seizure of the Saudi Riyals was published is corroborated by the evidence of Arvind Kumar, PW-40. He was confronted with the panchanamas Exts. 1255 and 1256 and asked whether the font in both the panchanamas are the same and he stated that they are same. However, when confronted with the authorization letter Ext. 2037 he expressed his inability to say whether the font in it is similar with the font in the panchanamas. Now what he volunteered is very important and is natural. He stated that the font in two computers may be similar as they are default fonts. This is correct and acceptable in view of both the panchanamas being prepared in the office of the ATS on the computers of the ATS. There is nothing other than this in his cross-examination and he specifically explained that after a discussion between him and Arvind Kumar, PW-40, the two panchanamas were prepared by them separately on two computers in his office, his writer PC Jagdale used to operate the computers, one panchanama was typed by him and one was typed by a writer who was taken from the adjacent room. Thus, there is nothing fishy about the preparation of the panchanamas in the ATS office on that day.

1021. His evidence is corroborated by the evidence of Arvind Kumar, PW-40, in whose evidence it has come that there were a lot of news about the railway bomb blasts in 2006 and while going through the news items they came to know that police had seized some foreign currencies, viz., Saudi Riyals, from the residential premises from some persons, therefore, one of his officers Sanjay Tripathi was

deputed to the ATS office, who went there and had a discussion about it. They came to know about the case details after the Special Director of E. D. wrote a letter to the Jt. CP, ATS for furnishing them and came to know that the accused are already arrested and as they wanted to interrogate the accused and take over the currency, they moved the concerned court at Mazgaon and got the order Ext.580 allowing them to interrogate the accused and to take over the currency. His further evidence is about how he recorded the statement of the A3, which in fact was written by the A3 in his own hand in English, true photocopies of which are at Exts. 585(1 and 2) and the statement of Khaleeda Iqbal Ahmed Khan, cousin sister of A3 and A9 and Abdul Rehman Dawrey, PW-71, true photocopies of which are at Exts. 587 and 586 (1 and 2). He proved the contents of the said true photocopies from the originals that he had brought to the court and when the learned SPP asked him a specific question as to how he confirmed from Khaleeda and Abdul Dawrey, PW-71, that they were talking of the same accused Faisal, i.e., A3, he answered that they showed the photograph of the A3 to both of them and they put their signatures on the confirmation. During his cross-examination it has come that photographs of the A3 were taken when he was interrogated on 21/08/06 and 24/08/06 by one of his officers by name Bandekar by his mobile.

1022. Major part of his evidence in chief-examination is about the procedure that he adopted for recording the statement of the A3 and Khaleeda Iqbal and Abdul Dawrey, PW-71, and it has come in his evidence that he took the foreign currency seized by the ATS total

amounting to 26200 Riyals. He identified the A3 in the court unhesitatingly.

1023. During his cross-examination by learned advocate Wahab Khan when he was asked to state the name of newspaper in which he had read the news about seizure of foreign currency, he went through his record on being permitted and stated that the news item had appeared on 01/08/06 in the Free Press Journal, Mumbai Edition. Most of his cross-examination is concerning the procedure that he adopted for recording the statements of the A3, Khaleeda and Abdul Dawrey, PW-71, and in respect of some improvements and contradictions in his statement that he gave to the police, which are mostly concerning the aspect of recording of his statements. He made a positive statement that he did not go the ATS office thereafter except on 25/09/06, i.e., the date of the seizure of the Saudi Riyals. Same is the case about the cross-examination by learned advocate Shetty for the A3. Admittedly, Arvind Kumar, PW-40, did not state about preparation of the panchanama Ext. 1256, the contents of which show the seizure of Saudi Riyals at the ATS office on 25/09/06 and it is only in his evidence that he seized the foreign currency, i.e., 26200 Saudi Riyals, that were seized by the ATS. Therefore, there was no cross-examination to him on the point of the seizure. On the other hand, an indirect statement has come in paragraph 31 of his cross-examination that upto 25/09/06 he had no occasion to see the seized currency and he did not ask the police and they did not produce the Saudi Riyals before him on 21/08/06 and 24/08/06 and even when he recorded the statement

of Abdul Dawrey, PW-71, and Khaleeda. There is no suggestion by learned advocate Wahab Khan that he had not seized the Saudi Riyals that had been seized by the ATS and also by learned advocate Shetty for the A3. One more positive statement has come on record at the end of paragraph 47 that he took the Riyals in his custody for the first time on 25/09/06.

1024. Though, Arvind Kumar, PW-40, did not state about preparing the panchanama Ext. 1256 and signing on it, it has been deposed by Sr. PI Rathod, PW-176, and the contents of both the panchanamas have been proved by him. His evidence is corroborated by the evidence of Farid Bakir Mallik, (PW-119)(Ext.1254), in whose evidence it has come that he was called at 12.45 p.m. on 25/09/06 by the ATS police to their office behind Police Station Bhoiwada, where officers by name Rathod, i.e., PW-176, and one Singh, i.e., PW-40, were present, one more person like him was present and Rathod told them that they wanted to hand over 15000 Saudi Riyals recovered from the A3 and 11000 Saudi Riyals from another person to the officer by name Singh. He deposed about there being two packed packets in front of Sr. PI Rathod, PW-176, on the table out of which he opened one packet in which there were Saudi Riyals which were counted and found to be 15000 and he also deposed about there being a black pouch, a railway ticket, credit card and something else. It has come in his evidence that the other packet was also opened and 11200 Saudi Riyals were found in it and he described the denomination of notes that is 22 notes of 500 denomination and one of 200 denomination and 15000 Riyals

comprising of 500 denomination notes. It has come in his evidence that all the Saudi Riyals were handed over to officer Singh and all the articles in the two packets were put in a packet, packed and their signatures were taken and then the events were typed and the contents of the type documents were explained to them and they signed on it alongwith officer Rathod. He identified his signature, signature of the other panch and signature of the officers Rathod and Singh on the panchanama Ext. 1255 and also identified the outer envelope in which the remaining articles were put and also the articles that were put in it separately and specifically. He deposed about signing on a paper prepared by officer Singh and he identified signatures of all as above on the panchanama Ext. 256. His cross-examination has not discredited his version or impeached his testimony as it is not shown that he has any criminal antecedents or any prior connections with the police or the ATS or that he was an accused or acted as a witness or a panch witness for them. His evidence is innocuous inasmuch as it is not in the presence of any accused. He was cross-examined about his work as a hawker, whether he has licence about it, the fine amounts that he paid from time to time, he residing in a hut in a slum without any rent, etc., but all that is inconsequential. No doubt in his chief-examination as well as in his cross-examination he has deposed incorrectly about the sequence of finding of particular number of Saudi Riyals in the two packets, but that does not affect his testimony so long as his evidence establishes that 30 notes of 500 denomination each were found in one packet and 22 notes of 500 denomination and 1 note

of 200 denomination were found in another packet. He admitted that he cannot read and write Urdu, has never seen notes as those he saw on that day and except the digit of 500 does not know about the contents of the notes. This admission is irrelevant insofar as the aspect of opening the two packets and handing them over to Arvind Kumar, PW-40, is concerned. His evidence that he went out of that office at 2.30 p.m. is corroborated by the contents of the panchanama Ext. 1255 which shows that it was over at 1430 hours. Now, insofar as the preparation of the two panchanamas by the two officers is concerned, he stated that both were preparing the panchanamas at the same time and specific answers have come in paragraph 11 of his cross-examination by learned advocate Wahab Khan that corroborate the evidence of Sr. PI Rathod, PW-176, that he saw that there were two different havildars for help, that officers were dictating to them, that there was a distance of 10 feet between the officers, that one of the officers was near one wall and other officer was at the other wall, that both panchanamas started at the same time and he was near officer Rathod initially, but it did not happen that in between he told him to go near officer Singh and then come back to him and sign his panchanama. All this type of cross-examination is inconsequential and does not affect his evidence and a very positive statement was made by him that he did not move from his place till officer Rathod explained the contents of the panchanama to him. Lastly he turned down the suggestion that officer Vijay Salaskar called him in Kurla Crime Branch and had taken his signatures on ready-made panchanamas and he identified

the articles at the instance of the police, etc. Thus, his evidence which corroborates the evidence of Sr. PI Rathod, PW-176, proves the contents of both the panchanamas Exts. 1255 and 1256.

1025. In respect of the evidence of Arvind Kumar, PW-40, there are elaborate submissions by learned advocate Shetty and considerable agitation about the manner in which he had recorded the statements of the A3, Abdul Dawrey, PW-71, and Khaleeda. To my mind, all this is besides the point because the prosecution is not placing reliance on the contents of the statements of these three, true photocopies of which are on record in support of its case and there are no submissions by the learned SPP as to their admissibility in this case or as to the nature of that evidence and their evidential value. The moot question is whether handing over of the Saudi Riyals by Sr. PI Rathod, PW-176, to the officer of the Enforcement Directorate Arvind Kumar, PW-40 is proved or not and, to my mind, there cannot be any doubt about it. The Enforcement Directorate may or may not succeed in their case against the A3, Abdul Dawrey, PW-71 and Khaleeda, the fact remains that during his evidence he has proved the copy of the show cause notice Ext. 582 that was given to these three containing the allegations about contravention of the provisions of sections 3(c) and 40 of the Foreign Exchange Management Act, 1999. Insofar as this show cause notice is concerned, he was cross-examined in detail about the procedure that is to be adopted before issuing show cause notice particularly to the A3, but to my mind, rightly or wrongly, the fact is that the notice has been given to these three.

1026. In view of the above discussion it will have to be held that the prosecution has proved that 15000 Saudi Riyals seized from the house of the A3 and 11200 Saudi Riyals seized from Abdul Dawrey, PW-71, were seized by Arvind Kumar, PW-40, an officer of the Enforcement Directorate on the allegation that there was a contravention of the provisions of the FEMA Act. **This is the circumstance no. 27 proved by the prosecution.** It is against the A3 as it is the proof that foreign currency in the nature of Saudi Riyals that were allegedly seized from him and seized from Abdul Dawrey, PW-71, which were to be handed over to him were a contravention of the provisions of the FEMA Act and had been sent by wanted accused no. 2 Rizwan Dawrey. It is the ninth circumstance against the A3.

Travel of accused to Pakistan for militant training :-

1027. It is alleged by the prosecution that in pursuance of the object of their criminal conspiracy, the A3, A2, A1, A9, A10, A11 and A6 went to Pakistan and received training in handling of arms and explosives in the terrorist camp run by wanted accused no. 1 Azam Chima and that the travel plans were elaborately planned by the conspirators in order to ensure that the passports of the accused did not bear the arrival and departure stamps into and out of Pakistan.

1028. It is alleged by the prosecution that in pursuance of the aforesaid criminal conspiracy, the A3 went to Pakistan for undertaking training in the handling and use of arms and explosives firstly on 01/10/01 and returned to India on 29/11/01 through Wagah border using Indian passport bearing No. B-5403385 issued

on 06/06/01 by RPO, Pune. It has come in the evidence of Sr. PI Rathod, PW-176, that as it was revealed in the investigation that the A3 had gone to Pakistan in 2001 through Attari Rail Check-post, Amritsar, wireless message dtd. 21/08/06, office copy of which is at Ext. 1981, was sent by DCP Nawal Bajaj to the Foreigners Registration Office (FRO), Amritsar under the forwarding letter to the Asst. IGP (Crime), Maharashtra State, Wireless Grid, Mumbai, dtd. 21/08/06, office copy of which is at Ext. 1980, for permission to broadcast wireless message. It has come in his evidence that the FRRO, BOI, Amritsar sent the fax Ext. 1982 confirming that the A3 had traveled through Attari Rail Check-post on 01/10/01 and returned back *via* the same route on 29/11/01. It has come in his evidence that the copies of embarkation and disembarkation cards were not sent with the fax. Therefore, DCP Bajaj again gave a letter addressed to the FRRO, Amritsar dtd. 29/09/06, office copy of which is at Ext. 1188, for handing over copies of the embarkation and disembarkation cards and to inform the names of the officers who had given the clearance. It has come in his evidence that PSI Gaikwad, PW-169, was appointed to collect the documents and to record the statements of the concerned officers and it has come in the evidence of PSI Gaikwad, PW-169, that after reporting to DCP Bajaj on 29/09/06 as per the directions of Sr. PI Rathod, PW-176, and taking the letter from him, he met the FRRO at Amritsar on 06/10/06, handed over the letter given by DCP Bajaj and on being directed to go to AFRRO at Attari check-post, he went with the staff to the International Rail Check-post at Attari, which is near Amritsar

and met the AFRRO Premraj Sharma, gave him the letter and the AFRRO informed him that officer Subhash Choudhary, PW-114, was on duty on 01/10/01 at the time of departure and officer Surjeet Singh, PW-115, was on duty at the time of arrival on 29/11/01. The AFRRO gave him a letter addressed to the DCP, ATS, Mumbai dtd. 06/10/06, Ext. 1189 and attested true copies of the entries Exts. 1190 and 1192. On coming to know on inquiry that the said two officers were posted elsewhere, he requested the AFRRO to send them to the office of the ATS at Mumbai. The contents of the wireless message Ext. 1981 show the specific information about the A3 and his Indian passport no. B-5403385 issued at Pune on 06/06/01. Some details are also given in the letter Ext. 1188 and the contents of Ext. 1189, which is the letter given by the office of the Incharge Bureau of Immigration, ICP, Attari Rail, Attari, Amritsar, which show that it was informed that the aforesaid A3, an Indian national holder of the passport of the same number, had taken exit to Pakistan on 01/10/01 and returned back on 29/11/01 via ICP, Attari Rail, Amritsar. The contents of the certified true copy of the register Ext. 1190 discloses the name of the A3 alongwith his address of Pune and the same passport number and the contents of Ext. 1192 show his name in short as Mohd. Shaikh in front of which the same passport number is written alongwith its date of issue.

1029. The evidence given by Sr. PI Rathod, PW-176, as well as PSI Gaikwad, PW-169, and the documents produced by them were unchallenged from the side of the accused probably because the A3 has admitted his visit to Pakistan during that period as it is in his

written statement Ext.2829 filed alongwith his statement under section 313 of the Cr. P. C. that he had gone for the marriage of his cousin sister in Karachi, though he has mentioned that he had gone in December, 2001.

1030. The prosecution examined Subhash Choudhary, PW-114, who was posted as immigration officer in 2001 at Attari Railway Station, Amritsar, to prove the entry Ext.1190 and he proved the entry at sr. no. 979, which shows that one Mohd. Faisal s/o Ataur Rehman, r/o 1B-1/24, Kubera Garden, NIBM Road, Pune, DOB-1974, passport No.-B5403385 issued on 06/06/01, visa no. 251828 dated 27/08/01 had departed India on 01/10/01 and his destination was Karachi. He proved acknowledgment of his office below Ext. 1188 and the letter Ext. 1189 sent by his office saying that they are as per the original and also the entries in Ext.1190 (2 pages), which are of 01/10/01 and are in his handwriting. Then, Surjeet Singh, PW-115, who was posted as immigration officer at the same railway station in November, 2001 and was at counter no. 19 concerning Maharashtra and Gujarat on 29/11/01, proved the entry no. 4 in Ext. 1192. He had brought the original register of 29/11/01 and it has come in his evidence that all the entires on that day are in his handwriting and the entry at sr. no. 4 is concerning the person by name Mohd. Shaikh, whose passport number was B5403385, date of issue is 06/06/01 and year of birth is 1974 and stated that the date of departure and the serial number is written in column no. 10 and the name of the city where he would go in India is written in the last column, which is Pune. He explained that he had wrongly and

inadvertently written the date 10/10/01 in column no. 10 below the departure no. 979 instead of 01/10/01. For this, he explained that the trains used to arrive and depart on Monday and Thursday and there was no train on 10/10/01.

1031. Both the witnesses have been cross-examined in respect of some overwriting in one digit in passport number in Ext.1190 and in respect of some other aspect of the register and both also admitted that Mumbai Police have not inquired with them and have not taken their statements. However, there is no suggestion to them that they were not posted as immigration officers on the concerned dates at the Attari Railway Station and have not done the work as deposed by them and they had not made the entries. Hence, by their evidence the prosecution has proved the entries of departure from India and arrival from Pakistan of the A3 in the registers Exts. 1190 and 1192.

1032. In this respect learned advocate Shetty for the A3 made submissions about certain shortcomings in the register produced by two witnesses and also submitted that their statements were not recorded. However, I do not think that it is necessary to consider the submissions in detail in view of the A3 having admitted that he had gone to Pakistan in the year 2001. In view of the above discussion, it will have to be held that the prosecution has proved that the A3 went to Pakistan by railway from Attari Railway Station, Amritsar on 01/10/01 and returned back to India from Pakistan from the said Railway Station on 29/11/01. **This is the circumstance no. 28 proved by the prosecution. It is against the A3. It is the tenth**

circumstance against him. Whether or not the A3 had gone there for a valid reason or for militant training is an aspect that will have to be considered subsequently at the appropriate stage.

1033. It is alleged by the prosecution that the A3 again went to Pakistan for undergoing training in the handling of use of arms and explosives and during this second visit, in order to avoid detection, he left Mumbai for Jeddah on 08/11/03 using the same passport, From Jeddah, he illegally entered Pakistan *via* Kisham Island, Iran, where he allegedly destroyed his passport and during return, his mentors in Pakistan gave him a fake Pakistani passport on an assumed name Mohammed Akram, using which he returned to Jeddah, but while in Saudi Arabia, he was arrested for not possessing a travel document and was departed to New Delhi on 01/12/04 on an Emergency Certificate.

1034. It has come in the evidence of Sr. PI Rathod, PW-176, that he directed PI Bavdhankar, PW-152, on 08/08/06 to take the statements of the travel agents who had obtained the visas and tickets for the A2, A9, A10 and A11, had gone to Pakistan *via* Tehran and to collect the documents in that connection and it has come in his evidence that PI Bavdhankar, PW-152, after doing the said work, produced the statements, panchanamas and the documents that were seized under the panchanama which included registers and photocopies of travel documents and deposited them with the muddemal clerk. PI Bavdhankar, PW-152, corroborated his version and stated about making inquiries and taking statements of eight travel agents, out of whom the prosecution examined PWs 43 to 47,

the relevant in respect of the A3 being Mushtaq Ahmed, PW-46, and Mohd. Umar, PW-47. He deposed about seizing the documents, Arts. 261 (1 to 5) and 262 (1 to 6) under the panchanama Ext. 1637 from Mohd. Umar, PW-47, on 08/08/06. The said documents cannot be considered as they are not duly proved by the prosecution, however, the relevant evidence is of the two witnesses. The evidence of Mushtaq Ahmed, PW-46, a travel sub-agent, working for procuring visas and tickets shows that he knows the entire family of the A3 and A9 and their father, i.e., Ataur Rehman, was his neighbour and had taken him for work to Saudi Arabia in 1995 and that family of Ataur Rehman consisted of his wife, three sons, i.e., elder son A3, second wanted accused no. 3 Rahil and third A9, and a daughter. His acquaintance with the said family was further confirmed during his cross-examination in paragraph 21 by learned advocate Shetty in which it has come that he knew Ataur Rehman's family closely since 1984, they used to visit each others house, go out together, stayed in one house and worked together in Saudi Arabia and he and Ataur Rehman used to do namaj together and used to go together in Masjid or other pilgrimage centers in Saudi Arabia. He unhesitatingly identified the A3 and A9 in the court.

1035. It has come in the evidence of Mushtaq Ahmed, PW-46, that the A3 had brought the work of obtaining visa for wanted accused no. 3 Rahil and himself for Umrah in Saudi Arabia in 2003 and he got that work done from agent Mohd. Umar, PW-47. This is his only evidence concerning the work given by the A3 of himself and of wanted accused no. 3 Rahil and his entire chief-examination

is of just three pages and few lines more, whereas, his cross-examination is six times more than his chief-examination. Certain portions from his statement given to the police were brought on record as contradictions by learned advocate Wahab Khan and the relevant insofar as A3 is concerned are Ext. 1643(1) and (2), that were got proved from PI Bavdhankar, PW-152. The contents of the portion Ext. 1643(1) is in respect of the inquiry made by the officers of the ATS, Mumbai about the work of obtaining visa and tickets for A3 and his brother and for A2, A10 and A11 and some more persons is concerned. I do not see how it is a contradiction because it was a part of inquiry and while giving a statement, a witness will not state that he has been called by the ATS, Mumbai for the purpose of inquiry in connection with the bomb blasts in the western railway local trains on 11/07/06, about the work of obtaining of visas and tickets, etc. This is the inquiry and what he is required to be stated by the witness to the police is what work he has done. The contents of Ext. 1643(2) show that police had pointed out A3 and A9 to him when he had gone to ATS office and he had identified them. This aspect will have no effect either way. Whether they pointed him out or whether he saw them on his own because he knew them from before. Even otherwise, this part is not stated by him in his chief-examination and cannot amount to a contradiction.

1036. While we are at it, it will be better if all the contradictions in his evidence are taken up and discussed. It is in his evidence that thereafter in 2004, A3 had asked him to obtain visa for Iran for his friend Tanveer Ahmed Ansari, i.e., A2 and had sent his passport with

the A9. The portion from his statement Ext. 1643(3) that was put to him is that the A9 had brought the A2 before him in 2004 and had told him that he is a Shia and that he wants to go for Ziarat to Iran. To my mind, this does not disprove his evidence that the A3 asked him to obtain visa for Iran for the A2 and had sent his passport with the A9. Even otherwise, though the relevant portion is shown as an improvement, it is not contradictory to this portion because he has not stated so in his chief-examination or stated something contradictory to that evidence. Next is Ext. 1643(4), the contents of which are that in 2005 A9 had brought Firoz Ghaswala to him and had told him to obtain visa for Ziarat in Iran. This also will not amount to a contradiction because it is only his evidence that A9 had also given the passport of Firoz Ghaswala for obtaining visa for Iran which he had given to agent Johar Sayyed. Thus, the only contradiction will be about A9 taking Firoz Ghaswala to him, which to my mind, is of not much consequence. Next is Ext. 1643(5) which shows that from 2005 to May, 2006 A3 had brought A11, Mohd. Chipa Chand and Zulfiquar Faiyyaz and had told him that they are Shia Muslims and asked him to obtain visa for Ziarat to Iran for them. Once again this will also not amount to a contradiction though he denied having stated so because it is his evidence that in 2005 or 2006, A3 had given the passport of A11, Faiyyaz Ahmed and Mohd. Chand for obtaining visa for Iran, which he had given to agent Ashik Ali, PW-44, and the tickets were also obtained from the same agent. The only contradiction is about the A3 having taken the three persons to him and telling them that they are Shia Muslims.

Next is Ext. 1643(6) which says that in May, 2006, A3 had brought a passport of a person for visa and ticket for Ziarat in Iran, but as he had not brought that person and he did not know to which Muslim sect he belongs, he did not do the work. Mushtaq Ahmed, PW-46, has not stated anything about it and though he denied having stated so to the police it cannot be considered to be a contradiction because he did not state about it in his chief-examination. Next is Ext. 1643(7) that Ashik Ali, PW-44, and agent Johar Sayyed had asked him about the said persons when he gave them the work of visa and ticket and he told them that they are Shia Muslims and he has not stated about it in his chief-examination and though he denied it, it does not affect his evidence about the work that he had done. Ext. 1643(8) is that the A3 and A9 had posed to him that they are Shia Muslims and had misled him and obtained visa and ticket for Ziarat in Iran and if he would have known it, he would not have done their work. This again is not stated by him in his chief-examination and though he denied having stated so to the police, to my mind, the portions in Exts. 1643(3), (5), (6), (7) and (8) which refer to he having stated about Shia sect, which he denied having stated so to the police, is a good thing which shows that he is not drawing any conclusion or he is not inserting anything as per the case of the prosecution, but his evidence is matter of fact. In fact, his evidence in connection with all these things is not brought on record as an improvement or as omission. Lastly, learned advocate Wahab Khan gave him a suggestion that he has deposed falsely at the instance of the ATS, that he has not done the work of visa and ticket of the

persons whose names he stated and that it was the ATS officers who told him that he had done that work of the persons whose passports A3 and A9 had given to him, therefore, he is saying say so. Of course, he denied all these suggestions and to my mind they are just given for the sake of giving them without suggesting him any reason as to why he deposed at the instance of the ATS or as to why he deposed against A3 and A9 in the first instance and consequently the A2, A10 and A11. Major part of his cross-examination is in respect of pilgrimage to the Iran particularly to the tomb of Imam Reza, the evidence of which will be discussed subsequently.

1037. During his cross-examination by learned advocate Shetty one more contradiction is brought on record, i.e., Ext. 1643(9) which is about he stating to the police that he had gone to Saudi Arabia in 1994-95. What happened is this that during his cross-examination by learned advocate Wahab Khan he was directed to produce bank passbook of his sister or his statement of account from the bank in respect of his remittance to his home in the name of his sister when he was working in Saudi Arabia and on the next day of his cross-examination he reported that he had gone to the bank, but the bank officials told him that they did not keep the record that is more than 10 years old and stated that he had brought three remittance slips, Exts. 626(1 to 3), 627 and 628, which are dtd. 23/10/93, 24/11/93 and 21/02/94. It is, therefore, that during his cross-examination by learned advocate Wahab Khan he stated that he did not go to Saudi Arabia in 1994, but had gone in April, 1993 but does not remember the exact date, but that he had stated to the

police that he had gone in 1994 and explained that he realized that he had gone in 1993 when he saw the remittance yesterday at his house. The contents of the said remittance corroborate his version and show that he had generally deposed about going to Saudi Arabia in 1994-95, but he corrected himself on seeing the remittance that he had gone in 1993. Rest of his cross-examination by both the learned advocates has not revealed anything that would affect his testimony inspite of certain improvements that were brought on record. His memory about doing the work of the A3 and A9 and of other persons on the instructions of the A3 was tested. He admitted that his work is only concerned with taking the passports from the persons, giving them to the agent for visa and after taking back from the agent to give them back to the persons. It has come in his evidence that acquaintances from Kerala, Andhra Pradesh and Hyderabad used to bring the work of obtaining visas and tickets and he used to get the work of Maldives, Saudi Umrah done by agent Mohd. Umar, PW-47, and admitted in his cross-examination that it is difficult to tell what work he did before one year or before 3-4 years about a particular person with his name and whether it was for Umrah or Ziarat and also from which relative, friend or acquaintance a person had come to him for the work of visa and tickets. He made positive statements that however it is possible to remember about some special persons and the people who send him work from Hyderabad, Andhra Pradesh, Kerala and Mumbai are special for him. To my mind, the witness knowing the family of the A3 and A9 since 1984, makes the A3 and A9 special persons and I

do not think that he would forget what work he did for them. Insofar as the recording of his statement is concerned, he gave a perfect positive answer in his cross-examination that officers Kolhatkar and Bawdhankar inquired with him in the ATS office. The contents of Ext. 626 (1 to 3) show the name of remitter as Ataur Rehman, i.e., the father of the A3 and beneficiary name of Hasinabi Mohd. Saheb, which is as stated by him at page nos. 627 and 628 show his name as the remitter. These documents also prove that he had gone to Saudi Arabia in 1993-94 and was closely acquainted with Ataur Rehman, father of the A3 and A9. There is no suggestion to him that he was not acquainted with the A3 and A9 and there is no reason why he would depose against the A3, A9, A2, A10 and A11. The witness has no criminal antecedents and it is not shown that he has any previous connection with the police or the ATS. Thus, he is an absolutely credible witness and there is no hesitation in accepting his entire testimony as truthful.

1038. Mushtaq Ahmed, PW-46's testimony stands corroborated by the evidence of Mohd. Umar, PW-47, who works as a travel sub-agent, doing the work of obtaining visas and tickets and from 1997 mostly did the work of sending people to Maldives. It has come in his evidence that some persons come directly to him and some sub-agents also bring the work and one of such sub-agents is Mushtaq Ahmed, PW-46, whom he knows since 10 years, that he became acquainted with him 9-10 years before, he had brought the work of a tailor for being sent to Maldives. It has come in his evidence that Mushtaq Ahmed, PW-46, had come with the persons by name Faisal

and Rahil in September, 2003, which is shown as an improvement over his statement before the police. His further evidence is clear and practically unchallenged and he added to the above that Mushtaq Ahmed, PW-46, had come with A3 and wanted accused no. 3 Rahil for the work of visa and ticket for Umrah of Rahil and had given his passport and came on the next day and gave him an advance of Rs. 12,000/- for the visa and ticket work which work he got done from Gokul Travels, Marine Lines, gave the visa and ticket to the A3 after 8 days and got a commission of Rs.1,500/- for the said work. His evidence that Mushtaq Ahmed, PW-46, knew the A3 as A3's father had taken him with him to Saudi and they had homely relations, corroborates the evidence of Mushtaq Ahmed, PW-46. He unhesitatingly identified the A3 in the court, which has not been challenged during his cross-examination. It has come in his evidence that Mushtaq Ahmed, PW-46, and A3 again came to him after 10-15 days for the visa and ticket work of A3 for Umrah. This means that A3 had so approached him in 2003 and he stated that he did that work and got a commission. This evidence is clear and is not by way of improvements over his statement and except for a single contradiction, i.e., Ext. 1642, which says that A3 had brought four passports, nothing else has been revealed in his cross-examination to discredit his version. This contradiction is not material.

1039. It has come in his evidence that he does not maintain record about his work and when he was called on 08/08/06, the ATS police had asked him to bring whatever proof he had about the visa and ticket of Faisal for Umrah that he had done, therefore, he

went to Gokul Travels and brought the passports and visas of A3 and wanted accused no. 3 Rahil and bills of tickets Arts. 261(1 to 5) and 262(1 to 6). However, though PI Bavdhankar, PW-152, deposed about seizing them under the panchanama Ext. 1637, though he identified them and identified his signature and signatures of the panch witnesses on the said documents and also the envelope Art. 262A, those documents remained to be received in evidence at that time. Hence, they are now received in evidence and marked as Exts. 4790(1 to 5) and 4791(1 to 6) respectively. Their contents show that the passport of the A3 was bearing No. B-5403385 and his Air India ticket from Mumbai to Jeddah by flight no. AI-865 was booked through Akbar Travels. They also show passport no.1387118 of wanted accused no. 3 Rahil Ataur Rehman, visa of Kingdom of Saudi Arabia issued on 22/09/03 and bill of Akbar Travels issued to Gokul Travels dtd.16/09/03 of Air India of wanted accused no. 3 Rahil for Mumbai to Jeddah. These documents conclusively prove that A3 had booked a ticket of Air India for going from Mumbai to Jeddah and back to Mumbai and wanted accused no. 3 Rahil had also done so and a visa valid for one month was issued to him on 22/09/03 by the Kingdom of Saudi Arabia.

1040. In respect of the evidence of PI Bavdhankar, PW-152, about the seizure of various documents and registers under the panchanamas Exts. 1637 and 1641, he admitted during his cross-examination that articles that are seized under the panchanama are required to be sealed using lac seal and brass seal and that the registers and documents that he seized are not sealed. For this, he

gave a correct explanation which has been borne out from the evidence given by the other ATS officers, that they did not seal the registers because the brass seal was not available at that time. The said registers and the documents were seized on 08/08/06 and it has come on record that the ATS got their brass seal on 12/08/06. Thus, no fault can be found with him for not having sealed the packets in which he had put the documents and registers. Even otherwise, the persons from whom they are seized have been examined and they have identified the articles and stated about the police having seized the documents, registers from them. Another aspect is that panch witnesses for all these panchanamas have not been examined and for the same reason as above, it does not affect the seizure of the documents and registers.

1041. Mohd. Umar, PW-47's memory in respect of doing the work of A3 and wanted accused no. 3 Rahil was tried to be tested by his cross-examination and though he admitted that he cannot tell the names of persons for whom Mushtaq Ahmed, PW-46, had come to him for the first time for the work of Maldives and in which month or year he had gone there, that he cannot tell the name of persons whose work of Maldives was given to him subsequently by Mushtaq Ahmed, PW-46, his positive statement further that except for the two persons, i.e., the A3 and wanted accused no. 3 Rahil, Mushtaq Ahmed, PW-46, had not come to him for the work of Umrah for any other person. Therefore, this was an exceptional case which is the reason for him to remember it and the main reason for it being that Mushtaq Ahmed, PW-46, knew A3 as A3's father had taken him with

him to Saudi Arabia. Other than this there is nothing in his cross-examination to discredit his version and he denied the suggestion that he deposed falsely because of pressure of the police. What pressure is there is not put to him or explained. I have, therefore, no hesitation in accepting his testimony as truthful.

1042. In view of the evidence given by Mushtaq Ahmed, PW-46, Mohd. Umar, PW-47, and PI Bavdhankar, PW-152, it will have to be held that prosecution has proved that A3 had given the work of obtaining visa to Mushtaq Ahmed, PW-46, for himself and wanted accused no. 3 Rahil for Umrah in Saudi Arabia in 2003, that Mushtaq Ahmed, PW-46, had given this work to Mohd. Umar, PW-47, who had done that work and given the visa and ticket of the wanted accused no. 3 Rahil to the A3 and had given the visa and ticket of A3 to him in 2003 and the visa of the wanted accused no. 3 Rahil of Kingdom of Saudi Arabia dtd. 22/09/03 and he had booked a ticket on 16/09/03 for going from Mumbai to Jeddah and back and A3 had booked a ticket for 21/10/03 going from Mumbai to Jeddah and back. **This is the circumstance no. 29 proved by the prosecution. It is the eleventh circumstance against the A3.**

1043. It has come in the evidence of Sr. PI Rathod, PW-176, that after a letter to the Sr. Inspector of Police, Airport Branch, SB-II, CID, Mumbai, by DCP Bajaj and his, i.e., Sr. PI Rathod, PW-176's reminder, they got a letter Ext. 1999 from the Sr. PI sending them the information about the departure of the A3 from India. The contents of Ext. 1999 show that the A3 was cleared to immigration of that air check-post for his departure on 08/11/03. This evidence

is unchallenged and coupled with the evidence of Mushtaq Ahmed, PW-46, and Mohd. Umar, PW-47, it proves that the A3 had left India for Jeddah on 08/11/03.

1044. It has come in the evidence of Sr. PI Rathod, PW-176, that the A3 had been deported on an emergency certificate from Jeddah in Saudi Arabia in December, 2004. Therefore, PSI Gaikwad, PW-169, was directed to collect the disembarkation/arrival card from the FRRO, Delhi Airport and it has come in the evidence of PSI Gaikwad, PW-169, that after he had collected the documents from the FRRO, he informed about the investigation to Sr. PI Rathod, PW-176, and DCP Bajaj on phone and at that time Sr. PI Rathod, PW-176, told him about the A3 having gone to Jeddah by air in 2004 and he was asked to collect the details and information about his travel. He deposed about going to the office of AFRRO Immigration, New Delhi at R. K. Puram on 10/10/06, meeting AFRRO Ravi Saigal, who inspected the record and gave him the information that the A3 had come to Delhi on emergency certificate from Jeddah on 01/12/04 and he gave the attested photocopy of the disembarkation card. The contents of Ext. 1813 show the name of the A3, his date of birth, his port of boarding at Jeddah and date of arrival as 01/12/04, under the grid passport no.906081 dtd. 27/11/04 is written. It is obviously not the passport number of the accused, but it is the serial number of the emergency certificate Ext. 1580 issued by the Consul General of India in Jeddah. There is no cross-examination to PSI Gaikwad, PW-169, on this point and it has come in his evidence that he returned back to Mumbai and gave report

Ext. 1814 about the investigation that he had done, he proved the station diary entry no. 7 about leaving for Delhi on 02/10/06, certified true copy of which is at Ext. 1809, and the entry no. 8 dtd. 12/10/06, true photocopy of which at Ext. 1815, the contents of which corroborate his version. This evidence is also unchallenged.

1045. It has come in the evidence of Sr. PI Rathod, PW-176, that a letter dtd. 09/08/06, office copy of which is at Ext. 1572, was given to the passport office, Pune for obtaining copies of the application and the documents given by the A3 and the Superintendent of that office forwarded true photocopies of the application and the documents submitted by the A3, Ext. 1574 (17 pages), under the covering letter Ext. 1573. The contents of Ext. 1573 show that passport no. B-5403385 was issued to the A3 by their office on 06/06/01 and his address is that of Pune as mentioned earlier and Ext. 1574 (colly) shows the passport application form filled in by the A3 on 08/10/00 at Pune alongwith the correspondence and supporting documents like HSC certificate and ration card. DCP Bajaj had sent a letter on 14/08/06 to the passport office, Pune, office copy of which is at Ext. 1575, asking for the emergency certificate of the A3 and the said office had sent a phtotocopy of the said emergency certificate alongwith their letter Ext.1576. Therefore, he again sent a letter dtd.19/09/06, office copy of which is at Ext. 1577(1) alongwith the application in format, office copy of wihch is at Ext. 1577(2) asking the said office to hand over the original emergency certificate for the purpose of investigation. It has come in the evidence of Sr. PI Rathod, PW-176, that DCP Bajaj gave a letter

on 30/10/06 to the same office, photocopy of which is at Ext. 1578, for handing over the emergency certificate of the A3 to PSI Ravindra Kshirsagar of the ATS, Mumbai and accordingly by the forwarding letter Ext. 1579 Manisha Doiphode, PW-142, the Superintendent of that office handed over the original emergency certificate Ext. 1580 to PSI Kshirsagar alongwith the covering letter Ext. 1579. The contents of the emergency certificate Ext. 1580 show that it is issued by the Consul General of India, Jeddah on 27/08/04 to the A3 bearing no. 906081. Manisha Doiphode, PW-142, gave evidence about it and proved the contents of the letter issued by her colleague Ext. 1573, letters Exts. 1576 and 1579 and the original emergency certificate Ext. 1580. She deposed about handing over Ext.1580 to PSI Kshirsagar by her letter Ext. 1579. Her cross-examination by learned advocate Shetty for the A3 is in respect of her personal knowledge about when the emergency certificate was received in their office, who received it, whether any inquiry was made about it and that the emergency certificate Ext. 1580 does not contain the passport number and the date of its issue. It has come in her evidence that the emergency certificate is issued when the passport is lost abroad. If this is so, there is no question of passport number and the date of issue appearing on the emergency certificate. It has come in her re-examination by the learned SPP that the Indian Embassy in a particular country issues the emergency certificate on the information given by the person to whom it is issued. Thus, there is nothing in her evidence to discredit her version and in fact the original emergency certificate Ext. 1580 is a public document

and can be read as it is. There is no cross-examination to Sr. PI Rathod, PW-176, about it.

1046. In this respect, learned advocate Shetty for the A3 criticized the evidence given by Manisha Doiphode, PW-142, but only submitted that as she does not know actually in what circumstances their department received the emergency certificate, it cannot be linked to the passport of the A3 and that her evidence does not lead to any conclusion as to how and in what circumstances the certificate was issued. He submitted that looking at the reason narrated by the prosecution it cannot be said that the accused had gone for some illegal activity and overstayed there even after the lapse of visa. Learned SPP submitted that the evidence of this witness only shows that the A3 was deported on the emergency certificate and it was the effort of the A3 to screen his visit to Pakistan, therefore, the passport was lost or destroyed and as the original passport was not available the emergency certificate was issued. To my mind, it will also show that he may have overstayed in Pakistan or may have moved around in a foreign country without having a valid Indian passport. The correspondence and the inquiry made by the investigating machinery shows the prompt action and the proper line of investigation as the A3 was arrested on 27/07/06 and the first step that was taken by issuing the first letter inquiring about this aspect is dated 09/08/06.

1047. It has come in the evidence of Sr. PI Rathod, PW-176, that correspondence was made with the Saudi Airlines by which the A3 was deported to India and the manifest containing the list of

passengers was obtained and for that purpose a letter was sent under the signature of ACP Tawde, office copy of which is at Ext. 1983, to obtain the manifest and the Airlines sent the manifest, Ext. 1985, alongwith its covering letter Ext. 1984. It seems that alongwith the efforts that were made to obtain the documents that the A3 had submitted with his application for passport and the efforts made for obtaining the emergency certificate, ACP Tawde also wrote a letter Ext. 1983 on 20/08/06 to the Saudi Airlines asking for the arrival details and the said Airlines furnished the manifest dtd. 01/12/04 Ext. 1985, which mentions three names which are similar, viz., Ataur Rehman, Mohd. Shaikh and Shaikh Mohd., and by the covering letter Ext. 1984, it was informed that Delhi office of the Airlines checked the entire manifest, but they could not find any passenger with the exact name and they traced few names which were similar. Leaving aside this evidence, the emergency certificate Ext. 1580 is sufficient to prove that the A3 was deported from Jeddah in Saudi Arabia to India on 01/12/04. In view of the above discussion, it will have to be held that the prosecution has proved that the wanted accused no. 3 Rahil had gone to Jeddah in Saudi Arabia sometime in 2003 from Mumbai and the A3 had gone to Jeddah in Saudi Arabia on 08/11/03 from Mumbai and was deported from Jeddah on 01/12/04 as he did not have a valid passport. This is the circumstance no. 30 proved by the prosecution. It is against the A3. It is the twelfth circumstance against him.

1048. It is alleged by the prosecution that in pursuance of the

aforesaid conspiracy and while the A3 was still in Pakistan, he instructed the A9 to send some more Muslim youths to Pakistan for undergoing training and accordingly the A9 paid and arranged for the travel and training of the A2 in Pakistan, that in order to avoid detection, the A2 went to Pakistan *via* Iran from Chatrapati Shivaji International Airport, Mumbai on 21/05/04, traveling on Indian passport bearing No. B-0099830 issued by RPO, Mumbai. It is also alleged that as a part of the same conspiracy and as instructed by the A3, the A9 illegally traveled to Pakistan *via* Iran on 09/08/04. It is also alleged that on return from training, the A2 induced the A11 to undergo training in Pakistan to achieve the larger objective of conspiracy and collected A11's passport bearing no. A-1886227 issued by RPO, Mumbai, handed it over to the A9 who in turn got it stamped with *ziyarat* visa for Iran and A11 left Mumbai for Tehran on 04/04/05.

1049. Mushtaq Ahmed, PW-46 has given the details of five more transactions or the work of visa and ticket that he had done on the instructions of the A3 :

(i) First is that he had obtained visa for Iran for the A3's friend Tanveer Ahmed Ansari, i.e., the A2, in 2004 and A3 had sent the passport of the A2 with A9. This is brought on record as improvement. However, his further evidence that he had given that work to agent Johar Sayyed and the ticket for the A2 was obtained from Akbar Travels is corroborated by Afzal Hirji, PW-43, whose evidence that A2's passport came through Al Mehdi Tours in 2005 and his ticket was not issued through them though the visa was

done by them, is brought on record as improvement. He identified the photocopies of the letter dtd. 12/04/04 and the list of 25 persons, Arts. 258 (1 and 2), which were proved during the evidence of PI Bavdhankar, PW-152, and received in evidence as Exts. 1641 (1 and 2). It has come in his evidence that he was called in the office of the ATS at Bhoiwada on 08/08/06 in connection with the railway bomb blasts and they told him the names of the A2, A9 and A11 and Zulfiqar Faiyaz Ahmed, Mohd. Chhipa, Mehmood Shaikh and Firoz Ghaswala. This was brought on record as an improvement, but I do not see how this can be stated by a witness to the police when his statement was recorded because it is a part of the inquiry that the police did with him. The evidence of PI Bavdhankar, PW-152, and this witness is unchallenged and the contents of Ext. 1641(1) show the request made to the visa section of the Consul General for the Islamic Republic of Iran, Mumbai for issuing double entry visa for performing Ziarat for the 25 Zaireen as per the list enclosed and the list Ext. 1641(2) shows the name of the A2 at sr. no. 25, which also shows his passport no. B-0099830. The passport Ext.449 shows the stamps of Mumbai immigration of CSI Airport dtd.21/05/04 and the other stamp shows that he returned on 25/06/04. The visa issued by Islamic Republic of Iran is for the period from 15/04/04 to 14/07/04. There is also a stamp of visa extension. Thus, it will have to be held that the prosecution has proved that in 2004 the A3 had sent the passport of the A2 with the A9 to the travel agent for obtaining visa for Iran for the A2 and that the A2 traveled from Mumbai to Tehran in Iran on 21/05/04 and returned on 25/06/04.

This is the circumstance no. 31 proved by the prosecution. It is against the A3, A9 and A2. It is the thirteenth circumstance against the A3, fifth circumstance against the A9 and sixth circumstance against the A2.

1050. (ii) second is about Mushtaq Ahmed, PW-46, obtaining visa for Iran for the A9 soon after the visa work that he did for A2 in 2004 and it has come in his evidence that after some days A9 had given his passport for obtaining visa for Iran, which he had given to Ashik Ali, PW-44. It has come in the evidence of Ashik Ali, PW-44, working with As-Serat Tours as a Tours and Travels agent, that they give the work of obtaining the visas to Afzal Hirji, PW-43, of Al Shaya Nasser Travels, that they maintain a record of the pilgrims, i.e., the persons that they take on pilgrimages and make entries of the details of the passport and paste photograph of the persons in the registers. It has come in his evidence that ATS persons had came to their office on 07/08/06 and showed him 7-8 names and asked him to come to the office if they had done some work for them and on checking his record he found four names out of the names that the ATS officer had given, whose ticket and visa work was done by them. It has come in his evidence that he took the registers to the office of the ATS at Bhoiwada on the next day and police took the registers in their custody under the panchanama. He identified the registers Exts. 616, 617 and 618, which were received in evidence as learned advocates for the accused consented. It has further come in his evidence that he remembers that the agent by name Mushtaq Ahmed, i.e., PW-46, had brought the passports of four persons,

whose names he found, viz., A9, A11, Mohd. Chand and Zulfiquar, that the passports of four persons were received from time to time during 2004 to 2006, that Mushtaq Ahmed, PW-46, told them the said persons want to go for Ziarat to Iran. It has come in his evidence that during that time he had his own group for going to Iran and after a few days Mushtaq Ahmed, PW-46, told him that the four people would not go with the group and they will go by themselves and asked him to obtain their tickets and visas. He proved the entry of a name and photograph in the register Ext. 616 as that to be of the A9. He identified the passport of the A9 Art. 178, Ext. 620, on the basis of details written in the said register and stated that as per the entry in the register this person was go to Iran on 07/05/04. The contents of the said passport show stamps of Mumbai immigration from CSI airport of departure on 06/08/04 and of arrival on 10/09/04.

1051. It has come in the evidence of Afzal Hirji, PW-43, that Ashik Ali, PW-44, of As-Serat Tours had given four passports from 2004-2006 and he identified the A3 and he proved the entry Ext. 603 in the register of the year 2004 of the A9 in respect of passport no. E-0634943 and stated that this passport had come to Mushtaq Ahmed, PW-46, for visa to Iran. He was shown the passport Art. 178, Ext. 620 and he identified it as of the same person on the basis of the number and all other details in the passport mentioned in the register.

1052. (iii) Third is about Mushtaq Ahmed, PW-46, obtaining visa for Iran for the A11. It has come in his evidence that the passport of

the A11 was given to him by the A3 in 2005 or 2006, which he had given to Ashik Ali, PW-44. There is nothing in the cross-examination of Mushtaq Ahmed, PW-46, except the contradicted portion Ext. 1643(5) discussed above. Ashik Ali, PW-44, proved the entry in the register Ext. 617 pertaining to the A11 and stated that as per the said entry the said person was go to Iran in 2005. He identified the passport Art. 133, Ext. 619, of the A11 on the basis of its details mentioned in the register. It has come in the evidence of Afzal Hirji, PW-43, that the passport of the A11 was brought by the agent of As-Serat Tours, i.e., Ashik Ali, PW-44, and he proved the entry, Ext. 607, which is in his handwriting. The entry is concerning the A11 and he identified the passport Art. 133, Ext. 619, on the basis of its number and the other details that are entered in the register. The contents of Ext. 619 show the stamps of Mumbai immigration CSI Airport of departure dtd. 04/04/05 and of arrival dtd. 29/04/05.

1053. (iv) Fourth is about Mushtaq Ahmed, PW-46, obtaining visa for Iran for Faiyyaz Ahmed and Mohd. Chand. It has come in his evidence that A3 had given the passports of the said two persons to him for obtaining visa of Iran, which he had given to Ashik Ali, PW-44, and tickets were also obtained from him. There is nothing in the cross-examination of Mushtaq Ahmed, PW-46, to discredit his version except the contradicted portion Ext. 1643(5), discussed above. Ashik Ali, PW-44, proved the entry in the register Ext. 617 pertaining to Chipa Mohd. Ali and stated that as per the entry in the register, this person was go to Iran in 2005 and explained that the agent had given only three photographs of this person, therefore, his

photograph is not in the register. He had earlier stated that they take four photographs of each person, but Mushtaq Ahmed, PW-46, had brought four photographs of three persons and three photographs of one person and told them that they would bring one photograph of the one person later on. He also proved the entry in the register Ext. 618 pertaining to Zulfiquar Faiyyaz Ahmed and stated that as per the entry in the register this person was go to Iran on 02/05/06. Afzal Hirji, PW-43, proved the entry Ext. 605 of obtaining visa for Chipa Mohd. stating that it was obtained for Iran. He also proved the entry Ext. 606 which is in his handwriting in respect of Zulfiquar Faiyyaz Ahmed stating that the visa for that person was for Iran. It has come in his evidence that the work of obtaining visas for both these persons was given by agent of As-Serat Travels, i.e., Ashik Ali, PW-44.

1054. It is the evidence of Mushtaq Ahmed, PW-46, Ashik Ali, PW-44, and Afzal Hirji, PW-43, in respect of the points no. (ii) to (iv) supra. The evidence of Mushtaq Ahmed, PW-46, has been discussed in detail while discussing the evidence against the A3 in respect of his second visit to Pakistan in the year 2003 and after discussion of his entire evidence it is observed that he is an absolutely credible witness having no criminal antecedents and no previous connection with police or the ATS and there is no hesitation in accepting his entire testimony as truthful. There is similar cross-examination of Ashik Ali, PW-44, and Afzal Hirji, PW-43, in respect of points no. (ii) to (iv) above. Major portion of the cross-examination of Ashik Ali, PW-44, by learned advocate Wahab Khan is in respect of

pilgrimage/visit to the tomb of Imam Reza for having taken Niyaz. This evidence is totally unimpeached because no improvement or contradiction or omission is brought on record during his cross-examination. On the other hand, positive statements have come on record in paragraph 9 of his cross-examination by learned advocate Wahab Khan after he was questioned about the procedure of obtaining visas, that they had given around Rs.15,000/- to Rs. 17,000/- per person in the office of Afzal Hirji, PW-43, for the purpose of ticket and visa, that after few days, on the given date, they went to that office and collected the tickets and visas, that they followed the same procedure for obtaining tickets and visas and as they were getting the work done from Afzal Hirji, PW-43, therefore, tickets and visas of these three persons were done from him. These statements have not been controverted. His further cross-examination in paragraph 14 is about visit of the police to his office for inquiry on 07/08/06, he going to the ATS office on 08/08/06, police seizing the registers under the panchanama, his statement being recorded, etc., and nothing has come out to discredit his testimony or impeach his credibility. He admitted as per the factual position that the registers were not sealed by the lac seal and his truthfulness and the truthfulness of the event of seizure of registers, Exts. 616 to 618, from him is evident by his denial that he does not know what the police did except encircling certain names by red pen and in this connection he made a positive statement that the police had wrapped the registers in brown paper, pasted the brown paper by gum and two persons had signed near the encircled portion. He

admitted that the registers are not maintained as per any government rules or guidelines, but then he has not professed so. He admitted that there is no endorsement of the Iran Consulate or of the police having checked the registers, that there are no signatures of the persons whose names and details are mentioned in the entires, that the registers are not serially paged and not maintained datewise. However, he emphatically denied that the registers are not of his firm and he did not produce them and explained in response to the question about the registers not being maintained chronologically, that entries are made in the registers as and when the passports of the passengers were received.

1055. His cross-examination by learned advocate Shetty from paragraphs 17 to 21 is more specific and to the point. It is with respect to the format, contents of the registers and their practice. To recapitulate, there are four entries proved by him, one in the register Ext. 616 pertaining to the A9, second and third in the register Ext. 617 pertaining to the A11 and Chipa Mohd. and fourth in the register Ext. 618 pertaining to Zulfiqar Faiyyaz Ahmed.

1056. Several shortcomings were pointed out by learned advocate Shetty about maintaining and making the entires in the registers and he admitted that he cannot say who out of his staff made the entry in respect of the A9, that the registers are not serially paged, that it is nowhere mentioned in the registers that except the A9 remaining passengers came directly to him in groups or individually, that the entries in the registers are the only document with them about arranging visas for those persons, etc. With particular reference to

the entry of the A9, he admitted that the page containing the entry contains photographs, but not serial numbers, that except that entry all other entries on that page are in his handwriting. He also admitted that the photographs on this page are affixed in the column of date and place of birth, the name and address of the passengers is written in the column of payment details and ticket and visa particulars are written in the last column, that passport details are not mentioned in the entry, that except the entries on the page containing the entry of A9 further about ten pages do not contain such type of entries on the front pages like pasting the photographs and writing the details in the continuation of the columns on the first page and it is only on this page that the passport details of the passengers are not mentioned. To my mind, if passports details of all other passengers on the page containing the entry of the A9 are not mentioned, this shows the uniformity that was followed at that time. Insofar as the manner of pasting photographs and writing the details on the front pages like the page containing the entry of the A9, no doubt further ten pages do not contain such type of entries, but there are such entries on many pages before that page and after that page. Insofar as writing of names, addresses and particulars of ticket and visa in different columns that is so for all other entries also on that page. Insofar as the entries of the A9 is concerned, which is the odd man out as it is not in the handwriting of this witness, it does not appear to be an inter pollution, because the last entry on the next page of Merchant Gulab Bano is similar. There are similar type of entries of single

passengers in groups or other passengers where handwriting in respect of the entries of all the other passengers is the same, but the handwriting of the entry of one passenger is different and even the ink is different. So these things, to my mind, rule out the possibility of concoction and said entry is not suspect. Secondly, the first entry on that page and the three entries below the entry of the A9 appear to be in the same handwriting and appear to be of a group, because the first and second entry show the date and departure as 02/08/04 and the date of arrival as 13/08/04. If these four persons are in a group, there was no reason for leaving the space for the entry in respect of the A9 in between the first and third entry. This means that the explanation by Ashik Ali, PW-44, that they make entries in the registers as and when they receive the passports is correct. Hence, there is nothing suspect in the said entry.

1057. About the register Ext. 617 containing the entry about A11, he admitted that the first page does not mention from what date to what date the register is. However, he explained that it is written that it is from January, 2005. Ext. 616 also shows the year 2004 to be written on the first page. Exactly similar type of shortcomings that were pointed out in respect of the entry of the A9 in Ext. 616 are also pointed out about the A11 in Ext. 617. Hence, the same observations will apply here. In respect of the entry of the A11, he admitted that except that entry all other entries on that page are in one handwriting. Perusal of the said register shows that there is a similar entry on the page after two pages which is of one Naushad Ali, a Chartered Accountant. Ashik Ali, PW-44, denied the suggestion

that entries of A9 and A11 are made at the behest of the ATS officers and he did not remember the date, but stated that he wrote the words 'only Iran visa' in the entry of the A11. He specifically explained that all the remaining 12 persons were given only Iran visas as at that time the Iraq border was closed. This is a perfect explanation. He admitted that in the entire register, the date of travel and the dates of issue of ticket and visa are not mentioned, that there is no mention in the entries from the first page about the month and in the thirteen entries, the date of departure and the date of arrival is also not mentioned. He explained that this is not their practice and generally they do not write these details and very candidly admitted that even today he does not know the dates of the departure and arrival of the A9 and A11. A very positive statement by him that he does not take any person with him other than for pilgrimage corroborates his evidence in chief-examination that A9 and A11 as well as Mohd. Chipa and Faiyyaz had not traveled in group with him. Similar types of shortcomings were pointed out in respect of the entry of Mohd. Chipa in the register Ext.617 and same observations will apply.

1058. In my humble opinion, it is obvious from the cross-examination in respect of registers that the columns are prepared in the registers and efforts are made to enter the information in the column to the best of their ability, however, it is not a hard and fast practice and the entries are made haphazardly. Obviously, there is no format of register approved by any government office and it is clear that they are maintained only as notings or remembrance of the

work done by them. Some of the entries do not even contain the amount of fees collected for the work that they have done for those persons. Thus, no inference can be drawn because of the so called shortcomings in maintaining the registers, that they are unreliable.

1059. To recapitulate, Afzal Hirji, PW-43, has proved the entries in the registers seized from him. One is Ext. 603 in the register of the year 2004 about A9, second is Ext. 604 in the register of the year 2005 of Firoz Ghaswala, third is Ext. 605 in the register no. 1 of the year 2005-06 of Chipa Mohd., fourth is Ext. 606 in the register no. 6 of the year 2006 of Zulfiqar Faiyyaz Ahmed and fifth is Ext. 607 in the register no. 3 of the year 2005 of A11. Once again his cross-examination by learned advocate Wahab Khan is in respect of visit to the tomb of Imam Reza at Mashad in Iran and the cross-examination relevant to his evidence about the accused is in paragraph 23. It is about how and when the ATS approached him or contacted him and seizure of the registers, etc., and he gave specific answers about the timings when he went to the office of the ATS, upto what time he was there and the production of the registers by him and they being seized by the police under panchanama. Certain improvements were brought on record and insofar as the improvements about the relevant evidence against the accused that he gave, the first one is to that he had stated to the police that they, i.e., the police told him the names of the A9, A2, etc., total seven names, showed him passport copy of one of the persons, asked him to bring the registers where the names of the seven persons appeared, that they went through the registers and circled the names. I do not see how this can be an

improvement because it is a part of inquiry that the police did with him and it is only what work he has done in respect of the accused that will be his evidence that can be shown as an improvement. Next improvement was in respect of his evidence in paragraph 2 of his chief-examination and the statement in paragraph 3 that they were brought by different sub-agents and the group leaders were different, is obviously an explanation about the seven persons and cannot amount to an improvement. The same is the case about the entire paragraph 4 of his chief-examination wherein he has explained about issuing visas for Sunni people because they do not go for Ziarat in Iran, but the passports of the seven persons, whose names were told by the ATS were given to them by their Shia agents in groups and after the visa was stamped on passports, they took the passports back. Obviously, this is in respect of issue about Sunni people not going to Mashad and his subsequent evidence in the said paragraph is about not knowing that the seven persons were Sunnis, coming to know of it when this case came up and he being called to the office of the ATS and the ATS people asking him as to how they could not recognize by their names and why they issued visa for Iran to them. To the last question he explained that as the names like Zulfiqar, Muzzammil were similar to Shia names, they could not identify. Subsequently, only one sentence in paragraph 5 is shown as an improvement that the meal at tomb of Imam Reza is given only once in a year to one person even if he goes ten times in a year. In fact this is an admitted position by defence also and this sentence has come after his evidence about there being a way to identify

whether a person has gone for Ziarat to Iran by verifying whether there is a round stamp of taking meal at the tomb of Imam Reza. The improvement in paragraph 6 of his chief-examination that all the registers are maintained in the ordinary course of business and 4-5 staff members make the entries in the registers, to my mind, cannot be a part of the statement because it is what is brought on record by the learned SPP in respect of the maintenance of the registers. The next improvement in the same paragraph is that this person, i.e., the A9 did not travel in a group. The next improvement is obviously by pencil in the register in respect of PNR of the Indian Airlines, which to my mind, is an explanation and cannot be part of statement to the police. To my mind, all the above improvements, even if they are held to be so, are not material to the fact in issue and therefore are inconsequential.

1060. In his cross-examination further he admitted that the ATS people told him that the seven persons whose names they told him are Sunnis, that they had obtained visas for Iran from his travel agent, that they had been caught, that the persons whose passports they showed him did not have the stamp of free meal of Imam Reza. In this connection, he has given a perfectly acceptable explanation that the person Ashik Ali, PW-44, had told the ATS people all these things on seeing the passport. No improvements, omissions or contradictions have been pointed out during the evidence of Ashik Ali, PW-44. In fact, this witness, i.e., Afzal Hirji, PW-43, though examined prior to Ashik Ali, PW-44, has stated so and the evidence of Ashik Ali, PW-44, is stainless, there being no improvements,

omissions and contradictions in his evidence. He denied the case that at the instance of the ATS he stated that the seven persons had gone for Ziarat to Iran, etc., however, there is no suggestion to him in respect of the entries which he proved.

1061. During his cross-examination by learned advocate Shetty, since the learned advocate referred to other contents and entries in the register, the entire registers were received in evidence and marked as Exts. 608 to 612. Several shortcomings in maintaining the register as were pointed out during the cross-examination of Ashik Ali and some more were pointed out during the cross-examination by learned advocate Shetty and same observations made by me in respect of registers Exts. 616 and 618 maintained in the office of Ashik Ali, PW-44, are applicable here. The cross-examination in respect of registers has shown the haphazard manner in maintaining them. However there is no problem about it as the registers have been admitted in evidence and there is no prescribed format by any government office. On the other hand he has given a very good explanation that the registers do not contain the names of only pilgrims that have gone for Ziarat or other holy places, that 5% of the persons may be non-pilgrims, that they used to write the names of persons in a group together, that at one or two places names of non-pilgrims are included in the groups because they were flying in the same flight by the same agent and that pilgrims and non-pilgrims are not distinguished and no separate lists were made anywhere in the registers. It has come in his evidence further that out of 65, 22 entries are in his handwriting. In connection with the

entry at Ext. 607, he explained all the entries and the odd entries where there is a group of passengers. e.g., the passport in connection with the entry at Ext. 606, they had received 81 passports, but in between sr. no. 65 and 64 there is a different group of persons. Finally, he denied the suggestion that the registers are manipulated. This suggestion is made without assigning any reason for it and nothing is brought in his cross-examination to show as to why he is deposing in favour of the ATS or as against the accused. The cross-examination by learned advocate Rasal is in respect of the entry of Zulfiquar Faiyyaz Ahmed and his name being told on the television and other things, which are not material. Thus, the witness has withstood the test of cross-examination and I do not see why his evidence should not be accepted as a cogent evidence.

1062. Learned advocate Wahab Khan criticized the evidence of the above two witnesses, i.e., Ashik Ali, PW-44, and Afzal Hirji, PW-43, by submitting that this is an every changing story by the ATS and it is the story of the ATS that Sunnis do not go to the tombs in Iran for Ziarat and PI Iqbal, i.e., ACP Shaikh, PW-162, was the best person to explain these things and also about jihad and kafir. To my mind, the last submission is not correct because though ACP Shaikh, PW-162, was asked in paragraph 14 of his cross-examination about some basic things, he stated that he cannot comment whether the Sunnis are the first amongst Muslims to go for Ziarat at durgahs to have the Niyaz. It is also not shown from his cross-examination that he is some kind of an expert in religious matters.

1063. The submission of the learned advocate that Shia and Sunnis

is a creation of the ATS, is to my mind totally wrong. It is ignoring the history of strife between two sects since long in the middle-east countries. It is ignoring the killings of Shia persons in Pakistan in the areas populated by Shias. It is ignoring the continuous conflict going on in Iraq and Syria and the emergence of the terrorist organisation Islamic State of Iraq and Levant (ISIL), which is a banned terrorist organisation and also known as Islamic State of Iraq and Syria (ISIS) and is now known as Islamic State (IS) which is a Sunni jihadist group in the Middle East. The IS has proclaimed its State as a 'Caliphate' claiming religious authority over all Muslims across the world aspiring to bring much of the Muslim inhabited countries of the world under its political control and it is attracting youths from other countries as well to participate in Holy Jihad against all other communities by violent means and is engaged in ethnic cleansing of minorities and execution of non-believers.

1064. Learned advocate then pointed out some portions in the confessional statements of A2, A9 and A11 and submitted that all the things about which evidence is given by PWs-43 to 47 are not in the confessional statements of the accused. To my mind, this submission is irrelevant insofar as the accused having obtained visas and tickets through these agents is concerned and at the cost of repetition the confessional statement is a statement given by the accused voluntarily. If the ATS wanted to make them perfect there was no problem for them to include what these witness had stated to them when they gave the statements. His next submission is that the agents Johar Sayyed, Anis, Akbar Travels, Al-Medi Tours are not

examined. To my mind, there is no cross-examination about this to the investigating officer or PI Bavdhankar, PW-152, who had stated about taking the statement of Jawar Sayyed and one Maulana Zulfiqar. The prosecution probably did not examine the said Jawar Sayyed as it did not relate to the arrested accused or as the agents who actually obtained the visas are examined.

1065. In respect of the evidence of Ashik Ali, PW-44, he submits that the said witness does not have personal knowledge about the entries in the registers and the said registers have not been sealed when they were seized and it is admitted by PI Bavdhankar, PW-152, that case diary of the said crime does not mention recording of statement of these five witnesses, which raises the possibility about the statements as well as the case diary having been manipulated or tampered. To my mind, I do not see why the evidence of the five agents is being disputed because the accused have come up with the defence that they had gone for pilgrimage to Iran. So, if they have *bona fide* traveled to Iran, they should accept all these things, because leaving aside all this evidence, the visa stamps and immigration stamps on the passports of the A2, A9, A10 and A11 are sufficient to prove that they had gone to Iran. The purpose of the prosecution for examining these witnesses is to show that their visas were obtained from the same agents as per the instructions of the A3. Insofar as there being no entry in the case diary about recording of statements of these witnesses, it is explained by PI Bavdhankar, PW-152, that he had not maintained the case diary, that Sr. PI Rathod, PW-176, was maintaining it, that he handed over the

statements, panchanamas and the documents that he had seized to him, about which also there is no mention in the case diary and it is also not mentioned that he has done any part of the investigation and he did not tell Sr. PI Rathod, PW-176, to make entry in the station diary, because he was his superior and he had done the work as directed by him. He admitted that the station diary entry is required to be made about the recordings of the statements of the witnesses and in this case he did not make it about the work that he did. His evidence about taking the statements of these five witnesses and seizing the registers and documents under panchanamas is corroborated by Sr. PI Rathod, PW-176, in whose evidence it has come that PI Bavdhankar, PW-152, produced the statements, panchanamas and the documents that were seized under the panchanamas, which included registers and photocopies of travel documents and that he deposited the seized articles with the muddemal clerk. This evidence is not controverted and there is no cross-examination to him on this point. In fact, all the witnesses, i.e., PWs-43 to 47, have not stated that their statements were not recorded or the panchanamas were not prepared or the documents were not seized. In fact, there is no suggestion to them that their statements were not recorded.

1066. Learned advocate further submitted that the documents, Arts. 258 (1 and 2) were proved by the evidence of PI Bavdhankar, PW-152, and were marked as Exts. 1641 (1 and 2), but panch witnesses have not been examined and those documents are xerox documents and it shows the date 12/04/04 though Afzal Hirji,

PW-43, had stated that A2's passport had come to them in 2005. To my mind, non-examination of panch witnesses will not affect the evidence of PI Bavdhankar, PW-152, about seizure of these documents, because the person from whom they are seized, i.e., Afzal Hirji, PW-43, has deposed about it. It may be that he committed an error in stating the year as 2005, but the contents of the passport Ext. 449 of the A2 shows the stamps of immigration dtd. 21/05/04 for departure and 25/06/04 for arrival and the period of visa is 15/04/04 to 14/07/04. Thus, this does not make any difference.

1067. Learned advocate Shetty has mainly submitted that no inference can be drawn about the accused going to Pakistan for training and insofar as the material produced by Ashik Ali, PW-44, and Afzal Hirji, PW-43, he submits that it is itself suspicious and not convincing and in the entire documents there are lot of manipulations pointed out by him in the cross-examination of the witnesses and the explanation given by the witness is not convincing. He submits that the evidence about seizure of the documents does not rule out the possibility of manipulation. I have already considered the aspect of manipulation or maintaining the registers by these two witnesses and insofar as the aspect of sealing is concerned, admittedly on that day, i.e., on 08/08/06, there was no lac seal with the ATS.

1068. In view of the above discussion, in view of there being no improvements, omissions or contradictions in the evidence of Ashik Ali, PW-44, there being no omissions or contradictions in the

evidence of Afzal Hirji, PW-43, and the improvements made by him being not material and not affecting his evidence with respect to the fact in issue, I have no hesitation in accepting the testimony of these two witnesses as truthful, cogent and reliable. These two witnesses and Mushtaq Ahmed, PW-46, are apparently impartial witnesses having no criminal antecedents, no prior links with the police or the ATS and nothing is brought on record to show that they have any enmity or ill-will against the accused so as to induce them to speak in favour of the prosecution or against the accused. It will therefore have to be held that by their evidence the prosecution has proved :

(a) that the A9 had given his passport Ext. 620 to Mushtaq Ahmed, PW-46, for obtaining visa for Iran in 2004, that Mushtaq Ahmed, PW-46, gave it to the tour operator Ashik Ali, PW-44, who in turn gave it to Afzal Hirji, PW-43, to obtain the visa for Iran for the A9. The contents of the visa and the passport Ext. 620 of the A9 prove that it was obtained in the year 2004 and the stamps of Mumbai immigration in it prove that he went to Iran on 06/08/04 and returned to India on 10/09/04. This later conclusion cannot be disputed as Ext. 620 being the passport of the A9 containing the visa and the stamp of immigration is not denied. **This is the circumstance no. 32 proved by the prosecution. It is against the A9. It is the sixth circumstance against him.**

(b) that the A3 had given the passport Ext. 619 of the A11 in 2005 to Mushtaq Ahmed, PW-46, for obtaining visa for Iran, that Mushtaq Ahmed, PW-46, gave it to Ashik Ali, PW-44, who in turn gave it to Afzal Hirji, PW-43, to obtain the visa of Iran for the A11.

The contents of the visa and the passport Ext. 619 prove that it was issued in the year 2004 and the stamps of Mumbai immigration in it proved that A11 went to Iran on 04/04/05 and returned to India on 29/04/05. In fact, the later conclusion cannot be disputed as Ext. 619 being the passport of the A11 is not denied. **This is the circumstance no. 33 proved by the prosecution.** It is against the A3 and A11. It is the fourteenth circumstance against the A3 and second circumstance against the A11.

(c) that the A3 had given the passport of Chipa Mohd. Ali and Zulfiquar Faiyyaz Ahmed to Mushtaq Ahmed, PW-46, for obtaining visa for Iran which he had given to Ashik Ali, PW-44, who in turn had given it to Afzal Hirji, PW-43, who obtained the visa for them and these persons were to go to Iran in 2005 and on 02/05/06 respectively. **This is the circumstance no. 34 proved by the prosecution.** It is against the A3. It is the fifteenth circumstance against the A3.

(iv) The fifth transaction is about Mushtaq Ahmed, PW-46, obtaining visa of Iran for one Firoz Ghaswala and it has come in his evidence that thereafter in 2005, A9 had also given the passport of Firoz Ghaswala for obtaining visa for Iran, which he had given to agent Johar Sayyed. It has come in the evidence of Shaikh Mohammad Wasi, PW-45, that a person by name Zawwar of his Shia community had brought the passport of Firoz Ghaswala and told him that he wants to go for Ziarat. He proved the entry in the register Ext. 624 that was seized from him stating that the entry was encircled by red pen by the ATS officer and the panchas had signed

it. It has come in the evidence of Afzal Hirji, PW-43, that in 2005 passport of Firoz Ghaswala had come through agent Mr. Wasi of Western Travels, i.e., PW-45. He proved the entry Ext. 604 in the register Ext. 609. There is no challenge to this evidence of Afzal Hirji, PW-43. About Mushtaq Ahmed, PW-46's evidence, it is only the contradicted portion Ext. 1643(4) which is discussed earlier. Insofar as the evidence of Shaikh Mohammad Wasi, PW-45, is concerned, it has come in his evidence that he went to the ATS office on 08/08/06 as he was called there on telephone, the ATS officers told him two names, i.e., Sohail Shaikh and Firoz Ghaswala, asking him whether these persons had done the ticket and visa work from his office, he telephoned his office and asked them to verify and got the information after some time that ticket and visa work of Sohail Shaikh and only visa work of Firoz Ghaswala was done by his office, that the copy of the passport of Sohail Shaikh and the register containing the entry of Firoz Ghaswala was brought from his office, that police saw the documents, prepared panchanama, thereafter after some time took his statement. This entire evidence is brought on record as an improvement, which I will discuss subsequently. He identified the register Art. 259, which was received in evidence and marked as Ext. 624 as consented by learned advocates and he also identified the xerox copy Art. 259A of the passport of the A10 and when shown Ext. 621 stated that the Art. 259A is the xerox copy of the said passport. He identified the entry of Firoz Ghaswala stating that his name, address and passport details are written in the register and deposed that the entry of Firoz Ghaswala was encircled

by red pen by the ATS officers and the panchas had signed it.

1069. His cross-examination by learned advocate Wahab Khan is once again mainly on the aspect of visit to the tomb of Imam Reza and one portion from his statement, Ext. 1644, is proved as a contradiction, which says that police had shown him xerox copies of passports of A3, A9, A11, A10 and A2 and asked him to verify whether they had stamp of Ziarat. To my mind, even if it is considered that he had stated so to the police, he did not state so in the court and it does not affect his evidence in respect of Firoz Ghaswala or the A10. The improvement that is brought on record as pointed out above, to my mind, is about what activity preceded the production of the register and photocopy of the passport of the A10 from his office and it is not so material so as to affect his testimony about the entry in the register. His subsequent evidence in paragraph 8 is giving the details as to at what time the documents were brought from his office, how he showed the entry on the relevant page, that the ATS officers encircled the entry in red ink and how the register and the photocopy of the passport were packed.

1070. His cross-examination by learned advocate Shetty has revealed that there is no endorsement in the entry of Firoz Ghaswala that his passport was given by Zawwar. Except this, nothing adverse was brought on record to discredit his version. He was cross-examined about the endorsement in the columns like, 'ticket', 'visa pilgrim', 'one meal', 'endorsed by party' and 'visa' and he explained the meanings and also explained that as it is written in the remarks column in the entry of Firoz Ghaswala that it is a pilgrim visa, he

says that visas for the persons on page no. 14 were for Iran, though the specific word 'Iran' is not written. Of course, he denied the suggestion that he prepared the register at the instance of the ATS, which was given by learned advocate Shetty and also the suggestion by the learned advocate Wahab Khan that he had not produced the register and xerox copy of the passport. Thus, he has withstood the test of cross-examination and his evidence about doing the work of visa for Firoz Ghaswala has remained unshaken. It is Afzal Hirji, PW-43, who had obtained the visa for Firoz Ghaswala as per the entry Ext. 604 in the register Ext. 609.

1071. In view of the above discussion, it will have to be held that the prosecution has proved that A9 has obtained visa for Iran for one Firoz Ghaswala in the year 2005 from travel agent Mushtaq Ahmed, PW-46. **This is the circumstance no. 35 proved by the prosecution.** It is against the A9. It is the seventh circumstance against the A9.

1072. It is alleged that in pursuance of their conspiracy, the A3 on returning to India from Pakistan in 2001 instigated the A10 and sent him to Pakistan for training in the handling and use of arms and explosives and the A10 went to Tehran from Mumbai on 01/10/02 on Ziarat visa to avoid the detection and from there to Pakistan. It has come in the evidence of PI Bavdhankar, PW-152, that he had seized the register Art. 259, Ext. 624 and photocopy of passport of A10 Art. 259A under the panchanama Ext. 1639 from Shaikh Mohammad Wasi, PW-45, who corroborated his version. However, their evidence is of no use as Art. 259A was not proved by the

prosecution. It has come in the cross-examination of Shaikh Mohammad Wasi, PW-45, by learned advocate Shetty that the A10 had given his passport for visa in 2002. This is a positive statement in his cross-examination and it is not affected by he admitting in further cross-examination that from the stamp on the visa of the passport Ext. 621 of the A10, he cannot say whether the visa was done by them. Admittedly, there can be no entry of any travel agent to obtain the visa for a particular person on the passport of such person. However, his office being in possession of the photocopy Art. 259A of the passport of the A10 is sufficient to prove that he had done the visa work of the A10. In addition, the contents of the passport Ext. 621 of the A10 prove that the visa of Islamic Republic of Iran was issued for the period from 25/10/02 to 23/01/03 and the stamps of Mumbai immigration proved that the A10 had left India for Iran on 01/11/02 and had returned to India on 29/11/02. **This is the circumstance no. 36 proved by the prosecution. It is against the A10. It is the third circumstance against him.**

1073. It is alleged that in pursuance of their conspiracy, A6 went to Dubai on 01/02/03 from Mumbai and from there he traveled to Karachi in Pakistan and underwent training in the handling of arms and explosives. It has come in the evidence of ACP Patil, PW-186, that it was disclosed in the investigation that the A6 was having passport by using which he had gone to Dubai and then to Pakistan for terrorist training, returned back to Dubai and from Dubai, he went to Nepal and from there he entered in India, that it was disclosed that he had used this route to hide his visit to Pakistan and

the passport was not traceable and it was suspected that he had destroyed it. It has come in his evidence that DCP Bajaj sent a letter to the Regional Passport Officer, Worli, photocopy of which is at Ext. 2417, to obtain the details of the passport and the reply Ext. 2418 alongwith photocopies of the documents furnished with the application and the copy of the passport Arts. 380 (1 to 6) were received. It has come in his evidence that during the course of investigation it was found that the A6 had traveled to Dubai from Mumbai International Airport, therefore, he, i.e., ACP Patil, PW-186, wrote a letter, photocopy of which is at Ext. 2419, to the Sr. PI of SB-II, CID, Airport Branch, Mumbai on 10/10/06 and received a reply Ext.2420 on 01/11/06 confirming the departure of the A6 on 01/02/03 by flight no. WY 802. It has come in his evidence that he wrote a letter, fax copy of which is at Ext. 2421, to the Airport Service Manager, Oman Airways, CSI Airport, Terminal-IIA, Departure Level, Mumbai to inquire about his departure on 01/02/03 and received the reply Ext. 2422 alongwith photocopies of the documents Arts. 381 (1 to 7). A positive statement has come during the cross-examination by learned advocate Rasal, who was then representing the accused, that they came to know during the interrogation of the A6, 10-15 days after his arrest, that he had a passport and when asked to go through the reply Ext. 2422 which is given by Oman Airways, he admitted that the letter does not mention the destination to which the accused departed. He was then asked to go through the list of passengers and baggage Ext.2581(6), who traveled on 01/02/03 by Oman Airways, Mumbai to Muscat

and he admitted that there is no document other than this to show that the accused had traveled anywhere apart from Muscat. He denied the suggestion about the A6 having not traveled to Dubai at any point, the said story is cooked up to suit their story, that he had never traveled to Pakistan and never undergone training which is his and his superior's creation and they accordingly prepared the confessional statement of the A6.

1074. It is clear that the reply Ext.2422 given by Oman Airways is in respect of A6, whose name is mentioned in the subject of the letter and no doubt it does not show the destination but the booking of that passenger reflects the flight details as WY 802 BOM MCT at MCT/DXB WY 411, however, PTN reflects its MCT/DXB flight number as WY 501. BOM is obviously Bombay, MCT is obviously Muscat. Ext.2581 (1) appears to be the list of passengers of flight no. WY 802 dtd. 01/02/03 and it includes the name of the A6. Ext. 2581 is the passenger and baggage list of the same flight of the same day from Mumbai to Muscat and it shows the name of the A6 at sr. no. 111. The contents of the reply Ext.2420 given by Sr. PI, Airport Branch, LB-II, CID, CSI Airport, Mumbai, show that the A6 has been cleared through immigration at that air check-post for his departure by flight WY 802 on 01/02/03 at 0656 hours. Hence, it will have to held that the prosecution has proved that the A6 had traveled from Mumbai to Muscat in Dubai on 01/02/03. **This is the circumstance no. 37 proved by the prosecution.** It is against the A6. It is the third circumstance against him.

Accused going to Iran as a camouflage for going to Pakistan for militant training :-

1075. It is alleged by the prosecution that the A2, A9, A10 and A11, who are Sunni Muslims, traveled from India to Iran on a Ziarat visa, but they did not visit Mashad where the tomb of the 8th religious leader Imam Reza is situated. It is submitted that Sunni sect of Muslims do not believe in the teaching of Imam Reza and hence do not go for Ziarat to pilgrimage Iran, that they are not granted Ziarat visa for Iran, that the person who undertakes this pilgrimage usually travels in groups with a proper operator, all pilgrims get holy food known as 'Niyaz' at the tomb of Imam Reza at Mashad, but before any pilgrim receives the Niyaz, his passport is stamped on the page of Ziarat visa by the office of the Imam Reza. It is alleged that to camouflage their travel to Pakistan for militant training, the A2, A9, A10 and A11 traveled to Iran on Ziarat visa, but they did not visit Mashad and then crossed the Iran border illegally and went to Pakistan and underwent training in the camp of the wanted accused no. 1 Azam Chima. It is submitted that the conclusive proof of this is the absence of stamps/seal of Imam Reza tomb at Mashad on their passport. It is also alleged that these accused traveled individually instead of going in a group on the tour of Iran, which is the normal course of pilgrims.

1076. Prosecution is relying on the evidence of the travel agents and tour operators, PWs-43 to 47, to prove the above allegations. At the outset, it will have to be stated that the evidence of these five witnesses is not about the above four accused illegally crossing the

Iran border and going in Pakistan, but it is about obtaining their visas and about there being no stamps of the office of Imam Reza on their passports, which indicates that they had not gone for Ziarat. I have already accepted the evidence of these five witnesses as truthful, reliable and cogent with respect to the obtaining of visas for A2, A9, A10 and A11 for Iran and I have also held that they are impartial witnesses since they have no criminal antecedents and no prior contact with the police. Mushtaq Ahmed, PW-46, is a Sunni Muslim, through whom the A3 and the A9 had obtained visas for Ziarat to Iran for themselves and for A2, A11, wanted accused no. 3 Rahil, Firoz Ghaswala, Zulfiquar Faiyyaz Ahmed and Mohd. Chipa Chand during the years 2003 to 2005-06. Mushtaq Ahmed, PW-46, had given the work of obtaining the visas to travel agents Mohd. Umar, PW-47, and Johar Sayyed, Ashik Ali, PW-44, and Shaikh Mohammad Wasi, PW-45, who had obtained it from Afzal Hirji, PW-43. With respect to the aspect of pilgrimage to Iran, Mushtaq Ahmed, PW-46, stated that all the visas were obtained for Ziarat and mostly Shia sect of Muslims go for Ziarat to Iran. His evidence about Ashik Ali, PW-44, asking him for what purpose these persons want to go to Iran and he facilitating the talk between him and the A3 on phone is brought on record as an improvement.

1077. He admitted in his cross-examination that he is a Sunni Muslim, that he has not gone to Iran and that he had performed Haj and Umrah pilgrimage when he went to Saudi Arabia. He admitted that in Muslims, Sunnis are the first persons to go to dargahs, they are the persons who first distribute and eat the Niyaz at the dargahs,

that they also have photographs of dargahs in their houses, that descendants of Prophet Mohammad like his daughter, son-in-law and grandsons are respectable persons for Sunni Muslims and visit to the tombs of these persons and of the persons who were around the Prophet at that time is a pious act for Sunni Muslims. Though he so admitted, at the end of the paragraph 12 containing the above statements, he made a positive statements that Sunnis do not respect Imam Reza. This is not controverted during his further cross-examination. He expressed his lack of knowledge about the procedure of Niyaz at the tomb of Imam Reza as he has not gone to Iran, but made a positive statement that he had stated to the police that every Shia Muslim who goes for Ziarat to Iran visits the tomb of Imam Reza and takes the Niyaz there and for that purpose a round stamp is put on the visa of that person. In further cross-examination, he admitted that Imam Reza, Masom-e-qum and Shah Abdul Azim are respected by Sunni Muslims, that as they are descendants of Prophet Mohammad, Sunni Muslims have the wish to visit their tombs in Iran and if possible in their lifetime, they visit them.

1078. Mohd. Umar, PW-47, a Sunni Muslim, did not say anything about this aspect in his chief-examination, however, major portion of his cross-examination by learned advocate Wahab Khan is related to this issue. He stated that he has never gone for Haj or Umrah and admitted most of the suggestions about Haj pilgrimage during which people principally go to Mecca and Medina and visit the tomb of Prophet Mohammad and other tombs of his relatives and associates. A vague answer was obtained from him that same can be said about

visits to the tombs of relatives and associates of Prophet Mohammad. He admitted that Sunni Muslims are infamous for their visits to such tombs and in a majority for doing the pilgrimages.

1079. It has come in his cross-examination that he is a Sunni Muslim and goes for pilgrimage to the dargahs at Mahim, Haji Ali, Ajmer, Nizamuddin at Delhi, etc., in India and it is the wish of every Sunni Muslim to go for pilgrimage to the tombs of the ascendants and descendants of Prophet Mohammad. It has also come in his cross-examination that Maulanas are responsible for spreading differences and hate between different sects of Muslims, that there are no differences between different sects of Muslims insofar as worshiping Allah and Kuran is concerned and the disputes between the sects of Muslims from start to end is the handiwork of Maulanas. So one thing is clear that there is existence of disputes between the sects of Muslims from start to end. His further admissions are relevant as will be pointed out shortly. He admitted that there are no restrictions by the belief of the Sunni sect of Muslims or by the Governments of Iran, Iraq, Syria, Jordan and Damascus, for Sunnis to go for Ziarat, that it is the created restriction of some of the Maulanas that as there is a Shia government in Iran the Sunni Muslims should not go there and if a Sunni Muslim is possessed of sufficient means, he will not hesitate to go to Iran for Ziarat. A vague question was put to him and a vague admission was given by him at the end of paragraph 12 that at other places of pilgrimage it is not necessary that a person eats Niyaz to complete the pilgrimage. No specific suggestion about visit to the tomb of Imam Reza in Iran

is given to him.

1080. Ashik Ali, PW-44, a Shia Muslim, whose firm organizes tours for the pilgrimages of Haj, Umrah and Ziarat, beautifully explained the destinations of the pilgrimages and the persons of which sect go for the pilgrimages :

- (i) Pilgrims are taken to Saudi Arabia for pilgrimage of Haj and Umrah where all sects of Muslims go, and,
- (ii) Pilgrims are taken to Syria, Iraq and Iran for Ziarat where majority Shias go.

1081. It has come in his evidence that Mushtaq Ahmed, PW-46, had told him that these four persons, i.e., A9, A11, Mohd. Chand and Zulfiquar want to go for Ziarat to Iran, that during that time he had his own group for going to Iran, but after few days Mushtaq Ahmed, PW-46, told him that these four persons would not go with the group, but they will go by themselves. This evidence is not by way of improvement and is not even controverted. In his chief-examination, he was asked to go through the passport of the A9 and A11 and he explained that they had gone to Iran, but not for Ziarat, because persons who go for Ziarat take Niyaz or prasad and a stamp is put on their passport to show it and there is no such round stamp on the passports of the A9 and A11. However, in his cross-examination by learned advocate Wahab Khan, he admitted that even if a person goes to Iran, but does not visit Mashad, but goes to other religious places, the round stamp of Mashad will not be on his passport, that if a person goes to Mashad, but does not take the Niyaz, the round stamp will not be there on his passport. He stated

that Niyaz means a meal at the tomb of Imam Reza at noon time upto 2006, that if a person visited the tomb in the morning for one or two hours or in the evening, the round stamp would not be there on his passport and in respect of the guest visiting the tomb, one time free meal of good quality is given. He also admitted that a person can have meals there only once in a year though he may go for Ziarat for 30 days, that there is no compulsion at Mashad for a person to have meals and then only he can do Ziarat. He admitted that in India Sunni sect people mostly visit dargahs, that Ziarat means paying homage to the person whose tomb it is and Sunnis may be known for going for Ziarat to dargahs. He further admitted that there are religious places in Iran other than the tomb of Imam Reza, Masom-e-qum and Shah Abdul Azim, that there are historical and tourist places in Iran and, this is important, that people going for Ziarat to Iran visit the three tombs. He admitted in paragraph 15 of his cross-examination that it is possible that Sunni pilgrims go for Ziarat to Iran and the round stamp of Mashad is put on the visa to prevent a person from having second meal in a year. In his cross-examination by learned advocate Shetty, it has come that the main pilgrimage centers in Iran are the tombs of Imam Reza at Mashad, of Masoom-e-qum at Qum and of Shah Abdul Azim in Tehran.

1082. Afzal Hirji, PW-43, is a Shia Muslim, whose firm procures visas for pilgrimage to Haj, Umrah and Ziarat and it has come in his evidence that all people of Muslim community go to Haj and Umrah and Sunni sect Muslims go to Ziarat also, that Shia and Bohras go to Damascus and Iran, but Sunni people do not go for Ziarat to Iran.

His evidence in paragraph 4 which is brought on record as an improvement, about which I have already discussed, is that they do not issue visas for Sunni people for Iran because they do not go for Ziarat in Iran, that they do not believe in Imam Reza at Mashad in Iran, that the passports of all the seven persons were given to them by their Shia agents, that after the visa was stamped in the passports, they took the passports back. He explained that he did not come to know that these seven persons were Sunnis and came to know only when this case came up and he was called to the office of the ATS, where they asked him how he could not recognize them by their names and why they issued visas for Iran to them, about which he explained that as the names like Zulfiqar, Muzzammil were similar to Shia names, they could not identify.

1083. He explained as is explained by Ashik Ali, PW-44, that there is a way to identify whether a person has gone for Ziarat in Iran and it is that when they go to visit Mashad, the tomb of Imam Reza, they are given one meal, i.e., lunch and a round stamp is put on the visa by taking their passports, by which one can identify whether they had visited Mashad or not. It has come in his cross-examination by learned advocate Wahab Khan that he went to Iran more than 15 times, that he goes with his family individually and not in any group and that there are 15 stamps on his passport of visiting the tomb of Imam Reza at Mashad. He volunteered that if he had gone more than once in a year, there would have been only one stamp. In spite of giving the above answers, he candidly admitted that there is no circular of the Iran Government about sending only

Shias to Iran. Further it has come in his cross-examination that people who go to the tomb of Imam Reza are considered his guests, that tour operators take groups of persons there, that the arrangement of stamping the visas at the Imam Reza is made to prevent the tour operators from misusing the facility of free food. Though he admitted about stamping the visa to prevent misuse of the facility of free food, he emphatically denied that without stamp on the visa and without a token, an individual or his family can have meals there. His further admissions are relevant that he cannot produce any certificate or letter from the Iran Consulate about this procedure, that he has not seen any rules displayed at the tomb of Imam Reza saying that only Shias can visit it for Ziarat and Sunnis are not allowed and he does not know of any circular or order issued by the Iran Government that only Shias can visit Iran for the purpose of Ziarat. His evidence will carry considerable weight in view of his statement that he is doing this work since last 24 years. He further admitted that present Muslim community persons are considering that they are the followers of Prophet Mohammad, that all sects of Muslims consider Allah as the Supreme and consider Prophet Mohammad as the last messenger and that all Muslims are governed by Kuran, thereafter by Hadis and thereafter by consensus and there is no concept of sects in Kuran. His statement that on all occasions he went only to Iran underlines the aspect of only Shia Muslims going for Ziarat to Iran though he admitted that there is no ban by the Iran and Iraq Governments for Sunni and Shia sect Muslims to visit the religious tombs there.

1084. He also admitted that absence of stamp of the office of Imam Reza is not a sign of not visiting Mashad, that it is only an indication that the person has not taken the meals at the tomb of Imam Reza, that taking meals is optional and is not compulsory, that no stamp or endorsement is made on the visa about visiting Masuma-E-Qum and Shah Abdul Azim. His further admissions are very relevant that there is a considerable population of Sunni Muslims in Iran, that under the regime of Saddam Hussain there was a restriction on members of Shia Muslim sect in Iraq as the government was of Sunni sect, however, there was no restriction on Sunnis in Iran at any time, although the government was of Shia sect. He emphatically denied the suggestion in his cross-examination by learned advocate Shetty that Sunnis respect the tombs in Iran.

1085. The last travel agent is Shaikh Mohammad Wasi, PW-45, who is obviously a Shia Muslim, because he stated that he has gone to Iran for Ziarat several times, that his agency does the business of conducting the tours to Haj, Umrah and Ziarat and all types of clients come to them for ticketing. It has come in his evidence that he asked Zawwar or Johar Sayyed of his Shia community whether Firoz Ghaswala is a Shia sect Muslim going for Ziarat to the tomb of Imam Reza in Iran. He admitted several aspects as were admitted by Afzal Hirji, PW-43, about the round stamp at the tomb of Imam Reza and there being no restriction by the Iran Government or by the office of the tomb of Imam Reza for non-Shia Muslims and persons from other religions to visit there, etc. He also admitted that a person is not a Shia or Sunni by birth, but it is a question of

following a particular faith and that the Iran Government does not make a distinction between Shia and Sunni while issuing visa for Ziarat.

1086. In connection with this topic, learned advocate Shetty submitted during his arguments that the fact of going to Iran is not at all an offence, that the witnesses have deposed quite clearly without leaving an ambiguity, that getting the stamp on the passport is not a conclusive proof of the person having gone for Ziarat to Iran. Even if a person goes there, the stamp may not be there. Therefore, it is not a conclusive proof on which an inference can be drawn that the person who had gone there had not gone for pilgrimage, but had gone for some training of some terrorist activity. He submits that the material, i.e., the evidence by the travel agents and the Iran visits of the accused is not conclusive and satisfactory material pointing to the guilt of the accused. Learned advocate Wahab Khan submits that the ATS is still confused about the caste and sub-caste of the accused and again made an unacceptable submission that in some of the confessions of the accused this aspect and about Ahle Hadis is neglected which is ever changing theory of the ATS, but is included in the confessions of the A2 and A9. He submitted that it was the duty of the prosecution to explain the difference between Sunni, Shia and Ahle Hadis and submits that the Iran issue is imaginary and is a concocted story of the ATS to give support to their so called theory of the accused undergoing training in Pakistan. I do not think that it is necessary for the prosecution to explain the religious things and this court is not the authority to decide these things. A typical

fact emerged in the investigation and it is placed before the court. Learned advocate submitted that PWs-43 to 47 have not given any particular reason why only Shias go to Iran and not Sunnis, whereas, the cross-examination of the witnesses contradicts this claim of the prosecution. He pointed to the statement made by Afzal Hirji, PW-43, in paragraph 15 of his cross-examination that Imam Reza and Masuma-E-Qum tombs are descendants of Prophet Mohammad and submitted that this itself is sufficient to destroy the claim of the prosecution that Sunnis do not go to Iran for Ziarat. He alleges that the ATS is misusing the absence of the stamps on the passports of the accused to say that they did not go for Ziarat. Pointing out to the answers in paragraph 17 by Afzal Hirji, PW-43, that generations of Moses and Jesus are considered as respectable by all sects of Muslims and the Bible is also respected by all Muslims, he questions as to whether it can be interpreted or accepted that descendants and ascendants of other religions are not respectable for the Muslims and they will not go to the tombs of the ascendants and descendants of Prophet Mohammad. He submits that these basic things were not known to the ATS. Therefore, they created the dispute of Shias and Sunnis and Ahle Hadis. In this connection, my earlier observations in paragraph 1063 in respect of the strife between the two sects of Muslims going on since long in the Middle East countries will apply with equal force.

1087. The submissions of the learned SPP in this context are that the passports of the accused speak for themselves and what is important is that ordinarily people who go for pilgrimage like Ziarat

go in groups, but these persons did not go with groups, that it is not merely a co-incidence that though there are many travel agents and tour operators, these accused land-up with the same agents. There being no stamp of Niyaz or Prasad on their passports is one of the circumstance which is ultimately for the court to appreciate. He submits that it may be true that a person may go there and not take Niyaz, but ordinarily it would not so happen. In respect of all these accused going to the same agents or their visas being done by the same agents, he submits that this is significant if one considers the claim of the accused that they do not know each other and this is one of the connecting links showing their interconnectivity.

1088. In my humble opinion, by the oral and documentary evidence of the five agents and tour operators and by the contents of the passports of the A2, A9, A10 and A11, the prosecution has proved that these four accused, though Sunni Muslims, traveled to Iran on Ziarat visa, but did not do pilgrimage there, which is obvious from the absence of stamps of the tomb of Imam Reza at Mashad in Iran about having Niyaz and that their travel to Iran was nothing but a camouflage. The evidence given by these five witnesses boils down to the position that though the holy Kuran has not created sects, it is the Maulanas who have created them and in practical life there do exist different sects of Muslims like Shias and Sunnis. It is also clear that Governments of Iran and Iraq, particularly of Iran, have not banned Sunni Muslims from coming to Iran for Ziarat at the tombs of Imam Reza and two more. It is clear that the Consulate of Iran does not differentiate between Shia and Sunni when it issues visas

for Ziarat in Iran. However, the evidence given by the five witnesses, two out of whom are Sunni Muslims, underlines and endorses the fact that Sunni Muslims ordinarily do not go for Ziarat to Iran. It is also clear that a pilgrim can visit the tomb of Imam Reza at Mashad in Iran and do not take Niyaz or prasad, because of which there will be no stamp of the office of Imam Reza on his visa or passport. It is also clear that it is not compulsory for a person to have Niyaz/prasad at the tomb of Imam Reza to complete the Ziarat, i.e., pilgrimage of Iran. It is also clear that different sects of Muslim do exists and it may be the handiwork of the Maulanas who are responsible for spreading the differences or hate between different sects of Muslims. Thus, it is established that there are different sects of Muslims and there are differences and hate between themselves. It is also clear that it is the created restriction of some of the Maulanas that as there is a Shia Government in Iran, Sunni Muslims should not go there. This is also clear from the emphatic statements by all the five witnesses that Sunnis do not respect Imam Reza. It is also clear that the main pilgrimage centers in Iran are the tombs of Imam Reza at Mashad, of Masoom-e-qum at Qum and of Shah Abdul Azim in Tehran. It is also clear that there is no circular of the Iran Government about sending only Shias to Iran or any order that they can only visit Iran for the purpose of Ziarat and there are no rules displayed at the tomb of Imam Reza that only Shias can visit it for Ziarat and Sunnis are not allowed. It is also clear that absence of stamps of the office of Imam Reza on the passport is not a sign of not visiting Mashad, that it is only an indication that the person has

not taken the meals at the tomb of Imam Reza, which is optional and any Muslim or non-Muslim can go for Ziarat to Iran and return without having stamp of free meal on his visa.

1089. In spite of the above position, I have held that the prosecution has proved that A2, A9, A10 and A11, though Sunnis, have traveled to Iran on Ziarat visa, but did not do the pilgrimage there. The reasons for this are many. The main amongst them being the absence of round stamp of Imam Reza of having the meal there. Ordinarily, a person who goes to the tomb of Imam Reza at Mashad in Iran will try to have Niyaz that is distributed there. He will then obtain the stamp of he having taken the Niyaz, which will be a proud thing for him to show to others. I would have understood if there would have been a stamp of the office of Imam Reza on at least one out of the four passports. Secondly, Afzal Hirji, PW-43, had denied the suggestion that his agency is the only agency in Mumbai that obtains visa from the Iran Consulate and informed that there are two such more agencies. Thus, it is not a co-incidence that the visas of the A2, A9 and A11 at least were obtained by the same agent, i.e., Afzal Hirji, PW-43, and it is proved that it was the A3 on whose instructions the visas of the A2 and A11 were obtained. Thirdly, all these four persons did not travel in groups though the visas were for Ziarat and though Ashik Ali, PW-44, is a tour operator taking pilgrimage to Iran, even then all these four accused traveled individually. Thus, all these things pileup to the inference of there being a common thread between them. Next all these travel agents are Muslims, two of them being Sunnis, but there is nothing in their

evidence to show that they have any ill-will or enmity against the accused or there have any previous contacts with the police in any character like complainant, accused or witness and the ill-will and animosity against the accused is to such an extent that it would extend to implicating them in such a serious crime. There is absolutely no reason why the police would pick out only these four accused though there may be thousands of Muslims particularly Sunnis, who may have traveled to Iran during that period and whose passports may not be having stamps of Imam Reza. The absence of the stamps, to my mind, is a crucial fact and a common thread. To my mind, if we visit the Taj Mahal or the Red Fort, we take our photographs on the background of these two historical places and even this is so in respect of other religious and tourist places. No amount of arguments can explain the absence of stamp of Imam Reza on the passports of the accused if they really had gone for Ziarat, i.e., pilgrimage to Iran.

1090. To my mind, there may not be any written rules or law or circular by Iran or Iraq Government saying that only Shias can come for Ziarat to Iran and Sunni Muslims are banned, but as is seen at several religious places, there are unwritten rules of practice and such unwritten rules of practice are a peculiarity of religious places. Eg., if one visits a Gurudwara, one has to wash his feet and cover his head by scarf. One has to wear a lungi if one enters the inner sanctuary of the Tirumala Devasthan. For these practices there may not be any circulars or rules in writing, but that does not mean that they do not exist. Moreover, all these travel agents are not experts

on religion. They are following the practice of their own religion as is followed by other people of their caste, sub-caste or sect. There may be no hard and fast rule for following or not following any procedure or rule established by practice, but if one thinks as a common man, it is obvious to expect that a person who goes for Ziarat to Iran will take Niyaz at the tomb of Imam Reza and consequently will get the stamp of that office of having taken the Niyaz. Leaving aside all the basics of Islam as are given in the Holy Kuran, it is common knowledge that there are two sects, i.e., Sunni and Shia, amongst them and if not in India, but in the Middle East countries and in Pakistan there are disputes between them, may be created over the time by Maulanas.

1091. In view of the above discussion, it is clear that the prosecution has proved that there is a common thread in the conduct of the accused in approaching the same travel agents in going for Ziarat to Iran though they are Sunni Muslims and in the absence of stamps of the office of Imam Reza, on their passports in respect of having Niyaz there. This is a relevant circumstance, though it will not amount to an offence of merely going to Iran. Hence, from all this the only inference that can be drawn is that the prosecution has proved that A2, A9, A10 and A11 traveled to Iran on Ziarat visa as a camouflage. **This is the circumstance no. 38 proved by the prosecution.** It is against the A3, A2, A9, A10 and A11. It is the sixteenth circumstance against the A3. It is the seventh circumstance against the A2. It is the eighth circumstance against the A9. It is the fourth circumstance against the A10. It is the third

circumstance against the A11.

Connection of accused with banned organisation SIMI :-

1092. It is the case of the prosecution that activities of the organisation Students Islamic Movement of India (SIMI) were banned in India with effect from 27/09/01 by declaring it as an unlawful association under section 3(1) of the UA(P)A. To prove this, the prosecution examined PSI Mandlik, PW-145, who was attached to Police Station Kurla as an ASI in 2001 and it has come in his evidence that on being directed by his Sr. PI on 28/09/01 to promulgate the ban by the government on the SIMI organisation, he went with his staff by the Pipeline Road in Kurla (W) and with the help of megaphone they promulgated the ban by the government. He stated that they also pasted copies of the Notification of the official gazette containing the ban order at conspicuous places like beat chowkis, madarsa, sewage center of BMC, tahasil office, Pipe Road masjid, etc. and also on the office of the SIMI that was on the Pipe Road. He identified the copy of the gazette Ext.1592 (2 pages), which was obtained by ACP Patil, PW-186. Its contents show that the Government of India had on 27/09/01 declared SIMI as an unlawful association and had imposed a ban on it under section 3(1) of the UA(P)A. PSI Mandlik, PW-145 could not produce station diary entries about he doing the work of promulgation because they had been destroyed as per the office rules and for that purpose he produced certified true copy of station diary entry no. 53 dtd. 04/03/09 of Police Station Kurla which shows that amongst other documents station diary entry upto 31/12/01 was destroyed as per

the order of the ACP, Kurla Division, dtd.19/09/08. He also produced true copy of the application given by ACP, Sr. PI and PI (ADMM) of Kurla Police Station to the ACP, Kurla Division Mumbai for permission to destroy the documents listed in that application as per the office order no. 65-B, the station diary register upto 31/12/01 being at sr. no. 1. His cross-examination has revealed nothing adverse to affect his testimony about promulgation and on the contrary he gave total and exact details about the procedure of promulgation, viz., that the Sr. PI had not specified the places where the copies were to be pasted, but had told them to do so at conspicuous public places and he pasted the copies of the gazette at ten places, that he promulgated the gazette and pasted the copies on 28/09/01, that he started from the police station at about 6.00 p.m. on that day, that the copy of official gazette was received in their police station on 27/09/01, which he saw for the first time when it was given to him on 28/09/01. There are no improvements made by him and no omissions and contradictions and he stated the address of the office of the SIMI is in front of the Madarasa, Pipe Road, Kurla (W) and though he expressed his inability to state the name of the Madarasa or the building number, he clarified that it was by the side of the municipal school in 'L' ward and the SIMI office was on the first floor of a two storied building. He also stated that they had gone in Mobile-III vehicle, that they were five including the driver of that vehicle, that he and the staff members were using megaphone one after the other and they promulgated in Hindi, that they used to get down at certain places and paste the copies and also make the

promulgation, that the staff did the work of pasting copies and ASI Parab was the other person who was announcing on the megaphone. All these things have come in his cross-examination and there is nothing to contradict it and in further cross-examination he stated that a fax of the gazette was received on 27/09/01 from the Home Ministry of the Government of India, that it was in two pages in Hindi and English and photocopies of that fax was pasted. The contents of Ext.1592 show that it is in two pages, first in Hindi and second in English. Thus by his evidence the prosecution has proved that the SIMI organisation was banned on 27/09/01.

1093. It has come in the evidence of ACP Patil, PW-186, that he had obtained the said gazette copies and had also obtained the copies of the gazettes extending period of the ban by the order dtd. 08/02/06 and gazettes regarding confirmation of the ban, i.e., Exts. 2437 to 2443. Ext. 2437 is the gazette published by the Government of India on 09/04/02 reproducing the order of the Tribunal constituted under the UA(P)A, which was presided over by Justice S. K. Agrawal and by the order dtd. 26/03/02 he confirmed the declaration made in the Notification dtd. 27/09/01 declaring SIMI as an unlawful association. Ext.2438 is the subsequent declaration by the Government of India dtd. 26/09/03 declaring the SIMI to be an unlawful association. Ext. 2439 is the similar declaration dtd. 08/02/06 and Ext. 2440 is a corrigendum correcting a word in the main notification. Ext. 2441 is a notification by the Government of India extending the powers under sections 7 and 8 of the UA(P)A to the State Governments and the Union Territory Administrations in

relation to the unlawful association SIMI. Ext. 2442 is a notification dtd. 07/03/06 constituting the tribunal under the UA(P)A for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and Ext. 2443 dtd. 11/08/06 reproduces the order dtd. 07/08/06 passed by the said Tribunal headed by Justice B. N. Chaturvedi by which he confirmed the ban on SIMI imposed by Central Government by Notification dtd. 08/02/06 read with corrigendum dtd. 13/02/06. Thus, by the above evidence the prosecution has proved that the Students Islamic Movement of India, i.e., SIMI, was declared as an unlawful association under section 3(1) of the UA(P)A on 27/09/01 and the ban has been extended from time to time upto and even after the date of the bomb blasts in this case. **This is the circumstance no. 39 proved by the prosecution.**

1094. It is alleged by the prosecution that though the SIMI was banned in the year 2001, A2, A3, A4, A6, A7, A8, A9, A11 and A13 and wanted accused no. 2 Rizwan Dawrey and wanted accused no. 3 Rahil Shaikh continued to remain members of the said banned organisation and continued to take part in the activities of Students Islamic Movement of India, which is a declared terrorist organisation under sections 2(1)(m) and 35 of the UA(P)A and thereby advocated, abetted, advised and incited the Indian Muslim youths against the policies of the Government of India, promoted enmity between different groups on grounds of religion by printing, publishing and circulating seditious, inflammatory and derogatory material and collected funds and subscriptions from others for the

achievement of the larger goal of conspiracy.

1095. To prove this, the prosecution is relying on :-

- (a) the recovery of books allegedly connected with SIMI,
- (b) the fact of previous cases against some of the accused alleging that they are SIMI activists, and,
- (c) the oral evidence of some witnesses.

(a) Insofar as the recovery of books is concerned :-

(i) recovery of eight books, Arts.150 (1 and 2), 151 (1 and 2) and 152 (1 to 4) from the A3 on 28/07/06 is held to be proved by the cogent evidence of Sr. PI Rathod, PW-176, and the panch witness Sanford Fernandes, PW-31, and the contents of the panchanama Ext. 533 of his house search, which is the circumstance no. 9 supra proved by the prosecution.

(ii) recovery of four books, Arts. 166 (1 and 2), 167 and 168 from the A9 on 28/07/06 is held to be proved by the cogent evidence of Sr. PI Rathod, PW-176, and the panch witness Sanford Fernandes, PW-31, and the contents of the panchanama Ext. 534 of his house search, which is the circumstance no. 20 supra proved by the prosecution.

(iii) recovery of six books, Arts. 249 (1 to 6) from the A10 on 30/07/06 is held to be proved by the cogent evidence of PSI Gaikwad, PW-169, and the panch witness Alankar Mane, PW-61, and the contents of the panchanama Ext. 758 of his house search, which is the circumstance no. 21 supra proved by the prosecution.

(iv) recovery of two books, Arts. 135 and 136, Ext. 1678 and 1679 respectively, from the A11 on 31/07/06 is held to be proved by the

cogent evidence of PI Tonapi, PW-155, and the panch witness Mukesh Jadhav, PW-30, and the contents of the panchanama Ext. 527 of his house search, which is the circumstance no. 22 supra proved by the prosecution.

(v) recovery of eight books, Arts. 43 (1 and 2), 44 (1 to 4), 47 and 48 from the A2 on 01/08/06 is held to be proved by the cogent evidence of Sr. PI Rathod, PW-176, and the panch witness Rohit Warang, PW-19, and the contents of the panchanama Ext. 485 of his house search, which was as per his instance, which is the circumstance no. 23 supra proved by the prosecution.

1096. The case of the defence that the colour photocopies of the books that were seized from some accused by police of Khandwa Police Station, Madhya Pradesh in C. R. No. 256/06 on 16/04/06 were obtained by the ATS and planted on the accused has been discussed in paragraphs 997 to 1001 supra and it is held that no such inference can be drawn from the evidence of A4, DW-38, or from the documents Ext. 3226 to 3234. At the cost of repetition it will have to be stated that the theory of plantation will have to be ruled out on a singular aspect, viz., that the recovery of the said books were made very early after the arrest of the accused. A2 was arrested on 24/07/06, A10 and A11 were arrested on 25/07/06 and A3 and A9 were arrested on 27/07/06. The recoveries of the books from the A3 and A9 are on the very next day of their arrest, i.e., on 28/07/06, and just 5-7 days after the arrest of the other accused. It is already observed by me and it will have to be repeated that it was not possible for Sr. PI Rathod, PW-176, who had effected three out

of the five seizures or for PSI Gaikwad, PW-169, and PI Tonapi, PW-155, to be so resourceful at that stage of the investigation to plant such type of evidence against the accused in order to show that they are the members of an unlawful association. Insofar as the contents of the books seized from the accused is concerned, there is cross-examination to ACP Khandekar, PW-174, as well as ACP Patil, PW-186. However, there is no doubt that the books titled SIMI on the front page and bearing the years 1997-02 are connected with the SIMI organisation and have been definitely published after the ban on it in the year 2001. The possession of these books of SIMI or about SIMI or connected with SIMI after the ban on that organisation is one of the indication of the connection of the A3, A9, A10, A11 and A2 with SIMI and inter se. Insofar as the book 'Tehrik' April, 2004 issue is concerned, the learned SPP pointed out the last paragraph on page 33 and furnished a translation in English, which runs as follows :-

*'This **DEMOCRACY** is completely contrary to the thought and way of Islam. This view point is completely in conflict with the values of Islam. To those true muslims to embrace this, to make a move towards this, and to base the life on this, to adopt this a viewpoint in life as a guide and law, or to participate in any manner in this is absolutely '**HARAM**'. This is not acceptable, it is necessary to uproot this from the very root, and this is the solemn duty of every Muslim. This is tyranny and is the thought of a '**KAAFIR**' and its consequence. There is no correlation of this and Islamic thought. It is necessary for muslims to live according to muslims and it is necessary to uphold and praise the Islam principles'.*

Hence, it will have to held that by the evidence of seizure of books, the prosecution has proved that the A3, A9, A10, A11 and A2

were found in possession of books connected with SIMI.

(b) Insofar as the previous cases against the accused is concerned;

(i) it has come in the evidence of Sr. PI Rathod, PW-176, that an LAC under the UA(P)A and another for rioting and under section 353 of the IPC had been registered against the A2 and A4 in Police Station Kurla and PSI Kshirsagar obtained the said copies, i.e., Exts. 462 and 463. Ext. 462 is certified copy issued by court of ACMM, Mumbai of final report in LAC No. 1839/01 registered on 27/09/01 against eight accused including the A2 and A4 for the offences under sections 10 and 13 of the UA(P)A alleging that SIMI was banned on 27/09/01 and in view of the ban order, a watch was kept on the secret movement of the said organisation with the help of Special Squad at the office of the SIMI at 613, Fitwala Compound, Pipe Road, Kurla (W), Mumbai-70, that information was received that the Irshad Khan, president of Maharashtra Zone of SIMI, was having a private discussion in that office with the members of the SIMI and accordingly eight persons were found there and were arrested. Ext. 463 is a certified copy issued by ACMM Court of the final report of FIR no. 2001 dtd. 28/09/01 for the offences under sections 143, 147, 353 read with 34 of the IPC, 10 read with 13 of the UA(P)A and 37(3) read with 135 of the Bombay Police Act against 12 accused including the A2 and A4 on the allegation that when they were produced for remand on 28/09/01 in LAC No. 1839/01 in the 11th Court at Kurla and the court passed an order of releasing them on bail of Rs.3,000/- and the court directed them not to take part in the activities of SIMI organisation, the accused had been taken out

from the court and were being taken to the police vehicle, at that time they shouted anti-national slogans.

(ii) It has come in the evidence of ACP Patil, PW-186, that arrested accused were having previous cases registered against them at various police stations and information about it was obtained by procuring certified/true copies of the relevant documents. He pointed out to the documents and the relevant against the A4 is certified true copy issued by Sr. PI, ATS, Mumbai, Ext. 1512, which is the FIR in LAC No.04/06 of ATS Police Station for the offences under sections 10 and 13 of the UA(P)A against the A4. It is alleged in the chargesheet that when the A4 was the active member of the banned organisation SIMI, he promoted the views of the SIMI organisation and published articles on the subject of jihad that would inflame the feelings of Muslims and also tried to obtain money for the organisation.

(iii) Ext. 1514 is the certified true copy of the FIR in Crime No. 256/06 issued by Dy. SP, Khandwa registered with Police Station Kotwali, Dist. Khandwa for the offences under sections 3, 10 and 13 of the UA(P)A against the five accused and the bunch of documents that are with it and with covering letter Ext.1513 sent by SHO of that police station to ACP and IO, ATS, Mumbai, which includes photocopies of statements of accused wherein they have informed that the A4 and two others print the booklet Tehrik at Mumbai and distribute it. The covering letter Ext.1513 shows that during investigation of that crime Imran Ansari, so-called General Secretary of SIMI in Madhya Pradesh, was arrested and interrogated and he

disclosed the fact that the A4 and others in Mumbai used to publish the Tehrik magazine for SIMI and the matter published in it is vulnerable and creating disturbance for communal harmony. A production warrant is issued by judicial court at Khandwa against the A4, which was enclosed with the letter, which makes it clear that the A4 was made an accused in that case.

(iv) Ext. 1518 is a certified copy of final report issued by MM court, Mumbai, in respect of LAC No. 26/01 registered on 28/01/01 for the offences under sections 10 and 13 of the UA(P)A of Andheri Police Station against the A7 and his brother Khalid and it is alleged that both accused appealed to the Muslims in that area in Urdu mix Hindi and inflamed them by saying that now all Muslims brothers should come together and stay in Bharat and if necessary they should protest against America at various places in Bharat and on this occasion, Pakistan should also help the Muslims and on this occasion the proper time has come for fighting to liberate Kashmir from Bharat. This was done at 11.00 p.m. on 26/09/01 near Mograpada Masjid, Mograpada, Andheri (E), Mumbai. It is alleged that at 9.30 p.m. on 27/09/01 at the same place brother of the A7 appealed to Muslim and inflamed their feelings by saying that the world is on fire, the India Government has banned the SIMI, but he and Sajid, i.e., the A7, and the other activists of SIMI will not be afraid and will go on working for SIMI and the Muslims residing in Mograpada should be with them.

(v) Ext. 1519 is certified true copy issued by MM court of final report in FIR No. 132/01 of Police Station Andheri against the three

accused including the A7 and his brother for the offences under sections 153A, 120B, 153B, 505(2)(3) read with 34 of the IPC alleging that at the behest of the Irshad Salim Khan, who was acting as a President of SIMI, though it was banned, A7 and his brother distributed pamphlets in Urdu containing inflammatory matter that was likely to incite and promote the feelings of enmity and hatred between Hindu and Muslims and that they had entered into conspiracy to do so.

(vi) Ext. 1516 is certified true copy issued by MM court of LAC No. 877/01 of Vikhroli Police Station for the offences under sections 10 and 13 of the UA(P)A against 8 accused including A8 and Amar Sardar Khan, PW-75. It is alleged that even after the Notification banning the SIMI was published, A1 to A8 in that case, took a meeting at 5.30 a.m. on 28/09/01 in the office of the SIMI in Vikhroli and thereby conducted the work of the said organisation with the intention of creating unrest in the society and were found in possession of pamphlets, magazines and books and cloth banners containing the pictures of Babri Masjid with the title 'the revenge is out' and of Islamic struggle continues from Ayodhya to Jerusalem.

(vii) Ext. 1523 is certified true copy of station diary entry no. 46 of Lashkar Police Station, Pune City dtd. 28/08/03, which mentions that A10, a SIMI activist, who was not found by the police since one and half years, was arrested under section 151(1) of the Cr. P. C. The station diary entry no. 16 of the same day that SIMI activists had been served with the notice about the ban on SIMI on 27/09/01, however the A10 was not found for service of copies and on inquiry

with his relatives, it was revealed that he had gone to Saudi Arabia, Iraq, etc., and other countries, which was a false information to mislead the police and it was revealed in the investigation that before that day SIMI activists of Mumbai used to come to meet him and sometimes he used to go to Mumbai to meet them. Therefore, it was found that he may commit some subversive activity and endanger the public peace and therefore a request was made for his detention under section 151(3) of the Cr. P. C.

(viii) Exts. 1506 to 1509 are certified true copies of court documents issued by district court, Jalgaon of RCC No. 919/01 that was in connection with FIR No. 178/99 registered with MIDC Police Station, Jalgaon on 03/12/99 for the offences under section 153A read with section 34 of the IPC against the A13 and one Shaikh Shakil on the allegation that they printed and distributed handbills in Urdu and English and posters of Masjids in order to provoke people of Muslim community and promote feelings of enmity and hatred between Hindu and Muslim community. Ext. 1511 is certified true copy issued by MIDC Police Station of final report in FIR No. 103/01 dtd. 28/07/01 for the offences under sections 120B, 153A, 121A, 122, 123, 201, 506B read with 34 of the IPC and sections 4(a), 4(b) and 5 of the Explosive Substances Act against ten accused and six wanted accused, on the allegation that 4-5 days prior to 25/07/01 at Jalgaon, Nagpur, Delhi, Jammu and Kashmir, Dodha, Kupwada, Shrinagar and Patna they gave lectures in weekly meetings, published posters and thereby promoted and advocated to promote feelings of enmity between Hindu and Muslim community,

prejudicial to the maintenance of harmony between two communities and disturbed the public tranquility, that they made efforts to enroll persons of Muslim community to become members of SIMI and instigated them by provocative speeches and publication of posters and providing training in arms and preparation of bombs, supplying arms and ammunition to instigate young Muslim persons and members of SIMI to cause bomb blasts, i.e., waging war against Indian army in Dodha and Kashmir and admitted to cause bomb blasts at Nagpur on 20/05/01, etc.

1097. By the above unchallenged documentary evidence, the prosecution has proved that the A2, A4, A7, A8, A10 and A13 had previous cases against them in connection with their activities for the banned organisation SIMI.

(c) Five witnesses have been examined to prove that the said accused were connected with SIMI.

1098. The first one is Mehmood Qureshi, PW-65, husband of sister of the A7 and thereby related to A8. He identified both the accused in the court. It has come in his evidence that he got to know one Israr Ahmed at Trans Institute of Computer Technology at Mira Road, where he did a diploma in computers in 1999, as the said Israr used to teach there and as he used to attend and give the lectures of SIMI on Kuran, Hadis and life stories of Prophet Mohammed and and he, i.e., the witness, used to remain present and hear the lectures, because of which he became connected with SIMI and started attending its programs. It has come in his evidence that the office of the SIMI was at Kurla Pipe Road, where he used to

go sometimes and he became acquainted with some persons, but cannot tell their names, that similar types of programs used to be conducted there as were conducted in the Trans Institute of Computer Technology at Mira Road. It has come in his evidence that in the year 2000 he had visited Akola for a convention of SIMI and had acquaintance with the workers of SIMI, i.e., A8, A7 and Irshad Khan, who was the Maharashtra President, etc. It has come in his evidence that he attended the SIMI office upto 2001 and in that year the SIMI was banned and as far as he knows from the programs that he attended, the SIMI members used to conduct the programs as stated by him earlier, but he had not attended any other than the above described lectures and convention. It has come in his evidence that he was arrested alongwith 125 similar persons in November or December, 2001 on the allegation that it was SIMI program when he had gone to Surat for an educational program.

1099. The prosecution examined this witness to show the connection of the accused with SIMI as well as to prove that the A4 had taken the keys of the house of the A8 in May, 2006 from him and took meeting in that house. Insofar as the first part, i.e., he himself attending the lectures and programs of SIMI before 2001 and A7 and A8 being workers of SIMI, his evidence about it is totally unchallenged and there is not even a single suggestion to him denying that evidence. Hence, insofar as the connection of the A7 and A8 with SIMI, i.e., prior to 2001 is concerned it is established by the prosecution beyond any doubt.

1100. In respect of the second aspect Mehmood Qureshi, PW-65,

admitted that he had good relations with the A8 and they were on visiting terms at their houses and sometime the A8 used to keep the keys of the house with him when he used to go out after locking the door of his house. He did not walk with the prosecution in respect of the second aspect and when asked whether he had given the keys to anyone else he stated that he does not remember about it and then denied that A4 had come to ask for the keys of the house of the A8. He was declared hostile by the learned SPP and cross-examined and it has come in his cross-examination that the ATS police had taken his statement on 05/10/06 and he had given the statement Ext. 767 to a magistrate at Dadar, which is obviously the statement under section 164 of the Cr. P. C. He disowned seven portions from his statement when confronted and those portions were got proved from PI Khanvilkar, PW-168, as Exts. 1780 (1 to 7). He has obviously turned hostile to the prosecution in view of his relation with the A7 and A8 and though he admitted that his statement was taken on 05/10/06, typed on computer and explained to him in Hindi, he denied that it was correctly written as stated by him and denied the portion Ext. 1780(1). Now though he stated that he came to know at that time itself that his statement is not correctly written, his further answers are that he did not complain about it to the person who recorded it saying that it was not correctly recorded or did not complain about it to any of his superior officer. He made positive statements that he had stated to the magistrate at Dadar court in October, 2006 that the police recorded an incorrect statement, however, contents of Ext.767 do not show that he has so

complained. He admitted that he did not tell about this to any other person during the period when the ATS police took his statement and he complained to the magistrate.

1101. In respect of statement that he gave to the magistrate his story is that he was called to the ATS office three or four times during the above period and he used to be called there for learning by heart the statement that he was to give before the magistrate and that statement in writing was with him, which he did not give to the magistrate. Though, this is the story told by him he admitted that as he knew what statement he has to give there was no question of learning by heart the statement that he was to give before the magistrate. In respect of statement recorded by the ATS police, he denied the suggestion that no portion of his statement that was recorded on 05/10/06 was correct, which in plain terms means that some portions of his statements are correct.

1102. Insofar as his statement recorded by magistrate is concerned, he went to the extent of stating that inspite of taking oath, he did not state the truth before the magistrate, though he admitted that he did not have any fear of the magistrate and he could have told the magistrate, but he did not tell him, that he was rounded up repeatedly by the ATS police after the arrest of the A7 and A8 and was threatened to state as per the statement dtd. 05/10/06 or else he would be made a witness or an accused and also confirmed it by saying that even then he did not complain to the magistrate or any superior officer. He volunteered that he did not do so as at that time he was afraid, was the sole earning member of his

family, his parents are aged and this is the reason why he gave the statement and even now this fear is in his mind. However, he admitted that he signed the statement that he made before the magistrate and at that time interpreter was present and thereafter he admitted most of the portions in the statement before the magistrate except that he was inspired by Israr Ahmed and that Ehtesham, i.e., the A4, taking the keys twice in May, 2006. Now wherever the relevant portions were put to him he volunteered that he was told to say so and that he was told that he may narrate anything in beginning, but his emphasis at the end should be that the A4 had taken the keys twice in May, 2006. All other things he has admitted and everywhere volunteered that he was told to say so and he was told the names that he stated before the magistrate. Once again in respect of the procedure of recording statement before the magistrate, he admitted that except the magistrate or interpreter, there was no other person present in the chamber of the magistrate when his statement was recorded. This answer if read with his admission that he did not have any fear of the magistrate, goes to show that he obviously denied the relevant facts falsely in respect of the A4. This is clear from his further admission that police had told him a large number of things and admitted that he could have avoided stating before the magistrate the words 'I was inspired by him, i.e., Israr Ahmed' and that 'Ehtesham had taken the keys twice in May 2006'. He admitted the entire contents of the statement Ext. 767 as being correctly written except the above two portions that he denied. Learned SPP very skillfully got the admissions from him that

today he does not have any fear or apprehension in his mind and since the last date till today no ATS officer or any police officer has threatened him or put him in fear. His admissions cover and show that his statements in cross-examination by learned advocate Wahab Khan that he received calls from the ATS office thrice in November, twice in December, 2010 and on 18, 19 and 20/01/11 on his mobile, that the calls were made to pressurize him to give evidence as per their version and he was called to the ATS office on that number on all the occasions and was called there to tutor him, show that he is obviously won over by the accused particularly as he is related to the A7 and A8. He produced a copy of the typed written statement dtd. 05/10/06, i.e., Art. 309, stating that API Varpe forgot to take it back from him and though he deposed about his mobile handset having the records of the calls received from certain numbers, which he alleges to be of the ATS office and when the mobile Art. 310 was taken on record, it came in his further cross-examination that he does not have the sim card that was in the Art. 310 and admitted that calls that are received on a particular sim card that is in a particular mobile handset are only recorded in that handset and today by looking at the handset memory of Art. 310 one cannot say to which sim card number the calls were received. Thus, this effort by the defence to show that he was called on his mobile from the ATS office to pressurize him to give evidence as per their version and call to the ATS office for tutoring him has not succeeded. Now what remains is the portions from his statement under section 161 of the Cr. P. C. which he denied having stated to the police, but which were

got proved during the evidence of PI Khanvilkar, PW-168, and received in evidence as Exts. 1780 (1 to 7). Leaving aside the portions in respect of the A7 and A8, because I have already held that his oral evidence about they being members of the SIMI is unchallenged, the relevant portion insofar as the other accused is concerned is the portions Ext. 1780(1 and 2), viz., that at the same place, i.e., at the Trans Institute of Computer Technology at Mira Road, following activists of SIMI members used to come for lectures and he has given five names including that of Asrar Ahmed, about which his evidence is unchallenged and the fifth is the A4. Secondly is the portion marked Ext. 1780(3) which says that at Akola, persons of SIMI, i.e., Ashraf Jafari of Delhi, Shahid Badar Falai of Delhi, Asrar Ahmed, Muzzammil, Asif Khan and other activists and officer bearers were present. The contents of Ext. 1780(4) show that he had stated that he knows following activists and members of SIMI organisation and he has given the names of 24 persons, which includes the A7 at sr. no. 1, A13 at sr. no. 7, A4 at sr. no. 8, A2 at sr. no. 10 and A8 at sr. no. 19. Though, PI Khanvilkar, PW-168, proved the contents of these portions by stating that Mehmood Qureshi, PW-65, had stated so before him, there is not a single suggestion to him during his entire voluminous cross-examination that Mehmood Qureshi, PW-65, had not so stated to him or that he had prepared a false statement in the name of the witness. Therefore, all the contents of all the contradicted portions that were got proved to him will have to be read in evidence and will have to be accepted as being stated by Mehmood Qureshi, PW-65, when he gave statement

to the police on 05/10/06. This plus the last relevant contradicted portion Ext. 1780(7) concerning the A4 will also have to be accepted as the statement made by the witness to the police, which shows that he knows A4 since 1999 as he was an office bearer, that A4 used to come to meet the A8 when he used to come to Mumbai, that in May, 2006, A4 came to his shop Hamja General Stores and told him that the A8 had asked him to take the keys of his house, which Mehmood Qureshi, PW-65, gave to him and at that time Mehmood Qureshi, PW-65, know that A8 and his wife were not in the house, that at that time there were 5-6 persons with the A4 and during that period he so took the key twice and took meetings. Thus, though he declined to identify and did not identify the A2, A4 and A13 when they were shown to him, it is obviously because he was won over and his evidence about the A7 and A8 being the workers of SIMI, is probably given on the assumption that it is an innocuous evidence relating to the events prior to 2001, but that evidence has really fixed his as well as the A7 and A8's association with SIMI and the proof of the portions in his statement which are not challenged has shown his in depth knowledge about the other accused also and the activists of SIMI.

1103. In respect of his evidence, there are submissions by learned advocate Shetty and Wahab Khan and written submissions by learned advocate Sharif Shaikh. To my mind, no amount of arguments will set aside his unchallenged evidence in respect of A7 and A8 being workers of SIMI and the unchallenged proof of the portions in his statement that was proved and also not challenged.

The submissions by learned advocate Shetty are more in respect of A8, whom he represents and his emphasis is more on what the witness stated during the cross-examination in respect of pressure of the ATS and surveillance on him and undue influence to give the statement as per their dictates. I have already discussed this and it will not be out of place to point out that learned advocate skipped the portion from his evidence that there was no question of learning by heart the statement that he gave before the magistrate as he knew what statement he had to give, which to my mind, extinguishes the possibility of he being tutored or forced to give the statement to the magistrate as per the statement that he gave to the police earlier. The submissions of the learned advocate that it is not uncommon for a person to keep the keys with one's house with neighbour is of no consequence and relevant thing is about A4 having taken the keys of the house of the A8 from the witness. In respect of the witness being regularly called, daily for 15 days in the ATS office, shows the threat under which he was put and the intimidation that he was given to give his statement, learned advocate questions that in view of this what value can be attached to a statement and whether it can be said that it is a true statement from an independent person. In this connection, it will not be out of place to point out that the witness has nowhere stated that he was threatened to give a false statement at that time. Learned advocate lastly submitted that the evidence of the witness does not connect A8 to the crime. That will be a different aspect.

1104. The submissions of learned advocate Wahab Khan that

except declaring the witness hostile the learned prosecutor has not done anything for this witness is obviously ignoring the fact of contradicted portions being proved through the concerned investigating officer and the other answers discussed by me that were obtained during the cross-examination by learned SPP. His next submission is in respect of defence of the A7 about the defence of alibi of being at his house on 09/07/06, which has already been discussed.

1105. There are 13 points in the written submissions concerning this witness given by learned advocate Sharif Shaikh and most of them have been covered in the discussion above. Some strange submissions are made that Mehmood Qureshi, PW-65, has not identified any of the remaining accused in the court and has not deposed about seeing the A4 in SIMI programs. Obviously, it is not in the unchallenged evidence of the witness and even in the proved contradicted portions of his statement that he had seen the A4 in SIMI programs though it is in his statement that this is so about lectures in the year 1999 (when SIMI was not banned). However, it is in the portion Ext.1780(7) that the witness knew the A4 since 1999 as he was the office bearer of SIMI. On the basis of this submission it is strangely submitted that hence the case of the prosecution about A4 taking the keys of the house of the A8 from the witness is not reliable and the evidence against the A4 has to be discarded. In respect of recording of statement it is submitted that when the witness has stated that his statement was not recorded as stated by him then the portions confronted to him and got proved

are not acceptable against the A4. To my mind, it is because the witness disowned the particular portions from his statement, that they were marked and got proved from the investigating officer. This submission is obviously a wrong one. Next submission that the portions from the said statement that were got proved from PI Khanvilkar, PW-168, have to be discarded from the evidence because as per Mehmood Qureshi, PW-65, PI Khanvilkar, PW-168, had not recorded his statement and the portions have not been proved by API Varpe, who had recorded the statement of the witness as per the defence, which submission to my mind is also incorrect. When PI Khanvilkar, PW-168, has stated about recording of statement of this witness and has identified his signature on it and there is no suggestion to him that he has not recorded the statement, such a submission will not be correct. The next submission is again the allegation in respect of PI Khanvilkar, PW-168, about he being a corrupt officer and therefore the evidence based on the statement recorded by him is required to be discarded, is indirectly admitting that he had recorded the statement. I have already considered the allegations against the said officer. It is alleged that the statement under section 164 of the Cr. P. C. is false and tutored. I have already held that it cannot be so in view of his answers in the cross-examination and there being no fear in his mind about the magistrate when his statement was recorded. Now reliance is placed on the answers given by the witness in cross-examination by learned advocate Shetty that A8 may have given the keys of his house to him on 4 or 5 occasions when he went out, that he himself used to

collect the keys from him on return and that he never handed over the keys to anyone else other than him and his wife. It is submitted that hence it is not proved to the hilt that Mehmood Qureshi, PW-65, had given the keys of the house of the A8 to the A4. To my mind, the witness may have stated so, but it is not suggested to him that he had never given the keys of the house of the A8 to the A4 and the portion Ext. 1780(7) from his statement to the police proves it to the hilt that in fact it had so happened. The next submission about Mehmood Qureshi, PW-65, being threatened to become a witness, not identifying the A4 and he being pressurized to give false evidence has already been considered by me. Again, entries in the CDRs of the mobile of the A4 Ext. 3765(2) for the month of May, 2006 showing absence of locations of Mumbra are relied upon to show that he had not gone to the house of the A8 in May, 2006. This is an inferential evidence and A4 is trying to disprove a positive evidence by a negative circumstance which is not proper and acceptable.

1106. In view of the above discussion, it will have to be held that by the evidence of Mehmood Qureshi, PW-65, the prosecution has proved that A7 and A8 were the workers of SIMI and that the A2, A4 and A13 were the activists and members of the SIMI and the A4 was the officer bearer. To my mind, the prosecution took the risk of examining this witness though it may have expected that the witness will not support them. However, the answers given by him in cross-examination by learned SPP as well as the proved portions from his statement to the police have proved the above fact and he being

related to the A7 is also proved that he is not supporting to the prosecution because of his relation with them.

1107. Next witness is Shaikh Noman, PW-78, who is a relative of the A3 and A9 and knows their entire family and it has come in his cross-examination by the learned SPP that police had arrested him when he had attended All India Muslim Education Board program in which there were SIMI members. He resined from the statement that he gave to the police and during his cross-examination the learned SPP confronted him with the relevant portions which were marked. However, those portions were not got proved from ACP Patil, PW-186, who had recorded his statement. He did not identify the A2, A4 and A13 when they were asked to stand up and they were shown to him. He is obviously won over by the defence because though he stated that when police inquired with him about SIMI, he told that whatever knowledge he had and whatever he narrated was typed on the computer by the police. He stated that when it was read over to him, he had objected to many things that were written therein, but he did not complain to any superior officer. The reason for this that he gave is that the situation at that time was that he feared that he would be involved in an illegal case. He admitted that he had given a statement in the court that is in front of V. T. and that it was on oath, however, his endeavour to support the accused is clear from his admission that he did not state the truth before the magistrate though he was given the oath in the name of Allah that he was speak the truth and no untruth and even then he gave a false statement. He admitted that he did not state anywhere and

complain to anyone about giving a false statement before the magistrate under pressure and though he had attended the court a day before his evidence was given and informed that the accused were not produced, therefore, his evidence is not recorded, he admitted that he did not complain to this court about the ATS or the magistrate. Now he is not denying whether A3, A9 and their brother wanted accused no. 3 Rahil had become members of SIMI in the year 2000, but he says that he is not confirmed about it. Then he again admitted most of the things that he stated before the magistrate and then his statement under section 164 of the Cr. P. C. Ext. 829 was shown to him and he admitted his signature. At the end of his cross-examination by learned SPP though he confirmed that he has faith in this court, he stated that he had prepared an affidavit in court about his statement which was not with him when he was in the witness box, but had its xerox and that he had prepared it in this court with the help of an advocate on the day when his statement was recorded before the magistrate, but admitted that he had prepared it for his own security and has not produced it before the court or before the police or before the community or before any minister. This was taken advantage by the defence advocate and they produced photocopies of three affidavits Arts. 312 (1 to 3) during his cross-examination by learned advocate Wahab Khan and when the learned advocate asked him whether he would produce the original affidavit on the next day, he questioned whether it is necessary to produce that and he does not wish to produce because of fear. Learned advocate then asked him to

produce original at once and on the next day though he stated that he has brought the affidavits which are with his mother, who has come in the court, he does not want to produce them even for comparing them with the xerox. The learned advocate requested to direct the witness to produce them, the same was rejected as the witness could not be compelled to do so. Therefore, he was asked and he answered that he is afraid of producing the original affidavits as he fears the ATS officers, but then stated that he cannot reply whether between yesterday or today he got a phone call from the ATS officers pressurizing him not to produce affidavit and therefore he is not producing the affidavit.

1108. Thus, his evidence is of no use to the prosecution as well as to the defence, as the portions that were confronted to him were not got proved from the investigating officer and though he admitted that he had stated most of the things that are in his statement under section 161 of the Cr. P. C., that alone cannot be relied upon. One thing is certain that he has not supported the prosecution as he is related to the A3 and A9 though he has vaguely stated that they had family dispute with the family of the A3, A9 and this dispute arose 10-15 years before. This inference is fortified by his knowledge that he knows that the A9 had done computer course, which was probably done by A9 about 5-6 years before his evidence. His evidence is of no use to the defence because there is nothing on record to substantiate his allegations about being threatened or tutored as he has failed to produce the affidavits that he allegedly made on the day when his statement was recorded by the

magistrate. Though he has stated about torture by the police of Unit-II at Sat Rasta, he has not complained anywhere about it and it is not against the ATS, though he stated that he was called at Kurla also where he was detained for 2-3 days, but he could not tell the date and month of all the visits to the police stations and offices and made a positive statement that there was no torture in Kurla. Therefore, there is no necessity of considering the submissions made by learned advocate Sharif Shaikh in respect of this witness.

1109. The third witness is Abdul Usman Kumbhar, (PW-79) (Ext. 830), who also did not support the prosecution, who was declared hostile and cross-examined by the learned SPP and though the portions from his statement with which he was confronted were marked, they were not proved from the investigating officer, who had recorded it. His evidence is also of no use to the prosecution.

1110. The fourth witness is Abdul Dawrey, PW-71, whose brother is wanted accused no. 2 Rizwan Dawrey and his evidence about the A3 and wanted accused no. 3 Rahil being his friends and visiting their house in 1996-97 and that A3 had a brother Muzzammil, i.e., A9, whom he had seen sometimes and knew him as well as A3's other name being Mustafa is unchallenged evidence. It is not by way of an improvement or contradiction. His evidence in paragraphs 2 and 3 of his deposition is connected with the aspect of SIMI connection of the accused and it has come in his evidence that in 1996-97 he used to go to Kamruddin and Usmania Masjids in Camp area, Pune and sometimes wanted accused no. 2 Rizwan used to accompany him. His further evidence about there being an office of

SIMI upstairs in the masjid where they used to be called after namaj and that he may have visited that office 5-6 times where lectures of Kuran and Hadis used to take place is brought on record as an improvement over his statement that he gave to the police. However, his further evidence that wanted accused no. 3 Rahil, A3, one Asif Khan, one Firoz and others, whose names he does not remember, used to come to the office of SIMI, that besides Kuran and Hadis, there used to be discussions about Muslim issues like arrests of Muslims and the atrocities on the Muslims and the persons whose names he does not remember used to make these discussions, is not an improvement over his statement. In this connection he stated that he can identify the persons, who used to participate in the discussions, but whose names he does not remember and then he pointed out the A10, A3 and A9, however insofar as the A9 is concerned he admitted that A9 used to come to his house, but he had not seen him at the masjid.

1111. His evidence that there were many riots in Pune in 2001 and there were incidents of burning Kuran and there was an atmosphere of tension, is brought on record as an improvement. However, his further evidence is clear and he has deposed that at that time, which presumably refers to the incidents during the riots in Pune in 2001, some persons of SIMI used to say that it will not be only sufficient to talk, but they should take some training, that the above talks took place in Ramzan in Camp area 'when they had gathered for tea'. The portion into inverted commas is an improvement over his statement, which to my mind, is not material.

He positively stated that A3 was one of the persons who used to take part in the talks and on listening the views expressed in the talks he became frightened and stopped meeting them. The above is his only evidence and it has shown that not only the A3 and A10, but his brother wanted accused no. 2 Rizwan and A3's brother wanted accused no. 3 Rahil used to attend the office of the SIMI and there were some discussions after the ban on SIMI in 2001. His major evidence is in respect of 11200 Saudi Riyals received from him from one Afzal that were sent by his brother wanted accused no. 2 Rizwan for the A3 and its seizure by the ATS officers under the panchanama Ext. 756, which has already been discussed and found to be a cogent evidence. The relevant cross-examination in respect of this topic by learned advocate Shetty is in paragraphs 19 and 20 of his deposition and some positive statements have come on record that he first became acquainted with the A3 in 1997, that he knew him by that name from that time and in Saudi Arabia he came to know his another name Mustafa and he came to know him as he used to come to meet his brother at his residence in 1997 occasionally, but the A9 did not come often. His further cross-examination has revealed that Kamruddin and Usmania masjids are about 5 kms. from his house, that both are about 1 km apart and Usmania masjid is nearer to his house than Kamruddin masjid and there was no SIMI office in Usmania masjid. He then described the details of the office including its area and stated that he did not become member of SIMI and never participated in its activities, that he does not know whether Rizwan was its member, but stated that

he had called him to that office a couple of times to sit for the lectures and he may have visited the office five or six times after 1996, but not always with wanted accused no. 2 Rizwan. He admitted that no pamphlets were distributed during the lectures about the lectures and lectures were immediately held after the namaj, normally after 8.30 p.m., that there was no announcement after the namaj about lectures in the SIMI office. To the last statement, he clarified that however the information used to be given from person to person and around 15-20 persons used to attend the lectures in the SIMI office, who were mostly from Pune. One important admission that he gave is that there was no issue of arrest of Muslims during the lectures in the SIMI office and he had not stated to the police that there used to be discussions about harassment of Muslims. He was confronted with the portions marked 'B' and 'C' in his statement in this connection, but they could not be proved as the investigating officer who recorded his statement is not examined by the prosecution. In the remaining part of his cross-examination on this aspect, most of the answers that he gave are expressing his lack of knowledge or inability to remember whether certain things had happened or not. The fact remains that his evidence about attendance of the A3 and A10 in the office of the SIMI is unshaken and at the end of his cross-examination he denied the suggestion that in order to take favour of the police to save himself, he is implicating the A3 and that there was no office of the SIMI in Kamruddin masjid.

1112. His cross-examination by learned advocate Wahab Khan

concerning this aspect is in paragraphs 25 and 26 of his deposition during which it has come that there was no board of SIMI office on that masjid, that he does not perform namaj in the masjid of shias, etc., and the remaining questions were about different sects of the muslims offering namaj in specific masjids, etc., which to mind mind, is not relevant here. It has come as a positive statement that there is a library in the only one room that is on the upper floor which discloses his knowledge and though he expressed his ignorance as to whether there was no SIMI office at the first floor in that masjid he denied the suggestion that he did not attend any lectures in that room. At the end of his cross-examination he denied that he is under the pressure of the ATS and was under the pressure even in 2006 when they had come to the house, that he and his family members apprehended that he would be implicated in the false case and he deposed falsely as tutored by the ATS. Surprisingly, though there was no effort by the learned SPP to connect the name Asif Khan that he told in his chief-examination to the A13, learned advocate Wahab Khan took upon himself to clarify this aspect and the honesty of the witness is clear when the A13 was asked to stand up and the witness was asked whether he was shown to him in the Kalachowki office about which he stated that he does not remember, but frankly admitted that A13 is not Asif Khan of Pune. I failed to understand why this exercise was undertaken by the learned advocate.

1113. During his arguments, learned advocate Shetty for the A3 pointed out to the improvements made by the witness and some of

the admissions given by him, which I have already discussed and his major submissions are in respect of seizure of the Saudi Riyals from him. Same can be said about the submissions of the learned advocate Wahab Khan and one of the submission made by him is that the witness has admitted that all the meetings in the masjid were before the ban. I think this is ignoring the evidence of the witness that at that time, i.e., during the riots in Pune in 2001, some persons of SIMI used to say that it will not be sufficient only to talk but they should take some training. To my mind, the evidence of Abdul Dawrey, PW-71, will have to be accepted to the limited extent of A3 and A10 and wanted accused no. 2 Rizwan as well as wanted accused no. 3 Rahil taking part in the activities of SIMI.

1114. The fifth and the last witness is Amar Khan, PW-75, and his evidence has been considered threadbare alongwith his cross-examination and extensive submissions by learned advocates for all the accused and the learned SPP and it has been held that his evidence is a cogent evidence. His evidence about A8 being a SIMI activist, taking part in the programs and the activities of SIMI and meeting the A2, A4 and A6 in the said programs which he had also attended and identifying them in the court unhesitatingly is an unchallenged evidence. His further evidence about there being aggressive and provocative speeches about jihad being made at SIMI programs and the jihad that they were talking about being in respect of atrocities committed on Muslims, is held to be a good evidence. He, A8 and two more being caught by Park Site Police Station in 2001 on the allegation that they are activists of SIMI and his further

evidence that at that time the A8 told the police that it is only he who does the work of SIMI and all others do not have any concern with it, is held to be an uncontroverted evidence which has been confirmed by him in cross-examination. Thus, to my mind, there is no point in going through the rigmarole of reassessing his evidence on that point. It will therefore have to be held that by his cogent evidence the prosecution has proved that the A2, A4, A6 and A8 were activists of SIMI.

1115. The cumulative effect of the findings in respect of the three types of evidences led by the prosecution, viz., finding of books connected with SIMI, previous cases and the oral evidence of some witnesses is that the prosecution has succeeded in proving that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 were either members of and were either activists or office bearers of SIMI organisation and continued to work for the said organisation even after the ban on SIMI in 2001. **This is the circumstance no. 40 proved by the prosecution. It is against the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13. It is the eighth circumstance against the A2. It is the seventeenth circumstance against the A3. It is the fourth circumstance against the A4. It is the fourth circumstance against the A6. It is the second circumstance against the A7. It is the first circumstance against the A8. It is the ninth circumstance against the A9. It is the fifth circumstance against the A10. It is the fourth circumstance against the A11 and it is the fifth circumstance against the A13.**

1116. The investigating officers Sr. PI Rathod, PW-176, and ACP

Khandekar, PW-174, and ACP Patil, PW-186, have been cross-examined on the aspect as to whether they have gone through the alleged SIMI literature and ACP Patil, PW-186, was asked whether he had gone to the SIMI office at Delhi and obtained the list of members and about he attending the SIMI tribunal, etc., but all that cross-examination does not affect the above discussed evidence.

Identification of an unclaimed dead body as that of a Pakistani National :-

1117. It has come in the evidence of Sr. PI Rathod, PW-176, that a dead body in the Matunga blast was unclaimed, which consisted of only chest and head portion, but the face was torn and disfigured. It has come in his evidence that he requested the Dean of the Sion Hospital by his letter, office copy of which is at Ext. 1172, to reconstruct the face of that person and also requested to preserve the tissue parts of dead body for DNA test. It has come in his evidence that the doctors there reconstructed the face of that person, gave a CD to him, which he handed over to Addl. CP, ATS, to send it to the CFSL, Chandigarh for verification and the covering letter Ext. 1927 and the examination report Ext. 1928 was received from the CFSL. Insofar as he making the said request, the only thing that has come in his cross-examination that he had read all the statements of the witnesses in C. R. No. 77 of 2006 before he made the request to the Dean of Sion Hospital and his evidence about it is not denied though there is a dispute in respect of his contention about the unclaimed dead body in that blast, to which we will presently come. It has come in his cross-examination that the report of

reconstruction of the face was received in August, 2006, but he had not seen the CD of the reconstructed face, did not get it printed and circulated as he had seen the reconstructed face in the hospital after 20/07/06, therefore, there was no question of seeing the photographs of that face. He expressed the possibility that the photograph of the face may have been circulated to the media.

1118. The contents of the FSL report Ext. 1930 (2 pages) containing the DNA profile of the tissues/parts of the said dead body that were sent to the FSL are not material to come to any conclusion. It has come in the evidence of Sr. PI Rathod, PW-176, that it was revealed in the investigation that the dead body was of a Pakistani national by name Salim, therefore, he sent letter to the medical officer of Sion Hospital to write his name in the memorandum of *post-mortem* and death certificate. He proved the contents of the office copy of the letter Ext. 1173 and it has come in the evidence of Dr. Ghuge, PW-112, that the dead body in the memorandum of *post-mortem* examination Ext.1165 was initially not identified, hence, it was written as unknown, however, after receiving a letter subsequently from the ATS on 10/10/06 informing him that that person's name as Salim, he made a correction in the memorandum of *post-mortem* examination and in the cause of death certificate under his signature. He obviously committed a mistake while stating about the date of receipt of the letter which is Ext. 1173. It has come in his evidence that he as well as one Dr. Sapna, his junior, had conducted the *post-mortems* on 15 bodies of the persons, who had died in the train blast at Mahim and other blasts, on 12/07/06 and 13/07/06

and he is a lecturer in Forensic Medicine in L. T. M. G. Hospital at Sion and he produced and proved the contents of the memorandums of the *post-mortem* examination and death certificates Exts. 1139 to 1170 stating that they bear his names, some of them bear his signatures and some bear the signatures of Dr. Sapna, but all the certificates about cause of death bear his signature. It has come in his cross-examination that the memorandum of *post-mortem* examination Ext. 1165 is in his handwriting, that Ext. 1166 is in the handwriting of Dr. Sapna, which is a carbon copy, original going with the disposal of the body and that it was prepared on 13/07/06, which he says on the basis of the date and time mentioned in the column of the date and time of the *post-mortem* examination. Though, he had not stated about making the endorsement on the top left corner of Ext. 1165 in his chief-examination, it was brought out in his cross-examination that the said endorsement is in his handwriting and under his signature and it was roughly made after 10/10/06. He corroborated the evidence of Sr. PI Rathod, PW-176, that the body was half upper portion, with 1/3rd of the chest, front portion of the face and neck as described in paragraph 17 of the memorandum and in respect of inconsistency in the contents of Exts. 1165 and 1166 he answered that he does not remember whether Dr. Sapna wrote the word 'Hindu' in Ext. 1166 or he suggested it to her and admitted that it is not mentioned in Ext. 1165. He was shown a copy of Ext. 1165, which is in the chargesheet and which was marked as Ext. 1171, and he admitted that the endorsement made in Ext. 1165 is not found in Ext. 1171. It may be that the photocopy

of the memorandum was taken out by the police and as per his evidence the endorsement on Ext. 1165 was made sometime after 10/10/06. Thus, this is of no consequence. All this is during the cross-examination by learned advocate Shetty and though he admitted that he cannot say on what basis he identified the body as of a Hindu, he denied the suggestion that he is deposing falsely to oblige the police, which suggestion to my mind is baseless. Same is the case about the suggestion at the end of his cross-examination by learned advocate Wahab Khan that the endorsement on Ext.1165 was made just before entering the witness box to help the police, which to my mind, is wrong as the correspondence made by Sr. PI Rathod, PW-176, is of October, 2006. During the cross-examination by learned advocate Wahab Khan the letter Ext. 1172 was received in evidence and he admitted that it is addressed to the Dean and further stated that it was in connection with body no. 31, which is obviously wrong, because the contents of Ext. 1172 show the body no. 41 kept at the Sion mortuary. Of course, there was no submission about it. During his cross-examination by learned advocate Rasal the letter Ext. 1173 sent by Sr. PI Rathod, PW-176, was shown to him and received in evidence and the endorsement of receiving it in his hospital was pointed out to him and he admitted that the endorsement shows that the letter was received on 16/10/06. If one peruses the endorsement, it is a carbon print, because the endorsement may have been made on the original Ext. 1173 and as it is a carbon print it is light and it is, therefore, that Dr. Ghuge, PW-112, may have stated that he received the letter on 10/10/06.

However, his clarification about the date covers up everything. In respect of identification of religion of the dead body, he admitted that in some cases they can identify whether the person is Hindu or Muslim and he identified the person as a Hindu at the initial stage. This is inconsequential and he made a positive statement that no police officer personally met him in connection with the endorsement in the left hand corner of Ext. 1165. It has come in his evidence that he made that endorsement on the basis of the correction made by Dr. Sapna in the cause of death certificate. His evidence is corroborated by the original cause of death certificate Ext. 2556 that was produced by Dr. Santosh Krishnarao Revankar, (PW-188), (Ext. 2555), Dy. Executive Health Officer, Public Health Department, Municipal Corporation of Greater Mumbai. It was not produced by the prosecution or Dr. Ghuge, PW-112, as it had gone with the dead body at the time of disposal, therefore, he was not cross-examined about it, but Dr. Revankar, PW-188, was cross-examined about the corrections made therein. The fact remains that the contents of Ext. 2556 show that it is the original of Ext. 1166, except that the words 'unknown' and 'Hindu' is struck off and the name 'Salim' and 'Muslim' are written and they are initialed and there is a rubber stamp of the said medical college, same as the rubber stamp at the bottom, which is also at the bottom of Ext. 1166. There is an endorsement at the left hand corner that the name is corrected on 16/10/06 as per O. No. O/3068/ACP/ATS/06 which is the letter Ext. 1173. It has come in the evidence of Dr. Ghuge, PW-112, that Dr. Sapna is not in service and he does not know

whether she is available or not. Thus, by his evidence the correction that was made in the original cause of death certificate Ext. 2556 and the correction that he made under his own handwriting in the memorandum of *post-mortem* examination Ext. 1165, as per the letter Ext. 1173 given by Sr. PI Rathod, PW-176, is proved by the prosecution.

1119. As mentioned above, Dr. Revankar, PW-188, produced the cause of death certificate Ext. 2556 as per the summons and he had brought the original record pertaining to a male dead body, whose date of death is 11/07/06 and was bearing *post-mortem* no. FM/786/06 of Sion *post-mortem* center and he also produced the no-objection certificate Ext. 2557 and photocopy of letter dtd.15/10/06 bearing outward no. 3068 from PI, ATS, Art. 395, which is the same as Ext. 1173. He also produced the death report Ext. 2558 which is an official record required to be maintained officially and prepared at the time of actual disposal of the body. All the details including the ADR no. 457/06 and *post-mortem* number and name of deceased as Salim, date of death as 11/07/06, name and address of informant as HC Marbhal, HC-1793 of MCT Railway Police Station are found in the said death report. It has come in his evidence that he described the procedure about the registration of the death and stated that death registration no. 4803 is given in the crematorium and after all these documents are received, they are registered at the local ward office and the registration number is given, which in this case is 3853 registered on 06/11/06. Learned SPP asked him to go through Ext. 1166 and he stated that it is the carbon copy of Ext. 2556

except the correction of words 'unknown' and 'Hindu' and also described the remark in the left hand bottom corner about the correction being made on 16/10/06 as per the letter outward no. 3068/ACP/ATS/06. It has come during his cross-examination by learned advocate Shetty that the papers are received for registration after the *post-mortems*, that he saw all these documents for the first time two days back and he does not have any personal knowledge about the dead body and the documents that he produced. One thing is certain that the custody of the documents Exts. 2556 to 2558 produced by him cannot be disputed, he being the Dy. Executive Health Officer in the Public Health Department of MCGM and therefore whatever evidence he gave is on the basis of his official record. Now, in respect of the corrections made in Ext. 2556, he admitted that date is not put below the corrections in the name and religion, but denied that there are no initials where the word 'Hindu' is scored off and the word 'Muslim' is written and could not say whether the initials near the scored off word 'unknown' is different from the signature of the medical officer at the bottom of the certificate, etc. I do not think anything can be inferred from this in view of scoring of the word 'Hindu' and writing the word 'Muslim' being initialed by none other than Dr. Sapna, who had issued it, because her signature there and at the end of the certificate is obviously same. It is a signature and not an initial and it is quite obvious that above the struck off 'unknown' she had made initials. It is obvious from the remark at the left hand bottom corner that the correction was made on 16/10/06. Thus, Dr. Revankar, PW-188,

expressing his lack of knowledge as to who made corrections in the words and in whose handwriting the remark is, is of no consequence. It has come in his cross-examination further that the death certificate is from 'C' Ward, Chandanwadi crematorium, but it was registered in the 'F' North Ward, Matunga, though there is a separate office in the 'C' Ward. He does not know the facts of the case, therefore, he admitted that he cannot explain why the registration was made in 'F' North Ward and not in 'C' Ward. To my mind, this is obviously because the dead body was recovered from the blast site at Matunga, which means that the person had died in that blast within the jurisdiction of that Ward and therefore the death was registered in the office of 'F' North Ward, Matunga. There can be no other explanation for this. Nothing is revealed during his cross-examination by learned advocate Wahab Khan except about the death report Ext. 2558 not bearing the signature and name of the registrar to which he explained that it is not there as the registrar can delegate his power. It has also come that the death report is in book form and a sheet is taken out for every dead body and he denied the suggestion that the left portion of the form is kept in the office and the right portion is detached and sent for statistical process. As per the contents of that portion about which he explained that the data is fed in the computer now and earlier it used to be detached and sent it to the statistical department for statistical record that was maintained manually, he denied the suggestion that it was prepared in the year 2012 stating that it was not given to the police earlier. Surprisingly, he was given a

suggestion that the endorsement on the correction on Ext. 2556 is made on 10/10/06, but he made a positive statement that it is made only on 16/10/06. Thus his evidence has not been shaken and it has not in any way raised any doubt about the documents Exts. 2556 to 2558.

1120. Thus, it is proved by the prosecution by the evidence of Sr. PI Rathod, PW-176, Dr. Ghuge, PW-112, and Dr. Revankar, PW-188, and the documents produced by them, that the corrections in the cause of death certificate Ext. 2556 and in the memorandum of *post-mortem* examination Ext. 1165 from 'unknown' to 'Salim' and from 'Hindu' to 'Muslim' was made on 16/10/06.

1121. It has come in the evidence of Sr. PI Rathod, PW-176, that he gave a letter, office copy of which is at Ext. 1695 to the Dean of the Sion Hospital for handing over the dead body for funeral to HC Jadhav and HC Marbhal, PW-159, and he proved its contents. It has also come in his evidence that he gave a letter, office copy of which is at Ext.1696, contents of which he proved, to the medical officer, incharge of the *post-mortem* center for handing over the said body to HC Marbhal, PW-159, and it has come further in his evidence that he had directed HC Marbhal, PW-159, to dispose off the body as per Muslim religious rites, which he did and accordingly disposed off the body, gave an oral report and made station diary entry, certified true copies of which are at Ext. 1698. HC Marbhal, PW-159, corroborated his version by stating that Sr. PI Rathod, PW-176, had ordered him to bury the said body on behalf of the government and had given him two letters mentioned above. It has come in his evidence that he

went to Sion Hospital on 16/10/06 alongwith HC Jadhav, handed over the letters to the Dean's office and to the medical officer incharge and the latter told him that he cannot give the body in his custody as he is head constable, therefore, he informed on phone to Sr. PI Rathod, PW-176, to send some officer and accordingly PSI Khsirsagar was sent and he signed on the register in the *post-mortem* center about taking the body in possession. His evidence upto this stage is unchallenged. His further evidence is that the medical officer gave cause of death certificate is brought on record as an improvement, but it does not affect his evidence as who else than the medical officer will issue the cause of death certificate. It has come in his evidence that they put the body in the hearth vehicle and took it to Chandanwadi kabrastan. Only the word 'kabrastan' is brought on record as an improvement, which to my mind, is inconsequential in view of what has come in his cross-examination that there are two places there, one Chandanwadi smashanbhumhi for Hindus and the other Chandanwadi kabrastan for Muslims, that they have separate entrance and though the death registration clerk is one, but the staff in both are different. It has come in his evidence that they showed the memo about the order of disposal of the body and cause of death certificate to the clerk in the registration office and obtained the acknowledgment on the office copy of the receipt Ext. 1697, which Sr. PI Rathod, PW-176, had given to them, from the incharge of burial ground (kabrastan). The contents of Ext. 1697 show the name of HC Marbhal and his buckle number and the name of the dead body and at the end of the page there is a signature in

Urdu above the date 16/10/06, which is above the rubber stamp of Rajay Charities, Mumbai and the receipt is dtd. 16/10/06. His evidence and the contents of the said receipt prove that he had handed over the dead body of Salim, resident of Lahore, Pakistan to the incharge of burial ground (kabrastan) at Chandawadi.

1122. His evidence that the clerk made the entires and the staff in the Kabrastan dug a pit and buried the body there is brought on record as an improvement, but then who would have done these things than those two officers. Therefore, it is inconsequential. He proved the contents of the station diary entry no. 7, certified true copy of which is at Ext. 1698, to be in his handwriting, which he had done while leaving for the work and the contents of the station diary entry no. 10 that was made after his return. During his cross-examination by learned advocate Wahab Khan a portion from his statement Ext. 2004 was proved as a contradiction in which he had stated that the ADR number as 285/06 and his explanation about it clears the confusion, because he explained that it is so written initially as it was registered under an ADR and then it is converted into a crime and when he gave a statement he gave this number as he did not know the CR number. If one sees the other documents in this connection, Ext. 1696 shows ADR no. 285/06, but Ext. 1165 shows ADR no. 457/06 and even Exts. 1166 and 2556 show the same number but the no objection certificate also mentions ADR no. 285/06 and the death report Ext. 2558 mentions both numbers. Thus, this is clarified by him as well as borne out from the documents. He was shown the carbon copy of the death certificate

Ext. 1166 and he correctly stated that it is not the copy of the cause of death certificate, because the original cause of death certificate containing the corrections, i.e., Ext.2556, had gone along with the disposal of the dead body. A positive statement was made by him that the certificate given by PSI Kshirsagar to him mentioned the religion as Muslim after cancelling the word Hindu, but the cancellation was not done in his presence or after the certificate was given to him. Now his experience in doing this type of work is brought on record and it has shown that he has gone to the said crematorium many times, i.e., 20-25 times, and to the kabrastan for 4-5 times and that Hindus are cremated in the smashanbhumi and Muslims are buried in the kabrastan. His further cross-examination about the procedure of burying Muslim bodies has revealed his ignorance about the procedure and he admitted that even then he reported that the body was buried in Chandawadi smashanbhumi as per Muslim rites and customs. To my mind, it is not for such type of witness/person, who is only a carrier of dead bodies from *post-mortem* centers to the crematorium, to know about the exact religious procedure and as it has come in his evidence that the staff in the kabrastan dug a pit and buried the body there, that is sufficient for him to have reported accordingly. He was then cross-examined about whether he got any receipt from the kabrastan incharge, whether an entry was made when he took the body, whether he spent any money for purchase of any article before going for the burial, etc. All that is irrelevant and he clearly stated that the office bearers do not issue receipt about cremation or burial of the

body. He does not know whether the body was of Hindu and he did not see the body as it was wrapped in cloth and he took it in his custody in the same condition and no part of the body was visible and he did not make any effort to remove the cloth and see the body. To my mind, this was totally unnecessary for him to do as he had the cause of death certificate Ext. 2556 and the no objection certificate Ext. 2557 with him and his job was only to reach the body there. Thus, his cross-examination has not discredited his version about taking the dead body no. 41 bearing the name Salim to the Chandanwadi kabrastan where it was buried as per Muslim rites. The contents of the station diary entry no. 10 in Ext.1698 corroborate his version.

1123. Sr. PI Rathod, PW-176, was cross-examined extensively on this aspect. It will be appropriate if the submissions of both parties in respect of his evidence as well as evidence of Dr. Ghuge, PW-112, Dr. Revankar, PW-188, and HC Marbhal, PW-159, are considered rather than doing the exercise of interpreting the answers in his cross-examination. Learned advocate Shetty submitted that though the correction in the name and religion was made in the memorandum of *post-mortem* examination Ext. 1165, it is not reflected in the cause of death certificate Ext. 1166 and for that purpose he pointed out to the answers given by Dr. Ghuge, PW-112, in his cross-examination. I have already considered this issue and have held that Ext. 2556 is the original cause of death certificate that went with the dead body at the time of disposal as per Dr. Revankar, PW-188, and it is in it that the corrections were made and

Ext. 1166 is the carbon copy of that certificate as it originally stood. Hence, submissions of the learned advocate that this material shows how things were manipulated by the investigating machinery to fit the accused in the present crime is not acceptable. He submits that till 10/10/06 the body was of a Hindu and then it was converted to a Muslim, the photos of reconstructed face were shown to the witnesses, but none could identify him and therefore the evidence is manipulated to fix the accused in the crime and accordingly Subhash Nagarsekar, PW-57, was made to depose in that angle though he gave a vague description of two persons only. It has come in the cross-examination of Sr. PI Rathod, PW-176, that he came to know that the body is of a Muslim when ACP Patil, PW-186, told him on 14th or 15/10/06 to write to the hospital to add the name. I have already held that the evidence given by Subhash Nagarsekar, PW-57, is a cogent and acceptable evidence. Hence, this submission by the learned advocate is not acceptable. In respect of his submission that maximum corrections are made by Dr. Sapna and she is not examined, I have already mentioned the answer given by Dr. Ghuge, PW-112, that she is not in service and he does not know whether she is available or not. It does not make any difference because his evidence that he and Dr. Sapna performed the *post-mortem* examinations and his name being in the memorandums is sufficient proof of his evidence about she issuing the death certificate and moreover it has not been challenged. Learned advocate submits that Dr. Ghuge, PW-112, clearly says that he made the endorsement in the top left corner of Ext. 1165 roughly after 10/10/06 and it is his

submission that this is a clear case of manipulating the record without having any sufficient material. To my mind, Dr. Ghuge, PW-112, acted upon the letter Ext. 1173 given by Sr. PI Rathod, PW-176, and it is not that on his own he has done the corrections. Obviously, the body was of a person who had died in the train bomb blast and it was the subject matter of inquiry of ADR no. 457/06. Thus this submission is not acceptable and medical officers will not go to the extent of concocting such type of material.

1124. In respect of evidence of Dr. Revankar, PW-188, learned advocate submits that in July, 2006 he was attached to Ghatkopar 'N' Ward so basically he does not have any personal knowledge of this particular case and he could not say who made the corrections in Ext. 2556. It is very much obvious that this witness does not have any personal knowledge, but there can be no dispute about the documents coming from his custody and moreover they are official documents maintained in the office of a Semi Government. His evidence is clear and to my mind there can be no challenge about it. Learned advocate next questions as to whether HC Marbhal, PW-159, was in a position to identify the dead body? To my mind, there is no question of this because he was just acting on instructions of his superiors. Same can be said about his submission that this witness had not seen the body and how can he say that it is of a Muslim merely because Sr. PI Rathod, PW-176, says so. This aspect has also been covered earlier that Sr. PI Rathod, PW-176, was informed by ACP Patil, PW-186, and then wrote the letter Ext. 1173. Lastly, learned advocate submits that it cannot be imagined, forget

about proof that the body is of so called Salim, a Pakistani national and through him prosecution cannot establish the link between the blasts and Pakistani terrorist organisation. The question here is whether in the documents pertaining to the unidentified dead body, the body was given an identification and a religion or not and this has been clearly established by the evidence of four witnesses.

1125. Learned advocate Wahab Khan submitted that a very novel practice has been adopted by Sr. PI Rathod, PW-176, and other officers to introduce a dead body in this case and to say that it is of a terrorist, who died in the bomb blast. I will deal with this aspect later on. He submits that reconstruction of the face was done, but it has not been identified by anybody, either the witness Mohd. Alam, PW-59, who stated that it was the body of Abu Umed or in the evidence of taxi driver. This is not the case of the prosecution and as per the A1's confession, the prosecution is saying that it is the dead body of one Salim and in that case the photograph of reconstructed face should have been shown to the witnesses in the witness box. Therefore, identity of both deceased is not established. To my mind, no such inference can be drawn and because it was necessary for the investigating officer to first establish the identity of reconstructed face of the dead body, and to my mind, a reconstructed face may not be exactly identical to the face of a living person. Therefore, no useful purpose would have been served by showing the photograph to the witnesses examined in the court.

1126. Learned advocate submits that the dead body was not of Salim, but was of a person for whom claimants had come, but there

is no evidence about the claimants. In this respect, it has come in the cross-examination of Sr. PI Rathod, PW-176, that statements of two witnesses were recorded in the second week of July, 2006 in connection with the unknown and unclaimed dead body, that they were two parties who were claiming the body, however, later on they said that it is not the dead body of their relative and they made this disclaimer two-three days after their statement. Sr. PI Rathod, PW-176, did not state about this in his chief-examination and all these things have come as positive statements in his cross-examination. He was asked to go through the case diary and tell the names of claimants and he told the names of two claimants and the dates on which their statements were recorded and he stated that they were Chandansingh Pyarelal Banjara, occupation imitation jewelry in front of VT station and Sureshsingh Atharsingh Rajawal, watchman in ICICI bank, but as per the case diary their statements are not seen to be recorded, but only inquiry was made with them on 17/07/06. It has further come in his cross-examination that the said two persons disclaimed on 18/07/06, but their statements were not recorded and denied a suggestion that he removed their statements from the record and prepared false case diary. He positively stated that these two had claimed the dead body and disclaimed it in his presence and gave a very proper explanation that he did not record their statements, as when they claimed the dead body, he told them to bring the record to identify it. He had to admit that the body was sent for reconstruction of face as two parties were claiming it as per the contents of his letter Ext. 1172 and till the

time they disclaimed it the face had not been reconstructed. Now he again stated that the two persons had not come before him personally for disclaiming the body, but the ASI at Sion Hospital informed him about it that the first party had told him that on inquiring with his brother, he said that it was not the dead body of his relative and the second party said that the person whom he thought was dead, was in fact alive. Now, he admitted that he did not record the statement of the ASI, but explained that the information given by the ASI was not important as no claim was made and same can be said about recording of the statement or complaint of the two persons, because he explained that as they were told to bring the record for identification, he did not do so. It has further come in his cross-examination that the two persons had come with missing complaint, therefore, they were sent with a constable to identify the dead body and at that time they did not disclaim it, quite naturally because it is only on the next day, i.e., on 18/07/06 that they disclaimed it for the reasons mentioned above. At the end he made a positive statement that he has mentioned in the case diary about the claim made by the two parties and they disclaiming it later on. This positive evidence has not been challenged. Thus, the submission of the learned advocate in this respect are not acceptable.

1127. A strange submission was made by the learned advocate that there will be a difference in the appearance of the person who had died in an encounter and a person who had died in a bomb blast and a person who is born in a metropolitan city like Mumbai will not

be confused between these two and will not be confused about identity and if at all there is some confusion, it can be ruled out by showing their photographs. I am not able to follow the line of this submission which is made as is made by a layman based on a presumption that every person in metropolitan city is intelligent enough to know the difference between two types of injuries. His submission that how Sr. PI Rathod, PW-176, can only make oral inquiry and say that later on the claimants disclaimed the dead body is also not acceptable in view of Sr. PI Rathod, PW-176, explaining that he did not do so as there was no claim.

1128. The next submission by the learned advocate is that considering the circumstances that witness who are cited and examined by the prosecution are not identifying the body and the prosecution is trying to establish his identity only on the basis of the confessions itself suggest that this body is introduced and planted in this case to give weightage to the case. To my mind, this submission is showing the probable source of the information on the basis of which ACP Patil, PW-186, directed Sr. PI Rathod, PW-176, to write the name of the said person in the documents in respect of the unclaimed dead body. Thus, from this alone it cannot be said that this body is introduced and planted. Learned advocate submits that first Sr. PI Rathod, PW-176, stated that the statements of the two claimants were recorded and he had taken them, but subsequently he stated that they were not recorded, but only inquiry was made and this shows that there is suppression and tampering of record and supports the claim of the defence that there were two claimants

whose statements were recorded and then it was decided to introduce one dead body as that of one wanted accused. To my mind, learned advocate should have not gone further after obtaining these answers from Sr. PI Rathod, PW-176, that he had taken the statements of two claimants which were of second week of July, 2006. However, he did not stop and he asked the witness to go through the case diary and it is then that Sr. PI Rathod, PW-176, stated that only inquiry was made with them on 17/07/06 and that they disclaimed it on 18/07/06 as per the case diary, therefore, their statements were not recorded. This submission is, therefore, of no use to discredit his evidence.

1129. Learned advocate then again made a strange submission that the confessional statement of the A3 names the pair of A13 and Salim and not the A1 and Salim and therefore this evidence is not reliable. At the cost of repetition I have to say that the defence should admit the contents of the confessional statement as being proved before making such a submission. The confessional statement is given by an accused whereas the evidence that has come in respect of this issue and in respect of the A1 has been held to be a cogent and convincing evidence. Learned advocate further submits that finding of unclaimed dead body in a city like Mumbai is very common and has submitted that when there were two claimants, in all fairness, the investigating officer should have conducted DNA test and compared them with the DNA of the deceased. This submission can be answered simply, that this dead body was found at the site of the bomb blast and out of 187 persons,

who had died, this is the only unclaimed body to claim which nobody had come forward. It was not a body that was found on a road or railway track, etc., and the findings in the memorandum of the *post-mortem* examination Ext. 1165 show that there were injuries because of bomb explosion. Secondly, in view of the explanations given by Sr. PI Rathod, PW-176, that too in his cross-examination, that the two persons disclaimed on the next day, there was no reason for doing their DNA test for comparing it with the DNA report of the deceased. Learned advocate alleges that all these circumstances show that the body, which was unclaimed, was claimed by some class IV person, but they were advised to run away and not to claim. This is obviously a baseless submission. The reasons for which will be clear subsequently.

1130. Learned SPP submitted during his arguments that ACP Patil, PW-186, got the information about the name of the unclaimed body from the confessional statement of the A1 recorded on 05/10/06 and of the A3 recorded on 06/10/06 and in his confessional statement the A1 has given the names of four persons including Salim. Thus, the evidence given by the prosecution is corroborating the confessional statements given by the accused. This is exactly the story of the prosecution in respect of one body remaining unclaimed. He pointed out to another cause of death certificate, i.e., Ext. 1162, and submitted that this is another case in which name of the body was put later on and the religion was changed from Hindu to Christian. Perusal of Ext. 1162 shows that it is in respect of *post-mortem* no. FM/785/06 in respect of an

unknown body whose religion was shown as Hindu. It clearly appears that this is a carbon copy of the original cause of death certificate that may have gone with the body when it might have been handed over to the relatives of that person. It is seen to be signed by Dr. Sapna and her signature similarly appears as a carbon copy just above the word Hindu which is struck off. Here the corrections are made in blue ink and the name of one Joseph Robert Naron and his address in detail is written. His religion is changed from Hindu to Christian. Thus this shows that the case of the unknown body that was later on identified as that of one Salim of Pakistan is not a sole case and there may have several such cases considering the fact that the bodies were having marks of injuries of bomb blast and some may have been even unidentified initially, but would have had been identified specifically by their relatives after due inquiry by the police.

To my mind, Sr. PI Rathod, PW-176, took steps for the identification of the unclaimed dead body as early as on 19/07/06 by sending it for reconstruction to the Dean of the Sion Hospital. Can it be inferred from this that the ATS put into action their game plan or master plan or their conspiracy from that day itself, which they must have prepared prior to that date, when till that date no accused had been arrested? Was the dead body or its parts preserved as a part of the plan or conspiracy with the intention of foisting it on these accused or naming it as that of the Pakistani who had been involved in planting of bomb in one of the trains? As far as the dead bodies are concerned, I do not think that the police are happy to

keep an unidentified dead body on their hands, because they have to make arrangements for preserving it or disposing it off. They must be relieved to find claimants and to hand over the dead bodies to them. This theory does not therefore appeal to the reason. Another reason for not accepting this theory is that when out of 187 deceased, relatives of 186 had come forward to claim the bodies of their kith and kin, why not for this dead body? People of all faiths and religions make all efforts to obtain the dead bodies of their kith and kin at whatsoever cost for performing the funeral and post funeral rites. So why did no one came forward for this body?

1131. Performing of funeral and post funeral rites of their family members is very important and significant and close to the hearts of the kith and kin and relatives of the dead persons of whatsoever religion he or she may belong. It is therefore that bodies of soldiers are flown from hundreds and thousands of miles from wherever they are and reached to their kith and kin and relatives for the purpose of performing their funeral and post-funeral rites. Government of all countries across the world make all out efforts to make arrangements for the transportation of the dead bodies of soldiers at government expenses. Dead bodies of not even soldiers but even of common citizens of countries are similarly brought by the government if they are involved in any mishap anywhere in the country far away from their native place or even outside the country.

1132. Another and very important aspect is that when the claimants of the dead bodies of 186 out of 187 dead persons had come forward and identified the dead bodies of their family

members and relatives, had taken the dead bodies for performing the funeral and post funeral rites and had also taken amount of compensation that was offered and given by the Railways and government, it does not appear probable that kith and kin and relatives of the said unidentified dead body would not make all possible efforts to establish their connection with such dead body and to identify it at any cost.

1133. How can it be imagined that the investigating machinery will keep a dead body or whatever remaining parts of the dead body as it is for so long, i.e., upto October, 06, when the process of identifying the person had started as early as on 19/07/06? Can it be said that the police are so devious or have such devious minds to concoct such a theory only to be able to foist the dead body on the accused or to name/identify it as that of a particular person of Pakistani national. The only obvious inference that can be drawn from the action of the police or the ATS of identifying the dead body after such a long period is that it must have been revealed in the subsequent investigation or interrogation of the accused. It does not appear probable that this was the only body that was difficult to identify. This is because the description of the dead bodies in the memorandum of the *post-mortem* examinations shows that most of them were badly mutilated. Even the trunks of some bodies were trisected in between, the hands and legs had been severed and the heads had been cut. It is also in the memorandums of the *post-mortem* examinations that many parts of many bodies were burnt and charred. I am sure that strenuous efforts must have been made

by the kith and kin or relatives of the dead persons as well as by the police for identifying such bodies and to get them back for performing the funeral rites. It does not appear probable that if really there existed some kith and kin or relatives of the said unidentified dead body, they would not have made such efforts. It also does not appear probable that such family members of the said unidentified dead body would be content with the findings of the police officers that they have failed to establish the identity of the said dead body and their claim to it. They would certainly have agitated the matter before the higher ups in the police and the ATS or this court or in the High Court, particularly when two different persons, who are named by Sr. PI Rathod, PW-176, had come forward and staked their claims to the said body. If the identification of the said dead body is disputed by the defence why it did not make efforts to call the said two claimants and examine them as defence witness? If those persons would have come and given the evidence, they would have been able to show their relation and connection with the dead body and it would have automatically disproved the claim and story of the prosecution that it was the dead body of a Pakistani national by name Salim. The efforts that were made by the police officers for identifying the deceased are borne out by the evidence of Dy. SP Raskar, PW-139. It has come in his evidence that on 14/07/06 one Mithun Jitendra Gandhi came to the police station and requested to show the seized articles so that he could locate his father who had gone missing after the incident and that he had lodged a missing complaint at Azad Nagar Police Station and had

searched for his father amongst the deceased at Mumbai Central and Bandra Railway Police Station. He was shown the articles and he identified a photograph, a railway pass and other documents as belonging to his father and confirmed that his father travelled upto Jogeshwari and was amongst the injured or deceased, but the name of his father did not figure in the list of the injured or the 28 deceased persons. Therefore, Dy. SP Raskar, PW-139, appointed a team of ASI Ghuge and staff to search for his father as per the description that he had given. It has come in his evidence that PSI Ghuge and his team produced a man by name Sagar Vyapari and a woman by name Sangeeta Vyapari, residents of Manji Pada, Dist. Thane on 17/07/06 and gave report alleging that they had taken the body of Jitendra Darjibhai Gandhi (father of Mithun Jitendra Gandhi, who had come to the police station on 14/07/06 in search of his father) of Kandivali from Cooper Hospital on the pretext that it was the dead body of Sunil Vyapari, Sagar's father and Sangeeta's husband and had cremated the body at Oshiwara and had taken compensation of Re. 1,00,000/- from the State Government. Dy. SP Raskar, PW-139, sent the complaint with the two accused to Juhu Police Station as the crime had been committed within its jurisdiction. Crime No. 240/06 was registered at Juhu Police Station for the offences under sections 419 and 420 read with 34 of the IPC. The *post-mortem* report alongwith the inquest panchanama Ext. 2668 shows that the name of Sunil Thakur Vyapari has been encircled and the name of Jitendra Darjibhai Gandhi is written by the side. The prosecution has produced several documents in all the

seven crimes and in the documents of C. R. No. 41 of 2006 of Andheri Railway Police Station, they produced certified true copy issued by Sr. PI of Juhu Police Station of the FIR as well as the complaint lodged by one PSI Dilip Kachru Ghuge. As they are certified true copies, they are received in evidence at the time of the judgement and marked as Exts. 4796 and 4797. The contents of the complaint lodged by PSI Ghuge disclose the story of the cheating done by Sunil Vyapari and Sangeeta Vyapari for which crime no. 240/06 was registered against them as per the contents of the FIR Ext. 4796 for the offences under sections 419, 420, 201, 205, 181 and 114 of the IPC. These documents corroborate the evidence of Dy. SP Raskar, PW-139.

1134. The purpose of mentioning these *prima facie* innocuous acts is to show that such things had also happened in respect of some other dead bodies. Same could have happened about the unidentified dead body that was later on identified as that of Salim, a Pakistani National. Either the real claimants, i.e., the kith and keen of the said body would have come forward to claim it and to enable them to perform the funeral and *post-funeral* rights, or, some fictitious persons like Sunil Vyapari and Sangeeta Vyapari would have come forward and made a false claim to get compensation from the government and railways. This lends credence to the evidence given by Sr. PI Rathod, PW-176, in respect of the two rival claimants who had come for claiming the said dead body and whose claims were not found to be genuine or withdrawn by them. In view of the above discussion, it is clear that prosecution has led cogent

evidence and proved that an unidentified dead body that was found at the site of the Matunga blast was that of Salim, a Pakistani national. This is the circumstance no. 41 proved by the prosecution.

Handwriting of the A3 on seized maps :-

1135. It has come in the evidence of Sr. PI Rathod, PW-176, that it was necessary to examine the maps and the passports that were seized from the accused, therefore, on 06/08/06 in the presence of panchas, he called five packets from the muddemal room, opened them one by one, kept aside the international maps from all the envelopes and the passports and educational certificates of the A9 and passport of the A10 and kept the remaining books and maps in separate envelopes alongwith the original wrappers and then affixed labels containing his and panchas signatures on the separate envelopes. He identified the labels on the envelopes Arts. 45, 153B, 177B, 249A and 253B and his signature there on and deposed about completing the panchanama Ext. 566 and identified his signatures and of the panchas. He also identified the passports of the A9, Art. 178, i.e., Ext. 620 and of the A10, Art. 281, i.e., Ext. 621 and his and panchas signatures on the labels that were pasted on it. He also identified the maps Art. 116, i.e., Ext. 1490, Art. 161, i.e., Ext. 1486, Art. 165, i.e., Ext. 1487 and Art. 250, i.e., Ext. 1488, that were seized from the A2, A3, A9 and A10 respectively. His evidence is corroborated by the evidence of panch witness Prashant Zunjarrao, PW-35, in whose evidence the different packets were opened and he specifically identified the documents, i.e., the articles mentioned

above that were kept aside and he described the procedure adopted by Sr. PI Rathod, PW-176, for opening the packets, taking out the relevant documents and putting them in a separate envelope and rest of the documents being put in separate envelopes alongwith the original envelopes that were opened. He identified the other articles that were found in the packets, their envelopes separately and specifically and also the labels Arts. 45, 153B, 177B, 249A and 253B on the envelopes in which the remaining articles were put and his signatures on them. He also identified his signature on the panchanama Ext. 566. His cross-examination has not revealed anything adverse and major part of his cross-examination by learned advocate Wahab Khan is in respect of his work and occupation and he clearly admitted that no packet was in a lac sealed condition when it was shown to him and no packet was sealed with the lac after the work was over. Such is also not the case of the prosecution and Sr. PI Rathod, PW-176, has also not stated accordingly. It has come in his cross-examination that police had told him that the articles were recovered from the houses of the accused, which question was not really necessary to be asked to this witness. Same can be said about his answer that police did not tell him when and from where the xerox maps were made and where and when and under what circumstances the handwritten matter was written on the maps. He also admitted that police did not prepare separate envelopes of the maps and the passports that were kept aside, which is also not the case of the prosecution and not stated by Sr. PI Rathod, PW-176. He committed a mistake while stating that it was

PSI Kshirsagar, who signed the panchanama, whereas, it is Sr. PI Rathod, PW-176, who had signed it. That does not affect his evidence about the opening of the envelopes, keeping aside the photocopies of the international maps and putting the remaining articles in separate envelopes and the preparation of the panchanama. There is nothing more in his cross-examination to discredit his version. Thus, his evidence corroborates the evidence of Sr. PI Rathod, PW-176, and the contents of the panchanama Ext. 566 corroborate the evidence of both of them.

1136. In this connection, the relevant cross-examination by learned advocate Shetty is in paragraph 168 and it is mainly pertaining to the aspects as to who had called the panchas, from where they were called, within which time they were called and a suggestion was given that known and habitual panchas of Kurla Crime Branch Unit were used for preparing false panchanamas. It was not shown that the panch witness has any criminal antecedents or any prior links with the police. Thus, Sr. PI Rathod, PW-176's evidence is unimpeached.

1137. Thus, it will have to be held that the prosecution has proved that packet containing the documents seized from the A2, A3, A9 and A10 were opened on 06/08/06 and the international maps Art. 116, i.e., Ext. 1490, Art. 161, i.e., Ext. 1486, Art. 165, i.e., Ext. 1487 and Art. 250, i.e., Ext. 1488 and the passports of the A9 and A10 were taken out and remaining articles were again put in new envelopes, packed and labeled under the panchanama Ext. 566.

1138. It has come in the evidence of Sr. PI Rathod, PW-176, that

he obtained the specimen handwritings of the A2, A9, A3, A11 and A10 during the period from 30/07/06 to 04/08/06 and they as well as the five maps on which there was matter in handwriting were forwarded by ACP Tawde on 11/08/06 by a letter, office copy of which is at Ext. 1484, alongwith a questionnaire, office copy of which is at Ext. 1485, to the Add. CP, Crime Branch, CID, Mumbai for onward submission to the handwriting expert for finding out the author of the writings on the maps. There is no challenge to this evidence. In this respect during his cross-examination by learned advocate Wahab Khan he admitted that he did not take the samples of handwriting of the accused before panchas and explained that it is not necessary to do so. In this respect, ACP Patil, PW-186, admitted in his cross-examination that he is governed by the Police Manual and learned advocate Wahab Khan asked him to go through the Rule 165(5)(b) in Chapter -V of the Bombay Police Manual, 1959 Vol-III – Powers and Duties, (8th edition) and admitted that it is mentioned in the bracket that specimen handwritings should be taken before panchas. He explained as per Sr. PI Rathod, PW-176, that as per their practice specimen handwritings are not taken before panchas. This point was agitated by learned advocates for the accused and they submitted that this is not a correct practice and therefore this evidence cannot be relied upon. To my mind, this lacuna or lapse in the investigation can be excused for the simple reason that obtaining specimen handwriting of the accused as deposed by Sr. PI Rathod, PW-176, is not denied by giving him any such suggestion and the accused whose specimen handwriting were

taken have also not disputed the specimen handwriting attributed to them, which are in Exts. 1491 (1 to 45). Even then, I would call it a lapse on the part of the investigating officer, because as a matter of prudence it is necessary that specimen handwritings of the accused are obtained before independent panchas to rule out the possibility of force or undue influence being used on the accused to do so. Not only that Sr. PI Rathod, PW-176, has not referred to the said specimen handwriting and has not identified his signatures on them.

1139. The sheets Exts. 1491 (1 to 45) were received in evidence during the evidence of Jayant Aher, PW-131, who works as a State Examiner of Documents having examined about 2.25 lacs documents and given opinion in respect of 4500 documents approximately. He proved the letter received from the Add. CP, Crime, Ext. 1483, office copy of the letter sent by ACP, ATS, Ext. 1484, and the list of the documents sent with that letter Ext. 1484. It has come in his evidence that he opened the sealed packet and found the five questioned documents, i.e., maps, Arts. 161, 165, 250, 134 and 116 and forty-five specimen sheets Exts. 1491 (1 to 45). He described the procedure how he marked the written portions on the maps, which were given Exts. 1486 to 1490 during his evidence, by marking them as Q-1 to Q-5 in green ink and the bunch of nine papers each of the specimen handwriting of the five accused Ext. 1491 (1 to 45) by marking the red portions marked by the investigating officer in green ink as S-1 to S-45. He described the procedure during his cross-examination as to how he examined the questioned writing and figures in English and writing in Urdu in

questioned documents with the aid of scientific equipments and side by side examined the specimen handwritings and figures and prepared the reasons. The technical aspects about particular words were described by him. After giving his explanation about the number and the nature of similarities and the inference that can be drawn from them, he deposed that he came to the only irresistible conclusion that the questioned writings and figures marked Q-1 to Q-5 (excluding Urdu writings) shows similarities indicating towards the common authorship of the writer of Exs. S-1 to S-9 and he proved the contents of the true photocopy of the reasons Ext. 1492 and the final conclusion Ext. 1493. As stated by him the said Exs. S-1 to S-9 is the specimen handwriting of the A3. Learned SPP tried to get explanations from him in respect of Urdu handwriting on the maps and he stated that it is possible to opine about a document that is in a language which is not known to him, i.e., Urdu, for which they first study alphabetical letters or stroke by stroke examination for this purpose. In respect of Urdu writing on the photocopies of the international maps Exts. 1486 to 1490 he explained that the first line in Urdu that is common in all the five is 'Teheran, Gul Hotel, Meher Hotel, Amir Kadir Road', the words in the second line in Urdu are ' Rizwan phone' and the words in the third line are ' Chim email ID' and the words in the fourth line are 'unka admi naksheme marking bataye raste manjil le jayega'.

1140. In his cross-examination by learned advocate Shetty he expressed his lac of knowledge as to how the specimen handwritings are required to be obtained by the police and whether specimen

handwritings are required to be taken in the presence of the independent panchas by drawing separate panchanama and does not remember whether he has seen the signatures of the panchas on the 2.25 lacs documents that he examined. On the same point, he admitted that there are guidelines for the police officers given in the Police Manual in Vol-III for obtaining specimen handwriting and admitted documents, but he cannot tell about the provision and when asked whether he is in a position to contradict the learned advocate if he says that specimen handwriting are to be taken before the panchas under separate panchanama he answered that he is not concerned about it, but had to admit that none of the specimen handwritings contain the signatures of the panchas. He was then cross-examined about the science of handwriting being a perfect science and he did not agree with the learned advocate that it is not a perfect science, but admitted that there can be an honest error in giving the opinion about a particular handwriting. He was then cross-examined in respect of specific procedure by which characteristics of handwriting are identified and used for considering whether they are similar or dissimilar and other things and also about the reasons that he gave and was suggested that the reasons are hopelessly vague. He denied this, but admitted that the contents of paragraphs 2 to 4 in the reasons Ext.1492 do not show which questioned documents were compared with which specimen handwriting. Apart from the cross-examination on the merits of he examining the specimen handwriting and questioned documents in the present case by learned advocate Shetty, it was in the cross-

examination by learned advocate Wahab Khan that he admitted that he cannot state about a single case in which he received specimen writing without signatures of panchas. He was also asked about the contents of the maps as to whether they are old or they show the old geographical names, etc. Thereafter his cross-examination by learned advocate Wahab Khan is mainly concerned with he being suspended from service because of a case filed against him by the Anti Corruption Bureau on the allegation that he had given false, erroneous and incorrect opinions in 18 cases to the police during his tenure in the Nagpur region, etc., and he admitted most of the things and also admitted that lastly he examined a document on 31/12/09 and thereafter has not examined any document till date as he is under suspension.

1141. The submissions by the learned advocates during their arguments were mostly related to the aspect of the case against him for having given false opinions by taking money from the police officers and it is submitted that it was not correct for the ATS officers, who had obtained the opinion from such an officer. It is submitted that tainted officers like PI Khanvilkar, Tajne, etc., have been used in this case to create false evidence and this is one of them. In this respect it is submitted by the learned SPP that the ability and the skill of the witness has not at all being shaken during his cross-examination and the case that is registered is subsequent to this case and it has no bearing on the opinion given in this case which is supported by well-reasoned grounds and therefore his evidence can be termed as unimpeached. He submits that his

opinion is not bare words, but it is supported by scientific reasons and considering his experience and the length of his service, his skill cannot be disputed. To my mind, what the learned SPP has stated is the correct position. In his oral evidence, the witness has described in great detail the procedure of examining the questioned and specimen handwritings based upon the science of handwriting examination which are reflected in the reasons that he had given. Though the learned advocate Shetty has conducted a lengthy cross-examination on the technical aspect of the handwriting examination procedure as well as the reasons and has also made submissions about it, they are not such as to affect the evidence of his witness insofar arriving at the opinion is concerned.

1142. In view of the above discussion, there should be no hesitation in accepting the evidence given by Jayant Aher, PW-131, in respect of handwriting on the maps Exts. 1486 to 1490 being the handwriting of the A3. However, considering the lapse in the procedure of obtaining the specimen handwritings of the A2, A3, A9, A10 and A11, it will be unsafe to explicitly rely on the opinion given by him. Hence, it will have to be held that the prosecution has failed to prove that the handwriting on the photocopies of the international map Arts. 116, 161, 165, 250 and 134, i.e., Exts. 1486 to 1490 that were seized from the A2, A3, A9, A10 and A11 respectively is of the A3.

Identification of accused by witnesses in test identification parade :-

1143. It has come in the evidence of ACP Patil, PW-186, that by

01/11/06 all the accused were remanded to judicial custody and thereafter he started making preparations for holding the test identification parade, that for that purpose he and the seven former investigating officers scrutinized the papers, discussed among themselves and identified eight witnesses who were required to be placed in the test identification parade, i.e., Subhash Nagarsekar, PW-57, Kishore Shah, PW-60, Devendra Patil, PW-62, Santosh Singh, PW-63, Vishal Parmar, PW-74, Amar Khan, PW-75, Rajesh Satpute, PW-77 and Ajmeri Shaikh and for that purpose he filed an application in this court and obtained permission to organize the test identification parade of all the accused in the Mumbai Central Prison. It has come in his evidence that he contacted SEOs Purandare, PW-80, and Barve, PW-82, and Bendge, inquired about their availability on 7th and 08/11/06 and asked the first two to attend his office on 07/11/06. He had given request letters to the SEOs, office copies of which he proved at Exts. 2412 and 2414 and also the office copy of letter given to the Superintendent, Mumbai Central Prison Ext. 2415, to make arrangements and render the assistance for holding the test identification parade. He proved the contents of these three letters. It has come in his evidence that he asked his officers to contact the witnesses and to request them to attend his office on 07/11/06 at 9.00 a.m. for participating in the test identification parades, that the officers reported to him that the witnesses are available and they are instructed to come, that SEOs Purandare, PW-80, and Barve, PW-82, came to his office on 07/11/06, he explained the brief facts of C. R. No. 5 of 2006 of the

ATS to them, gave them the names of the witnesses and introduced the witnesses to them. He then stated about the names of the accused that he told to both the SEOs. It has come in his evidence that his staff rendered assistance to the SEOs in procuring the panchas and when they came he told them about the parade being organised in the prison and it has come in his evidence that SEO Purandare, PW-80, left for Mumbai Central Prison with panchas and eight identifying witnesses and ACP Joshi, PW-163, and staff.

1144. His cross-examination on this point in paragraph 97 has not revealed anything adverse and he had confirmed that he introduced the witnesses to the SEOs in his office and his staff assisted the SEOs in procuring the panchas.

1145. ACP Joshi, PW-163, corroborated his version and it has also come in his evidence that on reaching the prison he asked the SEO, two panchas and eight witnesses to wait outside the jail, he went inside, contacted the concerned jail officers, showed them the necessary documents including the court order and requested them to make arrangements for the parade and thereafter he came out of the jail and waited outside. It has come in his evidence that after sometime jail officers called SEO Purandare, PW-80, two panch witnesses and eight witnesses inside the jail and he waited outside. His cross-examination has not revealed anything adverse and some additional information has come that he left the office at 10.00 a.m., that they all went in two vehicles, that he was sitting in a Bolero vehicle and SEO Purandare, PW-80, was with him and, this is important, that ACP Patil and SEO Barve, PW-82, were present in the

ATS office at that time. The above evidence of ACP Patil, PW-186, and ACP Joshi, PW-163, is corroborated by SEO Purandare, PW-80, and he gave the entire details as were deposed by ACP Patil, PW-186, in respect of ACP Patil, PW-186, giving him the information about Crime no. 5 of 2006, telling him the names of four accused, i.e., A2, A4, A6 and A7, whose identification parade he had to conduct, telling him the names of eight witnesses who were to take part in the parade as mentioned above and introducing him to the witnesses. It has come in his evidence that police had called five persons to act as panch witnesses, that he asked them whether there are any crimes or criminal cases against them to which they said no, that he asked them whether they are ready to act as panch witnesses for the identification parade, they said yes and then he selected two persons out of them, the names of which he gave and stated that he wrote down the names of the accused, the witnesses and the panchas. He corroborated ACP Joshi, PW-163's evidence about going to the prison with the witnesses and panchas in two vehicles and what happened thereafter. In his cross-examination on this point a positive statement has come on record that he inquired with the panchas and not with the police before he selected them and in further cross-examination he admitted that ACP Patil, PW-186, did not tell him about the facts of the case, that police had called the panchas and he had asked every panch whether he had acted as panch witness earlier and at that time neither ACP Patil, PW-186, nor any other ATS officer was present. During his cross-examination by learned advocate Rasal it has come that he made notes about

witness identifying an accused and how he has identified and the said short notes were inspected by the learned advocate and when asked to produce them and as he stated that they are in his handwriting and their contents are correct, they were marked as Ext. 835. He stated that he had written the names of the witnesses in the ATS office, but it was not the paper Ext. 835, but it was a separate paper that he tore later on. Apart from this, his evidence about he going with ACP Joshi, PW-163, two panchas and eight witnesses has not been disputed. Same is the case about the evidence of the seven witnesses mentioned above who took part in the identification parade. Their evidence about going to the ATS office on that day, they being introduced to SEOs Purandare, PW-80, and Barve, PW-82, going to the prison in two vehicles has not been discredited except that during the cross-examination of some of them their evidence has been brought on record as improvements over their statements to the police on 07/11/06, but I will come to that later on.

1146. It has come in the evidence of SEO Purandare, PW-80, that they all reached the prison and stood outside, ACP Joshi, PW-163, went inside office of the prison, that he came out after some time, that after the preparations were made he and two panchas went inside on being called, he went to the office of the prison, met the prison officers and were taken to a grilled barrack on the left side after crossing two doors and he described the barrack as having two full walls on two sides, walls on the two remaining sides upto waist level and curtains above those walls. He described in detail about the four accused being introduced to them by the jail officers, who

told him to take the identification parade of all together, but he said no and told them that he will take the parade of two accused together and described about looking at the accused, taking a mental note of their age, physique and appearance and selecting 12 persons out of 30-35 persons, who were brought by the jail officers, more or less similar to the A2 and A7, whom he decided to take first, dividing 12 dummy suspects in two groups of six each and asking them to stand at some distance from each other. He then described about what precautions he took including asking the witnesses in the presence of panchas whether they were shown any accused or their photographs by the police to which they said no and getting verified from the panchas whether the identification room was visible from that room, to which they said no. Then going back to the barrack, asking the accused whether they were shown to any person by the police, to which they said no and then sending one panch outside and asking him to bring the witness to the parade room one by one. It has come in his evidence that after the panch witness went outside he closed the door of the barrack and asked the A7 to stand anywhere in the first row and the A2 to stand anywhere in the second row and also asked them whether they wanted to change their clothes. He then described how the witnesses were brought inside one by one and how he conducted the parade with their help, the first one being Amar Khan, PW-75, who identified both the accused by touching them and also described their role, which he wrote. He then stated about asking the second panch to take the witness outside and bring the second witness

Ajmeri Shaikh and after he left he closed the door from inside, asked the accused whether they wanted to change their places and their clothes, whereupon both accused removed their shirts and stood there with T-shirts that they were wearing inside, but he does not remember whether they changed their places. It has come in his evidence that only Amar Khan, PW-75, and Ajmeri Shaikh identified both accused, but the remaining six witnesses did not identify anyone and he took short notes about the witnesses who did not identify the accused as the prison officers has asked him to hurry. Insofar as the identification by Amar Khan, PW-75, and Ajmeri Shaikh, he has stated that he kept on writing the memorandum as per the events that were taking place and stated that he adopted the same procedure for remaining seven witnesses including Ajmeri Shaikh. It has come in his evidence that after the first parade was over he gave the accused and dummy suspects in the custody of the prison officers and asked them to take them away.

1147. In respect of the second parade, it has come in his evidence that he asked the prison officers to bring the remaining two accused inside the barrack, that he also asked them to bring the 12 dummy suspects that he had already selected from the remaining 20-22 dummy suspects, noted their names, asked the A4 and A6 whether they were shown to any person by the police, to which they said no, that he went outside with the panchas to the room where the witnesses were sitting, asked them whether police had shown them any accused or their photograph, to which they said no, that he instructed the panchas to bring the witnesses one by one and then

he went back to the identification barrack and adopted the same procedure for the second parade as per the first parade. It has come in his evidence that in this parade Amar Khan, PW-75, and Ajmeri Shaikh identified the A4 and A6 and Vishal Parmar, PW-74, identified the A4 and both witnesses described the roles of the accused. He then deposed about handing over the accused and the dummy suspects in the custody of the prison officers and sitting in a separate room to complete the writing of the memorandum and he completing the memorandum before the panchas, who were with him. He proved the contents of the memorandums Exts. 833 and 834, the contents of which corroborate his version and show that his evidence is as per their contents. It is clear that he has given meticulous evidence about the precautions that he took while conducting the parades and about the procedure of the parades.

1148. During his cross-examination by learned advocate Rasal, the short notes Ext. 835 that he made during the parade were received in evidence and he admitted that there is no record in the short notes of the panchas, whom he did not select though it was necessary to keep a note of the names, occupations and addresses of all the persons who were brought before him for being selected as panchas. In respect of preparations of the short notes, he explained that names of witnesses and accused are written in the notes, that he made note about the witnesses identifying the accused and how he identified the accused, that notes were taken about both parades, but for the first parade entire details are not mentioned as he had already written the first memorandum in the parade room and, this

is important, that he did not mention about the first two witnesses, i.e., Amar Khan, PW-75 and Ajmeri Shaikh because he wrote it in the memorandum at the same time. It is because he was asked in his cross-examination as to whether he has any other record other than the memorandums Exts. 833 and 834, that he volunteered that he has the short notes Ext. 835 about the parade with him. Therefore, the suggestion that he prepared the short notes yesterday, i.e., the day before he gave the evidence, is unwarranted. Again during further cross-examination he was asked about notings made in the short notes and he explained that the words 05/06, the date 11/07/06 on the top and timings 11.55 to 1.30 p.m. on the top right hand corner are respectively about the crime number, the date of the incident and the timings during which the identification parades were conducted. There is no more cross-examination about the short notes Ext. 835 and if the paper on which they are written is seen, it is apparent that it is an old paper and the contents thereon are very specific. Second column of the first parade contains the names of the two accused and the places where they stood, the third column mentions whether clothes and place is changed, the fourth column mentions the surname of the witnesses and the last column whether they have identified or not. This table contains the names of six witnesses excluding Amar Khan, PW-75, and Ajmeri Shaikh and the remark not identified as well as the places where the accused stood corroborates the contents of memorandum Ext. 833 perfectly. Same is the case about the short notes in the second portion that are in respect of the second parade. They also corroborate the contents of

the memorandum Ext. 834 perfectly. To my mind, in view of the meticulous and detailed evidence given by SEO Purandare, PW-80, and the contents of memorandums Exts. 833 and 834 being corroborated by the contents of the short notes Ext. 835 nothing in his cross-examination is sufficient to discredit his testimony. He was grilled extensively about minor things which, to my mind, do not affect his evidence. However, those things will be discussed when the submissions of both sides about his evidence will be taken up. He has specifically identified the A2, A4, A6 and A7 in the court.

1149. All the seven witnesses who took part in the identification parades conducted by SEO Purandare, PW-80, have corroborated his version about the procedure of conducting the parade to the extent of stating the sequence number by which they entered the parade room, how they identified particular accused and described their roles. One or two of them have not stated about the sequence number at which he went inside the parade room, however, all of them unhesitatingly identified the accused whom they had identified in the parade and in respect of what event. It is only Amar Khan, PW-75, who faltered some what in his cross-examination while identifying the person whom he had seen in the house of the A6 doing something with wire. In his chief-examination he correctly stated that he identified the A7 in the parade as the person doing something with the wires, however, in cross-examination learned advocate Wahab Khan asked the A4 to stand up and asked the witness whether he had seen him doing something with the wire when he visited the house of the A6, to which the witness answered

that he may have seen the A4 joining the wires. Immediately thereafter he corrected himself volunteered and stated that he knew the A4 earlier, but had seen an unknown person joining the wires and then stated that he had not seen the A4 joining the wires. A misleading suggestion was given to him that he had identified the A4 in the prison as the person whom he had seen joining the wires, which he of course denied. Misleading I say because it is not so written in the memorandum Ext. 833 however this part of his evidence is inconsequential as I have held that the prosecution has not proved that Amar Khan, PW-75, saw some persons including the A7 in the house of the A6 a few days before the blast. Amar Khan, PW-75, stated about identifying the A2 and A7 in the first parade and the A4 and A6 in the second parade and Vishal Parmar, PW-74, stated about identifying the A4 in the second parade. As is the case in respect of SEO Purandare, PW-80, all the seven witnesses are extensively cross-examined and their cross-examination will be considered while discussing the submissions made by both sides. The general cross-examination of SEO Purandare, PW-80, has not affected his testimony or impeached his credibility. He is obviously an experienced person in doing such work as he had conducted about 30 identification parades before that day. While admitting that the Government of Maharashtra has given the guidelines of writing the memorandum, he stated that he follows the guidelines scrupulously and the memorandums Exts. 833 and 834 are as per the proformas. He denied the suggestion that ACP Patil, PW-186, appraised him about the role of the accused and in the manner in

which the witness have stated about them and a positive statement has come that till the witness identified the accused, he had no knowledge about the details of the cases. He was very emphatic in stating that even today he knows the sequence in which the witnesses were brought to the parade room and whom they had identified. Positive statements have come in his cross-examination that no prison officer was present with the dummies and the accused when he went inside the parade room. In respect of location of the identification barrack and the room on the left side after entering the main gate of the prison where the witnesses were made to sit, he specifically denied that the window of that room is exactly opposite to the door of the identification barrack. He admitted that he did not describe that there were waist high walls on two sides of the identification barrack and the upper portions being covered with curtain and the other two sides having grills were covered with curtain, but he described the length and breadth of the barrack and that the grill that he mentioned was in the nature of a mesh. In respect of his evidence about four accused being brought by prison officers and he telling them that he will take the parade of two accused together and decided to take the A2 and A7 first and after selecting 12 dummies more or less similar to the accused, giving the other two accused, i.e., A4 and A6, and the remaining suspects in the custody of the jail officers and asking them to wait outside the barrack, he explained in his cross-examination that he was continuously inside the identification barrack from the time of the said parade upto the end of second parade, that the two accused and

the remaining dummy suspects, who were to be paraded in the second parade were in the custody of the prison officers and he does not know where they were when he was conducting the first parade and answered that they were brought in the identification barrack after five minutes after the first parade was over. From this, it cannot be gathered that the remaining two accused, i.e., A4 and A6, and the 12 dummy suspects used in the second parade were standing just outside the barrack.

1150. SEO Purandare, PW-80, described the topography of the prison stating that there is a big room on the left side after one enters the main gate and there are rooms on the right side in which the prison officers sit. He candidly admitted that he did not write in the memorandums that he asked the panchas to see whether the place where they were going to hold the test identification parade is visible from that room. He was suggested that he prepared the memorandum on the say of the ATS to help them and was asked to conduct the parades as he is the favourite of the ATS officers and does whatever they say. He denied the suggestion and it is obviously inconsistent with his earlier answer in his cross-examination that it was the first occasion for him to conduct a test identification parade for the ATS. He did not remember whether he had conducted an identification parade for V. P. Road Police Station on 07/03/10 in C. R. No. 32/06 and whether inspector Vilas Joshi was the investigating officer and whether Harish Popat and Ravi Pujari were the panchas. Defence produced certified copy of the memorandum Ext. 3292 to show that he is not deposing truthfully, but to my mind, it does not

affect his credibility because he has not stated that he had not conducted, but that he does not remember, which considering the fact that he has conducted many identification parades cannot be found fault with. The said document is obtained under the RTI Act and though it is certified as a true copy by the Police Inspector of V. P. Marg Police Station, it is not a document which has been proved in the court of law and cannot be relied upon for any purpose, not that it is not necessary to consider its import on his evidence. He was suggested and he denied that he identified the accused in the court as they were shown to him outside the court hall on the last date. He admitted that he has not read the High Court Criminal Manual and does not know about the guidelines given or the precautionary measures to be taken as mentioned in the said guidelines. Some positive statements have come in his cross-examination that there were no windows to the identification barrack, that there were no windows to which curtains could be fixed inside, that ACP Joshi, PW-163, did not enter the prison with him, that the prison officer and the constables were with the accused and the dummy suspects, that till that time none of the witnesses had come inside the prison and he denied that the panchas were also outside stating that they were with him. He also made a positive statement that both panchas used to be inside the identification barrack when the witness did their work. This is his cross-examination insofar as the place of holding the parade, whether police officers were with him when he conducted the parade etc., and it has not discredited his testimony.

1151. It has come in the evidence of ACP Patil, PW-186, that SEO

Barve, PW-82, had come to his office on 07/11/06 and he gave him names of witnesses who had come for the test identification parade and introduced them to the witnesses and he gave the names of the A1, A3, A12 and A13 to him, for whom he was required to take the test identification parades, that after ACP Joshi, PW-163, and SEO Purandare, PW-80, left for Mumbai Central Prison, he alongwith SEO Barve, PW-82, two panchas and staff also left the office for going there, that he entered the prison and thereafter SEO Barve, PW-82, entered alongwith panchas, the witnesses were sitting in the office of the superintendent, at about 1.30 p.m. the earlier parades were over, therefore, he handed them over to SEO Barve, PW-82, and requested him to commence the process. His evidence is corroborated by the evidence of SEO Barve, PW-82, who stated that ACP Patil, PW-186, told him the names of the A1, A3, A12 and A13, selected two persons out of the five arranged by the police, to act as panch witnesses and going to the prison with them and ACP Patil, PW-186, ACP Patil, PW-186, going inside to take permission and taking them inside after some time. He deposed about he asking jailor Patil to arrange for 12 dummies similar in appearance to the accused after telling him names of the four accused and he going to the room where the witnesses were sitting, ACP Patil, PW-186, going there and introducing him to the witnesses. He described how he ascertained whether the room where he and panchas were taken by jailor Patil was a proper room for holding identification parade and then asking jailor Patil to bring the accused and the dummies and he selected 12 dummy suspects for the first identification parade of the

two accused out of the 20-25 dummy suspects. About the first parade, he deposed about taking the A3 and A13 and the 12 dummies inside the room and the procedure by which he sent panch witness Kailashnath to bring the first witness Amar Khan, PW-75, and so on. It has come in his evidence that Rajesh Satpute, PW-77, identified the A3 and described the role of the accused. He then described how Devendra Patil, PW-62, identified the A3 and Santosh Singh, PW-63, and Kishore Shah, PW-60, identified the A13 in the first parade and also described their roles.

1152. It has come in his evidence that he wrote whatever had happened and after the first parade was over he handed over the two accused and 12 dummy suspects to jailor Patil and after some time jailor Patil brought the remaining two accused, i.e., A1 and A12, and 24 dummy suspects out of whom he selected 12 persons and followed the same procedure as per the first parade during which only Subhash Nagarsekar, PW-57, identified the A1. He deposed about completing the memorandum in the office of jailor Patil in the presence of panchas and he proved the contents of the memorandum Ext. 844, contents of which corroborate his version. He identified the A1, A3 and A12 in the court and could not identify the A13. His evidence about the procedure of conducting the test identification parade, the sequence of the witnesses going inside the parade room and which witness identified which accused is corroborated by the contents of the memorandum Ext. 844. It is also corroborated by the evidence of the seven witnesses, who took part in it, viz., Rajesh Satpute, PW-77, and Devendra Patil, PW-62, who

identified the A3, Santosh Singh, PW-63, and Kishore Shah, PW-60, who identified the A13 and Subhash Nagarsekar, PW-57, who identified the A1. Other two witnesses, i.e., Vishal Parmar, PW-74, and Amar Khan, PW-75, did not identify any accused. The five witnesses who identified the accused either stated about the sequence of entering the identification room or the place where the accused, whom they identified, was standing in the row of persons correctly, which is according to the sequence and location written in the memorandum.

1153. It has come in the evidence of SEO Barve, PW-82, that he is appointed as an SEO in 1990 and during his cross-examination it was revealed that this test identification parade is the only one that he has conducted after becoming an SEO. He knows the guidelines given by the Government of Maharashtra that are mentioned in the Criminal Manual about conducting the identification parades, which are in the papers that were provided after he become an SEO, but does not know the guidelines given by the High Court, but he followed the guidelines given by the Government of Maharashtra and prepared the memorandum as per the proforma. About the aspect of taking precautions and ascertaining from the witnesses whether the accused or photographs were shown to them and ascertaining from the accused whether they were shown to the witnesses, his evidence is clear. However, he committed a mistake by stating that he came out of the parade room after the first parade and met jailor Patil outside the room, who was with the remaining two accused and the dummy suspects just outside the door of that

room. However, this mistake is corrected by his answer in further cross-examination that he did not know at the time of the first parade where the other dummy suspects and the remaining two accused for the second parade were. It may be that jailor Patil may have brought the remaining two accused and the dummies near the parade room on seeing the first parade being concluded, therefore, no inference can be drawn from that they were standing outside during the entire period of the first identification parade, thereby enabling the eight witnesses, who came one by one, to see them. Not only this, none of the seven witnesses examined have been given any suggestion about having seen the remaining two accused outside the parade room, when they, i.e., the witnesses, went inside it at the time of first parade.

1154. Though it has come in his cross-examination that he is sevak of MLA, who was with the Shivsena earlier and is now with the Congress(I), nothing has been shown as to how it affects his capacity of the work that he does as an SEO. About his appointment as an SEO he had stated in his chief-examination that he was appointed in the year 1990 and in his cross-examination he stated that he was again appointed on 15/11/06 upto 15/11/11 and that the subsequent appointment starts after the earlier appointment is over and he is continuously being appointed from 1990. There was a heavy dispute about his capacity to act as an SEO and defence produced a photocopy of gazette alongwith Ext. 4298 dtd. 02/04/05 accompanied with part of list dtd. 23/06/06, which does not show his name at sr. no. 631, which is in his rubber stamp on every page

of the memorandum. Same is the case about the gazette copy dtd. 22/06/06 and 23/06/06 which do not include his name and do not show him at sr. no. 631, but in all these three gazettes a person by name Shamkumar Gangaram Lakampelli is shown. As against this, the prosecution produced his first appointment order by the gazette dtd. 08/05/01 Ext. 4307 and also the gazette dtd. 15/11/06 showing his name at sr. no. 1335. It is not necessary to consider the submissions of the learned advocates in view of the gazette dtd. 08/05/01 Ext. 4307 appointing him for a period of four years from that date or until further orders and further order is the gazette dtd. 15/11/06, copy of which is alongwith the said gazette showing his name at sr. no. 1335. This means that his earlier appointment continued ahead for a period of five years. The copies of these two gazettes were verified by the sheristadar of the court with the original brought by the prosecution. So, to my mind, it cannot be said that as on the date of the test identification parade SEO Barve, PW-82, was not an SEO having authority to hold the test identification parade. To my mind, no person will dare to work as such if his appointment is not in force. Conducting of test identification parade is one of the work that is allowed to be done by the SEOs. The gazette clearly shows that they can do the work of attestation, verification and certification of documents as well as issuing certificate in respect of income of parents. Thus, he must be doing the other work and must not have done the work of test identification parade during his long period, but certainly it cannot be construed on the basis of GRs produced by the defence that he

was not an SEO on the day of the identification parade. It will not be out of place to point out that alongwith his name at sr. no. 631 in the GR of 08/05/01 Ext.4307 the name of Lakampelli Shamkumar is at sr. no. 612 in the same GR and the same person was reappointed or continued by the GR of 23/10/06.

1155. A mistake committed by this witness was brought on record during his further cross-examination, which is in respect of repetition of some pages. It has come in his cross-examination that he had started writing the memorandum before he entered the parade room and he had so written the portion on page 4 upto the names of the witnesses. Now in his chief-examination he has stated that he was writing the memorandum as per the events that were happening and after the second parade was over he went to the office of jailor Patil alongwith panchas and completed the remaining part of the memorandum there. Now it has come in his cross-examination that the second parade started at 2.30 p.m. and was over at 3.15 p.m. and he was in the office of jailor Patil upto 5.15 p.m. completing remaining portion of the memorandum and denied the suggestion that he had entirely written the memorandum after the last witness left. Learned advocate Shetty was successful in pointing out the mistake that SEO Barve, PW-82, committed. Before that he got an admission that there may be some repetition or mistakes while writing the memorandum and he remembers that it is about names of dummies being written twice. His attention was drawn to pages 6 to 10 of the memorandum and he admitted that the contents from the second paragraph on page 6 upto the end of

page 8 of the memorandum are repeated on pages 9 and 10 and he cannot say why the contents are repeated, but denied the suggestion that he copied the memorandum and did not conduct the parades. This confusion is further compounded in his further cross-examination by learned advocate Wahab Khan. Learned advocate got admissions from the witness that there is a possibility that the word is written twice when something is being written about the work that is going on, but this possibility is not there about an entire sentence. Though he denied that it is impossible that an entire page is repeated when the writing is being done about the work that is going on, it is apparent that his denial is not correct. He admitted that if a person is copying from some matter, some sentences or pages can be repeated if the pages are displaced or thrown away by air. When the specific question was put as to whether he can say for sure whether the repetition of the contents from the second paragraph on page 6 upto the end of page 8 of the memorandum on pages 9 and 10 was because of copying or dictation, he answered that it was because the papers in his hand flew away and the papers on which he had already written were found subsequently. This answer is obviously given because of the clue provided earlier by the learned advocate. He could not say whether the pages had flown in the parade room or in the jailor's office, but stated that the first pages were not before him when he rewrote the contents and the already written pages that he found subsequently were mixed up in the papers. He, of course, denied the suggestion at the end of the cross-examination that he did not take the identification parade

inside the prison and did not write memorandum there and that ACP Patil, PW-186, dictated to him the contents of the memorandum in his office and because of the dictation there is repetition.

1156. To my mind, considering the fact that it was the first occasion for SEO Barve, PW-82, to conduct the test identification parade, consequently to prepare the memorandum of it, considering his explanation about it, that the evidence of seven witnesses corroborates his evidence about taking the test identification parade, no inference can be drawn that the repetition is because the contents of memorandum were dictated to him by ACP Patil, PW-186, in his office and because of the dictation there is repetition. However, it will have to be held that this an infirmity in the evidence given by SEO Barve, PW-82, and it is not a cogent evidence.

1157. From this we go to the submissions of both sides on this issue. Learned advocate Wahab Khan made general comments about the precautions to be taken while conducting the test identification parade and submitted that it is required to be conducted as early as possible. He submits that non-holding of parade is not so fatal to the case of the prosecution than holding of a defective parade. He submits that because of lapses on their part, the witness is having a glimpse of the accused and is seeing him and on that basis also he is identifying him in the court. This will frustrate the very purpose of the test identification parade.

1158. After pointing out to the guidelines given in the Criminal Manual, learned advocate submits that the panch witness in the memorandums Exts. 833 and 834 Sachin Krushna Koltharkar is a

habitual panch witness used by PI Khanvilkar and for this purpose he pointed out to the documents produced by the defence. First is Ext. 1742 which is the alleged panchanama dtd. 29/09/06 of the A7 in this case, which cannot be disputed. Then there is Ext. 2904, house search panchanama dtd. 03/01/04 in C. R. No. 277/03 of Bhoiwada Police Station, Ext. 2905 is panchanama of the same date, however, both show the name of the police officer as PSI Patil and Shinde and not of PI Khanvilkar, PW-168. Ext. 2906 is copy of final report in the same crime showing Sachin Koltharkar as the panch witness and one PSI D. P. Avari is the informant and PI Khanvilkar, PW-168, as the investigating officer. Ext. 2602 is the same as Ext. 2905. Exts. 2904 to 2906 have been obtained under the RTI Act and they are photocopies issued as true copies by the police inspector of the concerned police station and were supplied to the A7 as per the letter Ext. 2896. They are unproved documents, i.e., they have not been proved in any court and exhibited. Hence, there is a question as to whether they can be considered? Even then a note is taken that Sachin with the same age and address is a panch witness in that case. Ext. 2468 is certified copy of a memorandum of test identification parade dtd. 26/07/06 in MCOC Special Case No. 16/06 showing the same person to have acted as panch witness. Though it is issued by this court it is also a copy of a document which is not proved in that case. Learned advocate submits that the names of the witnesses were hidden in the chargesheet and inspite of several applications which he mentioned, the prosecution did not disclose the names of the witnesses to whom they were going to

examine. He submits that the above documents show that a witness who was well known to PI Khanvilkar, PW-168, has been involved in the proceedings of the parade, which is not a coincidence and therefore he is not an independent and impartial person, but he has been deliberately planted in this parade. He submits that he admits that for the other panch witness, he has failed to prove his association with the police and for that he blames the prosecution to handicap the defence and not supplying the names of the witness and by blocking the applications under the RTI Act. In my humble opinion, the prosecution has not examined any panch witness, who had taken part in the test identification parade. Hence, it will not be proper to condemn a person behind his back. In this respect, the learned SPP submitted that it would be unjust to give any finding about the said panch witnesses, equally so there cannot be a presumption that the panch witnesses did not do their job honestly and sincerely. Learned SPP also submitted that we cannot find fault with the SEO who conducted the parade, because he is not supposed to assume the role of the investigating officer and go into the history and geography of a person to find out whether he is telling the truth or not. However, a reasonable application of mind is demonstrated from his evidence that he had questioned the panch witnesses to satisfy himself. True it is, because it has come in the evidence of SEO Purandare, PW-80, that he inquired with the panchas to ascertain whether they had any criminal antecedents. To my mind, he need not have asked them whether they had acted as panchas earlier. Learned SPP further submitted that the SEO selected two out of five,

which in other words means that he rejected three. Therefore, reasonable care that was required to be taken is exhibited by him.

1159. To my mind, as panch witnesses have not been examined there is no question of assessing his role in the conduct of the test identification parade. The most important point is that neither the two SEOs nor the seven witnesses, who took part in it and gave evidence, have been suggested from the side of the defence that any panch out of the two had indicated at what place a particular accused who was to be identified, was standing in the row of persons in the identification parade or that the said accused was of a particular description or having some special features. Thus, not only this aspect does not affect their evidence, it also does not affect the aspect of the prosecution of not examining any panch witnesses.

1160. Next submission by the learned advocate is that it was the police who brought the five witnesses and from whom the SEOs selected two and alleges that all five persons were regular panchas and when it is shown that Sachin Koltharkar is specially associated with PI Khanvilkar, PW-168, then considering his background now it can be inferred that he provided this man to the SEO. To my mind, there is nothing wrong in the police bringing persons for being selected as panch witnesses because paragraph 16(3)(iii) of Chapter-I from the Criminal Manual says that the police themselves will have normally arranged to call-up such persons. Thus this submission is not justified. Learned advocate Wahab Khan further submits that to frustrate the purpose of the parade, the ATS undertook a further exercise, viz., of publishing the photographs of

the accused and circulating them in the media. He submits that the ATS had its own idea that as it was not expected to show the face of the accused to the witnesses, therefore, they published photographs in all the national Dailys and if it is established that photographs were circulated or published then it will frustrate the parades. For this purpose, he relied on the evidence of Siddiqui Ali, DW-12, a journalist working in the Times of India and the news item Ext. 3036 given by him and evidence of Abdul Mateen, DW-13, a journalist and crime reporter working in the Times of India and the news item in the newspaper Ext. 3015. Siddiqui Ali, DW-12, deposed that he had written the news item in the Times of India dtd. 26/07/06, copy of which is at Ext. 3036, and that the photograph is of the A11 and his photograph was given by police source. The publication of photograph of the A11 is inconsequential inasmuch as he has not been identified by anyone in the test identification parade dtd. 08/11/06. During his cross-examination by the learned SPP the witness was exposed in respect of his knowledge about the A11 and about his source of photograph, because he admitted that he did not have any occasion to see the accused persons before they were in the news items, that he does not have the photograph of a person Zameer that is in the news item Ext. 3036 and admitted that it is not mentioned below the photograph or in the article as to whose photograph it is. He admitted that the photograph was available with the media people and his statement in chief-examination that he had gone to the house of the A11 and interviewed his family and his answer in cross-examination that he had gone to the house of the

A11 before publishing the news item, clearly shows the possibility that the photograph of the A11 which he printed in his news item may have been obtained from the family members of the A11. This inference can be readily drawn as the photograph is not of the manner in which police take the photographs of the accused, but it is the photograph that is usually obtained by a person when he applies for licence to drive commercial vehicles like a taxi or bus or truck, because such a photograph is required by the RTO authorities. He denying that he did not ask his family members to give his photograph is obviously to support his statement that it was given by the police source. Abdul Mateen, DW-13, proved the article that is written by him in the said newspaper on 27/07/06, copy of which is at Ext. 3015. However, he did not toe the line of the defence because he stated on being asked as to who had supplied him with the photograph of the A2, he answered that in an ongoing story, they do use photographs. Sometimes they get the photographs from the police, sometimes from the families of the person concerning the story and sometimes from their own source and in this particular story he got the photograph in July, 2006, but does not remember the exact source from which he got it. He was declared hostile by the defence advocate and cross-examined and specific suggestions were given that the photograph in Ext. 3015 was provided by the ATS/Crime Branch to which he replied that he does not remember. Naturally, learned SPP did not cross-examine him. Thus, his evidence is of no use.

1161. Learned advocate then relied on the evidence of

Prabhudayal Chavala, DW-10, who was working as an editor of India Today of editions of all languages in 2006 and who brought to court the office copies of English editions of India Today dtd. 16/10/06 and Hindi edition dtd. 30/08/06 stating that the copies Exts. 2545 and 2544 respectively that are on record are as per office copies with him. He is obviously a very clever witness because when asked whether the contents of page no. 34 in Ext. 2545 and of page 29 in Ext. 2544 are true and correct, he answered that since the contents have not been denied till he was the editor, he can say that they are true and correct. One could have gathered an impression from this answer that the articles in the said issues of India Today are true and correct, however, it was disproved during his cross-examination by learned SPP, because he admitted that the editions of India Today that he brought with him are one of the copies that he printed and he does not remember the original data is stored in the computer, that various department heads look into various stories that are filed by the correspondents and he has no personal knowledge of the source of the news as it is not his job to know it, that it is not his job to personally verify the truth of each and every story, therefore, he does not know it and he does not have personal knowledge as to who took the photographs that are on those pages and where they were taken. Thus, it is obvious that he has no personal knowledge about the photographs as to who took them and where they were taken. The source of the photograph is therefore not clear. The photographs on perusal show that the photograph of the A11 is the same as the photograph that was published in the Times of India on

26/07/06, i.e., Ext. 3036 and probably the source is that it was available with the media and obtained from the family members of the A11. The photograph of the A1 is such that it would not have had been taken by the police. The photograph of the A2 appears to be a photograph of a photograph. Leaving aside all these things, the question is whether India Today magazine could have been read by the witnesses like taxi drivers and the travellers, who had deposed before the court and identified the accused in the parade. To my mind, considering their social status, I do not think that they must be reading India Today magazine. Not only that none of them have been suggested about having seen photograph of the A1, A2 and A11 in the India Today magazine and whether they used to read the said magazine. A different class of persons particularly affiliate persons read magazines like India Today. Thus, no inference can be drawn on the evidence of the above three witnesses that before the test identification parade the witnesses have seen photographs of the accused in the print media. In this context, reliance is placed by learned advocate Sharif Shaikh on the authorities in the case of **Vijayan Rajan, K. V. Sadanandan, Appellant V. State of Kerala, Respondents (LAWS(SC)-1999-2-95)** and **Ravi @ Ravichandran, Appellant V. State Rep. By Inspector of Police, Respondents (LAWS(SC)-2007-4-143)**. They are of no use because they are different on facts. In the case of **Vijayan Rajan** the fact was that, *'photograph of the accused was shown to a witness before the test identification parade and further just before she was entering the Sub-jail to identify the accused somebody told her to identify the tallest*

man in the parade'. The second authority is also not applicable on the facts because *the photographs of the accused were published in the Local Daily with caption that they were persons accused of causing murder in question*. Thus, the submission on this point is not accepted and no inference can be drawn that police have provided photographs of the accused to the media and that the witnesses had seen the photographs of the A1, A2 and A11 in the Times of India as well as in the India today magazine.

1162. The next submission by the learned advocate is the most hotly contested issue. Learned advocate submitted that he wants to point out how the jail officers were co-operating with the ATS officers during the test identification parade. It is contended by the defence that as per SEO Purandare, PW-80, the first test identification parade was conducted in between 1155 hours to 1250 hours and the second parade was conducted in between 12.55 to 1.30 p.m. However, the entries in the register maintained inside the prison at the gate of the high security cell by the prison officials, copy of which is at Ext. 2474, shows that the A2, A4 and A7 were taken out for the purpose of identification parade at 1235 hours and were put back at 1240 hours. He submitted that the parades cannot be completed within 5 minutes or 20 minutes. His further submission is ridiculous because he stated that prosecution cited the then superintendent of MCP Swati Sathe as a witness in the chargesheet and if at all there was any possibility of falsity in the documents of the defence, they would have examined her. Therefore, the non-examination of the said witness assures and

certifies the genuineness and authenticity of Ext. 2474. He submits that he has put the timings mentioned in Ext. 2474 to all concerned witnesses including ACP Patil, PW-186, and the SEO and if the prosecution would have examined Swati Sathe, the defence could have shown this document to her and could have succeeded in proving the timings. He submits that the prosecution ought to have led her evidence for such important piece of evidence and the reason as to why she is not examined is because she is hand in glove with the ATS for torturing and assaulting the accused.

1163. It appears that the learned advocate was conscious of the fact that the said document had been obtained under the RTI Act and its contents were not proved by the defence by calling concerned witness with the original record. In respect of the said document, the learned SPP submitted that it is not shown that the said register is a register that has to be statutorily maintained by the prison authorities and moreover it has not been proved by calling the persons who had made those entries. In my humble opinion, no reliance can be placed on the contents of Ext. 2474 as it is a document obtained under the RTI Act and it is not proved by calling person who had actually made the entries therein. In this connection the learned SPP pointed out to the applications made by the A2, A4 and A13 in respect of the parades that were conducted on 07/11/06 in which they made certain allegations, which will be subsequently considered. He, however, pointed out them in the context of this point submitting that none of the accused have stated in their applications that they were taken out only for five minutes and that

too on different timings. He submits that he has demonstrated through several instances how the accused moulded their defence as and when they got some information under the RTI Act and this is one of the instance. What the learned SPP has submitted is the correct position. A2 filed an application Ext. B, A4 filed an application Ext. 3799 and A13 filed an application Ext. 4280 on 09/11/06 in respect of the test identification parade that were held on 07/11/06, though A2 has wrongly mentioned the date as 06/11/06. It is the only A2 who has mentioned the time as 1230 hours, but though these three accused have alleged that the parades were conducted in the open space, etc., A2 stated that two witnesses identified him and A4 has stated that three witnesses had identified him, which is correct as per the prosecution case. If really the accused would have been taken out only for five minutes, they would have certainly mentioned in their applications, particularly when they were so vigilant, so as to mention about the points on which the test identification parades are not believed by courts, viz., open place or ground, beard or no beard and being pointed out by police officers. It is thus clear that after obtaining the information under the RTI Act, they moulded their evidence and it was accordingly put to the witnesses. In this connection, it is submitted by learned advocate Shetty that when SEO Purandare, PW-80, was asked in further cross-examination as to whether the A2 and A7 were taken out from their high security barrack at 1235 hours and whether they were put back at 1240 hours, he stated that he does not know about it. Learned advocate submitted that the answer that

was expected from him was that of denial. To my mind and as is pointed out by the learned SPP, the last sentence of his deposition that is volunteered by the witness clears this confusion because he stated that the accused were with him for about half an hour. This is the direct oral evidence of SEO and it has been corroborated by the witnesses, who took part in the parades conducted by him. As against this, it is the information in Ext. 2474, which is not a document that can be described as a public document. Hence, this point is no longer any doubt.

1164. It is further submitted by the learned advocate that A2, A4, A7 and A13 have deposed that the entries in the said register were made in their presence and their evidence has gone unchallenged. He has then explained that the accused stated that their names are called at the gate of the barracks, they gather at the gate and after making entry in the said register, they are allowed to go and when they came back again there is entry and they are allowed to go in their respective barracks. Learned advocate admitted that accused have not stated so when it was pointed out to him that the accused only stated that the entries were made in their presence. Thus their evidence does not affect the veracity of the evidence given by SEO Purandare, PW-80, and the evidence of the witnesses Vishal Parmar, PW-74, and Amar Khan, PW-75.

1165. Learned advocate then raised the issue about repetition of dummies in the identification parades and it is also raised by learned advocate Shetty. Names of two dummies, i.e., Amarjeet Singh Jasbir Singh and Selvan Nagu in the memorandum Ext.833 of the first

parade in the first list of dummies and the names of Aman Jabbar Abdul Shaikh, Vinod Pappuchand Gaikwad and Mohd. Mushtaq Kamrul Shaikh in the second list of dummies in the same memorandum and the name of Gangadhar Abhay Warik in the first list Ext. 834 and in Ext. 844 are pointed out and it is submitted that these were repeated in test identification parade conducted by SEO Barve, PW-82, as mentioned in the memorandums Ext. 844 and it is submitted that if the dummies that are used in one parade have been repeated in second parade for the same set of witnesses, then the option is very less and the witness has only to point out the new persons. I cannot subscribe to this submission because these are only two witnesses and, in fact, Selvan Nagu is one of the dummies in Ext. 833 whereas Selvan Shahnaz Nadi is one of the dummies in Ext. 844. Thus the similarity is only the first name. However, learned advocate is right in submitting that one name that is of Abdul Samad Mulla is repeated in both the lists in the memorandum Ext. 833. SEO Purandare, PW-80, was asked about it and when he was pointed out the name Abdul Samad Mulla appearing in both lists, he admitted that except the age difference of four years of the last dummy suspect in the memorandums of both the parades, his name is the same. This suggestion is not correct because the name of this dummy suspect is not there in the memorandum Ext.834, however, it is repeated in both the lists of dummy suspects in Ext.833. To my mind, except this mistake, there is no other mistake in the procedure as well as writing of the memorandum Ext. 833. The learned SPP in this connection submitted that you can find something wrong with

the memorandum, but no wrong can be found in respect of the fact in issue, which is the identification of the accused by the witness in the two parades conducted by SEO Purandare, PW-80. To my mind, it is not the case of the defence and it has not been brought on record during the cross-examination of the SEO or the identifying witnesses or by pointing it out from the contents of the memorandums that the said dummy suspect was made to stand by the side of the accused so as to facilitate easy location. Same thing can be said in respect of the names of the other five dummy suspects being repeated in the identification parades conducted by SEO Barve, PW-82.

1166. Learned advocate Wahab Khan criticized the evidence of SEO Barve, PW-82, on several points, which to my mind, is not necessary to be considered in view of it being held that the evidence given by SEO Barve, PW-82, is not a cogent evidence. Not that it is untruthful, which will be clear from the subsequent discussion.

1167. Learned advocate then submitted that SEO Purandare, PW-80, started writing the memorandum from the ATS office at Bhoiwada which is not in accordance with the guidelines given in the Criminal Manual and he did so in respect of the memorandum Ext. 833 of the first parade as well as memorandum Ext. 834 of the second parade, which means that he started writing two memorandums at Bhoiwada itself. To my mind, the opening paragraphs of both memorandums are a narration as to what transpired in the ATS office at Boiwada before going to the prison and it can be understood that the SEO wrote about the events again

in the memorandum Ext.834 in order to show the separation of the two parades as well as the completeness of the second parade. This aspect again does not affect the fact in issue about the identification parade being held and the evidence given by the SEO and the identifying witnesses. It is also corroborated by the applications given by the A2, A4 and A13 by which they have admitted the factum of holding of the test identification parade in the prison on that day.

1168. Submission by the learned advocate about short notes Ext. 835 that were brought on record during the cross-examination of SEO Purandare, PW-80, are that the names of the dummies are not written in Ext. 835. Therefore, the memorandum Ext. 834 is not based on it. It has come in the cross-examination of SEO Purandare, PW-80, that he had already written the first memorandum in the parade room and he wrote the second memorandum in the room that was provided by the prison officer after the parade and that the notes were taken out before the parades. Except this, there is no suggestion to him that he prepared the entire memorandum in the room that was provided by the prison officers. No doubt, learned advocate is right in submitting that the names of the dummy suspects are not written in the short notes Ext. 835, but considering his answer further that he knows even today the sequence in which the witnesses were brought to the parade room and whom they have identified, the possibility cannot be ruled out that the names of dummy suspects must be fresh in his mind when he wrote the memorandum Ext. 834. Thus the submission of the learned advocate

that the case on this aspect and the version in chief-examination loses its value and cannot be accepted.

1169. Learned advocate pointed out to the statement made by SEO Purandare, PW-80, that after the A2 and A7 were put in the identification parade alongwith the 12 dummy suspects, he and the two panchas went out of the barrack, keeping them inside the barrack and submitted that the SEO cannot go outside during conduction of the parade and it is against the guidelines. There is no guideline in the Criminal Manual that the SEO should not go outside the identification room during the conduction of the parade. On the other hand what has happened is that before actually starting the process of witnesses coming inside the identification room, the SEO had gone to the room where the witnesses were sitting and had asked them whether they were shown any accused or their photographs and whether the place where they were going to hold the parade is visible from that room. He also submitted that it is necessary for the SEO to depose about what the witness described about the role of the accused whom he has identified. To my mind, there is no such law, but it is necessary for the witnesses, who have taken part in the identification parade to depose about it and they have done so in the present case.

1170. Learned advocate submitted that SEO Purandare, PW-80, is lying when he has stated that he has not conducted any other identification parade after these parades on 07/11/06. He pointed out to Ext. 3292 which is a certified copy of a memorandum of an identification parade seen to be conducted by SEO Purandare,

PW-80, on 07/03/10 in the crime of V. P. Road Police Station. Again it will have to be pointed out that this is a document obtained under the RTI Act from V. P. Marg Police Station and has not been proved in the court of law and exhibited. Moreover, the witness was not confronted with this document to expose his falsity. It is seen to be obtained by the A4 on 03/01/12 as per the letter Ext. 3291 with which he received it, but there was no effort from the side of the defence to recall the witness and to confront him with the said document. Thus, this witness cannot be condemned behind his back and this is what has happened during the entire trial whenever the accused obtained the documents under the RTI Act. They recalled some witnesses, but not this witness. It is not shown as to how this single answer will totally discredit the oral and documentary evidence given by SEO Purandare, PW-80, which is corroborated by the evidence of the identifying witnesses.

1171. Learned advocate then submits that the evidence of SEO Purandare, PW-80, of having written the memorandum Ext. 834 in another room is against the guideline 'E' in the Criminal Manual. This is not what is written in guideline 'E' in paragraph 16 in Chapter I of the Criminal Manual. What is written is that everything in respect of the identification parade should take place in the presence and hearing of the suspect, including any instructions to the witnesses attending to it as to the procedure that is to be adopted. To my mind, writing of memorandum in the presence of the suspects is not a guideline. Thus, this submission is not correct. The last submission by the learned advocate is that once the

evidence of the parades is discarded the acts of the witnesses identifying accused before the court loses its value. This submission is against the settled law and is therefore not correct.

1172. Most of the submissions made by learned advocate Shetty in respect of the test identification parade have been covered while considering the submissions by learned advocate Wahab Khan. Learned advocate Shetty made general comments about the precautions that are required to be taken and his additional submission is that the identification parade is required to be conducted as early as possible, but that has not happened in this case. He submits that the parades in this case were conducted after about four months of the incident and after about three months of the arrest of the various accused and on this count also the evidence of these witnesses and the fact of the identification is required to be discarded. In this connection he has placed reliance on the law laid down in the case of **Nana Somnath Trimbake V. State of Maharashtra (2009 ALL MR (Cri) 434)** wherein it is held that there was a delay of almost a month in holding the identification parade and it was not explained by the prosecution. Alongwith this factor it was also noticed that after the first identification parade was over, wherein the witness had failed to identify the accused no. 4, there was only change of one person in subsequent identification parade and all the dummies were common, that the lock-up was just adjacent to the place where the test identification parade was held, the dummies were roaming around prior to the identification parade and the possibility of the suspect being seen by witness before the

parade was held was not ruled out. Hence, the evidence of identification parade was not believed. In my humble opinion, at this point itself it will not be out of place to point out certain things. No doubt, the A1, A2, A3, A4, A6 and A7 had been arrested in July, 2006, however except Kishore Shah, PW-60, all the remaining six witnesses, i.e., Subhash Nagarsekar, PW-57, Devendra Patil, PW-62, Santosh Singh, PW-63, Vishal Parmar, PW-74, Amar Khan, PW-75, and Rajesh Satpute, PW-77, had approached the police or were traced by the police from 18/10/06 onwards. The identification in respect of the A3, A4 and A13 by Santosh Singh, PW-63, Vishal Parmar, PW-74 and Rajesh Satpute, PW-77, was within 4-5 days and of the A1, A2, A4, A6 and A7 by Subhash Nagarsekar, PW-57, and Amar Khan, PW-75, was within one month. So in fact there was no delay in holding the identification parade because the investigating machinery did not know about the said witnesses before they came to the ATS office or were brought to the ATS office on the dates of their statements.

1173. Alongwith making submissions identical to the submissions made by learned advocate Shetty, learned advocate Sharif Shaikh relied on the following authorities about this topic :-

- (i) **Musheer Khan Alias Badshah Khan, Appellant V. State of Madhya Pradesh, Respondents (AIR(SC)-2010-0-762).**
- (ii) **Anil Kumar, Appellant V. State of Uttar Pradesh, Respondents (LAWS(SC)-2003-2-57).**
- (iii) **Rajesh Govind Jagesha, Sarif Anwar Saiyyad, Harish Govind Jagesha, Appellants V. State of Maharashtra,**

Respondents (LAWS(SC)-1999-11-1).

(iv) Hari Nath, Chhabi Nath, Raj Nath, Appellants V. State of Uttar Pradesh, Respondents (LAWS(SC)-1987-11-9).

1174. I have carefully gone through these authorities. In view of it being held above that in fact there is no delay in holding the test identification parade, there is no question of considering the case law on the point of delay. Even otherwise in the case of **Musheer Khan Alias Badshah Khan** where there was a gap of two months it was held by the Supreme Court that no reliance can be placed on such delayed test identification parade for which there is no explanation by the prosecution. It has come in the evidence of ACP Patil, PW-186, that by 01/11/06 all the accused were remanded to judicial custody and thereafter he started making preparations for holding the test identification parade. So if the accused were in judicial custody prior to 01/11/06, there was no question of holding the test identification parade. Thus, this authority does not help the defence. The law in the case of **Anil Kumar**, to my mind, helps the prosecution rather than the defence and it is a wrong reliance by the learned advocate. In the case before the Supreme Court there was a delay of 47 days in holding the test identification parade and on factual aspects, i.e., by holding that the witness who identified the accused would have been impressed by the facial expressions of the assailants, the delay of 47 days was considered as mere lapse not sufficient to erase the facial expressions from his memory and the Apex Court agreed with the trial court and appellate court that their evidence is believable. The law in the case of **Rajesh Govind**

Jagesha is in respect of unexplained delay by the prosecution and also on certain infirmities in the test identification parade like accused being described as having beard and long hairs, but being identified though he had removed the long hair and beard. It was also observed by the Apex Court that the High Court was not justified in holding that the parade could not be held early on account of alleged difficulties of the Special Executive Magistrate. Thus, on factual aspects this authority is of no help to the defence. In the case of **Hari Nath** there was one month's delay after the arrest of the accused and there is no explanation for it. It is observed that there might conceivably be occasions when there could be justification or acceptable explanation for the delay. To my mind, this is what has happened in the present case because the accused were in the police custody upto the end of October, 2006 and therefore there was no question of holding their test identification parade during that period. Secondly, the witnesses came forward in October and in the first week of November, 2006 as described above and therefore factually there is no delay. It will not be out of place to point out that in case of **Anil Kumar** supra reference was made to the law in the case of *Daya Singh vs. State of Haryana* reported in AIR 2001 SC 1188 wherein the identification parade was held after a period of almost 8 years inasmuch as the accused could not be arrested in a period of 7-1/2 years. Reliance was placed on the evidence of the test identification parade in that case for the reason that there was an enduring impression of the identity on the mind and memory of the witnesses.

1175. In this respect the learned SPP has placed reliance on the following authorities in respect of law about the test identification parade, delay in holding the test identification parade and publishing the photographs in newspapers :-

(i) **Mohd. Farooq Abdul Gafur and Anr., Appellants V. State of Maharashtra, Respondent ((2010)14 SCC 641).**

(ii) **Munna Kumar Upadhyaya @ Munna Upadhyaya, Appellants V. The State of Andhra Pradesh Through Public Prosecutor, Hyderabad, Andhra Pradesh, Respondent (AIR 2012 SC 2470).**

1176. In the case of **Mohd. Farooq Abdul Gafur**, it is held in paragraph 109 that the Supreme Court did not accept the contention of the counsel for the accused that the TIP was conducted after a period of 45 days after the accused were taken in custody and held that it is not such a long period to cast any doubt over the evidentiary value of the TIP. It is also held that the identification proceedings are in the nature of test and significantly, therefore, there is no provision for it in the Cr. P. C., 1973 and in the Evidence Act. It is held that if there are circumstances that are beyond control of the police and there is some delay, it cannot be said to be fatal to the prosecution. In the case of **Munna Kumar**, it was the contention of the accused that the identification of the accused was conducted in a manner contrary to law and much after their arrest. Further the photographs of the accused had been published in a newspaper on 19/03/03, i.e., on the date of their arrest, and the parade was conducted on 20/06/03. It is then observed in paragraph 45 that

there was some delay in holding the identification parade, but the delay *per se* cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of identification parade is to provide corroborative evidence and is more confirmatory in its nature. In respect of publication of photographs of the accused in the newspaper it is held that there is nothing on record to show that the photographs of the accused were actually printed in the newspaper and it is observed that even if that be so, they were printed months prior to the identification parade and would have lost their effect on the minds of the witnesses who were called upon to identify an accused. The Supreme Court hastened to clarify that it is always appropriate for the investigating agency to hold identification parade at the earliest in accordance with law so that the accused does not face prejudice on that count. A reference was made to the case of Mullagiri Vajram v. State of A. P. 62 and it was held that though the accused was seen by the witness in custody, infirmity in TIP will not affect the outcome of the case, since the depositions of the witnesses in the court were reliable and could sustain a conviction. The well settled law is reiterated by holding that the photo identification and TIP are only aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath. It did not accept the plea that merely because of delay, the court should reject the entire evidence of identification of the accused in the present case. More so, the accused persons were duly identified by these very witnesses in the open court, while they were deposing. Learned SPP submitted

that the photographs of the accused are published in our case in India Today, which only affluent persons read and not common men and we have to see from what setup the witnesses in this case are and moreover they have denied seeing the photographs. Same can be said about the issue of Mumbai Mirror. Thus, the law laid down in these two authorities clearly covers the delay if any in holding the test identification parade. However, on facts I have held that in fact there is no delay.

1177. Learned advocate Shetty submitted that considering the timings of the parades the first parade will not be over in half an hour. 8 witnesses were to participate and even if we say that for each witness minimum five minutes are required, it would be near about 40 minutes and before that selection of dummies and completing the initial formalities will have to be completed which will not be less than 15-20 minutes. Therefore, at any stretch of imagination you cannot complete the parade within one hour minimum where 8 witnesses identified the accused. He submits that in this context SEO Purandare, PW-80, stated that the accused were with him for half an hour and secondly when he says that he does not know whether the accused were taken out at 1235 hours and put back at 1240 hours, is itself sufficient to discard his evidence about conducting the identification parade. The second part of the submission is already discussed and in respect of short span of test identification parade the learned SPP relied on the law laid down in the case of **C. Muniappan and Ors., Appellants V. State of Tamil Nadu, Respondent (AIR 2010 SC 3718)**. The facts before the

Supreme Court were that the entire proceedings of the identification had been concluded within a short span of 2 hours and 25 minutes in respect of 18 witnesses in three rounds and this was objected to by the counsel appearing for the appellants submitting that this is a short span of time, which means that one round was completed in three minutes and this could not be treated to be a proper identification. After going into factual aspect the Supreme Court held that all preparations/arrangements had been made in advance by the jail authorities as per the directions of the said officer, the arrangements of standing of the accused along with other inmates in jail of the same height and complexion had already been made, that there had been no haste or hurry on the part of the officer to conclude the proceedings and more so, for reasons best known to the defence, no question had been asked to the officer in his cross-examination as to how he could conclude the said proceedings within such a short span of time. For this reasons, it did not consider the submission. Same thing has happened in our case also because there is no question to the SEO as to how they could conclude the proceedings within a short span of time. Thus, this submission by the learned advocate does not make the evidence of the test identification parade unacceptable.

1178. The next submission by the learned advocate is that both the SEOs have stated that four accused alongwith 24 dummies were brought together before them and they decided to take the first parade of two accused alongwith 12 dummies. However, they have not explained in their evidence as to where the remaining two

accused and the dummies were during the first parade. I do not see how this will affect the evidence of the SEOs, because none of the witnesses were asked whether they had seen the other two accused when they came out of the room and proceeded towards the identification barrack and it was not suggested to them that they had seen the other two accused outside the identification room or anywhere else before they identified them in the second parade. An untenable submission made by learned advocate is that SEO Barve, PW-82, is attached to a Congress MLA, who was previously with the Shivsena and therefore this person has a prejudiced mind. To my mind, it may be that the SEO Barve, PW-82, is a sevak of an MLA, who was of the Shivsena earlier and is now with the Congress(I), but that does not mean that he is a worker of a Shivsena party and no activity on his part has been brought on record to indicate that because of his association with the MLA he has a prejudiced mind.

1179. He submits that one can accept panchas who are residents of Parel village, which is near Bhoiwada/Naigaon/Dadar, to be selected as panch witness for the parades conducted by SEO Purandare, PW-80. However the panchas who were selected for the identification parades conducted by SEO Barve, PW-82, are residents of Saat Rasta area, which is near Mumbai Central Prison and it cannot be accepted that they were called from there to the ATS office at Bhoiwada. Learned advocate has certainly made a point here, however, the fact remains that the said two panchas, i.e., Kailashnath Kedarnath Jaiswal and Shahadur Prasad Rajghar, have not been examined by the prosecution and nothing is brought on

record as is the case in respect of the panch witness Sachin Koltharkar, to show that they had any previous connections with the police or had acted as panch witnesses earlier for any other police. This aspect alone does not affect the entire evidence of the SEO.

1180. Learned advocate then submits that it has come in the evidence of SEO Barve, PW-82, that the A3 wore a round cap before the witness Rajesh Satpute came inside and he told the dummies that they can wear the caps, if they have any, so as to appear similar to the accused and 4-5 persons wore round caps. Learned advocate submits that in his cross-examination the SEO admitted that the A3 had the cap with him, that till that time he did not know that he had a cap with him, that no person was wearing a cap till the work of the fourth witness was over and he did not provide any caps to any dummy suspects, that he did not know till the A3 took out the cap as to whether any dummy suspects had caps with them and by looking at their names in the memorandum he cannot tell who out of the dummy suspects wore caps. Learned advocate has again made a point there, but it will have to be considered that it was the A3, who wore a white round cap before witness Rajesh Satpute, PW-77, came inside the parade room, which is so written in the memorandum Ext. 844. No doubt it is not written that the SEO told the dummy suspects to wear caps, but these things have come in his cross-examination and on this ground alone the memorandum of the test identification parade or the evidence given by SEO Barve, PW-82, and the witnesses cannot be discredited.

1181. Last submission by the learned advocate is again in respect

of repetition of about two and half pages in the memorandum and he submits that the answer given by the witness to the specific question in paragraph 28 is not a plausible explanation. In this connection the learned SPP pointed out that you can find wrong with the memorandum, but you must consider whether it is the fault of the identifying witnesses. However, learned advocate is right in submitting that the repetition of the contents of more than two pages in the memorandum affects the credibility of the evidence.

1182. Learned SPP submitted during his arguments that the reasonable care that was required to be taken is exhibited by the SEOs. We have found that the witnesses were made to sit in a separate room after the parade and were asked not to talk with each other. The SEOs ensured from the panchas that the identification room/barrack was not visible from the room where they were sitting. The place where the identification parades were held was again beyond the office premises of the prison as it was in the barracks, that it is commonly known that jail barracks have iron grills/bars and both SEOs have also stated that the identification barrack had waist high walls and curtains. This shows that sufficient precaution was taken to see that what was going on inside is not visible from outside, the dummies also were selected from many persons, so that precaution is also taken and the accused were also asked whether they wanted to change their places and clothes every time when the panchas went outside the room to call a witness. This precaution was also taken. Lastly when the identifying witness identified the suspect, the SEOs confirmed the name from the

identifying person and confirmed the role from the identifying witness so by and large the standard practice and procedure and standard precautions were apparently taken as per the record and deposition of these witnesses.

1183. In respect of submissions by learned advocate Wahab Khan as well as learned advocate Sharif Shaikh in his written submissions about the time when SEO Barve, PW-82, came to the ATS office, whether the witnesses were introduced to him, etc., it is rightly submitted by the learned SPP that for the purpose of appreciating the evidence of prosecution witnesses, the court may take it in any way which the defence wants to take. The question that he puts to himself is whether presence of SEO Barve, PW-82, in the ATS office before the witnesses went to the prison, will have any bearing on the deposition of the witnesses and even of SEO Barve, PW-82, and he conducting the test identification parade. To my mind, this aspect will not affect either the evidence of the seven witnesses or of SEO Barve, PW-82, or of the memorandum Ext. 834.

1184. Learned advocate Shetty has relied on the following authorities in support of his submissions :-

- (i) **Chander Singh, Appellant V. State of U. P., Respondent (AIR 1973 SC 1200).**
- (ii) **Wakil Singh and others, Appellants V. State of Bihar, Respondent (AIR 1981 SC 1392).**
- (iii) **Devendra Bhima Naidu, Appellant V. The State of Maharashtra, Respondents in Criminal Appeal No. 709 of 2010 dtd.10/04/12 by High Court.**

1185. The facts before the Supreme Court in the case of **Chander Singh** were that one of the accused were having brown eyes and the persons with such brown eyes were not mixed in parade and therefore the identification was not relied upon and he was given benefit of doubt. On the other hand another accused not having features which would distinguish him from outsiders was mixed with him in the parade, but he was not held entitled to the benefit of doubt although identified by lesser number of witnesses. Factually, this authority is not helpful to the defence. The case before the Supreme Court in the case of **Wakil Singh** was that none of the witnesses had given the description of dacoits in their statements or in oral evidence, whom they have alleged to be identified in the dacoity, nor did the witness give any identification marks, viz., stature of accused or whether they were fat or thin or of a fair colour or black colour. There was identification of the accused by a single witness and therefore it was held that in the absence of such description it is impossible for them to convict any accused on the basis of the single identification, in which case the reasonable possibility of mistake in identification cannot be excluded. This authority is also factually different because the witnesses in this case have given the description of the suspects whom they had seen outside the house of the A6 or in their taxis or in the trains, though the description was not clear. Thus, it is not the case that they have not at all given the description of the suspects. In the case of **Devendra Naidu** before the Bombay High Court the factual aspect of the test identification parade was that four accused were put up

in one identification parade in the midst of 24 dummies. This is not the case here because though jail authorities brought four accused before both the SEOs at the time of start of the respective parades, the SEOs wisely and procedurally choose only two accused to be put up in one parade. Thus, this authority is also of no help to the defence.

1186. Most of the points raised in the 48 pages written submissions submitted by learned advocate Sharif Shaikh in respect of the test identification parade conducted by SEO Purandare, PW-80, have been covered while considering the submissions made by learned advocates Wahab Khan and Shetty. The submissions by learned advocate Sharif Shaikh are in respect of the second parade conducted by SEO Purandare, PW-80, the memorandum of which is at Ext. 834 in which Vishal Parmar, PW-74, Amar Khan, PW-75, and Ajmeri Shaikh had identified the A4. At the cost of repetition it will have to be said that the written submissions consist of reproduction of major portion of evidence of the witnesses in chief-examination as well as cross-examination and in this case it is in respect of SEO Purandare, PW-80, ACP Patil, PW-186, Vishal Parmar, PW-74, and Amar Khan, PW-75, and some reference to the evidence of Sr. PI Tajne, PW-161. Reference is also made to the evidence given by the A4 in connection with the test identification parade and it is contended on the basis of the submission made by him in chief-examination that so and so fact stands proved, which to my mind, is an incorrect submission. In respect of entries in the so called register kept outside the high security barrack, the evidence of the A4 is only

that all entries were made before him. However, he as well as all other remaining accused, who gave evidence about the identification parade, have not stated the name of the prison officer who made the entries though it is absolutely certain that they must have come to know his name. At the cost of repetition, it will have to be stated that defence had made no efforts to examine the person who has made entries in the said register Ext. 2472 to prove them. Again the evidence of A4 is vague when he has stated that he saw some ATS officers pointing him to some persons. It may be that on 09/11/06 he may not have come to know the name of the said ATS officer, but by that time when he gave his evidence as DW-38, he must have certainly come to know about it and should have deposed about it. It is fallaciously submitted that it is proved from the evidence of A2, A4 and A7 that they were taken out from the Anda Barrack at 1235 hours and put back at 1240 hours and therefore the evidence of SEO and two witnesses is required to be discarded in toto.

1187. It is submitted that the accused were photographed and videographed in police custody and reliance is placed on the evidence of Shaikh Noman, PW-78, a witness hostile to the prosecution, that ACP Patil, PW-186, had shown him the photographs of the A2 and A4 on 07/11/06 and the evidence of ACP Patil, PW-186, was that photographs of the accused were taken. Admittedly, Shaikh Noman, PW-78, was not put in the parade and he is a relative of the A3 and A9 and his evidence is found to be relevant insofar as the accused being connected to SIMI is concerned. It is a wonder why reliance is placed on his evidence

about the photographs of the accused being shown to him though he did not take part in the identification parade and how can it be submitted that it can be construed that photographs were taken only for the purpose of showing them to the witnesses and it is proved that the photographs were taken and were shown to the witnesses before the test identification parade and therefore test identification parade held on 07/11/06 is invalid and needs to be discarded. This is stretching the things too much.

1188. It is submitted that in his written complaint dtd. 03/11/06, A4 had alleged that he was shown to 20-25 persons in the lock-up and his name was told to those persons. It is alleged that when he was produced alongwith the other accused in the court on 03/11/06, Sr. PI Tajne, PW-161, showed him to Vishal Parmar, PW-74, however, Sr. PI Tajne, PW-161, stated that he does not remember whether he had come to the court on 03/11/06 alongwith Vishal Parmar, PW-74, and Vishal Parmar, PW-74, in turn denied the suggestion. The evidence given by A4 as DW-38 is reproduced, which is in accordance with the suggestion given to Sr. PI Tajne, PW-161, but it is not included in the alleged complaint Ext. 3798 or in application Ext. 3799. On the other hand, contents of Ext. 3799 described the procedure how identification parade was conducted. His allegation in Ext. 3799 that the witnesses were kept in the room together inside the prison corroborates the evidence of SEO Purandare, PW-80, and the identifying witnesses. His further allegation is vague that the room had window and the ATS officer indicated each accused to the respective witnesses from the window.

It is strangely submitted that from the said deposition of the A4 and the document, the only inference can be drawn that A4 was shown to the witnesses.

1189. It is submitted that A4 was remanded to judicial custody on 09/10/06 and thereafter the date of appearance in the court was on 20/10/06 and then 03/11/06 and he alongwith A1, A2, A3, A9, A10 and A11 were produced before the court without veil and the answers given by ACP Patil, PW-186, are reproduced during which he pleaded ignorance about the production of the accused with veil or without veil. However, to my mind, ACP Patil, PW-186, has specifically explained that they have no control over the accused remanded to judicial custody. From this alone, it cannot be said that the accused were shown to the witnesses in the court. In this connection, reliance is placed by learned advocate Sharif Shaikh on the authority in the case of **Shyam Singh Etc. V. State of U. P. (2003 Cri LJ 3441)**. Similar facts were there that the accused were produced twice for judicial custody before the court and coupled with it the delay in holding the test identification parade was considered and the accused was given the benefit of doubt. To my mind, unless it is shown by the accused that in fact he was shown to the witnesses on the dates of the judicial custody or that Sr. PI Tajne, PW-161, had come to the court on 03/11/06, this submission cannot be accepted. Strangely reliance is placed on the absence of mentioning in the roznamas of the remand applications dtd. 09/10/06 and 03/11/06 about any direction by the court to the prison authority to produce the accused in veil. In my humble

opinion, it is not correct legally to give such a direction because once the accused are remanded to judicial custody, there is no question of them being produced in veil. This submission therefore is of no use.

1190. It is submitted that it is the case of the prosecution that Amar Khan, PW-75, knew the A2, A4 and A6 as he had seen them in SIMI programs and even when there is a well settled position of law that identification of the named accused is not required, he was asked to identify them. There is no authority relied upon by learned advocate in support of his submissions. Hence, it is not considered. It is alleged that the manner of conducting the test identification parade invalidates it because the distribution of the accused who were put to be in the identification parade is made for some extraneous reasons and ACP Patil, PW-186, selected the accused to be identified as per his plan for identifying them. To my mind, this can be accepted for the simple reason that two accused more or less similar in physique were put up in one parade and therefore they were selected. The next submission is an example how the minds of the accused work in the opposite direction. It is submitted that the letter Ext. 2415 sent by ACP Patil, PW-186, to the prison authority for rendering assistance for holding the test identification parade bears the list of names of all the accused and the names of A5, A9, A10, A11 and A12 are tick marked, which means that they were not to be identified and this was a plan of the investigating officer. It do not see how such inference can be drawn and on the other hand it can be said that the remaining 8 accused were to be put up on 07/11/06 and the tick mark 5 accused were put up on 08/11/06. All

the clauses in Rule 16 (1)(2) and (3) have been mentioned in the point no. 15 and relying on the evidence given by the accused and other circumstances it is submitted that therefore the alleged test identification parade is required to be discarded. I think most of them have been covered while considering the submissions of the learned advocates and it is not necessary to again consider them. There may be slight variations and inconsistencies in the evidence of the SEOs and witnesses and there may be a few lapses in the proceedings of the test identification parades, but they alone are not sufficient to discredit the evidence given by the witnesses and the SEOs and the observations in the case of **State of Maharashtra V. Suresh** mentioned hereinafter will cover all these things.

1191. Next submission is about the inconsistencies in the evidence of ACP Patil, PW-186, ACP Joshi, PW-163, and SEO Purandare, PW-80, about handing over the memorandums Exts. 833 and 834 to ACP Patil, PW-186, whether they were handed over outside the prison when he came out after completing the parades or whether they were handed over in the ATS office. To my mind, it does not make much difference.

1192. There is a fresh issue and it is in respect of PI Alaknure, PW-153, having gone to the prison to reach the SEO and two panchas for an identification parade in connection with this case from his office at Kurla in vehicle no. MH-01-BA-4205. PI Alaknure, PW-153, admitted that he had gone to the prison alongwith the SEO and two panchas but did not remember their names and whether he had taken Amar Khan, PW-75, and Ajmeri and whether he has gone

in his office vehicle and it is in this connection that it is submitted that neither the SEO nor the witnesses have stated about his presence. Help is taken of an entry in the log book of that vehicle of 07/11/06, true photocopy of which is at Ext. 3279, which mentions that he had gone there from Kurla office to Bhoiwada Police Station, from there to Arthur Road prison and from there to Ghatkopar Railway Station and back to Kurla office and it is contended that he had carried the witnesses Amar Khan, PW-75, and Ajmeri. This document is obtained by the accused under the RTI Act and has not been duly proved by calling the person who had made the entries. Even otherwise, it is a question how an inference as submitted can be drawn only on the basis of log book and the evidence given by PI Alaknure, PW-153, when it has not been put to any of the SEO or Amar Khan, PW-75. It is also wrongly contended that this document falsifies the deposition of ACP Patil, PW-186, ACP Joshi, PW-163, and Amar Khan, PW-75, and other witnesses concerning recording of the statement of 8 witnesses after the test identification parade on 07/11/06.

1193. Learned advocate relied on the following authorities, which to my mind, are inapplicable on facts :-

(i) **State of Goa, Appellant V. Sanjay Thakran, Respondents (LAWS(SC)-2007-3-22).**

(ii) **Mahesh Rohidas Kinalkar, Appellant V. State of Goa, Respondents (LAWS(BOM)-2005-3-126).**

(iii) **Budhsen, Appellant V. State Uttar Pradesh, Respondents (AIR (SC)-1970-0-1321).**

(iv) **Dhananjay Shanker Shetty, Appellant V. State of Maharashtra, Respondents (LAWS(SC)-2002-7-7).**

1194. The facts in the case of **Sanjay Thakran** were that there were two accused who were put to be in one parade, out of whom one was a man and one was a woman and it was therefore held placing reliance on paragraph 16(2)(b) of the Criminal Manual that if two suspects were not similar in appearance, two parades should be held. Thus, on facts, this is not applicable in the present case because there is no woman accused in this case. Not only that the sentence in the same sub-clause that two suspects of 'roughly' similar in appearance should be paraded with 12 other persons. It does not mean that the two suspects should be identical to each other. Even the guidelines given by the Government of Maharashtra reproduced in paragraph 3 of Rule 16 show that not more than two accused should be placed in any single identification parade.

1195. The facts in the case **Mahesh Rohidas Kinalkar** were that four accused were paraded in one parade and four accused were paraded in the second phase of the parade while 13 dummies in both the phases remained the same and not only that they stood at the same place and only the places of accused were changed. Thus, this authority is not applicable on facts.

1196. The facts in the case of **Vilas Vasantrao Patil** were that independent respectable persons, who were associated with the parade, were not examined at the trial and this fact alongwith the other circumstances like the parade being held in the police station and same set of dummies being used in the next parade for the same

witnesses was considered for not relying upon the evidence by way of test identification parade. The other circumstances are not present in our case and insofar as non-examination of independent panch witnesses is concerned, to my mind, considering the fact that neither the SEOs nor the identifying witnesses have been suggested that any of the panch witness gave them indications or hints as to which accused has to be identified, it does not affect and does not vitiate the evidence of test identification parade, more so, when the A2 and A4 themselves have admitted the factum of test identification parade being held on that day.

1197. In the case of **Budhsen** the magistrate who conducted the parade had told the witnesses the name of the accused before he went for identification and to describe as to what that particular accused was doing at that time. That is not the case here and insofar as the other aspect on which the evidence of the identification parade was not considered is that the memo of the identification was filled up very casually, which is also not the case here. Thus this authority is also not helpful and is on different set of facts. I do not know why reliance is placed on the authority in the case of **Dhananjay Shanker Shetty** because the Supreme Court just referred to the circumstances against the appellant being identified in the test identification parade by two witnesses and observed that the trial court as well as the High Court has found various legal infirmities in holding the test identification parade. As such, no reliance has been placed on it. Moreover, the appellant was named as an accused person, therefore, his so called identification in the

test identification parade could not be of any avail to the prosecution as it was meaningless. There is no discussion about the procedural aspects of the test identification parade and I think that this is in respect of Amar Khan, PW-75, knowing the A2, A4 and A6 and he identifying them in the identification parade. However, to my mind, he was put in the identification parade to see whether he could identify the A7, whom he did not know earlier and during the course of the parade he identified the A2, A4 and A6 and the SEO also took down whatever he stated. This also shows the naturalness and the honesty of the parades conducted by SEO Purandare, PW-80, because if the parades were a farce and memorandums have been prepared as per the dictates of the ATS officers, the identification of the A2, A4 and A6 would not have been there and only the identification of the A7 would have come in the parade. Thus, this authority does not help the defence.

1198. Learned SPP submitted that he must admit that there is a slight contradiction where some of the witnesses have stated that one panch used to be inside and one panch used to be outside the parade room and SEO Barve, PW-82, stated that both panchas used to be inside. He submits that what is relevant and important is this that after the panch witness who was sent out to fetch a witness, would leave the parade room, it is only thereafter that the SEO would ask the accused whether he wants to change his place or clothes. He submits that so long as these precautions are taken then irrespective of whether both panchas were present in the parade room or not assumes no importance and no relevance. In other

words, the precaution is taken to rule out the possibility that the suspect should not take his position and change his clothes within the knowledge of the panch witness, who is to be sent to fetch the identifying witness. To my mind, it is obvious from the evidence of both the SEOs that this precaution has been followed and as I pointed out earlier not a single witness has been suggested that the panch witness had told him the features of any particular accused that he had to identify or the place where he was standing or the type of clothes that he were wearing.

1199. Learned SPP formulated four yardsticks on the basis of which the evidence by way of test identification parade is to be considered :-

- (i) Whether the fact of holding the test identification parade inspires confidence of all?
- (ii) Whether the procedure that was following by SEOs and the precautions that were taken were proper and adequate or not?
- (iii) Whether his deposition is consistent with the contents of the memorandum and whether the memorandum corroborates his oral evidence?
- (iv) And in the light of the above three, if the identifying witnesses have given their evidence before the court, whether it corroborates their substantive evidence of identifying accused in the court or not?

He submits that if the court is satisfied that these yardsticks are fulfilled, then there would be no difficulty in accepting the prosecution case as it is in respect of identification of the accused in the test identification parade by the relevant witnesses.

1200. Though the learned SPP submitted that if the court feels it may keep out of consideration the evidence given by SEO Barve, PW-82, in view of the explanation that he gave about the two pages in the memorandum that are verbatim reproduced or repeated and fairly conceded that the defence will be justified in criticizing his evidence, he submitted that it does not affect the substantive evidence of the witnesses given before the court. He submits that if even for the sake of arguments the memorandum of the identification parade Ext. 844 is kept aside, the deposition of SEO Barve, PW-82, that he had gone to the Mumbai Central Prison, that he had conducted the test identification parade coupled with the evidence of the identifying witnesses that in that parade they have identified concerned accused, are the facts on record and more than that the substantive evidence of the identifying witnesses in the court identified the concerned accused is very convincing and therefore the infirmity in the test identification parade memo will not seriously affect the prosecution evidence. Secondly, the lapses, if any, in the conduct of the SEO Barve, PW-82, will not affect the evidence of the witnesses, who say that they had identified the particular accused. He submits that the courts have gone so forward that even without a prior test identification parade if the witness identified the suspects for the first time in the court, his evidence can also be accepted provided it is acceptable and believable. He submits that it boils down to this, that this court will have to weigh the evidence of the identifying witnesses and on the basis of that evidence if the court accepts the involvement of the accused, then

ignoring the evidence of the test identification parade, the court can base its findings on the basis of substantial identification in the court. He has then briefly taken me through the evidence of Subhash Nagarsekar, PW-57, and Kishore Shah, PW-60, and has submitted that every witness who has come forward, has given the distinctive factors and reasons why they remembered a particular person and with respect to each witness, he has pointed out how they were traced by the police or how they came to the police. In this context he relied on the law laid down in the case of **Sheo Shankar Singh**, which is already discussed. In respect of the defence case that there was a delay in taking the statements of the witnesses, he points to the discussion in paragraphs 36 and 37. Paragraph 36 consists of the contentions of the learned counsel for the appellants and it is held in paragraph 37 that, *'the failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In the appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration'*. The observations in the case of Malkhansingh and Ors. V. State of M. P. ((2003) 5 SCC 746) in respect of law about the test identification parade are reiterated and in paragraph 38 the observations in the case of Pramod Mandal V. State of Bihar ((2004) 13 SCC 150), it is held that, *'it is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be*

held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminal in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction'.

1201. Learned SPP also relied on the law laid down by the Supreme Court in the case of **Shyamal Ghosh, Appellants V. State of West Bengal, Respondent (AIR 2012 SC 3539)**, wherein it is held that, *'it is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions'.*

1202. Learned SPP submits that the court should appreciate that this is a sensitive matter because hundreds of innocents have lost their lives and the investigation is being conducted, the investigating agency is the same, the action of the state during the course of the investigation is the same, i.e., conducting the test identification parade, officers who are responsibly doing the work are the same, i.e., ACP Patil, PW-186, who was the investigating officer, the date of the test identification parade conducted by both the SEOs is the same and the place where it is conducted is the same. He questions

as to whether it is conceivable that one test identification parade by SEO Purandare, PW-80, is such that it inspires confidence that such a thing had happened or taken place and the factum of holding the second identification parade by SEO Barve, PW-82, is a false and fabricated evidence? It does not stand to logic that on the same day, at the same place such a thing can happen. Finally, he summarized that there were four test identification parades, there were two officers, same day, same place, total four parades, two parades by SEO Purandare, PW-80, and two by SEO Barve, PW-82, all identifying witnesses say that they were called in the morning at the ATS office, all of them say that they were taken to the Mumbai Central Prison, all of them described how they were called for identification one by one and whom they identified. In this respect the evidence about the parades conducted by SEO Purandare, PW-80, is flawless, so even if there are any discrepancies in the evidence in respect of parades conducted by SEO Barve, PW-82, in respect of the day of the test identification parades and the event, there can be no dispute.

1203. In my humble opinion, the evidence given by SEO Purandare, PW-80, is a cogent and convincing evidence in respect of the parades that he had conducted. I have already discussed the evidence of seven identifying witnesses on the material aspects about roles of the accused before and on the day of the blasts. I have accepted their evidence holding that they are truthful witnesses on those points. They were also cross-examined on the aspect of the test identification parade and as is mentioned earlier some of them

specifically stated the serial number at which they went inside the identification room and some of them described at what place in the row of dummy suspects, they identified the particular witness. Their cross-examination has not discredited their version. In this context it will not be out of place to point out the observations of the Supreme Court in the case of **D. Gopalkrishnan V. Sadanand Naik and Ors. ((2006) 1 Supreme Court Cases (Cri) 600)** wherein it is held that, *'there are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show the photographs to confirm whether investigation is going on in the right direction. During the course of investigation if the witnesses had given identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspects'*. As is observed in that case, same thing can be said in respect to our case that there is no concrete evidence on record to show that the photographs of the accused were shown to the witnesses or the accused were shown to the witnesses. The important observations of the Supreme Court are in the case of **State of Maharashtra V. Suresh (2000 SCC (Cri) 263)** when similar objections or contentions were raised to challenge the evidentiary value of test identification parade. It was held by the Supreme Court that, *'if potholes were to be ferreted out from the proceedings of the Magistrates holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become unusable. We*

remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parades is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held'.

1204. To my mind, in the present case also even if it is assumed for the sake of arguments that there are laxities, contradictions in the evidence of the SEOs and the identifying witnesses *vis-a-vis* the memorandum of the test identification parades, it cannot be said that they are fatal enough to affect their evidentiary value. Nothing is brought on record to show that any unfair aid or assistance was given to the identifying witnesses by the investigating agency so as to facilitate the identification of the accused. It does not appear that the investigating agency played any hand in conducting of the parades.

1205. However, insofar as the evidence in respect of the test identification parade conducted by SEO Barve, PW-82, is concerned I have held that it is not a cogent evidence in view of the mistake that is obvious from the repetition of some pages in the memorandum

Ext. 834. It will be unsafe to rely on his evidence because of this lapse. It is not that his evidence is treated as false evidence and it cannot be held that he had not conducted the test identification parade on that date and the witnesses had not identified the accused. Thus, I say in view of the applications given by the A2, A4, A9, A11 and A13 on 09/11/06, which are at Exts. B, 3799, 4262, 4157 and 4280 respectively. As mentioned earlier, the A2 has only mentioned about the time, i.e., 1230 hours, but the other accused have not mentioned any time. Out of the five accused, except A13, other accused have stated that the parade was conducted in open place/ground. Surprisingly, the A4 has stated that the witnesses were in the room. A2 and A13 have stated that there was no dummy suspects having beard. However, A2 and A4 have stated that 2 and 3 witnesses respectively identified them, i.e., Amar Khan, PW-75, and Ajmeri Shaikh for the A2 and Amar Khan, PW-75, Ajmeri Shaikh and Vishal Parmar, PW-74, for the A4. This is as per the prosecution case and as per the oral and documentary evidence given by the SEOs and the identifying witnesses. A9 and A11 have stated that they were not identified by anybody, which is correct as per the prosecution case because they were put up in the identification parade dtd.08/11/06 conducted by SEO Bendge and were not identified by any witness.

1206. Obviously, the five applications given by the five accused on 09/11/06, i.e., immediately one or two days after the test identification parades, have come out of legal brains, otherwise how would the accused know the procedural lapses that weighs with the

courts to disbelieve such evidence. How did the accused know at that stage itself that the test identification parade is required to be conducted in a close room and therefore they alleged that it was conducted in open place? How they knew the word 'dummies'? How they knew that four persons cannot be put up in one test identification parade? How they knew that dummies should be similar in appearance to the suspects? How they knew what allegation is to be made against the officers of the investigating agency, viz., ATS officers showing them to the witnesses from a window? Of course, it is vaguely alleged and no ATS officer is indicated by name though admittedly by that time they must have come to know the officers by name.

1207. Keeping aside the allegations and the shortcomings pointed out, one thing can certainly be gathered from these five applications that in fact the test identification parades were held on 07/11/06 and 08/11/06. Following things are also certain and proved by the applications :-

- (i) that admittedly A2 was identified by two witnesses, (i.e., Amar Khan, PW-75 and Ajmeri Shaikh) as per the prosecution case,
- (ii) that admittedly A4 was identified by three witnesses, (i.e., Vishal Parmar, PW-74, Amar Khan, PW-75, and Ajmeri Shaikh) as per the prosecution case,
- (iii) that A13 was put up in the parade, and,
- (iv) that admittedly in the test identification parade dtd.08/11/06 A9 and A11 were not identified by anyone, which is as per the case of the prosecution.

These inferences can legitimately be drawn from the contents of the five applications given by A2, A4, A9, A11 and A13. These were the applications given on 09/11/06 for retraction of confessional statements.

1208. As against this, in the applications given by A1 Ext. A and A-1, by the A3 Ext. C, by the A5 Ext. E, by the A6 Ext. F and F-1, by the A7 Ext. 4199, by the A8 Ext. 3936, by the A10 Ext. K and K-1 and by the A12 Ext. 4270, none of these accused have made any reference to the holding or non-holding of the test identification parades except the A3, who has stated that he was not identified by the person whom the ATS had brought in the Arthur Road Jail and the test identification parade was conducted in open place. On the other hand A7 in his application Ext. 4199 has specifically mentioned in paragraph 7 that he does not have any problem with the jail administration. Thus, indirectly the A3 is admitting the holding of the test identification parade. In view of the above discussion and in view of the law laid down by the Supreme Court in the several authorities, it will have to be held that the prosecution has led cogent evidence to prove that SEO Purandare, PW-80, had conducted the test identification parade on 07/11/06 as per the memorandums Exts. 833 and 834. It will also have to be held that Amar Khan, PW-75 has identified the A2 in the first parade and has identified the A4 and A6 in the second parade as the persons who were present outside the house of the A6 a few days before 11/07/06. It will also have to be held that Vishal Parmar, PW-74, has identified the A4 in the second test identification parade as having

boarded the 5.19 p.m. Virar train at Churchgate on 11/07/06 with a black rexine bag and he got down at Dadar without the bag. **This is the circumstance no. 42 proved by the prosecution.** It is against the A2, A4 and A6. It is the ninth circumstance against the A2. It is the fifth circumstance against the A4. It is the fifth circumstance against the A6. It is also the sixth circumstance against the A4.

Why and how provisions of the MCOC Act came to be invoked in C. R. No. 156 of 2006 of Borivali Railway Police Station:-

1209. ACP Khandekar, PW-174, the ATS officer who was conducting the investigation of C. R. No. 156 of 2006 of Borivali Railway Police Station from 12/07/06, parallel to the investigation being conducted by the investigating officer of the railway blasts, conducted further investigation after receiving the papers of investigation done by the investigating officer of the railway police on 21/07/06. As described in paragraphs 127 and 128 of the judgment, he gave oral evidence most of which was brought on record as an improvement to state before the ACP Patil, PW-186, who recorded his statement. To my mind, at the outset it will have to be said that the statement of the investigating officer if recorded further by the chief investigating officer will be in respect of the physical investigation that he has done and not about what information he got from the other investigating officers or what was going on in his mind and how he came to certain conclusions. Thus this aspect does not affect his testimony. It has come in his evidence that he came to know from other investigating officers about seizure

of RDX from the house of the A1, seizure of Saudi Riyals from the house of the A3, seizure of books connected with SIMI from the house of the A2, A3 and A9 to A11, seizure of bottles of chemicals at the instance of the A2, seizure of maps of Mumbai as well as international map showing the marked route from India to Pakistan and other inputs about the activities of different accused having taken militant training in Pakistan. The most important is that he came to know from Sr. PI Rathod, PW-176, and during his interaction with the accused that the literature found with them contained the information how the democracy in India can be replaced by a Muslim Government, how to create disharmony in different ways in Indian society and how to do it and came to know that the ideology and object of SIMI was behind the railway blasts and it was to create public opinion against the government, so that the government would topple, that this fell within the meaning of promoting insurgency. The investigating officers of the ATS who were investigating the other six crimes have stated in their evidence that there used to be interaction between all of them, including ACP Khandekar, PW-174.

1210. Then comes the important information about the A13, an active member of SIMI, being connected with the railway blasts, which he got from PI Agrawal, PW-173, and PI Kadam and he, i.e., ACP Khandekar, PW-174, himself getting the confirmation from his sources at the same time that the A13 had played a vital role in the Borivali blast. How this information turned out to be correct is evident from the discussion upto now about the circumstances that

are proved against the A13. Thus, he was on the right track. The next step that he took is that he gave all the information to DCP Bajaj, who directed him to gather more information and to prepare and give a comprehensive report about it. It has come in his evidence that he came to know that the A13 is an active member of SIMI and some cases are filed against him at Jalgaon and he told ACP Tawde that he wanted information about the accused and ACP Tawde sent a letter and deputed an officer to collect the information. He had stated that he stated this to ACP Patil, PW-186, when his statement was recorded, but it is shown as an improvement, which to my mind, does not affect his evidence because, these are abstract things of which mental note is taken and oral request is made and cannot be penned down as a part of physical investigation that he did. The officer who was deputed by ACP Tawde to Jalgaon to collect the information is API Deore, PW-180. ACP Khandekar, PW-174, did not state about it and by way of a natural evidence he stated that he got information about two crimes being registered against the A13 with the MIDC Police Station at Jalgaon, one CR No. 178/99 in which he was released on bail, but was declared as a proclaimed offender as he did not attend the court subsequently and the second CR No. 103/01, in which he was not arrested but the chargesheet was filed showing him as a wanted accused and other accused in this crime being tried and sentence of 3 to 10 years being imposed on them for the offences under section 153A of the IPC and in the second case the offences included the offences under the Explosive Substances Act and section 120B of the IPC. This evidence

is not an improvement on his statement that he gave to ACP Patil, PW-186.

1211. His further evidence is about how he came to the conclusion that it was necessary to apply the provisions of the MCOC Act to the crime that he was investigating. He gave evidence as described in paragraph 130 of the judgment about relying on the above information that he received and realized that the main accused, i.e., A13, had more than one offence registered against him during the last ten years, that he was convinced that the A1 to A4 were involved in the commission of the crime that he was investigating, that he had received the information that there were two chargesheets against the A2 and A4 under the UA(P)A on the allegations that they were involved in SIMI activities in 2001 after the ban on SIMI and it has come in his evidence that he realized that though SIMI was banned it was operating as an illegal criminal organisation, i.e., an organised crime syndicate and the accused were continuing with the unlawful activities under that syndicate and promoting insurgency and obtaining pecuniary gains. The latter part about he coming to know about two chargesheets against the A2 and A4 upto the end, is brought on record as an improvement, but at the cost of repetition it will have to be said that these are non-physical things for which there cannot be any physical evidence and need not have been stated by him to ACP Patil, PW-186.

1212. It has further come in his evidence that on reaching the above conclusion he prepared a proposal for application of the provisions of the MCOC Act to the crime that he was investigating,

sent it to ACP Bajaj for onward submission and received the order of prior approval Ext. 1841 given by Addl. C. P. Jaiswal on 24/09/06 in which ACP Patil, PW-186, was appointed as an investigating officer of this crime. He proved the contents of the prior approval by saying that it bears the signature of Addl. C. P. Jaiswal and stated that ACP Patil, PW-186, recorded his detailed statement after the order was received. It has come in the evidence of ACP Patil, PW-186, that he took over further investigation of the said crime from ACP Khandekar, PW-174, on receipt of the prior approval order, recorded his statement on the same day and treated it as information under section 23(1)(a) of the MCOC Act, about which station diary entry no. 23 was made, true photocopy of which is at Ext. 2367, the contents of which he proved. His cross-examination on this point at paragraph 149 has not revealed anything and he has denied that signature of the informant is required to be taken and he did not record any statement, that he fabricated the entry later on.

1213. Though ACP Khandekar, PW-174, only stated in his chief-examination about getting information about two chargesheets filed against the A13 at Jalgaon, he had not stated about how he got the information, but it has come in his cross-examination that API Deore, PW-180, who was then PSI, had first informed him on telephone about the chargesheets and subsequently he gave copies of the chargesheets. API Deore, PW-180, gave evidence about the steps he took for obtaining the information about the A13 by going to Jalgaon as described in paragraph 129 of the judgement. It has come in his evidence that in the middle of September, 2006 he was

asked to take information as to where the A13, resident of Jalgaon, a SIMI activist, is and whether there is any case lodged against him at Jalgaon, keep the information secret and to contact ACP Khandekar, PW-174, immediately if he gets an information. It has come in his evidence that he went to Jalgaon accordingly on the same day and reached there in the morning. He did not state on what date he went to Jalgaon and reached there, but it has come in his cross-examination that he started at about 9.00 p.m. on 15/09/06 from Mumbai, which means that he must have reached Jalgaon on 16/09/06. This aspect is seriously agitated from the side of the defence placing reliance on a station diary entry of 18/09/06. When he denied the suggestion that he started on 18/09/06 after 1405 hours, he was asked to go through the station diary entry no. 15 in the station diary register and he admitted that the entry is not wrong and was again asked to go through the station diary register and after going through it, he admitted that there is no entry about he leaving for Jalgaon prior to 18/09/06 and about returning back before or after 18/09/06. In this connection in further cross-examination he admitted that the station diary entry no. 15 of 18/09/06 is made as per the information given on phone. It is further submitted that he had not gone to Jalgaon prior to 18/09/06, on which date ACP Khandekar, PW-174, sent the proposal. Though the station diary register was shown to him and he was confronted with the entry, learned advocate did not ask for its copy to be taken on record and receive it in evidence. Thus on the basis of this only one cannot say that API Deore, PW-180, had not

gone to Jalgaon prior to 18/09/06. Further he was asked about the contents of the documents Exts. 1506, 1507, 1509, 1510 and 1511 and in respect of Exts. 1510 and 1511 he admitted that he got the certified copies on 22/09/06 and got the judgement in C. R. No. 178/99 on 18/09/06. The main thrust of the submission of the defence is that there were no papers of the cases against the A13 at Jalgaon before ACP Khandekar, PW-174, sent the proposal on that day and he did not have any information about the said two cases before that date as API Deore, PW-180, had not gone to Jalgaon before 18/09/06. Learned advocate skipped showing Ext. 1508 to the witness. It is certified copy of the judgement in RCC No. 219/01, delivered on 12/08/02 by the CJM, Jalgaon and the slip containing the details of the copying application show that the application was presented on 16/09/06, it was completed on 18/09/06, but the applicant was called on 19/09/06 and the copy was delivered on 18/09/06. This certified copy was obtained from the District Court, Jalgaon. What this means that the application for obtaining certified copy of the said judgement was moved on 16/09/06. It has come in the evidence of API Deore, PW-180, when he described the steps that he took on 16/09/06, that he noted down all the details and the dates when he perused the case papers from the record alongwith the APP working in the CJM Court and told the APP that he wanted copies of relevant papers, the APP told him that an application will have to be moved and he told the APP to make an application and the APP moved it on the same day telling him that the copies would be available after 2-3 days. Though he did not state the date on

which all these things took place, it has come as positive statements in his cross-examination in paragraph 20 that the APP may have filed an application on 16/09/06 and in paragraph 34 that he met the APP for the first time on 16/09/06 and told him on that day to apply for certified copies, that he did not get any certified copy on 17/09/06, but he get one on 18/09/06, i.e., the judgement in C. R. No. 178/99. The slip containing the particulars of the copies of the application fully corroborate his version and prove that he had gone to Jalgaon on 16/09/06 itself. He, therefore, denied the suggestions that he went to Jalgaon for the first time on 18/09/06, that his superiors had already talked with APP R. D. Pawar before that day, that the applications were made in the court for applying the provisions of the MCOC Act, that he deposed falsely about going to Jalgaon and doing the work there, etc. Thus this issue is settled and needs no further discussion.

1214. Once the above conclusion is arrived at, his subsequent evidence about what he did on the following days till the date he reached Mumbai, i.e., on 23/09/06, fall in place chronologically, lending credence to his entire evidence about what he did during the seven days while he was at Jalgaon. It has come in his evidence that one PC Chorge was with him and on the first day, i.e., on 16/09/06, he saw the photograph of the A13 that was in the record of the District Special Branch, handling the cell of SIMI activists in the SP office and also came to know about the name of the A13 and the information he got that he was the President of Jalgaon Unit of SIMI and there were two crimes registered against him, one C. R. No.

178/99 and the second C. R. No. 103/01, both registered with MIDC Police Station, Jalgaon under section 153A of the IPC, the first one had been investigated by the said police station, but the second one being investigated by the Local Crime Branch, Jalgaon, who had arrested wanted accused by name Parvez Khan in August 2006. It has come in his evidence that he noted all this information on paper and requested them to give copies of the photographs of A13. As there is a dispute of the said copies of the photographs, it will be appropriate to take this issue at this stage itself. It has come in his evidence that late in the day, he went to the DSB office and collected copies of the photographs of the A13. It has further come in his evidence that ACP Patil, PW-186, directed him on 26/09/06 to again go to Jalgaon to search for the accused, to collect certified copies of the documents and record the statements of the investigating officers and after stating about preparing panchanama Ext. 2803 of the house search of the A13 in the presence of his younger brother Aziz Khan, he recorded the statement of API Dhakrao and showed him the copy of the photograph of the A13, who confirmed it on seeing his record, identified him on the basis of the photograph and signed a certificate Ext. 2084 behind the photograph Art. 376. It has come in his evidence that he got the similar certificate Ext. 2085 signed from Aziz Khan, younger brother of the accused behind the photograph Art. 377, went to Nasik on the next day, met API Tare, who also identified the A13 on the basis on his photograph Art. 378 and gave certificate Ext. 2086. The photographs as such were not received in evidence at that time and though in the written

submissions given by learned advocate Sharif Shaikh, he submitted that the certificates have not been proved as the witness who signed them have not been examined, to my mind, the certificate is in the handwriting of API Deore, PW-180, and that is sufficient to prove its contents. During his cross-examination by learned advocate Wahab Khan, API Deore, PW-180, was shown Ext. 2088, photocopy of application form, that was collected from the Lokhandwala Construction Industries Pvt. Ltd., where he was employed. The said application form Ext. 2088 was received in evidence as its contents were referred and shown to the witness and subsequently the other documents that were seized from the said company Exts. 2089 to 2094 were also received in evidence as learned advocate admitted the said documents. API Deore, PW-180, was asked to see the photograph of the accused in Ext. 2088 and say whether the shirt in the photographs, Arts. 376 to 378, show the pocket and blue coloured pen cap. He could not say whether that is the position and denied that the photographs Arts. 376 to 378 are the enlarged copies of the photograph of the A13 in Ext. 2088. To my mind, considering the fact that the contents of the photographs Arts. 376 to 378 were shown to the witness and he was asked to go through them, the photographs should have had been received in evidence at that stage itself. They are now received in evidence and marked as Exts. 4796 to 4798. The suggestions that the said three photographs Exts. 4796 to 4798 are the enlarged copies of the photograph of the A13 in Ext. 2088 is basically wrong because the photograph in Ext. 2088 is a xerox of the original photograph and from such xerox,

photographs like Exts. 4796 to 4798 cannot be prepared. Not only this, the knot of the tie in the photocopy of the photograph in Ext. 2088 is more towards the left side of the collar and the knot is broad as compared to the knot of the tie which is in the center of the collar in the photographs Exts. 4796 to 4796 and the tie is also a narrow one. Similarly, the substantial portion of the pocket has come in the photograph in Ext. 2088, whereas, that is not the position in the three photographs. The facial expressions of the A13 in the photograph in Ext. 2088 cannot be described as smiling, whereas, there is a hint of a smile in the three photographs. This much is sufficient to infer that Exts. 4796 to 4798 are not copies of the photographs in Ext.2088. I think the mistake in giving this wrong suggestion was realized by the learned advocate Wahab Khan, therefore the suggestion was given during his further cross-examination that copies of the photographs of the accused were got printed at Mumbai from the passport photograph of the accused that was at his service place. Considering the differences in the photograph pointed out above, this possibility is also not there. His cross-examination in connection with obtaining the copies, viz., whether he had given a requisition letter to that office, whether he took statement of any officer about handing over copies and that he did not take stamp of that office or initials of the officers on the photographs and did not put the photographs in an envelope and seal them though he admitted that there is no other proof that he obtained the photographs from that office, is to my mind, inconsequential. Same can be said about he having spent money for

printing them from a private lab at Jalgaon, which work he got done from the constable. It has come as positive statements that the photos of the accused that he obtained from the DSB at Jalgaon, were not printed in his presence, but were got printed from a private laboratory, that he paid Rs.200/- for them, but has not claimed reimbursement and did not preserve the receipt as he had told the constable to obtain them and that he gave the money at about 11.00-11.30 a.m. and collected the photos in the evening. Thus these statements strengthen his evidence and in further cross-examination he stated that he had seen the photographs of the accused in the DSB branch, that it was a single passport size photograph, he again corrected himself and stated that it was a postcard size photograph. Thus, what he has not done in respect of photograph does not affect his testimony and on the other hand it is the evidence of the A13, who gave evidence as DW-49, which also corroborates this aspect, because it has come in his evidence that API Tare was one of the officers, who was involved in the investigation of C. R. No. 103/01 and in paragraph 43 in his chief-examination the visit by API Deore, PW-180, and he showing the photograph of the A13 to PSI Dhakrao was confirmed, because it has come in his evidence that Jalgaon police took his custody on 29/12/06 in C. R. No. 103/01, that PSI Dhakrao of MIDC Police Station was there, that PSI Dhakrao told him that PSI Deore had come to him on 29/09/06 for inquiry and he had written a certificate behind the colour photograph that was brought by PSI Deore from Mumbai. The last portion of the sentence is obviously as

per the case of the defence which he stated after referring to the three photographs and stating that they are the enlarged copies of the photographs that he had given with the application form to Lokhandwala Construction company. The fact remains that his evidence proves the visit of API Deore, PW-180, to Jalgaon on 29/09/06 and showing the photograph of the A13 to API Dhakrao. This aspect therefore no longer remains doubtful.

1215. The next step that API Deore, PW-180, took is of taking notes of the information after going through the papers of C. R. No. 103/01 in the office of the LCB and meeting PI Thakare and coming to know that 10-12 accused were arrested, 6-7 accused were wanted, chargesheet had been sent to the Sessions Court and some accused have been convicted for ten years and it was also revealed that after the arrest of the wanted accused Parvez Khan, the full name of Asif Khan was disclosed as Asif Khan Bashir Khan @ Junaid. This was also done on the same day, i.e., on the first day on which he went to Jalgaon. i.e., on 16/09/06 and it is also on the same day that he collected photocopies of the FIR and other papers of both crimes from the MIDC Police Station after meeting API Dhakrao and HC Pradeep Badgujar and also took the information about the status of the case that was registered in connection with C. R. No. 178/99, that it was registered as RCC No. 219/01 in the court and disposed off. It has come in his evidence that as they did not have any details of the case, he took HC Badgujar with him, went to the court, met the APP working in the CJM court and perused the case papers from which he came to know that one of the accused was acquitted in the

year 2002 and A13 was shown as proclaimed offender in March, 2002 and he noted down all the details and the dates and requested the APP to make the application as he wanted copies of the relevant papers, which aspect is covered. This was in respect of C. R. No. 178/99 and to get information about C. R. No. 103/01 it has come in his evidence that he went to the Sessions Court on the same day, i.e., on 16/09/06, but did not get any information as it was late and therefore he went back to the office and collected the copies of the photographs.

1216. All the above events had taken place on 16/09/06. There is no challenge to this evidence and his major cross-examination is pertaining to obtaining the documents in his hand. It has come in his evidence that he then called ACP Khandekar, PW-174, on phone and informed him about all the information that he had gathered, viz., crime numbers of the two crimes, the names of the accused, sections of the offences, date of proclamation, date of order of conviction, etc., and ACP Khandekar, PW-174, wrote all this information. A ridiculous question was asked to him in his cross-examination by learned advocate Wahab Khan as to whether ACP Khandekar, PW-174, took down the information that he gave in his presence. Of course, he said that it did not so happen and then he was shown the station diary and asked whether there is any station diary about it, to which he said no, but explained that it depends upon the person who takes the information to make the station diary entry if any important information is received on phone. Though, ACP Khandekar, PW-174, did not state in his chief-examination as to how

he got the information from API Deore, PW-180, about the two cases against the A13, it has come as positive statement in his cross-examination that he prepared the proposal on the basis of the telephonic information received from API Deore, PW-180, and in the cross-examination by learned advocate Shetty, it has also come as positive statement that API Deore, PW-180, told him on phone that he had collected some photographs and some information of the accused from DSB or LCB. Thus, his evidence, that too in cross-examination, corroborates the evidence of API Deore, PW-180, about the information of the two crimes registered against the A13 at Jalgaon and it proves this fact. Incidentally, in the same paragraph in which this evidence is, he stated that API Deore, PW-180, met him personally before going to Jalgaon, which he had not stated in his chief-examination, but API Deore, PW-180, had stated so and stated further that he did not give him any document or API Deore, PW-180, did not inform him that any document concerning the present case was with him and, this is important, that he did not hand over any photograph to him and he did not show him any photograph. This further endorses the evidence of API Deore, PW-180, about collecting photographs from the DSB at Jalgaon on 16/09/06 and that he had gone there on that day. In turn, it also falsifies the defence that Exts. 4796 to 4798 were the copies of the photographs of the A13 on his application at the place of his job at Mumbai.

1217. It has then come in the evidence of API Deore, PW-180, that on the next day, i.e., on 17/09/06, he went to the Sessions Court,

but the staff there did not find the papers and he was called on the next day and on that day he went alongwith the constable, who was with him in Tambapura and Shirsoli areas, where the A13 used to be and tried to collect the information about him by making confidential inquiry.

1218. It has come in his evidence that on the next day, i.e., on 18/09/06, he came to know that all the papers were sent to the High Court as the convicted accused had filed an appeal. It has come in his evidence that thereafter he went to the APP in the CJM court and collected the certified true copies, about which the application had been given earlier. The endorsement on the slip Ext.1508 corroborates his version. Then it has come in his evidence that he informed on phone to ACP Tawde about having received copies of papers of one case, but the papers of the other case having been sent to the High Court at Aurangabad in an appeal and asked him as to what he should do, whereupon, ACP Tawde asked him to send all the documents that he had collected and to wait there and he would inform him on the next day as to what to do. It has come in his evidence that then he took out the photocopies of the documents that he had collected and sent the documents with PC Santosh Chorge to the ATS office. All these events took place on 18/09/06 which is corroborated by a positive statement by him in the cross-examination by learned advocate Wahab Khan that he sent PC Santosh Chorge back on 18/09/06 in the evening with the papers that he had collected upto that time, which means that PC Chorge must have reached Mumbai on 19/09/06. He explained in his cross-

examination that the papers were relevant papers of both CRs and, this is important, and also the certified copy provided by APP, viz., Ext. 1508. His evidence in chief-examination as well as cross-examination is very specific and he further explained that he had not received Exts. 1506, 1507 and 1510 before 18/09/06 and had not sent them to Mumbai before that day and that he received Exts. 1509 and 1511 on 29/09/06. This fact is again corroborated during the cross-examination of ACP Khandekar, PW-174, who stated that a constable who has gone with PSI Deore, brought the papers including the photocopies of the chargesheet and judgement and he received them for the first time on 20/09/06. API Deore, PW-180, then deposed about what he did on the next morning, i.e., on 19/09/06, about contacting API Tawde, who directed him to meet Addl. SP (Home), Dilip Sawant at Jalgaon, who told him to wait for two days at Jalgaon when he told him that he wanted the papers of the High Court and accordingly he waited there for two days, i.e., on 20/09/06 and 21/09/06, and during which period he took confidential information about the whereabouts of the A13, but did not get any information. It has come in his evidence that he only came to know that A13 was released on bail after his arrest in 1999, attending the courts regularly, but leaving that area after C. R. No. 103/01 was registered and some boys were arrested and his name cropped up in that crime and that in between the A13 had come and taken his wife and children also and there was no information about his present whereabouts. It has come in his evidence that he went to the office of the Addl. SP, Jalgaon on 22/09/06 and was given

certified copies of documents obtained from the High Court. Ext. 1510 is the certified copy of charge in Sessions Case No. 126/02 that was issued by the certified copy branch of the High Court of Judicature, Bombay, Bench at Aurangabad and the slip containing the particulars of the application for copy mention that the application was given on 20/09/06 and the copy was delivered on 22/09/06. These particulars fully corroborate the evidence of API Deore, PW-180.

1219. It has come in his evidence that on the instructions of the Addl. CP, Jalgaon he went to MIDC Police Station, met API Dhakrao and collected photocopies of supplementary chargesheet that was filed against the A13 and he identified all the documents that he had collected which include certified copies and photocopies of Exts. 1506 to 1511. Of course, Ext.1508 was already obtained by him on 18/09/06, but the slips containing the details of copying applications on Exts. 1506 and 1507 show that the applications for copies were given on 20/09/06 and the copies were delivered on 22/09/06. These documents also fully corroborate his evidence and they *inter alia* prove that he was very much at Jalgaon during the entire period from 16/09/06 to 22/09/06 and had in fact done the work as narrated by him. No amount of cross-examination can disprove the above facts and as is the case with all the police officers who made investigation, he as well as ACP Khandekar, PW-174, was asked as to whether any station diary entries about each and every thing that they did and at some places there are no station diary entries, but that does not affect the truthfulness of his evidence and

the truthfulness of the part of the investigation that he did. There was some cross-examination as to whether all the papers that he collected are amongst the documents that are on record and he admitted that all papers brought by PC Chorge are not amongst Exts. 1506 to 1511.

1220. It has come in his evidence that he came back to Mumbai and handed over the documents that he had collected to ACP Tawde. His further evidence is in respect of ACP Patil, PW-186, directing him on 26/09/06 to again go to Jalgaon, search the accused, collect the certified copies of the documents from the police station and record the statements of the investigating officers and then what he did at Jalgaon, viz., about preparing the panchanama of the house search of the accused Ext.2083, recording the statement of API Dhakrao and API Tare, obtaining their certificates behind the photographs of the A13, etc., which I have already discussed and then it is in his evidence that he returned to the ATS office, Mumbai on the next day and handed over all the documents of investigation that he had done to ACP Patil, PW-186. It has also come in his evidence that he again went to Jalgaon on 20/10/06 on the instructions of ACP Patil, PW-186, and recorded the statements of PI Thakare, who was the investigating officer of C. R. No. 103/01.

1221. The above is his complete evidence about the work that he did in connection with getting information and collecting the relevant papers of the two previous cases against the A13 at Jalgaon and there is nothing in his cross-examination to discredit his version and I have already held that the details of the copying applications

on the slips alongwith certified copies of the documents issued by the High Court and the District Court at Jalgaon fully corroborate his version. Admittedly, his statement was not recorded, but he has explained that he took the details of the two cases on his own and not as instructed by ACP Khandekar, PW-174. He was asked whether the charge under section 153A is not triable by Sessions Court, whether SC no. means Sessions Case number, etc., but all that is irrelevant insofar as the work that he had done and the documents that he had collected and there is no hesitation in accepting that the documents Exts. 1506 to 1511 were collected by him. His cross-examination on the other aspects as to whether there was order in C. R. No. 178/99 under section 173(8) of the Cr. P. C., etc., is not relevant and his knowledge as to how certified copies are to be obtained from the District Court and the High Court is also not relevant.

1222. Before proceeding further, it is necessary to discuss the contents of the documents that he produced :-

(i) Ext. 1506 is the certified copy of roznama in RCC No. 219/01 that was before the Chief Judicial Magistrate and the title shows that it is the case of the State against Asif Khan Bashir Khan, i.e., the A13, under section 153(1)(a), 34 of the IPC and one more and the first roznama is dated 09/01/01, on which date the chargesheet was filed and process was issued against them as they were on bail and both accused were present on next date, i.e., on 03/04/01, and the case was fixed for charge. It appears that the two accused in that case remained absent from 04/08/01 and hence NBWs were issued

and the A2 was taken in custody on 08/03/02 when he remained present in some other case and the charge was framed against him and he was acquitted by the judgement dtd.12/08/02.

(ii) Who this A2 is, is clear from the certified copy of the chargesheet Ext. 1507 and certified copy of the judgement Ext. 1508 which shows that the charge was framed and the trial was conducted against the accused Shaikh Shakil Shaikh Hannan, also resident of Jalgaon, and the charge mentions absconding accused Asif Khan Bashir Khan. Paragraph 3 of the judgement shows that the A13 was declared as proclaimed offender on 08/03/02 and his trial was separated. This date 08/03/02 is relevant. The CJM, Jalgaon directed the prosecution to file separate chargesheet against the absconding accused.

(iii) Ext. 1509 is the true certified copy of the FIR in C. R. No. 178/99 showing the A13 as A1, President of SIMI of Jalgaon District and Shakil Shaikh as A2, President of SIMI of Jalgaon city. Alongwith this FIR is the certified true copy of annual report form. There is also a true photocopy of supplementary chargesheet in the same crime filed against the A13. These documents have been given by MIDC Police Station certifying them to be true copies. They are photocopies of the originals. There is no dispute from the side of the defence about the documents in respect of C. R. No. 178/99.

(iv) Ext. 1510 is certified copy issued by the certified copy branch of High Court at Aurangabad of the charge in Sessions Case No. 126 of 2002, which mentions one Asif Khan as absconding accused alongwith five more absconding accused. The charge in this case is

for the offences under section 153A read with sections 34, 121, 121A, 122, 123, 201, 506B read with 34 of the IPC and sections 4(a) (b) and 5 of the Explosive Substances Act.

(v) Ext. 1511 is true photocopy of the FIR in C. R. No. 103/01 registered on 28/07/01 for the offences under section 153A, 120(b) read with 34 of the IPC and sections 4 and 5 of the Explosive Substances Act registered with MIDC Police Station against six accused and some more wanted accused on the allegations that they were belonging to a specific Muslim organisation and through that organisation they conspired with the absconding and other members of the said organisation and did acts to promote enmity between different groups on the grounds of religion and had taken training and had attempted to do bomb blasts in Hindu localities in Maharashtra.

1223. Exts. 1510 and 1511 are the most disputed documents. Most of the submissions that are made by the learned advocates for the accused have been covered while discussing the particular evidence of ACP Khandekar, PW-174, and API Deore, PW-180. It will be fruitful if the additional submissions of the learned advocates that are made on the basis of cross-examination of witnesses are considered rather than assessing their cross-examination independently. The first and important submission made by learned advocate Shetty and learned advocate Sharif Shaikh in written submissions is that the authority who granted prior approval has not been examined which has caused a great prejudice to the accused inasmuch as it cannot be said what were the documents produced

before him and what was the material produced before him to accord the prior approval. It is submitted by learned advocate Shetty that in the present case, it is Addl. CP Jaiswal, who granted the prior approval Ext.1841 and it is necessary that he is examined in the court, that prosecution examined CP Roy, PW-185, the sanctioning authority, but it cannot be said that as he is examined, it is not necessary to examine the authority granting the prior approval and it cannot be said that the earlier lapses are cured. He submits that non-examination of Addl. CP Jaiswal is a fatal blow to the prosecution insofar as the provisions of the MCOC Act are concerned. He submits that today the defence is kept in the dark about the material that was placed before him and therefore the invocation of the provisions of the MCOC Act in this case has to fail. He submits that there are two things. First is that without prior approval no investigation can be carried out under the MCOC Act and second is that if there is no prior approval then no sanction can be granted under the MCOC Act. He submits that because of non-examination of the authority who granted the prior approval, the defence is handicapped. In this respect the learned SPP submitted that many a times a hue and cry is made for non-examination of the officer who according prior sanction and submitted that it is not absolutely necessary to examine him for the simple reason that when the matter ultimately comes before the court, the court is bound to satisfy itself about the existence of the prior approval. The court is bound to satisfy that when the prior approval was given, there were two chargesheets of which the court had taken

cognizance and the offence for the said chargesheets are punishable with more than three years. Even before that a duty is cast on the officer of the rank of an Addl. DGP, who has to give sanction under section 23 (2) and it is he who first satisfies himself whether, in the first case, there is prior approval or not. If it is there then he will consider it on its own merits. If there is no prior approval, there is no question of giving sanction. He submits that ultimately in this case not only there is a sanction because of which this court can take cognizance and the trial can proceed, but the sanctioning authority has also been examined and whether there was prior approval or not and whether the sanctioning authority applied its mind or not is reflected from the sanction order itself. He referred to paragraph 2 in the sanction order Ext. 13 dtd. 25/11/06, which mentions the prior approval and submitted that there are more than adequate reasons to accept this part that after obtaining the prior approval the sanction was accorded and therefore there was no necessity of examining the authority. He referred to the judgement of the Bombay High Court in the case of **John D'Souza, Appellant V. Assistant Commissioner of Police, B-1/Special, DCB, CID, Joint Commissioner of Police (Crime) Crime Branch, CID, Commissioner of Police and The State of Maharashtra, Respondents (Criminal Writ Petition No.147 of 2007 decided on 30/04/07)** relied upon by learned advocate Sharif Shaikh and pointed out paragraphs 9 and 10 of the judgement submitting that it is said that sections 23(1)(a), section 23(1)(b) and section 23(2) of the MCOC Act are inter dependent. So unless the person who gives

the sanction under section 23(2) satisfies himself that there is a prior approval under section 23(1)(a), he will not accord sanction. Further unless that sanctioning authority is satisfied that the investigation has been done by the officer appointed under section 23(1)(b), he will not grant sanction. Particularly when the chargesheet is attempted to be presented before the special court. The special court will not take cognizance unless it is satisfied that there is sanction. He submits that since in the words of the Bombay High Court these filters are interconnected, therefore, this court has an opportunity to satisfy itself about the compliance of statutory requirements by examining the sanctioning authority. The court has to satisfy itself about the competence of the authorities giving the prior approval as well as the sanction. He submits that it is nobody's case that Addl. CP Jaiswal, who is the rank of DIG, was not competent to give prior approval. It is reflected on the face of the prior approval that the sanctioning authority was subjectively satisfied. He submits that the law has gone further and says that even in a given case if the subjective satisfaction is not reflected on the face of the sanction order in that case also the sanction cannot be thrown out at the threshold and the prosecution can supplement whatever things which are not apparent on the face of the sanction documents by examining the authority. Therefore, if it is apparent on the face of the document, then the prosecution is not obliged to examine additional witnesses unnecessarily. He has relied on the judgement of the Supreme Court in the case of **State of Madhya Pradesh, Appellants V. Jiyalal, Respondent (Criminal Appeal No.**

1386 of 2009 dtd.31/07/09). It is held in paragraph 8 that, *'it was also not justified for the learned single judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution'*. To my mind, on the principles of analogy, these observations can be imported to the present case, though that was a case under the Prevention of Corruption Act and it refers to a sanction. It is held by the Division Bench of the High Court in the case of **Anil Sadashiv Nanduskar V. State of Maharashtra (2008 (3) MAH.L.J. (CRI) 650)** in paragraph 13 that, *'the settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e., ex-facie it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question*

of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard'. The High Court has gone to the extent of holding in paragraph 17 that, 'the provisions of law under section 23(1)(a) of the MCOC Act precisely provides that in order to initiate investigation under MCOC Act, prior approval of the police officer, not below the rank of Dy. Inspector General of Police is necessary. The said provision of law does not regulate the approval to be necessarily in writing. Undoubtedly, being a matter for investigation in relation to a criminal offence of serious nature, it would always be expected and advisable to have such approval in writing'. It is further held in paragraph 18 that, 'in the case in hand it is not in dispute that such approval was in writing granted on 28th August 2004. Whether it was on proper application of mind on the basis of the materials placed before the concerned authority or not and whether all the required materials were actually placed before the concerned authority or not, are the points to be decided at the conclusion of the trial so that the prosecution gets sufficient opportunity to establish all the facts necessary to prove the valid approval and sanction for the prosecution'. The most important observations are in paragraph 25 wherein it is held that if there is a written approval or written sanction, the argument that the rule that the application of mind can be established by leading evidence will not apply. No doubt, this authority is in respect of challenge to the rejection of the objection raised by the accused for framing of charge on the ground of invalid approval under section 23(1)(a) and invalid sanction under section 23(1)(b) of the MCOC Act, but the

meaning of the observations will have to be construed to hold that it is not always necessary to examine the authority, which has given the prior approval, more so, when it is a written approval. Learned SPP has relied on the authorities of the High Court and Supreme Court in the first case of the MCOC Act for some other purpose. It will not be out of place to point out that in the judgement of the Division Bench of the High Court in the case of **The State of Maharashtra, Appellant V. Mohd. Zuber Kasam Shaikh alias Tabrej alias Juganu and Anr., Respondents (Confirmation Case No. 01 of 2001 dtd.17/12/03)** with four criminal appeals, in paragraph 11 there is a reference to the Joint Commissioner of Police (Crime), Bruhan Mumbai granting permission to apply provisions of MCOC Ordinance, 1999 to the said case and thereafter reference to the investigation being taken up by ACP Pradeep Sawant, PW-61. All other witnesses who are examined are referred to by their prosecution witnesses numbers, but the Jt. CP (Crime), Bruhan Mumbai is not so referred. In the Judgement of the appeal that was carried to the Supreme Court reported in the case of **State of Maharashtra, Appellants V. Mohd. Zuber Kasam Sheikh and Ors., Respondent ((2010) 14 SCC 641)**, also the Supreme Court has reiterated the same position without referring to the prosecution witness number of the Jt. CP (Crime), who granted permission. Though non-examination of the authority granting the prior approval was not an issue before the High Court as well as the Supreme Court, the fact remains that he had not been examined in that case and this point was not raised before both the courts though

the application of the provisions of the MCOC Act were challenged and it is observed by the High Court that the trial court had answered this question in the affirmative.

1224. To my mind, in view of the above legal position it was not absolutely necessary to examine Addl. CP S. K. Jaiswal, who had granted the prior approval. What had happened is that during the cross-examination of ACP Khandekar, PW-174, learned advocate Wahab Khan stopped after he had cross-examined him extensively in respect of obtaining knowledge of two previous cases against A13 and then called upon the prosecution to say whether it is going to examine the person who gave the prior approval, to which the learned SPP submitted that the officer is probably out of India and the prosecution does not want to delay the trial. Learned SPP further submitted that the officer who gave the prior approval will not be examined as he is not available and will not be available for next two months. In this connection, it has been submitted in the written submissions by learned advocate Sharif Shaikh that though this submission was made by the learned SPP on 23/12/11, the prosecution case went on upto 04/04/12 and after two months the learned SPP could have examined Addl. CP S. K. Jaiswal, however, because of fear that his examination will further damage the case of the prosecution, he was dropped, therefore, the prior approval was not proved as per law. Hence, it is not receivable in evidence and once it is vitiated, the sanction order Ext. 13 loses its value. In my humble opinion, these submissions presuppose that the case of the prosecution is damaged. Therefore, they cannot be accepted.

Similarly, sufficient evidence has been led by the prosecution in the form of the oral evidence of ACP Khandekar, PW-174, and API Deore, PW-180, and the documentary evidence, and, both these witnesses have been cross-examined extensively and it is for this court to consider whether the relevant material was or was not before the authority granting the prior approval. To my mind, the defence could have insisted on the prosecution to produce Addl. CP S. K. Jaiswal for giving evidence as they did in respect of many witnesses even after the main investigating officer ACP Patil, PW-186, was examined and his evidence was over. Thus, non-examination of Addl. CP S. K. Jaiswal who gave the prior approval to invoke the provisions of the MCOC Act in C. R. No. 156 of 2006 is not fatal to the prosecution.

1225. Learned advocate Shetty has then referred to the contents of the prior approval Ext. 1841 and submits that the authority says that he has gone through the documents and found that the key member, i.e., A13, had been indulging in continued unlawful activity and two chargesheets against him have been taken cognizance by the competent courts. He has also considered that the A2 and A4 are the active members and A13 is the key member and they are indulging in continuing unlawful activity. He submits that if he wants to come out from this, in what way he could challenge it, because one cannot know what are the two chargesheets against the A13. To my mind, the last sentence in paragraph 2 of Ext. 1841 says that two chargesheets filed against A13 have been taken cognizance by the competent court as defined in section 2 of the MCOC Act,

and, this is important, this is reflected from the report submitted by the investigating officer. I do not think anything more is necessary, because at the start of the prior approval, there is a reference at sr. no. 2 of the report dtd. 18/09/06 initiated by PI P. M. Khandekar, the investigating officer in the above case (i.e. C. R. No. 156 of 2006 of Borivali Railway Police Station) and submitted by DCP, ATS and ACP Khandekar, PW-174, has deposed as to what information he got about previous cases against the A13 on the basis of which he prepared the proposal. To my mind, it is not necessary for the authority to mention the crime number or case number in the prior approval. It has come in the cross-examination of ACP Khandekar, PW-174, in paragraph 24 that he had stated to ACP Patil, PW-186, about the information that he got and he gave the two crime numbers that were registered against the A13 and the sections of the offences. It has come in his cross-examination that he had discussed about his case and the information that he received with Addl. CP S. K. Jaiswal on 22 or 23/09/06 and the prior approval was asked for in the crime that he investigated. It has also come in his cross-examination that his proposal contained the facts of this case and only two previous cases at Jalgaon are relied upon for invoking the provisions of the MCOC Act. This takes care of the next submission of the learned advocate that it is not clear as to which two cases the authority relied upon for granting the prior approval. It has come in his evidence that Addl. CP S. K. Jaiswal had asked for the certified copies of the chargesheets during their discussion and he told him that they had not been received till that time. What this means is

that the information about the two crimes registered against the A13 at Jalgaon was very much before Addl. CP S. K. Jaiswal and there can be no doubt that those two previous cases had been relied upon to grant the prior approval. Though he admitted in his cross-examination that the proposal that he sent is not before the court, he explained that it was in the noting form and the defence did not insist upon him or on the prosecution to produce the proposal. In this respect again it has come in his cross-examination that rest of the cases to which he referred in his evidence were not considered for giving the prior approval. In his cross-examination by learned advocate Wahab Khan he has specifically explained that he had understood the entire case before sending the proposal for prior approval and he did not rely on the cases against the A2 and A4 as they were LAC cases with less imprisonment, that is less than three years and had not asked for the papers. He was grilled about the sections of the UA(P)A for which the A2 and A4 were prosecuted and about the punishment referred to in the different parts of section 10, i.e., (a) and (b), and he admitted that he does not know for which out of these two the accused had been charged. Though he admitted that he had referred to these cases against the two accused in the proposal, however, they were not to be considered for invoking the provisions of the MCOC Act and that he did not collect their chargesheets or the orders of the court taking cognizance of those cases though he was aware that the chargesheets have been filed in both the cases. He again reiterated that the two chargesheets at Jalgaon were the only basis of showing continuous unlawful

activities. This takes care of the submission of the learned advocate that it is not clear as to which are the two cases relied upon on the basis of which the authority granted the prior approval.

1226. Learned advocate pointed out to the words 'unlawful association' in the prior approval submitting that they are alien to the provisions of the MCOC Act, under which it is only for an organised crime syndicate for which you can apply the provisions of the MCOC Act. For unlawful activities there is a separate Act that has been enacted by the Central Government and this order does not show that the approval was granted under the UA(P)A and the same things are repeated in various parts of the order. To my mind, the words unlawful association are preceded by a stroke and before that the words organised crime syndicate are at all the places wherever unlawful association words are used. It does not make much difference because it is clear that what the authority considered was organised crime syndicate and it may be that they are by way abundant precaution that those superfluous words have been used.

1227. He submits that the order of prior approval is obviously vague and beyond his authority and is seen to be passed without studying the documents and without application of mind. I do not see how this inference can be drawn because reference no. 1 at the start of the prior approval is to the papers of investigation in C. R. No. 156 of 2006 and the second reference is to the report dtd. 18/09/06 initiated by ACP Khandekar, PW-174, and the opening words of the second paragraph are that the authority has gone through the documents and report placed before him and is satisfied

that the A4, A2 and A13 are the active members of the organised crime syndicate and the A13 and his associates A4 and A2 have been indulging in continuing unlawful activities. Thus, this submission by the learned advocate is not acceptable and same can be said about his submission that if we look at it from this angle then the entire process of invoking the provisions of the MCOC Act is nullified, illegal and totally unjustified and it is only because of the provisions of section 18 to extort the confessions from the accused. He again reiterated the submission that under these circumstances and on this background non-examination of Addl. CP S. K. Jaiswal has affected the case of the prosecution and caused prejudice to the case of the defence and the prior approval is totally illegal and without jurisdiction. In respect of the non-examination of the said authority I have already come to the conclusion that it is not fatal to the prosecution.

1228. Referring to the documents Exts. 1506 to 1511, learned advocate submits that they do not show that both the chargesheets were filed against the A13 and cognizance was taken by the courts and there is no connection between the FIR Ext. 1511 and the charge Ext. 1510. The contents of the documents are indicated in detail in paragraph 1222 supra and there can be no doubt insofar as C. R. No. 178/99 that was registered against the A13 which was given RCC No. 219/01 in the court of the CJM, which means that the chargesheet was filed and the contents of the roznama Ext. 1506 show that the A13 had appeared in that case, was bailed out and subsequently he absconded and was declared as proclaimed offender

as long back as on 08/03/02 and the CJM, Jalgaon had directed the prosecution to file separate chargesheet against him. It is clear that the trial against the A2 in that case, i.e., Shaikh Shakil Shaikh Hannan, was conducted and a judgement was given, which means that the court had taken cognizance of that offence. This dispenses any doubt about the chargesheet being filed and cognizance being taken. He has raised some disputes about the wrong mention of the offence as 153-1A in the certified copy of the FIR. To my mind, this wrong mentioning of section is corrected by the Chief Judicial Magistrate in the charge Ext. 1507 and the judgement Ext. 1508 wherein the proper section 153-A is mentioned and it is also mentioned that the accused, who was tried, had committed the crime in furtherance of their common intention with the absconding accused Asif Khan Bashir Khan, i.e., A13, in this case.

1229. In respect of the crime no.103/01 learned advocate submits that there is absolutely no reference to the A13 in the FIR, copy of which is at Ext. 1511, and there is no material to link the charge Ext. 1510 to the said FIR or that it was on the basis of the said FIR. In my humble opinion, this submission is also not acceptable for the simple reason that A13 is indicated as an absconding accused alongwith five more absconding accused in the charge and the charge is against 10 accused whose names are very much there in the contents of the copy of the FIR Ext. 1511. Not only this, once again the police had committed a mistake of writing the section as 153(A), but the Sessions Judge has corrected it and written 153-A and the allegations in the FIR find place in the charge. In this respect the

learned SPP submitted that in his evidence, the A13 has admitted that the Sessions Case No. 126/02 instituted in connection with C. R. No. 103/01 of MIDC Police Station is still pending against him. After admitting this, the A13 explained that the Sessions Case was not tried against him and he was not the wanted accused in that case and denied that he was shown as wanted accused in the charge that was framed against him in that case. This denial is obviously against the document of the court. Now this has come in his cross-examination, but it is in his chief-examination itself that he was arrested in C. R. No. 103/01 on 29/12/06, i.e., after filing of the chargesheet in this case and he was produced before PI Patil of LCB on 30/12/06. No doubt it is his story that PI Patil told him on asking that he was arrested in the said CR number, that he is not wanted in that case, but they are fitting him in that case on the say of Addl. CP S. K. Jaiswal and Nawal Bajaj as two chargesheets are required for the application of the MCOC Act and he is being involved in the chargesheet against some other person. How fallacious this story is clear from the fact that his involvement in that crime was disclosed in September, 2006 itself and the prior approval under the MCOC Act was also granted in September, 2006. Similarly, his story is not at all an acceptable one because I do not think that any police officer will tell an accused that he has arrested him in any case on the say of superiors though he is not wanted in that case. This is not believable at all. Secondly, it is his story that PSI Dhakrao was also present in the MIDC Police Station when he was produced before PI Patil and he told him that when API Deore, PW-180, had come to

him on 29/09/06, he, i.e., PSI Dhakrao, had said the same thing to him, that Asif Bashir Khan is not a wanted accused in C. R. No. 103/01. How this story is fallacious is obvious from his further statement that PSI Dhakrao had said to him that he had written a certificate behind the photograph that was brought by API Deore, PW-180, from Mumbai. Now what is the certificate given by PSI Dhakrao? The said certificate is received in evidence as Ext. 2084 and it shows that API Dhakrao had certified that it is the photograph of the accused Asif Khan Bashir Khan on the basis of record that is available with the police station. Thus, unless PSI Dhakrao knew about the involvement of the A13 in the said crime, he would not have given the certificate behind the photograph and this certificate also falsifies the claim of the A13 that the photograph was a copy of the photograph that he had affixed on his application at the place of his job. No doubt, the contents of the FIR Ext. 1511 do not mention the A13 as a wanted accused, but unless his name was brought to the notice of the Sessions Court, it would not have had come in the charge as an absconding accused. No doubt, the charge only mentions his name as Asif Khan, however, it is clear from the evidence of API Deore, PW-180, that he came to know on going through the papers of C. R. No.103/01 in the office of the LCB at Jalgaon that during the interrogation of wanted accused Parvez Khan, who was arrested by the LCB in August, 2006, i.e., prior to API Deore, PW-180, visiting Jalgaon, the full name of wanted accused Asif Khan was disclosed as Asif Khan Bashir Khan @ Juned and he had taken notes of all the information which he subsequently

conveyed to ACP Khandekar, PW-174, on phone on 16/09/06 itself. These observations take care of the submissions by learned advocate Shetty as well as learned advocate Sharif Shaikh in his written submissions in respect of the name Asif Khan only being mentioned in the charge Ext. 1510 being not the full name and that there is no evidence to link crime no. 103/01 to the charge Ext.1510. No doubt the charge does not mention C. R. No. 103/01 of MIDC Police Station, Jalgaon, but this is the practice in all the courts.

1230. To my mind, it needs to be mentioned that if at all the A13 was not a wanted accused in C. R. No. 103/01, it is a question as to why he did not apply for discharge after being arrested in that case on 29/12/06, though immediately after filing of the chargesheet he had prayed for discharge in this case and had gone up to the Supreme Court on the ground that there were no previous chargesheets against him. Those proceedings are not relevant to this stage, but a brief reference will not be out of place. He had filed M. A. No. 58/07 for invocation of the provisions of the MCOC Act on the ground that the prior approval is bad in law inasmuch as there are no two chargesheets filed against him and the reference was made to the documents that are before the court in connection with the two crimes. It was also contended that since he was not arrested in connection with the offence for which S. C. No. 126/02 was pending, it cannot be treated that the chargesheet in that case had been filed against him. My learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) rejected the application holding that non-filing of the chargesheet against the

A13 has no adverse effect on the compliance of the section 2(1)(d) of the MCOC Act and has also observed that admittedly in the second case, i.e., in S. C. No. 126/02, the accused was never arrested and never brought before the court till filing of the chargesheet in the present case, but the charge dtd. 12/12/03 framed by the Sessions Judge of Jalgaon Ext. 1510 mentions that the accused no. 1 to accused no. 10 had committed the offence described therein alongwith absconding accused A13, which shows that the said court had taken cognizance of the offences for which chargesheet against those ten persons was filed. It is also observed that it is settled law that the court takes cognizance of the offence and not of the offender and the fact of framing of the charge shows that the competent court had taken cognizance of the offence. It is also observed that A13 was absconding and therefore the charge was not framed against him. However, it does not mean that the competent court had not taken any cognizance of the offence as contemplated under section 2(1)(d). It is held that it is an admitted fact that the separate chargesheet was filed on 27/03/07, however, it does not mean that it is a different chargesheet. It was held that therefore the cognizance taken by the Sessions Court of Jalgaon in Sessions Case No. 126/02 brings the case of the A13 within the definition of section 2(1)(d) of the MCOC Act. This order was carried to the High Court by filing Criminal Appeal No. 749 of 2006 and by the judgement dtd. 16/10/06, it was dismissed as failed on merits. It was canvassed before the Division Bench that at no point of time two chargesheets were filed against the petitioner, i.e., A13,

during the preceding period of ten years, it was held that chargesheet is essential in relation to the offence committed in a matter. This order was carried to the Supreme Court by filing SLP (Crl.) No. 2012/08 and was disposed off as withdrawn on 21/03/08 as the counsel for the petitioner sought leave of the court to withdraw it. Thus, this aspect has been tested and has been decided by our High Court. Reference can be made to the judgement of the Supreme Court dtd. 15/04/15 in Criminal Appeals No. 1967-1970/10, which was against the judgement of the Division Bench of the High Court dtd. 19/07/10 in Criminal Appeal No. 867/09 against the order of this court dtd. 31/07/09 in Special Case No. 01/09 (Malegaon Bomb Blast Case 2008). The view taken by the Bombay High Court was upheld and it was held that cognizance of an offence is taken and filing of the supplementary chargesheet does not and will not amount to taking cognizance by the court afresh whomsoever against with reference for the same offence. It was held that this was satisfied and fulfilled the requirement of cognizance of offence by filing of more than one chargesheets before the competent court as stipulated in section 2(1)(b) of the MCOC Act.

1231. Learned advocate next submitted that even if it is assumed that the offence under section 153-A is applied in both the crimes, there are three sub-clauses to sub-section (1), each having different ingredients of offence and therefore it is not clear that which offence was alleged to have been committed in that crime. To my mind, wrong application of section is immaterial. We have to go by substance of allegations. Next point agitated by learned advocate is

that the punishment of all three categories of offence mentioned in section 1 of section 153-A of the IPC is upto three years and there is a lot of difference between the requirement of the cognizable offence as described in Clause (d) of sub-section (1) of section 2 of the MCOC Act, which says that there should be a cognizable offence punishable with imprisonment or three years more. In this connection learned SPP submitted that imprisonment of three years is separated from the words 'or more' in section 2(1)(b). If the offence is punishable upto 3 years and section 153A(1) is to be excluded then the wording in section 2(1)(b) would have been punishable for imprisonment for more than three years. However, here it is categorical, which means that 3 years is included and what would be excluded would be the offence punishable with 2 years and 364 days. To my mind, the submissions of the learned advocate are not correct and acceptable for a simple reason that the offences under section 153A(1) are punishable with imprisonment upto 3 years and therefore they cannot be excluded from the scope of continuing unlawful activity as defined in section 2(1)(a) of the MCOC Act.

1232. Learned advocate then submitted that if we analyze or evaluate the evidence of ACP Khandekar, PW-174, it is apparent that without studying the material, without examining the details, he has submitted the proposal for invoking the MCOC Act. He has not consulted all the investigating officers of the other six crimes, their case papers were not studied and not looked into and according to his version without study of all the material he submitted the

proposal on 18/09/06. Even on that day so called material of two chargesheets at Jalgaon was also not available because the evidence of API Deore, PW-180, shows that he went to Jalgaon on 20/09/06 and collected the material on 22/09/06. Therefore on 18/09/06, it cannot be imagined that the material of the two cases was available with ACP Khandekar, PW-174. To my mind, these submissions are not acceptable because it is proved from the above discussion that API Deore, PW-180, has very much gone to Jalgaon on 16/09/06 and it is on 16/09/06 itself that he gave the information about the two cases against the A13 to ACP Khandekar, PW-174. No doubt it is true that the material was not in physical form, i.e., true copies or photocopies of the case papers, but to my mind, information of the two cases is also sufficient. In respect of the submission that the material with the other six investigating officers was not studied, to my mind, it has come in the evidence of ACP Khandekar, PW-174, as well as the investigating officers, who were investigating the other crimes, that there used to be interaction and it is obvious that from that interaction ACP Khandekar, PW-174, could gather what material was collected during their investigation. He has deposed specifically about what information he got about the activities of the accused. Learned advocate Shetty then submitted that ACP Shengal, DW-51, was the ACP of the Division, many accused who were caught were brought before him, many articles that were seized were handed over to him, even then ACP Khandekar, PW-174, submitted the proposal keeping everyone in the dark including ACP Shengal, DW-51, and Sr. PI Rathod, PW-176, and other superior officers. This

shows the highhandedness of the witness and his malicious intention and eagerness of the witness to invoke the MCOC Act. He did not feel it necessary to arrest the accused and interrogate them, did not consult or take material from various officers, who investigated the crime, did not bother to consult with the 3-4 ACPs, who were concerned with the case, but directly submitted the proposal. Therefore, looking at the material on record and the evidence that has come, it can be safely said that provisions of the MCOC Act are not applicable on the given material and they have been applied maliciously with a malafide intention of detaining the accused for more and more period in police custody and to extort confession or to legalize the statements of the accused after their arrest by giving them the colour of confessions and another reason is that they could not submit the chargesheet during the period of 90 days. To my mind, it may be that ACP Khandekar, PW-174, did not consult his immediate superiors, but for that alone his action cannot be found fault with it. It was the officer of the rank of the DCP, who could have taken such decisions and merely because he by-passed his immediate superiors, such an inference cannot be drawn. Secondly, it may be that ACP Khandekar, PW-174, did not feel the necessity to arrest the accused and interrogate them because he had come to know about the activities of the accused and the evidence that had been collected from the other investigating officers. A man may have a different thought process than others and he may be only a thinking man and it may be that this concept of organised crime came to his mind on considering the activities of all the accused who

had been arrested till then and on coming to know of the two previous cases against the A13 and their nature. Thus, this submission is also not acceptable and no inference can be drawn that the provisions of the MCOC Act were invoked maliciously and with *mala fide* intention to legalize the statements of the accused after their arrest by giving them the colour of confessions. The submissions of the learned advocate about another reason being inability of the investigating agency to submit the chargesheet during the prescribed period of 90 days is of no consequence, because the period has been validly extended by this court on merits and secondly, if one considers the arrest of the A1 on 20/07/06, even then the investigating machinery had sufficient time upto 20/10/06 to file the chargesheet in this case and about a month before the expiry of the period of 90 days the prior approval was granted.

1233. Learned advocate submits that in the two cases against the A13 none of the remaining co-accused, who are facing trial is an accused. This means that there could not have been an organised crime syndicate. This point is well settled by several judgements wherein it has been held that it is not necessary that there should be two chargesheets against each accused and moreover that all the accused in a particular case or some of them should be shown as co-accused in the cases that are considered for invoking the provisions of the MCOC Act. Continuing unlawful activity is defined in the MCOC Act as an activity prohibited by law, which is a cognizable offence with imprisonment of three years or more and, this is

important, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate. Thus, even if it is a single accused, who had committed cognizable offence, as described, as a member of an organised crime syndicate, it will be covered by the definition of continuing unlawful activity which has been so mentioned in the prior approval Ext. 1841. What was organised crime syndicate is clear from the allegations in the charge in C. R. No. 178/99 and the contents of the charge Ext. 1510 which referred to the SIMI. It is also clear from the FIR and the contents of the final report form Ext. 1509 in respect of the C. R. No. 178/99 that it was the organisation SIMI of which the A13 was a member. At this stage itself it will be appropriate to consider the point raised in the written submissions filed by learned advocate Sharif Shaikh that the two cases against the A13 are prior to the ban on SIMI inasmuch as C. R. No. 178/99 was registered on 03/12/99 and C. R. No. 103/01 was registered on 28/07/01, whereas, SIMI was declared as an unlawful association on 27/09/01. To my mind, if this submission is considered then most of the cases under the MCOC Act upto ten years after it came in the existence will have to be thrown out. This submission is ignoring one of the ingredient of continuing unlawful activity, which is more than one chargesheet within the preceding period of ten years. Thus, this submission is bad on the point of law.

1234. Most of the points that are raised in the written submissions by the learned advocate Sharif Shaikh have been covered upto now. In addition, it is submitted that PI Agrawal, PW-173, did not depose that name of the A13 was revealed during the investigation of A2

when he was in his custody and therefore the evidence by ACP Khandekar, PW-174, is an afterthought and an improvement on his statement given to ACP Patil, PW-186. Once again at the cost of repetition, it will have to be held that the information that ACP Khandekar, PW-174, got from the other investigating officers, including PI Agrawal, PW-173, was non physical. Statement of the A2 may have been recorded by the other investigating officers and the involvement of the A13 would have been disclosed therein. If PI Agrawal, PW-173, would have given the evidence about it saying that A2 and A4 had stated in their statements about the complicity of the A13 in this crime, would this evidence have been admissible? Obviously no. Thus this submission is of no help to the defence.

1235. Next point raised is that almost all the investigating officers of the other crimes, who had arrested the accused, had stated that they did not have sufficient evidence to file the chargesheet till the investigation of that crime was with them and Sr. PI Rathod, PW-176, has stated that he did not get any eyewitness in the investigation of his crime and there was no evidence against the accused, who were arrested, to show their involvement in the bomb blasts. This shows that the material collected by the ATS upto 24/09/06 was not sufficient to show the involvement of the accused in the bomb blasts and the question is asked as to how ACP Khandekar, PW-174, thought of proposing application of MCOC Act? It is also submitted that ACP Khandekar, PW-174, has also admitted the same things alongwith admitting that there was no confession, recovery, discovery from any accused and no accused had been

arrested and no test identification parade had been conducted in his crime. In this respect it is clear from the evidence of ACP Khandekar, PW-174, that he had not arrested the accused, therefore, there was no question of any confession, recovery, etc., in his crime. The earlier submission is already answered that it was the thought process of one of the investigating officers, viz., ACP Khandekar, PW-174, which led him to the conclusion about the bomb blasts being an organised crime committed by the organised crime syndicate. To my mind, the materials and the scenario that would be considered for considering application of the provisions of the MCOC Act would be quite different from the insufficiency of evidence to file chargesheet in a particular crime out of the seven crimes. Thus, the allegation that the provisions of the MCOC Act were invoked though there was no evidence and were invoked only for the satisfaction of the superior officers as they wanted to implicate falsely innocent persons in the blasts case is baseless and unacceptable.

1236. A wrong submission was made that charge Ext. 1510 does not mention the name of Asif Khan, but it mentions the name of one Asif Shaikh Supbu. Wrong I say because both these names are there and it is the court record and not the creation of the police.

1237. The evidence of A13 as DW-49 in connection with what happened after his arrest on 29/12/06 in C. R. No.103/01 is reproduced alongwith reproducing what had happened in 2001 and it is submitted that he withstood in the cross-examination and his evidence is more reliable than the hearsay evidence given by API Deore, PW-180, and it is clear that the A13 is not the wanted

accused in C. R. No. 103/01. To my mind, these submissions are fallacious for the simple reason that A13 has not examined any witness including his brother or father or any of the police officers of Jalgaon, whom he names as having stated to him that he has been falsely implicated on the say of Nawal Bajaj, as his defence witnesses. It is only his words and the story that he told. On the other hand, the evidence of API Deore, PW-180, is corroborated by the documents as is held earlier and his evidence is only about collection of the documents and there is no question of hearsay in that case. The next submission that the case of a wanted accused cannot be considered for invocation of the MCOC Act is covered by the fate of the discharge application filed by A13 before this court as well as the appeal that he filed in the High Court and also by the recent law laid down by the Supreme Court in the Malegaon Bomb Blast Case of 2008. The next submission is that SIMI is not named in the prior approval as an organised crime syndicate, but it is only ACP Khandekar, PW-174, through whom it was brought on record by the prosecution. Similarly he has admitted that he does not know till today whether chargesheet is filed against A2, A4 and A13. The question is asked as to why then he proposed invocation of the MCOC Act? To my mind, not mentioning SIMI in the prior approval does not vitiate the said order if the allegations in C. R. No. 178/99 and C. R. No. 103/01 registered with the MIDC Police Station, Jalgaon against the A13 are considered, which specifically show that the organisation was SIMI and though ACP Khandekar, PW-174, might have or might not have mentioned the name SIMI in the

proposal, the fact that there were two previous chargesheets of the nature as I described earlier, was sufficient for the authority granting the prior approval to come to the conclusion about the organised crime syndicate. Thus, this submission is not proper and a wrong submission is made further that the name SIMI is also not mentioned in the sanction order Ext. 13.

1238. Learned advocate Dr. Yug Chodhary relied on the following authorities with respect to this point :-

- (i) Ashraf Khan @ Babu Munnekhan, Appellants V. State of Gujarat ((2012) 11 Supreme Court Cases 606).**
- (ii) Rangku Dutta @ Ranjan Kumar Dutta, Appellant V. State of Assam, Respondent ((2011) 6 Supreme Court Cases 358).**
- (iii) Pulin Das @ Panna Koch, Appellant V. State of Assam, Respondent ((2008) 5 Supreme Court Cases 89).**
- (iv) Mukhtiar Ahmed Ansari, Appellant V. State (N. C. T. of Delhi), Respondent (2005 CRI. L. J. 2569).**

To my mind all the authorities are under the TADA and are inapplicable on facts in issue, inasmuch as in the first and fourth case before the Supreme Court, on facts it was found that the documents for prior approval were not on record and it does not come under the TADA. The second is concerning regarding recording of information without a prior approval, which is not the case here. In the third authority, it is held that the highest police officer, viz., Superintendent of Police, or equivalent officer of the district should explain all the details about the banned organisation and that accused are connected to the banned organisation. To my mind, this

has been explained by ACP Patil, PW-186, the investigating officer after the application of the MCOC Act, by referring to the literature that was seized from the accused and by explaining the ideology of SIMI and its activities being banned. Thus, this authority is also not helpful to the defence.

1239. Learned SPP has relied on the judgement of the Division Bench of our High Court in the case of **Sachin Bansilal Ghaiwal, Appellant V. State of Maharashtra, Respondent (Criminal Appeal No. 24 of 2014 dtd.16/07/04)**. The order of the MCOC Act court was in respect of the discharge application by the accused and it was also considered and it was held that on perusal of the prior approval, the court was of the opinion that the competent authority has recorded its subjective satisfaction and accorded sanction. Reliance was placed on the ratio laid down in the case of **Anil Nanduskar** which was also a case of discharge before the charge was framed and it was held that the prosecution has to be afforded an opportunity to lead evidence with regard to the subjective satisfaction recorded by the competent authority by leading evidence at the time of trial.

1240. Submissions of the learned SPP while submitting his reply on law points are, that had there been no sanction under section 23(2) of the MCOC Act, this court could not have taken cognizance, but the fact is that cognizance has been taken and the trial has been conducted under the MCOC Act. The fact is also that the written prior approval is produced and exhibited in this case as a document admissible in law. The fact cannot be disputed that the prior

approval does mention the existence of two previous chargesheets. Learned SPP submitted that ultimately this court will have to test the evidence on the ground of reasonableness. Although it is the right of the accused to take recourse of every technicality and to try to pick a hole in the prosecution case, the court is saddled with the responsibility of testing it on the ground of reasonableness. Lastly he raised the question as to who is the other Asif Khan mentioned in Ext. 1510 and to what extent imagination is to be stretched? He submits that otherwise he will have to be establish that he has passed LLB, that he has a Sanad and that he is notified as an SPP and therefore he is trying this case. At the cost of repetition it will have to be pointed out that it was very easy for the defence and particularly the A13 to call for the record of C. R. No. 178/99 and Sessions Case No. 216/02 or the papers of the criminal case that was instituted in the lower court in respect of C. R. No. 103/01. If he would have done so, it would have easily displaced the case of the prosecution about there being two previous cases against him, which would have in turn taken the case out of the ambit of the MCOC Act.

1241. In view of the above discussion, it will have to be held that there were two previous chargesheets against the A13 in respect of the cognizable offence punishable with imprisonment of three years or more, that they were done on behalf of SIMI, which was subsequently banned, withing the preceding period of ten years and the competent court had taken cognizance of the offence. It will also have to be held that the above fact as well as the cases against the A2 and A4 show that they were acting as members of SIMI, which

was later on declared as unlawful association and these facts were before the authority, who granted the prior approval Ext. 1841. Paragraph 3 of the approval reflects the subjective satisfaction to which the authority arrived at on the basis of the material that was before him in respect of there being sufficient evidence to prove continuing unlawful activities of the organised crime syndicate and was also further satisfied that A1 and A3 had abetted and knowingly facilitated the continuing unlawful activities of the said organised crime syndicate by rendering financial and other assistance and indulging in various acts preparatory to the commission of the organised crime. Paragraph 2 also records the satisfaction that the continuing unlawful activities of the A13, A4 and A2 in respect of cognizable offence punishable for imprisonment for three years or more revealed their conspiracy for promoting insurgency to overawe the government by criminal force. Thus, it is clear that the Addl. CP S. K. Jaiswal, who was of the rank of DGP, had applied his mind before granting the prior approval and no fault is found in his order. Hence, it will have to be held that the provisions of the MCOC Act have been properly invoked in C. R. No. 156 of 2006 of Borivali Railway Police Station. **This is the circumstance no. 43 proved by the prosecution.**

Recording of information under section 23(1)(a) of the MCOC Act :-

1242. Recording of the information under section 23(1)(a) of the MCOC Act has been discussed in paragraph 1212 supra and the evidence of ACP Khandekar, PW-174, and ACP Patil, PW-186, is

discussed. ACP Khandekar, PW-174, stated that after the order of prior approval was received, ACP Patil, PW-186, recorded his detailed statement. His cross-examination in respect of his statement is, as discussed earlier, mainly concerned with the improvements and omissions while giving the statement and his cross-examination on the other points has been discussed earlier. In his cross-examination he reiterated that ACP Patil, PW-186, recorded his information on 24/09/06 and it is in the nature of his statement and as per his knowledge that is the information. He was asked to go through section 23(1)(a) of the MCOC Act and he affirms that the provisions of the said section show that information should be recorded after prior approval is received. It has come in the cross-examination of ACP Patil, PW-186, that this is the only case under the MCOC Act that he investigated during his service period and he also affirmed that the information is to be recorded under section 23(1)(a) of the MCOC Act. It has also come that he also discussed this issue with DCP Bajaj on the day when investigation came to him and specifically explained that he has not read anywhere about the procedure for recording such information. He denied the suggestion that the signature of the informant is required to be taken and the station diary entry Ext. 2367 is fabricated later on. Other than this there is nothing in his cross-examination. Certified true photocopy of Ext. 2367 of the station diary entry no. 23 dtd. 24/09/06 refers firstly to station diary entry no. 20 of the same day about receipt of the order of the prior approval appointing ACP Patil, PW-186, as the investigating officer and directing him to record the information of

the commission of the offence under the MCOC Act and the station diary entry no. 23 states that ACP Patil, PW-186, reports having recorded the information about commission of the offence under the MCOC Act, 1999 by recording the statement of ACP Khandekar, PW-174, and applying sections of the MCOC Act to C. R. No. 156 of 2006. To my mind, this much procedure is sufficient and there is no need for a separate information to be recorded.

1243. It is submitted by learned advocate Sharif Shaikh in his written submission in volume-1 after reproducing the evidence of ACP Patil, PW-186, that the information that is recorded by him is not exhibited in the court as it is a statement under section 161 of the Cr. P. C. and not an information, that even later on, a separate crime number, i.e., C. R. No. 05/06, was registered but no information was recorded. Hence this case is without information and therefore the prior approval and sanction under the MCOC Act become invalid. In this connection the law has been well settled as long back as in the year 2007 by the Division Bench of our High Court in the case of **John D'Souza, Appellant V. Assistant Commissioner of Police, B-1/Special, DCB, CID, Joint Commissioner of Police (Crime) Crime Branch, CID, Commissioner of Police and The State of Maharashtra, Respondents (Criminal Writ Petition No.147 of 2007 decided on 30/04/07)**, where several questions were raised in respect of the MCOC Act and this was the very first question whether it is necessary that a separate information under section 23(1)(a) of the MCOC Act should be recorded after the approval is accorded under

this section even in cases where crime had already been registered after recording the FIR under section 154 of the Code for the offences under the IPC. This question was answered in the negative holding that no separate FIR needs to be recorded by a police officer after the prior approval contemplated under section 23(1)(a) is granted by the Jt. CP. It was also held that if the expression 'shall be recorded' is read only to mean 'recording of an information' or 'reducing an information in writing' and not 'registration of an offence' it would create an anomalous situation which would be unsustainable in law. There cannot be, in any case, two FIRs. There is no special format prescribed for recording information under section 23(1)(a). What is necessary is only 'prior approval' of the high ranking police officer for recording and/or registering an information/offence about the commission of an offence of organised crime. Thus, this objection and submission is unsustainable in law and no separate crime number being given when the information of ACP Khandekar, PW-174, was recorded does not and will not invalidate the prior approval as well as the sanction.

Confessional statements of the accused recorded under section 18 of the MCOC Act :-

1244. The confessional statements of 11 accused were recorded and A8 did not express his desire to make a confessional statement, whereas, though the A13 desired to make it and was taken before DCP Ranade, PW-111, was sent back on 31/10/06 with the information that he had refused to make it. The confessional

statements were recorded in two batches, first of the A1 to A4 and A9 to A11 during the period from 03/10/06 to 06/10/06 and the second of the A5 to A7 and A12 from 24/10/06 to 25/10/06.

Confessional statement of the A2 :-

1245. It has come in the evidence of ACP Patil, PW-186, that all the arrested accused were put under constant interrogation, that different teams were formed for interrogating them and he alongwith the superior officers were supervising the same. It has come in his evidence that the team interrogating the A2 informed him on 29/09/06 about his willingness to make a voluntary confessional statement before the superior officers, about which he satisfied himself by interrogating him, that thereafter on his request, the Jt. CP, ATS directed SP Mohite, PW-102, by his letter Ext.1015 dtd.03/10/06 to record his confessional statement and thereafter received letter from SP Mohite, PW-102, Ext.1016 dtd.04/10/06 directing him to produce the A2 before him on the same day at 2.00 p.m. It has come in his evidence that he directed ACP Khandekar, PW-174, by his letter, office copy of which is at Ext.2395, to take the A2 to SP Mohite, PW-102, and also prepared the letter Ext.1018 addressed to the DCP about producing the A2 before him with ACP Khandekar, PW-174. He proved the contents of Ext.1018 as well as Ext.2395. It has come in his evidence that ACP Khandekar, PW-174, and staff produced the A2 before SP Mohite, PW-102, on that day, returned back and reported that the DCP had taken the accused in his custody. ACP Khandekar, PW-174, corroborates his version and it has come in his evidence that he alongwith API Wadmare, PSI Patil

and staff took the A2 to the DCP and PSI Patil made the station diary entry no. 8, true photocopy of which is at Ext.1842, contents of which he proved, at Kalachowki while going and he produced the accused in veil before the DCP and handed over the letter given by ACP Patil, PW-186, to him. It has come in his evidence that he gave brief facts of the crime including the number and the name of the accused, thereupon, the DCP took the accused in his custody and asked him to go back and when they returned, API Wadmare made station diary entry no. 11, true photocopy of which is at Ext.1843, contents of which he proved. He identified the A2 in the court.

1246. SP Mohite, PW-102, corroborated the evidence of the above witnesses and stated about receiving the letter Ext.1015 from the Jt. CP, ATS, issuing the letter Ext.1016, contents of which he proved, to ACP Patil, PW-186, to produce the accused and also issuing the letter to Sr. PI, Azad Maidan Police Station to send one PSI and four constables at 1400 hours, office copy of which is at Ext. 1017, contents of which he proved. He also confirmed about ACP Khandekar, PW-174, producing the accused before him at 1420 hours alongwith report Ext.1018, i.e., the letter by ACP Patil, PW-186. He then described about asking ACP Khandekar, PW-174, to briefly narrate the facts of the case and after he narrated them, he asked all the policemen to go outside his chamber. He then described as to what precautions he took to ensure that no other policeman would see and hear them, how he made the accused comfortable by asking some preliminary questions and informing him that he has no concern with the investigation of the crime in

which he is arrested, that he was taken in his custody from the custody of the ATS and that till the time he is in his custody, no ATS officers can come in his contact and can pressurize him. It has also come in his evidence that he had also ascertained from ACP Khandekar, PW-174, about the sufficient period of the PC to enable him to give the accused time for reflection and to complete the confessional statement. He described what questions he asked and what warning he gave to the A2 and about recording Part-I of the confessional statement in his handwriting and telling the accused that he is giving him 24 hours to think over whether to give the confessional statement and deposed about he being satisfied that the accused was prepared to give the confessional statement voluntarily. He proved Part-I of the confessional statement Ext.1019, identified his signatures and the signatures of the A2 on all the pages and stated about having read over the Part-I to the A2 and he accepting that it was correctly written as per his narration.

1247. It has then come in his evidence that he handed over the custody of the A2 to PSI Gangurde, PW-105, of Azad Maidan Police Station, who had come there as per his letter, alongwith two constables and gave letter, office copy of which is at Ext.1021, addressed to the Sr. PI, Azad Maidan Police Station, contents of which he proved, containing directions about keeping the accused in a separate cell in his lock-up, to take care that no police officer or no one from the ATS as well as no other person meets him, that he should be got medically examined and care should be taken about his bedding and food to make him comfortable and directing him to

produce the accused before him on 05/10/06 at 5.00 p.m. It has come in the evidence of PSI Gangurde, PW-105, that on being directed, he reported with two constables to SP Mohite, PW-102, of which station diary entry no. 29, true copy of which is at Ext.1080, was made by the duty officer and on reporting the DCP, he was asked to wait outside for some time, called inside his office at about 1645 hours and the DCP telling him that the A2 is in his custody and is giving him in his, i.e., in the custody of PSI Gangurde, PW-105. PSI Gangurde, PW-105, corroborated the version of SP Mohite, PW-102, and proved his endorsement below Ext.1021 of having received the A2 in his custody and his signature below it. It has come in his evidence that he veiled the accused and took him to the GT Hospital in a police van, got him medically examined there, took him to the police station and put him in the lock-up in a separate cell giving strict instructions to the guard amaldar and to the duty officer as given by the DCP and also intimating the instructions to the night PI Sonavane and making station diary entry no. 39, certified true copy of which is at Ext.1080.

1248. SP Mohite, PW-102, had deposed about PSI Gangurde, PW-105, producing the A2 on the appointed date and time and reporting to him on being asked about getting the accused medically examined and complying with other instructions and also giving him the letter Ext. 1022, whereupon he took the accused in his custody and asked PSI Gangurde, PW-105, and his staff to go outside his chamber. His evidence is corroborated by the evidence of PSI Gangurde, PW-105, who specifically deposed about veiling the

accused after taking him out from the lock-up and making station diary entry no. 25, true photocopy of which is at Ext.1081, contents of which he proved. PSI Gangurde, PW-105, then deposed about producing the accused before the DCP alongwith letter Ext.1022 and being asked to wait outside and that he, i.e., the DCP and the accused were inside the office.

1249. SP Mohite, PW-102, then described about the precautions that he took as per the earlier day, asking preliminary questions about medical examination, etc., and the necessary questions to ascertain whether the A2 was ready to give the confessional statement voluntarily and being satisfied from the answers of the accused that it was so. He then stated about recording the confessional statement of the A2 in his own words and in his language, reading it over to him after it was finished and obtaining his signatures on all pages after he affirmed that it was correctly written as narrated by him and putting his counter signatures and giving a certificate below the statement as per the provisions of the MCOC Act. He proved the signatures of the accused and his counter signature and signatures in Part-II Ext.1023, stated about putting the original in the envelope Ext.1024, sealing it and endorsing it after having taken out two photocopies, one for his record and one for giving to the investigating officer.

1250. He then deposed about the next step that he took, viz., of preparing three letters, addressed to the CMM, Sr. PI, Azad Maidan Police Station and the investigating officer of the ATS, office copies of which are at Exts.1025 to 1027, the contents of which he proved.

It has come in his evidence that he then gave the accused in the custody of PSI Gangurde, PW-105, alongwith the letters and the sealed envelopes and then he identified the A2 in the court unhesitatingly.

1251. PSI Gangurde, PW-105, corroborated his evidence fully and stated about DCP calling him inside his office at about 10.00 p.m., giving him similar directions as were given on the earlier day about taking care of the accused and precautions that were to be taken. He specifically described about the DCP handing over two sealed envelopes and one letter in an envelope addressed to the CMM with a direction to produce the A2 on the next day before the CMM. He also deposed about the DCP giving him the letter Ext.1026 addressed to his Sr. PI and directing him to get the accused medically examined, that he veiled the accused and took him to the GT Hospital and got him medically examined. Ext. 2109 is the carbon copy of the OPD case paper and Ext.2108 is the true photocopy of the extract from the OPD register showing that the A2 was examined at 10.30 p.m. on that day and there were no complaints. The contents of Exts. 2108 and 2109 are proved by Dr. Paikrao, PW-181. It has further come in his evidence that he put the A2 in the lock-up giving the instructions to the guard amaldar as given on the earlier day, informed the duty officer and the night PI about the instructions, kept sealed envelopes in the locker of the police station safely and then made station diary entry no. 39, certified true photocopy of which is at Ext.1081, contents of which he proved.

1252. PSI Gangurde, PW-105, deposed about taking the accused in veil to the court of the CMM on 06/10/06 after making the station diary entry no. 40, certified true photocopy of which is at Ext.1082, the accused being called in the chamber of the CMM at about 4.30 p.m. and he handing over the letter and two sealed envelopes to the CMM, being asked to wait outside and the A2 being given in his custody at about 5.30 p.m., he veiling the accused, taking him back to the police station and reporting to SP Mohite, PW-102, about the work of production of the A2 before the CMM being over and asking for his further instructions and on being directed, taking the A2 to the office of the ATS at Bhoiwada and giving him in the possession of ACP Patil, PW-186, and ACP Khandekar, PW-174. He deposed about making the station diary entry no. 49 to that effect, certified true photocopy of which is at Ext.1082. He proved the contents of the copy of the requisition Ext. 1083 that he gave to the medical officer for examining the A2 on 05/10/06 and identified the A2 in the court unhesitatingly. The CMM forwarded the sealed envelope of the confessional statement alongwith letter Ext.1028 in the envelope Ext.1028A to this Court and they were received in evidence as they are the official communication from one court to another.

1253. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A2 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody

of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A4 :-

1254. It has come in the evidence of ACP Patil, PW-186,, that after the team of officers interrogating the A4 informing him on 29/09/06 about his willingness to make a voluntary confessional statement before the superior officers and the Jt. CP, ATS, at his request, nominated SP Karale, PW-104,, by the letter Ext.1054 dtd.03/10/06, thereafter he received the letter Ext.1055 from SP Karale, PW-104, directing him to produce the A4 before him on that day itself and then directing API Deore, PW-180, to take the accused to the DCP by the letter, office copy of which is at Ext.2396, the contents of which he proved. He also informed the DCP by his letter Ext. 1056 about producing the accused before him and he proved the contents of that letter. It has come in his evidence that API Deore, PW-180, and his staff produced the A4 before the DCP on that day, returned back to the office, reporting that the DCP has taken him in his custody.

1255. API Deore, PW-180, corroborated his evidence and deposed that on the directions of ACP Patil, PW-186, he took the A4 in his custody on 06/10/06, veiled him and alongwith the letter Ext.1056 he took the accused with him, produced the accused before the DCP at 9.00 a.m. and handed over the letter. Before proceeding ahead, he had gone to the Kalachowki ATS office and made station diary entry

no. 1, true photocopy of which is at Ext.2087, contents of which he proved, which are in his handwriting. It has come in his evidence that on asking he gave the particulars of the case in which the accused is involved in brief, the DCP took the accused in his custody and asked them to leave and then he went back with his staff, handed over office copy of the letter Ext.1056 to ACP Patil, PW-186, and he identified the A4 in the court unhesitatingly.

1256. SP Karale, PW-104, corroborated the evidence of both the above witnesses and deposed about getting the letter Ext.1054 from the Jt. CP, ATS directing him to record the confessional statement of the A4, he informing the investigating officer ACP Patil, PW-186, by his letter, office copy of which is at Ext.1055, to produce the accused before him at 9.00 a.m. on 06/10/06 and API Deore, PW-180, producing the accused before him alongwith the letter Ext.1056, he inquiring with API Deore, PW-180, about case in which the accused was involved, directing the accused to remove his veil and asking API Deore, PW-180, and staff to go outside his chamber. He deposed that he and the A4 were only in his chamber and that after ascertaining that no one from outside could see the proceedings that was going on in his chamber, he made preliminary inquiry with the accused and informed him about his designation, observed his body language to ascertain whether he was giving the confessional statement voluntarily and after ascertaining whether he was beaten or threatened by police or given any inducement, being satisfied that the accused was ready to make the confessional statement voluntarily after giving him statutory warning and then informed the

accused that he would give him 24 hours to reflect whether to make the confessional statement. It has come in his evidence that he was dictating the questions and answers to his stenographer who was typing them on the computer and after it was over, taking out the printout, reading it over to the A4 to affirm that it was correctly written on being asked and putting his signature and asking the accused to put his signature. He identified his signature and signatures of the accused on Part-I, i.e., Ext.1057.

1257. It has come in his evidence that API Randive, PW-106, of Matunga Police Station and his staff had come to his office as per his telephonic directions to the Sr. PI of that police station, which is on the ground floor of his office. He also proved the contents of the office copy of Ext.1059 containing this direction to the Sr. PI. He calling them inside, telling him that the A4 is in his custody and asking API Randive, PW-106, to keep the accused in a separate cell in the lock-up of Police Station Matunga and he described the precautions that were to be taken in respect of lodging and food of the accused and also to give medical treatment if necessary and about always escorting the accused in veil. All these directions were incorporated in his letter to the Sr. PI, office copy of which is at Ext. 1058, contents of which he proved. He then deposed about the escort party veiling the A4 and taking him out and he having directed them to produce the accused before him at 11.00 a.m. on the next day, i.e., on 07/10/06.

1258. API Randive, PW-106, corroborated the evidence of SP Karale, PW-104,, deposing about the DCP giving the A4 in his

custody at about 10.45 a.m. on 06/10/06 alongwith the letter Ext. 1058 and being given instructions as to how to keep the accused and what care should be taken, etc., and the direction that he has to be produced on the next day, i.e., on 07/10/06 at 11.00 a.m.. He deposed about veiling the accused and taking him for medical examination at Lokmanya Tilak Rugnalaya, Sion. He had produced xerox copy of requisition, Art.328, that he gave to the medical officer of Sion Hospital and xerox true copy of the OPD case paper Art.329 to ACP Patil, PW-186,, who took his statement. Dr. Singal, PW-171, proved the entry at sr. no.26216 in the casualty register dtd. 06/10/06, certified true copy of which is at Ext.1825, and its carbon copy Ext.1826 about examining the A4 at 10.45 a.m. and everything being normal and there being no visible marks of injuries. He then deposed about putting the A4 in a separate lock-up, giving directions to the guard hawaldar not to allow any ATS or police officer or anyone to meet him and then made an entry in the lock-up diary, certified copy of which is at Ext.1089. It has come in his evidence that he did not get the original lock-up diary as it was informed that it was destroyed as it was an old record, therefore, he produced the certified copies of letters given by Sr. PI of his police station to ACP of Matunga Division, Exts.1087 and 1088, for permission to destroy the old record with the list of record that was to be destroyed. The list Ext.1088 includes the lock-up diary at sr. no. 30 from January, 2004 to December, 2006. He explained that he did not make station diary entry when he was called by the DCP as his office is on the first floor above the Matunga Police Station.

1259. API Randive, PW-106, then deposed about taking out the A4 from the lock-up at 10.30 a.m. on 07/10/06, making entries in the inward-outward register of the lock-up and in the lock-up diary and producing the accused before the DCP at 11.00 a.m. and the DCP asking him to wait outside. SP Karale, PW-104, corroborated his version and then deposed about asking the accused to remove his veil and the precautions that he took to screen the proceedings in his chamber from outside and again ascertained from the accused about his willingness to make the confessional statement voluntarily and on receiving an affirmative answer calling his stenographer and then putting him questions whether the time for reflection was sufficient, whether he was pressurized in any way, etc., and the statutory warning and the accused on understanding the warning saying that even then he is ready to make it. He deposed about being satisfied on the inquiry and on observing the body language of the A4 and his confidence level that the accused was ready to make the confessional statement voluntarily and then starting dictating the confessional statement to the stenographer in the language of the accused as narrated by him. He deposed about taking out the printout of the Part-II after the A4 finished narrating, signing on all the pages and asking the accused to sign, which the accused did after reading it and affirming that it was correctly written as per his narration. He deposed about dictating the certificate as required by the MCOC Act, taking out its printout and signing it and he identified signatures of the accused as well as his signature on Part-II, i.e., Ext.1060 and proved its contents as well as the contents of

the certificate, Ext.1061. A copy, i.e., Ext.1062, that he had prepared for his record was also attached with the original and it has come in his evidence that he put Part-II in an envelope and closed it and prepared a letter addressed to the CMM, office copy of which is at Ext.1063, the contents of which he proved. He deposed about handing over the custody of the accused to API Randive, PW-106, giving him the forwarding letter with the direction to produce him with the letter and sealed envelopes before the CMM and thereafter to hand over the accused to the ATS after the procedure before the CMM was over. He identified the A4 in the court unhesitatingly.

1260. API Randive, PW-106, corroborated the evidence of SP Karale, PW-104,, about being called inside and giving the A4 in his custody alongwith two sealed envelopes and a separate letter addressed to the CMM with a direction to veil the accused and to produce him before the CMM and he making the station diary entry no. 20, certified copy of which is at Ext. 1090 and the certified true photocopy of which was produced and marked as Ext.1100. The contents of Ext.1100 corroborate his evidence, though the date in Ext.1090 is 06/10/06 instead of 07/10/06, which is obviously a typographical error as Ext.1090 is a typed photocopy of three station diary entries. It has come in his evidence that he veiled the accused and took him to the court of the CMM, produced the accused before him and handed over the forwarding letter and the two sealed envelopes and was asked to wait outside. He deposed that he was called inside after about half an hour, the A4 was given in his custody and a letter in an envelope was given to him, whereupon he

again veiled the accused, went back to the office of the DCP and gave him the letter, but the DCP told him that the ATS officers are coming and directed him to keep the accused in the lock-up of his police station till they come, which he did and made station diary entry no. 24, certified true photocopy of which is at Ext.1100 and which is in his handwriting. It has come in his evidence that API Deore, PW-180, came after sometime and A4 was given in his custody alongwith the letter Art.330 and then he made the station diary entry no. 25, certified true photocopy of which is at Ext.1100. It has come in his evidence that the A4 was sent in veil in the same jeep with API Deore, PW-180, and API Deore, PW-180's evidence corroborates his version, who deposed about going to the Police Station Matunga, meeting API Randive, PW-106, taking the accused in his custody, veiling him and bringing him back to the ATS office and putting him in the lock-up and informing ACP Patil, PW-186, about it. API Randive, PW-106, and API Deore, PW-180, identified the A4 in the court unhesitatingly. The CMM forwarded the sealed envelopes of the confessional statement to this court in the envelope Ext.1064A alongwith his letter Ext.1064 and they were received in evidence as it is an official communication between the two courts.

1261. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A4 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the

contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A1 :-

1262. ACP Patil, PW-186, deposed about getting information on 01/10/06 from the team of officers interrogating the A1 about his willingness to make a confessional statement before the superior officers, he satisfied himself after questioning the accused and on his request Jt. CP, ATS, nominating DCP Choubey, PW-113, by a letter, office copy of which is at Ext.1176, to record the confessional statement of the A1. He deposed about receiving a letter, office copy of which is at Ext.1177, from the DCP directing him to produce the accused on 03/10/06 and he directing ACP Shaikh, PW-162, by a letter, office copy of which is at Ext.2397, to do so and also giving him the letter Ext.1179 addressed to the DCP and ACP Shaikh, PW-162, and staff producing the A1 before the DCP on that day and coming back and reporting that the DCP had taken the accused in his custody. ACP Shaikh, PW-162, corroborated his version and deposed about taking the accused to the office of the DCP at Bandra before which he made station diary entry no. 9, true photocopy of which is at Ext.1749, and handing over the A1 in the custody of the DCP, who asked him and his staff to withdraw from his office and go back. He deposed about returning back and making station diary entry no. 13, true photocopy of which is at Ext.1750, about the work that he had done and he identified the A1 in the court

unhesitatingly.

1263. DCP Choubey, PW-113, corroborated the version of the above two officers and deposed about receiving the letter Ext.1176 of the Jt. CP, ATS directing him to record the statement of the A1, he sending letter, office copy of which is at Ext.1177, to ACP Patil, PW-186, for producing the accused before him and also writing a letter to Sr. PI, Police Station Bandra to send a team of escort to his office at 1700 hours to take custody of the accused, office copy of which is at Ext.1178. The letter contained instructions about transporting the accused in veil and getting him medically examined and screening him from meeting any person. He deposed that ACP Shaikh, PW-162, produced the accused before him alongwith the letter Ext.1179, that he obtained brief information about the case from him and inquired about the PC, got the veil of the accused removed and told ACP Shaikh, PW-162, and his staff to withdraw from his chamber. He deposed about ensuring that the proceeding in the chamber would not be heard or seen from outside, about asking preliminary questions to the A1 to make him comfortable, about informing him that he was no longer in the custody of the ATS and that he was DCP of that area, but had no relation with the investigation of the case in which he has arrested, etc. He deposed about asking questions to ascertain whether the A1 was voluntarily going to make the confessional statement by asking him about any influence, pressure, etc., on him and giving him the statutory warning and on getting the positive answers from the accused, being convinced that the accused was ready to make the confessional

statement. He deposed about informing the accused that he would be given 24 hours for reflection and that nobody from the ATS or any other branches would meet him or contact him and stated that he was writing down most of the questions and answers put to the accused and at the end wrote about the proceedings in brief, read them over to the accused to affirm that they were correctly written and to sign after going through the papers on each page and he also signing it. He identified his signature and signature of the accused on Part-I, i.e., Ext.1180, of the confessional statement and deposed about keeping it in his personal custody and then calling PI Gailwad, PW-116, who had come from Police Station Bandra, instructing him to get the accused medically examined, transport him in veil and keep him in an independent cell in the lock-up of Police Station Bandra and what precautions were to be taken there and directions to produce the accused on the next day, i.e., on 04/10/06 at 1900 hours. PI Gaikwad, PW-116, corroborated his evidence and deposed that he alongwith the PSI and two constables went to the office of the DCP after making station diary entry no. 44 in his handwriting, certified true copy of which is at Ext.1194, reporting to the reader about their arrival and being asked to wait outside. He deposed about he and his staff being called inside by the DCP and being asked to take the custody of the A1 with the instructions to keep him in a separate cell, to veil him, to get him medically examined and not to allow any ATS officer to meet him and to produce him on the next day at 7.00 p.m. He deposed about taking the A1 to the police station first and then getting him medically examined. Ext.2197 is

true photocopy of the OPD register of Bhabha Hospital, the contents of which are proved by Dr. Yelkar, PW-183, which show that he had no complaints and no history of assault. PI Gaikwad, PW-116, deposed about having made station diary entry no. 48 on returning from DCP office, station diary entry no. 49 on returning from hospital and entry no. 52 after putting the accused in the lock-up, all of which are in his handwriting, true photocopies of which are at Exts.1195 and 1196, the contents of which corroborate his version.

1264. PI Gaikwad, PW-116, then deposed about taking the A1 to the DCP office on 04/10/06 after making the station diary entry no. 46, true photocopy of which is at Ext.1197, reporting to the DCP and producing the accused before him, the DCP asking him whether all the instructions were followed and telling him that it was followed and then the DCP taking the A1 in his custody and telling them to wait outside and not to allow anyone to come inside and accordingly they waited outside. DCP Choubey, PW-113, corroborated his version even about he asking PI Gaikwad, PW-116, as to whether all the instruction were complied and after instructing the escort to leave his chamber, he ensuring that the proceedings in the chamber were not heard and seen by anyone else and then he deposed about the procedure he adopted to ascertain whether the accused was voluntarily going to make the confessional statement, by putting the necessary questions to him and also the statutory warning and he being satisfied that the A1 was ready to give it voluntarily. It has come in his evidence that he told the A1 to state whatever he wanted to state and started writing as per his narration in his own

handwriting and after completing it, reading it over to the A1 and A1 going through the papers, signing on every page and he also signing similarly and putting his stamp. He identified his signatures and signatures of the accused on Part-II, i.e., Ext.1181, which he had started writing below the Part-I and deposed about putting both the parts in the envelope Ext.1182. He deposed about handing over the custody of the accused to PI Gaikwad, PW-116, and giving him letter addressed to the CMM, office copy of which is at Ext.1183 and giving directions to again keep the accused in an independent cell of the lock-up of Police Station Bandra and also handing over the sealed envelope with the direction to produce the accused and the documents before the CMM on 05/10/06, as the confessional statement was over at 2.30 a.m. on 05/10/06. He also gave instructions to hand over the custody of the accused to ACP Patil, PW-186, after the court formalities were over. He identified the A1 in the court unhesitatingly.

1265. PI Gaikwad, PW-116, corroborated his version by deposing that at 2.30 a.m. on 05/10/06 the DCP called him inside and gave him the custody of the accused and also two letters, one in an envelope addressed to the CMM and one a sealed envelope Ext.1182 containing the confessional statement of the accused, which he identified. He also confirmed that the DCP had instructed him to get the accused medically examined and stated about putting the accused in the lock-up and the envelopes in the safe and making station diary entry no. 7, certified true photocopy of which is at Ext. 1198. It has come in his evidence that he resumed duty at 9.00 a.m.

on 05/10/06 and took the custody of the A1 from the lock-up in his custody and started going to the CMM court at the time of which he made station diary entry no. 17 in his own handwriting, true photocopy of which is at Ext.1199. It has come in his evidence that he had verified and confirmed whether the accused is medically examined in the morning. The OPD case paper dtd.06/10/06 in the bunch Ext.2151, proved by Dr. Gond, PW-182, shows that there were no complaints and the findings were normal.

1266. PI Gaikwad, PW-116, then deposed about being called by the CMM in his chamber at 2.30 or 2.45 p.m. and he producing the accused before him and the CMM asking him to wait outside, being called inside at about 5.00 p.m. and giving the accused in his custody, thereafter he going back to the police station and making station diary entry no. 52 in his handwriting, true photocopy of which is at Ext.1200. He deposed that as per instructions of the DCP, a letter was prepared and he took the accused to the ATS office at Bhoiwada, making station diary entry no. 53 in his handwriting, certified true photocopy of which is at Ext.1201, giving the accused in the custody of the duty officer and API Mohite. He identified the A1 in the court unhesitatingly. The CMM forwarded the confessional statement of the accused alongwith his forwarding letter Ext.1203 and statement of the A1 Ext.1204 in the envelope Ext.1204A. They were received in evidence as they are official correspondence from court to court.

1267. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A1 from the ATS office to the

office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A3 :-

1268. ACP Patil, PW-186, deposed about coming to know on 01/10/06 of A3's willingness to make a confessional statement as the team of officers interrogating him reported so to him and he satisfied himself about it on questioning the accused, then Addl. CP Brijesh Singh, PW-117, being nominated by the Jt. CP, ATS by the letter Ext.1209 to record the confessional statement about which he received a letter, office copy of which is at Ext.1210, from the DCP for producing him on 03/10/06 and he directing PI Deshmukh by a letter, office copy of which is at Ext.2398, to do so and also sending the letter Ext.1211 to the DCP, contents of which he proved. It has come in his evidence that PI Deshmukh and staff did as directed and PI Shelke, PW-150, reported to him that the DCP had taken the accused in his custody. PI Shelke, PW-150, corroborated his version. It has come in the evidence of PI Shelke, PW-150, that he accompanied PI Sunil Deshmukh to take the A3 to the office of the DCP and they took the A3 from the lock-up of the ATS asking HC Ghag to make station diary entry and on his direction HC Ghag

made station diary entry no. 8, certified true copy of which is at Ext. 1616. He deposed about taking the A3 in veil and producing him before the DCP, handing over the letter given by ACP Patil, PW-186, and returning back to Bhoiwada office on being instructed by the DCP and then on his direction, HC Ghag making station diary entry no. 11, certified true copy of which is at Ext.1617.

1269. Addl. CP Brijesh Singh, PW-117, corroborated the evidence of the above two officers and deposed about receiving the letter Ext. 1209 by which Jt. CP, ATS had directed him to record the confessional statement of the A3, he writing a letter to the investigating officer, office copy of which is at Ext. 1210, the contents of which he proved, to produce the accused before him on the same day at 5.00 p.m., according to which directions, team of ATS officers produced A3 before him alongwith letter Ext.1211. He deposed that before that he had given directions to Azad Maidan Police Station to send an escort party to take the custody of the accused. He deposed about cursorily inquiring with the team of ATS officers about the facts of the case, etc., then asked them to go out of his chamber and described the procedure by which he endeavoured to ascertain that the A3 was willing to make the confessional statement voluntarily and the purpose of his production, to which the A3 replied he wants to make a voluntary confessional statement. He gave evidence about the questions that he asked to ascertain whether there was any pressure on the accused and gave him the statutory warning and also told him that he is giving him 24 hours for reflection and recorded Part-I of the confessional statement, Ext.

1212, after ascertaining the voluntariness and being convinced that it was recorded in free atmosphere, which was evident from the body language of the accused. A rough sheet Ext.1213 was also brought on record about which he explained that he was recording the questions and answers from them and they were included in the papers as the accused insisted that he wanted to see them and that they should be included in the papers. He identified his signature and signatures of the accused on both the documents after stating that he had given it to the accused for reading and the accused had read and admitted it to be correctly written and then signed it. It has come in his evidence that thereafter he wrote a letter, office copy of which is at Ext.1214, to API Dasurkar, PW-101, giving him instructions about keeping the accused in a separate cell and precautions that were to be taken and then keeping Part-I and rough notes in the envelope Ext.1215 and sealing the envelope and keeping it in his lock and key.

1270. API Dasurkar, PW-101, corroborated his version by deposing that on being directed he went to the office of the DCP, Zone-I with staff and before going there made station diary entry no. 45 in his handwriting, certified true copy of which is at Ext.998, which he proved, reported to the DCP, who gave the A3 in his custody alongwith the original of the letter Ext.997 (which is the same as Ext.1214) and stated about the DCP giving him directions to veil the accused, keeping him in a separate cell in the lock-up and to take the precautions that no police officer and no other person meets him. It has come in his evidence that he took the accused in his

custody and took him to the GT Hospital and got him medically examined there. Ext.1006 is the carbon copy of the OPD case paper of the GT Hospital which shows that the A3 was examined at 8.10 p.m. on 03/10/06 and no physical complaints or external injuries were seen. It also bears his thumb impression. API Dasurkar, PW-101, has deposed that he had handed over the medical certificates of 03/10/06 and 05/10/06 to ACP Patil, PW-186. Dr. Helaskar, PW-170, proved the contents of Ext.1006 as they are in his handwriting and also proved a photocopy of the original Ext.1823, the contents of which he also proved. API Dasurkar, PW-101, then deposed about putting the accused in a separate cell, directing the HC on guard duty of the lock-up not to allow anyone to meet the accused and stated about a separate HC being put on guard outside the cell and then deposed about giving report to the Sr. PI and making station diary entry no. 59 in his handwriting, certified true copy of which is at Ext.998. It has come in his evidence that on the next day, i.e., on 04/10/06, he took out the A3 from the lock-up in veil and produced him before the DCP at 1900 hours before which station diary entry no. 37 was made, certified true copy of which is at Ext.1000. It has come in his evidence that the DCP took the accused in his custody and asked him to wait outside and again called him inside at about 8.00 p.m. told him to take back to the accused and keep him as earlier in the separate cell and told him that he had given more time to the accused for thinking over about giving confession and gave the letter Ext.999 (which is the same as Ext.1216) alongwith similar directions and with the direction to

produce him at 10.00 a.m. on the next day.

1271. Addl. CP Brijesh Singh, PW-117, corroborated his version and deposed about escort party informing him about the instructions being complied alongwith the instructions about medical examination after he made inquiry and the accused suggesting to him that his statement would take a long time as he remembered that he had given a confession and written statement before the officer of the Enforcement Directorate. Therefore, he gave him 14 hours more time and told him that he would be produced on 05/10/06 at 10.00 a.m. He deposed about repeating the instructions given to the escort party and giving the letter Ext.1216 addressed to API Dasurkar, PW-101, who deposed about taking the accused in veil and putting him in a separate cell in the general lock-up and giving similar instructions to the guard HC and making station diary entry no. 40 in his handwriting, certified true copy of which is at Ext. 1000. It has come in his evidence that he took out the A3 in veil on 05/10/06 from the lock-up and produced him before the DCP about which station diary entry no. 20 was made, certified copy of which is at Ext.1002, and the DCP asking him to wait outside.

1272. Addl. CP Brijesh Singh, PW-117, corroborated his version and confirmed the compliance of his instructions from the escort party and asked them to go out of his chamber, ensured that no one was within sight and hearing of the proceedings going on in his chamber. He then deposed about the steps he took for making the accused comfortable and asking him the necessary questions and giving him the statutory warning and also inquired whether anyone

had met him during the period of reflection and contemporaneously wrote down the questions and answers which were being typed by his stenographer who was in his chamber at that time. He deposed that on ascertaining the general state of well being, demeanor and body language of the A3 and the answers that he gave to the questions, he came to the conclusion that the accused wanted to make the confessional statement voluntarily and was not under any threat, inducement or promise. At this point of time, the printout of the questions and answers was shown to the accused, who read it and signed it after admitting it to be correct. He then deposed about proceeding to write the narration of the accused in his own handwriting after asking the stenographer to go out and stopping the proceedings at 1430 hours as he had to attend the visit of Prime Minister Manmohan Singh that was in his jurisdiction and about making a note of this fact in his own handwriting in the narration part itself and keeping it in his lock and key in his chamber. He deposed about sending back the accused to Azad Maidan Police Station and giving letter, office copy of which is at Ext.1217, to API Dasurkar, PW-101, and giving him the instructions to produce the accused on the next day. API Dasurkar, PW-101, corroborated his version and deposed about the DCP giving him the letter Ext.1001 (which is the same as Ext.1217), taking the accused in veil and putting him in a separate cell in the general lock-up and giving similar instructions to the guard HC and making station diary entry no. 28, certified true copy of which is at Ext.1002. It has come in his evidence that after taking custody of the accused from the DCP on

that day, he had taken him to the GT Hospital and got him medically examined. Ext.1007 is the carbon copy of the OPD register which shows that the accused was examined on that day and he had no complaint and it also bears his thumb impression.

1273. API Dasurkar, PW-101, then deposed about taking the A3 out from the lock-up in veil on 06/10/06 at about 9.40 a.m. and taking him to the office of the DCP, about which station diary entry no. 26, certified true copy of which is at Ext.1003, was made. He deposed about producing the A3 before the DCP giving him in his custody and he being asked to wait outside. Addl. CP Brijesh Singh, PW-117, corroborated his version about the production of the accused before him and deposed about confirming compliance of the instructions, asking them to go out his chamber and again asking the A3 whether he still continuous to want to make a confessional statement and on receiving an affirmative answer again ensuring that the accused is not under any kind of inducement, threat or promise during the intervening period and continuing to record his narration in his own handwriting after being satisfied about his voluntariness. He deposed about accused signing on each page after he was given papers to read when it was completed and after he expressed satisfaction that it was truthfully recorded as per his version and he, i.e., Addl. CP Brijesh Singh, PW-117, also putting his signatures. He identified his signature and signature of the accused on Part-II, Ext.1218, of the confessional statement and putting it in the envelope Ext.1219. It has come in his evidence that he wrote a letter to the CMM for further legal action, office copy of which is at

Ext.1220, the contents of which he proved. He also proved the contents of the letter Ext.1221, office copy of a letter addressed by him to the investigating officer of the ATS about handing over custody of the accused. It has come in his evidence that he directed the escort party to produce the accused before the CMM immediately alongwith the envelopes and the forwarding letter and then handing over to the ATS. He identified the A3 in the court unhesitatingly.

1274. API Dasurkar, PW-101, corroborated his version and deposed that the custody of the A3 was given to him at about 3.30 p.m. alongwith a forwarding letter and two sealed envelopes with a direction to produce him before the CMM, which he did, but as the CMM was busy in court work, he was directed to take back the accused and produce him on the next day at 11.00 a.m. He deposed about taking the accused, putting him in a separate cell and giving directions as before, reporting to his superiors and making station diary entry no. 46 in his handwriting, certified true copy of which is at Ext.1003. He deposed about taking out the accused from the lock-up on the next day for taking him to the CMM court and the duty officer making station diary entry no. 32, certified true copy of which is at Ext.1004, and producing the accused before the CMM and handing over the forwarding letter and two sealed envelopes to him, being asked to wait outside and the accused being given back in his custody at 1.00 p.m. and he taking the accused to the office of the ATS at Bhoiwada and giving him in the custody of ACP Patil, PW-186, and returning back to the police station and making station

diary entry no. 47, certified true copy of which is at Ext.1004. He identified the A3 in the court unhesitatingly. The CMM sent the sealed envelopes of the confessional statement of the accused alongwith his forwarding letter Ext.1222 in the envelope Ext.1222A. They were received in evidence as it is the official correspondence from court to court.

1275. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A3 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A9 :-

1276. It has come in the evidence of ACP Patil, PW-186, that he requested the Jt. CP, ATS to nominate an officer for recording the confessional statement of the A9 as the team of officers interrogating the A9 reported to him on 01/10/06 about his willingness to make a voluntary confessional statement before the superior officers and he satisfied himself about it by questioning the accused, that DCP Phadtare, PW-93, was appointed for recording the confessional statement by the letter Ext.917 and he got a letter from the DCP, office copy of which is at Ext.918, directing him to produce the

accused before him on 04/10/06. He deposed that he directed ACP Joshi, PW-163, to produce the accused before the DCP by a letter, office copy of which is at Ext.2399, contents of which he proved and also gave letter Ext.919 addressed to the DCP about producing the A9. It has come in his evidence that ACP Joshi, PW-163, and staff produced the A9 before the DCP on that day, returned back to the office and reported that the DCP had taken the accused in his custody. ACP Joshi, PW-163, corroborated his version and deposed that on the directions of ACP Patil, PW-186, he produced the A9 before the DCP, who took him in his custody and gave him the letter Ext.920 to that effect and asked him to leave his office immediately. He deposed about returning back and giving instructions to make station diary entry, whereupon entry no. 14, certified true copy of which is at Ext. 1753, was made. He identified the A9 in the court unhesitatingly.

1277. DCP Phadtare, PW-93, corroborated the evidence of both the above witnesses and deposed about being directed by letter Ext. 917 of the Jt. CP, ATS for recording the confessional statement of the A9, he thereupon directing ACP Patil, PW-186, to remain present in his office at 10.00 a.m. and then directing him to produce the accused before him at 1500 hours on the same day and giving him a letter for that purpose, office copy of which is at Ext.918, the contents of which he proved. He further deposed that ACP Joshi, PW-163, produced the A9 before him alongwith the letter Ext.919, that he took the accused in his custody and gave letter Ext.920 addressed to the IO about taking the accused in his custody, before

which he telephonically directed Sr. PI, Mahim Police Station to send an officer and party to him to take the custody of the accused after recording his statement. He then deposed about ensuring that no one could see or hear the proceedings and then deposed about the information that he gave to the accused about he not being in the custody of the investigating officer of the ATS, the efforts that he took for making the accused comfortable and wrote down the questions and answers and also ascertained whether the accused was giving his confessional statement voluntarily. He deposed about giving the necessary information to the accused and being satisfied that the accused was ready to give confessional statement voluntarily. He deposed about accused signing Part-I of the confessional statement Ext.921, after he had read it and acknowledged that it was correctly written and he himself signing it and he identified the signatures of both on all the pages of Part-I, Ext.921. He deposed that he informed the accused about giving him 24 hours of time for reflection and till that period he would be in his custody and he will be kept in the lock-up of Mahim Police Station and then put Part-I of the confessional statement in the envelope, Ext.922, closed it and put his stamp and signature on stamps. He deposed about calling PSI Powar, PW-94, of Police Station Mahim, who had come there inside his chamber, giving the custody of the accused to him and giving the direction about the precautions to be taken, viz., keeping the accused in a separate cell in the lock-up of that police station, not allowing anyone including the police officers, policemen, public, relatives or friends to talk with him or meet him

and to produce him on the next day at 5.30 p.m. and these instructions were incorporated in a letter, office copy of which is at Ext.923, the contents of which he proved. PSI Powar, PW-94, corroborated his version by deposing that he reported to the office of the DCP alongwith the staff and at that time station diary entry no. 26 about it was made, certified true copy of which is at Ext.943. He deposed about being called in the cabin of the DCP and the A9 being given in his custody, which he took and put veil and then the DCP gave the letter Ext.923, alongwith the instructions to take the accused in veil and to take care, not to allow anyone to speak with him and to keep him in a special cell of the police station and produce him on the next day at 5.00 or 5.30 p.m. He deposed about taking the A9 to the police station, giving the letter Ext.923 to the Sr. PI, who told him to lock-up the accused in a separate cell and to take care that nobody talks with him or meets him. It has come in his evidence that the ATS had already got the accused medically examined before producing him before the DCP. Ext.2275 are the OPD case papers of several dates and the case paper of 04/10/06 shows that the accused was examined and he had no complaint, the contents of which were proved by Dr. Gond, PW-182. PSI Powar, PW-94, deposed about putting the accused in a separate cell and duty officer PSI Kumbhar making station diary entry no. 32, certified true copy of which is at Ext.943. It has come in his evidence that he and his staff took the accused to the office of the DCP on the next day after taking him out of the lock-up at about 4.00 - 4.30 p.m., veiling him and he making station diary entry no. 37 in his own

handwriting, certified true copy of which is at Ext.944 and producing the accused in the cabin of the DCP in veil and the DCP telling them to wait outside.

1278. DCP Phadtare, PW-93, corroborated his version and deposed that on the being accused produced before him, he asked PSI Powar, PW-94, and his staff to go outside his chamber, that he again ensured about secrecy of the proceedings in his chamber, that he again informed the accused that he is not in the custody of the investigating officer or the ATS team and is in his custody and made him comfortable and ascertained whether he is in fear of someone or threatened by anyone or promise to be released or to be made a witness and also gave the statutory warning after which the accused expressed his willingness to give his confessional statement and he himself was also satisfied about it. He deposed about writing down all the questions and answers in his own handwriting and then recording the statement in his own handwriting as narrated by the A9 and after completing, reading it over to the accused, giving it to the accused for reading and asking him to put his signature on all the pages, that the accused accordingly signed when he confirmed that it was correctly written and then he also putting his signatures. He identified signatures of both of them on Part-II Ext.924, and proved its contents and then deposed about writing the certificate Ext.925 as per section 18 of the MCOC Act and putting the Part-II in the envelope Ext.926 and stamped and signed it. He deposed about giving the A9 in the custody of PSI Powar, PW-94, and giving him three envelopes containing the confessional statement and the letter

to the CMM, office copy of which is at Ext.927, the contents of which he proved and directed PSI Powar, PW-94, to produce the A9 before the CMM on the next day, i.e., on 06/10/06, and till that time to keep the accused in a separate cell as earlier and to take the necessary precautions which he incorporated in a letter to the Sr. PI of that police station, office copy of which is at Ext.928, contents of which he proved. PSI Powar, PW-94, corroborated his version about custody of the A9 being given to him with the direction to produce him before the CMM on the next day and giving him four envelopes, one addressed to the Sr. PI containing letter Ext.928 and remaining three addressed to the CMM. He stated that out of three envelopes addressed to the CMM, two were closed and had rubber stamps on them. He then deposed about taking the A9 to the police station, producing him before the duty PI and handing over all the envelopes, putting the accused in a separate cell and giving the necessary instructions to the guards and station diary entry no. 1 being made by the night duty officer, certified true copy of which is at Ext.943. PSI Powar, PW-94, then deposed about the events that took place on 06/10/06, viz., about he going to the police station at about 9.00 a.m., taking out the A9 from the lock-up in his custody, veiling him, taking the three envelopes addressed to the CMM and starting for going to the court of the CMM about which station diary entry no. 21 was made, certified true copy of which is at Ext. 943. He deposed about producing the accused before the CMM and handing over the three letters and being asked to wait outside for some time. He deposed about being called inside the court hall at

about 1.00 or 1.30 p.m. and bringing the accused inside the court hall in veil on being asked by the CMM and then waiting outside with his staff as directed, then again being called inside the court hall at about 3.00–3.15 p.m. and the CMM telling him to take the accused and produce him before the same DCP, which he did after putting veil on him. He deposed about the DCP directing him to hand over the custody of the accused to ACP Joshi, PW-163, and giving him the letter, office copy of which is at Ext.929. DCP Phadtare, PW-93, corroborated his evidence and deposed about handing over the custody of the A9 to ACP Joshi, PW-163, alongwith giving a letter to the investigating officer, office copy of which is at Ext.929, the contents of which he proved. He also deposed about satisfying himself that his directions are being followed by checking the station diary entries and as the night round officers informed him about it. He was not in a position to identify the A9 in the court, but PSI Powar, PW-94, identified him in the court unhesitatingly and stated about returning back to the police station and making station diary entry no. 40 in his handwriting, certified true copy of which is at Ext.943. The CMM sent the sealed envelopes of the confessional statement of the accused alongwith his forwarding letter Ext.2810 in the envelope Ext.2811 directly to this court and they were received in evidence as it is the official correspondence from court to court.

1279. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A9 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to

the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A10 :-

1280. ACP Patil, PW-186, deposed about requesting the Jt. CP, ATS for nominating an officer of the rank of a DCP to record the confessional statement of the A10 as the team of officers interrogating the said accused reported to him on 02/10/06 that he is willing to make a voluntary confessional statement before the superior officers about which he satisfied himself by questioning the accused. He deposed about DCP Dumbre, PW-118, being appointed by the letter Ext.1243, and receiving a letter from the DCP, office copy of which is at Ext.1244, by which he was directed to produce the accused before him on 05/10/06 and he in turn directing PI Deshmukh to do so by a letter, office copy of which is at Ext.2400, the contents of which he proved. He deposed about addressing the letter Ext.1245, the contents of which he proved, to the DCP about PI Deshmukh and staff producing the A10 before the DCP on 05/10/06 and API Yadav, PW-178, reporting after returning that the DCP had taken the accused in his custody. API Yadav, PW-178, corroborated his version and deposed that he accompanied PI Sunil Deshmukh, who as per the direction of ACP Patil, PW-186, took out the accused from the Bhoiwada lock-up, veiled him and about which

station diary entry no. 4, certified true copy of which is at Ext.2055, was made. He deposed about he and PI Deshmukh producing the A10 before the DCP, PI Deshmukh handing over the letter Ext.1245 and the DCP asking some preliminary information about the name, etc., of the accused and the crime and asking them to leave. He deposed about reporting to ACP Patil, PW-186, after returning back to the Bhoiwada office and on his direction station diary entry no. 8, was made by the SHO at Kalachowki, certified true copy of which is at Ext.2056. He identified the A10 in the court unhesitatingly.

1281. DCP Dumbre, PW-118, corroborated the version of both the above witnesses by deposing that he was directed by the letter, Ext. 1243, of the Jt. CP, ATS, to record the confessional statement of the A10 and he in turn directing ACP Patil, PW-186, by a letter, office copy of which is at Ext.1244, the contents of which is proved, to produce the accused before him on 05/10/06 at 1200 hours. He deposed about directing the officer on duty of L. T. Marg Police Station to provide a PSI and escort to his office at around 1130 hours and was informed at 1145 hours that PSI Thakur, PW-110, had come there with his staff and whom he asked to wait outside. He deposed about PI Deshmukh producing the A10 before him at 1210 hours in veil alongwith a letter Ext.1245 of ACP Patil, PW-186, asking preliminary information about the facts of the case from PI Deshmukh and about the PC of the accused and then asking him to leave his cabin. He deposed that he and the accused only were in his cabin and he ensured that the proceedings between him and the accused would not be seen and heard by anybody and then asked

the accused to remove his veil and introduced himself and gave him the necessary information as per law and made him comfortable. He deposed about asking the necessary questions to ascertain the voluntariness of the accused to make the confessional statement and whether he had been threatened, tortured or lured by police, to which the accused replied in the negative and also about any inducement. He deposed about giving the statutory warning and then telling the accused that he would give him 24 hours to again think whether he wants to make the confessional statement. He deposed about reducing all the questions and answers in his own handwriting, giving written papers to the accused for reading, the accused signing them after he read it and confirmed that they were written as per his narration and he also countersigned the papers. He identified signatures of both on Part-A of the confessional statement Ext.1246, then deposed about recording the proceedings of the day below the question and answers, putting the original in the envelope, Ext.1247. He then deposed about handing over the custody of the A10 to PSI Thakur, PW-110, and giving him a letter addressed to the Sr. PI of his police station, office copy of which is at Ext.1248, the contents of which he proved and deposed about the letter containing the instructions about keeping the accused in a lock-up of the police station in a separate cell and not to allow any officer or staff of the ATS or any other branch of the police to talk with him and he orally instructed PSI Thakur, PW-110, to always veil the accused while escorting him, to keep him in a cell, to get him medically examined and to produce him on the next day at 1500

hours.

1282. PSI Thakur, PW-110, corroborated his version deposing that he reported to the office of the DCP alongwith his staff, about which the SHO made station diary entry no. 34 on his instructions, certified true copy of which is at Ext.1113(1). He deposed about being directed to wait outside when he went to the cabin of the DCP and reported about his arrival and then deposed about being called by the DCP at about 1500 hours and after he procuring a vehicle and the veil, being given the custody of the A10 with a direction to veil him while escorting and to get him medically examined and was also given two letters and was also directed to keep the accused in a separate lock-up of their police station and not to allow any relative of the accused or any other person or any ATS officer or amaldar to meet him. He deposed that the DCP told him that he had given instructions in the letter about bringing back the accused to him on the next day at 1500 hours, that he took the accused and the two letters to the police station, gave the two letters to the Sr. PI, who read them and told him to follow the instructions given by DCP about not allowing anyone to meet the accused and told him to get the accused medically examined. He deposed about getting a requisition prepared from his constable addressed to the medical officer of the JJ Hospital and signing it, office copy of which is at Ext.1112, the contents of which he proved. He deposed about taking the accused in veil to the GT Hospital and getting him medically examined. He produced the copy of the OPD case paper, Art. 338, which was marked as Ext.2105, after Dr. Paikrao, PW-181, proved its

contents and also proved a true photocopy of casualty register Ext. 2104, both documents showing that the A10 had no complaints. PSI Thakur, PW-110, then deposed about putting the accused in the lock-up after personally going inside it, seeing lock-up being empty and telling the guard amaldar to put the accused in the lock-up and giving him the instructions as given by DCP and Sr. PI and then ascertaining that the accused was put in a separate lock-up about which station diary entry no. 48 was made, certified true copy of which is at Ext.1113(2) and which corroborates his version.

1283. PSI Thakur, PW-110, further deposed about taking out the accused in veil from the lock-up on the next day, i.e., on 06/10/06, after being directed by his PI and the SHO making the station diary entry no. 34, certified true copy of which is at Ext.1114(1). He deposed about taking the accused to the office of the DCP, producing him in veil before the DCP, who asked him to wait outside and where he waited upto 9.00 p.m.

1284. DCP Dumbre, PW-118, corroborated his version and deposed that A10 was produced before him by PSI Thakur, PW-110, at 1500 hours on 06/10/06, the veil of the accused was got removed and he getting it confirmed from PSI Thakur, PW-110, about medical examination of the accused being done and confirming it by perusing the medical papers of the GT Hospital. He deposed about telling PSI Thakur, PW-110, to leave his cabin and then deposed about taking the necessary precautions about ensuring the secrecy of the proceedings and again asking the accused whether he wanted to make the confessional statement, to which the accused replied in the

affirmative. He deposed about giving the required information to the accused about the nature of his custody, about statutory warning and about the questions that he asked to ascertain whether the accused was willing to make the confessional statement voluntarily and writing down the questions and answers. He deposed about being satisfied about the voluntariness of the accused for making the confessional statement and then starting to write it as per his narration in his own handwriting, which continued upto 2000 hours, after which he handed over the written part to the accused for reading, which he did, then he again read it over to the accused, who told him that it is as narrated by him and then the accused signed on all the pages and he also countersigned it. He proved the signatures of both of them on Part-B of the confessional statement Ext.1249 and also its contents and that he put it the envelope Ext. 1250 sealing it under his signature. He deposed that he gave the custody of the accused to PSI Thakur, PW-110, with the direction to keep him in the lock-up in a separate cell and to follow the same instructions as given on the earlier day and to produce him before the CMM on the next day at 1100 hours and he giving a letter to the Sr. PI of that police station, office copy of which is at Ext.1251, contents of which he proved, and another letter addressed to the CMM, office copy of which is at Ext.1252, contents of which he proved, alongwith sealed envelopes containing the confessional statement of the accused.

1285. PSI Thakur, PW-110, corroborated his version and deposed that at about 9.15 p.m. the DCP gave him the custody of the accused

alongwith two letters and two sealed envelopes, he veiling the accused and taking him to the police station, putting him in the separate lock-up and giving similar instructions to the guard amaldar, then going to the Sr. PI, giving him the letters and envelopes, who on reading the letters asked him to keep the sealed envelopes in the custody of the SHO and directed him to produce the accused in the Killa Court on the next day. He deposed about keeping the letter addressed to the CMM and the two sealed envelopes in the safe custody of the SHO about which the SHO made station diary entry no. 66 as per his instructions, certified true copy of which is at Ext.1114(2). It has come in his evidence that he took out the accused from the lock-up at about 10.00 a.m. on the next day, i.e., on 07/10/06, veiled him, collected the forwarding letter and sealed envelopes and as per his instructions, the SHO made station diary entry no. 23, certified true copy of which is at Ext.1115(1). He deposed about getting the accused examined in the GT Hospital and obtaining copy of the OPD case paper Art. 339. Dr. Paikrao, PW-181, proved the contents of Art.339, which was then marked as Ext.2107, and he also produced and proved the true photocopy of the casualty register, Ext.2106, the contents of which are similar to Ext.2107 and which shows that the accused had no complaints. PSI Thakur, PW-110, then deposed about taking the accused inside the cabin of the magistrate in Killa Court in veil, handing over the forwarding letter and two sealed envelopes and being asked to wait outside and again being called inside after 15-20 minutes and being asked to take the accused to the DCP which he

did after veiling the accused and reported to the DCP about having got the accused medically examined and having taken him before the magistrate. He deposed about the DCP giving him a letter addressed to ACP Patil, PW-186, and directing him to take the accused to the office of the ATS and hand over his custody, which he did and after obtaining the signature of ACP Patil, PW-186, on the office copy of the letter, returning back to the DCP office and giving it there. He deposed about returning to the police station and reporting about the events to the Sr. PI and station diary entry no. 47, office copy of which is at Ext.1115(2), being made by the SHO as per his instructions. He identified the A10 in the court unhesitatingly. DCP Dumbre, PW-118, fully corroborated his version and deposed about giving letter addressed to the ACP of the ATS about handing over the custody of the accused back to the ATS. He proved the office copy of his letter Ext.1253, which contains the acknowledgment of ACP Patil, PW-186, and which was given to him by PSI Thakur, PW-110, in the evening. He identified the A10 in the court unhesitatingly. The CMM forwarded the sealed envelopes to this court with his letter Ext.1253 in the envelope Ext.1253A and they were received in evidence as they are official communication from court to court.

1286. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A10 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody

of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A11 :-

1287. ACP Patil, PW-186, deposed about Jt. CP, ATS, nominating DCP Ranade, PW-111, by his letter Ext.1118, on his request after the team of officers interrogating the A11 reporting to him on 02/10/06 about his willingness to make a voluntary confessional statement before the superior officers about which he satisfied himself, about receiving a letter from DCP Ranade, PW-111, office copy of which is at Ext.1119, directing him to produce the accused before him on 04/10/06 and he directing PI Salaskar by a letter to do so, office copy of which is at Ext.2401 and also giving the letter, Ext.1120, addressed to the DCP. He deposed about PI Salaskar and staff producing the said accused before the DCP on 04/10/06 and PI Alaknure, PW-153, returning back and reporting that the DCP had taken the accused in his custody. PI Alaknure, PW-153, corroborated his version and deposed about taking out the accused from the lock-up on 04/10/06 and taking him in veil to the office of the DCP at Borivali as per the directions of ACP Patil, PW-186, and producing him before the DCP and he deposed about a HC making station diary entry no. 9 on his direction, certified true copy of which is at Ext.1651 when he started from the Bhoiwada office and DCP Ranade, PW-111, acknowledging having taken the accused in his

custody by the letter Ext.1121 and directing his staff to leave his office. He deposed about returning to the ATS office at Bhoiwada and station diary entry no. 17, certified true copy of which is at Ext. 1652, being made as per his direction.

1288. DCP Ranade, PW-111, corroborated the version of both the above witnesses and deposed about being directed by the letter Ext. 1118 to record the confessional statement of the A11, writing letter to ACP Patil, PW-186,, office copy of which is at Ext.1119, the contents of which he proved, to produce the accused before him at 5.00 p.m. on that day, i.e., on 04/10/06, and PI Alaknure, PW-153, producing the accused before him and giving him the letter Ext.1120 from the investigating officer, upon which he gave a letter to the investigating officer about taking the accused in his custody, office copy of which is at Ext.1121, and thereafter asked PI Alaknure, PW-153, and staff to go outside. He then deposed about the steps that he took to give introduction, to make the preliminary inquiry with the accused and also asked the accused whether he knows why he was brought before him whereupon the accused told him that he wants to make a confessional statement and therefore he is brought before him. He then deposed about asking him questions to ascertain whether the accused was making the statement under the pressure or influence, whether he had been beaten or tortured or induced and after getting a reply in the negative, giving him the statutory warning and telling him that he would give him 24 hours to think over whether he wants to make the confessional statement or not alongwith telling him that he is in his custody and not in the

custody of the ATS and no one from investigating machinery will meet him, etc. He deposed about writing down the conversation that he had with the accused, giving the writing to the accused for reading and the accused signing on all the pages after reading it and stating that it was written as stated by him and he also countersigning all the pages. He identified the signatures of both on Part-I, Ext.1122 and proved its contents and deposed about putting the original in the envelope Ext.1123 and sealing the envelope by putting round stamp of his office at the back and signing on the round stamp. He then deposed about PSI Suryavanshi and the escort party of Borivali Police Station having come there to take custody of the accused as per his letter to the Sr. PI, office copy of which is at Ext.1124, the contents of which he proved, and giving custody of the accused in his possession with the necessary instructions of putting the accused in a separate cell in the Borivali general lock-up, making arrangements for appointing separate guard at his cell and to see that no ATS officer, police officer, etc., meets the accused and also of giving a letter containing his instructions, office copy of which is at Ext.1125, the contents of which he proved. He deposed about also giving a letter, office copy of which is at Ext.1126, the contents of which he proved, to the ACP, Borivali Division, to supervise over the arrangements of the accused in the lock-up. He also deposed about giving similar instructions in person to the ACP, Borivali Division and Sr. PI of Borivali Police Station and to report compliance in the morning on the next day and to produce the accused before him at 1800 hours on the next day and also get the accused medically

examined from time to time. Addl. SP Bhavsar, PW-100, deposed about being attached to Borivali Police Station as Police Inspector in October, 2006, one Tiwari being a Sr. PI and PI Mathadhikari bringing A11 from DCP Ranade, PW-111, on 04/10/06 alongwith the letter Ext.990 given by the DCP about which station diary entry no. 53 was made, certified true copy of which is at Ext.991. He deposed about PI Mathadhikari having got the A11 medically examined before he kept him in the lock-up in the separate cell. He deposed that as PI Mathadhikari was busy in some urgent office work, he was directed to comply with the orders of the DCP of producing the accused before him on 05/10/06. Therefore, he asked PSI Suryavanshi to take out the accused from the lock-up in veil and he produced the accused before DCP Ranade, PW-111, about which station diary entries no. 40 and 45 were made, certified true copies of which are at Ext.992. He deposed that he produced the A11 in the cabin of DCP Ranade, PW-111, and gave him in his custody and was made to wait outside.

1289. DCP Ranade, PW-111, corroborated his version, but he stated that it was PSI Suryavanshi and his staff, who produced the accused before him at 5.20 p.m. in veil, which is corroborated by the station diary entry no. 45, certified true copy of which is at Ext.993. He deposed that he asked the police officers to go outside, ascertained the secrecy of the proceedings in his chamber, asked some questions to the accused to make him comfortable and also asked him whether his medical check-up was done and he was provided with meals, to which the accused answered in affirmative

and then again satisfied himself that the accused was not making his confessional statement because of any allurements or under threat of any person and from the answers given by the accused he was satisfied that he was ready to make the confessional statement voluntarily and was mentally and physically prepared to make it. He deposed about starting to write Part-II of the confessional statement as narrated by the accused after having written all the questions and answers and after finishing writing the confessional statement giving it to the accused for reading, who read it carefully and signed on all the pages after affirming that it was correctly written as narrated by him. He deposed about countersigning on all the pages and identifying the signatures of both of them on Part-II of the confessional statement, Ext.1127, and proved its contents. He deposed about getting the certificate, Ext.1128, typed on the computer by dictating it to his writer and proved its contents. He deposed about putting the Part-II in the envelope, Ext.1129 and sealing it by putting the office round stamps and signing on the stamps. He deposed about handing over the custody of the accused to PSI Suryavanshi alongwith a letter to the Sr. PI, office copy of which is at Ext.1131, the contents of which he proved, for keeping the accused in the lock-up and giving him the same directions as before and the direction of producing the accused before the CMM on the next day, i.e., on 06/10/06. He also gave him a letter addressed to the CMM, office copy of which is at Ext.1130, contents of which he proved, and gave the original and the office copies of the Exts. 1130 and 1131 and a letter to ACP Patil, PW-186, office

copy of which is at Ext. 1132 alongwith sealed envelopes to PSI Suryavanshi. He identified the A11 in the court unhesitatingly. He deposed about directing the Sr. PI of Police Station Borivali to hand over the envelope and forwarding letter to the CMM.

1290. Addl. SP Bhavsar, PW-100, corroborated his evidence stating that he was given the custody of the accused with a direction to keep him in Borivali lock-up as he was to be produced before the CMM at 11.00 a.m. on the next day. Accordingly, he took the accused in his custody and directed PSI Suryavanshi to again take the accused and keep him in Borivali lock-up, which he did and about which station diary entry no. 54 was made, certified true copy of which is at Ext.992. He deposed that DCP Ranade, PW-111, gave him a letter, Ext.993, addressed to the Sr. PI for keeping the accused in the lock-up and producing him before the CMM on the next day and two sealed envelopes alongwith a forwarding letter addressed to the CMM. He deposed about taking the accused in his custody from the Borivali lock-up at 9.15 a.m. and getting him medically examined at the GT Hospital. Ext.2101 is the certified true copy of the OPD register which was proved by Dr. Paikrao, PW-181, who had examined the A11 at 11.00 a.m. and the accused had no complaints. It has come in his evidence further that he produced the A11 in veil before the CMM, handed over two sealed envelopes and forwarding letter and was asked to wait outside, called after one and a half hours, the CMM gave the accused in his custody and asked him to take the accused to the DCP, which he did and the DCP gave him the letter Ext.994 addressed to the ACP Patil, PW-186. He deposed about

making station diary entry no. 19, certified true copy of which is at Ext.995, about taking the accused out from the lock-up by them and PI Mathadhikari making station diary entry no. 54 on his instructions after he returned back to the police station and handed over all the office copies of the letters to the DCP office, certified true copies of which is at Ext.995. He identified the A11 in the court unhesitatingly.

1291. PI Alaknure, PW-153, corroborated his version by deposing that Addl. SP Bhavsar, PW-100, brought the A11 to the ATS office at Bhoiwada on 06/10/06 and he took the accused in his custody and gave an acknowledgment on copy of the letter Ext.1132, which he had brought, which was sent by DCP Ranade, PW-111. He deposed that he put the accused in the lock-up and on his directions, station diary entry no. 14 was made, certified true copy of which is at Ext. 1653. He also identified the A11 in the court unhesitatingly. The CMM sent the sealed envelopes containing the confessional statements to this court directly alongwith his letter Ext.1133 in the envelope Ext. 1133A, which was received in evidence directly as they are official communication.

1292. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A11 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and

letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A6 :-

1293. ACP Patil, PW-186, deposed about Jt. CP, ATS nominating SP Karale, PW-104, by his letter, Ext.1065, to record the confessional statement of the A6 on his request as the team of officers interrogating the said accused had reported to him on 19/10/06 about his willingness to make a voluntary confessional statement before the superior officers about which he satisfied himself by questioning the accused and then receiving a letter from the DCP, office copy of which is at Ext.1066, directing him to produce the accused before him on 24/10/06 and he directing API Kolhatkar, PW-18, to do so by a letter, office copy of which is at Ext.2402. He deposed about giving letter, Ext.1067, to the DCP about producing the accused before him and before that API Kolhatkar, PW-18, and staff did so, returning back to the office and reporting that the DCP had taken the accused in his custody.

1294. Somehow, API Kolhatkar, PW-18, forgot to depose about this work done by him. However, it has come in the evidence of SP Karale, PW-104, that API Kolhatkar, PW-18, brought the accused before him on 24/10/06 in veil alongwith a copy of letter Ext.1067 and then deposed about asking him to unveil the accused, taking brief information from API Kolhatkar, PW-18, about the facts of the case and then asking him and his staff to go outside. He deposed about taking the necessary precautions to see that the proceedings in

his chamber were not seen from the outside, then deposed about giving the information to the accused and introducing himself, etc., and asking him questions which he wrote alongwith the answers and also questioning the accused to ascertain his voluntariness by asking him whether he was beaten, threatened or forced to make the confessional statement to which the accused replied in the negative. He deposed about giving the statutory warnings to the accused and being satisfied on his inquiry and on observing the body language of the accused and the fact that he was looking cool, that he was ready to make the confessional statement voluntarily and then he told the accused that he would give him 24 hours to reflect whether to make the confessional statement. He deposed about giving Part-I, Ext.1068 to the accused for reading, who read it and stated that it was correctly written and then both put their signatures, which he identified and he also proved the contents of Part-I specifically stating that the first page was typed by him and about putting it in the envelope, Ext.1068A. He deposed about directing Sr. PI of Police Station Matunga on phone to send their officer and staff to take the accused, which he also informed by a letter, office copy of which is at Ext.1069, the contents of which he proved. He gave the accused in the custody of PSI Divekar, PW-108, telling him that the accused is in his personal custody, that he should be kept in a separate cell in the lock-up of Police Station Matunga, that care should be taken about his food and medical treatment and not allowing any person from the ATS or any other policeman or any other person to meet him and to produce him in veil on the next day, i.e., on 25/10/06 at

1200 hours. He deposed about giving a letter containing these directions, office copy of which is at Ext. 1070, the contents of which he proved.

1295. PSI Divekar, PW-108, corroborated his version by stating that he reported to the office of the DCP as directed on 24/10/06, making station diary entry no. 13 in his handwriting, certified true copy of which is at Ext. 1103 and SP Karale, PW-104, gave him the custody of the A6 alongwith the letter Ext. 1070 and oral directions to keep the accused in a separate cell in the lock-up of their police station and to take care that no police officer talks with him and comes in his contact and to produce the accused before him on 25/10/06 and to always escort him in veil. He deposed that he took the accused to the police station, kept the accused in a separate cell, appraised the lock-up guard in-charge about the instructions given by the DCP and made station diary entry no. 24 in his own handwriting, certified true copy of which is at Ext. 1103.

1296. He deposed about taking the A6 in veil to the DCP on 25/10/06 as directed by the DCP and making station diary entry no. 15 in his handwriting, certified true copy of which is at Ext. 1104, which is dtd. 25/10/06, producing the accused before the DCP, who asked him to wait outside. His evidence is corroborated by SP Karale, PW-104, who deposed about asking him whether there was any difficulty during the last 24 hours and on getting a negative reply asking him and his staff to go outside. He deposed about ascertaining that the proceedings in his chamber were secret and then deposed about asking the accused whether he is still ready to

make his confessional statement, whether the time of 24 hours given to him for reflection was sufficient, then repeating the statutory warnings and ascertaining the voluntariness of the accused to make the confessional statement and on the answers that the accused gave and on observing his body language being satisfied that the accused was ready to make the confessional statement freely and voluntarily. He deposed about writing down the questions and answers in his own handwriting and then started to write the confessional statement in the language of the accused, giving it to the accused for reading after it was finished, putting his signatures on all the pages and asking the accused to sign and he identified the signatures of both of them on Part-II, Ext. 1071 and proved its contents. He deposed about writing observations about the procedure, Ext. 1072, and preparing the certificate as required by section 18 of the MCOC Act, Ext. 1073 and signing it. He proved the contents of all these documents and deposed that he put the original in the envelope Ext. 1073A. He deposed about giving the accused in the custody of PSI Divekar, PW-108, alongwith forwarding letter, Ext. 1074, the sealed envelopes, office copy of the letter to the Sr. PI, Matunga Police Station, Ext. 1075, to produce the accused before the CMM and another letter to him, office copy of which is at Ext. 1076, directing him to hand over the accused to the ATS after the procedure before the CMM was over. He identified the A6 in the court unhesitatingly. PSI Divekar, PW-108, corroborated his version fully by deposing that he was called by the DCP in his chamber at about 5 p.m. and given custody of the accused with a direction to produce him before the

CMM alongwith two sealed envelopes for giving to the CMM, one forwarding letter addressed to the CMM and two letters, Exts. 1076 and 1075, addressed to the Sr. PI for producing the accused before the CMM and for handing over his custody to the ATS. He deposed about the DCP telling him to produce the accused before the in-charge CMM Shri Shisode at his house as it was a court holiday. He made the station diary entry no. 23 in his handwriting, certified true copy of which is at Ext. 1104, about taking the accused to the court. He deposed about producing the accused before the in-charge CMM Shri Shisode, handing over the forwarding letter and two sealed envelopes, being asked to wait outside and called inside after sometime and directed to take the accused in his custody. He deposed about taking the accused to the ATS office at Bhoiwada, handing over his custody to ACP Patil, PW-186. He deposed about returning back to the police station and making station diary entry no. 30 in his own handwriting, certified true copy of which is at Ext. 1104. He identified the A6 in the court unhesitatingly. The CMM forwarded the sealed envelopes of the confessional statement alongwith his letter Ext. 1077 in the envelope Ext. 1077A, which were received in evidence as they are official correspondence.

1297. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A6 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the

contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A7 :-

1298. ACP Patil, PW-186, deposed about Jt. CP, ATS nominating SP Mohite, PW-102, to record the confessional statement of the A7 by his letter Ext. 1029 as the officers and men interrogating the A7 reported to him on 19/10/06 about his willingness to make a voluntary confessional statement before the superior officers about which he satisfied himself by questioning the accused, about receiving the letter, office copy of which is at Ext. 1030, from the DCP directing him to produce the accused before him on 24/10/06, whereupon by a letter, office copy of which is at Ext. 2403, contents of which he proved, he directed ACP Tambe, PW-177, who was then PSI, to produce the accused before the DCP on 24/10/06 and also gave him a letter Ext. 1032 addressed to the DCP. He deposed that ACP Tambe, PW-177, returned back and reported that the DCP had taken the accused in his custody. ACP Tambe, PW-177, corroborated his version and deposed that he took out the A7 on 24/10/06 from the Bhoiwada lock-up, veiled him and on his information station diary entry no. 1 was made in the Kalachowki office of the ATS, certified true copy of which is at Ext. 2050, and then produced the accused before SP Mohite, PW-102, and handed over the letter Ext. 1032 and the DCP asked him the brief the information of the crime and the accused and asked him to go out of his chamber. He

deposed about returning to Kalachowki office and on his instructions the SHO making station diary entry no. 9, certified true copy of which is at Ext.2051. He identified the A7 in the court unhesitatingly.

1299. SP Mohite, PW-102, fully corroborated the version of the above two officers by deposing that he was directed by the Jt. CP, ATS to record the confessional statement of the A7 by his letter, Ext. 1029, whereupon he directed the investigating officer, ATS by a letter, office copy of which is at Ext.1030, the contents of which he proved, to produce the accused before him on 24/10/06 at 9.00 a.m. At the same time he directed Sr. PI, Azad Maidan Police Station to send a PSI and two constables by a letter, office copy of which is at Ext.1031. He deposed about ACP Tambe, PW-177, producing the accused before him alongwith the letter Ext.1032 and asking the police officer and the staff to go out of his chamber and ensuring that the proceedings in his chamber were secret. He deposed about making the accused comfortable and asking him preliminary questions and giving him the information about he being not connected with the case in which he was arrested. He deposed about asking the accused whether he knows as to why he had to brought there, to which the accused replied that he was brought there for giving his confessional statement as he had volunteered to do so. He then deposed about giving him a statutory warning and asking him the questions to ascertain the voluntariness of the accused whether he was induced, threatened, coerced or influenced by any police officer or any person for giving the confessional statement, to which

the accused replied in the negative. He deposed about writing the questions and answers simultaneously and telling the accused that he would give him more than 24 hours for thinking over whether to give the statement and told him that he would be in his custody during that period. He deposed about reading over Part-I of the confessional statement to the accused after it was completed and obtained his signatures on all pages after he admitting that it was correctly written as narrated by him and he also countersigning on all pages. He identified signatures of both of them on Part-I, Ext. 1033 and proved its contents and deposed about putting the original in the envelope, Ext.1034, sealing it, endorsing it in his handwriting. He deposed about giving the accused in the custody of API Shinde, PW-103, who had come from Azad Maidan Police Station alongwith his letter Ext.1035, the contents of which he proved, addressed to the Sr. PI of that police station containing the directions about getting the accused medically examined, keeping him in a separate cell, providing meals to him and to see that no police officer meets and talks with him during that period and also to produce the accused before him on 25/10/06 in veil at 1100 hours.

1300. API Shinde, PW-103, corroborated his version and deposed that on the directions of Sr. PI he went with his staff to the office of the DCP on 24/10/06, making station diary entry no. 17 in his own handwriting, certified true copy of which is at Ext. 1047, the contents of which he proved, reporting to the DCP at 1120 hours and being given the A7 in his custody with the direction to keep him in a separate cell in the lock-up of their police station and other

precautions that should be taken which was incorporated in the letter, Ext. 1035. He deposed about veiling the accused and taking him to the GT Hospital for medical examination and then taking him to the police station, putting the accused in a separate cell and giving the instructions as were given by the DCP and making station diary entry no. 20 in his handwriting, certified true copy of which is at Ext. 1047. Ext. 2111 is the carbon copy of the OPD case paper dtd. 24/10/06 which is proved by Dr. Paikrao, PW-181, who also proved true photocopy of the OPD register of the GT Hospital Ext. 2110, the contents of which are same as the contents of Ext. 2111. The accused was examined at 12.25 p.m. and he only complained of fainting, for which he was given glucose water, ORS and Rantac tablets.

1301. API Shinde, PW-103, then deposed about taking the A7 in his custody from the lock-up on 25/10/06 at about 11.00 a.m., putting a veil on him and taking him to the office of the DCP and making station diary entry no. 28 in his own handwriting, certified true copy of which is at Ext.1048, contents of which he proved. He deposed about producing the accused before the DCP and handing over his letter Ext.1036 about producing the accused, the contents of which he proved and the DCP taking the accused in his custody and asking him to wait outside for some time. SP Mohite, PW-102, corroborated his version and deposed about asking the officer and his staff to go out of his chamber, again ensuring that the proceedings between him and the accused cannot be seen or heard from outside, making the accused comfortable, asking him whether

the time of 24 hours given to him for reflection was sufficient to which the accused answered in the affirmative, asking him whether anyone had met him in the lock-up and pressurized, threatened or intimidated him to which the accused replied in the negative and then giving the statutory warning that if he gives the confessional statement, it may be used against him and the accused replied that he knows it and even then he wants to give it. He deposed about being satisfied on the above questions and answers that the accused was willing to give the confessional statement voluntarily and thereafter starting recording the narration in the words of the accused in his handwriting and after it was finished reading it over to him and asking him to put his signature when he confirmed that it was correctly written as narrated by him. He deposed about accused signing on all pages and he also countersigning on all the pages and writing the certificate at the end and signing it. He identified his signature and signature of the accused on all the pages and his signature below the signature of Part-II Ext.1037 and stated about putting the original in the envelope Ext.1038, sealing it and endorsing it. He deposed about giving the accused in the custody of API Shinde, PW-103, and giving him the two sealed envelopes alongwith office copy of the forwarding letter Ext.1039 for being handed over to the CMM. He deposed about two letters addressed to the Sr. PI, one office copy of which is at Ext.1040, directing the Sr. PI to produce the accused before the CMM and second the office copy of a letter addressed to the Sr. PI, Ext.1042 to produce copies of the relevant station diary entries and also a letter to the investigating

officer, office copy of which is at Ext.1041, asking him to take possession of the accused at the court of the CMM after the work of the CMM was over. He proved the contents of all these letters. He deposed about verifying in the evening on the same day whether the accused had been produced before the CMM and that he received a detailed report from API Shinde, PW-103, on 02/11/06 about following his instructions. He identified the A7 in the court unhesitatingly.

1302. API Shinde, PW-103, corroborated the version of SP Mohite, PW-102, and deposed about being called inside to the office of the DCP at about 2.30 or 2.45 p.m., the DCP giving him two sealed envelopes and a forwarding letter addressed to the CMM and a letter addressed to the Sr. PI and directing him to produce the accused before the CMM and to get him medically examined and he putting a veil on the accused. He identified the letters Exts.1039 and 1040 and it has come in his evidence that on inquiry he came to know that one Shri Shisode, ACMM was in-charge of work of the CMM as it was a holiday and after obtaining his phone number and inquiring whether he should produce the accused before him in his house and receiving an affirmative reply, he took the accused to the house of the ACMM, handed over the sealed envelopes and forwarding letter, was asked to wait outside and called inside after some time and told to take the accused, whereupon he took the accused in his custody, veiled him and informed the DCP on phone about the compliance of his orders and was in turn directed to give him in the custody of the ATS as he was to be produced before the Sessions Court. He deposed

about taking the accused to the GT Hospital and getting him medically examined. Ext.2113 is the carbon copy of OPD case paper, which is proved by Dr. Paikrao, PW-181, who also proved a true photocopy of the entry in the casualty register Ext.2112, the contents of which are same as that of Ext.2113. Again on this day, the complaint of the A7 was of giddiness. API Shinde, PW-103, then deposed about taking the A7 to the Sessions Court and giving him in the custody of ACP Patil, PW-186,, going back to the police station and making station diary entry no.42 in his handwriting, certified true copy of which is at Ext.1048. He identified the A7 in the court unhesitatingly. The CMM forwarded the sealed envelopes of the confessional statement alongwith his letter Ext.1043 in the envelope Ext.1043A, which were received in evidence as they are official communication between two courts.

1303. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A7 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A12 :-

1304. ACP Patil, PW-186, deposed about Jt. CP, ATS nominating

Addl. CP Brijesh Singh, PW-117, to record the confessional statement of the A12 by his letter, Ext.1223 on his request as the team of officers interrogating the A12 had reported to him on 19/10/06 about his willingness to make a voluntary confessional statement before superior officers about which he satisfied himself by questioning the accused and he also receiving a letter, Ext.1224 from the DCP directing him to produce the accused before him on 23/10/06. He deposed about directing PI Shelke, PW-150, by a letter, office copy of which is at Ext.2404, to produce the accused before the DCP on the same day, i.e., 23/10/06, and also giving a letter Ext.1225 addressed to the DCP regarding production of the accused. He deposed about PI Shelke, PW-150, and staff producing the accused before the DCP on that day, returning back to the office and reporting that the DCP had taken the accused in his custody. PI Shelke, PW-150, corroborated his version and deposed about taking the A12 in his custody on 23/10/06 and taking him to the office of the DCP as per the directions of ACP Patil, PW-186, and station diary entry no. 8 being made by HC Ghag on his directions, certified true copy of which is at Ext.1618. He deposed about producing the accused before the DCP and handing over the letter given by ACP Patil, PW-186,, returning back to Bhoiwada as the DCP told him to go back and station diary entry no. 10 being made by HC Ghag on his directions, certified true copy of which is at Ext.1619. He identified the A12 in the court unhesitatingly.

1305. Addl. CP Brijesh Singh, PW-117, corroborated the version of both the above officers and deposed that he was directed by the

letter, Ext.1223 of the Jt. CP, ATS to record the confessional statement of the A12, whereupon he wrote letter, office copy of which is at Ext.1224, directing the investigating officer to produce the accused before him on 23/10/06 at 1400 hours and pursuant to that letter PI Shelke, PW-150, and his team produced the accused before him in veil accordingly alongwith the letter of the investigating officer Ext.1225. He deposed about ascertaining the general facts of the case from the escort party, about wellbeing of the accused and then asking the ATS team to go out of his chamber, asking the accused to remove his veil, ensuring that there was no one within the sight and hearing of the proceedings in his chamber, but his stenographer was with him and then inquiring with the accused about the reason as to why he was produced before him, whereupon the accused said that he was produced to make the confessional statement as he wanted to make it. He deposed about introducing himself and putting general questions and being informed by the accused that he is fluent in Hindi and English, though he knows Urdu and Arabic as well. He deposed about giving the statutory warning to the accused and ascertained whether he was given any kind of inducement, threat or promise about which the accused replied in negative and that he told the accused that he would give him time for reflection. He deposed about becoming confident that the accused wished to make the confession statement before him and deposed that he was dictating the questions and answers and his stenographer was typing them on computer and after it was completed, a printout was taken out and given to the

accused for reading, who signed it after admitting it to be correctly written and then put his signatures. He deposed about he also signing the Part-I of the confessional statement, Ext.1226, and identified signatures of both of them and deposed about sealing Part-I of the confessional statement in the envelope, Ext.1227 and keeping it in his lock and key. He deposed about handing over the custody of the accused to PI Sonavane, PW-122, of Azad Maidan Police Station, who had come there as per his instructions on telephone and also gave letter, office copy of which is at Ext.1228, the contents of which he proved, containing the instructions about keeping the accused in a separate cell in the lock-up of their police station, not allowing any ATS officer or any other person to meet him and to always escort him in veil, etc., and a further direction of producing the accused before him on 24/10/06 at 1800 hours. PI Sonavane, PW-122, corroborated his version and deposed that he went with his staff to the office of the DCP on 23/10/06 as directed by his Sr. PI and made station diary entry no. 29 in his own handwriting, certified true copy of which is at Ext.1465, which he proved. He deposed about reporting to the reader in the office of the DCP, who told him that the DCP had told them to wait and being called by the DCP in his cabin at 1635 hours, introducing the A12 and giving him in his custody alongwith a letter Ext.1228 and the instructions to keep the accused in a separate cell in the lock-up of their police station and to see that no one from the police or his relatives to meet him and also to get the accused medically examined and to always escort him in veil. He deposed about veiling

the accused and taking him to the GT Hospital when he got him medically examined. Ext.2103 is the carbon copy of the OPD case paper, the contents of which were proved by Dr. Paikrao, PW-181, who also proved true photocopy of the entry in the casualty register, Ext.2102, the contents of which are the same as Ext.2103. The accused was examined at 4.50 p.m. and he had no complaints. PI Sonavane, PW-122, then deposed about taking the A12 to the police station and telling the havildar on guard duty to keep the accused in a separate cell and keeping the accused in a separate cell and giving him the instructions as were given by the DCP and also personally checking the cell no. 1 where the accused was to be kept and then making station diary entry no. 31, in his own handwriting, certified true copy of which is at Ext.1466, the contents of which he proved.

1306. PI Sonavane, PW-122, then deposed about taking out the accused from the lock-up on 24/10/06, veiling him and taking the A12 to the office of the DCP and making station diary entry no. 25 in his handwriting, certified true copy of which is at Ext.1467, the contents of which he proved. He deposed about reaching office of the DCP at 1800 hours, but the reader informing him that the DCP had asked him to wait, that the DCP came outside at about 7.45 or 8.00 p.m. and said that there was a law and order problem in Bhendi Bazar area where he was required to go and then he left returning at 9.30 p.m., calling him inside in his cabin and telling him that he is unable to record the confessional statement of the accused on that day and asking him to take him back to the police station, to follow the instructions as given on the earlier day and to

produce him on the next day at 1200 hours and also gave the letter Ext.1229. Addl. CP Brijesh Singh, PW-117, corroborated his version fully and proved the contents of his letter Ext.1229. PI Sonavane, PW-122, deposed about taking the accused back to the police station in veil, putting him in the lock-up and giving similar instructions to the guard havildar as given on the earlier day and making station diary entry no. 31 in his own handwriting, certified true copy of which is at Ext.1468, the contents of which he proved.

1307. He deposed about taking out the A12 from the lock-up on the next day, i.e., on 25/10/06, veiling him and taking him to the office of the DCP and making station diary entry no. 33 in his own handwriting, certified true copy of which is at Ext.1469, the contents of which he proved. He deposed about producing the accused before the DCP, who told him to wait outside, where he waited upto 9.30 p.m. Addl. CP Brijesh Singh, PW-117, corroborated his version and deposed that on the accused being produced before him in veil, he inquired and was given report by the escort party that the instructions in his letter were complied, then he asked the escort party to go out and asked the accused to remove the veil. He deposed about ensuring secrecy of the proceedings in his chamber and at this time the stenographer was not with him and then he asked necessary questions to the accused, gave him the statutory warning, checked to see whether he was under any kind of inducement, threat or promise and came to a personal satisfaction that the accused voluntarily wished to make a confessional statement. He deposed about writing down the questions and

answers in his own handwriting, giving them to the accused to read, who signed it after reading it and admitted it to be correctly written and he also putting his signature and then proceeded to record the narration of the accused in his own handwriting. He deposed about giving the writing to the accused for reading after it was over, the accused signing it after reading it, admitted it to be correct and he also signing on all pages of Part-II, Ext.1230 and appending the certificate Ext.1231 regarding his satisfaction about the voluntariness of the confessional statement. He proved the signatures of both of them and the contents of Part-II and certificate and deposed about sealing it in the envelope Ext.1232. He deposed about asking the escort party to take the accused to the CMM and gave them a forwarding letter addressed to the CMM, office copy of which is at Ext.1233, the contents of which he proved, alongwith two sealed envelopes and a letter to the investigating officer to take custody of the accused after his production before the CMM. He unhesitatingly identified the A12 in the court.

1308. PI Sonavane, PW-122, corroborated his version and deposed that the DCP called him inside his cabin at 9.30 p.m., handed over the custody of the accused alongwith a forwarding letter addressed to the CMM, two sealed envelopes and one more letter addressed to the ATS with a direction to produce the accused before the CMM and to give the envelope and forwarding letters to the CMM. He deposed about taking the accused in veil to the house of the CMM Shisode at Kurla, producing the accused before him and handing over the letter and two sealed envelopes and being asked to wait

outside, being called inside after half an hour and giving the accused back in his custody. He deposed about veiling the accused, taking the accused to the office of the ATS at Bhoiwada and handing over his custody, then returning back to the police station and making station diary entry no. 1 in his handwriting, certified true copy of which is at Ext.1470, the contents of which he proved. He identified the A12 in the court unhesitatingly. The CMM sent the sealed envelopes of the confessional statement alongwith his letter Ext.1235 in the envelope Ext.1235A and they were received in evidence as they are official communication between courts.

1309. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A12 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Confessional statement of the A5 :-

1310. ACP Patil, PW-186, deposed about Jt. CP, ATS nominating DCP Phadtare, PW-93, by his letter, Ext.930 to record the confessional statement of the A5, on his request as the officers interrogating the A5 had reported to him on 20/10/06 that he is willing to make a confessional statement before the superior officers

about which he satisfied himself on questioning the accused. He deposed about receiving a letter, office copy of which is at Ext.931, from the DCP directing him to produce the accused before him on 24/10/06 and thereupon he directing PI Alaknure, PW-153, by a letter, office copy of which is at Ext.2405, to produce the accused before the DCP on 24/10/06 and also giving a letter, Ext.932, addressed to the DCP. He deposed about PI Alaknure, PW-153, and staff producing the accused before the DCP on 24/10/06, returning back to the office and reporting that the DCP had taken the accused in his custody. PI Alaknure, PW-153, corroborated his version and deposed in addition that on 23/10/06, ACP Patil, PW-186, had given him a sealed envelope with a direction to reach it to DCP Phadtare, PW-93, which he did and the DCP on opening the envelope and after reading the letter inside, gave him the letter Ext.931 addressed to ACP Patil, PW-186, directing him to produce the A5 before him on 24/10/06 at 10.00 a.m. and he returning back to the ATS office, handing it over to ACP Patil, PW-186,, who in turn directed him to do the needful. He deposed about taking out the accused about 7.30 or 8.00 a.m. on 24/10/06, veiling him and leaving for going to the office of the DCP and station diary entry no. 2 being made as per his directions, certified true copy of which is at Ext.1654. He deposed about producing the accused before the DCP, who took him in his custody and directed him and his staff to leave the office and gave the letter, Ext. 933, acknowledging having taken the accused in his custody, he returning to the ATS office and station diary entry no. 10 being made as per his directions, certified true copy of which is at

Ext.1655.

1311. DCP Phadtare, PW-93, corroborated the evidence of both the officers and deposed that by the letter Ext.930, the Jt. CP, ATS, had directed him to record the confessional statement of the A5, which PI Alaknure, PW-153, had brought to him, whereupon he directed ACP Patil, PW-186, by his letter, office copy of which is at Ext.931, to produce the accused before him on 24/10/06 at 10.00 a.m. He deposed about PI Alaknure, PW-153, producing the A5 on 24/10/06 alongwith a letter, Ext.932, he ascertaining that the offences were committed in the State of Maharashtra, then taking the accused in his custody and giving a letter, office copy of which is at Ext.933, addressed to the investigating officer about having taken the accused in his custody. He proved the contents of all the above letters and deposed about asking PI Alaknure, PW-153, and his staff to go out of his chamber, ensuring that nobody could see or hear the proceedings of recording of the confessional statement in his chamber, giving the information to the accused that he is not in the custody of the investigating officer or the ATS team that is investigating the offence and making the accused comfortable. He deposed about putting general questions to the accused and ascertaining from him whether he was threatened to give the statement or given any inducement of release or of being made a witness and writing all the questions and answers in his own handwriting. He deposed about giving the statutory warning to the accused about it being not binding on him to make the confessional statement and he would record it only if he is ready to give it

voluntarily and also that any confessional statement that he makes can be used against him as evidence in the court. He deposed about the accused expressing his desire to give his confessional statement voluntarily and he telling him that he would give him 24 hours for reflection and thereafter only he would record it if he gives it voluntarily. He was satisfied on the answers given by the accused that he was ready to give the confessional statement voluntarily and then he gave the writing to the accused for reading, who signed it after reading it and stating that it was correctly written. He deposed about he also signing Part-I of the confessional statement, Ext.934, and putting it in the envelope Ext.935, sealing the envelope with his stamp and signing on the stamps. He identified his signature and signature of the accused on all the pages of Part-I, Ext.934 and proved its contents. He deposed about calling PSI Powar, PW-94, and his staff of Police Station Mahim, who had come there as per his directions to the Sr. PI of that police station, to take the custody of the accused and gave him a letter, office copy of which is at Ext.936, the contents of which he proved, containing the directions about keeping the accused in a separate cell in the lock-up of Mahim Police Station and to take care that no police officer or no policeman or any other person meets him and talks with him and to produce the accused before him on the next day at 11.00 a.m. He also gave these directions orally. PSI Powar, PW-94, corroborated his version and deposed about taking staff with him and going to the office of the DCP as per the directions of the Sr. PI on 24/10/06 and station diary entry no. 21 being made, certified true copy of which is at Ext.943,

the contents of which he proved. He reported to the DCP, who told him to take the A5 in his custody which he did and put a veil on him and after some time was given letter addressed to the Sr. PI, office copy of which is at Ext.936. He deposed about the DCP giving instructions to keep the accused in a separate cell and to give instructions to the guard commander not to allow anyone to meet him or talk with him and produce him on the next day at 11.00 a.m. He deposed about taking the accused in veil to the police station, putting him in the separate cell and giving the guard commander necessary directions as given by the DCP and then making the station diary entry no. 31 in his handwriting, certified true copy of which is at Ext.943, the contents of which he proved.

1312. PSI Powar, PW-94, deposed about taking out the accused from the lock-up on the next day, i.e., on 25/10/06, at 10.15 a.m. and making station diary entry no. 23 in his own handwriting, certified true copy of which is at Ext.943, the contents of which he proved and then getting the accused medically examined at Bhabha Hospital. Ext.2196 is the true photocopy of the MLC book, the contents of which were proved by Dr. Yelkar, PW-183, which shows that the A5 was examined at 10.25 a.m. and the only complaint that he made was headache for one month and was brought by PC-29346 of Mahim Police Station, who according to PSI Powar, PW-94, was with him. PSI Powar, PW-94, then deposed about producing the accused before the DCP and being asked to wait outside.

1313. DCP Phadtare, PW-93, corroborated his version and

deposed that PSI Powar, PW-94, produced the A5 before him at 1210 hours, that he took the accused in his custody and asked the policemen to go out of his chamber, ensured that nobody could see or hear the proceedings of the recording of the confessional statement and then again made the accused comfortable by telling him that he is in his custody and not in the custody of the ATS or the investigating officer. He deposed about again asking him whether anybody had threatened him or tortured him or given him any promise to which the accused replied in the negative and whether he is giving his statement voluntarily, to which he replied in the affirmative. He deposed about giving statutory warning to the accused and being satisfied from his answers and from his body language that the accused is ready to give the confessional statement voluntarily. He then deposed about starting to write the confessional statement in his own handwriting, giving it to the accused for reading after he completed it and asking him to put his signature when the accused told that it was correctly written as narrated by him. He deposed about he also putting his signature on all the pages of Part-II of the confessional statement, Ext.937, and writing the certificate, Ext.938 as per section 18 of the MCOC Act and putting both in the envelope Ext.939. He identified signatures of both of them on Part-II and proved its contents. He expressed his inability to identify the accused. He then deposed about handing over custody of the accused to PSI Powar, PW-94, and his staff alongwith three envelopes, directing him to produce the accused before the CMM on the same day and proved the office copy of the letter written to the

CMM, Ext.940, that he put in an envelope, which he gave to PSI Powar, PW-94, who corroborated his version deposing that the DCP called him inside his cabin after 3.00 p.m. and told him to take the custody of the accused, which he took and put veil on him and the DCP giving him three envelopes addressed to the CMM, out of which two were closed having rubber stamps on them. He deposed about the DCP directing him to take the accused to the house of the ACMM as it was a public holiday on account of Ramzan Id and accordingly he going there, producing the accused and giving the letters and then waiting outside. He deposed about being called inside after some time and being told to take the accused to the DCP, which he did, thereupon DCP gave a letter, Ext.941 addressed to the ATS and asked him to take the accused to the ATS office, which he did. He deposed about returning back to the police station and making station diary entry no. 37 in his own handwriting, certified true copy of which is at Ext.943, the contents of which he proved. He identified the A5 in the court unhesitatingly. DCP Phadtare, PW-93, corroborated his version about PSI Powar, PW-94, producing the A5 before him again to be handed over to the investigating officer and he giving the custody of the accused to PI Alaknure, PW-153, alongwith a letter, office copy of which is at Ext.941.

1314. PI Alaknure, PW-153, corroborated his version, but he deposed slightly inconsistently by deposing that PSI Powar, PW-94, of Police Station Mahim brought the accused to the office of the ATS at Bhoiwada and gave his custody to him and took his acknowledgment on the letter, Ext.941. It has come in his evidence

that he put the accused in the lock-up and on his directions station diary entry no. 9, certified true copy of which is at Ext.1656, was made, the contents of which he proved. The in-charge CMM forwarded the two sealed envelopes to this court alongwith his letter Ext.2812 in the envelope Ext.2813, which was received in evidence as it is an official correspondence between the courts.

1315. Thus the above is the oral and documentary evidence in respect of the procedure of taking the A5 from the ATS office to the office of the DCP, from there to the lock-up of the local police station, then back to the DCP, then back to the police station, then to the office of the CMM from where he was again given in the custody of the ATS. All these actions are corroborated by the contemporaneous entries in the station diary, medical certificate and letters between the three authorities *inter se* and there is no hesitation to accept that the confessional statement has been recorded by following due process of law.

Legal submissions about the evidence regarding confessional statements :-

1316. Learned SPP submitted during his arguments that if the chronology of the events that have taken place and the documents that are produced are seen, there cannot be any hesitation to accept that the confessions have been recorded by following due process of law. He submits that the prosecution has *prima facie* established how the confessions were recorded, all the relevant documents corroborating the testimony of the DCPs have been produced, the DCPs have withstood the test of cross-examination and have given

frank answers to all the questions that were put to them, the procedure post-recording of the confessions of producing the accused before the CMM has also been complied and the confessions have reached this court in sealed condition directly from the office of the CMM, therefore, the *prima facie* compliance of section 18 of the MCOC Act is apparent on the basis of oral as well as the documentary evidence.

1317. There is a multi pronged attack from four all sides by the learned advocates for all the accused in respect of the evidence given by the prosecution about recording of the confessional statements. Lengthy arguments are made and the large number of case laws are relied because confessional statements are important evidence insofar as cases of this nature are concerned. Each and every word, sentence, paragraphs in the oral and documentary evidence is discussed, dissected and interpreted possibly because of the misconceived motion of the defence that this is the only evidence against the accused, which is also oft repeated by the learned advocates for the accused during their submissions. It will be appropriate to start with the principles of the law laid down by the Apex Court in this regard. It needs to be mentioned at the outset that the authorities relied upon by the defence advocates are in respect of the confessions recorded under the provisions of the TADA, POTA, under section 24 of the Evidence Act and section 164 of the Cr. P. C. However, there is no answer by the defence advocates to the law laid down by the Division Bench of the Bombay High Court dtd.17/12/03 in Confirmation Case No.01/01, which was the

first case under the MCOC Act and the judgement of the Supreme Court dtd.06/08/09 in the appeal against the judgement of the High Court reported in (2010) 14 SCC 641, both of which have been relied upon by the learned SPP. Answers to most of the legal and factual objections on points raised by learned advocate for the defence can be found in these two judgements under the MCOC Act. It is submitted by the learned advocate Yug Choudhary, who argued for learned advocate Wahab Khan, on law points, that the provisions of recording confessional statements in TADA and MCOC Act are *pari materia*, therefore, the judgements under the TADA, POTA, section 24 of the Evidence Act and section 164 of the Cr. P. C. will apply equal force. To my mind, the guidance in the judgement of the High Court and Supreme Court under a special statute like MCOC Act would be most relevant and applicable. Even then since lengthy arguments are made, the principles of law laid down in the judgements are being enumerated.

1318. Learned advocate Yug Choudhary relied on the following authorities in support of his submissions :-

(i) **Kartar Singh, Petitioner V. State of Punjab, Respondent ((1994) 3 Supreme Court Cases 569) (Under TADA).**

(ii) **Ahmed Hussein Vali Mohammed Saiyed & Anr., Appellants V. State of Gujarat ((2009) 7 Supreme Court Cases 254) (Under TADA).**

(iii) **State of Maharashtra, Appellant V. Shiraj Ahmed Nisar Ahmed & Ors. ((2007) 5 Supreme Court Cases 161) (Under TADA).**

- (iv) State (NCT of Delhi), Appellant V. Navjot Sandhu @ Afsan Guru (2005 Supreme Court Cases (Cri) 1715) (Under POTA).
- (v) Ayyub, Appellant V. State of U. P., Respondent ((2002) 3 Supreme Court Cases 510) (Under TADA).
- (vi) Bharatbhai @ Jimi Premchandbhai, Appellant V. State of Gujarat, Respondent ((2002) 8 Supreme Court Cases 447) (Under TADA).
- (vii) Hardeep Singh Sohal & Ors., Appellants V. State of Punjab Through CBI, Respondent ((2004) 11 Supreme Court Cases 612) (Under TADA).
- (viii) Devendra Pal Singh, Appellant V. State of NCT of Delhi and Anr., Respondents ((2002) 5 Supreme Court Cases 234) (Under TADA).
- (ix) Gulam Mohammed @ Gulal Shaikh, Appellant V. State of Gujarat, Respondent ((2008)15 Supreme Court Cases 402) (Under POTA).
- (x) Balbir Singh, Appellant V. State of Punjab, Respondent (AIR 1957 SC 216) (Under section 24 of the Evidence Act).
- (xi) Muthuswami, Appellant V. State of Madras, Respondent (AIR 1954 SC 4) (Under section 24 of the Evidence Act).
- (xii) Alope Nath Dutta & Ors., Appellants V. State of West Bengal, Respondent ((2007) 12 Supreme Court Cases 230) (Under section 24 of the Evidence Act and section 164 of the Cr. P. C.).
- (xiii) Nathu, Appellant V. State of Uttar Pradesh, Respondent (AIR 1956 SC 56) (Under section 24 of the Evidence Act).

(xiv) **Bharat, Appellant V. State of U. P, Respondent (1971 (3) Supreme Court Cases 950) (Under section 164 of the Cr. P. C. and section 24 of the Evidence Act).**

(xv) **State of Rajasthan, Appellant V. Raja Ram, Respondent ((2003) 8 Supreme Court Cases 180) (Under section 24 of the Evidence Act).**

(xvi) **Babu Singh, Appellant V. State of Punjab, Respondent (1964 (1) Cri. L. J. 566) (Under section 164 of the Cr. P. C.).**

(xvii) **Arup Bhuyan, Appellant V. State of Assam, Respondent (2011) 3 Supreme Court Cases 377) (Under TADA).**

(xviii) **Vinod Solanki, Appellant V. Union of India & Anr., Respondents ((2008) 16 Supreme Court Cases 537) (Under section 24 of the Evidence Act).**

(xix) **Bhagwan Singh & Ors. V. State of MP (2003 ALL MR (Cri) 564 (S.C.) (Under section 24 of the Evidence Act).**

(xx) **Pyare Lal Bhargava, Appellant V. The State of Rajasthan, Respondent (AIR 1963 Supreme Court 1094) (Under section 24 of the Evidence Act).**

(xxi) **Haroon Haji Abdulla, Appellant V. State of Maharashtra, Respondent (AIR 1968 Supreme Court 832) (Under Section 30 of the Evidence Act).**

(xxii) **Manjit Singh @ Mange, Appellant V. Central Bureau of Investigation, Respondent ((2011) 11 Supreme Court Cases 578) (Under TADA).**

(xxiii) **Prakash Kumar @ Prakash Bhutto, Appellant V. State of Gujarat, Respondent ((2007) 4 Supreme Court Cases 266)**

(Under TADA).

(xiv) **Sarwan Singh Rattan Singh, Appellant V. State of Punjab, Respondent ((8) AIR 1957 SC 637) (Under section 24 of the Evidence Act).**

(xxv) **Haricharan Kurmi, Appellant V. State of Bihar, Respondent (AIR 1964 Supreme Court 1184) (Under section 30 of the Evidence Act).**

1319. Learned advocate Wahab Khan relied on the authorities in the case of **Devendra Pal Singh supra** and submits that it distinguishes the authority in the case of **State of Maharashtra V. Bharat Chaganlal Raghani & Ors., ((2001) 9 SCC 1)**, that may be relied upon by the prosecution. He also relied upon the authorities in the case of **State (N.C.T. of Delhi), Appellant V. Navjot Sandhu, Respondent (AIR 2005 Supreme Court 3820)** and the judgement of the Supreme Court dtd. 16/05/14 in the case of **Adambhai Sulemanbhai Ajmeri & Ors., Appellants V. State of Gujarat, Respondent in Criminal Appeal Nos.2295-2296 of 2010.**

1320. Learned advocate Shetty relied on the following authorities in support of his submissions :-

(i) **State of Maharashtra V. Siraj Ahmed Nisar Ahmed & Ors. (AIR 2007 Supreme Court 1859).**

(ii) **Shivappa, Appellant V. State of Karnataka, Respondent (AIR 1995 Supreme Court 980).**

(iii) **Dhanajaya Reddy, Appellant V. State of Karnataka, Respondent (2001 Supreme Court Cases (Cri) 652).**

(iv) **Palvinder Kaur, Appellant V. The State of Punjab,**

Respondent (AIR 1952 Supreme Court 354).

(v) Parmananda Pegu, Appellant V. State of Assam, Respondent ((2004) 7 Supreme Court Cases 779).

(vi) K. I. Pavunny, Appellant V. Assistant Collector (HQ), Central Excise Collectorate, Cochin, Respondent (1997 Supreme Court Cases (Cri) 444).

1321. Learned advocate Sharif Shaikh relied on the following authorities :-

(i) Khatri, Appellant V. State of Bihar, Respondents (LAWS (SC)-1980-12-20).

(ii) Abdul Vahid, Appellant V. State of Rajasthan, Respondents (AIR (SC)-2004-0-3211).

(iii) Sharafat Hussain Abdul Rahaman Shaikh & Ors., Appellants V. State of Gujarat & Anr., Respondents ((1996) 11 Supreme Court Cases 62).

(iv) Mohamad Iqbal Farooq Sheikh, Appellant V. State of Maharashtra, Respondents (LAWS (BOM)-2006-9-60).

(v) Daya Singh, State of Haryana, Appellant V. State of Haryana, Daya Singh, Respondents (LAWS (SC)-2001-2-38).

(vi) Hari Ram, Appellant V. State, Respondent (1972 Cri. L.J. 961).

(vii) Dhanajaya Reddy, Appellant V. State of Karnataka, Respondent ((2001) 4 Supreme Court Cases 9).

1322. Learned SPP relied on the following authorities in reply :-

(i) State of Maharashtra, Appellant V. Bharat Chaganlal Raghani & Ors., Respondents ((2001) 9 Supreme Court Cases 1).

- (ii) **Manjit Singh @ Mange, Appellants V. CBI, through its S. P, Respondent (AIR 2011 SC 806).**
- (iii) **Afzalkhan @ Babu Murtuzakhan Pathan, Appellants V. State of Gujarat, Respondent (AIR 2007 SC 2111).**
- (iv) **Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh & Anr., Appellants V. C.B.I. through its Director, Respondent ((2008) 15 SCC 49) .**
- (v) **The State of Maharashtra, Appellant V. Mohd. Zuber Kasam Shaikh @ Tabrej @ Judanu & Anr. Respondents (Confirmation Case No. 01/01 decided on 17/12/03).**
- (vi) **Mohd. Farooq Abdul Gafur & Anr., Appellants V. State of Maharashtra, Respondent ((2010) 14 SCC 641) .**

1323. It is necessary to discuss some submissions made by learned advocates Yug Choudhary and Wahab Khan for the defence in respect of the reliance by the learned SPP on an authority. Anticipating that the learned SPP would cite the authority in the case of **Bharat Chaganlal Raghani**, learned advocate Yug Choudhary cited **Devenra Pal Singh** and submitted that the view in **Bharat Chaganlal Raghani's** case (two judges) was that it was not necessary for the CMM to open the envelope containing the confessional statement. However, this is a complicated aspect as a contrary view is taken in **Devendra Pal Singh's** case (three judges), which has made the job of this court a bit difficult. Pointing out the word 'confirmation' in the sentence 'The purpose of the confessional statement being sent to the court by producing the accused for confirmation (emphasis supplied) of the statement is to ensure that

interpolation or manipulation is ruled out as a later date' in paragraph 36 in **Devendra Pal Singh's** case, he submitted that this can only be done by opening the envelope. Learned advocate Wahab Khan relied on paragraph 38 of the judgement in the case of **Bharat Chaganlal Raghani**, which says that the guideline(3) mandates the magistrate to scrupulously record the statement, *if any*, made by the accused so produced and get his signature and in the event of any *complaint* of torture, the person should be directed to be produced for medical examination and no duty is cast upon the magistrate concerned to record the confessional statement afresh or himself/herself to ascertain the nature and the circumstances under which the confessional statement was made, unless the complaint is made by the accused regarding torture, etc. He submitted that these observations will have to be read to mean that if the accused complains, then the envelope has to be opened and the magistrate has to ascertain the nature and circumstances under which the confession was made.

1324. I am afraid but submissions of both learned advocates are not only wrong, but an example of misinterpretation, i.e., trying to read what is not there and not reading what is there. In clear terms the Supreme Court has said in paragraph 36 in the case of **Bharat Chaganlal Raghani** that, '*Rule 15 does not oblige such Magistrate either to open the envelope containing the confessional statement recorded by the police officer or to satisfy himself regarding the voluntary nature of the confession. The Magistrate, at the most, can record the statement of the accused if made regarding alleged*

*harassment, torture or the like. If the Magistrate, referred to in sub-rule (5) of Rule 15 has to ascertain the voluntary nature of the confessional statement, the purpose of Section 15 authorising a police officer to record the confessional statement shall stand frustrated'. In my humble opinion, it cannot be interpreted that the use of the word 'confirmation' in paragraph 36 in **Devendra Pal Singh's** case is a contrary view to the law laid down in the case of **Bharat Chaganlal Raghani** and cannot be interpreted to mean that if the accused complains then the envelope has to be opened and the magistrate has to ascertain the nature and circumstances under which the confession was made. It can also not be said that the law laid down in **Bharat Chaganlal Raghani** case has been distinguished by the law laid down in the case of **Devendra Pal Singh**. In my humble opinion, it can be said that the purpose of sending the sealed envelope containing the confessional statement to the magistrate is only to ensure that it is taken out of the hands of the DCP and is transmitted in the same condition as it was when it was sent by the DCP and does not fall in the hands of the investigating police, and, then it is sent by the magistrate to the designated court.*

1325. The relevant principles of law that can be culled out from the judgements relied upon by the learned advocates for the accused can be enumerated as follows :-

General :-

- (i) Right of access to legal aid, to consult and to be defended by a legal practitioner arises when a person arrested in connection with a

cognizable offence is first produced before the magistrate. The accused would need a lawyer to resist remand to PC or JC and for granting bail, to clearly explain to him the legal consequences in case he intends to make a confessional statement in terms of section 164 of the Cr. P. C. However, failure of providing legal aid to the accused at the beginning or before his confessional statement is recorded under section 164 of the Cr. P. C., would not render the trial illegal. (Mohammed Ajmal Kasab).

(ii) The magistrate or sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. (Khatri).

(iii) Before acting upon a confession, the court must be satisfied that it was freely and voluntarily made. (Navjot Sandhu referring to Shankaria V. State of Rajasthan).

(iv) Further the confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. Recognizing the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to a police officer. (Navjot Sandhu referring to Shankaria V. State of Rajasthan).

(v) Accused kept in PC even after a substantial part of the

investigation is over. This should be kept in mind in considering whether the confession made subsequently is voluntary or not. (Babu Singh).

(vi) Prolonged custody immediately preceding the making of the confession is sufficient, unless it is properly explained, to stamp the confession as involuntary. The investigating officer should explain the unusual circumstances. (Nathu and Hari Ram).

(vii) Every inducement, threat or promise does not vitiate a confession. If the inducement, threat or promise is sufficient in the opinion of the court, to give the accused persons grounds, which would 'appear' to him reasonable for supposing that by making it he would gain any advantage or avoid any ill-will, it is enough to exclude the confession. (Rajaram).

(viii) The expression 'appears' in section 24 of the Evidence Act connotes that the court need not go to the extent of holding that the threat, etc., is in fact have been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be a result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a magistrate or a person other than the police officer. (Navjot Sandhu referring to Shankaria V. State of Rajasthan).

(ix) A person accused of commission of an offence is not expected to prove to the hilt that the confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on prosecution to show that the confession statement is

voluntary in nature and not obtained as an outcome of threat, etc., if the same is to be relied upon solely for the purpose of securing a conviction. (Vinod Solanki).

(x) Recording of a confession under section 164 of the Cr. P. C. is not excluded by any exclusionary provision in the TADA Act. Police officer investigating the case under the TADA Act can get the confession recorded by any metropolitan magistrate, judicial magistrate, executive magistrate or special executive magistrate. (Kartar Singh).

(xi) To establish that the confession is true, it is necessary to examine the confession and compare it with the rest of the prosecution evidence and probabilities of the case. (Sarwan Singh).

Procedural :-

(xii) No breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement and there should be no room for hypercriticism that the authority has obtained an invented confession as a source of proof. (Kartar Singh).

(xiii) Statutory obligation under sub-section (2) of section 15 of the TADA on the police officer recording the confession to explain to the person making it that he is not bound to make it and to give a statutory warning that if he does so, it may be used as evidence against him. (Kartar Singh).

(xiv) Rule 15 of the TADA Rules, requires the police officer to make a memorandum at the end of confession that he has explained it to the maker in terms of sr. no. (ii) above. (Kartar Singh).

(xv) Rule 15(5) requires that every confession recorded under section 15 of the TADA Act should be sent forthwith either to the CMM or to CJM having jurisdiction and the magistrate should forthwith forward the recorded confession received by him to the designated court. (Kartar Singh).

(xvi) (a) Writing the certificate and making the memorandum under Rule 15(3)(b) is mandatory.

(b) The language of the certificate and the memorandum is not mandatory.

(c) In case the certificate and the memorandum is not prepared, but the contemporaneous record shows substantial compliance with what is required to be contained therein, the discrepancy can be cured if there is oral evidence of the recording officer based on such contemporaneous record.

(d) In the absence of contemporaneous record, discrepancy cannot be cured by oral evidence based on the memory of the recording officer. (Bharatbhai).

(xvii) Omission to get signature on the confessional statement is fatal and it makes the confessional statement inadmissible. (Dhanajaya Reddy).

Retracted confessions :-

(xviii) A true confession made voluntarily may be acted upon with the slight evidence to corroborate it, but the retracted confession requires corroboration that the retraction was an afterthought and that the earlier statement was true, however, this is not a rule of law, but it is only a rule of prudence. It cannot even be

laid down as an inflexible rule of practice or prudence that under no circumstances can such a confession be made without corroboration or a court may in a particular case be convinced of the absolute truth of a confession and compelled to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. (Navjot Sandhu referring to Bharat V. State of UP, Subramania Gounden, Pyarelal and Parmanand Pegu).

(xix) As to the extent of corroboration required each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. It would be sufficient that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. (Navjot Sandhu referring to Bharat V. State of UP, Subramania Gounden, Pyarelal and Parmanand Pegu).

(xx) A court may take into account the retracted confession, but it must probe for the reasons for making of the confession as well as for its retraction and must weigh the two to determine whether retraction affects the voluntary nature of the confession or not. (Navjot Sandhu referring to Bharat V. State of UP, Subramania Gounden, Pyarelal and Parmananda Pegu).

(xxi) With a view to arrive at a finding as regards the voluntary nature of a retracted confession, the court must bear in

mind the attending circumstances, which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. (Vinod Solanki).

(xxii) If multiple confessions are retracted, subsequently proper approach is to consider each confession as a whole on its merits and use it against the maker. It may form the basis of conviction provided the court concludes that it is voluntary and true, but rule of practice and prudence requires that it should be corroborated by independent evidence. (Balbir Singh).

(xxiii) The court must play a proactive role in unearthing objective evidence forming the backdrop of retraction and later the examination of such evidence of retraction. Affirmative indication of external pressure will render the retracted confession nugatory in effect. (Aloke Nath Dutta).

(xxiv) If in reality there is no confession, the question of any retraction does not arise. (Gulam Mohammed).

(xxv) If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and tenor of the confession as made and the circumstances of its making and withdrawal warrants its user. The courts do not act upon the retracted confession without finding assurance from the other sources as to the guilt of the accused. (Navjot Sandhu referring to Bharat V. State of UP, Subramania Koundar, Pyarelal and Premanand).

(xxvi) Retracted confession is a weak evidence, therefore, no

judgement of conviction on uncorroborated retracted confession.
(Aloke Nath Dutta).

Admissibility :-

(xxvii) The court trying the offence must, while deciding the question of admissibility or reliability of a confession, in its judicial wisdom strictly adhering to the law, satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions are fulfilled. (Kartar Singh).

(xxviii) The confessional statement recorded under section 15 of the TADA Act by the authorized police officer is admissible in evidence. (Ahmed Hussein Vali Mohammed Saiyed).

(xxix) The confessional statement recorded under section 15 of the TADA Act is a substantive piece of evidence. (Ahmed Hussein Vali Mohammed Saiyed).

(xxx) Confessional statement under section 15 of the TADA Act is also a substantive piece of evidence against the co-accused, however in the case of co-accused, though taken as substantive evidence, as a rule of prudence, the court would look upon corroborative evidence as well. (Ahmed Hussein Vali Mohammed Saiyed).

(xxxi) Strict compliance with Rule 15 of the TADA Rules is necessary for the confessional statement made before the police officer, which needs no corroboration or contemporaneous record to prove its veracity, to be admissible as evidence. (Ahmed Hussein Vali Mohammed Saiyed-TADA).

Evaluation :-

(xxxii) The twin test to be applied to evaluate the confession are (i) whether the confession was perfectly voluntary, (ii) if so, whether it is true and trustworthy. If the first test is not satisfied, the question of applying second test does not arise. (Navjot Sandhu referring to Shankaria V. State of Rajasthan).

(xxxiii) (a) A confession must either admit in terms of the offence or at any rate, substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even of a conclusive incriminating fact, is not of itself a confession.

(b) The statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. (Palvinder Kaur).

(xxxiv) It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail in the confessional statement. (K. I. Pavunny).

(xxxv) Use of word 'pitaji' by accused, who are Muslims, indicates that witnesses are tutored because it is not the language of a Muslim to address his father as 'pitaji'. (Abdul Wahid).

(xxxvi) If any part of the confessional statement is excluded under any provision of law then the entire confessional statement must be excluded, unless the proof of it is permitted by some other provisions. (Dhanajaya Reddy).

(xxxvii) It is unsafe to regard mere wealth of uncorroborated

detail in a confessional statement as a safeguard of truth. (Muthuswami).

(xxxviii) One broad method by which a confession can be evaluated is that the court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test. (Navjot Sandhu referring to Shankaria V. State of Rajasthan).

1326. Following principles of law emerge from the judgements relied upon by the learned SPP Raja Thakare :-

Procedural :-

(i) The test to judge the constitutional and legal acceptability of a confession recorded under section 164 of the Cr. P. C. is not whether the accused would have made the statement, had he been sufficiently scared by the lawyer, regarding the consequences of the confession. The true test is whether or not the confession is voluntary. If a doubt is created regarding the voluntariness of the confession, notwithstanding, the safeguards stipulated in section 164 of the Cr. P. C., it has to be trashed, but if a confession is established as voluntarily, it must be taken into account not only constitutionally and legally, but also morally. (Mohammed Ajmal Kasab).

(ii) The accused in PC before recording their confession and not

having access to legal assistance and confessions being recorded by officers, who were actively supervising the investigation of the case and were in a position to influence the appellants cannot make the confession inadmissible or unreliable if there is total compliance of the mandate of law in recording confession and if the accused did not utter a word about any threat, coercion, inducement or allurement before the CMM and did not make any grievance of ill-treatment, torture (physical or mental) inducement or allurement by the investigating officer to the court before whom they were produced for remand. (Mohmed Amin).

(iii) Rule 15 of the TADA Rules does not oblige the magistrate either to open the envelope containing the confessional statement recorded by the police officer or to satisfy himself about voluntary nature of the confession. The magistrate, at the most, can record the statement of the accused if made regarding alleged harassment, torture or the like. (Bharat Raghani).

(iv) There should be no hesitation to hold that the confessional statements are made voluntarily without any threat, inducement or pressure if memorandum as desired by sub-rule (3) of Rule 15 of the TADA Rules is not recorded, but if the DCP has complied with all the mandatory provisions of section 15 of the TADA. (Bharat Raghani).

(v) Departure from the form or the words cannot adversely affect the object of the provisions or the person making the confession so long as the court is able to conclude that the requirements have been substantially complied with. No public purpose is likely to be achieved by holding that the certificate and the memorandum

should be in the same form and also in the same terms as are to be found in Rule 15(3). (Nalini).

(vi) No specific statement in certificate that the record contains 'a full and true account of confession made', but the very fact that the confession is recorded in the handwriting of the police officer will imply that it was recorded in his presence and was recorded by him. So also when it is mentioned in the certificates and memorandums that the confession was recorded as per the say of the accused that it was read over to him fully, etc., would mean that it contains 'a true and full account of the confession'. (Afzal Khan referring to S. N. Dubey V. N. B. Bhoir (2000) Cri.L.J. 830).

(vii) Confession cannot be regarded as not in conformity with Rule 15(3)(b) of the TADA Act if statutory warning of precautions given to accused are mixed up by writing certificate and memorandum or if such statements instead of appearing at the end of the confession in the memorandum appear in the earlier part of the confession in question and answer form. (Afzal Khan).

Retracted confessions :-

(viii) Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law.

(ix) A confessional statement given under section 15 of the TADA Act shall not be discarded merely for the reason that it has been retracted. (Manjeet Singh referring Ravinder Singh V. State of Maharashtra (2002) 9 SCC 55).

(x) After thought and belated retractions and allegations regarding coercion, threat, torture, etc., that may be products of

ingenuity of the advocates of the accused, are not valid grounds to discard the confession. (Mohmed Amin).

Evaluation :-

(xi) (a) Corroboration of the confessional statement is not a rule of law, but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case. (Bharat Raghani).

(b) In order to sustain a conviction on the basis of a confessional statement, it is sufficient that there is a general corroboration. (Bharat Raghani).

(xii) Merely because the confessional statement of some accused are more or less similar, it cannot be said that they are neither normal nor unnatural which would vitiate their value. (Manjeet Singh).

(xiii) Due credence is to be given to the confessional statement if the accused did not claim before the CMM that their confessional statement was fabricated or that they have been tortured or that they have been made to sign on blank papers. (Manjeet Singh).

(xiv) Structure of the statement, the sequence of the events narrated therein and use of some words, though *prima facie* unnatural, are not surprising. It needs to be kept in mind that the appellant (Mohammed Ajmal Kasab) was making the statement after being in PC for several months. The police, in the course of countless sessions of interrogations, would have turned him inside out and he could have earlier made the very same statement in the same sequence before the police many times. Under relentless

interrogation, he would have recalled smallest details of his past life, especially relevant to the preparations and training for the attack on Mumbai and when the appellant (Mohammed Ajmal Kasab) went to the magistrate to make his confession, everything would be completely fresh in his mind, he would also have unconsciously picked-up words from his interrogation and those would have become part of his own vocabulary. (Mohammed Ajmal Kasab).

(xv) Use of bold letters does not make the confession doubtful justifying the conclusion that there had been interpolations. (Bharat Raghani).

(xvi) Confession recorded under section 15 of the TADA Act is substantive piece of evidence not only against the maker of it, but also against his co-accused, because it is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not truncate it. (Bharat Raghani).

(xvii) Voluntary and truthful confessional statement recorded under section 15 of the TADA Act requires no corroboration. (Manjeet Singh referring to Ravinder Singh which refers to Nalini, S. N. Dube and Devender Pal Singh).

1327. Rather than enumerating the principles of law in the Vth and VIth authorities relied upon by the learned SPP, it would be apt to reproduce the conspectus of law regarding confessions done by the Division Bench of the Bombay High Court and its observations in Confirmation Case No. 01/01, which was the first case under the MCOC Act. This judgement was delivered on 17/12/03. The

provisions regarding recording of confessions under the MCOC Act were discussed alongwith similar provisions in section 15 of the TADA Act alongwith the leading case law on that topic :-

'Provisions regarding recording of confessions under MCOC Act (XXIV)'

71. *The mainstay (emphasis supplied) of the prosecution case is the confessions made by A-1, A-4, A-5, A-6, A-7 and A-8, wherein these six accused have clearly admitted their connection and/or participation (emphasis supplied) in the alleged crime. The confessions are recorded not by any Magistrate but by three different police officers of the rank of Dy. Commissioner of Police under section 18 of the MCOC Act. Under section 25 of the Evidence Act a confession made to a police officer cannot be proved as against a person accused of any offence. However, section 18 of the MCOC Act is a clear departure from the rule stated in section 25 of the Evidence Act. (Section 18 of the MCOC Act was reproduced).*

*In this connection it may be pointed out that under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short TADA, Act), there was a similar provision in section 15, which permitted recording of confessions made by the accused before a police officer, not lower in rank of Superintendent of Police and which shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under that Act or rules made thereunder. The question about the constitutional validity of the provisions of section 15 of the TADA was considered by the Supreme Court in the case of **Kartar Singh vs. State of Punjab 1994 (3) SCC-569**. It was held that if the exigencies of certain situation warrant such a legislation then it is constitutionally*

*permissible. The court pointed out that in some advanced countries like UK, USA, Australia and Canada, etc., confession of an accused before the police is admissible and having regard to the legal competence of the legislature to make the law prescribing the different mode of proof, the meaningful purpose and object of that legislation, the gravity of terrorism unleashed by the terrorist and disruptionists endangering not only the sovereignty and integrity of the country but also the normal life of the citizens, and the reluctance of even the victims as well as the public in coming forward, at the risk of their life, to give evidence, the said section could not be said to be suffering from any vice of unconstitutionality. It may be pointed out that constitutional validity of the MCOC Act was challenged before this court also but the division bench of this court upheld the constitutionality of all the provisions except Ss. 13 to 16 and part of Section 21 (5). The Court further clarified that S. 3 and 4 contemplate existence of mens rea inherently and shall always be read therein as a necessary ingredient of the offence (**vide Bharat Shah Vs State of Maharashtra 2003 Bom. C. R. Cri. 947**). The provisions of section 15(1) of the TADA and those of section 18 (1) of the MCOC Act are almost identical. In **Kartar Singh's** case the Supreme Court, however, laid down certain guidelines to ensure that the confession obtained in pre-indictment interrogation by a police officer not below the rank of Superintendent of Police is not tainted with any vice but is in strict conformity with the well-recognised and accepted aesthetic principles and fundamental fairness. It is pertinent to note that the said guidelines are found to have been incorporated in sub-section 2 to 6 of section 18 of the MCOC Act. It,*

*therefore, follows that confession of an accused recorded under section 18 (1) of the MCOC Act by a police officer not below the rank of Superintendent of Police is admissible in evidence, provided the same has been recorded in compliance with the guidelines incorporated in sub-section 2 to 6 of section 18. As observed in **Bharat Bhai vs. State of Gujarat (2002) 8 SCC 447**, it is for the prosecution to prove that the confessional statement which is being relied upon is voluntary, truthful and all safeguards were complied with while recording it. It was further held that if the confession is duly recorded and is proved to be voluntary and truthful, then it can be taken to be a most reliable piece of evidence coming from the accused himself and can be made the sole basis of conviction. It was alleged that a confession recorded under section 15 of TADA Act is substantive piece of evidence, which is admissible. These observations will apply with equal force to a confession recorded under section 18 of the MCOC Act. The court will have first to verify that there has been compliance of all the guidelines laid down in sub-section 2 to 6 of section 18 of the MCOC Act. (Sub-rules 1 to 8 of Rule 3 of MCOC Rules were discussed). It will thus be seen that all these rules are in the nature of procedural guidelines.*

1328. Formalities observed in recording confessions and the objections raised in the case were then discussed. Then the contents of the confessional statements of each of the six accused were reproduced and then following observations were made :-

Admissibility of confessions (XXXII)

91. Shri Gupte, the learned counsel for accused no. 7 pointed out that the learned trial Judge has started with the confessions of the

*accused and then proceeded to seek corroborative evidence in support of the same. According to Shri Gupte this approach of the learned trial Judge is totally erroneous as confessions cannot be made sole basis of conviction. Relying upon the decision in **Kashmirasingh vs State of Madhya Pradesh (A. I. R. 1952 S. C. 159)**, and **Harichran Kurmi vs State of Bihar (AIR 1965 S. C. 1184)**, Shri Gupte submitted that confessions cannot be made foundation for a conviction and can only be used in support of the other evidence. In the said cases, it was laid down that the proper way is first to marshal the evidence against and accused excluding the confession altogether from consideration and see whether if it is believed a conviction could safely be based on it. It was further held that the Judge may call in aid the confession and use it to lend assurance to the other evidence. The law regarding confessions appears to have undergone a considerable change since the above mentioned two decisions. In **S. N. Dube vs N.B. Bhoir 2000 Cr. L. J. 830**, the Supreme Court held that confession recorded under section 15 of TADA Act is substantive piece of evidence and it can be used against co-accused also if otherwise it is found to be admissible, voluntary and believable. The same view was taken by the Supreme Court in the case of **Jaywant Dattatraya vs. State of Maharashtra (2002 Cr. L. J, 226)** and **Jamil Ahmed vs State Rajasthan (2003 (2) Crimes-53 (S.C.)**, which were the cases under the TADA Act. In the latter case, it was held that if the confessional statement is properly recorded satisfying the mandatory provisions of section 15 of the TADA Act and the Rules made thereunder and if the same is found by the court as having been made voluntarily and truthful then the said confession is*

sufficient to base a conviction on the maker of it. It was, however, further observed that whether such confession requires corroboration or not, is a matter for the Court considering such confession on facts of each case.

92. Section 18(1) of MCOC Act makes it clear that a confession made by a person before a police officer not below the rank of Superintendent of Police shall be admissible in the trial of such persons or co-accused abettor or conspirator, provided they are charged and tried in the same case together with the accused. In **Kalpanath Rai vs State...1997 (8) S.C.C. 732**, a different view was taken in the context of confessions recorded under section 15 of the TADA Act and it was held that such a confession cannot be used as substantive piece of evidence against co-accused. It was further held that a confession made admissible under section 15 of the TADA Act can be used as against co-accused only in the same manner and subject to the conditions as stipulated by section 30 of the Evidence Act. This view was however, overruled by the larger bench of the Supreme Court in **State of Tamilnadu vs Nalini (AIR 1999 S.C. 2640)** and it was held that on the language of sub-section (1) of section 15 of the TADA Act, a confession of an accused is made admissible evidence as against all those tried jointly with him. It is implicit that the same can be considered against all those tried together. The court, however, observed that insofar as use of confession of an accused against a co-accused, is concerned, rule of prudence cautions the judicial discretion that it cannot be relied upon unless corroborated generally by other evidence on record. In **Lalsingh vs State of Gujarat 2001 IAD (1) Apex**

Decision (S. C.), 189, it was held that section 15 of the TADA Act is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate. The correct legal position is that a confession recorded under section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also. Similar view has been taken by the Supreme Court in the subsequent decision in **Ravinder Singh vs State of Maharashtra 2002 Cri. L. J. 2957**.

The above decisions apply to cases under the M. C. O. C. Act with equal force since the relevant provisions under the TADA Act and MCOC Act are *pari materia* the same. In short a confession recorded under the MCOC Act can very well be used as substantive evidence not only against the accused who makes it but also against the co-accused subject to the condition that they are tried together in the same case.

POST CONFESSION FORMALITIES (XXXIII)

94. Sub-section 3 of Section 18 of the MCOC Act *inter alia* requires the police officer recording the confession to certify in writing below the confession about his personal satisfaction of the voluntary character of such confession putting the date and time of the same. Rule 3 (6) of the MCOC Rules 1999 prescribes the form of certificate. (Format of certificate is reproduced).

95. It is true that none of these confessions bears a certificate of the concerned D. C. P. in the above terms. The confession of A-1 Ex P-188A states several questions were put to the accused No. 1 and he freely and voluntarily made the confession. It was given to understand that he was not bound to give confession and that any confession given

by him could be used as evidence against him. The confession of A4 Ex. P-149 collectively records the certificate to the effect that he was given to understand that he was not bound to make any confession and that if he does so, it may be used as evidence against him. The certificate further records that the confession was made voluntarily. The certificates given by D.C.P. Shinde P.W. 60 below the confession of A5 Ex.P-210, A6 Ex.P-212 and A7 Ex. P-216 are to the effect - "I m personally satisfied the above made confessions have been done voluntarily". The confession of A8 Ex. P-151 denotes that accused was explained that he was not bound to make confession and that if he does so, it may be used a evidence against him. The certificate further records the satisfaction of the D.C.P. Kadam that the confession was voluntarily made by the accused. It will thus be seen that the certificates below all the six confessions are not strictly in accordance with the form given in Rule 3 (6). In our opinion, the said rule is not mandatory but directory as having regard to sub-section 3 of Section 18 what is important to be certified is the personal satisfaction of the concerned police officer about the voluntary character of the confession recorded by him. Therefore, in our opinion, there has been substantial compliance of Rule 3 (6) so far as the certificates below the confessions are concerned. In the instant case, all the six confessions referred to above have been certified by the concerned D. C.P as being of voluntary character. Thus, there is compliance of the third condition contemplated by section 18(3).

96. Sub-section (4) requires the confession to be forwarded to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate

having jurisdiction over the area in which such confession has been recorded. The Magistrate who has received the confession is required to forward the same to the Special Court which may take cognizance of the offence. In the instant case, all the six confessions were sent to the Chief Metropolitan Magistrate who thereafter, forwarded the same to the Special Court under his separate letters. Sub-section 5 of Section 18 requires the person whose confession has been recorded, to be produced before the Chief Metropolitan Magistrate or Chief Judicial Magistrate alongwith the original statement or confession. Sub-section 6 requires such Magistrate to scrupulously record the statement, if any made by the accused so produced before him and obtain his signature thereon. In case of any complaint of torture, such Magistrate is required to direct production of the accused before a medical officer not lower in rank of an Assistant Civil Surgeon. In the instant case, all the 6 accused were produced before the Metropolitan Magistrate on the respective dates on which their confessions were recorded. The Chief Metropolitan Magistrate has also recorded the statements of the concerned accused and obtained their signature thereon. None of the six accused made any complaint of torture before the Chief Metropolitan Magistrate. Thereafter, the Chief Metropolitan Magistrate forwarded all the confessions to the Special Court alongwith his separate forwarding letter. It is necessary to point out that A4, A5, A6 and A7 retracted their confessions in their statements recorded by the Chief Metropolitan Magistrate. Thus, there has been formal compliance of the provisions of sub-section 5 and 6 of Rule 18. Shri Majid Memon, the learned counsel for A5 and A6 submitted before us that it was the

duty of the Chief Metropolitan Magistrate to open the sealed packets containing confessions of the accused and examine the same to ascertain that they really amounted to confessions. He further submitted that confession is not completed until the Magistrate certifies it to be voluntary. According to Shri Memon, sending of the accused and forwarding of confession to the Magistrate is not an empty formality and the Magistrate is not supposed to act like a mere postman. We have carefully considered this submissions of Shri Memon in the light of provisions of sub-section 18 and we are unable to accept the same. There is nothing in these two sub-sections which requires the Magistrate to question the accused in connection with his confession recorded by the police officer and to ascertain whether or not the same is voluntary. All that the Magistrate is supposed to do is to record a statement of concerned accused if any made by him and obtain his signatures thereon. In case of complaint of torture, Magistrate is required to send the accused to the medical officer. If the legislature had intended to give any such power to the Magistrate to verify the voluntariness or otherwise of the confession forwarded to him, then in our opinion, it would have certainly provided for the same in sub-section 6. In this connection learned SPP drew out attention to Rule 15(5) of the TADA Rules 1987 which enjoins that every confession recorded under section 15 or the TADA Act to be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and the Magistrate has to forward the recorded confession so received to the designated court which may take cognizance of the offence. It

will thus be seen that Rule 15 (5) of the TADA Rule is substantially similar to sub-section 6 of Section 18 of the MCOC Act. Ms. Salian relied upon the following decisions of the Supreme Court. In **Variyam Singh V/s. State of U. P. (1995) 6 Supreme Court Cases 458 and Jamil Ahmd. V/s. State of Rajasthan (Supra)**, it was held that Rule 15 of the TADA Rules is not mandatory but directory and that sending of confessional statement directly to the designated court was merely a procedural irregularity which did not vitiate the trial. In **State of Maharashtra V/s. Bharat Chaganlal 2001 (3) Crimes 234 Supreme Court**, it was held that Rule 15 of TADA Rules does not oblige the Magistrate either to open envelope containing confessional statement recorded by the police officer or to satisfy himself regarding voluntary nature of the confession. It was further held that the Magistrate at the most can recorded the statement of the accused if made regarding alleged harassment, torture or the like. It is true that unlike TADA Act, the requirement of sending confession alongwith the accused to the Chief Metropolitan Magistrate or Chief Judicial Magistrate is incorporated in the sub-section 5 and 6 of the Section 18 of the MCOC Act. However, that does not make much difference because the said requirements are matters of procedure. The purpose of making such provisions appears to be that the accused can at the earliest opportunity complain to the Magistrate that his confession was recorded under threat, inducement, etc., and he can also make a complaint of torture to him. The other purpose seems to be to get the recorded confession out of the hands of the police and forward the same to the Special Court forthwith so that there would not be any

change or interpolation made in the confession. Sub-section 6 of the Section 18 however, does not at all contemplate any verification of the confession as regards its voluntary nature or truth of contents by the Magistrate. It is for the Special Court to decide that question. For these reasons, we are unable to accept the submissions made by Shri Memon.

*As already stated A4, A5, A6 and A7 retracted their respective confessions immediately when they were produced before the Chief Metropolitan Magistrate. It was therefore, contended that the immediate retraction of confessions by these four accused is a clear indicator of their not being voluntary and therefore, they should not have been relied upon. Merely, because a confession is retracted it cannot be excluded from consideration. In **Pyarelal V/s State of Rajasthan AIR 1963 SC 1094**, the Supreme Court considered a case of retracted confession and held that retracted confession may form the legal basis of conviction if the court is satisfied that it was true and voluntary. It was however, indicated that the court shall not base conviction on such retracted confession without corroboration. The court indicated that it is not a rule of law but such course is followed by the rule of prudence. The same view has been followed in the **Variyam Sing's case (Supra)**. We, have earlier referred to certain Supreme Court decisions which lay down that conviction can be based solely upon the confession of the accused, but in view of the fact of retraction of confession by some of the accused, it would be advisable to insist on some corroborative evidence.*

1329. It is necessary to refer to the factual matrix of the case before the High Court. The date of the incident was 04/03/99. The

provisions of the MCOC Act were invoked in the crime on 26/03/99.

Accused No.	Date of Arrest	Date of confession
A1	13/03/99	10/04/99
A4	21/06/99	13/07/99
A5	18/06/99	26/07/99
A6	18/06/99	26/07/99
A7	15/06/99	05/08/99
A8	21/07/99	13/07/99

Confessions of these six accused were recorded by three DCPs.

DCP Parambir Singh, PW-51, recorded the confessional statement of the A1 on 10/04/99.

DCP Anant Shinde, PW-60, recorded the confessional statements of two accused, i.e., A5 and A6 on the same day, i.e., on 26/07/99. He also recorded the confessional statement of the A7 on 05/08/99.

DCP Kadam, PW-39, also recorded the confessional statements of two accused, i.e., the A4 and A8 on the same day, i.e., on 13/07/99.

1330. The trial court believed al the confessional statements, which was the mainstay of the prosecution case, and convicted the A1 and A4 to A8 and acquitted the A2 and A3. The High Court did not believe the confessional statements of A5 and A6 as their preliminary statements (Part-I) were not forthcoming and DCP Shinde, PW-60, in his evidence stated that he had sent them to the investigating officer, ACP Sawant, PW-61, who did not say so. It was held that therefore there was a failure on the part of the DCP who

recorded the preliminary statement. Therefore the confessional statements were found to be vitiated for want of compliance of mandatory provisions of sections 18(3) and 3(iii) of the Rules. The confessions of the co-accused were also not used against the A5 and A6 because the questions in respect of those confessions were not put to them under section 313 of the Cr. P. C. The Supreme Court believed the confessional statements of the A5 and A6 holding that the typist, who typed the preliminary statements, was examined and she stated about typing them, and secondly, the provisions of section 313 of the Cr. P. C. are not attracted in view of the non-obstante clause in section 18 (3) which precludes the application of the Cr. P. C. and therefore held that the evidence of the co-accused is admissible as a piece of substantive evidence. It therefore convicted the A1, A5 and A6 who had been acquitted by the High Court while maintaining the convictions of the other accused.

1331. Similar type of objections were raised before the High Court as are raised in this case and it will not be out of place to refer to them briefly as they would cover most of the objections raised in the present case. It was observed that there is a common set of questions asked to each of the six accused and, this is important, there are only three questions, viz., (i) whether the police had assaulted the accused, (ii) whether the police or any other person had threatened the accused by giving an inducement to make the confession, and, (iii) whether the police or any other person had given any promise to the accused that on his making the confession, he would be released or he would get a lesser punishment or that he

would be made a witness. It was observed from the evidence of the DCPs that they had made it clear to the accused that it was not necessary or compulsory for them to make a confession, that the accused were also given to understand that in case of making any confession, same could be used against them as evidence, that after recording the answers of the accused to these preliminary questions, they were given not less than 24 hours time for retraction and given to understand that they were being kept in a lock-up other than that of the investigating machinery, so that the police officer who arrested them or who were investigating the case would not be in a position to pressurize them. On going through the questions and answers put to each of the six accused, it was observed that all the statements were signed by all respective accused and the High Court held that it was satisfied that on the whole, the questions put to the accused were sufficient to ascertain their willingness to make the confession.

1332. On going through the evidence of the three DCPs, it was observed that same questions as were put on the date on which the accused were produced them before the first time, i.e., only three questions, were again put to them when they were produced before the DCP after the time of retraction was over in order to ascertain whether they still wanted to make the confessions. It was observed that more or less the questions put to each accused are the same though in respect of some of the accused the number of questions defers. It was also found that the concerned officer had first ascertained whether the time of reflection given to the respective

accused was found to be sufficient by them or they wanted further time to think over the matter, but each of the accused told that the time given for retraction was sufficient and he did not want any more time for that purpose. It was observed that each of the accused was then asked some questions about threatening or intimidating by the police or promise or inducement to make the confessional statement and whether he was making it on his free will or under the pressure of someone and each accused was given to understand and that there were no compulsion on him to make the statement.

1333. It was observed that it is only upon consideration of the answers given by the accused that the three DCPs felt satisfied about the voluntariness of the accused to make their statements, therefore, they proceeded to record them, that the questions put to the accused on both occasions were in Hindi, their answers were also given in Hindi and their statements were also recorded in Hindi and the DCP as well as the accused signed at the end of the confessional statement and below that the concerned DCP certified that they had ascertained that the accused had given the confessions freely and voluntarily. It was observed that after recording the confessions of the accused, they were forwarded to the CMM of Mumbai.

1334. The first contention or objection in respect of all the six confessions was that none of them is recorded under free atmosphere. It was held that the MCOC Act does not define or explain as to what is meant by 'free atmosphere' and it was explained that the atmosphere is free when the person giving a confessional statement is neither forced nor compelled to make it or

misled under some promise or inducement to make it or threatened or intimidated to make it. It was observed that the confessional statement does not become involuntary or it cannot be said not to have been recorded in a free atmosphere merely because it has been recorded by a police officer. For this purpose, the police officer is required to certify about his personal satisfaction of the voluntary character of such confessions which is to be based upon the preliminary questions which he puts to the accused and the answers given to them by the accused. In the case before it, it was observed that in order to ensure free atmosphere, the DCP did not send the accused back to the custody of the investigating machinery after giving the accused time for reflection, but were sent to the lock-up of different police stations. Therefore, the contention/objection by the learned advocate for the accused was not accepted.

1335. The second contention/objection by the learned advocates for the accused was that none of the accused was asked the most pertinent questions, viz., as to why he was making the confession. It was observed that this fact was apparent from the questions and after discussing what a confession is, viz., that it is an admission of guilt by the accused, it is against his own interest, which normally no person would like to do, because there is an inherent reluctance to disclose one's own misdeeds to protect one's own interest, however, in certain cases this reluctancy disappears when there is profound repentance on the part of the accused for the act which he had done and therefore the question, viz., why the accused wants to make a confession becomes relevant in order to ascertain whether it

was because of repentance or otherwise that he has decided to make a confession. The High Court found much substance in the submissions of the learned advocate for the accused, however, it questioned as to whether failure on the part of the police officer to put such a specific question to the accused is fatal and whether it makes the confession involuntary. It was observed that paragraph 18 of the Chapter-I of the Criminal Manual issued by the High Court contains some guidelines given to the magistrate to record the confessions and the guidelines incorporate model questions supposed to be asked to the accused and one of such questions to be asked to the accused is 'why are you making a confession?' The decision in **S. N. Dubey V. N. B. Bhoir (2000) Cri.L.J. 830**, which was relied upon by learned SPP Mrs. Salian was considered observing that the Supreme Court referred to section 15 of the TADA Act and pointed out that the police officer recording the confessional statement under section 15 is really not bound to follow any other procedure and that the rules and guidelines framed by the Bombay High Court for recording the confession by the magistrate under section 164 of the Cr. P. C., do not by themselves apply to recording of confession under section 15 of the TADA Act. It was further held by the Supreme Court that merely because some of those guidelines were not followed while recording the confessions, it cannot for that reason, be held that the said confession have lost their evidential value. It was held by the High Court that it is bound by the observations made by the Supreme Court.

1336. The third objection before the High Court was that DCP

Parambir Singh, PW-51, who recorded the confession of the A1, was interested in the investigation and he was supervising it and on facts it was found that the admissions given by the DCP created a doubt about the voluntary nature of the confession of the A1.

1337. The fourth objection raised by the defence related to non-compliance of sub-section (3) of section 18, which requires the police officer recording the confession to explain to the accused that he is not bound to make the confession and that if he does so it may be used as evidence against him and this mandatory question was not put to some of the accused, therefore, their confessions cannot be recorded as voluntary. On going through the evidence it was held in paragraph 82, that from the above examination, it is seen that the specific warning contemplated by section 18(3) of the MCOC Act was given to four out of the six accused when they were produced before the concerned DCP for the first time, however it was not repeated on the second time, when they were again produced before the DCP. It was held that there is substantial compliance of the provisions of section 18(3) and it is not that the accused were not at all given to understand that they were not bound to give a confession, etc.

1338. Thereafter, the contents of the confessional statement of each accused were reproduced and then the observations from paragraph 91 onwards reproduced earlier were made.

1339. The Supreme Court confirmed the findings of the High Court about absence of certificate as per Rule 15 of the MCOC Rules and held on perusing the confessional statements that they

substantially comply with the requirement of section 18 of the MCOC Act read with the Rules. Referring to the law laid down in the case of **State V. Nalini ((1999) 5 SCC 253)**, it observed that it was held by the same court in the context of section 15 of the TADA Act, which is *pari materia* to section 18 of the MCOC Act, that evidence of the co-accused is admissible as a piece of substantial evidence and in view of the non-obstante clause, the Cr. P. C. will not apply. Observations in paragraph 416 in Nalini's case were reproduced, viz., *'the term 'admissible' under section 15 has to be given a meaning. When it says that confession is admissible against a co-accused, it can only mean that it is substantive evidence against him as well as the maker of the confession'*. The observations in the case of Jayawant Dattatray V. State of Maharashtra ((2001) 10 SCC 109) in paragraph 60 were also reproduced :-

'Confessional statement before the police officer under Section 15 of the TADA is substantive evidence and it can be relied upon in the trial of such person or co-accused, abettor or conspirator for an offence punishable under the Act or the Rules. The police officer before recording the confession has to observe the requirement of Sub-section (2) of Section 15. Irregularities here and there would not make such confessional statement inadmissible in evidence. If the legislature in its wisdom has provided after considering the situation prevailing in the society that such confessional statement can be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under duress or was not recorded truly by the officer concerned in

whom faith is reposed. It is true that there may be some cases where the power is misused by the authority concerned. But such contention can be raised in almost all cases and it would be for the court to decide to what extent the said statement is to be used. Ideal goal may be: confessional statement is made by the accused as repentance for his crime but for achieving such ideal goal, there must be altogether different atmosphere in the society. Hence, unless a foolproof method is evolved by the society or such atmosphere is created, there is no alternative, but to implement the law as it is'.

Factual Position :-

1340. On the background of the above legal position, the factual position emerging from the record and the evidence given by the prosecution in respect of recording of confessional statement of the accused is necessary to be considered for appreciating the allegations of torture, etc., prior to the recording of the confessional statement and during the confessional statement and, the factum of retraction of confessional statements made by all the accused whose confessional statements were recorded.

The provisions of the MCOC Act were invoked on 24/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station and ACP Patil, PW-186,, was appointed as the investigating officer of that crime.

The evidence about recording of the confessional statement of each accused will have to be considered independently.

1341. Factual position regarding A1 :-

- A1 was arrested on 20/07/06 in C. R. No. 77 of 2006 of

Mumbai Central Railway Police Station.

- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.
- He had engaged learned advocate Shakil Ahmed on 14/08/06 in Remand Application No. 229/06, Ext. 4490.
- His advocate was present on 11/09/06 in Remand Application No. 264/06, Ext. 4474.
- His advocate M. H. Bhandarkar has filed application on 25/09/06 in Remand Application No. 264/06 for meeting relatives.
- His advocate Shakil Ahmed has filed application on 07/09/06 in Remand Application No. 228/06 for medical examination.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 25/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 25/09/06 in Remand Application No. 60/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- Though he was represented by advocate Shakil Ahmed since 14/08/06 in Remand Application No. 229/06, Ext. 4490, his

advocate was not present on 25/09/06.

- He did not make any complaint of assault against the police on that day, i.e., on 25/09/06.
- He was medically examined on 29/09/06 and 01/10/06 in the KEM Hospital and had no complaint and no external injuries as per the OPD case paper Ext. 2151 proved by Dr. Gond, PW-182.
- His advocate Farhana Shah filed applications on 30/09/06 in Remand Application No. 264/06 for medical check-up and meeting relatives.

Process of recording the confessional statement :-

- He was taken to the DCP on 03/10/06 for recording his confessional statement.
- He was medically examined at 5.45 p.m. on 03/10/06 at Bhabha Hospital, where he was taken by PI Gaikwad, PW-116, of Bandra Police Station, after he was given in his custody by the DCP. He had no complaint and no external injuries as per true photocopy of the OPD register Ext. 2197 proved by Dr. Yelkar, PW-183.
- He was produced at 1.15 p.m. on 05/10/06 before the CMM.
- He did not make any complaint to the CMM against the police of torture to obtain his confessional statement. In his statement Ext. 1204 recorded by the CMM, he admitted entire Part-I, Ext. 1180, and most of the contents of Part-II of the confessional statement Ext. 1181, except those related to this crime, however he admitted his signatures on both parts of his confessional statement and did not make any grievance about recording of his confessional

statement and did not allege that his signatures were taken on 25-30 blank papers.

After the confessional statement :-

- He was medically examined on 06/10/06 at KEM Hospital, after he was handed over to the ATS again. Ext. 2151 is the OPD case paper of that hospital proved by Dr. Gond, PW-182, which shows and as is also deposed by him, that the accused had no complaint. He was also similarly examined on 08/10/06 by the same medical officer and similar findings were noted.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by learned advocate A. A. Siddiqui on this date. He submitted orally to the court that his confessional statement was recorded under pressure and it is not voluntary.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate A. A. Siddiqui on this date.
- He did not make any retraction of his confessional

statement and did not make any grievance or allege anything about it when he was produced on 03/11/06 from JC in Remand Application No. 78/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate A. A. Siddiqui on this date. He was allowed to meet his family members on the application by his advocate.

Retraction :-

- A1 filed Ext. A dtd. 02/11/06 in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 23/11/06. He was represented by learned advocate A. A. Siddiqui. In Ext. A he alleged torture during PC. He also alleged that on 02/10/06 ACP Shaikh, PW-162, who had taken him to the DCP, had threatened and pressurized him by telling him to keep quiet and to say yes and that DCP Choubey, PW-113, took his signature on 25-30 blank pages without his consent.
- No suggestion on these lines was given to both the above witnesses in their cross-examination. Though, the accused had submitted orally to the court on 09/10/06 in Remand Application No. 67/06 that his confessional statement was recorded under pressure and it is not voluntary, he had not stated so before the CMM on 05/10/06 though the CMM had recorded his statement. Thereafter, he did not say anything on the subsequent two dates of

production from JC, i.e., on 20/10/06 and 03/11/06.

1342. Factual position regarding A2 :-

- A2 was arrested on 23/07/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.
- He had engaged advocate Solkar on 17/08/06 in Remand Application No. 229/06, Ext. 4492 and in Remand Application No. 243/06. His advocate had filed an application for legal interview and meeting relatives.
- He had engaged advocate Solkar on 31/08/06 in Remand Application No. 251/06.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 25/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 25/09/06 in Remand Application No. 60/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- Though he was represented by advocate Solkar since 17/08/06 in Remand Application No. 229/06, Ext. 4492, his

advocate was not present on this date.

- He did not make any complaint of assault against the police on that day, i.e., on 25/09/06.
- His father and brother had filed an application on 30/09/06 for legal interview and meeting relatives.
- He was medically examined on 26/09/06, 01/10/06 and on 03/10/06 at 11.50 a.m. at KEM Hospital and had no complaints and no external injuries as per the OPD case paper Ext. 2176 proved by Dr. Gond, PW-182.
- His advocate Amin Solkar had filed Bail Application No. 123/06 on 03/10/06.

Process of recording the confessional statement :-

- He was taken to the DCP on 04/10/06 for recording his confessional statement.
- He was medically examined at 10.30 p.m. on 05/10/06 at GT Hospital, where he was taken by PSI Gangurde, PW-105, of Azad Maidan Police Station, after he was given in his custody by the DCP. He had no complaints and no external injuries as per true photocopy of the OPD register Ext. 2197 proved by Dr. Yelkar, PW-183.
- He was produced at 4.55 p.m. on 06/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter, Ext. 1028, sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 07/10/06 at KEM Hospital, after he was handed over to it. Ext. 2176 is the OPD

case paper proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer, that he had no complaints. He was similarly examined on 09/10/06 by the same medical officer and similar findings were noted.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by advocate Khaliphe h/f advocate Amin Solkar on this date. He submitted orally to the court that police showed him a part of his confession which is totally wrong, that he has signed confessional statement under fear and that he denied the confessional statement before the magistrate S. S. Shrike, who did not obtain his signature.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate Khaliphe h/f advocate Amin Solkar on this date.

Retraction :-

- A2 filed Ext. 4028 in Remand Application No. 78/06 when he was produced from JC on 03/11/06 before this court presided over

by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Amin Solkar. By Ext.4028 he alleged torture during first police custody remand for taking signatures on blank papers. He stated that ACP Khandekar, PW-174, took him to SP Mohite, PW-102, on 04/10/06 and alleged that ACP Khandekar, PW-174, warned him not to speak more and to make signatures quietly. He alleged that on the next day ATS officers harassed him, insisted and pressurized him to sign, without his knowledge and will, and threatened that if he does not sign, they would drag his mother, sisters, wife, brother and father in the case. He alleged that SP Mohite, PW-102, continuously harassed and tortured him mentally and physically and therefore he signed under pressure. He stated that when he was produced before CMM Shri S. S. Shirke, he refused having given the confession.

- No suggestion is given to SP Mohite, PW-102, on the above lines. The CMM's letter Ext. 1028 specifically mentions unwillingness of the accused to give any statement and he not complaining of ill-treatment at the hands of the police. Suggestions on the line of the above allegations were given to ACP Khandekar, PW-174, in his cross-examination, which of course he denied. In his oral evidence as DW-41, A2 stated that ACP Patil, PW-186, ACP Khandekar, PW-174, and other officers had threatened him not to say anything before the judge or they would take his PC and torture him again, that he retracted his confessional statement before the judge and told her that he had retracted it before the magistrate

also, that he had not taken his signature anywhere and that he had signed the confessional statement because of pressure and force and not voluntary. No suggestions on the above lines were given to ACP Patil, PW-186, or ACP Khandekar, PW-174, during their cross-examination.

1343. Factual position regarding A3 :-

- A3 was arrested on 27/07/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.
- He had engaged advocate Shahid Azmi on 13/09/06 in Remand Application No. 229/06, Ext. 4504 and in Remand Application No. 243/06. His advocate had filed an application on 14/09/06 for legal interview and meeting relatives.
- His advocate Renu Bhatt had filed vakalatnama and application on 18/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives. He had engaged advocate Shahid Azmi on 18/09/06 in Remand Application No. 243/06.
- His advocate Renu Bhatt had filed application on 25/09/06 in Remand Application No.204/06 for meeting relatives.
- His advocate Niranjana Mogre had filed application on 30/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was

produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 28/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 28/09/06 in Remand Application No. 61/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- He was represented by advocate Shahid Azmi on that day, i.e., on 28/09/06.
- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 28/09/06.
- He was medically examined on 28/09/06, 30/09/06 and on 02/10/06 in the KEM Hospital and had no complaints as per the OPD case paper Ext. 2188 and Ext. 2186 proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 03/10/06 for recording his confessional statement.
- (i) He was medically examined at 08.10 p.m. on 03/10/06 at GT Hospital, where he was taken by API Dasurkar, PW-101, of Azad Maidan Police Station, after he was given in his custody by the DCP. He had no physical complaint and no external injuries as per OPD case paper Ext. 1006 proved by Dr. Helaskar, PW-170.
(ii) He was medically examined on 05/10/06 at GT Hospital.

He had no complaints as per OPD case paper Ext. 1007.

- He was produced at 12.45 p.m. on 07/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 1222 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 09/10/06 at KEM Hospital, after he was handed over to it. Ext. 2189 is the true photocopy of the casualty register of that hospital proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer, that the accused had no complaints.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by advocate Shahid Azmi on this date. He submitted orally to the court that his confessional statement is recorded under pressure, that his signatures were obtained on blank sheets, that he has not signed in the presence of the magistrate, but he signed it afterwards and does not know what was written in the statement.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor

judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date.

- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 03/11/06 from JC in Remand Application No. 78/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date. He was allowed to meet his family members on the application by his advocate.

Retraction :-

- A3 filed Ext. C dtd. 09/11/06 signed by him and his advocate Shahid Azmi in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 23/11/06. He was represented by advocate Shahid Azmi on this date. In Ext. C he alleged about being beaten by Raghuvanshi, CP Roy, PW-185, Jaijeet Singh, Inspector Salaskar and other police officers, his father also being detained and humiliated and torture and he being made to sign on blank papers. When these things took place is not mentioned by him. In respect of confession, he only alleged that he refused to confess before the DCP as he is innocent,

that he was forcibly made to sign several typewritten/computer printouts by one officer, that DCP took his signatures on several handwritten papers under duress and coercion and he was merely produced before the magistrate who did not verify from him.

- No suggestion on these lines was given to Addl. CP Brijesh Singh, PW-117. A3 did not give any oral evidence.

1344. Factual position regarding A4 :-

- A4 was arrested on 12/08/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 28/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 28/09/06 in Remand Application No. 61/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- He had not engaged any advocate till then.
- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 28/09/06.

- He was medically examined on 28/09/06, 30/09/06, 02/10/06 and 04/10/06 in the KEM Hospital and had no complaint and no external injuries as per the OPD case papers Exts. 2212 and 2214 proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 06/10/06 for recording his confessional statement.
- He was medically examined at 1.45 p.m. on 06/10/06 at LTMG Hospital, where he was taken by API Randive, PW-106, of Matunga Police Station, after he was given in his custody by the DCP. There were no visible marks of injuries as per the true photocopy of casualty register Ext. 1825 and carbon copy Ext. 1826 proved by Dr. Singal, PW-171.
- He was produced at 3.30 p.m. on 07/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 1064 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 09/10/06 at KEM Hospital, after he was handed over to it. Ext. 2215 is the true photocopy of the casualty register of that hospital proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer, that the accused had no complaints.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my

learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by advocate Khaliphe h/f advocate Amin Solkar on this date. He submitted orally to the court that one portion of his confessional statement is totally wrong.

- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate Siddiqui h/f advocate Amin Solkar on this date.

Retraction :-

- A4 filed Ext. 3798 dtd. 03/11/06 in Remand Application No. 78/06 when he was produced from JC on 03/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Amin Solkar. In Ext. 3798 he alleged torture during PC before and after narco analysis test and thereafter being threatened that his mother and sister would be brought there and raped and his father and brothers would be involved in the blast case if he does not sign on a paper when he is taken to another officer. He alleged that PI Tajne, PW-161, and API Deore, PW-180, were present in the office of SP Karale, PW-104, that he was given the papers of

confession for reading on his request, but the papers were snatched from him when he had read one page and was told to sign quietly, which he did. He alleged that from there he was taken to a magistrate near Azad Maidan and *en-route* API Deore, PW-180, threatened him not to say anything before the Magistrate, or else they would complete the threat given to him earlier and that API Deore, PW-180 was present when he was produced before the Magistrate, who only saw his face and asked him his date of arrest. He alleged that thereafter he was put in Bhoiwada lock-up, that on 4th and 5th October (sic) DCP Bajaj, PI Mandge met him and told him not to retract his confessional statement on 9th October (sic) when he would be produced before Bhatkar Madam or else they would take his police custody and arrest his family members. He submits that even then he retracted his confessional statement when he was produced before my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) on 09/10/06.

- There are no suggestions either to Sr. PI Tajne, PW-161, or API Deore, PW-180, in their cross-examination on the lines of the above allegations.
- In his oral evidence as DW-38, A4 stated that DCP Bajaj told him not to say anything when he goes to court and if he said anything, they would involve his father and brothers, that on being produced before Judge Bhatkar madam on 09/10/06 and on she asking him whether he wanted to say anything, he told her that his signatures are taken on some papers in which false things were

written.

1345. Factual position regarding A5 :-

Arrest under the MCOC Act :-

- A5 was arrested on 29/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 29/09/06 in Remand Application No. 62/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 13/10/06.
- He was not represented by any advocate on that day, i.e., on 29/09/06.
- He did not make any complaint of ill-treatment against the police on that day, i.e., on 29/09/06.
- He was medically examined on 29/09/06 and 01/10/06 in the KEM Hospital and had no complaints and no external injury as per the OPD case paper Exts. 2216 and 2217 proved by Dr. Gond, PW-182.
- He was produced on 13/10/06 in Remand Application No. 68/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 26/10/06. He was represented by learned advocate Shahid Azmi @ Mohd. Hashim on that day. He was allowed to have legal interview with advocates and allowed to meet family members.
- He did not make any complaint of ill-treatment or torture

against the police on that day, i.e., on 13/10/06.

- He was medically examined on 14/10/06 in KEM Hospital as per true photocopy of casualty register Ext.2218, proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 24/10/06 for recording his confessional statement.
- He was medically examined at 10.25 a.m. on 25/10/06 at GT Hospital, where he was taken by PSI Powar, PW-94, of Mahim Police Station, after he was given in his custody by the DCP. He did not complain of assault or trauma and had no external injuries, fresh or old as per true photocopy of the MLC book Ext. 2196, proved by Dr. Yelkar, PW-183.
- He was produced on 25/10/06 before the incharge CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext.2812 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 28/10/06 at KEM Hospital, after he was handed over to it. Ext. 2217 is the OPD case paper proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer that the accused had no complaints and no external injuries.

After being remanded to JC :-

- He was produced on 26/10/06 in Remand Application No. 77/06 before this court, presided over by my learned predecessor

judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 09/11/06. He was represented by advocate Hashmi on that day. He prayed for legal interview and meeting with relatives. Thereafter, one advocate Asif Kittekar submitted to the court that when he went to obtain signature of accused, they told him that they want to say something to the court. My learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) called the escort officials and they informed that they did not hear any conversation between the accused and advocate Kittekar. She caused the accused to be produced again before her, whereupon he submitted that his confessional statement was recorded yesterday by DCP Sanjay Mohite, who did not show it to him. This is totally wrong because it is DCP Phadtare, PW-93, who recorded his confessional statement.

Retraction :-

- A5 filed Ext. 4142 dtd. 09/11/06 signed by him and his advocate Shahid Azmi in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 23/11/06. He was represented by advocate Shahid Azmi alongwith Mohammed Hashim on this date. In Ext. 4142 he alleged that he was picked up on 28/10/06 (which is wrong). He alleges physical and mental torture during PC and threats not to say anything to the court. He alleges that he was threatened that if he did not comply with their advise to confess, he will be further

tortured, that his wife and women relatives will be humiliated, that PI Alaknure, PW-153, used to tell him that he will sell his two months old daughter to some beggar and under such threats he was taken to DCP on 23/10/06 (which is wrong) and told to confess whatever Jaijeet Singh had told him and his signature was obtained on some blank papers and on 25/10/06 he was made to sign on blank papers again. He alleged that he was taken to a magistrate in Kurla, who did not ask him anything and turned him away saying that everything is alright, but he did not say anything to him due to fear.

- No suggestions on the above lines are given to PI Alaknure, PW-153, or DCP Phadtare, PW-93.
- In his oral evidence as DW-43, A5 stated that before he was produced on 26/10/06 before this court, PI Alaknure, PW-153, and constables had threatened him in the vehicle not to tell anything to the court, that his mental and physical condition was bad and as a constable stood behind him repeatedly telling him not to tell anything to the court, therefore, he could not say anything to the court. There is no suggestion to PI Alaknure, PW-153 on the above lines.

1346. Factual position regarding A6 :-

Arrest under the MCOC Act :-

- A6 was arrested on 29/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 29/09/06 in Remand Application No.

62/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 13/10/06.

- He was not represented by any advocate on that day, i.e., on 29/09/06.
- He did not make any complaint of ill-treatment against the police on that day, i.e., on 29/09/06.
- He was medically examined on 29/09/06, 1st, 5th, 7th, 9th and 11/10/06 in the KEM Hospital and had no complaints and no external injury as per the OPD case paper Exts. 2219 and 2220 proved by Dr. Gond, PW-182. On 03/10/06 he complained of pain in left scapular region since 15 years, but there was no history of trauma, TB or external injury as per the OPD case paper Ext.2220 and as deposed by Dr. Gond, PW-182.
- He was produced on 13/10/06 in Remand Application No. 68/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 26/10/06. He was represented by advocate Anjali Iyer on that day. He was allowed to have legal interview with advocates and allowed to meet family members.
- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 13/10/06.
- He was medically examined on 14th, 16th, 19th and 20/10/06 in KEM Hospital as per the OPD case papers and true photocopy of casualty register Exts. 2227 to 2231 proved by Dr. Gond, PW-182.

He had a complaint of loose stools ten times since the day before complaint of giddiness on 19/10/06, fasting since morning-roja, x-ray of chest suggesting of old fracture, right rib-cage.

Process of recording the confessional statement :-

- He was taken to the DCP on 24/10/06 for recording his confessional statement.
- He was produced on 25/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext.2812 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 26/10/06 at KEM Hospital, after he was handed over to it. Ext. 2220 is the OPD case paper proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer that the accused had no complaints and no external injuries.

After being remanded to JC :-

- He did not make any retraction of his confessional statement and did not make any grievance about it when he was produced on 26/10/06 in Remand Application No. 77/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upot 09/11/06. He was represented by advocate Ms. Anjali Iyer on that day.

Retraction :-

- Advocate of A6 filed Ext. F on 09/11/06, on which the A6

signed on 23/11/06. A6 filed Ext. F1 dated 09/11/06 on 09/11/06 in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upto 23/11/06. He was represented by advocate Anjali Iyer on this day. He alleged assault and beating by police officers during PC, threats of false implication in Malegaon Bomb Blast Case and allurement. He alleged similar threatening if he does not sign on confessional statement, that he will remain in prison for a long time and if he co-operates he would be released in 1½ months. He alleged that SP Karale, PW-104, just asked him his name and address and told him that his statement will be sent. He was not allowed to read though he requested. He alleged that his signatures were forcibly taken on the confessional statement, the contents of which he does not know. He alleged that he was threatened as above by Sr. PI Tajne, PW-161, PI Khanvilkar, PW-168 and other officers not to state anything before the court on 26/10/06, but he was send for medical examination on the directions of this court. Application Ext. F was filed by his advocate who endorsed on the last page that the accused was taken back to the prison, therefore, his signature could not be taken to sought permission to take it on the next remand date.

- No suggestion on the above lines are given to the DCP or the police witnesses. A6 has not stated in these applications that his signatures were taken on the confessional statement. However, he has not denied his signatures at the trial.

- In his oral evidence as DW-42, A6 stated that he did not say anything before Judge Mridula Bhatkar on 26/10/06 because of the threats given by Raghuvanshi and CP Roy, PW-185, that he should not say anything in the court on that day and if he says that they had beaten him and taken his confessional statement, they would involve him in the Malegaon case and his family members in this case. No such suggestion is given to CP Roy, PW-185.

1347. Factual position regarding A7 :-

Arrest under the MCOC Act :-

- A7 was arrested on 29/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 29/09/06 in Remand Application No. 62/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 13/10/06.
- He was not represented by any advocate on that day, i.e., on 29/09/06.
- He did not make any complaint of ill-treatment against the police on that day, i.e., on 29/09/06.
- He was medically examined on 29/09/06, 1st, 3rd, 5th, 9th, 11th and 13/10/06 in the KEM Hospital and had no complaints and no external injury as per the OPD case paper Exts. 2219 and 2220 proved by Dr. Gond, PW-182.
- He was produced on 13/10/06 in Remand Application No. 68/06 before this court, presided over by my learned predecessor

judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 26/10/06. He was represented by advocates A. K. Usmani and Shabana Shah on that day. He was allowed to have legal interview with advocates and allowed to meet family members.

- He did not make any complaint of ill-treatment or torture against police on that day, i.e., on 13/10/06.
- He was medically examined on 15th, 18th, 20th, 21st and 23/10/06 in KEM Hospital and had no complaints as per the OPD case papers and true photocopy of casualty register Exts. 2239 to 2241 proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 24/10/06 for recording his confessional statement.
- He was produced on 25/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 1043 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 26/10/06 at KEM Hospital, after he was handed over to it. Ext. 2241 is the OPD case paper proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer that the accused had no complaints and no external injuries.

After being remanded to JC :-

- He did not make any retraction of his confessional statement

and did not make any grievance about it when he was produced on 25/10/06 in M. A. No. 302/06 filed by his mother, before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and stated that he does not have any complaint against the police.

- He did not make any retraction of his confessional statement and did not make any grievance about it when he was produced on 26/10/06 in Remand Application No. 77/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upto 09/11/06. He was represented by advocate Amin Solkar on this day.

Retraction :-

- A7 filed Ext. 4199 dtd. 09/11/06 in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upto 23/11/06. He was represented by advocate Sarpande h/f Amin Solkar on this day. He alleged that Jt. CP Raghuvanshi, PI Khanvilkar, PW-168, Sr. PI Tajne, PW-161, PI Sachin Kadam and other 8-10 officers had obtained his signatures on blank papers, that he was taken to his home for alleged recovery of sim card, whether(sic) his mother observed the injury marks on his body and applied for producing him and doing his medical examination, which subsequently proved that he had around 8 contusions and 2 healing ulcers on his buttocks. He submits that he could not say

anything on 25th and 26/10/06 about the cause of the injuries, because he was under constant threat of the police that they will again beat him. He alleged that the injuries were sustained because of police violence and torture in custody for confessing the offence, which he did not do. He stated that on 24/10/06 he was taken before SP Mohite, PW-102, who asked him whether he is giving the statement *sou-motu*. He alleges that he has threatened by ACP Khandekar, PW-174. He alleges that on 25/10/06 he was taken to SP Mohite, PW-102, who gave him already prepared statement and took his signature without allowing him to read it. He submits that he was taken to some magistrate in Kurla, where he did not sign anything.

- No suggestions on the above lines were given to ACP Khandekar, PW-174.
- In his oral evidence as DW-46, A7 stated about producing him before this court on 25/10/06 and the ATS officers PI Agrawal, PW-173, and ACP Khandekar, PW-174, staring at him and when Madam Bhatkar asked him whether he was being beaten, he said no to her because of the threats of the ATS officers and their fear. He could have complained immediately on the next day, i.e., on 26/10/06, when he was produced in Remand Application No. 77/06.

1348. Factual position regarding A9 :-

- A9 was arrested on 27/07/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the

bomb blasts upto and even after his confessional statement was recorded.

- He had engaged advocate Shahid Azmi on 13/09/06 in Remand Application No. 229/06, Ext. 4504 and in Remand Application No.243/06. His advocate had filed an application on 14/09/06 for legal interview and meeting relatives.
- His advocate Renu Bhatt had filed an application on 18/09/06 in Remand Application No. 264/06 for meeting relatives. He had engaged advocate Shahid Azmi in Remand Application No. 243/06 on 18/09/06.
- His advocate Renu Bhatt had filed vakalatnama and application on 18/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives.
- His advocate Niranjana Mogre had filed application on 30/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 30/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 30/09/06 in Remand Application No. 65/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High

Court) and remanded to PC upto 09/10/06.

- Though, he was represented by advocate since 13/09/06 in Remand Application No. 229/06 Ext. 4504, his advocate was not present on this date.
- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 30/09/06.
- He was medically examined on 30/09/06, 02/10/06 and 04/10/06 in the KEM Hospital and had no complaints and external injuries as per the OPD case papers Exts. 2279 and 2275 proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 04/10/06 for recording his confessional statement.
- He was produced at 1.40 p.m. on 06/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 2810 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 06/10/06 and 08/10/06 at KEM Hospital, after he was handed over to it. Ext. 2275 is the true photocopy of the casualty register of that hospital proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer, that the accused had no complaints.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my

learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date. He submitted orally to the court that he signed confessional statement under pressure and fear and that before confession, he had asked for legal interview.

- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 03/11/06 from JC in Remand Application No. 78/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date. He was allowed to meet his family members on the application by his advocate.

Retraction :-

- A9 filed Ext. 4263 dtd. 02/11/06 signed by him and his advocate Shahid Azmi in Remand Application No. 84/06 when he

was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 23/11/06. In Ext. 4263 he alleged that he was tortured during PC, that on 04/10/06 ACP Joshi, PW-163, informed him that he would be sent to DCP of another Zone and he has to sign on whatever papers are given, that DCP, Zone-V took his signature when he was produced before him on that day as well as on the next day, without letting him read, that he was taken in front of Magistrate and he denied the confession, but he did not pay heed and took his signature, without letting him to read.

- There are no suggestions on the above lines to ACP Joshi, PW-163, and DCP Phadtare, PW-93, and the CMM's letter Ext. 2810 though contains his signature, the CMM has informed that he did not want to make any statement and refused to make it and had no complaint of ill-treatment against the police.
- In his oral evidence as DW-47, A9 did not say anything about his complaint to the court on 09/10/06.

1349. Factual position regarding A10 :-

- A10 was arrested on 25/07/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.
- He had engaged advocate Ms. Farhana Shah on 08/09/06 in Remand Application No. 229/06, Ext. 4501.

- He had engaged advocate Shahid Azmi on 14/09/06 in Remand Application No. 228/06, Ext. 4505.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 30/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 30/09/06 in Remand Application No. 65/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- He had engaged advocate Ms. Farhana Shah on 08/09/06 in Remand Application No. 229/06, Ext. 4501, but she was not present on that day, i.e., on 30/09/06.
- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 30/09/06.
- He was medically examined on 30/09/06, 02/10/06 and 04/10/06 in the KEM Hospital and had no complaints as per the OPD case paper Ext. 2302, proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 05/10/06 for recording his confessional statement.
- He was medically examined on 05/10/06 at GT Hospital and had no complaints as per the OPD case paper Ext. 2105 and true

photocopy of the casualty register Ext. 2104, proved by Dr. Paikrao, PW-181.

- He was medically examined at 11.00 a.m. on 07/10/06 at GT Hospital and had no complaints as per the OPD case paper Ext. 2107 and true photocopy of the casualty register Ext.2106, proved by Dr. Paikrao, PW-181.
- He was produced at 12.30 p.m. on 07/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 1253 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 09/10/06 at KEM Hospital, after he was handed over to it. Ext. 2303 is the true photocopy of the casualty register of that hospital proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer, that the accused had no complaints.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. His advocate Ms. Farhana Shah was not present on this date. He submitted orally to the court that a part of his confessional statement is totally wrong, that he did not sign confessional statement in presence of magistrate, that he only signed in presence of DCP

- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. His advocate Ms. Farhana Shah was not present on this date.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 03/11/06 from JC in Remand Application No. 78/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Ms. Leena Mehta on this date. He was allowed to meet his family members on the application by his advocate.

Retraction :-

- A10 filed Ext. K dtd. 02/11/06 signed by him and his advocate and Ext. K1 signed by him on 09/11/06 when he was produced from JC on 09/11/06 before this court in Remand Application No. 77/06, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upto 23/11/06. He was represented by advocate Ms. Mehta alongwith Farhana Shah on this date. In Ext. K he did not make any allegation in respect of the confessional statement. In Ext. K1 he alleged torture and beating in PC and that on 3rd October

being taken to Chandan Police Station in Andheri, where he was shown some papers and promised huge amount of money and settlement anywhere in India if he does as the ATS wants. He alleged that on the same day, i.e., on 3rd October, he was taken to DCP Dumbre, PW-118, where ATS officers took his signatures on papers, which he was prevented from reading. He alleged that on the same day, i.e., on 3rd October, he was taken to a magistrate who did not ask him a single question and was sent out within a minute.

- No suggestions on the above lines were given to DCP Dumbre, PW-118, and his evidence and the evidence of PSI Thakur, PW-110, and the letter of the CMM, Ext. 1253, show that he was produced before the DCP on 05/10/06 and before the CMM on 07/10/06 and not on 03/10/06 as alleged by him.
- In his oral evidence as DW-44, A10 stated that on being produced before this court on 09/10/06, he told Bhatkar Madam that he had not given any confessional statement, that he admitted the details of him and his family written in it, but did not admit other contents. He submitted that the judge noted his retraction in the roznama and marked it as Ext. K. This is wrong, because Ext. K is dated 03/11/06 and it was filed on 09/11/06.

1350. Factual position regarding A11 :-

- A11 was arrested on 25/07/06 in C. R. No. 77 of 2006 of Mumbai Central Railway Police Station.
- He was continuously in PC in different crimes involving the bomb blasts upto and even after his confessional statement was recorded.

- His advocate Renu Bhatt had filed application on 08/09/06 in Remand Application No. 251/06 for legal interview and meeting relatives.
- He had engaged advocate Shahid Azmi on 14/09/06 in Remand Application No. 243/06 and his advocate had applied for legal interview and meeting relatives.
- His advocate Shahid Azmi had applied on 16/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives.
- His advocate Renu Bhatt had filed an application on 25/09/06 in Remand Application No. 264/06 for meeting relatives.
- His advocate Niranjana Mogre had filed an application on 30/09/06 in Remand Application No. 264/06 for legal interview and meeting relatives.
- He had not made any complaint against the police about torture or ill-treatment on all the earlier dates whenever he was produced before the Magistrate during the PC remand.

Arrest under the MCOC Act :-

- He was arrested on 30/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 30/09/06 in Remand Application No. 65/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 09/10/06.
- He had engaged advocates Shahid Azmi/Renu Bhatt since

08/09/06, but they were not present on this date.

- He did not make any complaint of ill-treatment or torture against the police on that day, i.e., on 30/09/06.
- He was medically examined on 30/09/06 and 02/10/06 in the KEM Hospital and had no complaints as per the OPD case paper Ext. 2326, proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 04/10/06 for recording his confessional statement.
- He was medically examined at 11.00 a.m. on 06/10/06 at GT Hospital and had no complaints as per the OPD case paper Ext. 2105 and true photocopy of the casualty register Ext. 2101, proved by Dr. Paikrao, PW-181.
- He was produced at 3.30 p.m. on 06/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 1133 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 08/10/06 and 09/10/06 at KEM Hospital, after he was handed over to it. Exts. 2326 and 2327 are the true photocopies of the casualty register of that hospital proved by Dr. Gond, PW-182, which show and as is also deposed by the medical officer, that the accused had no complaints.

After being remanded to JC :-

- He was produced from PC on 09/10/06 in Remand Application No. 67/06 before this court, presided over by my

learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 20/10/06. He was represented by advocate Shahid Azmi on this date. He submitted orally to the court that 2-3 days back his confessional statement was recorded, that it was not voluntary and true and that police obtained his signature under pressure.

- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 20/10/06 from JC in Remand Application No. 71/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to further JC upto 03/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date.
- He did not make any retraction of his confessional statement and did not make any grievance or allege anything about it when he was produced on 03/11/06 from JC in Remand Application No. 78/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 09/11/06. He was represented by advocate Renu Bhatt h/f Shahid Azmi on this date. He was allowed to meet his family members on the application by his advocate.

Retraction :-

- A11 filed Ext. 4157 dtd. 09/11/06 and Ext. 4158 dtd. 02/11/06 when he was produced from JC on 09/11/06 before this

court in Remand Application No. 77/06, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to JC upto 23/11/06. He was represented by advocate Shahid Azmi on this date. He alleged in Ext. 4158 that he was tortured physically and mentally during PC and compelled to sign on blank and written papers. In respect of his confessional statement he alleged that he was told to sign some papers before DCP and on refusal warned of further police torture, that the DCP accepted that there was ample pressure on him from higher authorities and that he pleaded innocence before magistrate S. S. Shirke and alleged that police obtained his signature by pressure and he does not have knowledge about the contents of the papers, which according to them is his confession. He also reminded the court of having retracted the confession before the court on 09/10/06 with six others.

- In his oral evidence as DW-45, A11 stated that when he was produced on 09/10/06, he had stated to the court that his signatures had been forcibly obtained on papers.

1351. Factual position regarding A12 :-

Arrest under the MCOC Act :-

- A12 was arrested on 30/09/06 in C. R. No. 156 of 2006 of Borivali Railway Police Station by the investigating officer ACP Patil, PW-186.
- He was produced on 30/09/06 in Remand Application No. 65/06 before this court, presided over by my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High

Court) and remanded to PC upto 13/10/06.

- He was not represented by any advocate on that day, i.e., on 29/09/06.
- He did not make any complaint of ill-treatment against the police on that day, i.e., on 30/09/06.
- He was medically examined on 29/09/06, 2nd, 4th, 6th, 8th, 10th, 11th and 12/10/06 in the KEM Hospital and had no complaints and no external injury as per the OPD case paper Exts. 2329 and 2336 proved by Dr. Gond, PW-182.
- He was produced on 13/10/06 in Remand Application No. 68/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and remanded to PC upto 26/10/06. He was represented by learned advocate Shahid Azmi @ Mohd. Hashim on that day. He was allowed to have legal interview with advocates and allowed to meet family members.
- He did not make any complaint of ill-treatment or torture against the police on that date, i.e., on 13/10/06.
- He was medically examined on 21/10/06 in KEM Hospital as per true photocopy of casualty register Ext. 2337, proved by Dr. Gond, PW-182.

Process of recording the confessional statement :-

- He was taken to the DCP on 23/10/06 for recording his confessional statement.
- He was medically examined at 4.50 p.m. on 23/10/06 at GT Hospital, where he was taken by PI Sonavane, PW-122, of Azad

Maidan Police Station, after he was given in his custody by the DCP. He had no complaints as per true photocopy of casualty register Ext. 2102 and OPD case paper Ext. 2103, proved by Dr. Paikrao, PW-181.

- He was produced on 25/10/06 before the CMM.
- He stated to the CMM that he does not want to make any statement and also did not complain of ill-treatment at the hands of police as per the letter Ext. 2812 sent by the CMM to this court.

After the confessional statement :-

- He was got medically examined by the ATS on 26/10/06 at KEM Hospital, after he was handed over to it. Ext.2334 is the OPD case paper proved by Dr. Gond, PW-182, which shows and as is also deposed by the medical officer that the accused had no complaints and no external injuries.

After being remanded to JC :-

- He did not make any retraction of his confessional statement and did not make any grievance about it when he was produced on 26/10/06 in Remand Application No. 77/06 before this court, presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) and was remanded to JC upto 09/11/06. He was represented by advocate Patankar h/f Shahid Azmi on this date.

Retraction :-

- A12 filed Ext. 4270 dtd. 09/11/06 signed by him and his advocate Shahid Azmi in Remand Application No. 84/06 when he was produced from JC on 09/11/06 before this court presided over by my learned predecessor judge Mrs. Mridula R. Bhatkar (now

Hon'ble Justice of the Bombay High Court) and remanded to further JC upto 23/11/06. He was represented by advocate Shahid Azmi @ Mohammed Hashim on this date. He alleged being beaten and abused on 20/10/06 by Sr. PI Tajne, PW-161, and Addl. CP Jaijeet Singh. In respect of his confessional statement he stated that when he was in JC he was taken to DCP on 23/10/06 and on 25/10/06 was forced to sign certain papers, which he was not allowed to read. He stated that the DCP expressed his helplessness and told him that becoming an approver will save him. He submitted that he did not give any confession and had never desired to give it before any other person. He stated that he was taken to the residence of a magistrate in Kurla at 11.30 p.m. and alleged that the magistrate did not put a single question to him, but merely signed whatever was given to him by the ATS.

- No suggestions on the above lines are given to Sr. PI Tajne, PW-161.
- In his oral evidence as DW-48, A12 stated that he did not say anything before the judge on 26/10/06 as he was frightened as PSI Sachin Kadam had told him in the morning on 26/10/06 that he should not complain about any ill-treatment or anything against the ATS offices, otherwise his brother would be pulled in the case and his parents would be harassed.

Evaluation of confessional statements :-

1352. As per the settled law, the first test to be applied to evaluate a confession is whether it is voluntary. The defence has come down very heavily on this aspect. It is submitted by learned advocates

Prakash Shetty and Wahab Khan as well as learned advocate Sharif Shaikh in his written submissions that the investigating officers of the different crimes consistently deposed that none of the accused expressed their desire to give confessional statements, that the accused started singing like parrots within 8-9 days after the provisions of the MCOC Act were applied, that the investigating officer under the MCOC Act ACP Patil, PW-186, deposed that on different dates the officers interrogating the accused informed him about the willingness of the accused to give the voluntary confessional statement, but he could not give the names of the said officers and could not point out from the case diary about any entry in this respect. It is not one or two accused, but eleven accused who have given their confessional statements as per the prosecution, but not a single officer is coming forward to say that a particular accused expressed his desire before him to make the confessional statement. Hence, it is submitted that this creates a reasonable doubt about the very beginning of the process of recording the confessional statements and when ACP Patil, PW-186, says that he had communicated the willingness of the accused to his superiors by way of notings, they should have been produced for judicial scrutiny and contemporaneous record ought to have been produced in this respect. Learned advocate Wahab Khan submitted that the defence is justified in alleging that the confessional statements are concocted, manipulated and tailored by the higher authorities. The answers in cross-examination given by the four investigating officers of the ATS, who had been examined by the prosecution, are reproduced in the

written submissions, the statements made by ACP Patil, PW-186, in cross-examination in this connection are also reproduced and the dates of arrest are mentioned in the written submissions by learned advocate Sharif Shaikh and it is submitted that none of the four investigating officers stated about any of the accused having expressed their desire to make the confessional statement to them, which was also confirmed by ACP Patil, PW-186. It is submitted that it is an admitted fact that during the period of police custody of more than two months there was also no evidence against the accused regarding their involvement in the bomb blasts, but without any evidence, the ATS succeeded in taking the custody of the accused under the provisions of the MCOC Act. Thus the only inference that can be drawn is that the accused never expressed their desire to make confessional statements and provisions of the MCOC Act were invoked only to extort the confessional statements. Now insofar as the submissions that there was no evidence against the accused in the application of the MCOC Act for filing chargesheet, some of the investigating officers have admitted this, however, Sr. PI Rathod, PW-176, has specifically denied this suggestion, about which it is submitted that he has falsely denied it.

1353. The above submission is also the submission by the defence in respect of the reason for which the accused volunteered to give their confessional statements and it is submitted that this reason is not disclosed anywhere.

1354. To my mind, if the evidence of the investigating officer ACP Patil, PW-186, is considered, it will be more than clear that the

accused had volunteered to make their confessional statements. He admitted that ACP Shaikh, PW-162, ACP Joshi, PW-163, PI Agrawal, PW-173, and Sr. PI Wadhankar, PW-167, had made inquiries after taking the accused in their custody and they did not report to him about any voluntary statement made by the accused, any recovery at their instance and any confession made by them. Similar type of questions were asked by learned advocate Shetty and learned advocate Sharif Shaikh during their cross-examination in respect of the accused whom they represented and ACP Patil, PW-186, fairly admitted similarly. In categorical terms he admitted that no investigating officers had told him that any of the A1 to A4 and A9 to A11 had expressed their willingness to give their confessional statement, but he denied the suggestion that provisions of the MCOC Act were applied to this case only for taking confessions. He was asked to go through the case diary by learned advocate Wahab Khan when he stated that he had informed his superiors on the day on which he was satisfied about the accused expressing their desire to make the confessional statement, that this report was under his signature in the form of notings, about which he did not make any station diary entry and it is not in the case diary also. However, he remembered that entries are made in the case diary about this aspect and when asked to go through the case diary, he stated that there is an entry on 29/09/06 about the A4 and on 01/10/06 about the A9 expressing their desire to make the voluntary confessional statement. This line/point was thereafter not pursued further in respect of other accused.

1355. He admitted that he does not remember which officer told him about the willingness of the accused, that there is no mention of the names of the officers in the case diary, that no officer gave written report about it, that there is no mention in the case diary as to when a particular officer came to know about desire of the accused, that he cannot tell the name of a particular officer who told him about a particular accused expressing his desire and he does not remember whether ACP Shaikh, PW-162,, ACP Khandekar, PW-174, Sr. PI Rathod, PW-176, PI Agrawal, PW-173, Sr. PI Wadhankar, PW-167, ACP Joshi, PW-163, and PI Vijay Kadam told him about it. However, he denied the suggestion that no officer told him about it. In this connection, it will be necessary to refer to the evidence given by ACP Patil, PW-186, in his chief-examination about the manner in which he handled the investigation of this case. It has come in his evidence that he requested Jt. CP, ATS, K. P. Raghuvanshi to allot a team of officers to assist him in the investigation since the investigation was very voluminous and widespread and on his request the Jt. CP allotted a team of officers to him as per the order Ext.2387 and he also stated that during the investigation he also used the services of officers other than those mentioned in the order as and when needed, with the permission of the superiors. Ext.2387 shows a list of 19 officers who were directed to assist ACP Patil, PW-186,. The seven investigating officers from sr. no. 8 to 14 were obviously doing the field work. Two ACPs at sr. no. 1 and 2 were supervising over the investigation. Out of the remaining, Sr. PI Tajne, PW-161, PI Tonapi, PW-155, and API Deore, PW-180, have been examined and have

taken part in the investigation. Other than this, there were six officers including three PIs at sr. no. 3, 5 and 7 and four APIs at sr. no. 15 to 18. Thus, these officers and their staff must have interrogated the accused on the directions of ACP Patil, PW-186, and as they were not entrusted with the investigation of any particular crime, there was no question of them making any separate investigation or reporting in writing about willingness of the accused to make the confessional statements. They were directly working under the chief investigating officer ACP Patil, PW-186. This is clear by the evidence of ACP Patil, PW-186, that the separate teams of officers and their staff were formed for the interrogation of the accused, that he alongwith other senior officers were supervising the interrogation, that all the arrested accused were put under constant interrogation and he had instructed the officers to take immediate steps if needed, if something important came out from the interrogation and they were asked to keep him posted about the same. To my mind, there was no problem for the investigating officers of the different crimes, examined by the prosecution, to say when asked that so and so accused had expressed his desire before him on so and so date for making confessional statement before superior officers. However, they stated per the facts. Thus, the submission in this respect is not acceptable and it does not affect the evidence of ACP Patil, PW-186, that the accused volunteered to make their confessional statements and does not create any doubt about the beginning of the process of recording confessional statement.

1356. Since it has been held that the provisions of the MCOC Act have been properly invoked, the allegation that they were invoked only to extort the confessions need not be considered and in view of the denial by Sr. PI Rathod, PW-176, that there was no sufficient evidence in his crime to file chargesheet, the further submission that there was no evidence against the accused concerning the blast till the invocation of the MCOC Act is also unacceptable and it will have to be stated here that the confessions was not the first evidence that was brought by the investigating agency. This was insofar as the first seven accused, i.e., A1 to A4 and A9 to A11, who had been arrested before the provisions of the MCOC Act were invoked. Similar answers are given by ACP Patil, PW-186, in respect of the four accused, i.e., A5, A6, A7 and A12, whose confessions were recorded after the provisions of the MCOC Act were applied to the crime. It is alleged that he could not tell the dates and he does not remember the names of the officers to whom the said accused first expressed their desire to make the confessional statements and he admitted that no special technique was used to make all the accused to give the confessional statements. It is then alleged that the special techniques were by way of torture and threats, which were used to get the signatures of the accused on so called confessions. Same reasoning as is given in respect of the first seven accused about the officers out of the 19 officers who were directed to assist ACP Patil, PW-186, applies to these four subsequent accused also, because the evidence of ACP Patil, PW-186, is common.

1357. It is submitted that the first seven accused, i.e., A1 to A4 and

A9 to A11 were in the custody of the ATS since more than two months and a question is asked as to what happened in their minds just after invocation of the MCOC Act to express their desire to give the confessional statement. Learned advocates Wahab Khan and Shetty cleverly avoided asking this question to ACP Patil, PW-186, and they skirted the issue. However, during the cross-examination by learned advocate Rasal in paragraph 351, he was asked about the arrest of the A5 and his interrogation and in respect of notings in the case diary about the interrogation of the accused and he stated that there may be some notings in the case diary about the interrogation and firmly stated that there are notings in the case diary about interrogating A1 and A6 before their confessional statements. Positive statements have come on record during further cross-examination that the officers who were interrogating the accused used to brief him and they had informed the desire of the accused to make the confessional statements. He was asked and he specifically answered that he tried to find out from the said officers the reason for which the accused desired to make the confessional statements and then volunteered, and this is important, that he learnt from the officers that the accused decided to make a clean breast of the crime by giving confessional statements before the superior officers as they realized that all the accused in this case were arrested and the entire story behind the conspiracy was revealed to the police. To my mind, this explanation is completely acceptable and reflects the factual position. It is not that ACP Patil, PW-186, stated about this in his chief-examination. It came out of his mouth when he was probed

about it in cross-examination and it came voluntarily. Thus, this closes the issue about the reason as to why the accused expressed their desire to give their confessional statements. In the same paragraph, he stated that all the accused were under constant interrogation from the date of their arrest and also denied that he had not made any noting anywhere about the officers informing him about the desire of the accused. Though, he admitted that he did not record statements of those officers and there is no evidence before the court about the accused having expressed their desire before the said officers, he emphatically denied that the suggestion that he is unable to tell what type of interrogation the officers carried on. There is no further cross-examination thereafter on this point.

1358. The next objection that is taken is that the alleged confessional statements of all the accused are recorded after a long period of police custody from the date of their arrest. The dates of their arrest and the dates of their confessions are listed in the table in the written submissions by learned advocate Sharif Shaikh, the delay in days is calculated and it is submitted that there is more than two months delay for recording the confessional statements of the A1 to A4 and A9 to A11 and 25 days delay in recording the confessions of A5 to A7 and A12. In this connection reliance was placed by learned advocate Yug Choudhary on the authorities in the cases of **Babu Singh** and **Nathu** (supra) and in the case of **Hari Ram** (supra) by learned advocate Sharif Shaikh. In the case of **Babu Singh** the accused were kept in police custody even after a substantial part of investigation was over and it was held that the

detention of the accused person in police custody is a matter which has to be borne in mind in considering the question as to whether the confessions subsequently made by the accused are voluntary or not. This is not the fact in our case because it is not a case of a single murder, but the compass of the case is involving seven bomb blasts and the investigation was widespread. The investigation was still underway when the provisions of the MCOC Act were applied and there was some more further investigation. In the case of **Nathu** the facts were entirely different inasmuch as the prosecution had not discharged its duty of positively establishing that the confession was voluntary and to prove the circumstance under which the unusual step of recording confession was taken. The nature of the present case once again shows that this authority is not helpful to the defence. In the case of **Hari Ram** there was a single accused and again it was found that the delay caused in the production of the accused before the magistrate was not explained by the prosecution. All these three cases relied upon by the learned advocates are in connection with the confessional statements recorded under sections 24 of the Evidence Act and 164 of the Cr. P. C. However, the law laid down in the case of **Mohmed Amin** (supra) relied upon by the learned SPP is under the TADA Act and the Supreme Court rejected the arguments of the learned counsel for the accused that the trial court committed a grave error in relying upon the confessions of the accused ignoring that at the relevant time they were in the custody of the investigating officer and did not have access to legal assistance and also because the confessions were recorded by the

officers who were actively supervising the investigation of the case and were in a position to influence the accused. This argument did not find favour with the Supreme Court in view of the prosecution evidence giving the explanation about the police custody. Thus, this objection is of no substance. Same can be said about the next objection that there was a delay of 2-7 days in recording confessional statements after the accused expressed their desire. It is clear from the evidence of ACP Patil, PW-186, that the procedure of physically sending the accused for recording the confessional statements was preceded by the official procedure of he making a request to the Jt. CP for appointing the DCPs for recording the confessional statements, the DCP writing to the investigating officer to produce the accused on a particular date, etc. This objection is, therefore, irrelevant and the submission that it is necessary for the investigating officer to produce the accused before the recording officer as soon as possible is of no substance. Pointing to the evidence of ACP Patil, PW-186, that he informed the Jt. CP in the form of notings about the desire of the accused to make the confessions, it is submitted that these notings are not before the court and appointing a DCP is not the work which required time and it is submitted that the only inference that can be drawn is that the ATS managed the DCPs to anyhow get the signatures of the accused on the confessions that were prepared by it. No such inference can be drawn if one considers that in fact there was no delay as the procedure preceding the recording of the confessional statement was underway.

1359. The next point that is urged is that the accused were not produced before the magistrate for recording their confessions under section 164 of the Cr. P. C. It is submitted that the accused were produced before the DCPs who were located at long distances like CST to Borivali, whereas, the magistrate court was just adjacent to Bhoiwada lock-up and a confession under section 164 of the Cr. P. C. is a more reliable piece of evidence and a magistrate is trained to perform a judicial duty without any pressure. It is submitted that when accused themselves expressed the desire to make the confessional statement, there should have been no apprehension that they would not give a confession before the magistrate. It is alleged that these facts show that the accused never showed their desire, that the ATS knew that if they are produced before the magistrate, they would not get any confession and the DCPs were managed by the ATS for doing the illegal work as they are habituated to follow the directions of their superiors whether legal or illegal. I am afraid, but the submissions are totally unacceptable and no such inference as submitted can be drawn only because the confessional statements have been recorded under section 18 of the MCOC Act. It is also submitted by the learned defence advocates that the investigating officers, who were investigating individual crimes, could have got the confessional statements of the accused recorded under section 164 of the Cr. P. C. To my mind, if the accused had not expressed their desire during the investigation by the concerned investigating officers, there was no question of doing so. Though in the case of **Kartar Singh**, recording of the confession

under section 164 of the Cr. P. C. is not excluded, which also applies to the MCOC Act, the submissions of the learned SPP Raja Thakare on this point are acceptable as they are perfectly logical. He submitted that ordinarily every police officer investigating any type of crime is conscious of the fact that the statement by the accused during the course of investigation has got no evidential value and therefore ordinarily under the ordinary law no police officer ever dreams of exploring the possibility whether the accused would be confessing by going before the magistrate under section 164 of the Cr. P. C. He submits that even if we see the ratio of the cases, accused giving confession under section 164 is minimal. Therefore, till the time the matter is investigated under the ordinary law, it is difficult to accept that every investigating officer would explore the possibility under section 164. However, the moment a special statute is applied, there is a change in scenario, the investigating officer is changed and that investigating officer is conscious of the provisions of the special statute and by default every such officer knows that there is a special provision whereby the confessional statement of the accused can be recorded by a police officer and that such confessional statement would be admissible in evidence. So at that stage, when the investigating officer is conscious that he is investigating under a special statute, he is conscious that there is a special provision under the special statute why should he not take its help rather than going to the general law. This is what has happened in the present case because the provisions of the MCOC Act were invoked on 24/09/06 and thereafter the investigation was

done by the officer of the rank of ACP. To my mind, on the facts and circumstances of this case, this objection by the defence is incorrect and unacceptable.

1360. A fallacious submission was made that the letters of the Jt. CP, ATS to the DCPs contained the word 'directed', which means that they were not nominated or appointed for recording the confessional statement, that there is a difference of three ranks between the DCP and Jt. CP and if there is a direction by a superior officer to do some work, the inferior officer is bound to do it. It is submitted that because of these directions, the DCPs in the present case had to record the confessions of the accused even if they refused. At this stage itself it is made clear that the confessional statement of the A13 was not recorded by DCP Ranade, PW-111, though he was sent to him and as submitted 'was directed to record it'. A strange inference is asked to be drawn that CP Roy, PW-185, was instrumental in influencing the DCPs to record the confessional statements as he visited the ATS office more than 32 times. To my mind, visit to the ATS office is different than actually visiting the office of the DCPs, who were not attached to the ATS. The DCPs did the work of recording the confessional statements as per the letter of the Jt. CP of the ATS and there is nothing on record to show that it was as per the directions of the CP. In fact, the visit by the CP to the ATS office was in pursuance of the order dtd. 14/08/06 by the ACMM in Remand Application No. 229/06 in C. R. No. 41/06, which is at Ext.4490. Thus, this submission/objection is fallacious and not acceptable.

1361. Incidentally, it will not be out of place to take up the submissions of the learned advocate Wahab Khan that the record of refusal of the A13 to give the confessional statement has not been produced and therefore an adverse inference be drawn. He submitted that confession or retraction, both have to be sent to the CMM and after confirmation, the CMM has to forward it to the Special Court. He submits that this mandate was violated by DCP Ranade, PW-111, and submits that he may say that his understanding of this is that the A13 was not ready to sign, therefore, the documents were torn. He submits that this also shows that while indulging in this exercise of not sending the confession/retraction of the A13, DCP Ranade, PW-111, has shown his collusion with the ATS officers, otherwise in all fairness the documents should have come before the court. To my mind, these submissions are wrong and unacceptable. Giving evidence about it by DCP Ranade, PW-111, or producing of any documents that he may have prepared would have been redundant, because it would have been evidence about a negative fact. It would have also burdened the record of the Court. I do not see how it would have furthered the case of the prosecution or the defence. ACP Patil, PW-186, proved the letter Ext.2410 sent by DCP Ranade, PW-111, to him, which shows that A13 was produced before him on 29/09/06 for recording his confessional statement, but before Part-I could start, he asked for time to think over it, therefore, he was kept in the general lock-up of Borivali Police Station in a separate cell and when he was again produced on 31/10/06 before him, he refused to make

the confessional statement. Thus, it is not that the prosecution has not produced any record. There is nothing in the cross-examination of DCP Ranade, PW-111, about it and there is nothing in the cross-examination of ACP Patil, PW-186, about it. Not only the letter Ext. 2410, but ACP Patil, PW-186, also proved the letter of the Jt. CP Ext. 2406 directing DCP Ranade, PW-111, to record the confessional statement of the A13, Ext.2407 by which DCP Ranade, PW-111, asked him, i.e., ACP Patil, PW-186, to send the accused to him on 29/10/06 and the letters Exts. 2408 and 2409, given by ACP Patil, PW-186, to PSI Kandharkar for producing the accused before the DCP and to the DCP about production of the accused respectively. Thus, this submission is baseless as it is not based on the facts. Not only this, there is the evidence of PI Tonapi, PW-155, about having taken back the A13 from the DCP as he refused to make a confessional statement. It has come in his evidence that PSI Kandharkar had taken the A13 to the DCP on 29/10/06 for that purpose, but the DCP informed on 31/10/06 that the accused refused and directed them to take him back, accordingly after making station diary entry no. 9, true photocopy of which is at Ext. 1672, he had brought back the accused and first he had got him medically examined at Cooper Hospital by giving a letter, office copy of which is at Ext.1671, and after examination, medical certificate, Art.368, was issued by the medical officer. He proved the contents of the station diary entries made by PSI Kandharkar and staff about taking the accused to the DCP, coming back to the police station, true photocopies of which is at Exts.1672 (5 entries). This evidence is not

challenged in his cross-examination. The fact remains that DCP Ranade, PW-111, sent back the accused when he refused to make the confession before him.

1362. The next objection in the written submissions of learned advocate Sharif Shaikh is that four DCPs have recorded the confessions of two accused each and it is submitted that for being fair, one DCP should not have been allowed to record the confession of two different accused in the same crime. A strange and illegal submission is made that this is a violation of Rule 3(2) of the MCOC Rules, because once a DCP has recorded the confession of one accused, he is deemed to be involved in the investigation of that case, because before recording confession of the second accused in the same case he becomes well aware about the facts and circumstances of the case disclosed in the first confession. It is submitted that therefore the confessional statements of A5, A6, A7 and A12 be discarded on this point only as the DCPs who recorded them had already recorded the confessional statements of A2, A3, A4 and A9. It is submitted that the question is as to why the same DCPs were directed for this purpose, because it has come in the cross-examination of CP Roy, PW-185, that there were about 38-39 DCPs. It is submitted that the only inference that can be drawn is that the other DCPs were not willing to record the confessions in the manner in which the ATS officers were asking them to do. To my mind, Rule 3(2) does not say that the confession of only one accused should be recorded by a police officer. It only says that no police officer who has taken part in the investigation shall be allowed to

remain present at the time of recording of the confession. So also it cannot be deemed that once a DCP has recorded the confessional statement of one accused, he should not record the confessional statement of another accused in the same case as he is deemed to be involved in the investigation or becomes aware of the facts and circumstances of the case. The factual position that is found in the case of **State of Maharashtra V. Mohd. Zuber Kasam Sheikh and Ors.**, is that two DCPs had recorded the confessional statements of two accused each, that too on the same day. Even then they were upheld and it was not found to be procedurally or legally wrong.

1363. The next objection is that the DCPs who recorded the confessional statements were assisting in the investigation of the case, which is a violation of Rule 3(2) of the MCOC Rules. It is admitted that the DCPs were not deputed to the ATS nor they were connected with the investigating agency, but as per CP Roy, PW-185, they had assisted the ATS in the investigation, which means that they had taken part in it. This is obviously factually wrong because CP Roy, PW-185, denied the suggestion that the DCPs at the zonal level were taking part in the investigation of this case. He volunteering that the ATS was doing the investigation and all others were assisting them, cannot be construed to mean that the DCPs were interested in the investigation or were taking part in the investigation. Statements made by DCP Phadtare, PW-93, about giving instructions to his subordinate to follow the lead of the blasts that had taken place at Mahim Railway Station, by SP Karale, PW-104, that he attended 3-4 meetings with the Commissioner of

Police after the blasts and visited the hospitals to see the injured as per the log book of his vehicle and also visited Sector-9 in Antop Hill where an encounter had taken place which is also as per the log book of his vehicle and DCP Ranade, PW-111, having formed a special investigation team, mention of which is found in the statement of an injured witness, are relied upon to show that these DCPs were interested in the investigation. This submission is not acceptable for the simple fact that they were not attached to the ATS, the accused were not in their custody and they were not investigating any particular crime out of seven, though it may have occurred within their jurisdiction.

1364. The next and most important objection/allegation in respect of the confessional statements of the accused being not voluntary is the allegations of torture made by the accused and the threats given to them. It is submitted that all accused made complaints of torture, threat and inducement on 09/11/06 and filed written complaints themselves and also through their advocates describing the third degree torture and DCPs and ATS officers obtaining their signatures forcibly. It is also submitted that all accused in their written statements filed alongwith their statement under section 313 of the Cr. P. C. described how they were arrested, illegally detained, tortured and forced to sign on the confessional statements. Except A1 and A3, the remaining accused, whose confessional statements were recorded, gave evidence on oath describing all the above things. It is also submitted that A2 and A4 and A9 to A11 were handed over to the Anti-Robbery Cell at Kurla for special type of

torture and the medical record of the Bhabha Hospital shows this. The said accused have also deposed about the torture meted out to them in the Kurla Unit of Vijay Salaskar. A3 and A4 were taken to the Unit-II of the DCB CID for special torture. It is also submitted that they have mentioned in their written submissions that they filed with their statements under section 313 of the Cr. P. C., in their applications for retraction of their confessional statement and in their oral evidence that the ATS officers threatened them not to say anything about the torture or beating whenever they were produced before the magistrates and before this court on the dates of remand and whenever they were produced before the medical officers. It is submitted that considering all the above documents and evidence, the only inference that can be drawn is that the ATS officers and Crime Branch officers had subjected all the accused to third degree torture.

1365. The dates of medical examination of each and every accused are listed in paragraph 11 of the written submissions by learned advocate Sharif Shaikh and also submitted by learned advocate Wahab Khan and then the gaps of 3 to 10 days are pointed out on which days the accused were not examined and it is submitted that as per the guidelines in D. K. Basu's case, every accused arrested in any crime must be medically examined in every 48 hours, but these guidelines were not followed. It is also submitted that all the doctors who examined the accused are not examined by the prosecution, as has come in the evidence of Dr. Ochaney, PW-179, Dr. Paikrao, PW-181, Dr. Gond, PW-182, Dr. Yelkar, PW-183 and Dr. Dhangar,

PW-184. It is therefore submitted that the medical record for which the concerned doctors were not examined by the prosecution, are not legally proved, which means that the accused were not medically examined on those dates. It is further submitted that if the accused complain to the doctor during police custody about torture by the police, the doctor asked them as to what happened to them and when the accused told their problems, the doctor did not write that the complaint was due to police torture, but only wrote the complaint. It is submitted that considering the record of the injuries to the accused and deficiency in the medical examination that has emerged from the cross-examination of the doctors coupled with their written submissions and the oral evidence, the court can easily arrive at the conclusion that the accused were tortured.

1366. In my humble opinion, if the factual position and the evidence given by the prosecution in respect of the recording of the confessional statements of the accused described in paragraphs 1340 to 1351 is considered, then it is abundantly clear that all the above submissions are baseless as they are not based on facts. Alongwith the above allegations, is the allegation in point no. 12 in the topic 'common arguments of all alleged confessions' in volume no. 1 of the written submissions filed by learned advocate Sharif Shaikh that the record of the magistrate court or the special court does not show that the magistrate or the special judge had asked the accused whether they had any complaint against the police, though at some places it is written that there is no complaint against the police, which does not mean that the magistrate or the judge had asked the

accused. It is submitted that the accused in their written statements filed with their statements under section 313 of the Cr. P. C. and in their evidence have explained about this aspect stating that they were threatened and tortured not to make any complaint and therefore on considering this it can be safely construed that all the accused were tortured and threatened and therefore the alleged confessional statements are required to be discarded. This is nothing but casting aspersions on the magistrates or the special judge. All the judicial officers invariably ask each and every accused when they are produced during the police custody as to whether they have any complaint of ill-treatment at the hands of the police and such type of allegations on the background of the factual position of the accused being represented by advocates throughout their periods of police custody remand are baseless and just made for the sake of making it. The twisting of facts and submissions about drawing an inference in their favour either way is nothing but trying to be in a winning position whether it is heads or tails. The fact remains that the Court record of the remand applications before the magistrate and the record of this court as described in the factual positions in respect of each accused shows that there is not any single complaint by any accused against the police about torture or ill-treatment and there is no evidence in respect of any torture or ill-treatment. There is medical evidence about some physical ailments of some of the accused which I will presently discuss. The applications for retracting their confessional statements filed by the accused, their written submissions filed alongwith their statements under section

313 of the Cr. P. C. and their oral evidence, contain a vivid description as to how they were tortured and how third degree methods were used during the police custody period to obtain their signatures on blank papers for the purpose of showing the seizure of some articles from them and in respect of the confessional statements. To my mind, considering the extent and the nature of the torture that is alleged and described by the accused and their evidence that it was unbearable because of which they signed on the confessional statements or were forced to sign on blank papers, it does not appear probable that they would have remained quiet for such a long period of more than two months till they filed their retraction applications by two accused on 03/11/06 and by all of them on 09/11/06, because except the A4, all the other accused were represented from time to time by advocates who applied to the magistrate for having legal interview and for permitting the accused to meet their family members or relatives alongwith permission to carry certain personal items with them. To my mind, considering this fact, it does not appear probable that the accused would have kept quiet for such a long time or would not have indicated to even a single person out of their family members or relatives or to their advocate about any ill-treatment, torture or beating by the ATS police. It is very easy to make allegations of torture and it is very easy to make a retraction of a confessional statement. The fact remains as can be gathered from the factual position before and after recording of the confessional statements, that the applications for retraction of the confessional statements containing the

allegations of torture during the police custody period have come very belatedly and considering the nature of the retractions, they have obviously come out of legal minds. This inference is fortified because some of the applications are in the handwriting of their advocates and they contain the words like 'voluntary' and 'retraction', etc., which are legal words. The contents of the retraction statements also indicate the supposed legal lacunae in the procedure of the recording of the statements. The fact remains that none of the accused has disputed his signature on the confessional statement.

1367. From the above discussion, it is clear that except the allegations made in their retraction applications by the accused, in their written submissions alongwith their statements under section 313 of the Cr. P. C. and in their oral evidence, there is no evidence to substantiate their allegations about the torture. The factual position in respect of each and every accused whose confessional statements was recorded gives a very clear picture about all of them, except the A4, being represented by advocates in the remands before the magistrate since as early as 14/08/06 and from then on different dates and, on not even a single occasion whenever they were produced before the magistrate for obtaining their police custody, did they make any complaint against the police about torture and ill-treatment. They were produced before my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) for the first time after the application of the MCOC Act, some on 25/09/06 and some on subsequent dates and were represented

by advocates, except the A4, who came to be represented on 9/10/06, but they did not make any complaint about the torture and ill-treatment at the hands of the ATS police prior to that date. They have also been medically examined from time to time and they had no complaints and no external injuries were seen as per the OPD case papers and true photocopies of the casualty register. As I said earlier, it is very easy to make allegations of torture, but the record should substantiate the said allegations. It is not that there is only one or two accused, but there are thirteen accused and it is not that they have been produced from the police custody remand once or twice, but have been produced before the magistrate or this court repeatedly. It is unacceptable and it does not appeal to the reason considering the alleged unbearable levels of torture for so long that not a single out of all the accused would not have complained, though duly represented by advocates, i.e., having the legal assistance. This is India where even a Pakistani terrorist gets a fair trial and fullest opportunity. This is Mumbai, a cosmopolitan commercial city, where human rights are well-known and upheld, the media is strong and recourse/approach in the High Court and knowledge of its plenary powers is there. This is not the first case of bomb blast. That there is a knowledge about the plenary powers, is clear from the admission by the A2, who gave evidence as DW-41, in his cross-examination that during the police custody period, he had told his advocate Amin Solkar about his illegal arrest and illegal detention and that he had filed a petition in the High Court on 24/08/06 praying that his custody should not be taken repeatedly as

the blasts are one. So at the cost of repetition, it will have to be stated that the allegations of ill-treatment and third degree torture have been made belatedly and obviously on legal advice. It will, therefore, have to be held that the retractions by the accused, oral as well as written, are afterthought, not *bona fide* and not true. They do not affect the credibility and veracity of the prosecution evidence about recording of the confessional statements.

1368. Insofar as the evidence about physical complaints during the police custody period concerning some accused, it will not be out of place to mention at the outset that they were produced during the police custody periods before the magistrates and before this court, but they did not make complaint of ill-treatment or torture. In respect of A1, the OPD case paper dtd.15/08/06 Ext.2122 shows that the accused was complaining of giddiness with ear pain and loss of hearing of the left ear. This case paper was proved by Dr. Gond, PW-182. When the A1 was produced before the magistrate on 14/08/06 in police custody in Remand Application No. 243/06 of C. R. No. 86/06, the learned magistrate had specifically noted that the A1 was earlier arrested in C. R. No. 41/06, was remanded to police custody till that date, that he is arrested in this C.R., i.e. C. R. No. 86/06, with the prayer for police custody and, this is important, that he has repeatedly questioned the accused whether he has any complaint against the police, but the accused did not make any complaint and only repeated that he is innocent and said that he had some pain in the ear. The accused was represented by the advocate on that day and though he did not make any complaint against the

police, the learned ACMM directed the Commissioner of Police to supervise the investigation and to examine the accused and directed that the report be produced on the next date, i.e., 16/08/06, as to what treatment is given to the accused. Considering the fact that the OPD case paper Ext.2121 shows that the symptoms were giddiness with left ear pain since last two days read with the accused not having made any complaint against the police, this physical complaint is of no consequence and does not lead to any inference about ill-treatment or torture or beating. On the other hand, the continuation sheet of the OPD case paper showing the examination in the ENT Department shows history of bud usage, so that was the cause of ear pain which ultimately leads to giddiness. He was produced before the ACMM in the same remand application on 28/08/06 and there is no mention about he complaining about any ill-treatment or torture by the police and on that day he was remanded to judicial custody.

1369. Next is the OPD case paper dtd. 23/09/06 Ext.2152 proved by Dr. Gond, PW-182, which mentions that the patient is not willing to make any complaint, but he is moaning. He was referred to expert and the findings of the EMR, i.e., Emergency Medical Registrar, were that in view of cooing sound making through mouth, when asked to patient, no any symptoms after asking deeply. There was history of pain at groin, pricking pain at inguinal region and the sonography that was done to rule out renal colic was normal, but he had a history of vomiting twice on the earlier day, x-ray was also advised and he was again referred to Emergency Surgical Registrar in view

of pain at inguinal region and the OPD case paper Ext.2145 shows that the patient complained of pain in abdomen, back and inguinal region right side from three days and, this is important, history of hematuria ten days back. A1 was examined by Dr. Dongre and Dr. Amit Sharma on 23/09/06 and 25/09/06 and they have not been examined by the prosecution, but even then defence is relying on that evidence. This shows the double game of the accused that, that which is favourable is pointed out forgetting at the same time that it is submitted that such documents have not been proved. Dr. Gond, PW-182, no doubt admitted in his cross-examination that if a person is kicked in the scrotum, he can sustain the type of injury sustained by the A1, i.e., spermatic cord haematoma. This is of course a possibility and in the absence of any complaint by the A1 himself, it cannot be understood or interpreted to mean that he was tortured. Again he was produced before this court on 25/09/06 in Remand Application No. 60/06 after his arrest under the MCOC Act, but he did not make any complaint of assault against the police. After that day, he was examined on 27/09/06 as per the OPD case paper Ext. 2152, where he complained of back pain since five days alongwith the nominal complaint of pain in abdomen, etc., and it is also mentioned that there is a history of injury to his back five days before. Obviously, there was no external injury visible to the eyes, but it was on the complaint by the accused. After that day, he was examined on 29/09/06 and 01/10/06 as per the OPD case paper Ext. 2151 proved by Dr. Gond, PW-182, which is mentioned in the factual position and he did not have any complaint or external

injury. Thereafter, is the process of recording of his confession and he was then medically examined on 06/10/06 and 08/10/06 and had no complaints.

1370. A2 had a physical complaint on 26/09/06 as per the OPD case paper Ext.2176 proved by Dr. Gond, PW-182. As per the history given by him, he had two episodes of loose motions with abdomen pain. Before this date, he was produced on 25/09/06 after his arrest under the MCOC Act and he had no complaints of assault against the police. The reason for this is obviously that he was on religious fast. He was again produced in Remand Application No. 67/06 before this court on 09/10/06 when also he did not make any complaint of torture against the police though he retracted having given the confessional statement.

1371. Next is the case of A6, who was directly arrested under the MCOC Act on 29/09/06 and was produced in Remand Application No. 62/06 before my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to police custody upto 13/10/06. He was examined on 29/09/06 and on 01/10/06 as per the OPD case paper Ext.2220 wherein he had no complaints. However, during his examination on 03/10/06, he complained of shoulder pain on left side, therefore, he was referred to orthopedic reference and as per the evidence of Dr. Gond, PW-182, the notes of the orthopedic surgeon shows that the patient was complaining of pain in the left scapular region since 15 days, there was no history of trauma, TB or external injury and, this is important, that local examination did not show swelling, deformity

and tenderness and no swelling and deformity on the left scapula, but tenderness was present. In this context, Dr. Gond, PW-182, was suggested in his cross-examination and he admitted that there can be pain in scapula if a man is hanged at a height by tying his hands by rope after taking care that there will be no marks of the rope on the hands and in that situation pain in overhead abduction and tenderness present on left scapula on left side is also possible. However, he explained that there was no pain in the other joints. Now these are possibilities and unless the accused complains to the medical officers or to the court, no inference about ill-treatment or torture can be drawn. The notes of orthopedic surgeon dtd. 03/10/06 have come under attack in view of the striking off the word 'days' and then writing the word 'years' and it is submitted by learned advocate Wahab Khan that this correction in the notes shows that the ATS officers prevailed upon the medical officer of the KEM Hospital and other hospital. True it is the word 'days' is struck off and then word 'years' is written in the complaint that was made by the accused about pain in left scapular region. However, the important thing is that the patient did not give any history of trauma and if the entire notes of the orthopedic surgeon is seen, it appears that he is in the habit of writing words and striking them off and then writing some new words. From this alone one cannot draw the inference as submitted by the learned advocate that pain was because of trauma within a period of 15 days. How, this is possible is not explained by him, because the accused was arrested on 29/09/06 and 03/10/06 is the fourth day of his arrest and in

between he was examined on 29/09/06 and 01/10/06 when he had no complaints and he had complained to the doctor about pain since 15 days, i.e., prior to his arrest. Accused did not complain of ill-treatment or torture by the police on the next day of remand, i.e., on 13/10/06, when he was produced in Remand Application No. 68/06 before this court.

1372. Then again there is the OPD case paper dtd. 19/10/06 Ext. 2230, which is after the above remand date wherein he complained of giddiness. The lecturer of that medical college noted that the patient is apparently on fast for religious reasons, which to my mind was the cause of the giddiness. There could have been one more reason that of undergoing narco analysis test two days back. One more thing in respect of the complaint of A6 of pain in the left scapula is the history given by the accused himself, which is noted in the date column by the lecturer in Ext.2230 and it is history of fracture of right rib cage about 15 years back. Thereafter, the accused was produced before this court on 26/10/06 in Remand Application No. 77/06 after his confessional statement was recorded, but he did not make any complaint of ill-treatment at the hands of the police. It is on that day itself that he was medically examined as per the OPD case paper Ext. 2220 and had no complaints.

1373. In respect of the A9 it is the OPD case paper Ext. 2281 dtd. 26/09/06 wherein he complained of two episodes of loose motions on that day, but, to my mind that was because of he being on religious fast. He did not complain about any torture or ill-treatment

at the hands of the police when he was produced before the magistrate in Remand Application No. 264/06, Ext.4476, on 18/09/06, on which date he had engaged advocate, who had applied for permitting the accused to meet his relatives. He was arrested on 30/09/06 under the MCOC Act and produced in Remand Application No. 65/06 before my learned predecessor judge Shri A. M. Thipsay (now Hon'ble Justice of the Bombay High Court) and remanded to police custody upto 09/10/06 and on this day he did not complain about any ill-treatment or torture against the police and was also represented by advocate. Thus, there is nothing to infer from this.

1374. Next is the A10 who was arrested on 25/07/06 and the OPD case paper Ext. 2284 dtd.25/07/06 shows no complaint, but Ext. 2286, dtd.27/07/06, shows complaint of chest pain in the left side since six hours. He was referred to the higher authority, i.e., EMS, who noted that he is a tobacco chewer and the finding was atypical chest pain on the left side radiating towards the left arm since 2.30 p.m. Now, before this date, he was produced before the magistrate in a remand application Ext.4450 of C. R. No. 77/06 and remanded to police custody upto 07/08/06, but he had no complaints against the police. Same was the position on 07/08/06 in the remand application Ext.4452. The OPD case paper Ext.2298 dtd. 11/09/06 shows that he was feeling feverish and bodyache and was referred to the higher authority. He had no complaints when he was produced before the magistrate on 03/09/06 in Remand Application No. 243/06 and on the same date in Remand Application No. 229/06,

Ext.4497, in which he was remanded to police custody. Similarly, he had no complaints against the police about ill-treatment or torture on 14/09/06 in Remand Application No. 229/06, Ext.4505, and on 16/09/06 in Remand Application No. 264/06 in C. R. No. 59/06 Ext.4477. Thus no inference can be drawn from these medical certificates of the accused about any torture or ill-treatment by the ATS police.

1375. A11 complained of two episodes of loose motions on 03/08/06 as per the OPD case paper Ext.2312, but had no external injuries. Before that he was produced in a remand application of C. R. No. 77/06, Ext.4450, on 26/07/06 and remanded to police custody and had no complaints. After that date, he was produced on 07/08/06 in remand application of the same crime, Ext. 4452, and remanded to judicial custody and on that day also he did not complain of any ill-treatment or torture against the police. He was remanded to police custody upto 03/09/06 in Remand Application No. 243/06 when he was produced before the magistrate on 21/08/06. On 02/09/06 he complained of erythematous lesion on lower lip. Therefore, he was referred to the skin specialist to whom he complained about fluid filled lesions over lower lip since two days, history of fever three days back and history of similar complaint following fever every year 3-4 times per year, but he had no complaints. Thus, this is not an injury, but a sort of infection having history prior to his arrest. He did not complain about it on 03/09/06 when he was produced before the magistrate in Remand Application No. 243/06. On 22/09/06 he complained of loose

motions and vomiting as per the OPD case paper Ext.2324. He had no complaint against the police of ill-treatment or torture on 16/09/06 when he was produced before the magistrate in Remand Application No. 264/06 and was remanded to police custody upto 30/09/06. Similarly, he had no complaint on 30/09/06 when produced in the same remand application Ext. 4479 and remanded to judicial custody upto 06/10/06. Thus, the medical record does not substantiate any allegation of torture and ill-treatment at the hands of the police and the accused had also not complained about the same.

1376. In their applications for retraction of confessional statements, their written submissions filed with their statements under section 313 of the Cr. P. C. and in their oral evidence the above accused have vividly described, as mentioned earlier, about the nature of the torture and the extent of the torture and that it was inhuman and unbearable. However, the record of the remand applications of the courts of the magistrate as well as this court and the medical record does not substantiate their allegations. I have already held that it is unacceptable and impossible that the accused who were duly represented by their advocates and who had been meeting their family members, did not complain even on a single occasion to the magistrates when they were produced from time to time. Thus it will have to be held that the accused have failed to prove the allegations of ill-treatment and third degree torture by the ATS police.

1377. The next objection is that the DCPs did not know the law regarding confession because though they deposed that they had

given certificates as per formats in the MCOC Rules, the certificates given by them are not according to the format and rules. Substantial submissions were made by learned advocate Wahab Khan in this regard. He submitted that the DCPs have developed their own format of certificate though it is not provided by law and that all seven certificates are similar, but in none of the confessional statements, there is a memorandum at the end of the confessional statement as prescribed in Rule 6 of the Rules and the memorandums have not been placed before the court. Before addressing the merits of this submission, it will not be out of place to point out that nomenclature as 'certificate' or 'memorandum' is not so significant. Section 18(3) says that below the confessional statement, the police officer should certify in writing that it is voluntary. Rule 6 says that at the end of the confession, the police officer shall, under his own handwriting, also make a memorandum and then the format is given, but what is important, are the last four words 'to the following effect'. Thus, both, certificate in section 18(3) and the memorandum in Rule 6, refer to the endorsement that is put at the end of the confessional statement, which should contain the satisfaction of the police officer about the voluntariness of the confessional statement and that the accused was given to understand that it may be used against him, etc. It is held in many authorities that wording of the certificate is not mandatory and none of the authorities make any distinction between memorandum and certificate. Even absence of certificate is condoned by some authorities if it is found that other things have been complied with

and the police officer has given evidence about his satisfaction. Thus, this submission does not affect the credibility of the confessional statements.

1378. A strange and unacceptable submission is made that the sentence in paragraph 1 in Part-I of the confessional statement of the A4 and A6, Exts.1057 and 1068, showing perusal of report of ACP, ATS, Mumbai Shri S. L. Patil, is deleted in Part-I of the confessional statement of the A3, Ext.1212, and it is further submitted that SP Karale, PW-104, ran away from this by saying that the letters sent by ATS was itself report and ACP Patil, PW-186, also says this. To my mind, if both the witnesses are saying the same thing, how can the accused asked the court to draw the inference that a detailed report alongwith readymade confessional statement was sent to the DCP and that too on the basis of its absence in Ext.1212. In fact, two prosecution witnesses have corroborated each other on that point. In fact, Addl. CP Brijesh Singh, PW-117, was not asked about the absence of the said sentence in Ext.1212 though he admitted that it is written in the rough notes, Ext.1213. He admitted that contents of paragraphs 2, 3 and 4 in Ext. 1212 are written on the basis of the letter Ext. 1209 which was sent by the Jt. CP to him and also on the basis of his inquiry with the escorting officers.

1379. Next submission and objection is that many important questions were not asked by the DCPs to ascertain the voluntariness of the confession and hence all the confessional statements are required to be discarded. The questions are enumerated in point no. 16 of the 1st part of volume-2 of the written submissions by the

learned advocate Sharif Shaikh, viz., that the DCPs did not tell the accused that they are not connected with the investigation of the case, in which they were arrested, the DCPs did not ask the accused from where, when and why police arrested them, the DCPs did not ask why the accused are produced before him and why they are making the confessional statements, the DCPs did not inform the accused that if they refuse to make the confessional statement, they will not be sent back to the police who are investigating the case and did not ask them whether they want to keep their advocates or relatives present during the recording of the confessional statement. It is submitted that some of the DCPs deposed in chief-examination by way of an improvement that they had asked these questions, but admitted in cross-examination that the questions remained to be written in both parts of the confessional statement and also admitted that there is no contemporaneous record to show that they asked the questions. Hence, their evidence on this point is not acceptable. Alongwith this, it is also submitted that except in the confessional statement of the A1, the warning that the confessional statement may be used against him is written in Part-I, but it is not written in the Part-II. Alongwith this, it is submitted that no warning is given to any accused except the A1 that the confession will be used against his co-accused. It is submitted that all the DCPs except, DCP Choubey, PW-113, unanimously deposed that they warned the accused about it, but it is not found in the record and it is also admitted that there is no contemporaneous record about it. It is submitted that all this shows all the DCPs are tutored on this point

and all of them made improvements.

1380. To my mind, insofar as the warning to the accused, as is submitted, that the confession may be used against his co-accused, there is no law for it and it is not necessary to be asked. Insofar as the questions to be asked to the accused about the date, place and the reason for his arrest, to my mind, it is unnecessary, though it is strenuously submitted by all the learned advocates that it was necessary to ascertain the police custody period to ascertain the voluntariness. The information to be given to the accused that he will not be sent back to the police who are investigating the case, if he refused to make the confessional statement is also not necessary because it is not so provided in the TADA Act or MCOC Act though it has been provided for in the POTA Act. The submission about the DCPs not having informed the accused that they are not connected with the case is factually wrong because it is found in Part-I, Ext. 1019, of the confessional statement of the A2 and Part-I, Ext. 1033, of the confessional statement of A7 and no doubt it is not found in the confessional statements of the A3, A4, A5, A6, A9, A10, A11 and A12, but endorsements just above the questions in Part-I of their confessional statements specifically mention that the accused was informed that he is no longer in the custody of the ATS, Mumbai. To my mind, this can be certainly interpreted to mean that it was informed to the accused that the recording officer is not concerned with the investigation of the case. The submission that the question as to why the accused is produced before him is not asked is also factually a wrong submission, because it is so asked in Part-I of the

confessional statement of the A2 and A7 also. However, it is not there in the remaining confessional statements. It is submitted that the most important question as to why the accused is making the confessional statement is also not found in any of the eleven confessional statements. To my mind, it is not necessary in view of the law laid down in the case of **S. N. Dubey V. N. B. Bhoir (2000) Cri.L.J. 830**, wherein, the Supreme Court referred to section 15 of the TADA Act and pointed out that the police officer recording the confessional statement under section 15 is really not bound to follow any other procedure and that the rules and guidelines framed by the Bombay High Court for recording the confession by the magistrate under section 164 of the Cr. P. C., do not by themselves apply to recording of confession under section 15 of the TADA Act. Section 15 of the TADA Act is *pari materia* to section 18 of the MCOC Act. This judgement was referred and followed in **Confirmation Case No. 01/01 (The State of Maharashtra, Appellant V. Mohd. Zuber Kasam Shaikh alias Tabrej alias Juganu and Anr., Respondents)**. Thus, this submission is also of no consequence.

1381. As many as 14 questions were asked to the A1, 10 questions were asked to the A2 and A7 and 8 questions were asked to the remaining accused when they were first produced before the DCPs. These questions comprise of the statutory warnings that are required to be given to the accused, that they are not bound to make the confessional statements and if they make it, it can be used against them as evidence. They include questions to ascertain whether any threats were given or any inducement was made or whether they

were beaten to make the confessional statements. They also invariably include information to the accused that they are given time to think over and would be in the custody of the DCPs and would not be in the custody or pressure of the police who are investigating the case. In my humble opinion, the nature of the questions, though some of them are clumsily drafted, was sufficient to ascertain the voluntariness of the accused for making the confessional statements. The statutory warnings given in the questions were sufficient to make the accused aware that there is no compulsion on them to make the confessional statements and even then if they did make the confessional statements they could be used against them. The questions also contain the information that they are given time for reflection to think over whether they really want to make the confessional statements. In this respect, it is submitted in point no. 28 in topic no. 1 in volume-2 of the written submissions by learned advocate Sharif Shaikh that the accused were not given 24 hours for reflection or reconsideration and the timing is calculated from the lodging time in the lock-up of the concerned police station till he was removed from the lock-up and then a meticulous arithmetic is made for each accused showing that the accused were kept in the lock-up for a period ranging from 21 hours and 5 minutes to 23 hours and 15 minutes and therefore it was less than 24 hours which is a violation of Rule 3(4) of the MCOC Rules. To my mind, may be that the period in the lock-up is not totaling to exact 24 hours, but it is nearby and it can also be said that the period can be calculated from the time the DCP gave the accused in

the custody of the police officer of the local police station till the time when he was again produced for the second time before the DCP. This aspect is therefore not of much consequence and it does not amount to violation of Rule 3(4) of the MCOC Rules. Moreover, the accused have not come out with the case that the period for reflection was very less and they wanted some more time to think over. All in all, I am fully satisfied that the nature of the questions asked to the accused was sufficient for the DCPs to come to the conclusion that the accused are desirous of making their confessional statement voluntary.

1382. There is one more objection/submission in respect of the voluntariness of the accused to make the confessional statement and it is that the accused were sent to the custody of the ATS again after their alleged confessional statements were recorded and they knew that if they refused to sign on the confessional statements they would again be sent to the custody of the ATS and would be tortured there again and therefore this threat of again being sent to police custody is sufficient to discard the confessional statements. It is alleged that they were told by the ATS that they can get another 15 days police custody. To my mind, this submission is inconsequential inasmuch as within a day or two all the accused were produced before this court again and the provisions of the MCOC Act do not prescribe that after the confessional statements, the accused are to be sent to the judicial custody, as is the case under the POTA Act.

1383. It is then submitted that A1 to A4 and A9 to A11 retracted their alleged confessional statements on 09/10/06 before this court,

that A2 and A4 made written complaint on 03/11/06, A7 made a retraction on 26/10/06 and all accused made the complaints on 09/11/06 and considering the nature of the complaints and the retraction at the earliest point of time, all the confessional statements are required to be discarded. I have already considered the aspect of retraction done by the accused and have held that they are obviously made on legal advice. The factual position about each accused before their arrest under the MCOC Act, after their arrest under the MCOC Act and before and after the dates of their confessional statements has been discussed in detail earlier in respect of their production before the concerned magistrates and before this court. It is not necessary to discuss in detail the contents of the written applications that were made on 03/11/06 by the A2 and A4 and by the other accused on 09/11/06, because till that time all of them had produced before this court once or twice and had been remanded to judicial custody.

1384. A brief reference to the factual position of each accused will be sufficient. Admittedly, the CMM recorded the statement of the A1 when he was produced before him and he admitted the entire Part-I and most of the contents of Part-II of his confessional statement and at the same time admitted his signature on both parts and did not make any grievance to the CMM that it was because of threat or torture that he was forced to sign on blank papers. He was produced on 09/10/06 before this court and he only orally submitted that his confessional statement was recorded under pressure and it is not voluntary. He was represented by advocate and obviously the legal

terminology used by him. Thereafter, he was produced before this court on two occasions, i.e., on 20/10/06 and 03/11/06, but he did not retract his confessional statement and did not make any grievance or allege anything though he was represented by advocate. It is only on 09/11/06 that he filed the application Ext. A dtd. 02/11/06 making certain allegations, about which I have already discussed in the topic 'Retraction' in the 'Factual position regarding A1'. A2 only submitted to this court on 09/10/06 after the date of his confessional statement, on which date he was duly represented by an advocate, that too orally, that the police showed him a part of his confession which was totally wrong and he signed it under fear, etc., however, he did not make any retraction or grievance or allege anything about the confessional statement on 20/10/06 after a period of 11 days of being in judicial custody. It is only on 03/11/06 that he filed the application for retraction making certain allegations, which I have already discussed under the topic 'Retraction' in the 'Factual position regarding A2'. A3 was produced before this court on 09/10/06 after the date of his confessional statement, was represented by an advocate and submitted orally that his confessional statement was recorded under pressure, etc., however he did not make any retraction of his confessional statement on subsequent two dates when he was produced before this court from judicial custody and was also remanded to judicial custody. It is only on 09/11/06 that he gave an application signed by him and his advocate containing the allegations, which I have already discussed. Thus, from 07/10/06 to 09/11/06 there was no

retraction by him, though he had been produced before this court twice after 09/10/06 and during this entire period, he was in judicial custody. A4 was produced before this court on 09/10/06 after the date of his confessional statement, was represented by an advocate and he only submitted that one portion of his confessional statement was wrong. How can he make such a statement when he says later on that his confessional statement was not recorded at all. He did not deny having signed the confessional statement or having given the confessional statement. This is very important considering the allegations that he made in his application of retraction filed on 03/11/06, which is discussed earlier. In between he was produced from judicial custody on 20/10/06 and he did not make any retraction or any grievance or allege anything about his confessional statement. Thus from 07/10/06 upto 03/11/06 he did not make any retraction. His oral submission to the court on 09/10/06 cannot be construed as retraction proper. He has made inconsistent contentions and allegations in his written submissions Ext. 2825 filed with his statement under section 313 of the Cr. P. C., in his application Ext. 3798 dtd. 03/11/06 and in his oral evidence. A5 was produced before this court on 26/10/06 after the date of his confessional statement, was represented by an advocate and he admitted that his confessional statement was recorded the day before, but committed a mistake by stating that it was recorded by SP Mohite, PW-102. He filed retraction application on 09/11/06 which is discussed by me earlier. A6 was produced before this court on 26/10/06 after the date of his confessional statement, he was

represented by advocate, but he did not make any retraction or grievance or allege anything about his confessional statement. It is only on 09/11/06 when he was produced from judicial custody, that he made the application retracting his confessional statement, which I have discussed earlier. I will discuss the case of the A7 subsequently. A9 was produced before this court on 09/10/06 after the date of his confessional statement, was represented by an advocate and he only orally submitted that he signed the confessional statement under pressure and fear. However, on the subsequent two dates, i.e., on 20/10/06 and 03/11/06, he did not make any retraction or grievance or allege anything about his confessional statement. It is only on 09/11/06 that he filed the application dtd. 02/11/06 for retraction. Thus, for a period of about one month, he had not retracted his confessional statement. The retraction application has been discussed by me earlier. A10 was produced before this court on 09/10/06 after the date of his confessional statement, was represented by advocate and in his oral submissions he admitted having signed in the presence of the DCP, but stated that a part of his confessional statement is totally wrong and he did not sign in the presence of the magistrate. I do not see how this can be considered as a retraction because it is not so. Moreover, he did not make any retraction, grievance or allege anything about his confessional statement when he was produced from judicial custody on 20/10/06 and 03/11/06 and it is only on 09/11/06 that he filed the application dtd. 02/11/06 containing the retraction which I have already discussed. Thus, for a period of more

than a month, there is no retraction by him. A11 was produced before this court on 09/10/06 after the date of his confessional statement, he was represented by an advocate and he orally submitted that his confessional statement was recorded 2-3 days back, but it was not voluntary and true and police obtained his signature under pressure. He did not make any retraction or grievance or allege anything about his confessional statement on the two subsequent dates of remand on 20/10/06 and 03/11/06. It is only on 09/11/06 that he filed the retraction application dtd. 02/11/06, which I have already discussed. A12 was produced before this court on 26/10/06 after the date of his confessional statement, but did not make any retraction or any grievance or alleged anything about it. It is only on 09/11/06 that he filed the application for retraction, which I have already discussed. The oral evidence given by all the accused in respect of their retractions is also mentioned and discussed in the factual position about the retraction. It is surprising to note that though it is the case of the prosecution that A8 did not express his desire to make any confessional statement and that his confessional statement was recorded, he informed the court on 26/10/06 that police obtained his signatures twice and he does not know the contents of the written matter. Admittedly, his confessional statement was not recorded as he did not express his desire to make it and there is no recovery from him and there is only one panchanama of his house search and he also accordingly deposed about it, but it is inconsequential.

1385. It will be necessary to take up the case of the A7 as there is

much agitation about the medical evidence that has come on record. It is submitted by learned advocate Wahab Khan for the A7 that as per the OPD case papers Exts. 1051 and 1052 dtd. 24/10/06 and 25/10/06, the accused had complained of fainting and giddiness respectively and these were the documents of medical examination of the GT Hospital proved by the concerned medical officer examined by the prosecution. However, it is the case of the A7 that on 22/10/06 he was taken to his residence for some search, where his mother noticed black marks below both of his eyes and swelling on the face and both hands and the skin also peeled off and the accused limping and when she inquired whether he was assaulted he did not speak anything, but indicated by waiving his hands that he was assaulted in the police custody. Therefore, she filed M. A. No. 302/06 before this court on 24/10/06 and on that day itself my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) directed the investigating officer to produce the accused before her on the next day, i.e., on 25/10/06, at 1200 hours. The accused was produced at 4.40 p.m. on 25/10/06 and she specifically asked him whether he wants to complain against anybody or whether he wants to say anything to the court and the accused specifically answered that he does not have any complaint against the police. Considering the allegations in the application, she asked the accused to roll-up his sleeves and saw for herself that there were no marks of injury or peeling of skin, but only saw slight black circles under the eyes. Even then she directed that he should be sent for complete body check-up to the JJ Hospital

permitting Dr. Ashpak Ubhare, a family physician of the accused, at the request of advocate for the accused, to remain present at the time of check-up. He submitted that the Superintendent of the JJ Hospital sent a letter to this court on 26/10/06 and as per the certificate Ext. 1744 it was informed that the patient did not have any complaint of any assault in police custody or by any other person or by any other authority, that he does not have any complaint of having injuries, but as per the court's order he was thoroughly examined and no fresh wounds were found, however eight contusions, two old scabs and old epidermal skin exfoliation was seen over both buttocks and all the above wounds were more than 5-7 days old.

1386. Learned advocate submitted that this clearly shows and proves beyond reasonable doubt that the A7 was subjected to 3rd degree torture. He submitted that the JJ doctors found 11 injuries and the prison doctor in the Byculla prison also found similar injuries as per Exts. 1742 and 2136 and submitted that either the group of doctors in the JJ Hospitals and Byculla prison are creating false record or the group of doctors of KEM and GT Hospitals are doing so. He submits that the accused was taken by the ATS officers for medical examination to the JJ Hospital and what has come is the finding of 11 injuries. From this an inference can be drawn that the medical officers at KEM and GT Hospitals prepared false record under the thumb of ATS, that they did not examine or question this accused as well as other accused because of the pressure of the terrorist accused and it also shows that the torture was to such an extent that the A7

did not even complain when the court asked him and when the doctors asked him. In my humble opinion, no such inference as submitted can be drawn. If accused did not complain to the medical officer, how can he know about his injuries, if the accused did not complain to the court about any torture, ill-treatment or 3rd degree torture by the police how can it be inferred that his silence shows that the torture was to the extent that he could not even complain, though he was represented by an advocate in M. A. No. 302/06 that was filed by an advocate. To my mind, it is too much to suspect the court record and this is nothing but an attempt to twist the factual aspects on the basis of the court record. Whatever it is, the order dtd. 01/11/06 disposing of M. A. No. 302/06 passed by my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) filed by the mother of the A7 is a very speaking order and in great detail. After reproducing the findings in the medical report, it was observed that the accused did not make any complaint of assault by police on 25/10/06 and 26/10/06, that his advocates were present and he was remanded to judicial custody. It is observed that no name of the police officer is quoted and no submissions were made by the learned advocate for the accused on 26/10/06 in respect of the observations made by their medical practitioner, who had remained present at the time of medical check-up of the accused. The M. A. was, therefore, disposed off as there was no complaint from the accused himself on consecutive dates when he was in police custody and thereafter transferred to judicial custody. In my humble opinion, this order has become final

and no amount of arguments can make this court drawn any inference about the accused being under such pressure that he could not even complain to the court. It is obvious that my learned predecessor took great pains to ascertain whether the accused had any complaint against the police and irrespective of he having not complained she sent him for medical check-up. I do not think it is the fault of the investigating agency or the court if the accused does not complain about any ill-treatment or torture by the police and no inference can be drawn that he was tortured or beaten before the date of his confessional statement.

1387. In view of the entire discussion upto now it is clear that the accused have failed to substantiate their allegations of ill-treatment and torture and the medical evidence in respect of few accused also does not corroborate their evidence, though they have given elaborate evidence vividly describing the ill-treatment and third degree torture during the police custody. The questions that were asked by all the DCPs were sufficient to enable them to ascertain the voluntariness of the accused to make the confessional statements and moreover the statutory warnings were also given and sufficient time was given for reflection. Hence, it will have to be held that the prosecution has proved that the confessional statements of all the eleven accused were voluntary.

1388. The second test to evaluate a confession is whether it is true and trustworthy. This aspect has been attacked on factual as well as legal aspects by all the learned advocates for the accused. Learned advocate Wahab Khan started his arguments on 02/05/14

and from that date upto 18/06/14, i.e., for a period of more than one and half months, he went on and on and on pointing out similarities, dissimilarities, use of specific words, non-use of specific words, repetitions of similar mistakes, etc., in the preliminary questions and answers, in the notings made by the DCPs and in their certificates, etc. If there is a certificate at the end of the confessional statement, he submitted that there is no memorandum, then if there are certificates, he pointed out to the similarities in the certificates, then he pointed out the similarities in the questions and answers in both parts of the confessional statement, etc. All his submissions as well as submissions made by learned advocate Shetty have been summarized in the written submissions filed by learned advocate Sharif Shaikh in the point no. 1 of volume-2 and learned advocate Sharif Shaikh also submitted orally that oral submissions of learned advocate Wahab Khan have been reproduced and summarized in them.

1389. The first submission is with respect to the identification of the accused by the DCPs and the escort officers, about which it is submitted that except DCP Phadtare, PW-93, all remaining six DCPs identified the accused in the court, that DCP Phadtare, PW-93, was the first DCP examined in the court and the ATS forgot to point out the accused to him whom he was to identify. It is submitted that when he did not identify due to lapse of time, how all the other DCPs could identify without any hesitation which only shows that the accused were pointed out to them. It is submitted that the court is open, the accused used to be produced before the court without

veil and used to stand outside waiting for being called in the court and the ATS had easy access to point them out to the DCPs and the escort officers. Hence, the identification by all the officers connected to the process of confessional statement is required to be vitiated. To my mind, first of all it is only a possibility that is suggested in the submission that the ATS could have easily pointed out the accused to the DCP when they were standing outside the court. Insofar as lapse of time is concerned, DCP Phadtare, PW-93, had not said so and he was only suggested that because the A5 and A9 were not produced before him, he could not identify the accused. Similarly, except DCP Choubey, PW-113, Addl. CP Brijesh Singh, PW-117 and DCP Dumbre, PW-118, remaining three DCPs were not even suggested that the accused had been pointed out to them by the ATS officers. Of course, the above DCPs denied the said suggestion and there is nothing more than that in their cross-examination. Insofar as the escorting officers are concerned, except the suggestion to PI Gaikwad, PW-116, that PI Mohite of the ATS pointed out the A1 to him, there is not a single suggestion to any of the escorting officer either of the ATS or local police station about the accused being pointed out to them and therefore they identifying the accused in the court. Thus, this objection is factually wrong and unacceptable.

1390. Next and the most agitated objection is that all the seven DCPs committed common mistakes, did common changes and additions and by this the only inference can be drawn is that all the confessional statements were prepared by the ATS officers in the ATS office and were supplied to the DCPs only for signing. It is also

submitted that the accused were taken to the DCPs only to get their signatures and make record in the police station that they were brought to the DCP for recording of the confessional statement. Insofar as the later submission is concerned, the voluminous and contemporaneous documentary record in the form of letters by the DCPs to the investigating officer of the ATS, to the local police stations, the oral evidence of the DCPs, the oral evidence of the escorting officers, station diary entires and the medical record fully proves that the accused were taken to the DCPs for the purpose of recording their confessional statement and not for taking their signatures.

1391. The points on which the submissions of common authorship of the confessional statements is based are changes in sequence and addition of sections concerning the first batch of the seven accused, then copying of word to word with mistakes from other confessions, etc. The changes in sequence and addition of sections is pointed out in respect of the letters sent by the Jt. CP, ATS to the DCPs, the letters sent by the DCP to the ACP, ATS, the letters by the DCP to the in-charge of local police station and the letters by the DCP to the CMM and it is submitted that before recording Part-I of the confessional statement, the DCP has two letters with him, one from the Jt. CP, ATS and one from the investigating officer of the case. It is submitted that the sequence of the sections and addition of the sections by the DCPs is the same when they have written letters to the above authorities, but it is changed in Part-I and Part-II. The sequence is changed and section 34 of the IPC is deleted. It is

submitted that if this is done by one DCP, it can be understood, it can be a coincidence if done by two DCPs, but if it is done by all the seven DCPs, then the only inference that can be drawn is that all the confessional statements were supplied by the ATS to the DCPs and the accused did not make any confession before them and therefore the seven confessional statements of the A1 to A4 and A9 to A11 are required to be discarded on this ground. Learned advocate Wahab Khan submitted that the sequence of sections of offence in the correspondence/set of letters prior to the recording of the confessional statements of all the eleven accused is changed by the DCPs in Part-I and Part-II of the confessional statement. However, in the correspondence by the DCPs after the confessional statements were recorded, including the letters to the CMM, the sequence of sections in the correspondence prior to the recording of the confessional statements is maintained. He submits that the DCPs have written the first and second part of the confessional statements by applying their minds uninfluenced by any outside things. Therefore, the sequence of sections of offence in the correspondence after recording of the confessional statements should be consistent with the sequence in the first and second part of the confessional statement. He submits that it may be said that this is a minor thing, but points out that this practice is followed by all the seven DCPs which is not natural and cannot be digested and it cannot be said that soft copies of the letters were given to all the authorities right from the Jt. CP, ATS upto the ACP.

1392. In my humble opinion, as submitted by the learned

advocate himself, this is a minor thing. The letters sent by the DCPs are on their letter pads bearing the logo of 'Brihanmumbai Police' and the possibility of soft copy of format of letters being provided cannot be ruled out. However, only on the basis of such commonality, it would be preposterous to draw the conclusion that the confessional statements themselves are fabricated and were dictated or prepared by a single authority.

1393. Same can be said about the submission of the learned advocate in respect of alias names of the A3 and A9 appearing in Part-I and Part-II of their confessional statements when they do not appear in the correspondence prior to and after the recording of the confessional statement in the correspondence in between Part-I and Part-II. In respect of the A12 it is about removal of word 's/o Rashid Khan' in Part-I of his confessional statement and in respect of the A7 it is the difference of age from 30 to 29 years in Part-I and Part-II. To my mind, at the cost of repetition, it will have to be said that these are minor things and no inference as submitted can be drawn that Part-I and Part-II were prepared separately at one stroke and the correspondence that was made prior to, in between and subsequent to the recording of the confessional statement, was prepared separately. To my mind, all the above things will not affect the factum of recording of confessional statement and cannot suggest common authorship or that the DCPs were not independent and impartial, having no nexus with the investigating agency.

1394. A few points raised by learned advocate Wahab Khan will suffice as examples about the large number of points that he raised

and how fallacious and unacceptable they are. A fallacious submission is made by the learned advocate referring to Ext.3912 (photocopy of Part-I of the confessional statement of A4 containing signature of SP Karale, PW-104, but not containing the signatures of the A4), obtained by the A4 under the RTI Act, that there should be no question of a copy unsigned by the accused or the DCP. He submitted that the sequence of the procedure of recording of confessional statement shows that it is only after obtaining signature of the accused that a copy can be provided. In this connection, referring to the evidence of SP Karale, PW-104, about taking out photocopy of Part-I after putting his signature and taking the signature of the A4, it is submitted in the written submissions by learned advocate Sharif Shaikh that Ext. 3912 is the copy sent by the ATS to the Collector office for getting consent order for prosecution and this means that it was prepared in the ATS office and they had a copy and SP Karale, PW-104, only took signature of the A4 on Part-I and this shows that as the confessional statement of the A4 was prepared in the ATS office, they had the copy and therefore the confessional statement of the A4 has to be discarded. To my mind, as mentioned earlier, this is a fallacious submission and is not acceptable. Ext. 3912 is a document obtained under the RTI Act, which has not been proved as per law. Even otherwise, I do not understand how the inference as submitted can be drawn, when it is only a copy of Part-I, which is obviously typed on the computer. Similarly it is not proved that it was sent with the proposal for obtaining consent to the Collector office. The material document is

Part-II of the confessional statement.

1395. Learned advocate Wahab Khan questioned as to why DCP Brijesh Singh, PW-117, should be believed when he says that the notes/endorsement at the end of Part-II of the confessional statement of the A12, that was a part and parcel of the proceedings, are in his file and not before the court, though he must have put them in the envelope? He submits that this shows non-application of mind and just copying the material that was provided. To my mind, this submission is unacceptable for the simple reason that the notes/endorsement, if any, made by the recording officer are superfluous and not made mandatory by the law. Therefore, their presence or absence is immaterial.

1396. It is next submitted that the memorandum in Part-II is absent in Part-II of the confessional statement of the A2 and A11, both were sent on the same day, but contents of their certificate are similar. This is factually wrong submission because one certificate is hand written and one is typed and there are other dissimilarities though minor. Another wrong submission is made that this is how the DCPs recorded the confessional statement and this is the sole evidence on which there can be death penalty. I said wrong submission, because it is obvious from the findings arrived at upto now that this is not the sole evidence.

1397. A childish and contradictory submission is made that the DCPs followed cut, copy and paste formula and made cosmetic changes to show application of mind, e.g., at one place only the word 'accused' is used and the other place 'the accused' is used.

Words 'बयान लिखा/बोला/कबुली बयान/I called steno and I started dictating' are the only differences and thus there is a doubt. Are these not dissimilarities? Can the inference as suggested be drawn? Obviously not.

1398. An incorrect submission is made by learned advocate that the memorandum in Part-I of the confessional statement of the A5 and A6 by different DCPs sitting at two different places on the same day, i.e., on 24/10/06, are exactly similar in content, but that of the A5 is hand written and of the A6 is typed, that Part-I of the confessional statement of the A6 is handwritten, but the memorandum is typed and there are no timings. This submission is incorrect because the memorandum/endorsement at the end mentions commencement time as 1000 hours and concluding time as 1100 hours. It cannot be said from this that the investigating officer prepared the entire thing and the only above is application of mind and that the author is same.

1399. It is submitted that the date and time in the first paragraph of the memorandum of Part-I Ext. 1068 of A6 is handwritten as against the entire memorandum being typed and the time is over written, but not initialed. There are blank spaces at the places where timing should be written in the noting Ext. 1213 of Part-I of the A3 and name of the police station is added though Addl. CP Brijesh Singh, PW-117, stated that he was writing them simultaneously. To my mind, how can these things said to be unnatural, improbable and indigestible, when Ext. 1213 are just notes and it can be understood that the timings must have been put in the fair version, Ext. 1212.

1400. Learned advocate submitted that memorandums after Part-I and Part-II of two different accused, i.e., A5 and A6, by two different DCPs, but of the same date are exactly similar, though not provided by law. They have been developed by the DCPs as per their own understanding. As against this, SP Mohite, PW-102, applied his mind by copying the first half portion of the memorandum and skipping the second half portion in the confessional statement of the A7. However, certificates of all three are same, except the last sentence in the certificate of the A6, which is not in the certificate of the A5 and A7. It is submitted that these similarities and presence and absence of certificate cannot be a coincidence and show common authorship which is evident on the background of the prosecution case that the accused were not telling/disclosing anything, were not confessing anything, but only giving piecemeal information and suddenly they decided to give confessions in group. Learned advocate submitted that the answer to the question as to why the DCPs did this mechanically without applying their minds is obvious that it was done by them on the instructions of CP Roy, PW-185, and Jt. CP Raghuvanshi and they just copied the material provided to them. However, learned advocate fairly admitted that the confessional statements of the seven accused in the first group substantially tally with each other on material particulars, but those of the four accused in the second group defer in some particulars. Now, to my mind, if the material parts of the confessional statements, viz., which the accused stated, is different in content, but corroborating each other in respect of fact in issue, the other

things pointed out are inconsequential and no inference as suggested or concluded can be drawn about the DCP obliging their superiors.

1401. In respect of word 'फिर' in a question in Part-II of the confessional statements of the A3, A4, A5, A9 and A10 relating to the inquiry whether police or any other person have threatened or frightened the accused, it is submitted that it can be interpreted in two ways : either that there was some complaint of threatening earlier which is not digestible, because though similar questions were asked in Part-I, the answers being in the negative. Therefore it is only because the DCPs just copied and pasted the questions, which means that there is a common author. To my mind, may be the said word is used and may be a set of questions were provided in soft copy, is this touches and affects the core issue? No. This is only for five accused and that too recorded on different dates. So if there are some similarities in some documents like memorandum or certificate in more than one confessional statement recorded on the same date, you say its copy and paste and even if it is recorded on different dates, you say the same thing. Therefore this submission is of no consequence.

1402. Learned advocate pointed out that first paragraph before the questions in Part-II of the confessional statement of the A3, A4, A5, A9 and A10 is the same. However, the second and third paragraph is not in the confessional statement of the A3. The last line in the confessional statement of the A4 is not in other confessional statements. Questions no. 2, 3 and 4 are the same as

questions no. 1, 2 and 3. The answer no. 3 cannot be a question and the question no. 4 cannot be an answer because it is a question. He submits that all eleven questions and all eleven answers are sequential and word to word same. This shows that soft copy was given and a slight modification to paragraphs in the confessional statement of the A3 were added and one sentence in the confessional statement of the A4 was added and this cannot be plausibly explained. To my mind, the learned advocate has himself pointed out the differences or dissimilarities in the memorandums and in paragraphs. So are they not dissimilarities? The questions that are there are as per the legally necessary points. Rest of the things are same and can you expect a literary expertise in formatting different types of questions for each accused? What would have been the questions? Thus, this submission is also improper and not acceptable?

1403. Next submission is that all the accused have taken education in Urdu medium except the A9, their mother tongue and family background is Urdu. Therefore, the use of pure Hindi words indicates dictation or drafting by a person well-acquainted with Hindi words. From this it can be safely inferred that the language used in the body of the confessional statement is not of any of the accused. To my mind, what the learned advocate is saying is impossible in Mumbai. There is no evidence by the accused except their words that their mother tongue is Urdu. Except the A1, A5, A10 and A13, remaining accused are Mumbaites. Just being a Muslim, does not mean that they will speak pure Urdu. One does not

talk as per perfect dictionary Urdu words. The DCPs asked the accused in which language they are comfortable and they said Hindi and talked in Hindi. So it is not surprising. It may have happened that if some Urdu words were used, the DCP could have asked its meaning and he would have written the meaning rather than writing the Urdu word. It is human nature to substitute words that one understands. Even assuming that it may be that the accused are Urdu speaking persons, but when they try to tell or explain something to a person, who does not understand or speaks Urdu like the DCPs, they must have used those words for clarification. This possibility is very much there. This inference can be drawn from the first question asked by the DCPs. No one uses pure language. Thus, this submission is of no use. It is observed by the Supreme Court in the case of **Mohammed Ajmal Kasab (supra)** that the accused would have unconsciously picked up the English words from his interrogators and these would have been made a part of his own vocabulary. It did not find anything surprising in the accused uttering the words 'sahzish', 'POK'. While we are at this judgement, it will not be out of place to reproduce the observations of the Supreme Court in paragraph 230 in respect of structure of the confessional statement, the sequence of events narrated therein and the use of some words that *prima facie* seems unnatural in the mouth of the accused. It is observed in paragraph 230 that, *'It needs to be kept in mind that the appellant was making the statement after being in police custody for several months. The police, in the course of countless sessions of interrogations, would have turned him inside out,*

and he would have earlier made the very same statements in the same sequence before the police many a times. Under relentless police interrogations, he would have recalled the smallest details of his past life, specially relating to the preparation and training for the attack on Mumbai. (The statements made before the police were not, however, admissible in evidence as being barred by the various provisions of the CrPC and the Evidence Act, as discussed in detail above.) But when the appellant went to the magistrate to make his confession, everything would be completely fresh in his mind. He would also have unconsciously picked up those words pointed out by Mr. Ramachandran from his interrogators, and these would have become part of his own vocabulary. We, therefore, find nothing surprising in his uttering words like 'Sahzish" or "POK".

As to his knowing the names of many people in Lashkar-e-Toiba, their respective positions in the hierarchy and their roles in the organization, again there is nothing unusual about it. It is to be noted that the appellant was not a mercenary hired for the operation. He was a highly committed and devoted member of the organization and, therefore, there is nothing strange or wrong in his coming to know many people in the organization during the course of his training. As to the recording of certain statements within quotes by the learned magistrate, that is only a manner of how the appellant spoke. The appellant would say a long sentence and then add that this was what so-and-so said. The magistrate would then record the statement within inverted commas even though the sentences would be made by the appellant himself, paraphrasing the words of others. Further, to say

that the confessional statement was intended to confirm the findings of the police investigation is actually to blame the police for an excellent investigation. If the confessional statement confirms the findings of the investigation that should go to the credit of the investigation, and it cannot be said that the confessional statement was recorded to confirm the police investigation.' Thus, the submission on this point is baseless and unacceptable.

1404. In view of the above discussion, the submission about the changes in sequence, addition of sections, commonality of words and mistakes in the confessions, uses of particular words, improper use of some words that are wrongly written, sequence of names of wanted accused as well as the accused in this case being common, covered in the topic the common authorship of the confessions, are untenable and do not affect the evidential value of the confessional statements. They also do not lead to any inference that there was a common author for all the confessional statements and that they were provided by the investigating machinery.

1405. Then is the objection about procedural violations. First is that section 18(1) makes it mandatory for the DCP to record the confessional statement made before him in his handwriting. It is submitted that in the present matter many DCPs have violated this procedure. It is submitted that paragraphs 1 to 5 and questions 1 to 11 in Exts. 1212 and 1218, the entire Ext. 1226 was recorded by the stenographer of Addl. CP Brijesh Singh, PW-117, and Exts. 1057 and 1060 were recorded by the stenographer of SP Karale, PW-104, but the stenographer was not examined therefore the alleged

confessional statements of A3, A4 and A12 are required to be discarded. These submissions are in respect of the Part-I of the confessional statements. Part-I of the confessional statements of the A3 and A12 are typed, but Part-II are handwritten. It is only the confessional statement of the A4, which is typed. In this respect it is held by the Supreme Court in the case of **State of T.N. V. Sivarasan Alias Raghu ((1997)1 SCC 682)**, that, *'there is no justification for interpreting the words 'recorded by such police officer in writing' to mean recorded by such police officer in his own handwriting. There is no reason why a Superintendent of Police who, for some reason, is unable to write down the confession, cannot take help of another person for writing the same. Why cannot a Superintendent of Police, whose handwriting is not good, record the confession by using a typewriter? Typewriting is also writing. A typewritten thing is also a writing prepared with the help of a typewriter. It, therefore, held in the facts of that case, which was under the TADA Act, that the learned Sessions Judge committed an error of law in treating the confessions as inadmissible on the ground that they were not recorded in accordance with the requirement of section 15 of the Act'.*

1406. It is submitted that section 18(3) of the MCOC Act states that after recording the confessional statement, the police officer shall certify in writing below the confession putting the date and time on the same. It is pointed out that there no certificates appended to the confessional statement of the A1, A3 and A10, therefore, they lose their value and are required to be discarded. In this context, the Supreme Court in the case of **Bharat Chaganlal**

Raghani (supra) referred to the factual position about the confessional statement of the two accused, i.e., A5 and A6, having been recorded by a DCP and observed in paragraph 32 that the epicentre of all the prosecution evidence is the said confessional statements. Three grounds on which the confessional statements were not relied upon and excluded from the evidence by the designated trial judge were noted in the said paragraph and in a discussion later on they were not held to be good grounds for discarding the confessional statement. The Supreme Court before dealing with the said grounds noted in paragraph 33 some observations of the designated trial judge regarding the confessional statements that, *'after referring to Exhibits 147 to 150, the Judge observed : By looking to the questions, it appears that by putting certain questions to these accused the officer did ascertain that the accused persons very voluntarily confessing the guilt....'*. The Supreme Court observed in paragraph 34 that *'Despite noticing the omission of the certificate below the confessional statements as per requirement of Rule 15(3) of the TADA Rules and relying upon the judgment of this Court in Sharafat Hussain Abdul Rahaman Shaikh V. State of Gujarat the court held that*

“absence of the certificate below the confessional statement will not make the confessional statement ipso facto a piece of paper worth throwing in the dustbin. The officer can very well appear in the witness box and satisfy the court that the confessional statement was voluntarily made....”

The trial court further held that “looking to the statement of

DCP it appears that the confessional statements have been made voluntarily by the accused”. The Supreme Court did not held the observations of the designated trial judge about absence of certificate as not the correct position of law. It accepted and relied upon the confessional statement of the two accused (which were the epicentre of all the prosecution evidence) though there was no certificate at the end of their confessions and overturned the acquittal of the A1, A5 and A6 by the trial court and convicted them. Learned SPP has relied on the case of **Afzalkhan @ Babu (supra)** and in paragraph 11 of the judgement the Supreme Court has referred to the observations in the case of Hardeep Singh Sohal and Ors. V. State of Punjab through CBI (2004 CriLJ 4627), in which it was observed that *'Ext. PAA does not contain such a certificate having been given by PW 34. It is true that PW 34 had put certain questions to the accused as to whether he was aware that the statement which he wants to make could be used against him and on the basis of the same he will be sentenced. The officer also asked him whether there is any pressure, fear on him and he answered in the negative. However, PW 34 did not give the certificate at the end of the confession. The certificate should have specifically stated that he had explained to the person making the confession that he was not bound to make the confession and, if he does so, the confession he may make may be used against him and that he believed that this confession was voluntarily made and it was taken in his presence and recorded by him and was read over to the person making it and admitted by him to be correct, and it contained a full and true account of the statement made by him.*

Thus, the question as to where irregularity, if any had been committed in recording the confessional statement of the accused or the same otherwise would not inspire confidence before a court of law is a matter which in our opinion would fall for consideration of the learned Trial Judge'. To my mind, considering the questions that were asked by the DCPs and the endorsements made by them, it is more than clear that necessary statutory warnings were given to the accused and the questions were put to ascertain the voluntariness of the confessional statement. I have already held that the confessional statements of all the eleven accused are voluntary. Thus, this irregularity, to my mind, does not affect the admissibility of the confessional statement. Even the DCPs have explained how they had ascertained the voluntariness. It is not the case of the accused except the A4 that they had not been taken before the DCPs. Thus, this objection does not come in the way of accepting the confessional statements.

1407. It is then submitted that as per section 15(3), the certificate should be given in writing by the DCP under section 15(3), but the certificates appended to the confessional statement of the A4, A6, A11 and A12 are typed. Hence, their confessional statements are required to be discarded. The Supreme Court has also considered this aspect in the case of **State of T.N. V. Sivarasan Alias Raghu (supra)**. It is held in paragraph 29 that "*under his own hand*" as used in sub-rule (3)(b) of Rule 15 does not mean in his own handwriting and it held that the ground on which the learned sessions judge held the two confessions are inadmissible, viz., that the certificate was

*typewritten and the memorandum at the end of the confessional statement was also typewritten, was not a good ground and the sessions judge was wrong in holding that the two confessions were inadmissible as they did not comply with the requirement of Rule 15(3)(b)'. It is also held in the case of **Devender Pal Singh (supra)** that merely because the confessional statement was recorded in computer, it cannot be a ground for holding that it was not voluntary. It was held that it would be too technical to discard the confessional statement or doubt its authenticity on the score that the DCP has given a certificate in typing when the requirement is that it should be 'under his own hand'. It observed that this is merely a procedural requirement and its non-observance does not cause any prejudice to the accused. It is held that procedure is handmaid and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, the requirement of recording 'under his own hand' demands an approach which would be rational and practical and not otherwise. Such minor deficiency, if any, cannot be considered to be a fatal factor so far as the prosecution case is concerned. These observations also cover the subsequent submission that the certificate must be just below the confession and not on the separate page as is the case in respect of the confessional statement of the A4, A5, A6, A9, A11 and A12 and the certificate of the confessional statement of the A2 to A7, A9, A11 and A12 do not bear date and time and the certificates are word to word common. In respect of this point, the learned SPP submitted that he is putting this serious*

proposition before the court whether not giving certificate below the confession or giving it on the separate sheets vitiates the entire confession? He wondered as to whether at any time in the past, there was an occasion in any matter to consider what is the legislative intent behind making such a provision? He submitted that by logical reasoning and by using common sense, the answer lies in the fact that there is a cut off portion and there should not be any scope for interpolation after the confession part is over. He submits that there is no other logic for making this provision and submits that if this explanation appeals to this court, then after recording of the confession is concluded, the DCP has made signature/ endorsement immediately below it. The action of the DCP takes care of the objection and eliminates the possibility of interpolating anything after recording of the confessional statement is over and serves the same purpose of placing the certificate just below the confessional statement. Therefore, on this ground, the confession cannot be discarded. The submissions by the learned SPP are logical and acceptable and except that alleging that this practice is not as per the provisions of law, the accused have not alleged anything or have not said that this has prejudiced them.

1408. The observations in the case of **Mohammed Ajmal Kasab (supra)** in respect of language of the confessional statements being not language of the accused covers the next submission about a very hard(?) Hindi word like 'Pitaji' being found in the confessional statement of the accused and it is submitted that a Muslim accused can never use this word, but he will use the words like 'Abbu',

'Walid', 'Abba' and all confessional statements containing the same language and words indicate that they were prepared at the ATS office. It is, therefore, submitted that recording of the confessions was not in the language of the accused and this is a violation of section 18(2) of the MCOC Act. In view of the law laid down in the case of **Mohammed Ajmal Kasab (supra)**, this objection is not tenable.

1409. It is submitted that A1 was produced before the CMM, who opened the confessional statement and read it over to him and A1 denied the contents in respect of the present offence. However, the CMM did not open the confessional statements of the A2 to A4 and A9 to A11 when they were produced before him and forwarded them to this court intact without verification. This is covered in the earlier discussion in paragraph 1323 *supra* in which the law laid down in the case **Bharat Raghani** is discussed. It was not incumbent upon the CMM to open the envelopes of the confessional statements.

1410. In respect of the production before the CMM, it is further contended that the CMM took signatures of the A9 and A11 on the letters, but did not take the signatures of the A2, A3, A4 and A10, though section 18(6) of the MCOC Act says that the CMM shall scrupulously record the statement, if any, made by the accused and get his signatures. It is submitted that even the word 'yes' or 'no' told by the accused is his statement, therefore, it is necessary for the CMM to record the statement and to get the signature. It is submitted that there is no explanation as to why the CMM adopted the above three types of procedures and this has not been explained

as the CMM was not examined. It is also submitted that the A4 deposed that he was not produced before the CMM. In this connection, it is submitted by learned advocate Wahab Khan that A9 and A11 deposed on oath that they complained to the CMM on the day of the production before him, but even then the learned SPP refused to examine the CMM. In this connection, the learned SPP submitted that in view of section 80 read with section 114 of the Evidence Act, it was not necessary and the prosecution was not obliged to examine the CMM. Learned advocate Wahab Khan submitted that the presumption under section 80 of the Evidence Act is rebuttable. The defence had filed an application Ext.2590 to direct the prosecution to examine 33 cited witnesses including the CMM and ACMM. It was rejected on 04/04/10. He submits that this was not challenged because of the financial constraints of the accused, appeal being not maintainable against that order and more importantly as the defence wanted to reserve something for the argument and wanted this court to draw adverse inference. To my mind, similar application was given by the defence Ext.2848 for examining them as court witnesses and it was rejected on 20/07/12. The submissions about financial constraints, etc., do not lie in the mouth of the defence considering the fact that they had repeatedly gone to the High Court and the Supreme Court to air their grievances by challenging many orders passed by this court. Not only this, the defence did not call them as defence witnesses, when they called several others. The point is that the defence cannot now raise this point and say that no opportunity was given. Learned

advocate Wahab Khan pointed out to the judgements in the cases of **State (N.C.T. of Delhi) V. Navjot Sandhu and Adambhai Sulemanbhai Ajmeri & Ors. V. State of Gujarat**, which show that the CMM or ACMM was examined in those cases. To my mind, there is no authority which says that the CMM should be examined. In our case, the CMM in his letters has informed that the accused did not give any statement except the A1. The statement given by the A1 has been forwarded to the court by the CMM and its contents have been referred to and it is taken on record. A1 has not added anything more to the contents of the statement that he gave before the CMM or he has not stated in his written submissions filed with his statement under section 313 of the Cr. P. C. that he made allegations before the CMM about torture, etc. Insofar as the other accused is concerned, to my mind, if their statements were not recorded as per the letters to the CMM, what was the point in examining the CMM. At the most, defence would have given suggestions to the CMM that the accused had complained of torture or that they had not given the confessional statements. These would have been only suggestions which would have been naturally denied by the CMM and ACMM. Thus, there is no question of any denial of opportunity. Insofar as the submissions about three types of procedures adopted, to my mind, it appears that in respect of the A1, CMM committed a mistake in opening his confessional statement and on realizing it, he did not do so for the rest of the ten confessional statements because that is the correct legal position. Thus, the submission that all the confessions go away for non-compliance of this requirement is not correct and

unacceptable submission. In fact, in the case of **the State of Maharashtra, Appellant V. Mohd. Zuber Kasam Shaikh alias Tabrej alias Juganu and Anr., Respondents, i.e., Confirmation Case No. 01 of 2001** decided by the Division Bench of our High Court on 17/12/03 and in the appeal against that judgement in the case of **Mohd. Farooq Abdul Gafur & Anr., Appellants V. State of Maharashtra, Respondent** relied upon by the learned SPP, though there is a reference about the accused being produced before the CMM, the CMM was not examined in that case. Thus, this aspect does not affect the credibility of the confessional statement. It is too much to suspect the record made by the CMM about all the accused not desiring to make any statement and not making any complaint. Denial of the accused to make any statement cannot be equated to a statement that has to be recorded. Sub-section (6) of section 18 specifically says that the CMM or the CJM shall scrupulously record the statement, if any, made by the accused and then get his signature on it. So it is only if the accused makes a statement, then it is to be recorded and then his signature is to be obtained. Thus, no inference about denial of opportunity can be drawn for non-examination of the CMM.

1411. It is further submitted that the A5 to A7 and A12 were produced before the ACMM at his residence on 25/10/06. However, the ACMM S. Y. Shisode wrote the letters to this court forwarding the confessional statements on 30/10/06 and it is only in respect of the A12 that he prepared a roznama dtd. 25/10/06 which is behind the letter Ext. 1233. Though, it is submitted that roznama in respect

of the A7 is also on record, the said document has not been proved, but it appears behind the xerox copy of the letter sent by SP Mohite, PW-102, at page no. 0479 of the chargesheet and is dated 25/10/06. It is submitted that these roznamas are very short and a question is raised as to on the basis of what record the CMM wrote the letters after a delay of five days. To my mind, the record must be in the court of the ACMM. No judicial work is done unless any record or noting is made somewhere. Thus, this objection is of no consequence.

1412. The issue in respect of ACMM Shri S. Y. Shisode being not in-charge, was considerably agitated during the evidence of the DCPs who had recorded the confessional statements of the A5 to A7 and A12 and during the evidence of the police officers of the local police stations who had taken the said accused to the residence of the said ACMM. However, this issue is not taken up by learned advocate Wahab Khan during his arguments and it is also not agitated in the written submissions by learned advocate Sharif Shaikh. A7 as DW-46 gave evidence in detail in paragraph 46 that he was not produced before the CMM as per the order given by SP Mohite, PW-102, to API Shinde, PW-103, but was produced before S. Y. Shisode, who was not the in-charge CMM on that day. For this purpose he relied on the information obtained by him under the RTI Act, Ext. 3339, which shows that Shri S. S. Shirke was the CMM between 01/10/06 to 30/11/06. Though, this issue has not been raised during the arguments, I deem it necessary to take it up as it might be again agitated before the higher courts. To the second

question, the information provided was that the charge of the CMM was given to the ACMM from 27/11/06 to 30/11/06. The reason for this being that the CMM had gone to Delhi to attend some course. To the fourth question as to who was the CMM and the in-charge CMM on 25/10/06, the information was given that Shri S. S. Shirke was the CMM on 25/10/06 and because of Diwali vacation from 23/10/06 to 30/10/06, no court was working on 25/10/06. A7 also wants to rely on the information Ext.3315 in respect of outward number register in confidential section in the office of the CMM showing forwarding of confessional statements and it is surprising how such a document is produced by the defence, though rather than helping the defence, it fully corroborates the prosecution case. It shows that the confessional statements of the A1 to A4 and A9 to A11 were sent to this court on the dates mentioned in the said letter by the CMM Shri S. S. Shirke. A7 is also relying on the information Ext. 3372 obtained by him under the RTI Act from the office of the CMM by which it was informed that as per the outward register of the year 2006-07, the confessions were not verified by Shri S. Y. Shisode, the then ACMM during the period from 01/10/06 to 30/11/06.

1413. In this connection, the learned SPP rightly pointed out as to how the defence is relying on incomplete information that they obtained under the RTI Act and is trying to mislead the court. He submitted that the DCPs and the escorting officers were given to understand that the CMM Shri S. S. Shirke is not there and his charge is kept with ACMM S. Y. Shisode and it is in that

circumstances that the accused were produced before the ACMM, that too at his residence as it was a holiday. He submits that by the application Ext. 2891 the Registrar and Asst. Registrar, who were also the Public Information Officers, were summoned by the defence as witnesses to bring the attendance record and details of the CMM and in-charge CMM between 01/10/06 to 30/11/06. However, when these two witnesses remained present on 24/07/12 as per the summons, by the pursis Ext. 2912 learned advocate Wahab Khan intimated that he does not want to examine them as the documents obtained under the RTI Act have been produced. To my mind, the game played by the defence is very obvious. They produced only those documents which furnish incomplete information and even incomplete information was asked by carefully framing the questions in their applications under the RTI Act. It is in this context that the prosecution produced numerous documents alongwith their application Ext. 3928, including the log book of vehicles and station diary entries that had been called by the defence during the cross-examination of various witnesses. Alongwith the same application, prosecution produced certified copies of documents in connection with the charge of the CMM, which are at pages 339, 341 and 343 of the documents that are with that application. Since they are certified copies of the court record, they are received in evidence directly and marked as Exts. 4804 to 4806 at the time of judgement. Ext. 4804 is the certified true copy of application by Shri S. S. Shirke, CMM, to the Registrar General of the Bombay High Court requesting permission to leave headquarter from 20/10/06 till

30/10/06 and intimating that Shri S. Y. Shisode, ACMM would be holding his charge from 24/10/06 to 30/10/06. Ext. 4805 is the certified true copy of outward register showing this letter being forwarded to the High Court by O. No. 3199/06. Ext. 4806 is certified true copy of confidential outward register showing forwarding of confessional statements of A5, A6, A7 and A12 on 30/10/06. What more proof is required to show that in fact Shri S. Y. Shisode, ACMM, was in-charge CMM and since it was Diwali holidays, the accused were produced before him at his residence. It is in the information produced by the accused that there was Diwali vacation from 23/10/06 to 30/10/06 and no court was working. That is the reason why the accused is produced at the residence of Shri S. Y. Shisode. That is also the reason that though all four accused were produced before him on 25/10/06, he forwarded the confessional statements to this court on 30/10/06 when he must have gone to the court and it explains the delay. This shows how the accused went about collecting the incomplete information under the RTI Act and relying upon it for making any kinds of allegations against each and every authority connected with the case including the judges. To my mind, no judicial officer will dare to do any work of any other judge unless he is kept in-charge by a written order.

1414. Next submission is that the DCPs supplied copies of the confessional statements to the investigating officer before the original confessional statements were sent by the CMM to this court, which is a violation of Rule 3(8) of the MCOC Rules. This is in respect of copies of confessional statements of the A3 to A7, A10 and

A12 and it is contended that therefore the confessional statements are required to be discarded. To my mind, this is just a procedural irregularity and it does not affect the evidence about the procedure of recording of confessional statements.

1415. Voluminous submissions are made by learned advocate Wahab Khan as well as in the written submissions by learned advocate Sharif Shaikh that the written submissions of the accused filed with their statements under section 313 of the Cr. P. C., their depositions under section 315 of the Cr. P. C., the defence witnesses examined, the contents of the CDRs and the contents of the confessional statements of all the accused *inter se* falsify the confessional statements of all the accused. In my humble opinion, the contentions made by the accused in their written submissions filed with their statements under section 313 of the Cr. P. C. and in their depositions are only words. What is necessary to be considered is their retractions and whether their evidence that they gave on oath as well as their contentions made in the written submissions are substantiated or not. It is clear from the discussion upto now that the allegations of torture have not been substantiated. Hence, the evidence of the accused on oath and in writing is of no consequence and does not affect the evidential value of the confessional statements. It is easy to make allegations, but these allegations in writing as well as oral are pitted against the positive physical evidence given by several witnesses examined by prosecution which is supported by contemporaneous record. It is submitted that sufficient opportunity was given to the learned SPP

for cross-examining the accused and he had cross-examined them at length, but did not succeed in discrediting the evidence given by the accused, who are credible, reliable and competent witnesses. The evidence of nine accused out of the eleven accused, whose confessional statements were recorded, is in the nature of allegations in respect of the torture and ill-treatment and mainly consisting of denials about the evidence given by the prosecution. To my mind, the learned SPP giving the suggestions that they deposed falsely and making specific suggestions about they being parts of the conspiracy and they having given voluntary confessions is a sufficient cross-examination. It was not necessary for the learned SPP to pinpoint each and every positive evidence, oral as well as documentary, given by the prosecution against each and every accused and to confront the accused with that evidence, because ultimately the accused would have simply denied it. So no purpose would have been served and it is for the court to consider the nature and volume of the evidence and its credibility given by the prosecution as against the nature and credibility of the evidence given by the accused. Thus, this aspect is of no consequence. Insofar as the defence witnesses examined by different accused in support of their respective cases is concerned, their evidence has already been discussed at the appropriate places.

1416. In respect of the entries in the CDR, a detailed analysis is made in the written submissions pointing out to the dates of entries of all and their locations *vis-a-vis* the dates given in the confessional statements of the respective accused. At the cost of repetition, it will

have to be said that this is an inferential evidence and the CDR does not and will not show the location of a particular person at a particular place. It will only show location of the mobile handset as is admitted by the A7 in his cross-examination. Absence of calls at particular time will not raise any inference about a particular person or accused being not present at a particular place.

1417. Next is the submission that there are contradictions between the confessional statements of the accused *inter se* which means that the confessional statements are not true, which is the second test for relying on the confessions, therefore, the confessional statements of the A1 to A4, A7, A9 and A12 are required to be discarded. The so called contradictions pointed out are in fact not contradictions, but inconsistencies and a certain thing stated by an accused in his confessional statement, but not stated by the corresponding accused in his confessional statement. These things are not material because what we have to see is whether there is a general corroboration from the evidence led by the prosecution and whether there is a general corroboration in the confessional statements of the accused *inter se*. Each and every detail in the confessional statement of one accused need not be specifically corroborated by other accused in their confessional statements. Thus this submission is not legal and therefore not acceptable.

1418. Lastly, it is submitted that substance of the crime is not disclosed in the confessional statements and there is no specifications as to what household utensils were used as containers, that there is no reference to any pressure cooker in any confessional

statement, that no confessional statement mentions from where rexine bags were purchased and it is not clear till date whether circuit board or Quartz watch was used as timer devices and there is no inquiry as to from where the A13 brought the articles for the preparation of bombs. In this respect, the learned SPP submitted that it will have to be kept at the back of the mind that we are dealing with the case under the MCOC Act and for the purpose of sub-section (2) of section 3 of the MCOC Act, the definition of the term 'abetment' makes it clear that acts preparatory to the organised crime also gets covered. He submits that the arguments that may be used against him will be that the confessional statements will not show that any accused has committed the blast and therefore it is not admission of guilt. He submits that it would be wrong and fallacious to contend that this is only a case of bomb blasts. The continuing unlawful activity has culminated in the seven bomb blasts on 11/07/06, but it is preceded by several acts that were preparatory to the organised crime. He submits that if the confessions were doctored, why take the trouble of recording so many pages of history and geography of the accused. They could have directly started with their statements about how they participated in the bomb blasts. Even otherwise, if the confessional statements would have been fabricated containing the direct admission about the commission of the bomb blasts and there was no history about it, the police would have not been able to know the conspiracy behind it. If the confessional statements would have been restricted only to the role of a particular accused, then it was open

to the defence to say that it was doctored. These submissions were made by the learned SPP in particular reference to the confessional statement of the A2 and he submitted that what is necessary to be seen is whether there is general corroboration between the confessional statement of the accused *inter se*. This he pointed out in respect of the confessional statement of the A2, A3, A4, A9 and the evidence of Mohd. Alam, PW-59. Thus, as mentioned earlier, to my mind, it is the general corroboration that is required to be seen and not minor inconsistencies relating to particular small instances that are mentioned in the written submissions. Insofar as use of general term household utensils being used as containers for the bombs by the accused in their confessional statements, to my mind, if at all the ATS had fabricated the confessional statements, they would have given some more specifications in the confessional statements itself. This lends credence to the evidence by the DCP that whatever accused stated before them, they wrote in their confessional statements. It was very easy for the ATS to introduce specific description of household utensil or pressure cooker or timer or bag and from where they were purchased or procured and what exactly was used as a timer device. The confessional statements were made by the accused. These things are not in their confessional statements because they did not give any specification about it. This submission, therefore, rather than supporting the case of the defence, supports the case of the prosecution to lead to the inference that the confessions were not doctored or fabricated by the ATS.

1419. The above discussion covers the general submissions in

respect of the confessional statements made by all the learned advocates for all the accused. There are submissions in respect of the individual accused by the learned advocates in respect of inconsistencies and irregularities in the documents comprising of the correspondence, the difference in ages of the accused and other things. I will take up only few instances to show as to how the said submission are not acceptable legally as well as factually and also logically. It is contended by the A4 that his surname is admittedly Siddique, but the Jt. CP in his letter Ext. 1054 wrote his surname as Ansari and in this context ACP Patil, PW-186, admitted that it is so written and he remembered that it is a typographical mistake. However, SP Karale, PW-104, deposed that he was directed by the Jt. CP to record the confessional statement of Ehtesham Siddique, though, Ext. 1054, shows the surname Ansari. His admission in cross-examination is pointed out that he did not know anything about the A4 till he received this letter and he admitted that the letter that he wrote to ACP Patil, PW-186, Ext. 1055 for producing the A4 before him, contained the surname of the accused as Siddique. Of course, he denied the suggestion that he had received the entire information and documents about the accused on 04/10/06, therefore, he wrote the correct surname. He also admitted that he cannot say from where he got the information to write the correct name of the accused in Ext. 1055. To my mind, the possibility cannot be ruled out that the messenger who had carried the letter Ext. 1054 to the DCP may have been inquired with and he may have stated the correct name of the accused, because it is a

letter by the Jt. CP of the ATS and the person who took the letter must also be of the ATS. The fact remains that the oral and documentary evidence given by the prosecution about the procedure for recording the confessional statements of not only the A4, but also of all the other accused, is in accordance with the provisions of section 18 of the MCOC Act and from such minor things, no inference can be drawn that the letters and confessions were prepared at the ATS office, more particularly, when the letter Ext. 1055 bears the logo 'Brihanmumbai Police' and of the letter pad of SP Karale, PW-104. Another such inconsistency is shown in the letter of the CMM Ext. 1064 by which he forwarded the confessional statement to this court, in which his surname is written as Shaikh in the subject matter and on the envelope Ext.1064A, however, this is of no consequence because in the main body of the letter correct surname Siddique is written.

1420. A serious contention is made in the written submissions that the A4 was not produced before the CMM and the evidence of the A4 as DW-38 in paragraph 25 is reproduced and it is submitted that it is crystal clear from his evidence that he was not produced before the CMM, but in view of the surname Shaikh being used, it is possible that some other person acquainted with the police had been produced and he may have forgotten his, i.e., A4's original surname as Siddique and told it as Shaikh. Reliance is placed on the evidence given by API Randive, PW-106, who stated about taking the accused before the CMM at 1445 hours, whereas, the letter Ext. 1064 of the CMM shows that they were produced before him at 3.20 p.m. This

submission is baseless, because even if police bring the accused to the court at particular timings, it is not that the judge takes up the matter immediately and he writes the time only when the accused is physically produced before him. It is also contended by the A4 that he was not taken before the DCP, but once he was put in the lock-up of Matunga Police Station at 1330 hours at 06/10/06, he was only taken out at 1630 hours on 07/10/06 as per the entries in Exts. 1093. The evidence of API Randive, PW-106, is pointed out in respect of destruction of the lock-up register within three years though as per the standing order Ext. 2542, it has to be preserved for five years. It is submitted that the only reason is that the ATS wanted to suppress the fact that he was not removed from the lock-up for confessional statement and this lends credence to the evidence of the A4 that Sr. PI Tajne, PW-161, and API Deore, PW-180, came to the lock-up at 10.00 a.m. on 07/10/06 and forced him to sign on typed papers. These submissions are ignoring the evidence given by API Randive, PW-106, that the lock-up diary is also referred as Kothadi Nond Vahi in Marathi and another register by name Avak-Javak is maintained in the lock-up. In this respect, the learned SPP submitted that the evidence of API Randive, PW-106, is very specific. He submitted that lock-up diary and lock-up register are two different things. The lock-up register will show when an accused is lodged in the lock-up and when he is finally removed. However, the lock-up diary would show the movement of the accused during that period. He gave an example for this. Supposing that an accused is arrested and put in the lock-up on 1st of April,

remanded to police custody upto 14th of April and remanded to judicial custody on that day. Thus, the entry in the lock-up register will be of 1st of April and 14th of April. But, in between there will be no entry whenever the accused is taken out for the investigation. There would be entries in the lock-up diary and that is what is stated by API Randive, PW-106. He submits that a fantastic argument is made that these entries in the lock-up register show that the A4 was not taken to the DCP. Similar, fantastic argument is made that the CMM has also fabricated record because the lock-up register shows that he was taken out on 07/10/06 at 1630 hours, whereas, the letter of the CMM shows that he was produced before him at 3.20 p.m., i.e., 1520 hours. To my mind, it is too much to contend that the CMM also fabricated the record. Apart, from all these things, the fact remains that when the A4 was produced before his court on 09/10/06 in Remand Application no. 67/06 he did not say that his confessional statement was not recorded, that he was not taken before the DCP or before the CMM. He submitted orally that one portion of his confessional statement is wrong. This can only mean that he admits that his confessional statement was recorded. As against his oral evidence that Sr. PI Tajne, PW-161, and API Deore, PW-180, came to the lock-up at 10.00 a.m. on 06/10/06 with typed papers and forced him to sign on them, in his application Ext. 3798 dtd. 03/11/06, which was his retraction, he alleged that these two officers were present in the office of SP Karale, PW-104, that he was given the papers of the confession for reading on his request, but they were snatched from him when he had read only a page and was

forced to sign quietly. It is also stated in the said application that from there he was produced before the magistrate. This inconsistent stand taken by the A4 show his untruthfulness in giving evidence and in making the allegation and this aspect, therefore, does not show that his confessional statement was not recorded.

1421. Some minor inconsistencies about difference in his age mentioned in letters and difference in outward numbers of letters is made, on the basis of which he submits that some crucial and important things are suppressed and therefore his confession is not reliable and required to be discarded. If the factual position and the description of the evidence regarding the confessional statements in paragraphs 1254 to 1261 is seen, then these things are obviously incorrect. His next submission pointing out to the date 05/10/06 in the letter Ext. 1078 and it is accordingly deposed by him that he was produced on 05/10/06 before SP Karale, PW-104, before whom he said that he had not done the blast and did not want to say anything, etc., and this letter was suppressed by the DCP and it is his evidence that thereafter he was taken back to the ATS lock-up and tortured and then again produced before him on 06/10/06, is not necessary to be considered in view of the oral statement on 09/10/06 before this court after the date of his confessional statement.

1422. Out of the remaining points the only important point that remains is about he being not represented by an advocate during police custody and in this context his evidence as DW-48 is reproduced, that his uncle, mother and wife had come to him and he

talked with them (which was during police custody) and his uncle told him that police had phoned him once and told him about his arrest and asked him not to engage any advocate or else he would arrest him also and it is submitted that the magistrate as well as this court did not ask him whether he wanted an advocate from the legal aid scheme and it is only on 09/10/06 that he was represented by an advocate. It is submitted that therefore no advocate represented him till retraction of his confessional statement and therefore this proves that he had retracted without any legal advice or legal instructions. In this respect in the case of **Mohammed Ajmal Kasab (supra)**, the Supreme Court has held in paragraph 207 that, *'To say that the safeguards built into Section 32 of the POTA have their source in Articles 20(3), 21 and 22(1) is one thing, but to say that the right to be represented by a lawyer and the right against self-incrimination would remain incomplete and unsatisfied unless those rights are read out to the accused and further to contend that the omission to read out those rights to the accused would result in vitiating the trial and the conviction of the accused in that trial is something entirely different. As we shall see presently, the obligation to provide legal aid to the accused as soon as he is brought before the magistrate is very much part of our criminal law procedure, but for reasons very different from the Miranda rule, aimed at protecting the accused against self-incrimination. And to say that any failure to provide legal aid to the accused at the beginning, or before his confession is recorded under Section 164 CrPC, would inevitably render the trial illegal is stretching the point to unacceptable extremes'*. It is also held in paragraph 208

that, 'we are also not impressed by Mr. Ramchandran's submission that providing a lawyer at the stage of trial would provide only incomplete protection to the accused because, in case the accused had already made a confession under Section 164 CrPC, the lawyer would be faced with a *fait accompli* and would be defending the accused with his hands tied'. It is also held in paragraph 216 that, 'but the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent magistrate liable to disciplinary proceedings, or giving the accused a right to claim compensation against the State for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial stage had resulted in some material prejudice to the accused in the course of the trial. That would have to be judged on the facts of each case'.

1423. In respect of the A5, it is submitted that he is from West Bengal, that he does not know Hindi language and therefore the Hindi words in his confessional statement or the entire confessional statement being in Hindi shows that it was fabricated. A5 gave evidence as DW-43, produced some progress reports of his school, which shows that he studied in Urdu medium and did not learn Hindi as it was not a subject in his curriculum. The said progress report are not proved and during his cross-examination, the learned SPP could elicit such answers from him which would show that he had adequate working knowledge of Hindi though he may not know how to write it, especially in paragraphs 22 and 23 of his cross-

examination. He gave very strange answers that he did not talk in Hindi with Judge Thipsay before whom he was produced for the first time, that Hindi and Urdu are similar when talked, but admitted that he interacted with this court in Hindi. While denying that he gave his evidence in Hindi, he volunteered that it was in Hindi and Urdu. He admitted that his advocate asked questions in Hindi, but again tried to correct himself by saying that the questions were in Hindi and Urdu. However, he had to admit that he did not say in respect of any question asked by his advocate that he did not understand it. About the questions asked by the learned SPP, surprisingly he denied that the questions were asked only in Hindi and explained that they were in Hindi and Urdu. However, his answer that he can understand if anyone talks with him in Hindi is sufficient to draw the inference that he has adequate working knowledge of communicating in Hindi. He also admitted that he did not tell the learned SPP or his advocate or this court during his entire evidence that he does not understand what they are saying. The learned SPP then took pains to point out specific words and phrases used in the questions in the confessional statements by the DCP and the accused admitted that he understands almost all of them, but pointed out to a few Hindi words. He admitted in paragraph 25 that he watches TV, but stated that he does not watch Hindi serials and admitted that he had seen Hindi cinemas some times and that he did not get good marks in Bengali language subject. I do not think anything more is necessary to show that the A5 did know Hindi.

1424. A general submission was made by learned advocate Wahab Khan that the certificates appended to the eight confessional statements are not in accordance with the certificate that is given in the Criminal Manual, though they are *mutatis mutandi* tallying with each other. What is missing in the certificates are the words 'the confession was made in my presence and hearing which is recorded by me as narrated by the confessor and after having read over the same, he admitted the contents to be correct'. He incorrectly submitted that there is no format of certificate, but there is format of memorandum in the MCOC Act. He submitted that if this missing portions from the certificate are relied with the infirmities pointed out by him, it gives support to the weightage and submission of the defence that the DCPs mechanically copied them from the material that was provided to them. In this connection, learned advocate Shetty submitted that the provisions of section 18 of the MCOC Act show that all things that are to be done are mandatory because the word 'shall' is used. He submitted that the certificate is not in the words as provided in rule 3(6) of the MCOC Rules. To my mind, this aspect has been considered in many authorities and in the Confirmation Case No. 01/01 in the case of **The State of Maharashtra V. Mohd. Zuber Kasam Shaikh alias Tabrej alias Juganu and Anr.**, decided by the High Court, it was held in paragraph 95 that Rule 3(6) is not mandatory, but directory as having regard to sub-section 3 of section 18. What is important to be certified is the personal satisfaction of the concerned police officer about the voluntary character of the confession recorded by him.

1425. In connection with the submissions in respect of the confessional statement of the A5, it is submitted that as per the evidence of A5 as DW-43 and the diary of his business, Ext. 4144 (colly), he was at his shop on 8th and 09/07/06 and on 10/07/06 he was also at Kolkata and on 11/07/06 he was also at the shop as usual. His evidence about it is reproduced and it is submitted that from this it is crystal clear that A5 did not go out of Kolkata during the alleged date of incident, was at his shop and Mohd. Shakil, PW-70, was not his childhood friend and considering all this evidence, the evidence of DCP Phadtare, PW-93, has to be discarded. Thus, it is tried to be submitted that the oral evidence of the A5 and the documentary evidence in the form of diary of his shop is by way of alibi to the allegations of the prosecution that he had come to Mumbai during that period. In this connection it is alleged by the prosecution that in May, 2006, A5 made arrangements and ensured the infiltration of wanted accused no. 8 to 13 into India through Bangladesh border. It is also alleged that after the bomb blasts, A5 provided a safe passage for them out of Mumbai. In this connection the evidence of Mohd. Shakil, PW-70, is discussed under the topic 'procurement of RDX' in paragraph 822 and the evidence of the A5 is also discussed and it is held that the prosecution has proved by the evidence of Mohd. Shakil, PW-70, that sometime in the second or third week of May, 2006, A5 had brought six persons, who were having Pakistani passports, from Bongaon, which is just adjacent to the Bangladesh border of India, to Kolkata for being further taken to Mumbai, which is circumstance no. 16 proved by the prosecution. In

his written submissions Ext. 2826 filed with his statement under section 313 of the Cr. P. C., A5 alleged that the story told by Mohd. Shakil, PW-70, about visiting the border of Bongaon in the month of May, 2006 to receive some Pakistani nationals is fabricated and he denied the same. He submitted that he can furnish his attendance register as well as business diary that was maintained daily to prove his claim that he was physically in Kolkata and can provide the details of money deposited daily in the Sahara Bank by him personally. Though, he has taken this stand, he has only stated in his oral evidence that he never went out of Kolkata and Hindustan during this period, which is also stated by his brother Mohd. Sajid, DW-23. He has not furnished his attendance register or his business diary or details of money deposited in the Sahara Bank to substantiate his contentions and allegations.

1426. It is in his confessional statement that in the second week of May, 2006 he and Mohd. Shakil, PW-70, went by railway to Bongaon and from there by taxi to Bongaon market as Kallu had told him that he is going to bring six Pakistani persons to the market by crossing the Bangladesh border upto Bongaon border and those people are being sent as per the directions of wanted accused no.1 and are to be taken to Mumbai, that Kallu came there after some time with six Pakistani persons, whose names he told, i.e., wanted accused no. 8 to 13, that all had their own bags, but the wanted accused no. 12 had a different big suitcase like bag and he said that there is RDX in the bag and it has to be taken carefully to Mumbai. It is also in his confessional statement that they took the said persons

to Kolkata by train and he then took them to Mumbai by railway on the next day and met A13, who took them to a place about which he came to know that it was the office of SIMI earlier, that he halted there for one night and returned to Kolkata and A13 told him to remain in contact with him. It is in the confessional statement of the A4 that he came to know from the A3 that the A5 had brought six Pakistani persons, i.e., wanted accused no. 8 to 13, from Bangladesh by crossing the Dhaka border and that wanted accused no. 12 had brought 15 k.g. RDX with him. Thus, there is no evidence by the A5 to support his contention that he never went outside Kolkata and that the story told by Mohd. Shakil, PW-70, is a false story. Thus, he has failed to prove the defence of alibi concerning this allegation of the prosecution that he had brought wanted accused no. 8 to 13, who were Pakistani nationals, in the second week of May, 2006 to Mumbai and handed them over to A13. It will therefore have to be held that he has taken this false defence. This is the eighth additional circumstance in the chain of circumstance proved by the prosecution against the accused. It is the first additional circumstance against the A5.

1427. In respect of his defence of alibi about 9, 10 and 11/07/06 taken in his written submissions Ext.2826 filed alongwith his statement under section 313 of the Cr. P. C., he deposed accordingly and also examined his brother Mohd. Sajid, DW-23. Now his evidence is uncogent and uninspiring inasmuch as he has not proved any entry in the diary Ext. 4144 though he identified the diary and it has come in his evidence that they used to maintain a diary in Urdu

and English about the financial transactions and sales of the shop and that it used to be maintained by the A5 and in his absence by another brother Mohd. Wahid and most of the entries of 07/07/06 and 09/07/06 are in the handwriting of the A5, the entries of 08/07/06 and 11/07/06 are in the handwriting of A5 and Mohd. Walid and 10/07/06 was Monday, on which day the shop used to be closed. His evidence is that Mohd. Majid was at the shop on 09/07/06 in view of the entries in the diary in his handwriting, but does not say that this is because of his own personal knowledge. It has come in his evidence that he remembers that in that night A5 had gone to his sister's house for watching the world cup football final match, that he had repaired the shutter of their shop on 10/07/06 and again in view of the entries in the diary in the handwriting of the A5, A5 was with him in the shop on 11/07/06 and 12/07/06. Thus, his evidence is only on the basis of alleged diary Ext. 4144. A5 repeated what he wrote in his written submissions Ext. 2826 and he proved his handwriting in the diary, wherever it was, stating that the handwriting therein is mostly his and rest of his two brothers. It is in his evidence that he was in his shop continuously during July, 2006 and never went outside Kalkata as per his diary and stated about the accounts of 08/07/06 and 09/07/06 being written by him. These two dates are not relevant. However, it has come in his evidence that he went to the house of his brother-in-law Noor Mohd. after closing the shop at 10.00 a.m. (which should be 10.00 p.m.) on 09/10/06 (which should be 09/07/06) to see the FIFA World Cup football, watched it till late

night and slept there. Now he has not examined the said Noor Mohd., his brother-in-law, to prove that he was at his house on 09/07/06 upto the morning of 10/07/06 and he admitted in his cross-examination that he has not cited or examined the said person to prove that he was in his house on 09/07/06. It is in his evidence that he returned from his sister's house at 1200 hours on 10/07/06 and did repairing work of shutter of the shop in the afternoon at 4.00 p.m. and returned home in the evening. 10/07/06 was a Monday on which date, as per him, his shop used to be closed. He admitted in his cross-examination that he has not produced any evidence to show that he had repaired the shutter of his shop on 10/07/06. It is in his further evidence that he attended the engagement of his brother's daughter in the evening of 10/07/06 and it is in his cross-examination that it was the engagement of daughter of his elder brother Mohd. Shakir. The said Mohd. Shakir is not examined and he admitted that he had not examined him as his witness to show his presence on 10/07/06. To my mind, it was very easy for the A5 to examine his brother-in-law Noor Mohd. and his brother Mohd. Shakir to prove his defence of alibi. His brother Mohd. Sajid, DW-23, has however not stated about the engagement of the daughter of their brother Mohd. Shakir on 10/07/06 in the evening. Thus, he has failed to establish that he was in Kolkata on 10/07/06.

1428. About 11/07/06 he gave the itinerary as to the time when he went to the shop, came back, etc., and is relying on the entries in the diary, Ext. 4144 of 11/07/06 and 12/07/06 and has indicated

certain transactions of these two dates in the diary dtd. 11/07/06 and 12/07/06. It is in his evidence that he had obtained the policy of ICICI on 11/07/06 from the son of the adjoining shop owner of the shop Golden Footwear, who does that work and had given the amount of the policy to him on that day. He admitted in his cross-examination that he has not cited or examined the person from whom he took the policy of ICICI and not produced any document in connection with the policy. A lame effort was made by him by volunteering that the document of policy was in his purse and he does not know where the ATS people have thrown them. To my mind, it is not possible that a policy document can be kept in a purse of a man because it is a wallet and policy documents are quite big documents. Now in respect of the diary entries and the maintenance of the diary, learned SPP has demolished his entire evidence about it. A5 admitted in his cross-examination that he has not mentioned in the application dtd. 09/11/06 and in the MA No. 62/07 about two shoe shops and maintaining a diary and that he has not produced any diary of any period prior to 2006. He made a positive statement that the market in which their shops are, remains closed on Monday, but denied that no diary is written on any Monday volunteering the explanation that the shop is open during Ramzan and Durga Puja and admitted that Durga Puja was in September in the year in which he arrested. He also admitted that Ramzan and Durga Puja did not come in February, 2006. Learned SPP then confronted him with the entries dtd. 20/02/06 and 24/07/06 and he admitted that those days were Monday, denied that the accounts

of that day are written in it and then volunteered that the accounts are of 19/02/06 and 23/07/06 respectively, but they forgot to cut the date 20/02/06 and 24/07/06. However, he had to admit that the words '24th July' are written by pen on the top of the page. When confronted with the page of 10/07/06, he admitted that the word 'Monday' is struck off and written as 'Sunday' and in respect of date 18/09/06, it is struck off and 17/09/06 is written and the word 'Monday' is struck off and written 'Sunday'. He also admitted that in the page of 18/09/06 the account of Monday 18th and Tuesday 19/09/06 is written and finally admitted that there is no account after October, 2006 in the diary. He could not give any explanation about the last answer and though he denied that the entries in the diary did not show that they were made contemporaneously, he admitted that he has not produced any documents of accounts that are required to be submitted to the Government. This admission coupled with his admission that he did not pay income tax and their shops were not registered for sales tax upto 2006, lead to the only inference that the diary and entries therein have absolutely no evidentiary value in the eyes of law and the manner in which the diary was maintained, even assuming that it is about the business of the shop, makes it clear that it does not confirm to the known methods of accounting. No other document is produced and no other evidence is given in support of the entries in the diaries. Hence, the entries in the diaries are worthless as evidence to corroborate his defence of alibi.

1429. In view of the above discussion, it will have to be held that

the A5 has failed to prove his defence of alibi that he was at Kolkata on 10, 11 and 12/07/06 and that he had not come to Mumbai on those days. It will also have to be held that it is proved that it is a false alibi because it was very easy for him to have examined the persons named by him in his defence. Thus, it will have to be held that this is the ninth additional circumstance in the chain of circumstance proved by the prosecution against the accused. It is the second additional circumstance against the A5. Thus, this additional circumstances do not disprove the evidence of DCP Phadtare, PW-93, or the contents of the confessional statement of the A5.

1430. Other than the above, the points that were raised by learned advocate Shetty during his arguments, there are certain specific points common to all the six accused whom he represented, are necessary to be discussed in brief. He submitted that the DCPs should have examined the body of the accused to find about any injuries and third degree torture. To my mind, no law says this and it is too much to expect the DCPs to do such a thing. Learned advocate submitted that it is the duty of the CMM to verify whether the confessional statement is a correct, is voluntary and is without any pressure and influence. To my mind, this is not the duty of the CMM, it is the job of this court. In respect of the rough notes Ext. 1213 about Part-I of the confessional statement of the A3, he submitted that it is at variance with the contents of Part-I. To my mind, this aspect is inconsequential as they are rough notes. Learned advocate submitted that the statutory warning is only in Part-I and not in Part-II. To my mind, it is not necessary to repeat the statutory warning

again in Part-II of the confessional statement. This aspect is covered by the judgement in Confirmation Case No. 01/01 in respect of **the State of Maharashtra, Appellant V. Mohd. Zuber Kasam Shaikh alias Tabrej alias Juganu and Anr., Respondents** relied upon by the learned SPP. Learned advocate submitted that A12 complained that video recording of he making the confessional statement was done, about which he filed complaint MA No. 500/07. The defence has not proved that the video recording was done and video shooting that is produced by the accused is not proved as per law. Learned advocate next submits that it is unnecessary that accused will narrate family details and give a chronological description of the events which are not related to the crime. The observations of the Supreme Court reproduced hereinabove answer this submission. Learned advocate submits that authentic record like lock-up register is not produced to prove that the accused were in fact put in the lock-ups of the concerned local police stations. To my mind, the evidence of the escorting police officers discussed in detail earlier and the true photocopies of the station diary entries, which is the contemporaneous record, is sufficient to prove that the accused were put in the lock-up. Learned advocate submitted that the accused disclosed everything to high ranking officers of the ATS, who disclosed everything in the media, which is highly objectionable and required to be condemned. I agree with the learned advocate. However, there is no evidence about publication in the media and even otherwise it does not take away the evidential value of the confessional statement. Learned advocate submitted that the DCPs

gave directions by letters about the safeguards that were to be observed by the officers of the local police stations, but that in itself is not sufficient and there is no evidence before the court as to how the safeguards were followed and the officers should have given compliance report and merely examining them is not sufficient, but the constables on the guard at the lock-up should have been examined. To my mind, the evidence of the officers about taking precautions and the entries in the station diaries are more than sufficient. All persons connected with the process need not to be examined. In that case, all the policemen in the escort party should be examined, all the station house officer should be examined and all the police station in-charge should be examined. Learned advocate submitted in respect of the confessional statement of the A1 that by the letter Ext. 1178 dtd. 03/10/06, the DCP directed Police Station Bandra to send escort to produce the accused at 1900 hours on 04/10/06 and questions as to how could the DCP anticipate on 03/10/06 that the accused should be produced at 1900 hours on 04/10/06? To my mind, the answer to this question is simple. It is because the DCP had directed ACP Patil, PW-186, by a letter Ext. 1177 to produce the A1 before him on 03/10/06 at 1500 hours. So there should be no problem about this and on the other hand it is a good thing that he did it in anticipation and it is corroborated by the endorsement in Ext. 1180 which is Part-I of the confessional statement. Learned advocate submitted in connection with the confessional statement of the A1 that if the spaces where signatures are placed in Part-I and Part-II of the confessional

statement of the A1 are seen, it is clear that the signatures had been taken earlier on the blank papers and the documents were written subsequently and therefore it is fallacious. To my mind, no such inference can be drawn because the signature of the accused appear to have been made by the same pen as the colour of the ink is same. Not only this A1 has admitted his signatures on both parts of his confessional statement before the CMM immediately after recording of his confessional statement was over and had not complained that his signatures were taken earlier. To my mind, the statement before the CMM by the accused is an obvious attempt to extricate himself from the involvement in this case. This inference can be drawn from he admitting his signatures on both parts and stating that he did not complain to the DCP that he was induced or forced to make the confessional statement. This plus the fact that he also did not complain to the CMM about any third degree torture, etc., which he would have done had he been tortured. From this as well as from the letters sent by the CMM and ACMM forwarding the confessional statements of all the remaining accused, an inference can be drawn that all the accused whose confessional statements were recorded, were not under any pressure, etc., when their confessional statements were recorded and they had given them as free persons and were voluntary and the same position continued when they were taken before the CMM. It can be concluded that if at all the accused had been tortured, threatened or forced to make the confessional statements as alleged, the environment before the CMM was conducive and free enough to put forth their grievances.

However, they did not put forth their grievances and it is only after a lapse of time and on the basis of legal advice, which is obvious, that they made retractions alleging torture, etc. Learned advocate submitted that the confessional statement of the A9 is written on front and back of all pages, but the certificate is on different page. To my mind, this aspect is inconsequential because there is an endorsement by the DCP after the end of the confessional statement containing the narration by the accused. Learned advocate submitted that the DCPs did not reply to the retractions filed by all the accused though, they were the persons connected with the process and it was necessary to them to do so. To my mind, I do not see how the DCPs, who are supposed to be independent and impartial officers for the purpose of doing this work, can be expected to take part in the court proceedings when they are not part of the investigating machinery. On the other hand, if they would have filed reply, the defence would have said that they have taken interest in the investigation and are interested in the prosecution. Lastly, learned advocate submitted that maximum number of DCPs have chosen evening or night time for recording a confessional statement, which shows pressure tactics and a compelling situation for the accused, who were on fast because of Ramzan to make the confessional statements. To my mind, it can be interpreted otherwise also that it shows that the DCPs did this additional out of the way work concerning some accused after doing their regular work and after the rehearsal and bandobast for visit of Prime Minister to Mumbai.

1431. It is clear from the above discussion that the objections raised by the defence about the voluntariness of the eleven confessional statements are improper and unacceptable and do not affect their voluntariness. The facts emerging from the evidence adduced do not show any reasonable probability that there was any inducement, threat or promise to give the accused persons grounds that would appear to them reasonable for supposing that by making the confessional statements they would gain any advantage or avoid any ill will. There is no room for inferring that the authorities obtained the invented confessions as a source of proof. I have concluded and I am satisfied that the confessional statements were retracted because of an afterthought or legal advice, hence, the retractions do not carry any weight and do not affect the voluntary nature of the confessional statements. Due credence will have to be given to the confessional statements as the accused did not claim before the CMM that their confessional statements were fabricated or that they have been tortured or that they have been made to sign on blank papers. I am also satisfied that there is no material to infer that there was any trap, track and importune seeking of evidence during the custodial interrogation for obtaining the confessional statements.

1432. The second test to be applied to evaluate a confession is whether it is true and trustworthy. Truthfulness of the confessional statements will have to be ascertained from their contents and whether the contents are generally corroborated on factual aspects by the oral and documentary evidence adduced by the prosecution

and also whether there is general corroboration between the confessional statements of the accused *inter se*. To establish that a confessional statement is true, it is necessary to examine the confessional statement and compare it with the rest of the prosecution evidence and probabilities of the case. It is not necessary, as per the settled law, that there should be a corroboration from independent evidence adduced by the prosecution to corroborate each detail in the confessional statement. As to the extent of the corroboration required, each and every circumstance mentioned in the retracted confession regarding the complicity of the matter need not to be separately and independently corroborated. It would be sufficient that the general trend of the confession is substantiated by some evidence which would tally with what is contained in it.

1433. It would be repetitive if the exercise of ascertaining the truthfulness of the confessional statements on the above point is done first to come to the conclusion as to whether the confessional statements are true and trustworthy and then consider how their contents prove the allegations of the prosecution. It would be, therefore, appropriate to make a composite discussion of the contents of all the confessional statements alongwith the facts that are proved by the prosecution upto now.

1434. The confessional statement of the A3 is the longest one containing a detailed narration of all events from as long back as the year 2000. Therefore, it will have to be taken as the base for considering and comparing it with the evidence given by the

prosecution and the confessional statements of the other accused and to see whether there is any corroboration.

Association of accused with an unlawful association, i.e., SIMI, and how they came together :-

1435. A3 in his confessional statement explained how he got motivated towards committing jihad. He stated that during 2001 he used to go to Mecca Masjid located in Mominpura area for Namaz and during the same period he got acquainted with some members of SIMI, viz., A10, wanted accused no. 2 Rizwan Dawrey and others. He stated that a program called “Dars-e-Quran” used to be conducted on behalf of the SIMI in the Masjid once or twice a week and his brothers A9 and wanted accused no. 3 Rahil also used to participate in these programs and got very well acquainted with a lot of SIMI activists from Mumbai and Pune. He stated that a big program used to be arranged by SIMI once in a year and in May, 2001 a big zonal “tarbiyati” program was organized at Unani Medical College in Pune, that all major SIMI activists from all districts of Maharashtra attended this program, that his brothers A9 and wanted accused no. 3 Rahil also took part in this program and there he became acquainted with the A4 and A13 and thereafter he used to meet these persons whenever there were such big programs in Maharashtra. He stated that there used to be ‘takrir’ and lectures in these programs of SIMI, in which they used to be told about the atrocities and excesses on Muslims in all the countries in the world and because of repeatedly taking part in such type of programs, he developed concern for his Muslim brothers and the wish to do

something in respect of the atrocities on Muslims and he was especially moved because of the communal riots in Mumbai and Gujarat and because of all these reasons he decided to migrate and settle in some Muslim country and while staying there to take revenge in respect of the atrocities committed on Muslims in Hindustan. Prosecution has proved by cogent evidence that the A3 was concerned with the atrocities being committed on Muslims and was of the view that the only way to solve their problems was by jihad, which is the circumstance no. 19 proved by the prosecution.

1436. A3's statements are corroborated by the A9, his brother, in his confessional statement, Ext. 924 and he stated that when he, A3 and wanted accused no. 3 Rahil used to visit Mecca Masjid in Mominpura, Pune for offering Namaj, at that place all the three brothers used to take knowledge about Dars-e-Quran and Jihad from the workers of SIMI, who used to give them information about atrocities being committed on Muslims by telling the tales of the demolition of Babri Masjid and were told to raise voice against the temple being built on that place, that they were also told about massacre of Muslims in the communal riots that had occurred in Gujarat and were being taught & instigated for committing jihad and since then he started working for SIMI alongwith A3 and wanted accused no. 3 Rahil. He corroborates the A3's statements about the Zonal Tabiyati School held at the end of the year 2001 in Unani Medical College, Pune and in addition he stated that about hundred people were present, that in the said program recitation of entire Quran, discourses, reading of Hadis and lectures on the history of

Islam religion and jihad were given, which was attended by the A3 wanted accused no. 2 Rizwan Dawrey, wanted accused no. 3 Rahil and others and A3 introduced him to SIMI activists A4 and A13 from Mumbai and Jalgaon respectively.

1437. A10 in his confessional statement Ext. 1249 stated that he got acquainted with a SIMI member, who was his neighbour in 1988-89 and started going to Kamruddin Masjid with him for the Saturday night SIMI programs of Dars-e-Quran, where he became acquainted with the A13, the president of SIMI unit, whom he always met and because of Babri Masjid demolition in December, 1992 he was deeply hurt. He stated about he, A13 and some more persons burning American flags in the Id-e-Milad procession in the year 1995 for which a case was registered against him in Lashkar Police Station, Pune. He stated that he became acquainted with Ataur Rehman Shaikh, father of the A3 and A9 in the beginning of 1995 and also became acquainted with his sons A3, wanted accused no. 3 Rahil and through him, i.e., A10, A3 and wanted accused no. 3 Rahil became acquainted with the A13 and thereafter he started attending the programs of SIMI and going to the SIMI organisation and all of them started meeting each other in the office of SIMI at Pune. He also stated that he worked for SIMI upto 1999 and visited Aligarh, Uttar Pradesh and Aurangabad to participate in its seminars.

1438. A4 stated in his confessional statement Ext. 1060 that he learnt about SIMI organisation during his academic days and started visiting SIMI office at Pipe Road, Kurla since April, 2001 and became

acquainted with other members of SIMI and used to remain present for the program of “Durs-e-Quran” on every Sunday night. He stated that he became friendly with one Asrar Ahmed, who had been president of SIMI of Mira Road and who introduced him to many other workers of SIMI and sent him to Delhi for training at the head office of SIMI in the month of August, 2001 alongwith one more person, during which they heard the lectures of Yasin Patel Falahi, Shahid Butt Falahi, Jamal Siddique and Safdar Nagori and there they were introduced to A3, who had also come there for SIMI training. He stated about attending a meeting of SIMI on 02/09/01 at Anjuman-e-Islam High school, near VT station, Mumbai, which was attended by 250 SIMI workers. He stated about A13 from Jalgaon being secretary for Maharashtra in the year 2001 and being absconding in a case of Jalgaon, that after the ban on SIMI, A13 obtained a room on rent at Kurla and started working for SIMI and used to go all over India, was elected president of All India SIMI Organisation in the meeting at Kerala in February 2006, but refused to accept it and therefore was expelled from SIMI. He stated that A13 brought his wife and children to Mumbai from Jalgaon in May, 2006 and was residing in a rented room at Mira Road. He stated that Israr Ahmed appointed him as SIMI President, Mira Road, that at that time he started studying Quran and concentrated on jihad, that he was downloading literature and Tarane of jihad from the website jamatuddawa.org. of Lashkar-e-Taiba, studied them and used to search by google and download speeches of Massood Azhar, chief of Jaish-e-Mohammed and hear them. He stated that Ishad Khan,

president of SIMI, Maharashtra had given him Rs.50,000/- and he reached that amount to Imran Ansari, the Finance Secretary of All India SIMI Organisation at Indore, MP in April, 2003 for meeting the expenses of the case of SIMI in the Supreme Court. He stated that one Tarique Ismail of Kurla introduced him in May, 2002 to Riyaz Bhatkal, residing at Bhatkal, Karnataka, the member of Jais-e-Mohammed Organisation, who was also member of SIMI before 2001 and who joined Asif Raza Group after the SIMI was banned.

1439. A2 in his confessional statement Ext. 1023 stated that during the period when he was taking education at Nagpur, he was residing in a room at Mominpura, near Jama Masjid at Nagpur, that in the year 1997 he started attending Sunday program of Dars-e-Quran in that Masjid, which was arranged by SIMI and afterwards he became a member of that organisation, that after completing his education in 1999 and on returning to Mumbai, he remained connected with SIMI, used to visit SIMI office at Kurla, undergone training of 10 days at SIMI Head Office at Delhi in the year 2000, during which Shahid Badar Falahi, Safdar Nagori, Dr. Annes Ahmed, Dr. Akram Falahi gave speeches and that he spent from his own pocket for this training, that he was Ansar in SIMI when the Government imposed ban on it in September, 2001, but he remained an active member of SIMI even after the ban and used to work for it. He stated that Ishad Khan, the president of Maharashtra SIMI, sent him and one Tanveer of Solapur during the month of Ramzan in the year 2002 to Hyderabad to bring money for SIMI from Maulana Abdul Alim Istahi, who used to collect money there for SIMI, that he

knew the A3 since the year 2002 as he used to come to the office of SIMI at Kurla and he became acquainted with the A3. He stated that he was made secretary of Mumbai SIMI in 2003, but was removed from the post in December, 2003 and till that time his mind had been prepared to do something for jihad and had decided to do jihad for the atrocities committed on Muslims in Kashmir, Palestine and Chechenia and Iraq. He stated that he knew the A4, who was an active member of SIMI.

1440. A11 stated in his confessional statement Ext. 1127 that one day in the year 1999 while he was going to Kurla, he saw some books kept alongwith the photographs of Babri Masjid and Aksa Masjid (Jerusalem, Isreal) put up over there, that on seeing those pictures, he was impressed and then read the newspaper there and became acquainted with a man by name Waqar, who gave him the information of SIMI organisation, thereupon he expressed his desire to work for it and the said Waqar gave him the address of SIMI at Iqwanu Safa near Madanpura, Mumbai and asked him to go there for entering the SIMI organisation, that he visited that office where Kuran and Hadis was read after the Isha Namaj. He stated that he got introduced to the A2 and others in the office of Iqbanu Safa and became well acquainted with the A2 after his wife suffered from TB and was treated by A2 and as his pregnant wife was admitted in August, 2000 in Fauziya Hospital with the help of A2. He stated that thereafter his meetings with A2 increased and they both used to participate in the programs of SIMI at Iqwanu Safa office at Madanpura every Saturday.

1441. A6 in his confessional statement Ext. 1071 stated that he was taken to Bandra for a SIMI program by two persons, thereafter he used to go with them in the Kurla office of SIMI and became member of SIMI in 1993, that he repeatedly went to that office and gave lectures and Takrir outside the mosque alongwith other members of SIMI. He stated that he had gone to Yeotmal District in 1994 for a program of SIMI where 10,000-12,000 activists were present, that all India secretary of SIMI Ashraf Jafari was also present, that he had gone to Aurangabad for three days SIMI program in November 1999. He stated that he went to a three days SIMI program at Jalgaon in July, 2000 where he got acquainted with A13 and where they were told about jihad. He stated about retiring from SIMI in December, 2000 as members of SIMI are retired at the age of 30, that thereafter he used to attend the programs of SIMI at Anjuman-Islam High School, Mumbai, where the chief guest Shahid Badar Falahi used to remain present. He stated that he always used to meet Riyaz Bhatkal, an office bearer of SIMI, near the masjid on the Kurla Pipe Road.

1442. A7 stated in his confessional statement Ext. 1037 that he attended a program by Haj House in Bambai in the year 2000 in connection with the difficulties faced by Muslim community and the solution about it, that Shahid Badar Falahi, Sadar of All India SIMI and other SIMI activists gave religious discourse and said that it is necessary to do jihad for the Muslim community, that he was impressed by the talks and after some days went to the office of SIMI in Kurla (W), became acquainted with Irshad Khan, Sadar of

Maharashtra SIMI and accepted his proposal for working for SIMI. He stated that after reading the news in Urdu Times about burning of Kuran in Delhi, he went to the Kurla office of SIMI, obtained the pamphlets that were prepared by Irshad Khan about that incident and distributed them to people by standing in front of masjid. He stated that though Bharat Sarkar banned SIMI organisation in September 2001, he worked for it against the atrocities on Muslim people and was made ansar of SIMI. He stated that in 2002 he became acquainted with A2, A3, A4, A6, A9, A10, A11 and A13, who were SIMI activists and had jihadi mentality, that during their acquaintance, they used to discuss issues like communal riots in Gujarat, Babri masjid and Kashmir issue and how to take revenge about the atrocities being committed on Muslims in the whole world. He stated that he remained in continuous contact with the A3 and A13 and took on rent Room No. 304, Amrapali Building, Sector-11, Shanti Nagar, Mira Road (E) for his office of SIMI organisation, where meetings of that organisation used to be conducted, that elections of Maharashtra SIMI organisation were conducted in March, 2006 by the A4 as General Secretary of Maharashtra SIMI, in which, he, i.e., the A7, was elected as President of Mira Road Unit, that he, A4 and A13 had the keys of that office and A13 stayed in that room for 3-4 months.

1443. It is clear from the above discussion that the contents of the confessional statements of the A2, A3, A4, A6, A7, A9, A10 and A11 corroborate each other in respect of they as well as A13 being members and activists and some of them being office bearers of

SIMI. By oral and documentary evidence, prosecution has proved that SIMI was declared as an unlawful association under section 3(1) of the UA(P)A and the ban has been extended from time to time and even after the bomb blasts, **which is the circumstance no. 39 proved by the prosecution.** The prosecution has also proved by cogent oral and documentary evidence that A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 were members or were either activists or office bearers of SIMI organisation and continued to work for the said organisation even after the ban on SIMI in 2001, **which is the circumstance no. 40 proved by the prosecution.** Prosecution has also proved by cogent oral and documentary evidence that eight books relating to SIMI Arts. 150 to 152 were found on 28/07/06 in the flat in possession of the A3, **which is the circumstance no. 9 proved by the prosecution.** Prosecution has also proved that four books, Arts. 166 (1 and 2), 167 and 168 allegedly connected to SIMI were recovered on 28/07/06 at the instance of the A9, **which is the circumstance no. 21 proved by the prosecution.** Prosecution has also proved that six books, Art. 249 (1 to 6) allegedly connected with SIMI were recovered at the instance of the A10 on 30/07/06, **which is the circumstance no. 22 proved by the prosecution.** Prosecution has also proved that two books allegedly connected to SIMI Arts. 135 and 136 were recovered on 31/07/06 at the instance of the A11, **which is the circumstance no. 23 proved by the prosecution.** Prosecution has also proved that eight books, Arts. 43(1 and 2), 44 (1 to 4), 47 and 48, allegedly connected with SIMI were recovered at the instance of the A2 on 01/08/06, **which is the**

circumstance no. 24 proved by the prosecution. Thus, it will have to be held that prosecution has proved that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 and wanted accused no. 2 Rizwan Dawrey and wanted accused no. 3 Rahil are members of an unlawful association. **I have to, therefore, answer point no. 6 in the affirmative.**

Accused acquiring militant training in Pakistan :-

1444. A3 stated in his confessional statement Ext.1218, that because of repeatedly taking part in programs of SIMI and because of the lectures delivered in SIMI programs, he got motivated to commit jihad to fight against the atrocities committed on Muslims in Hindustan. He stated that he decided to settle in a Muslim country like Pakistan, that he managed to obtain Pakistani visa through one of his friend Abdul Usman Kumbhar, (i.e., PW-79), that one of his friend Asif Abdul Rashid gave him a telephone number of Abu Harara, an L-e-T operator in Pakistan. He stated that he took Samjhauta Express from Attari and went to Lahore, Pakistan and called Abu Harara, who referred him to wanted accused no. 14 Abdul Razzak, an Indian staying in Pakistan, who in turn handed him over to L-e-T commander Arif Kasmani in Karachi through one Abu Zuber. He stated that he agreed to work for L-e-T on being told by wanted accused no. 14 Abdul Razzak. He stated that in Muzaffarabad he was given training in handling fire arms including AK-47, preparing bombs and causing explosions. He stated that he was sent to Al-Aksa training camp for training, where persons from Pakistan military connected to ISI used to come in military vehicles.

He stated that wanted accused no. 14 Abdul Razzak took him to Lahore and introduced him to wanted accused no. 1 Azam Chima, training commander of L-e-T at Bahawalpur, who told him to ready people from Hindustan and send them for training and also gave him Rs. 20-25,000/- for expenses. He stated that he returned by the same route to Attari border, went to Delhi and from there to Pune.

1445. He stated having told his brothers, i.e., A9 and wanted accused no. A3 Rahil about obtaining training in Pakistan and meeting wanted accused no.1 Azam Chima and also stated that thereafter he was searching for youngsters and able boys for training of Lashkar and had asked wanted accused no. 1 Azam Chima for money on phone for that purpose.

1446. A9 in his confessional statement Ext.924 generally corroborated all the above statements made by the A3.

1447. A7 in his confessional statement Ext.1037 also corroborated the statements of the A3 and added that there used to be discussions about sending Muslim youths to Pakistan to take training of operating arms and ammunition to do terrorist activities, that there was a meeting at Mira Road amongst them after some months in which the A3 told them that he is in continuous contact with the wanted accused no. 1 Azam Chima who had said that Muslims persons should be readied for jihad training and for that purpose they should be sent to Pakistan and promised that arrangements for that would be made for him on behalf of the ISI. He confirmed that the A3 was searching for boys for that purpose and the A3 told him that he is called by wanted accused no. 1 Azam

Chima to Pakistan and would go there soon.

1448. Prosecution has proved by cogent oral and documentary evidence that the A3 had traveled by train to Pakistan from Attari Railway Station, Amritsar on 01/10/01 and returned by the same method on 29/11/01, which is the circumstance no. 28 proved by the prosecution. Though the period stated by the A3 does not match this period proved by the prosecution, it is an admitted position by the A3 in his written submissions, Ext.2824 filed with his statement under section 313 of the Cr. P.C., that he had gone to Pakistan in 2001, albeit the reason that he gave is for attending his cousin sister's marriage.

1449. The A3 stated that four months after his return from Pakistan he received Rs.1,80,000/- sent by wanted accused no. 1 Azam Chima by hawala, that from that money he convinced the A10 to go for training in Pakistan and gave Rs.1,00,000/- to him for expenses. He stated that visa and air ticket for Iran was arranged and the A10 was dispatched on 18/11/02 by air to Tehran, from there he contacted wanted accused no. 2 Rizwan Dawrey and wanted accused no. A3 Rahil in Dubai and through them he contacted wanted accused no. 1 Azam Chima, who arranged for the training for the A10 in L-e-T in camp in Muzaffarabad for one month and then returned to Hindustan.

1450. The A10 in his confessional statement Ext.1249 confirms that the A3 instigated him for going for training to Pakistan showing him a rosy picture of improvement of his financial condition. He stated that the A3 arranged for his visa in September, 2002 and he

left for Tehran by air on 01/11/02 from Mumbai and wanted accused no. 2 Rizwan Dawrey had given him Rs. 10,000/- and 12,000/- Saudi Riyals. He stated that from Tehran he went to Pasargadh, from where he contacted wanted accused no. 3 Rahil on phone for his onward journey to Pakistan and went to Zahidan as per his instructions, that at Zahidan an L-e-T operative, wanted accused no. 15 Abdul Rehman received him and took him to Bahawalpur in Pakistan, introduced him to wanted accused no. 1 Azam Chima, who told him about jihad and Gujarat. He stated about an ISI person taking him to Lahore to the ISI office, where inquiries were made with him, then being taken to Rawalpindi, where he was explained about ISI and provoked to work for them in Bharat and was told about L-e-T and it being supported by ISI, which runs it and was told to work for ISI and tried to be convinced to become an ISI agent in Hindustan. He stated about again being taken to Lahore, meeting an ISI officer, having discussions about Gujarat riots and attacks of Afghanistan, told about atrocities on Muslims community and told to get news from Hindustan about Mumbai, Goa and Maharashtra borders, about police officers of Gujarat, about Bhabha Atomic Research Center, about special places of army, etc., and send it to them. He stated about being taken to Bahawalpur, meeting the wanted accused no. 1 Azam Chima, who told him that ISI and L-e-T are one and on his asking, he, i.e., the A10 expressed his wish to work for L-e-T, thereupon the wanted accused no. 1 Azam Chima told him to work with the A3 and promised that arrangements for his money would be made when he reaches back, that the wanted

accused no. 1 Azam Chima gave him knowledge of arms and made him practice operating arms for two days. He stated that he returned back by the same route escorted by the wanted accused no. 15 Abdul Rehman upto Zahidan, met the A3 in Pune and told him about the training in Pakistan.

1451. The A9 in his confessional statement Ext. 924 corroborated the above facts and stated that the A3 had sent the A10 for terrorist training in Pakistan in November, 2002.

1452. The prosecution has proved that passport Ext. 621 and photocopy of international map Ext. 1489 were recovered on 30/07/06 at the instance of the A10, **which is the circumstance no. 22 proved by the prosecution.**

1453. The prosecution has also proved by cogent, oral and documentary evidence that the A10 went from Mumbai to Iran on 01/11/02 and returned on 29/11/02, **which is the circumstance no. 36 prove by the prosecution.** The prosecution has also proved that the A10 traveled to Iran on ziarat visa as a camouflage, **which is the circumstances no. 38 proved by the prosecution.**

1454. The A3 described in his confessional statement Ext.1218, about wanted accused no. 2 Rizwan Dawrey coming to meet him at Mumbai whenever he used to come to Pune from Dubai, that wanted accused no. 2 Rizwan Dawrey went to Jeddah in Saudi Arabia in April, 2003 and he, i.e., A3 was also thinking of going there, that he came to know that the wanted accused no. 14 Abdul Razzak, whom he had met in Pakistan was in Dubai at that time and the wanted accused no. 3 Rahil was also there and they both met

and he facilitated talk between wanted accused no. 1 Azam Chima, wanted accused no. 2 Rizwan Dawrey, wanted accused no. A3 Rahil and he, i.e., the A3 was asked to contact wanted accused no. 1 Azam Chima, wanted accused no. 2 Rizwan Dawrey and wanted accused no. A3 Rahil for the purpose of executing any action of L-e-T in Hindustan, for fear of being caught if he got a phone from Pakistan. He stated that this was the mode of contact of wanted accused no. 1 Azam Chima with him, that wanted accused no. 1 Azam Chima used to send money through the wanted accused no. 2 Rizwan Dawrey and wanted accused no. A3 Rahil, that he, i.e., the A3 tried to send more persons for training, but except for sending the A10 he failed to send any other person. He stated that he went to Jeddah in Saudi Arabia for finding a job after the wanted accused no. 2 Rizwan Dawrey asked him to come there for that purpose, that he stayed there for about 1½ months during which period he talked with the wanted accused no. 14 Abdul Razzak and on coming to know that the wanted accused no. 1 Azam Chima's work had again started, he phoned him and told him that he wanted to come to Pakistan and as he could not get any job in Saudi inspite of efforts, he once again contacted the wanted accused no. 1 Azam Chima and repeated his wish to come to Pakistan, whereupon the wanted accused no. 1 Azam Chima asked him to take visa for Dubai, that he went to Dubai in March, 2001, that from there again contacted the wanted accused no. 1 Azam Chima, who asked him to go to Kisham, an island in Iran where he went by aeroplane, that wanted accused no. 1 Azam Chima had arranged for journey by ship to Abbas Bandargadh (Iran

port) and from there crossed the Iran-Pakistan border and reached Bahawalpur and went to the house of the wanted accused no. 1 Azam Chima, who gave him a new name "Amin", expressed his displeasure about sending few persons from Hindustan for training in proportion to the money sent by him and provoked him, i.e., the A3 to do something and prove himself and to send more persons as candidates for training as a big action is to be done in Mumbai.

1455. The A3 stated further in his confessional statement Ext. 1218, that he used to call the wanted accused no. 2 Rizwan Dawrey on phone and ask him to send more persons for training from Hindustan, that accordingly the wanted accused no. 2 Rizwan Dawrey told him about the A2 through the A4 willing to come to Pakistan for training, whereupon he, i.e., the A3 told him to make arrangements for visa and tickets of the A2 from the money kept with the A9 and accordingly the A9 arranged for the visa and tickets for the A2 through agent Mustaq (i.e., PW-46), and sent him for training *via* Iran route. He stated that he met the A2 in the training camp of the wanted accused no. 1 Azam Chima in Muzaffarbad, where the A2 completed 15 days training and returned to Hindustan *via* Iran route.

1456. The A9 in his confessional statement Ext. 924, corroborated the version of the A3, that when their family shifted to Mumbai, the A3 used to prepare Muslim youths to go to Pakistan for training of terrorist activities, that the A3 had so sent the A10, that he thinks that the A3 and the A13 sent Abdul Rauf, Sameer Lulle and wanted accused no. 2 Rizwan Dawrey for L-e-T training. He

stated that during April-May, 2003, the A3 told him that his paternal cousin sister Khalida Iqbal Khan, i.e., Khalida Apa, staying in Nagpada had received money through hawala, that he, i.e., the A3 was to go to the Gulf with the help of that money, that he came to know that the wanted accused no. 2 Rizwan Dawray had come to Pune from Dubai in 2003. He stated that the A3 obtained Umrah visa and went to Saudi Arabia in November, 2003, that there he informed him on phone that the wanted accused no. 2 Rizwan Dawrey was with him, that the said wanted accused no. 2 Rizwan Dawrey informed him on phone after several days that the A3 had gone to Pakistan and gave his email ID on which he used to chat with both of them. He described two transactions of hawala of Rs. 50,000/- and Rs.1,00,000/- done by him on the instructions of the wanted accused no. 2 Rizwan Dawrey and the A3. He stated that in May, 2004 the wanted accused no. 2 Rizwan Dawrey told him to ask the A4 as to when he would be coming for training to Pakistan, that he knows the A4 as a worker of SIMI and a friend of the A3, that he went to the house of the A4 who declined to go for training, but told him that the A2 wants to go to Pakistan for training, that he conveyed this to the wanted accused no. 2 Rizwan Dawrey, who told him to take his passport and gave it to Mustaqbhai, (i.e., PW-46) for obtaining visa, which he did after taking passport of the A2, which the A2 gave to him at Mira Road station and told him that he is a friend of the accused no.4, taking Rs. 20,000/- from Khalida Apa and giving both to Mushtaqbhai, (i.e., PW-46) who did the work. He further stated that on the instructions of the wanted accused no. 2

Rizwan Dawrey he took Rs. 20,000/- from Khalidaappa and gave the passport and air tickets and Rs. 20,000/- to the A2 at Mira Road Station and also gave two phone numbers of the wanted accused no. 1 Azam Chima, asking the A2 to contact him on reaching Iran and that the A2 went to Pakistan *via* Iran in May, 2004. The A9 further stated in his confessional statement about taking Rs. 10,000/- from Khalida Apa on the instructions of the A3 and giving it to the A4 for going to Ajmer.

1457. The A4 stated in his confessional statement Ext. 1060, that the A3 had told him about his close relations with the wanted accused no. 4 Hafiz Sayeed, chief of L-e-T and gave him Rs.25,000/- to print a book on jihad, that he published book titled "Islam Ko Choti" by downloading material from the websites 'munwahideen.tk' and 'jamatuddawa.org.' and on showing it to the A3, the A3 asked him to print 250 copies. He stated that the A3 gave him information about jihad and Ahle Hadis and that he and the A9 had undergone training at L-e-T at L-e-T training camp in Pakistan and asked him to come for training, which he refused, that he asked the A3 as to what is to be done after taking such training, that the A3 told him that they have to arrange for their stay and other facilities of the persons who come to Bharat from Pakistan for terrorist activities.

1458. The A4 further stated in his confessional statement, Ext. 1060, that the A3 asked him whether the A2 can go for training , that when he asked the A2 about it, the A2 expressed his readiness and he, i.e., the A4 arranged the meeting between them both at Muslim Ambulance at Bhendi Bazar. He stated about contacting the

A3 in March, 2004, who was in Pakistan for training, that the A3 told him that the wanted accused no. 1 Azam Chima would send a man of L-e-T to Ajmer, Rajasthan on 09/04/04, who is a guide and who will show the route for going to Pakistan from Rajasthan border and booked tickets for Ajmer by taking Rs. 10,000/- from the A9, however, he could not go as his brother was injured as he fell from train. He stated that he had motivated the A2 for going for training and to get knowledge of making bombs, therefore, he handed over the passport of the A2 to the A9 on 20/04/04, that the A9 arranged for A2's visa and ticket and the A2 left for training in May 2004. He stated that the A2 returned from training in the second week of June 2004 and met him and told him everything about the training.

1459. The A2 corroborated the version of the A3, A9 and A4 and stated in his confessional statement Ext.1023, about the A4 telling him in April, 2004 that the A3 is in Pakistan and is ready to arrange for his, i.e., the A2's militancy training in Pakistan, that he gave his passport to the A4, who told him to collect the passport, visa and ticket from the A9, that he contacted the A9, who gave him his passport, visa for Iran, air ticket, Rs. 20,000/- and two telephone numbers of wanted accused no. 1 Azam Chima, commander of L-e-T at Bahawalpur. He stated that at that time he was working in Prince Ali Khan Hospital and then he resigned from there and had gone to Tehran from Mumbai on 21/05/04, from there went to Zahidan by domestic flight, that he gave information about his arrival by phone to Bahawalpur, that two days thereafter a person from L-e-T, i.e., the wanted accused no. 15 Abdul Rehman came there and facilitated

him cross the border of Pakistan and took him to Bahawalpur, introduced him to wanted accused no. 1 Azam Chima, where he also met the A3, who introduced him to the wanted accused no.5 Sohail Usman Gani Shaikh @ Munna from Pune, who had undergone one year training in Pakistan. He stated that the wanted accused no. 1 Azam Chima sent him to the training camp of L-e-T near Muzzaffarabad after he had expressed his desire to undergo training in handling arms and preparing bombs and then to return back to India and make jihad against kafirs, that he was introduced to a commander by name Zaki-ur-Rehman in the training camp where he underwent training of 13 days in handling AK-47 rifles, pistols, preparing bombs and special training for preparing detonators, that thereafter he returned to Bahawalpur to the bungalow of the wanted accused no. 1 Azam Chima, where he saw some persons talking with him and the A3 was present there, who on asking told him that they are persons from Pakistan security agency, i.e., ISI, that all training camps are conducted on their directions and they bear the expenses of the training camps. He further stated that he informed about his training to the wanted accused no. 1 Azam Chima, who told him to send an ultra violet lamp to check fake currency notes, that with the help of the wanted accused no. 15 Abdul Rehman he crossed the Pakistan-Iran border extending his visa at Iran and returned to Mumbai in July 2005, met the A4 and gave him the information about the training and sent an ultraviolet lamp for checking fake currency notes with the A9 when he went for training to Pakistan via Iran after some days.

1460. The A7 in his confessional statement. Ext.1037, corroborated the version of the above three accused by stating that when he met the A3 in the similar meeting alongwith the A13, A4 and the A2, the A3 told him that he had taken training by going to Pakistan twice and told him that the L-e-T organization conducts the training camps under the directions of the ISI and the money for this comes from the ISI, that on that basis he, i.e., the A3 had sent the A2, A9, A10 and A11 and some other persons for training.

1461. The prosecution has proved by cogent, oral and documentary evidence that the A3 had obtained visa for himself and the wanted A3 Rahil, his brother, in the year 2003 and booked their air tickets for going from Mumbai to Jeddah and back, which is the circumstance no. 29 proved by the prosecution. The prosecution has also proved that the wanted A3 Rahil went to Jeddah in Saudi Arabia in 2003 from Mumbai and the A3 also went there from Mumbai on 08/11/03 and was deported from Jeddah on 01/12/04 as he did not have valid passport, which is the circumstance no. 30 proved by the prosecution.

1462. The prosecution has also proved that the A3 had sent the passport of the A2 with the A9 to the travel agent for obtaining visa of Iran and with the A2 had traveled from Mumbai to Tehran on 21/05/04 and returned on 25/06/04, which is the circumstance no. 31 proved by the prosecution. By cogent, oral and documentary evidence prosecution has proved seizure of passport, Ext.449, of the A2 at his instance on 26/07/06, which is the circumstance no. 20 proved by the prosecution. By cogent, oral

and documentary evidence prosecution has also proved that photocopy of international map, Ext.1490, was recovered at the instance of the A2 on 01/08/06, **which is the circumstance no. 22 proved by the prosecution.** Prosecution has also proved that the A3 was instrumental in obtaining visa of Iran for the A2 and the A2 traveled to Iran on ziarat visa as a camouflage, **which is the circumstance no. 38 proved by the prosecution.**

1463. The A3 stated in his confessional statement Ext. 1218, that the A9 came for training to Pakistan in August, 2004, that he met him there, that the A9 completed 15 days training in Muzzaffarabad and returned to Hindustan *via* Iran route. The A9 in his confessional statement corroborates the version of the A3 and in his confessional statement Ext.924, stated that a few days after April, 2004, wanted accused no. 2 Rizwan Dawrey asked him about going to Pakistan for training to which he said yes, that wanted accused no. 2 Rizwan Dawrey asked him to take Rs. 20,000/- from Khalida Apa and give it to Mushtaqbhai, (i.e., PW-46) for ticket and visa, that he had already obtained a passport from Pune in 2002 and he gave it and Rs. 20,000/- to Mushtaqbhai for getting the visa of Iran stamped on his passport and for purchasing ticket and then contacted wanted accused no. 2 Rizwan Dawrey about the training and he gave a number of Saudi.

1464. A9 further stated that in the meanwhile the A2 had returned after taking training in Pakistan and had informed him on phone about it and also described in detail the training that he took when they met personally and how one has to go to the training

camp at Al Aksa in Muzzafarabad, that the A2 also told him about meeting the A3 in the house of the wanted accused no. 1 Azam Chima and then the A2 gave him an ultraviolet lamp machine for identifying counterfeit currency notes and asked him to hand it over to the wanted accused no. 1 Azam Chima in Pakistan. He further stated that he went to Tehran from Mumbai on 09/08/04 and was carrying 5,000/- Tuman (Irani currency) and \$70 and on reaching there he made contact on the phone number given by wanted accused no. 2 Rizwan Dawray, thereupon wanted accused no. 15 Abdul Rehman came to take him and took his passport, visa, ticket and money, gave him a Pathani dress to wear and facilitated crossing the Pakistan border and from there he was taken to Bahawalpur and to the house of wanted accused no. 1 Azam Chima where he met him as well as the A3 and handed over the ultraviolet lamp machine to wanted accused no. 1 Azam Chima telling him that the A2 had given it for him. He stated that he was then taken to Muzzafarabad and was given training. He stated that he met one Abu Bakr, wanted accused no. 9, who was incharge of the said training center and he underwent 15 days training there and then returned back to Bahawalpur, met the A3 in the house of wanted accused no. 1 Azam Chima, whom he also met and who told him that jihad is the duty of every musalman and every musalman should do jihad, that he was doing all this for Islam, that there are atrocities on Muslims in Kashmir in Hindustan, therefore, jihad has to be done in Hindustan and on he asking wanted accused no. 1 Azam Chima as to what work he will have to do for this, wanted

accused no. 1 Azam Chima told him that the A3 will tell him about it and when he asked the A3 about it, the A3 said that he will tell it at the appropriate time. He further stated that he returned to Mumbai in the second week of 2004 by the same route, i.e., crossing the Iran-Pakistan border and reaching Zahidan in Iran and from there to Tehran, that on his return he met the A2 and told him about the training.

1465. Prosecution has proved by cogent oral and documentary evidence that passport Ext.620 and photocopy of international map Ext.1487 were recovered on 28/07/06 at the instance of the A9, **which is the circumstance no. 21 proved by the prosecution.**

1466. By cogent oral and documentary evidence prosecution has proved that in 2004 the A9 had obtained visa for Iran and traveled from Mumbai to Iran on 06/08/04 and returned on 10/09/04, **which is the circumstance no. 32 proved by the prosecution.** Prosecution has also proved that the A3 was instrumental in obtaining visas of Iran for the A9 and other accused, who traveled to Iran on ziarat visa as a camouflage, **which is the circumstance no. 38 proved by the prosecution.**

1467. A3 in his confessional statement, Ext.1218, stated that he knew wanted accused no.5 Sohail Shaikh of Pune, whose full name was disclosed later on as Sohail Usman Gani Shaikh, (whereas the full name of the A10 is Suhail Mehmood Shaikh), that he came to know from the wanted accused no. 2 Rizwan Dawrey that the wanted accused no. 5 Sohail is undergoing training in Muzzaffarabad, that therefore, he contacted him in Muzzaffarabad

and on his request went to meet him, that at that time he came to know that the wanted accused no. 5 Sohail was staying in Muzzaffarabad training center since last 7-8 months and had obtained 6 months training, that thereafter he and wanted accused no. 5 Sohail Shaikh went to Bahawalpur, met wanted accused no.1 Azam Chima, took 4 months training there and then wanted accused no.5 Sohail Shaikh went to Dubai *via* Iran route. He stated that during his stay there he obtained a lot of information about L-e-T organization from the wanted accused no. 1 Azam Chima, viz., that the L-e-T organization is a branch of Markaz-Dawa-wal-Irshad, that it looks after the education of its terrorists activities, that Hafiz Mohd. Saeed is the chief sargana of "Markaj" and "Lashkar" and wanted accused no.1 Azam Chima (Bahawalpur), Abu Muzzammil (Islamabad) and Arif Kasmani (Karachi) and many more similar commanders like them work under him, that all commanders recruit persons and give them terrorists training for the L-e-T organization and also give them whatever help they need to execute terrorists actions.

1468. The A3 stated that the wanted accused no.1 Azam Chima wanted to commit a big incident in Mumbai and for that purpose he sent him back to Hindustan, however, as his passport remained in a hotel in Kisham, there were difficulties for him to come to Hindustan, therefore, wanted accused no.1 Azam Chima got prepared a Pakistani passport showing his name as Mohd. Akram and affixed visa of Umrah of Saudi Arabia with the help of which he went to Saudi in October, 2004 and started staying with wanted

accused no. 2 Rizwan Dawrey. He stated that once while he was going to Mecca Sharif, which he visited 2-3 times, the police found a Hindustani driving licence with him during his search, when he told them that he was Pakistani, therefore, he was kept in prison, taken to Jeddah and then sent to Delhi on an emergency certificate in the last days of 2004, that he had kept his 14,000/- Riyals with wanted accused no.2 Rizwan and he told about all these things to the A9 after a few months, that at that time wanted accused no. 3 Rahil was working at Bangalore where he went and met him and told him all the things and asked him to be in contact with wanted accused no.1 Azam Chima.

1469. By cogent oral and documentary evidence prosecution has proved that the A3 had gone to Jeddah in Saudi Arabia from Mumbai on 08/11/03 and was deported from there on 01/12/04 on an emergency certificate as he did not have a valid passport, which is the circumstance no. 30 proved by the prosecution. Prosecution has also proved that photocopy of international map Ext. 1486 was found on 28/07/06 in the flat in possession of the A3, which is the circumstance no. 9 proved by the prosecution. Prosecution has also proved that the A3 had gone to Pakistan twice and had taken training in the camp of L-e-T, which is the circumstance no. 19 proved by the prosecution.

1470. The A3 further stated about coming to know from his friend Rahil Shaikh from Grant Road, that a boy by name Firoz Ghaswala is ready to go for training and he obtained ziarat visa for Iran for the said Firoz from agent Mushtaq, (i.e., PW-46) and sent

Firoz for training *via* Iran, that he had also sent Ubed Chipa of Ahmedabad for training by obtaining his visa and ticket. Prosecution has proved by cogent evidence that in the year 2005 the A9 obtained visa for Iran for Firoz Ghaswala, **which is the circumstance no. 35 proved by the prosecution.**

1471. The A3 stated that during this period wanted accused no.2 Rizwan sent his i.e., A3's 14,000/- Riyals. He stated that he shifted his residence to different places upto 2006 as he found it difficult to operate from Mira Road as his parents were staying there and there used to be sudden checking by police, therefore, after receiving money from wanted accused no.1 Azam Chima through wanted accused no.2 Rizwan he took on rent flat no. 24 in Lucky Villa Building, near Perry Cross Road, Bandra. Prosecution has proved by cogent evidence that he was in a possession of the said flat, **which is the circumstance no. 8 proved by the prosecution.**

1472. The A3 stated that wanted accused no.2 Rizwan Dawrey used to stay in Hindustan in March, 2006 and wanted to go to Saudi Arabia and he came to meet him, i.e., the A3 at Bandra, that they talked about the training in Pakistan and the intentions of the wanted accused no.1 Azam Chima and about sending more persons from Hindustan for training and he told the wanted accused no.2 Rizwan to send more money from the wanted accused no. 1 Azam Chima. He stated that the said Rahil Shaikh of Grant Road brought a passport of an Aurangabad resident Zulfiqar Faiyyaz Ahmed and he obtained a visa for him and sent him to wanted accused no. 1 Azam Chima for training in Pakistan. He further stated that wanted

accused no.1 Azam Chima had sent him a total amount of Rs. 10,00,000/- by hawala through wanted accused no.2 Rizwan, out of which he deposited Rs. 2,00,000/- in the account of his father in the ICICI Bank, that from that amount he spent money for sending the boys for training and till that time he had sent seven boys for training, i.e., A9, A10, A2 and the said Zulfiqar Faiyyaz Ahmed, Firoz Ghaswala, one more person Chipa Mohd. Ali and also the A11.

1473. The A9 in his confessional statement confirmed the version of the A3 about deposit of money in the ICICI bank account of their father in the Mira Road branch, which was received by Khalida Apa through hawala and which he did on the instructions of the A3 and had obtained signatures of his father on blank cheques and on the instructions of the A3 he used to withdraw money from the bank. He also corroborated the A3 shifting his residence in Mumbai from time to time and finally taking the flat at Bandra on rent and starting to stay there.

1474. The prosecution has proved by cogent evidence that the A3 had obtained visas for Iran for Chipa Mohd. Ali and Zulfiqar Faiyyaz Ahmed and that they were to go Iran in the year 2005 and 2006 respectively, which is the circumstance no. 34 proved by the prosecution.

1475. The A11 corroborated the version of the A3 in his confessional statement, Ext.1127, and stated about being impressed by the lectures given by the A2 on Hadis to do jihad and the A2 telling him that he will have to go out and take training, but few days thereafter the A2 left the country alone for taking training. He

stated that on returning from training the A2 met him and prepared him for training and he gave his passport and Rs. 8,000/- to the A2, that after 15-20 days the A2 gave him his passport, visa of Iran and ticket and \$200 and told him to first go to Tehran where a person will come to meet him and take him to Pakistan for training and told him not to talk much there and to pose as a Ahale Hadis. He stated that he went to Iran on 04/04/05 by air telling his family members that he is going for a job interview, that at Tehran he converted the dollars into riyals and made a phone call on numbers given by the A2, that wanted accused no.1 Azam Chima was on the line and told him that his man will come to take him, that accordingly one Abdulla sent by wanted accused no.1 Azam Chima came to the hotel where he was staying, made him to sit in a bus going to Zahidan, that after reaching Zahidan wanted accused no. 15 Abdul Rehman received him, took his passport, ticket and money and facilitated crossing the border and entering into Pakistan and was then taken to Bahawalpur to the house of the wanted accused no.1 Azam Chima, that wanted accused no. 15 Abdul Rehman took him to Muzzaffarabad to the "Maskar" (Aksa) training center, that he was given knowledge about explosive materials by a person by name Dawood and his training had started from 14/04/05, that he was given the training of explosive materials for 5 days, that Mushtaq gave him knowledge of use of explosive substances and how to use them to cause maximum loss of life and property in crowded places, that during the training two military officers came in a vehicle, which was bearing a Pakistani flag, that they trained him and 6-7

other person in setting the time upto 3 months by using timer device and preparing time bomb, that he was told later on that those officers were the officers of the ISI and the training center was run under the ISI, that during the training he was given practice of operating automatic fire arms and assembling and dismantling them and firing them. He stated that after his training was over he was taken to Bahawalpur to the house of wanted accused no.1 Azam Chima who inquired about the training and journey and told him to cause explosions at crowded places like stock exchange and film industry, to inform Amin to send more and more boys for training and that he would be sending explosive experts as early as possible for giving training to Hindustani people. He stated that with the help of wanted accused no. 15 Abdul Rehman he crossed the Iran-Pakistan border and returned to Mumbai by air. He stated about meeting the A2 and telling him about the training and the message of the wanted accused no.1 Azam Chima that Amin should be told to send more and more boys for training and that one explosive expert would be coming from there to Hindustan and thereafter he regularly met the A2.

1476. Prosecution has proved that on 31/07/06 at the instance of the A11 his passport, Ext. 619, and photocopy of international map, Ext.1488, were recovered from his house, which is the circumstance no. 23 proved by the prosecution. Prosecution has also proved by cogent evidence that the A3 had obtained visa for Iran for the A11 in 2005 and the A11 had traveled from Mumbai to Iran on 04/04/05 and returned on 29/04/05, which is the

circumstance no. 33 proved by the prosecution. Prosecution has proved by cogent evidence that the A3 was instrumental in obtaining visa of Iran for A11 who traveled to Iran on ziarat visa as a camouflage, **which is the circumstances no. 38 proved by the prosecution.**

1477. The A1 stated in his confessional statement Ext. 1181, that during his stay in Delhi he was introduced to one Dr. Johar by one Anwar, that Dr. Johar is a homeopathic doctor and working as professor in Jawaharlal Nehru University in Delhi, that Dr. Johar hails from Balkatwa, a neighbouring village to Madhubani of the A1, that the wanted accused no.4 Hafiz Zuber is step brother of Dr. Johar and thus was known to the A1. He stated that in the year 2000, one Ibrahim Rahin, friend of the wanted accused no. 4 Hafiz Zuber, approached him and asked him to accompany him to Nepal as he was called by the wanted accused no.4 Hafiz Zuber, that they reached Sitapaila, Kathmandu, met the wanted accused no.4 Hafiz Zuber and wanted accused no. 15 Abdul Rehman, that they both motivated and convinced him to go to Pakistan for collection of donation for Madarsas here. He stated that the wanted accused no. 4 Hafiz Zuber and wanted accused no. 15 Abdul Rehman managed to prepare his Nepalese passport and obtained Pakistani visa for him in the fake name as Kamal Ahmed Mohd. Munshi, that he traveled to Amritsar and from there to Lahore, Pakistan by bus *via* Wagha border, that after reaching Lahore, as per the instructions of the wanted accused no.4 Hafiz Zuber he called the wanted accused no.6 Aslam, an L-e-T commander, who led him to the training camp of L-

e-T in Muzzaffarabad. He stated that he took two months militant training in Muzzaffarabad and Bahawalpur training camps of L-e-T, which was imparted by trainers Amir and Saifulla Khalid, that after completion of training he returned *via* same route and reached Nepal. He stated that he went to Kathmandu and met wanted accused no.4 Hafiz Zuber, who took his Nepalese passport and asked him to return to Madhubani and wait for further instructions. He stated that in the training they were told about atrocities on Muslims all over the world, that he told them about Babri Masjid demolition and atrocities by Hindustanis on Muslims in Kashmir, women being raped and about merciless killings. He stated about being given training of AK-47 rifles, revolvers and assembling bombs. He stated about being employed in the office of NICE Travels owned by the wanted accused no. 4 Hafiz Zuber, which was run by one Saifulla Khalid, who taught him to operate computer and prepared three e-mail IDs and asked him to be in touch by using them. He stated that said Saifulla also asked him to prepare other poor, educated and needy boys to be sent to Pakistan for training under the pretext of collecting donations. He stated that he returned to his village, that he used to be in touch with Ibrahim Raeen and Saifulla through computer and during the period of about one year Ibrahim had given Rs. 75,000/- to him, but he did not send a single boy for training. He was lured by Ibrahim to go to Delhi, where he would get Rs.20,000/- and one AK-47 and was trapped and got arrested at Delhi by Delhi Police for possessing a fire arm.

1478. The A4 in his confessional statement Ext. 1060 indirectly

corroborated the version of the A1 as he stated that the A3 had told him that the A1 had taken training in the training camp of L-e-T in Pakistan.

1479. The A6 in his confessional statement Ext. 1071, stated that in the year 2000 he came in contact with a SIMI activist Riyaz Bhatkal, that he requested Riyaz to provide him financial assistance to start some business, that Riyaz Bhatkal referred him to advocate Shahid Azmi, who in turn introduced him to Asif Raza Khan, that when he asked Asif Raza for financial assistance Asif Raza told him that if he is prepared to do something for Islam then all the financial assistance will be provided to him, to which he, i.e., the A6 agreed. He described how since March, 2002 Riyaz Bhatkal started providing financial assistance to him and about motivating a person for committing jihad and to go for training. He stated that in February, 2003 Riyaz Bhatkal sent him and that person Mushiruddin Siddique for training in Pakistan by air *via* Dubai and from there to Karachi, that they took 16 days training and they returned to India in March, 2003 *via* Dubai by air and from there to Kathmandu and then crossed the Indo-Nepal border. He stated that they were trained in the use of fire arms including AK-47 and LMG, hand grenade and preparing bomb, taught about jihad and ISI officers visited that camp. He stated that he sent Shabbir of Malegaon and Nafis of Mumbai for the militant training in Pakistan.

1480. Prosecution has proved by cogent, oral and documentary evidence that the A6 had traveled from Mumbai to Muscat on 01/02/03, which is the circumstance no. 37 proved by the

prosecution.

Accused doing acts preparatory to causing the bomb explosions :-

General reconnaissance of various targets and meeting of February, 2006 :-

1481. The A3 in his confessional statement Ext. 1218 stated that after coming to Mumbai he was in continuous contact with the wanted accused no.1 Azam Chima, that the wanted accused no. 1 Azam Chima told him to search for a good target for committing a big incident in Mumbai, that he, i.e., the A3 alongwith the A11 and the A10 toured Mumbai and went to the Stock Exchange, World Trade Center, Mahalaxmi Mandir, Siddhivinayak Mandir, some big shopping malls and local railway stations and at that time he found that there were tight security arrangement at the Stock Exchange, World Trade Centers and the temples and he realized that the local train target was proper as the security arrangements there were not tight enough and all railway stations were always crowded.

1482. The A10 corroborated the version of the A3 by stating in his confessional statement Ext. 1249 that when he went to Mumbai in February, 2006 to ask for some money from the A3, the A3 told him that if he wants money he should do as he, i.e., the A3 says and as he, i.e., the A10 was in need of money he agreed, that thereafter the A13 called a meeting in the house of the A3, where the A3, A13, A4, A2, A9 and A11 were present and there was a discussion as to which targets in Mumbai are to be selected for bomb blasts, that the A13 ordered all the person to survey for targets. He then

corroborated the statements made by the A3 about the reconnaissance done by him, A3 and the A11 and finding local trains to be the proper targets.

1483. The A11 in his confessional statement Ext.1127 stated that the A2 had introduced him to the A3 earlier and after coming back to Mumbai he maintained regular contact with the A3 and then he corroborated the statements made by the A10 about the meeting called by the A13 at the house of the A3 and about the discussion that took place in the meeting and the A3 taking him and the A10 for the reconnaissance and realizing that the correct target would be the local trains.

1484. The A4 in his confessional statement Ext.1060 stated that a message was received from wanted accused no.1 Azam Chima to select targets about which the A3 had a discussion with the A13, that on the directions of the wanted accused no.1 Azam Chima, the A3 started choosing targets in Mumbai and that the A3 told him that he was ordered to check out targets like World Trade Center, etc., as described above and he, i.e., the A3 alongwith the A10 and A11 after touring Mumbai had found that it was easy to target the local trains because the rest of the places had good security arrangements.

1485. The A9 in his confessional statement, Ext.924, corroborated the statements made by the A3, A10 and A11 about a meeting being held at the instance of the A13 at the house of the A3, where he was present alongwith the A13, A3, A4, A2 and A10, that the A13 ordered the A3 and all of them to search for target for causing bomb explosions in Mumbai, that the A3 alongwith the A10

and others went around in South Mumbai, but the A3 said that no place was found to be appropriate.

1486. The A2 in his confessional statement Ext. 1023 corroborated the statements made by the A3, A10, A11 and A9 about the meeting being called at the house of the A3 in which he, i.e., the A2 alongwith the A3, A13, A4, A9, A10 and A11 were present.

1487. The prosecution has proved by cogent evidence that the A2, A4, A9, A10 and A13 had assembled in the house of the A3 in February 2006, which is the circumstance no. 19 proved by the prosecution.

1488. The A2 stated in his confessional statement Ext.1023, that the A4 had asked him about the methods of preparing bombs and had taken the list of articles required for preparing bombs, that the A4 used to repeatedly request him in 2005 to bring the articles for preparing bombs and on his demand, he, i.e., the A2 collected Acetone, Sulfuric Acid and Hydrogen Peroxide and kept it in his locker. The prosecution has proved by cogent, oral and documentary evidence that on 12/08/06 bottles of the said three chemicals were seized from the locker of the A2 at his instance from the Saboo Siddhiqui Hospital where he was working, which is the circumstance no. 10 proved by the prosecution and prosecution has also proved that these chemicals can be used for preparing the explosive mixture.

1489. The A2 had also stated in his confessional statement Ext. 1023, that in January, 2006 the A4 had collected SIMI activists in a

flat at Mira Road and played a CD of the lecture of Masood Azhar, the Chief of Jaish-e-Mohammed, that in that meeting he was present and the A4, A13, Safdar Nagoori and Shahanwaz Khan of UP and remaining members of SIMI were present. The A2 also stated in his confessional statement, that in February, 2006 the A3 had asked him to give a room on rent as it is required for the residence of some guests who are coming from Pakistan, that he showed a room to the A3 in Nagpada area, but the A3 refused as the deposit amount was high.

Meeting of March, 2006 :-

1490. The A12 in his confessional statement Ext.1230, stated that he returned to Mumbai from Hyderabad in February 2006 and started staying in the house of his brother at Mira Road and kept on meeting Mohd. Alam, PW-59, who was his friend, that in the second or third week of March 2006 when he was at the house of his brother at Mira Road, Mohd. Alam, PW-59, called him near Shams Masjid, that when he reached there, he saw the A3 there, with whom he had got acquainted through Mohd. Alam, PW-59, that the A3 introduced three boys who were with Mohd. Alam, PW-59, i.e., the A4, A13 and the A2 and that Mohd. Alam, PW-59, left from there after some time, but they all stayed back. Though the A2, A3, and A4 have not stated about this, prosecution has proved by cogent evidence that the A2, A3, A4, A12 and A13 had assembled near Shams Masjid in Mira Road in March, 2006, **which is the circumstance no. 19 proved by the prosecution.**

1491. The A12 stated in his confessional statement Ext.1230,

that the A3 told him that the A4 prints and publishes Tehriki and Jihadi books in the Shahadah Publishing house at Mira Road, that when they all were talking, the A6 also came there and he came to know that the A6 was a friend of the A3 and used to do the work of SIMI. He further stated that he came to know during the talks between them that the A3, A2 and A6 had gone to Pakistan and obtained jihadi training, that during the talks he came to know that the A3 is in direct contact with L-e-T commander wanted accused no. 1 Azam Chima and that the A3 is responsible for the L-e-T of Western India. He stated that on listening to their thoughts his thought also became like jihadi and the wish for doing something for Muslim brothers was awakened in him and on coming to know of this the A3 told him that they are soon going to make preparations of a big incident and he would also be given some work and asked him to remain in contact.

1492. The A6 corroborated the version of the A12 in connection with the above accused being near the Shams Masjid in second or third week of March, 2006. Before that he stated that for doing his business of selling Tilisma Moti, he used to go to Saboo Siddhiqui Hospital, Dongri in January, 2006 where he got acquainted with the A2, whom he knew from beginning as a SIMI activist, that at that time the A2 introduced him to the A3, that 15-20 days thereafter he again went to the said hospital where he met the A3, that during their talks at that time he came to know that the A3 is also a SIMI activist and the thinking of both is similar, that they both talked about jihad and Islam and thereafter came nearer to each other, that

he saw the A3 was a person of jihadi nature and he, i.e., the A6 had also the wish inside him to do something about jihad and felt that he could get an opportunity to do something for tehrik and jihad through the A3. He stated that the A3 told him that he had obtained jihadi training twice from L-e-T through ISI, that he, i.e., the A6 told the A3 about the work that he had done for SIMI and asked the A3 about Riyaz Bhatkal, but the A3 told that he did not know anything about him and asked the A6 to meet him leisurely at Mira Road and asked him to come to the shop of the A4 at Mira Road, whom the A6 knew as a SIMI worker and the A3 asked him to contact him through the A4. He stated that thereafter he went to Mira Road in the second or third week of March, 2006 by the side of Shahadah Publishing house at Shams Masjid where he met the A4, A13, A2, A3 and A12, that he had met the A12 for the first time and the A3 introduced the A12 as his friend and also a simi activist who works at Hyderabad. He stated that during their talks he came to know that the A3 is in contact with the wanted accused no.1 Azam Chima, commander of L-e-T and the A3 is the head of L-e-T of Western India, that as he, i.e., the A6 was of tehrik and jihadi nature he soon mixed with them and told them about obtaining training in Pakistan through Riyaz Bhatkal. He stated that he also told them that he could not do anything for jihad after returning from Pakistan in March, 2003 as he could not meet Riyaz Bhatkal. He stated that at that time the A3 told him that it is not a matter of worry, that he should keep in contact with them and his help would be needed, that at that time the A3 also told him that planning is going on for

causing bomb explosions in Hindustan, more particularly in Mumbai and asked him to be in contact with the A4. Thus, the A6 in his confessional statement stated about the events that took place in the meeting after March 2006 after Mohd. Alam, PW-59, had left the spot.

Meeting of April, 2006 :-

1493. There is another meeting in the first week of April, 2006, about which the prosecution has not been able to give any evidence. The A12 stated in his confessional statement Ext. 1230, that in the first week of April, 2006 he and the A3 were standing near Lucky hotel in Bandra, where the A3 had called the A4 and the A6 and when they came they sat there and after talking for some time went to the house of the A3 in Bandra where the A10 and the A11 were present.

1494. This is also corroborated by the A6, who stated in his confessional statement Ext. 1071 about the A4 calling him in the evening near Lucky Hotel in Bandra in the first week of April 2006, where he met the A3 and the A12 and the A11 and A10 were also there.

1495. The A12 and A6 both stated in their confessional statements Exts. 1230 and 1071 respectively further that they talked for long in the house of the A3, that the A3 said that in the rioting in Gujarat there was a considerable loss of lives and property of Muslims, therefore, Gujarati people are to be targeted in Mumbai and it would be proper to cause explosion in the first class bogies of the local trains in Mumbai, because mostly Gujarati people travel in

them, that it would be proper to cause the explosions in the evening time on the western line as every bogie of local trains at that time is jampacked and that he has finalized all these things after talking with the wanted accused no. 1 Azam Chima of Pakistan. Both A12 and A6 further stated that the A3 also told them that the wanted accused no. 1 Azam Chima is going to send some expert Pakistani persons to India for executing the plan and the A3 told the A12 that he would be given some responsibility at that time, which he would have to fulfill with all ability and it was decided that the work of preparing bombs will be done at the house of the A6 at Govandi. The A6 in his confessional statement Ext.1071 stated that the A3 had asked him to make arrangements for stay of the expert Pakistani person in his house, but he said no as his house is small, thereupon the A3 told him that his house, i.e., the house of the A6 would be used for the work of preparing the bombs and that he, i.e., the A6 consented for this.

1496. In respect of the meeting in March, 2006 the A2 in his confessional statement Ext.1023, stated that the A3 told all of them that on the say of the ISI, wanted accused no.1 Azam Chima has made a plan to cause bomb explosions in the local trains in Mumbai, that some Pakistani guests were coming for executing the plan and requested all of them to help him, that at that time the A3 asked him, i.e., the A2 about the electric circuit in bombs and he, i.e., the A2 told him that he had taking the training of chemical bombs and does not know anything about electric circuit. He further stated that the A13 and the A3 decided to cause bomb explosions, that there

were several meetings in the house of the A3 at Bandra during which he used to remain present and in those meetings the A3 told them that the work of preparing bombs will be done in the house of the A6 at Shivaji Nagar and that the articles required for preparing bombs are kept by the A13 in the house of the A6.

1497. The A3 in his confessional statement Ext. 1218, stated that when he talked with the wanted accused no.1 Azam Chima in February, 2006 and gave him the information about the target, wanted accused no.1 Azam Chima also approved it and asked him to pay more attention to it and mentioned about sending some persons from Pakistan for that purpose and told him that he would send the guests to Mumbai, that he had instructed the Hindustani persons, who had taken training in Pakistan through him to be in contact with him, accordingly the A6, A12, A13, A7 were in constant contact with the A4 and the A11, A10 and A2 were also in contact with him alongwith some more persons, that on the say of wanted accused no. 1 Azam Chima, the A1 and the A5 were maintaining contact with him and wanted accused no. 1 Azam Chima had talked about sending about 11 guests from Pakistan to Hindustan.

1498. The A3 also stated in his confessional statement Ext. 1218, that on the instruction of the wanted accused no.1 Azam Chima for causing explosions in the local trains, the A13 started collecting articles through some persons in May, 2006 and as decided by him he, i.e., the A13 kept all the articles in the house of the A6 at Govandi.

Inspection of place used for preparing bombs :-

1499. There is another incident about which the prosecution was not able to collect evidence. It is of the A2, A3, A4 and A12 going to the house of the A6 at Shivaji Nagar in Govandi and surveying it. The A12 stated in his confessional statement Ext.1230, that in the last week of April, 2006 which was a Saturday at about 8.30 in the night he, the A4, A2 and the A3 went to the house of the A6 where they were taken by the A4 as he knew it and there they all went around the house of the A6 and surveyed it. The A6 in his confessional statement Ext.1071, has corroborated the version of the A12 and stated that they had so come on the day of Saturday of last week of April, 2006 and had surveyed his house.

1500. The A7 in his confessional statement, Ext.1037, stated that when he contacted the A3 in February 2006, the A3 told him that he had talked with the wanted accused no.1 Azam Chima, who has selected local trains in Mumbai as targets for bomb explosions, that he came to know from the A3 that wanted accused no. 1 Azam Chima was going to send some Pakistani terrorists and on the instructions of the A3 he, i.e., the A7 maintained contact with the A3 and the A13.

1501. The A6 in his confessional statement, Ext.1071, stated that he came to know from the A3 that wanted accused no.1 Azam Chima had told the A3 that Stock Exchange building, World Trade Center, big shopping malls, government officers responsible for Gujarat Riots, police officers and local trains should be targeted for jihad, that the A3 further told him that when he surveyed all these

places alongwith some accomplice, all had said that target of local trains is the most appropriate.

Specific reconnaissance of finalized target :-

1502. The A3 stated in his confessional statement that he, the A4, A2, A11, A9 and A10 traveled in the local trains from Mumbai to Virar and surveyed the situation, that he found that it would be easy to cause explosions in running local trains at the time of crowd and decided that the evening time on working days for causing the explosions would be proper, because at that time there is more crowd in the train and it is easy to mix in the crowd.

1503. The A4 in his confessional statement Ext.1060, stated that the A3 told him that the wanted accused no. 1 Azam Chima has decided to cause bomb explosions in seven trains on the western line in Mumbai in the evening at the time of rush, that thereafter he, i.e., the A4 alongwith the A3, A2, A11, A9 and A10 made survey by traveling in trains from Churchgate to Virar, that sometimes they all used to visit the house of the A3.

1504. The A2 stated that they all had a ride in Virar down trains, that there is a heavy rush in the evening on working days, that the A13 and A3 decided to cause bomb explosions at that time, that there were several meetings at the house of the A3 at Bandra and he used to remain present, that in the meetings the A3 told them that the work of preparing bombs will be done in the house of the A6 in Shivaji Nagar and that the articles required for preparing bombs are kept by the A13 in the house of the A6.

1505. The A11 stated in his confessional statement Ext.1127,

that he kept regular contact with the A3 and then corroborated the statements made by the A3, A4 and the A2 about traveling in the local trains from Mumbai to Virar alongwith the A9 and A10 and assessing the situation and finding that there is more crowd in the evening after the offices closed and thought that it would be more easy to cause the bomb blasts in the local trains and they could easily mingle in the crowd.

1506. The A9 in his confessional statement stated that the A3, A10 and others went around in South Mumbai but the A3 did not find any place to be appropriate, therefore, the A3 took him, i.e., the A9 and A4, A2, A10 and A11 and traveled in local trains from Churchgate to Virar and found that the target of train was proper for exploding bombs in the crowd and that they felt that there is no risk of being caught.

1507. The A10 in his confessional statement Ext.1249, stated that he remained in continuous contact with the A3 and then corroborated the statements made by all the above accused about traveling in local trains in the same month from Mumbai to Virar, etc.

How the A1 came in possession of RDX :-

1508. The A1 in his confessional statement Ext.1188, stated about wanted accused no.4 Hafiz Zuber coming to his village in May, 2006 and asking him to accompany him to Janakpur where he would talk with him and give him money, therefore, he, i.e., the A1 went to Janakpur and there wanted accused no. 4 Hafiz Zuber made him talk with Saifulla on phone, that Saifulla told him that when he,

i.e., the A1 was arrested in Delhi, he, i.e., Saifulla could not help him as he was busy and then he asked him, i.e., the A1 to take Rs. 10,000/- from wanted accused no. 15 Abdul Rehman and return to his village, that wanted accused no. 15 Abdul Rehman gave him Rs. 10,000/- and a plastic bag that contained about half kilogram black coloured powder, that he inquired about it with the wanted accused no. 15 Abdul Rehman, who told him that it is RDX powder, which will be used for making bombs when it is necessary, that he, i.e., the A1 then returned to his village with the money and the RDX powder and hid the said bag containing RDX powder below his cot.

1509. Prosecution has proved by cogent oral and documentary evidence that RDX was found in the house of the A1 at Basupatti, district Madhubani, Bihar on 20/07/06, **which is the circumstance no. 7 proved by the prosecution.**

Arrival of wanted accused, i.e., Pakistanis in Mumbai :-

1510. The A3 in his confessional statement Ext. 1218, stated that wanted accused no.1 Azam Chima sent some Pakistani persons to Hindustan in May, 2006, that out of them, the A1 brought two persons, i.e., wanted accused no. 6 Aslam and wanted accused no. 7 Hafizullah from the Nepal border, that the A5 brought six Pakistani persons from the Dhaka border of Bangladesh, i.e., wanted accused no.8 Sajid, wanted accused no. 9 Abu Bakr, wanted accused no.10 Kasam Ali, wanted accused no. 11 Ammujan, WA No 12 Ehsanullah and wanted accused no. 13 Abu Hasan, that the wanted accused no. 12 Ehsanullah brought 15 kg RDX with him while coming. He stated that wanted accused no. 14 Abdul Razzak, resident of Hyderabad,

who is now in Pakistan, brought three Pakistani persons from Kutch border of Gujarat, viz, deceased accused no. 1 Salim and deceased accused no. 2 Abu Umed and wanted accused no. 5 Sohail Shaikh. He stated that he had kept the wanted accused no. 14 and 5 and the two deceased accused in his house at Bandra and the A13 made arrangements for the stay of the Pakistani persons brought by the A5.

1511. The A1 in his confessional statement Ext.1188, corroborated the statements made by the A3 by stating that the wanted accused no. 15 Abdul Rehman called him at Janakpur at the end of May, 2006 and when he went there he introduced him to two Paksitanis, i.e., wanted accused no. 6 Aslam and wanted accused no. 7 Hafizullah and then wanted accused no. 15 Abdul Rehman asked him to take both of them to Mumbai and to hand them over to Sajid chacha, that accordingly he brought them to Patna *via* Janakpur and then by train to Mumbai, that he took them to the shop of Sajidchaha in Jogeshwari and handed them over to him and returned to his village at Basupatti.

1512. The A5 in his confessional statement Ext.937, stated about his step-brother Mohd. Asif resident of Dhaka, Bangladesh visiting Kolkata to meet his step-uncle Mohd. Aslam and they roaming around during his visits and Mohd. Asif making all the expenditure, that he had come to Mumbai in 2001 for sightseeing with his friends of Kolkata, that in December, 2001 his step-brother and his friends from Bangladesh had come and they went for sightseeing for six days to Darjeeling and he further stated about Mohd. Asif's visits in

December 2002 and 2003. He further stated that he then described about facilitating crossing of Bangladesh border of some persons on the instructions of Mohd. Asif in February, 2006 and on one more occasion thereafter and he getting some money from him. He further stated that after some days his step-brother Asif came to Kolkota and met him, that at that time he told him that atrocities on Muslims in India have increased quite a lot but the government has not taken any action in respect of Babri Masjid, that there have been atrocities on Muslims in the riots in Gujarat, but the government has not taken any action against the people responsible for this, therefore, it is very necessary to do jihad in Hindustan, that he, i.e., the A5 felt that whatever Asif was saying is proper and expressed his willingness to help in this good work, thereupon, Asif told him that he is in contact with wanted accused no.1 Azam Chima, commander of L-e-T and his disciple wanted accused no. 14 Abdul Razzak. He further stated that Asif told him that wanted accused no.1 Azam Chima is going to send some Paksitani persons from the Bangladesh border for causing a big incident in Hindustan, that he came to know from Asif that some persons of Mumbai are working on this on the instructions of the wanted accused no.1 Azam Chima, that out of them A13 and A3 are the main coordinators, that on the instructions of the wanted accused no.1 Azam Chima he, i.e., the A5 remained in contact with the A3 and the A13. He stated that he came to know in May, 2006 from the A3 and the A13 that local trains in Mumbai have been decided as the targets for the bomb blasts and he,i.e., the A5 was given the responsibility of bringing six persons sent by wanted

accused no.1 Azam Chima from the Bangladesh border in Hindustan and hand them over to the A13 and A3 in Mumbai, that he was warned not to keep his mobile phone with him. He stated that he required the help of Kallu for this work, whose help he had taken for similar transactions earlier, therefore, he contacted Kallu and also told his partner Mohd. Shakil, (i.e., PW-70) to help if the need arises.

1513. The A5 stated in his confessional statement, Ext. 937, that the said Kallu told him in the second week of May, 2006 that he is going to bring six Pakistani persons to Bongaon market by crossing the Bangladesh border upto Bongaon border and told him that those people are being sent as per the directions of the wanted accused no. 1 Azam Chima and that they are to be taken to Mumbai and he was required to go to Bongaon for those Pakistani persons, therefore, he asked Mohd. Shakil, (i.e., PW-70), to accompany him to which he consented. He stated that on the next day he and Mohd. Shakil, (i.e., PW-70), went by railway to Bongaon and from there by taxi to Bongaon market, that after some time Kallu came there with six Pakistani persons, whose names he told as wanted accused no. 8 Sabir, wanted accused no.9 Abu Bakar, wanted accused no. 10 Kasam Ali, wanted accused no. 11 Ammujan, wanted accused no. 13 Abu Hsan and wanted accused no. 12 Ehsanullah, that all the wanted accused had their own bags with them, but wanted accused no. 12 had a different big suitcase like bag and he told him, i.e., the A5 that there is a RDX in the big bag and it has to be taken carefully to Mumbai. He stated that thereafter they all reached Kolkata,

Mohd. Shakil, (i.e., PW-70), went to his house and on the next day he, i.e., the A5 reached the six Pakistani persons, i.e., wanted accused no. 8 to 13 to Mumbai by railway and as decided met the A13 at Mira Road, that the A13 took them to the office of SIMI, where he, i.e., the A5 also halted for one night and returned to Kolkata and the A13 told him to remain in contact.

1514. Prosecution has proved by cogent evidence that in the second or third week of May, 2006 the A5 brought six Pakistani persons from Bongaon, which is just adjacent to the Bangladesh border of India, to Kolkata for being further taken to Mumbai, **which is the circumstance no. 17 proved by the prosecution.** It is held that the A5 has taken a false plea of alibi about he being in Kolkata in the second week of May, 2006, **which is the 8th—additional circumstance proved by the prosecution.**

1515. The A2 in his confessional statement, Ext.1023, stated that he had seen five Pakistani guests in the house of the A3 at Bandra, that the A3 introduced them to him and also told him that they are members of L-e-T.

1516. The A4 corroborated the statements made by all the above accused, but before that he stated in his confessional statement Ext. 1060, that when he had met the A3 at Bandra Station in August, 2005, at that time the A3 had told him that on taking stock of the situation during the training in Pakistan, he had understood that all the training camps conducted in Pakistan are controlled by the ISI and are conducted as per their directions, that the attack on Ayodhya Mandir was done on the directions of ISI by L-e-T and

Jaish-e-Mohammed jointly, that the people who had executed the attack had first come to Mumbai and they had the intention of causing bomb explosions in the trains in Mumbai, however, as arrangements for their stay and other facilities were not made, the ISI asked them to attack Ayodhya Mandir and then the A3 told him that wanted accused no. 1 Azam Chima has decided to do some action in Mumbai. He stated that he was in constant contact with the A3 and the A3 was informing him about the progress of their plan, that he met the A3 after he, i.e., the A3 returned from Pakistan after taking training, that the A3 was in constant contact with the wanted accused no.1 Azam Chima, commander of L-e-T, that in May, 2006 wanted accused no.1 Azam Chima sent some Pakistani to Hindustan via Nepal border out of which the A1 had brought wanted accused no. 6 and wanted accused no. 7 from the Nepal border. He stated that he also came to know from the A3 that the A5 had brought six Pakistani persons, i.e., wanted accused no. 8 to 13 through Dhaka border of Bangladesh, that wanted accused no.12 Ehsanulla had brought 15 kgs RDX with him and that some Pakistanis had come through Kutch border.

1517. The A6 in his confessional statement Ext. 1071, stated that on one day in June, 2006 the A3 had called him to Lucky hotel in Bandra (W) and told him that as decided Pakistani persons had come to India and then told him that the work of preparing bombs would be done at his house, etc.

1518. The A7 in his confessional statement Ext. 1037 stated that on the instructions of wanted accused no.1 Azam Chima, the A1 and

A5 were in contact with them, that the A3 told him that he alongwith the A4 and some accomplices had traveled in the local trains and made study as to how bomb explosions can be made, that there were some meetings about this at his house at Mira Road and some at the house of the A3 at Bandra and during those meetings the A13 and A3 had given the responsibility of causing the bomb explosions to each of them. He had further stated that wanted accused no.1 Azam Chima had sent Pakistani terrorists from separate places to Mumbai, some of whom were halted at the house of the A3 and the A13 had arranged for the stay of some Pakistani persons in the office of SIMI at Mira Road and he was told that the Pakistani persons had brought 15 kgs RDX with them.

1519. The A12 stated in his confessional statement Ext. 1230, about he, the A3 and A6 having an outing in the third week of June, 2006 and he sleeping in the house of the A3 where he saw some Pakistani persons on that day and on the next day also, i.e., on 27/06/06, that on the next day the A3 told him that his house is not sufficient, that repeated visits of people have increased because of which the people of the building may have doubt and for this reason it is necessary to shift some Pakistani persons who are staying in his house to some other place, that therefore, he, i.e., the A3 has arranged for the stay of some out of the Pakistani persons at Millat Nagar through the A13. He further stated that on the next day the A3 asked him to accompany him to Millat Nagar and *en route* the A3 told him that they are going to meet the Pakistani persons, who are shifted from his house.

1520. The prosecution has proved by cogent evidence that the wanted accused no. 5 Sohail Shaikh, whose full name is Sohail Usman Gani Shaikh, resident of Pune, but now residing in Pakistan and wanted accused no. 14 Abdul Razzak, a resident of Hyderabad, but now residing in Pakistan and deceased accused no. 1 Salim and deceased accused no. 2 Abu Osama @ Abu Umed @ Mohd. Ali, both Pakistani nationals were in the house of the A3 in the second or third week of May, 2006 and later on they were shifted to the house of A3 in Millat Nagar, Andheri (W), Mumbai, which is the circumstance no. 19 proved by the prosecution.

1521. The A10 stated in his confessional statement Ext. 1249, that he went to the house of the A3 in Lucky Villa, Perry Cross Road, Bandra (W) in the first week of July, 2006 on being called by the A3, that at that time 4-5 more persons came there, whom he did not know and they were talking with the A3 and on seeing him they stopped the talk and left from there after 5-10 minutes, that thereafter on he inquiring with the A3 about them, the A3 told him that they were guests who have come from Pakistan, that with their help they are going to cause a big bomb explosion in Mumbai and they have come for those preparations, that at that time the A13 was also present there and gave him, i.e., A10, Rs. 5,000/-.

Funding for causing the bomb blasts and meeting the expenses after the explosions :-

1522. The A3 stated in his confessional statement, Ext.1218, that wanted accused no.1 Azam Chima sent 11200 Riyals for executing the explosions with Abdul Rehman Dawrey (i.e.,PW-71), brother of

wanted accused no. 2 Rizwan Dawrey, however, before he, i.e., the A3 could get the money, he was caught and he came to know later on that police had seized the Riyals during the inquiry.

1523. Prosecution has proved by cogent, oral and documentary evidence that wanted accused no. 2 Rizwan Dawrey had sent 11200 Saudi Riyals on 14/07/06 for being handed over to the A3 and they were seized on 30/07/06, which is the circumstance no. 26 proved by the prosecution.

1524. The A3 in his confessional statement Ext.1218, stated that wanted accused no. 1 Azam Chima had sent 15000 Riyals to him during the bomb explosions for the purpose of meeting the expenses after the explosions, that he, i.e., the A3 kept the money in his house after he received it and he was to give the money to the persons who had executed the explosions, however, as there was tight police bandobast after the blasts and there was nakabandi and checking in every square, he thought it fit to keep the money with him and to give it to the persons after the matter cools down, however, police caught him on 27/07/06 and seized the money during inquiry.

1525. The A9 in his confessional statement, Ext.924, stated that wanted accused no.2 Rizwan Dawrey contacted him on his mobile phone from Saudi Arabia in May, 2006 and told him that the A3 had asked for an amount of 15000 Riyals, which he would be sending from Saudi Arabia with an acquaintance by name Hidayatulla Sundke, (i.e. PW- 64), to Pune and wanted accused no. 2 Rizwan Dawrey gave him the mobile number of the said person and asked him to contact him. He further stated that in May itself he told the

A3 about the 15000 Riyals that would be sent by wanted accused no.2 Rizwan Dawrey, thereupon the A3 told him that he knows about it and told him that Hidayatulla Sundke,(i.e., PW-64), came from Saudi and reached Pune on 02/07/06. He stated that from Bangalore he contacted Hidayatulla Sundke, (i.e., PW-64), and told him to give the Riyals to Bilal Shaikh, (i.e., PW-66), his relative, that he called Bilal Shaikh and gave him the mobile number given by wanted accused no.2 Rizwan Dawrey and instructed him to take 15000 Riyals from Hidayatulla Sundke, (i.e., PW-64), who had come from Saudi Arabia and give them to his another relative Mohsin Khan, (i.e., PW-67), living in Pune, that accordingly Bilal Shaikh, (i.e., PW-66), took the said Riyals from Hidayatulla on 05/07/06, that A3 contacted Bilal and instructed him to give the said Riyals to another relative by name Mohsin Khan, (i.e., PW-67), of Pune, that Bilal Shaikh, (i.e., PW-66), gave the said 15000 Riyals to Mohsin, (i.e., PW-67), that Mohsin, (i.e., PW-67), came to Mumbai from Pune to meet his father, who was admitted in the JJ Hospital and brought the Saudi Riyals with him and the A3 collected it from him in the JJ Hospital. Thus, he has corroborated the statements made by the A3.

1526. The prosecution has proved by cogent, oral and documentary evidence that wanted accused no.2 Rizwan Dawrey had sent 15000 Saudi Riyals for being handed over to the A9 at Pune and that ultimately the said Saudi Riyals were collected by the A3 in Mumbai and are the same Saudi Riyals that were seized from the house of the A3 on 28/07/06, which is the circumstance no.

25 proved by the prosecution. Prosecution has also proved that the foreign currency, i.e., the 15000 Saudi Riyals seized from the A3 and 11200 Saudi Riyals, both of which were sent for him by the wanted accused no. 2 Rizwan Dawrey, was a contravention of the provisions of the FEMA Act, **which is the circumstance no. 27 proved by the prosecution.** Prosecution has proved by cogent evidence that the wanted accused no. 1 Azam Chima rendered financial assistance to the A3, **which is the circumstance no. 19 proved by the prosecution.**

Fixing of D-day, i.e., date for causing the bomb explosions and accused being in contact with each other and discussing about the conspiracy for causing the bomb blasts:-

1527. The A3 in his confessional statement Ext. 1218, stated that 11th July was fixed as the date for executing the work, that before that it was decided to prepare the bombs at the house of the A6, that the A4, A2, A13, A6 and some other persons were in continuous contact with him, that sometimes they used to come at his house at Bandra for meeting and that some such meetings were held in the house of the A7 at Mira Road.

1528. The A4 in his confessional statement Ext.1060, stated that the A3 told all of them that 11/07/06 has been decided for causing the bomb explosions and that when it was planned to prepare the bombs, at that time it was decided that the bombs will be prepared at the house of the A6 at Govandi.

1529. The A6 in his confessional statement Ext.1060, stated that

the A3 told him that the preparations for bomb explosions have been completed, that other than him, i.e., the A6, the A13, A12, A7, A4, A11, A2, A10 and A9 were helping in executing this work. The A6 further stated that the A3 had also said that it was decided that the bomb explosions are to be done in the evening on 11/07/06, that accordingly a complete plan is being prepared, that the complete planning of bomb explosions was done by A3 and A13 on the instructions of wanted accused no.1 Azam Chima, commander of L-e-T. The A7 in his confessional statement, Ext.1037, stated that they had decided to cause the bomb explosions in the evening on 11th July in the trains in western line going from Churchgate to Virar.

1530. The A9 in his confessional statement Ext.924, stated that the A3 told him that 11th July has been fixed for causing the bomb explosions and that for that purpose wanted accused no.1 Azam Chima was sending several men from Pakistan, that the A3 also told him to be ready for doing any work and if necessary, his help would be taken.

1531. The A10 in his confessional statement Ext. 1249 stated that when he had gone to Mumbai to the house of the A3 for getting more money, the A3 had told him that the bombs are ready, that they would do the bomb explosions in the local railway in Mumbai on 11/07/06, that if there is some work that he, i.e., the A10 can do, he would be told about it and he should be ready for it.

1532. The A11 in his confessional statement Ext.1127, stated that the A3 asked him about fitting timer devices inside the bombs, that he told the A3 that a long time has passed since he had taken

the training and he does not remember about it. He stated that when he met the A3 on 10/07/06, the A3 told him that the bombs have been prepared and according to the plan the explosions will take place on 11th July in local trains and further told him that he should be ready at his own place and he, i.e., the A3 will tell him any work of his caliber in case of emergency.

1533. The A12 stated in his confessional statement Ext.1230, that the A3 met him at 5.30 in the evening on 30/06/06 at Narendra Park in Mira Road, where the A3 introduced him to A7, staying at Mira Road and doing the work of repairing mobiles and electronic remote. He stated that he reached the house of the A3 at Bandra in the evening on 07/07/06 and they went in the car of the A3 to the Seashore of Carter Road, where the A2, A4 and A11 were already standing and there was one more person there, whom he saw for the first time, who was introduced to him as the A1 Kamal Ansari of Bihar, that they all discussed about the conspiracy of causing the bomb blasts.

Assembling of bombs by the accused with the help of wanted pakistani accused :-

1534. The A3 in his confessional statement stated that the work of preparing the bombs was done at the house of the A6 at Shivaji Nagar in Govandi on 8th, 9th and 10/07/06, that the actual work of assembling the bombs was done by wanted accused no. 5 Sohail Shaikh, who had come from Pakistan, by the A7 and two Pakistani persons, that the A7 had a shop of mobile repairing at Jogeshwari, because of which he had knowledge of electronic circuits, that the

A4 was supervising the entire work of preparing bombs and told the A3 that wanted accused no. 5 Sohail Shaikh and the A7 had done the work of preparing the bombs and he further stated that the seven bags containing bombs were brought to his Bandra house and kept there on 10/07/06. The A3 stated that as per the instructions of the wanted accused no.1 Azam Chima, seven pairs consisting of one Pakistani and one local person were formed for planting the bombs, that he, i.e., the A3 was one of the local person and the Pakistani person with him was wanted accused no. 9 Abu Bakr, that he remembers that the A4, A12, A1 and A7 were amongst the other persons.

1535. The A12 stated in his confessional statement Ext.1230, that the A3 called him to his house at Bandra on 08/07/06 in the morning and when he reached there the A7 and two Pakistani persons were already there, that he took all these persons in the car of the A3 to the house of the A6 at Govandi and when they reached Govandi, they found the A2, A4 and A6 present there. He stated that as decided the A7 and two Pakistani persons went inside the house of the A6, that he came to know that the name of one of the Pakistani persons is Sohail Shaikh of Pune, but who is staying in Pakistan where he has taken militant training of terrorism and arms and is an expert in preparing bombs, that thereafter he and the A3 returned to the house of the A3 at Bandra where he halted and in that night he, the A3 and some Pakistani persons talked about jihad and tehrik upto late night, that there were again discussions between them on 09/07/06 in the afternoon about the explosions in

the local train, that at that time the A3 openly told him about his responsibility saying that after the bombs are prepared the bags containing the bombs are to be carefully brought from Govandi to his house at Bandra, that he, i.e., the A12 would be given the bag containing bombs at about 3.30 or 4.00 in the afternoon on 11th July and there would be a Pakistani person, i.e., deceased accused no. 2 Abu Umed @ Abu Osama with him. He stated that the A3 further told him that he, i.e., the A12 has to go with the Pakistani person in taxi to Churchgate and reach platform no. 2 with the bag containing the bomb and he, i.e., the A12 has the responsibility of keeping the bag containing the bomb in the first class bogie in the Borivali slow train that would be leaving at quarter to six in the evening. He stated that the A3 also told him that it would be risky for those persons who are going for keeping bombs in the local trains to keep their mobiles with them, therefore, it was decided that no one would keep mobiles with him. He stated that for that reason the A3 told him to give his mobile to the A7, who would be standing near the signal near Lucky Hotel in Bandra at 3.30 in the afternoon on 11th July and to collect the mobile from the A7 by going to Mira Road in the night.

1536. The A12 stated in his confessional statement Ext.1230, that as decided he and the A3 went by car to the house of the A6 in the night of 10/07/06, that till that time the work of preparing the bombs was over, that as per the plan all the seven bags containing the bombs were to be reached to the house of the A3, that they kept four bags containing the bombs in the car of the A3 and remaining

three bags containing bombs were kept by the A6 in taxi, that wanted accused no. 5 Sohail Shaikh and one more Pakistani sat with the A6 in the taxi and both vehicles started for Bandra, that on reaching the building of the A3 by car and taxi, the A6 took out the three bags containing bombs from the taxi, that till that time two more Pakistani persons got down from the house of the A3 and all of them kept the seven bags containing bombs in the house of the A3. He stated that at that time one thing struck the A3 and he told him, i.e., the A12 that it would be risky to keep the Maruti car near the house of the A3, therefore, the A3 told him to park the car in the compound of Al-Hatim building in Millat Nagar of his friend Rizwan Khot and to give the key to Rizwan, that accordingly he, i.e., the A12 parked the car of the A3 at the house of Rizwan, locked it and gave the key to Rizwan Khot.

1537. The A2 stated in his confessional statement Ext.1023 that he went with the A4 to the house of the A6 at Shivaji Nagar on 8th, 9th and 10th July, the A7 and two Paksitanis were there, out of whom one was wanted accused no.5 Sohail Shaikh and the A7 and those two were preparing bombs and the A4 told him to keep a watch outside the house of the A6. He stated that on 10/07/06 in the evening seven bags containing bombs were taken from the house of the A6 to the house of the A3 at Bandra, that he, i.e., the A2 had seen those bags when he had gone to the house of the A3 in the night of the same day, that the A3 told him that seven pairs of planters are formed to plant the bags containing the bombs in the train, that the A3 also asked him to be ready on 11/07/06 and that

he may be called if it is necessary and then he was asked to go from there.

1538. The prosecution has proved by cogent oral and documentary evidence that the A9 had purchased a Maruti Car No. MH-01-V-9568 on 04/06/06 and was handed over its possession, which is the circumstance no. 14 proved by the prosecution. Prosecution has also proved that on 22/10/06 the said car was seized at the instance of the A12, that there were black spots in the car, which were found to contain Cyclonite (RDX), Petroleum Hydrocarbon oil and charcoal and also Ammonium, Nitrate, Nitrite, which is the 15th circumstance proved by the prosecution.

1539. The A4 in his confessional statement Ext. 1060 stated that the work of preparing bombs was done on 8th, 9th and 10th July at the house of the A6 at Govandi, that the work of preparing bombs was done by wanted accused no. 5 Sohail Shaikh and by the A7 and one more Pakistani person, that RDX, Ammonium Nitrate, Diesel, 9 Volts Battery and a Quartz watch was used for preparing the bombs. He stated that the A13 and wanted accused no. 11 and one Parvez were present, that he, i.e., the A4 was supervising the preparations of bombs, that the A2 was present and was on watch outside for security, that the bombs were kept in the seven bags and those seven bags were taken to the house of the A3 at Bandra in the evening on 10/07/06.

1540. The A6 in his confessional statement Ext. 1071 stated that when he went to Lucky hotel in Bandra (W) as called by the A3 in June 2006, the A3 told him that the work of preparing bombs would

be done at his, i.e., the A6's house on 8th, 9th and 10th July, that he should keep the entire house empty, that therefore, by telling some reasons, he, i.e., the A6 sent his brother and family on 7th July to the house of his relative at Rafiq Nagar for 5-6 days. He stated that as per the plan the A3, A12, A7 and two Pakistani persons came to his house in the evening on 8th July, that one of the Pakistani persons was the wanted accused no. 5 Sohail Shaikh, resident of Pune, but staying in the training camp of L-e-T in Pakistan and expert in making bomb, that on that day those people did the work of preparing bomb in late night, that the A4 was present and was making arrangements of food for all and the A2 was kept outside the house on watch.

1541. Prosecution has proved by cogent evidence that a few days before the blasts, the A2 and A4 were outside the house of the A6, who was also present, which is the circumstance no. 18 proved by the prosecution. It is also held that the A2 has taken a false plea of alibi about he being continuously at his place of work in the Saboo Siddhiqui Hospital on 8th, 9th and 10/07/06, which is the 4th-additional circumstance against all the accused. It is also held that the A7 has taken a false plea of alibi about he being at his shop at Jogeshwari on 08/07/06 and 10/07/06, which is the 5th-additional circumstance against all the accused. It is held that the A4 has taken a false plea of alibi about he being at Mira Road on 8th and 10/07/06 and at Mumbra on 09/07/06 for the whole day, which is the 6th additional circumstance against all the accused. It is held that the A6 has given a false story that his and his two

brother's family members were present in his house continuously from 8th to 10/07/06, **which is the 7th additional circumstance against all the accused.** Prosecution has proved that Cyclonite (RDX), Ammonium Nitrate and traces of Cyclonite were found in the house of the A6 on 29/09/06, **which is the circumstance no. 11 proved by the prosecution.** Prosecution has also proved that the A2, A4 and the A6 have been identified in the test identification parade as the persons who were present outside the house of the A6 a few days before 11/07/06, **which is the circumstance no. 42 proved by the prosecution.**

1542. The A6 further stated in his confessional statement Ext. 1071, that wanted accused no. 12 Ehsanulla had brought 15 kgs RDX with him for preparing bombs, that the A3 brought the said RDX to his house, i.e., the house of the A6, that the A13 had already brought remaining articles like eight black coloured rexine bags, Ammonium Nitrate, detonators, cords, watches, etc., and had kept them in the house of the A6, that the A7 was to do the work of electric circuitry, therefore, he had brought battery, wire, soldering gun, soldering wire, circuit board, etc., articles. He stated that the work of preparing bombs was going on for three days, that some household utensils were used for preparing the bombs, that wanted accused no. 5 Sohail Shaikh and the other Pakistani persons mixed the explosives and prepared the mixture, fixed detonators in it and thereafter the A7 did the work of joining the circuit and wires, which could be used for exploding the bombs. He stated that the work of preparing bombs was completed in this manner in his house till the

evening of 10th July, that thereafter seven bombs were packed in separate black coloured bags, that the A13 took the remaining articles out of the articles that he had brought for preparing the bombs and put them in a bag and took them with him.

1543. The A6 further stated in his confessional statement Ext. 1071, that after some time the A3 and A12 came in the Maruti car of the A3, that they kept four bags in the Maruti Car and he hired a taxi and kept three bags in them and he, wanted accused no. 5 Sohail Shaikh and a Pakistani person went in that taxi to the house of the A3 at Bandra where the A3 and the A12 reached in their car and seven bags containing the bombs and were taken to the house of the A3 and kept there with the help of some more Pakistani persons, who had got down from the house of the A3.

1544. The A7 stated in his confessional statement Ext.1037, that as per the plan the responsibility of fitting timer devices on the bombs was given to him, that he had gathered the instruments necessary for it, i.e., battery, wire, printed circuit boards, soldering gun, multimeter, soldering wire, resistors, capacitors, insulation tape, tool kit, etc., that it was decided that the bombs would be prepared at the house of the A6 at Govandi, that the A13 was given the responsibility of collecting the articles necessary for preparing the bombs and keep them in the house of the A6.

1545. The A7 further stated in his confessional statement, Ext. 1037, that as directed by the A3, he went to the house of the A3 at about 1.00 p.m. on 08/07/06 taking with him all the instruments necessary for preparing for timer devices, that he saw four Pakistani

persons in the house of the A3, that the A12 also reached there after some time and as directed by the A3, the two Pakistani persons and he, i.e., the A7 went to the house of the A6 by the car of the A3 driven by the A12. He stated that one of the Pakistani person was the wanted accused no. 5 Sohail Shaikh, resident of Pune, but now staying in Pakistan, who had undergone jihadi training and obtained expertise in preparing bombs. He stated that as per the plan, the bombs were prepared on 8th, 9th and 10/07/06 in the house of the A6 at Govandi, that household utensils were used for preparing bombs, that wanted accused no. 5 Sohail Shaikh and one Pakistani person prepared the mixture for seven bombs with the help of RDX, Ammonium Nitrate and diesel and fitted detonators in it, that he prepared timer device for which purpose he prepared connection by pieces of wires on the circuit board and fitted the timer devices on seven different bombs. He stated that the A4 was present there, the A2 was keeping vigil outside the house of the A6, that during that period he, i.e., the A7 had a talk with the A4 about what the Home Minister of Maharashtra had said about the news of an incident that had take place in Bhivandi, viz., 'It ka jawab goli se denge', that because of this news they all became angry and excited, that the A4 ridiculed the news item and said that they would also give the reply to goli by bombs in two days. He further stated that bombs were prepared upto late night on 10/07/06 and packed in seven separate bags, that the A6, A12 and the A3 transported the seven bags to the house of the A3, that the A13 took the remaining articles out of the articles that he had brought for preparing the bombs, that as per the

plan he was told that it would be risky for those who would be going for keeping the bombs in the local trains to keep mobiles with them, therefore, it was decided that nobody should keep mobile with him. He stated that because of the above reason the A13 told him to reach the signal near Lucky Hotel in Bandra at 3.30 in the afternoon and A12 would give his mobile to him on 11th July at that time, which he should keep with him.

1546. The prosecution has proved by cogent, oral and documentary evidence that on 23/10/06 there was recovery of articles, i.e., Arts. 346 to 352, 354, 355 and 357 to 359 and that a timer/triggering device to trigger the detonator can be built with the help of resistors, Arts. 354 (1 to 22), capacitors Arts. 355 (1 and 2), coil, Art. 356, transistors, Arts. 357 (1 to 8), LEDs, Arts. 358 (1 to 9) and diodes, Arts. 359 (1 to 6), at the instance of the A7, **which is the circumstance no. 16 proved by the prosecution.**

1547. The prosecution has proved by cogent, oral and documentary evidence that Cyclonite (RDX) was found on 28/07/06 in the Flat no. 24, 3rd floor, Lucky Villa, A building, Perry Cross Road, Carter Road, Bandra (W), Mumbai that was in the possession of the A3, **which the circumstance no. 8 proved by the prosecution.**

1548. Prosecution has proved that on 08/10/06 seven black rubber cooker rings, Art-331 (1 to 7), five steel cooker whistles, Art-332 (1 to 5), electric circuit board, Art-334 and plastic bags, Arts-335 and 336, were recovered at the instance of the A3, that Cyclonite (RDX) was detected on the plastic bags and that the circuit

board, Art-334, can be used to form a triggering device, **which is the circumstance no.12 proved by the prosecution.**

1549. Prosecution has proved that the A13 was residing in flat no. 101, 'A' wing, Poonam Park apartment, Naya Nagar, Mira Road, that on 09/10/06 at his instance following articles are recovered :
(i) a rexine bag, Art-279, the blackish oily lumps in which were found to contain RDX (Cyclonite), Charcoal and Petroleum hydrocarbon oil, (ii) 2.700 kilograms white granules, Art-284, in which Ammonium Nitrate radicals were detected and (iii) 10 aluminum tubes joined with wires, Arts. 281 and 282 (colly.) which were proved to be live detonators, **which is the circumstance no. 13 proved by the prosecution.**

PLANTING OF BOMBS :-

1550. The A3 stated in his confessional statement Ext. 1218, that on 11/07/06 all pairs started from Bandra in between 3.00 p.m. to 4.00 p.m. by separate taxis for going to Churchgate, that he and the wanted accused no. 9 Abu Bakr started similarly, that no one out of them had kept their mobiles with them as all were so instructed, that all pairs one by one went to the east side of the Churchgate station and as per the plan came to the platforms coming out of the subway with the bomb laden bags, that each pair kept the bags in different locals as per the plan and that it was decided that after the bags were kept in the trains, they have to travel in the same bogie and get down after Mumbai Central. He stated that he along with the wanted accused no. 9 Abu Bakr boarded the first class compartment of the decided train, that as per the plan he had to

keep the bag on the rack above the seat, but the racks were full of luggage, therefore, he kept the bomb laden bag below a seat, that thereafter, he and wanted accused no. 9 Abu Bakr traveled in the same compartment upto Dadar and got down at Dadar, that there was a heavy crowd at Dadar, because of which they faced difficulty in getting down, that after getting down he took wanted accused no. 9 Abu Bakr to his house at Bandra and as per the plan wanted accused no. 9 Abu Bakar himself caught a bus and went out of Bombay.

1551. Prosecution has proved by cogent evidence that on 11/07/06 the A3 alongwith one more person had traveled in a taxi from Carter Road, Bandra at about 3.30 or 4.00 p.m. to a subway of Churchgate Railway Station, reached there at about 5.00 p.m. and that they were carrying a black coloured bag with them that was of rexine, which is the circumstance no. 1 proved by the prosecution. Prosecution has also proved that on 11/07/06 the A3 had kept a black coloured bag in the first class compartment in the 5.36 p.m. Churchgate Borivali slow train at Churchgate and he was accompanied by one more person, which is the circumstance no. 4 proved by the prosecution.

1552. The A1 in his confessional statement Ext.1188, stated that wanted accused no. 15 Abdul Rehman told him on 9th July that he has to reach the house of the A7 in Mira Road, Mumbai at any cost, that there he has to execute a big work of L-e-T commander, wanted accused no.1 Azam Chima with the help of WA No. 6 Aslam, wanted accused no. 7 Hafizulla and the A7 in Mumbai, therefore, he

started on 9th July and reached in the morning of 11th July at the house of the A7 where wanted accused no. 6 and wanted accused no. 7 were present and from there they three went to Bandra and met the A3 in his house, where 8-10 more persons were with the A3. The A1 further stated that there were seven black rexine bags kept in the house in which prepared bombs were kept, that the A3 said that those seven bags are to be kept in seven different local trains at Churchgate, that out of those seven bags, the A3 gave him one bag and told them, i.e., the A1, wanted accused no. 6 Aslam, wanted accused no.7 Hafizulla and deceased accused no. 1 Salim to reach the Churchgate station, go on platform no. 3 and keep the bomb laden bag on the luggage rack in the first 1st class compartment of the 5.57 fast train and to alight from the train at Dadar Railway Station at any cost. The A1 further stated that they all four left the house of the A3 by taxi, reached Churchgate station at about 5.00 p.m., purchased four first class tickets, that after the 5.57 train reached the platform no. 3 all of them boarded the first Ist Class compartment and he, i.e., the A1 kept the bag containing bomb on the passenger rack and all four stood in the passage leading to the door. He stated that when the train reached Dadar Railway Station, they all started getting down from it, but there was a big rush of people for entering the train, therefore, with great difficulty and pushing persons they managed to get down from the train, that however, because of the huge crowd Salim, i.e., deceased accused no. 1 could not get down with them and was trapped inside the compartment and by that time the train started.

1553. Prosecution has proved that on 11/07/06 the A1 had kept a big rexine bag in the first class compartment in the 5.57 p.m. Virar fast train at Churchgate and he was accompanied by a person, who did not get down at Dadar, **which is the circumstance no. 3 proved by the prosecution.** It is held that the A1 has taken a false plea of alibi about being at his native place on 10th and 11/07/06, **which is the second additional circumstance against the accused.**

1554. The prosecution has proved by cogent, oral and documentary evidence that an unidentified body that was found at the site of the Matunga blast was that of deceased accused no. 1 Salim, a Pakistani national, **which is the circumstance no. 41 proved by the prosecution.**

1555. The A4 in his confessional statement, stated that the A3 asked him to come on the next day afternoon, i.e., on 11/07/06 and the A3 had asked him not to bring his mobile, that accordingly he reached the house of the A3 at 3.30 p.m., that 10/12 persons were present there, that the A3 gave him a bag containing bomb and gave a person with him, i.e., the wanted accused no. 11 Ammujan and asked him to get a cab, go to Churchgate and keep the bag on the luggage rack on the first class compartment of the train going towards Virar at about 1715 hours. He stated that as per the instructions of the A3 he and the wanted accused no. 11 Ammujan caught a taxi, went to Churchgate railway station, took two first class tickets for Virar, that at that time a fast local train for Virar was on platform no. 3 and was to depart at 1719 hours, that he and wanted accused no. 11 Ammujan boarded the front first class

compartment of the train taking the black bag containing the bomb and he, i.e., the A4 placed it on the luggage rack and they both stayed in the compartment, that as per the plan they both went upto Dadar Railway Station and got down there and then went by taxi to the house of the A8 at Mumbra.

1556. The prosecution has proved by cogent evidence that on 11/07/06 the A4 had a black rexine bag with him when he boarded the first class compartment of the 5.19 Virar train at Churchgate and that he was accompanied by one more person and they had got down at Dadar empty handed, **which is the circumstance no. 5 proved by the prosecution.** It is held that the A4 has taken a false plea of alibi about being at Mira Road on 11/07/06, **which is the 3rd additional circumstance against all the accused.**

1557. Prosecution has proved by cogent oral and documentary evidence that the A4 has been identified in the test identification parade as having boarded the 5.19 Virar train at Churchgate on 11/07/06 with a black rexine bag, that there was one more person with him and both got down at Dadar without the bag, **which is the circumstance no. 42 proved by the prosecution.**

1558. The A12 in his confessional statement Ext.1230, stated that he started going to the house of the A3 at Bandra on 11/07/06, that at that time he received a call from the A3 reminding him to give his mobile to the A7 near Lucky Hotel, that he got down at Bandra station and as instructed by the A3 gave his mobile to the A7 in between near Lucky Hotel, and reached the house of the A3 at about quarter past four.

1559. The A7 in his confessional statement Ext. 1037, has corroborated his version by stating that on 11/07/06 he went to Bandra from Mira Road reaching there at about 4.15 p.m., that the A12 reached there by rickshaw and gave him his mobile phone and left from there to go to the house of the A3.

1560. The A12 stated further in his confessional statement Ext. 1230, that as decided the A3 gave him a bag containing bomb and asked him to go to Churchgate with Abu Umed, i.e., deceased accused no. 2, that thereafter he took the bag containing bomb, got down with the deceased accused no. 2 Abu Umed, took a taxi keeping the bag containing the bomb on a seat near him, reached Churchgate at about 5.30 p.m., left the taxi, crossed the road, went to Churchgate station, purchased two first class tickets, boarded the first class bogie of the Borivali slow local that was on the platform no. 2, that before sitting he kept the bag containing the bomb on the luggage rack. He stated that as the train went ahead the crowd in the bogie increased, but as per the plan they got down at the Dadar station and after coming out of the station they started for Mira Road by taxi, that *en route* he left deceased accused no. 2 Abu Umed near the house of the A3 and he went ahead to Mira Road. He stated that before reaching Mira Road he came to know from the situation outside that there were bomb blasts in the local trains, that on reaching Mira Road he collected his mobile from the A7 who told him that he had also came to know of the news of the bomb blasts. The A7 in his confessional statement Ext.1037, stated that thereafter he returned by train to Mira Road, that late in the evening he came

to know about the bomb blasts in the local trains, that as decided the A12 came to Mira Road and collected his mobile from him and left.

1561. Prosecution has proved by cogent evidence that on 11/07/06, the A13 alongwith one more person had traveled in a taxi from Perry Cross Road, Bandra at about 3.15 to 3.30 p.m. to a subway of Churchgate Railway Station, reaching there at about 4.45 or 5.00 p.m. and that they were carrying a black heavy bag with them, which is the circumstance no. 2 proved by the prosecution. Prosecution has also proved by cogent evidence that on 11/07/06, the A13 had kept a black coloured bag having chain in the first-class compartment of the 5.37 p.m. Virar fast local at Churchgate and he was accompanied by one more person, which is the circumstance no. 6 proved by the prosecution. It is held that the A13 has taken a false plea of alibi about being at his workplace on 9th, 10th and 11/07/06, which is the 1st additional circumstance proved by the prosecution.

Wanted accused who had come from Pakistan safely going out of Mumbai :-

1562. The A3 in his confessional statement Ext.1218, stated that after the blasts all Pakistani persons, i.e., wanted accused, remained stayed at the places where they had stayed and one by one they went by bus out of Mumbai to other cities and from there by catching different trains went to Pakistan, that he came to know later on that out of the pair of the A13 and deceased accused no. 1 Salim, the deceased accused no. 1 Salim could not get down on time

and was killed in the bomb explosion, that he was a resident of Lahore and had stayed in his house.

1563. The A4 in his confessional statement stated that after he reached the house of the A8, four more Paksitanis, i.e., the wanted accused who had executed the conspiracy came there halted for about 2-3 hours and went outside Mumbai by bus.

1564. The A1 stated in his confessional statement Ext.1118, that after alighting from the train they all three reached the house of the A7 at Mira Road by changing buses, that he dropped the wanted accused no. 6 Aslam and wanted accused no. 7 Hafizulla at the house of the A7, returned to Dadar railway station by changing buses, that from Dadar Central Station he took a train and reached Kalyan and caught Kalyan-Patna train at 1.00 hours in the night and reached Patna on the next day from where by bus he reached to his village on 13/07/06.

1565. The A5 stated in his confessional statement, Ext.937, that he got a message from Mumbai in the first week of July, 2006 that he has to reach Mumbai at any cost on 10/07/06, that accordingly he reached there and the A13 received him and took him to the house of the A8, a SIMI person in Mumbra area outside Mumbai and advised him to stay there and to take those Pakistani wanted accused persons whom he had brought in Hindustan by crossing the Bangladesh border, back to Bangladesh by the same way. He stated that as instructed the Pakistani wanted accused no. 8 to 13 met him in the late night on 11/07/06, out of whom one had been brought there by the A4, that he took them first by bus to Gujarat and from

there by train they all reached Kolkata and through Kallu he reached them in Bangladesh by crossing the India border. It is held that the A5 has taken a false plea of alibi about he being at Kolkata on 10th, 11th and 12/07/06, **which is the 9th additional circumstance proved by the prosecution.**

1566. It is alleged by the defence that the confessions are concocted and are false and are prepared by the ATS officers. If so, how come there are a few inconsistencies in their confessions? Are the inconsistencies also concocted? I do not think so. Perception and memories of different persons vary and the reproduction of a particular fact may also vary. Therefore, the inconsistencies and contradictions, if any, *inter alia* mean that they are natural and cannot be concoction by the ATS officers, because if it is so, then there would not have been such type of inconsistencies or contradictions. They would have made efforts to make them watertight. One of the inconsistency is about A3 stating in his confessional statement that seven pairs consisting of one Pakistani and one local person were formed for planting the bombs, which included him and wanted accused no. 9 Abu Bakr and he remembered that A4, A12, A1 and A7 were amongst the other persons. Thus, he has wrongly stated about the A7 and has not stated about the A13. However, the issue about the A7 is sorted out by the A12 and A7 in their confessional statements by stating that A12 was told by the A3 himself to give his mobile to the A7, who would be standing near the signal near Lucky Hotel in Bandra at 3.30 in the afternoon on 11th July and to collect the mobile from A7

by going to Mira Road in the night, which he accordingly did. A7 stated that A13 told him to reach near the signal near Lucky Hotel in Bandra at 3.30 on 11th July in the afternoon and that the A12 would give his mobile to him at that time, which he should keep with him. So this rules out the possibility of the A7 being one of the planters. About non-mention by the A3 of the A13 as one of the planters, the circumstances no. 2, 3 and 6 proved by the prosecution clear this ambiguity also. In fact, it is also cleared by the A3 in the last portion of his confessional statement wherein he has stated that he came to know later on that out of the pair of the A13 and the deceased accused no. 1 Salim, the deceased accused no. 1 Salim could not get down on time and was killed in the bomb explosion. So this involves the A13 as a planter. In fact, Salim going with the A13 is also inconsistent with the case of the prosecution that he was in the team of the A1. From the tenor of the confessional statement of the A3, it is apparent that he has generally stated about the persons who would be going for planting the bombs and in fact he did not state about two more planters. However, the circumstance no. 3 proved by the prosecution clears this aspect because there is cogent evidence of the witness who saw the A1 signaling the person inside the train after he, i.e., the A1, got down at Dadar. Thus, these inconsistencies do not affect the veracity of the confessional statements.

1567. In view of the circumstances that have been proved by the prosecution upto now and on a careful examination of the confessional statements of all eleven accused and on comparing

them with the rest of the evidence in the light of the surrounding circumstances and the possibilities of the case, it is found that the contents of the confessional statements are corroborated to a large extent by the circumstances that are proved by the prosecution. Not only this, there is material corroboration on most of the aspects in between the confessional statements of all the accused *inter se* as is clear from the above discussion.

1568. In view of the above discussion, I have no hesitation in accepting all the eleven confessional statements made by the eleven accused as voluntary, true and trustworthy. It is settled law that the confessional statements so made under section 18 of the MCOC Act is substantial evidence. Hence, there is no legal impediment in acting upon them to draw the conclusions against their makers as well as against the co-accused named in them. There is not even a single confessional statement that is exculpatory. I have to, therefore, hold that the prosecution has proved beyond reasonable doubt that the confessional statements given by the A1 to A7 and A9 to A11 are voluntary, true and trustworthy. **This is the circumstance no. 44 proved by the prosecution.**

Sanctions :-

Sanction under section 23(2) of the MCOC Act :-

1569. CP Roy, PW-185, was the Commissioner of Police, Mumbai from February, 2004 to February, 2007, in the rank of Addl. Director General of Police. He retired as DGP of Maharashtra in 2010. It has come in his evidence that he received the proposal for according sanction for prosecution under the provisions of the MCOC Act on

18/11/06 from the investigating officer through the DCP, Addl. CP and Jt. CP of the ATS, that it was accompanied with several volumes of documents, that he took many days to study and scrutinize the papers, that he took the assistance of the investigating officer, the legal advisor of his office and some times the Jt. CP, ATS. It has come in his evidence that he accorded sanction for prosecution on 25/11/06, when he was satisfied that a *prima facie* case is made out against all the accused, who were arrested and who were shown as absconding. He proved his signatures and the contents of the sanction order Ext.13. His chief-examination is only of one and half pages, whereas, the cross-examination is of 58 pages. However, the cross-examination also includes the cross-examination on several other aspects of the case, which are not relevant for the purpose of considering this issue. The sanction order Ext. 13 is under section 23(2) of the MCOC Act for prosecution of all the 13 accused under sections 3(1)(i), 3(2), 3(3), 3(4) and 3(5) of the MCOC Act.

1570. His cross-examination by learned advocate Shetty is in great detail in respect of sanction and rather than discrediting his version or showing that he had not applied his mind, it has in fact shown his total grasp of the facts and has shown complete application of mind while granting the sanction. There is nothing in his cross-examination to discredit his version in respect of the sanction order. On the other hand, the details that he gave, that too after about more than five years after having given the sanction, without referring to any papers or documents, show his brilliance and endorses the inference that he had applied his mind fully. It has

come in his cross-examination that the proposal was sent by ACP Patil, PW-186, of the ATS, who may be working as a supervising officer of the investigation of the cases before his appointment as an investigating officer since sometime at the end of September, 2006 after the provisions of the MCOC Act were applied. Insofar as the process of arriving at the conclusion to grant sanction, positive statements have come in his cross-examination that he took the assistance of the DCP and the Jt. CP many times after he received the proposal, that the concerned DCP, Addl. CP and Jt. CP of the ATS had verified the proposal and put their endorsements and recommended sanctioning the proposal before forwarding it to him, that he took assistance of Chief PP Pawar many times, that some times there were joint meetings with the DCP, Jt. CP of the ATS and the legal advisor. His depth of knowledge on the factual aspects is revealed from his answers that all the seven crimes were clubbed together under one C. R. No. 05/06 of the ATS at some stage after the provisions of the MCOC Act were applied, that the proposal was about 61 pages, that he was acquainted with the facts of the seven blasts and the development in the investigation before he received the proposal, that though no officer reported him about the progress in the investigation prior to 18/11/06, he kept himself generally aware of the developments in the investigation by discussing it with the Jt. CP, ATS and monitoring it, that there were about 25-26 bound volumes of papers, that he minutely went through the documents that were necessary for arriving at his satisfaction, etc. When he was questioned about his subjective satisfaction, he answered that the

entire sanction order is based on his subjective satisfaction for according sanction, that he passed the order only after he arrived at it and paragraph 4 shows recording of his satisfaction. His knowledge of law is also reflected from his answers that the existence of the organised crime syndicate is necessary for according sanction for prosecution under the MCOC Act, that there should be continuous unlawful activity, that more than one prior chargesheets should have been filed against the syndicate or even a single member of the said organisation and cognizance of the offence should have been taken by the concerned court. He denied the suggestion that the unlawful activity should be with the object of obtaining only pecuniary gain for the syndicate or member and explained that it may be for any gain. When he was suggested that documents showing the existence of the organised crime syndicate were necessary to be perused, he answered that the documents of the investigation disclosed the existence of an organised crime syndicate and also showed other ingredients required for according sanction. While admitting that there is not one single document or material showing this, he explained that the totality of the investigation showed the existence of an organised crime syndicate and then elaborated a few instances, that more than one chargesheet was pending against a member of the syndicate of which the court had taken cognizance, that more than one accused was involved in earlier cases, that there were confessional statements of many accused, that there was recovery of material under section 27 of the Evidence Act, that there were statements of

witnesses, identification by witnesses, multiple accused were seen to be involved in the cases of similar nature and different members of the syndicate were meeting and corroborating and planning to execute the blasts. When asked whether the record of the involvement of the arrested accused in previous cases was placed before him, he stated that the record was placed before him, many of them were involved in previous cases and when asked whether specific previous case was considered for according sanction, he said no and said that it is not necessary. When he was asked whether he considered any previous case against the organised crime syndicate before according sanction, he answered that entire record of involvement of the arrested accused in the previous cases was considered and then explained in detail that relevant papers of two previous cases against the A13, one of the year 1999, in which he was arrested, but had absconded and the other of the year 2002 in which he was not arrested, but the chargesheet was filed against him, were the two cases considered by the competent authority for invoking the provisions of the MCOC Act under section 23(1) of the MCOC Act. Once again he emphatically stated that it was not necessary for him to consider only those cases for according sanction. When questioned as to whether the orders of the concerned courts taking cognizance of the offence were placed before him, he explained that they were placed before him and they included charge framed by the concerned court and the judgement given by the concerned court. When asked as to whether the name of the A13 was specifically mentioned in the charges framed in both

the cases, he mentioned that in one case the accused was arrested, released on bail, but he jumped bail and did not appear during the trial and while passing the judgement against the other accused, the court ordered to present the muddemal again during the trial against him. In the second case, charge was not framed against him, but his name was mentioned in the order. He then stated that in the first case the name of the A13 was mentioned as Asif Bashir Khan, but in the second case his name was mentioned as Asif Khan. He stated this from his memory and the matter is six years old.

1571. Now about the name of the A13 being mentioned only as Asif Khan in the charge in the second case against him, he admitted that his name was not mentioned in the FIR, but only the name Asif Khan is mentioned in the charge. While admitting that Asif Khan is a common name in Muslims, that Khan is surname, the evidence that he gave thereafter voluntarily, not only shows his complete knowledge and total grasp of the entire facts of the investigation, but it also proves that whatever evidence the prosecution gave in respect of two previous cases against A13, was definitely against the A13 and that was done after ascertaining as to whether he was the same person. He volunteered that since the name Asif Khan is a common name, some officers were sent for making ground inquiries and these inquiries established that the said Asif Khan mentioned is the same absconding Asif Khan Bashir Khan @ Junaid. He explained that field inquiries made by a team that was sent to Jalgaon established the identity and the material was first placed before the competent authority under section 23(1). He did not remember the

specific document that he had seen in this regard, but stated that he satisfied himself about the veracity of the inquiries that were made. Though, he did not remember on what date the inquiry is made, he explained that it was prior to the application of the provisions of the MCOC Act prior to seeking prior approval. While admitting that the other 12 accused in the present case were not shown as arrested or wanted in those two cases, he gave details of the previous cases against the other accused, viz., that the A2 and A4 were involved in two cases at Kurla, A1 was involved in a case at Delhi and some accused was involved in a case at Bangalore, but it was unrelated.

1572. About mention of names of several Pakistani nationals in the sanction order, he explained that it was as per the proposal sent to him. He stated that one Suhail Shaikh from Pune was arrested and though he could not remember whether one Suhail Shaikh from Pune was a wanted accused when he accorded the sanction, he stated that one Pakistani national by name Suhail Shaikh was shown as absconding accused. This statement is found to be contradictory to his answers in paragraph 18 when he was confronted with the contents of the order that the name of accused Suhail Shaikh, resident of Pune, Maharashtra, presently based in Pakistan, is shown in the list of absconding accused and that he was not a Pakistani national. To my mind, though this appears to be a contradiction, it is not so and on the other hand it reveals his depth of knowledge. It is again endorsed by his answers that a person claimed to be a Pakistani national, who was identified as Salim, was killed in the blast, that his dead body was found at Mahim or Matunga blast site,

that he had seen the photographs of that body, which was of only the upper portion of the body including the face.

1573. He was tried to be contradicted with the statements that he allegedly made in a press briefing that he gave at the end of September, 2006 in which Jt. CP Raghuvanshi, Addl. CP and DCPs of the ATS were present and Pasricha, the Director General of Police, was also present for some time, in which broad details about the information disclosed until then were given to the media, with the factual aspects that were revealed in the investigation later on. To my mind, it does not make any difference, because any statements made by the police officers during the course of investigation were probably made on the basis of investigation till that time and on the clues that were available with them. You cannot bound the prosecution to such statements made to the media, if on further investigation by following some new leads, some other things were disclosed, which were not as per the statements made by him in the press briefing. Thus it is unnecessary to consider the other questions in respect of the present case and as to whether he had made some statements about the containers that were used for keeping the bombs, about detention of some of the accused by the Crime Branch from 14/07/06, especially the A3 and others and the dates of their arrest, etc.

1574. He admitted having visited the ATS office many times, but he turned down pointed questions about he giving any directions to the supervisory officer of the ATS as to how the investigation should be carried out and to the investigating officers. He correctly

answered that Jt. CP Raghuvanshi of ATS had ordered the clubbing of the crimes sometime in between 10th and 15th of October, 2006, that C. R. No. 05/06 was registered after invocation of the provisions of the MCOC Act. He was cross-examined about the conclusion of conspiracy that he arrived at and he explained that it had started somewhere around February, 2006 and when confronted with the contents of paragraph 4 of the order he stated that it is correctly recorded that the period of conspiracy was from 1999 to October, 2006 and then explained voluntarily and perfectly that the period of larger conspiracy from 1999 includes the multiple accused going to Pakistan on a number of occasions by different routes by camouflaging their journey to get trained in conducting subversive activities including bomb blasts. Then about the material that he examined to arrive at the conclusion about there being a conspiracy, he explained that the material that was before him was the statements of witnesses and the accused including their confessional statements showing multiple accused meeting each other, talking about their plans, collecting material, trying to get Pakistani nationals, making of the bombs, etc., and all this material was pertaining to the period prior to the occurrence of the crime and this material did not travel beyond 11/07/06. When asked about the date on which the information of the offence of organised crime was recorded under the MCOC Act, he explained perfectly that the FIRs regarding the bomb blasts were registered on 11/07/06 under the provisions of the IPC, Explosives Act and others and that the provisions of the MCOC Act were invoked on 24th or 25/09/06.

1575. In respect of his conclusion in the sanction order that the conspiracy was in between the year 1999 to October, 2006 he was asked as to whether any material was placed before him indicating that the conspiracy continued even after 11/07/06, he answered that the conspiracy culminated in the blasts and then explained perfectly that the only fact after the blasts that he recalls is that the accused persons who brought six Pakistani nationals through Bangladesh border from Kolkata to Mumbai, took them back from Mumbai to Gujarat and from Gujarat to Kolkata, where they were made to cross the border with the help of the same person, who helped them to cross the border while coming and this material was the confessional statement of the A5 and, this is important, statements of some witnesses whose names he does not recall. He correctly explained that retraction of confessions was not a material fact while applying his mind to accord the sanction. He admitted that names of witnesses and the accused and the other documents which influenced his mind and the two previous cases of organised crime syndicate are not specified in the order. To my mind, it is not necessary.

1576. Cross-examination by learned advocate Wahab Khan is mostly in respect of press briefing, an alleged VCD that was allegedly shown by a news channel containing confessional statement of the accused and he emphatically denied all these things and stated that an inquiry was held and it was found that those were not any CDs prepared by the investigating agency or given to the news channel and as far as he knows, the confessional statements

were not video recorded.

1577. In respect of call detail record, i.e., CDR, he stated that they were not in the documents submitted with the proposal, that he did not call for it and did not feel that they were necessary to establish the role of the accused. He then volunteered that during their interrogation, many accused told that there were clear instructions to them not to use mobile phones for any operational purpose or important communication between themselves, they generally used only landline and PCOs, that they had even stated that they sometimes gave only missed calls to each other as a signal and then contacted each other from a designated PCO. Now, these things have come in his cross-examination before the CDRs of the mobile phones used by the accused came on record. The CDRs show contact of the accused with each other, though during their statements under section 313 of the Cr. P. C., accused stated that they do not know each other and, on being confronted with their contact with the other accused, in fact numerous calls, the accused developed new stories in their evidence. Learned advocate also cross-examined him in respect of an encounter case of Lakhanbhaiya, about which he had filed affidavits in the Bombay High Court, many encounters taking place during his tenure as CP, PI Salaskar and PI Pradeep Sharma taking part in many encounters in which criminals were killed, about encounter of deceased A2 Abu Umaid @ Mohd. Ali and he being suggested that he was brought by DG of ATS Vanjara of Gujarat. To my mind, all these things are irrelevant to the facts in issue.

1578. About his visits to the ATS office, he explained very specifically that it was because of an order passed by a magistrate that the investigation of this case be carried out under the close supervision of the CP and it was passed when the A1 was produced before the magistrate sometime in early August, shows that it was mainly because of the magistrate's order that he used to visit the ATS office regularly. Not that it has much effect because as a CP he is expected to supervise over the law and order situation in his jurisdiction, which to my mind, will also include the investigation of cases in which the law and order of the city is in issue. His knowledge about the factual aspects is again seen by his answers in respect of an unclaimed dead body and about a family being prosecuted for falsely claiming a dead body in the Andheri blast.

1579. In view of the above discussion, it is clear that not only on the basis of the proposal and the documents that were forwarded to him, but also on the basis of personal knowledge, CP Roy, PW-185, had complete knowledge and had completely understood the factual as well as the legal aspects of the case and had accorded the sanction, which means that it was accorded with full application of mind. Hence, it is proved by the prosecution that there is a valid sanction for prosecuting all the accused for the offences under the MCOC Act.

Sanction under section 45 of the UA(P)A, 1967 and section 15 of the Passport Act, 1967 :-

1580. Awadhesh Sinha, PW-160, who was working as Addl. Chief Secretary, Home, Government of Maharashtra, from 2005 till his

retirement on 30/06/07, gave the sanction Ext.1700 under section 45 of the UA(P)A against all the accused to prosecute them for the offences under sections 10, 13, 16, 17, 18, 19, 20 and on behalf of the State Government for the offence under section 45 of the UA(P)A and under section 15 of the Passport Act for the prosecution of A3 and A6 for the offences under section 12(1)(c) of the Passport Act. He described about receiving the proposal initiated by the ATS, Mumbai, running into more than 40 pages, which was accompanied by two volumes of supporting papers, it being examined at different levels in the Home Department and then by the Law and Judiciary Department in the State Government before being put up before the competent authority for according sanction. He deposed that after the proposal was examined at the lower level in both the departments, it came to him for sanction under Chapter-III of the UA(P)A and through him for the sanction of prosecution under Chapter-IV and VI of the same act and under the Passport Act. It has come in his evidence that as secretary in-charge of the Home Department, he studied the entire proposal together with the comments of other officers and departments and after he was *prima facie* and subjectively satisfied that the prosecution under the provisions of the said law was justified, he accorded the sanction, then forwarded the file to the minister in-charge of the Home Department for consideration of the rest of the proposal under the same act and the Passport Act. It has come in his evidence that he also agreed with the proposal of the department that if the minister thinks it fit to accord sanction for prosecution under the two acts,

then a common sanction order would be issued under his signature in accordance with the rules and regulations of the government. He proved the contents of the sanction order Ext.1700, which he accorded in the first week of January, 2007.

1581. His cross-examination has not affected his evidence about the manner in which he accorded the sanction and it does not show that he had not applied his mind. Though he admitted that detailed description of the documents that were produced is not given in the sanction order and it does not reflect his meeting with any of the ATS officers, he clarified that he did not have any meeting with any ATS officer at that time, that the proposal was studied by at least ten people from his and other departments and while describing as to what was the material that was before him, he stated that there were numerous documents in two volumes that were sent with the proposal, which included books, pamphlets, statements, police reports and copies of ban order. In reply to a question as to whether he has to satisfy himself that ingredients of the offences for which the sanction is sought are *prima facie* fulfilled on the basis of the material placed before him, he answered that on the basis of the material placed before him, he has to be satisfied that in all probability the offences for which the sanction is sought for have been *prima facie* and in all probability occurred and it is necessary to see whether the ingredients of the offences are *prima facie* and broadly made out.

1582. He was shown the sanction order Ext. 1709 and asked whether it is based on the same set of facts and books that were

considered while giving the sanction dtd.02/01/07, i.e., Ext.1700, and he said that he could not say about it. However, he clarified that booklets purportedly published by SIMI were a part of the material that was sent with the proposal for which he gave the sanction on 02/01/07, though he admitted that he did not go through the booklets for the reasons given by him. The said sanction order Ext. 1709 is produced by the defence and it is of LAC No. 04/06 registered with ATS Police Station, Mumbai against the A4 and four more for the offences under sections 10 and 13 of the UA(P)A. I do not understand what defence wanted to show from this. The said order is dated 15/01/07 and apparently has no connection with the order in present case.

1583. The contents of the sanction order are attacked on several aspects. First is that the forwarding letter Ext. 1710 mentions in the last four lines that if there is any discrepancy in the matter, report is to be sent in that respect. He stated that he did not suspect any discrepancy in the sanction order and did not instruct his Jt. Secretary to convey these things. To my mind, may be by way of abundant caution or as a practice those sentences may have been incorporated in the forwarding letter, but they do not affect the veracity of the sanction order. He explained that if an error apparent on the face of the record is brought to his notice by the proposing or any other authority, then he may issue corrigendum or may take some other corrective measures or it may be that R. N. Deshmukh, Jt. Secretary so wrote in the covering letter, Ext. 1710, by way of abundant precaution and also correctly stated that there is nothing

objectionable about it. He denied the suggestion that he gave a blanket sanction order, but stated that by the use of the words 'and for any other offence committed by the accused persons', his intention was to cover other offences if any under the UA(P)A.

1584. About absence of signatures or initials of approval of the Home Minister in the sanction order, he explained that it was done under his, i.e., the witness's signature under his, i.e., the Home Minister's authority and as it is not the procedure that the sanction order should bear the signatures or initials of the Home Minister. About reflection of his subjective satisfaction in the order, he explained that the entire order including the schedule reflects his subjective satisfaction. He was confronted with the contents of the another sanction order Ext. 1603 issued by the Jt. Secretary R. N. Deshmukh, PW-149, and he admitted that except particulars of the name of the accused, material facts of the case, sections under which he is prosecuted and the section and the Act under which the sanction is given, all other contents are similar. I do not see how this will affect the veracity of the order and what inference can be drawn from this and no inference can be drawn that draft of the sanction order was provided to him.

1585. The main attack on his evidence and the sanction order passed by him is that he as well as the Government of Maharashtra did not have the power to grant sanction under section 45 of the UA(P)A. For this purpose, the defence is relying on the letter Ext. 1706 dtd. 27/09/01 issued by the Ministry of Home Affairs, Government of India to the Chief Secretary, Government of

Maharashtra saying that in exercise of the powers conferred under section 17 of the UA(P)A, 1967, the Central Government authorizes the Secretary of all the State Governments to exercise the powers to sanction prosecution in respect of the offences punishable under the said Act triable by the court in his State. It is submitted by the defence that the UA(P)A was amended in 2004 and the provisions of delegation of the power was to be in section 45 of the Act. Defence has produced Gazette of India Ext.1704 obtained by the A4 under the RTI Act dtd. 21/06/07, by which the Central Government authorized the Secretary of the State Governments to exercise the powers to sanction prosecution in respect of the offences punishable under Chapter-III of the said Act, which was sent to the chief secretaries of all the state governments by the covering letter Ext. 1702. It was submitted that it is only on 21/06/07 that the powers were delegated. The witness could not say whether the mention of section 17 in Ext. 1706, was a mistake. However, to my mind, Ext. 1706 is the document that clarifies the matter, as is rightly submitted by the learned SPP. Ext. 1706 is dated 27/09/01, i.e., before the amendment to the UA(P)A in the year 2004 and as per section 24 of the General Clauses Act, 1897, the effect of that order continues even after the amendment was made in the year 2004 and the power of delegation in that order thus continued and was in force in the year 2006-07 till a fresh notification was issued as per Exts. 1703 and 1704. Thus there is nothing in this objection to affect the power of the witness to accord the sanction.

1586. In view of the above discussion, it will have to be held that

the prosecution has proved that there was a valid sanction under section 45 of the UA(P)A for prosecuting all the 13 accused for the offences under the said Act and for prosecution of the A3 and A6 for the offences under section 12(1)(c) of the Passport Act.

Sanction under section 196 of the Cr. P. C. :-

1587. Jt. Secretary, Home Department, Mantralaya, Maharashtra Government R. N. Deshmukh, PW-149, accorded sanction Ext. 1603 under section 196 of the Cr. P. C. for prosecuting all the accused for the offences under sections 121-A, 122, 123, 124-A read with 120-B and also for the offences under sections 201 and 212 read with 120-B of the IPC. It has come in his evidence that his department received a proposal from the Jt. CP, ATS, Mumbai on 13/12/06 for according sanction to prosecute the accused in C. R. No. 05/06 for the above offences, that the proposal was of 40 pages giving the entire facts of the case, that he studied the proposal and called the investigating officer ACP Patil, PW-186, of the ATS and had discussions with him for 2-3 days. ACP Patil, PW-186, corroborates his version. He then described the procedure about sending the draft of the sanction order for approval of the secretary, after getting it, sending it to the Law and Judiciary Department, which gave the approval on 06/01/07 and submitting it to the minister, who gave his approval on 07/02/07 after which he issued it on 09/02/07. He proved the contents of the order Ext. 1603 and stated that the approval was given at every stage after due application of mind. His cross-examination has not affected his evidence about the procedure and in respect of the contents of the order, he stated that he and his

desk officer prepared the schedule with the help of the investigating officer, that he and his section officer prepared the sanction order and he gave dictation to the steno and the third paragraph mentions his subjective satisfaction. Except some grammatical mistakes and again the use of words 'any other offences', the effect of which is already discussed in the sanction given by Awadhesh Sinha, PW-160, there is nothing in his cross-examination to show non-application of mind.

1588. An issue was raised in his cross-examination and it is submitted by the defence that the ATS did not have the power to investigate the offences under the MCOC Act and UA(P)A and for that purpose letters and notifications, Exts. 1606 to 1612, were produced by the defence. Ext. 1608(2) is the notification dtd. 17/04/04 by the Home Department (Spl.), declaring the ATS, MS, Mumbai, as a police station under the provisions of the IPC, Arms Act, N.D.P.S. Act, Explosive Substances Act and Official Secrets Act within the jurisdiction extending to the State of Maharashtra. Thus as on that date the ATS did not have the powers to investigate the offences under the MCOC Act and UA(P)A. However, the notification dtd. 31/08/06 Ext.1609(2) gave the ATS the powers to investigate the offence under both acts. The provisions of the MCOC Act were applied to this case, i.e., C. R. No. 156/06 of Borivali Railway Police Station, on 24/09/06. Thus, this issue no longer remains an issue.

1589. In view of the above discussion, it will have to be held that the prosecution has proved that there was a valid sanction under section 196 of the Cr. P. C. for prosecuting all the accused under the

abovementioned sections.

Sanctions under the Explosive Substances Act, 1908 :-

1590. First in time is Rahul Singh, PW-26, who was Collector and District Magistrate at Madhubani, Bihar and who gave the consent Ext.511 under the Explosive Substances Act in connection with the crime of Police Station Basopatti concerning the A1. It has come in the evidence of Sr. PI Tajne, PW-161, that possession of RDX by the A1 was an offence that had taken place within the jurisdiction of Police Station Basopatti, District Madhubani. Therefore, it was registered at 00 number with the ATS in September, 2006 and the FIR alongwith seizure panchanama and the FSL report were sent to Police Station Basopatti for registering the crime about which PSI Rajan, PW-107, gave evidence about registering the FIR Ext.1098. He explained that the proposal sent by the District Superintendent of Police, Basopatti was accompanied with the copy of the FIR and the other documents and that the crucial document was the report of the FSL, Mumbai which said that Cyclonite (RDX) and Charcoal are detected in the exhibit. He also proved the sanction Ext. 512 granted to the ATS, Mumbai after he received a proposal from the ATS, which was accompanied by similar documents and an order of the Supreme Court transferring the entire FIR of Basopatti Police Station of the recovery of RDX from the house of the A1 to the Special Court under the MCOC Act as the said recovery was part of the larger conspiracy involved in the said bomb blasts. He proved the contents of both sanction orders and there is nothing in his cross-examination to discredit his evidence, because he has specifically stated that he

had a discussion with an ATS officer before giving the consent. Though it has come in his cross-examination that except the report of the FSL he had no other material before him about the seized powder being RDX, to my mind, that material was sufficient and there was really no need for him to again get the sample analyzed from any government FSL in Bihar before granting the sanction. He admitted that the ATS, Mumbai had given a draft consent order with the proposal, but explained that he made some corrections in it and also explained that except grammatical mistakes, there is no other mistake in the paragraphs that were pointed out. His knowledge about the factual aspects is clear from his answers in cross-examination that the seizure was effected on 20/07/06 and the FIR was registered in Police Station Basopatti on 09/09/06. While admitting that the order Ext.511 is for the prosecution in Bihar, he explained the legal compliance that was done by him, i.e., of sending copies to the CJM, Madhubani, the ACJM, Jhanjharpur, officer in-charge of Police Station Basopatti and the District Superintendent of Police, Basopatti.

1591. The only issue is as to whether the sanction order Ext. 512 is the original order or whether it is a copy as it does not contain his signature below the main part of the order. This aspect has been clarified by the learned SPP in his re-examination wherein he submitted that the practice in their State is that the office copy of the main order is signed and the copies are issued to the concerned authorities and the memorandum below the main order is signed. He explained that the copy issued is treated as original and there is

no difference in the matter of Ext. 512 and the office copy of it. In cross-examination, he was suggested that Ext. 512 is not signed by him or his subordinate as a true copy, to which he correctly explained that it is signed by him as it is the original. Thus, this clears the issue and there is nothing in his entire cross-examination to discredit his version.

1592. It will, therefore, have to be held that the prosecution has proved that there was a valid sanction order under the Explosive Substances Act for prosecution of the A1 for the offences under sections 4 and 5 of the Explosive Substances Act.

1593. S. S. Zende, PW-166, who was the Collector and District Magistrate of Thane District from December, 2006 to September, 2008, issued the consent, Ext.1766, under section 7 of the Explosive Substances Act for the prosecution of the A3, A4 and A13 for the offences under section 3, 4, 5 and 6 of the said Act. It has come in his evidence that he received a proposal in the beginning of March, 2007 from the ATS, Mumbai to issue consent for prosecuting the accused involved in the serial bomb blasts that had taken place in Mumbai in July, 2006, that the proposal was accompanied with panchanamas, statements, FSL reports, etc., that he had a discussion with his additional district magistrate, the home tahsildar and considering the gravity of the offence, he had a discussion with ATS officer Patil, which is also corroborated by ACP Patil, PW-186,. It has come in his evidence that he was subjectively satisfied on the basis of the documents that was sent with the proposal and the discussion that he had with officer Patil and his staff, that the case was fit for

according consent. It has also come in his evidence that the proposal was for consent for prosecution of nine accused, but he realized that only three accused were concerned with the incident that had taken place within the jurisdiction of Thane District, therefore, he accorded the consent for prosecuting only three accused. He proved the contents of the consent order.

1594. His cross-examination has not discredited his version on the aspect of application of mind for granting the sanction and he described the territorial jurisdiction of Thane District. His knowledge about the factual aspects of the case is clear from the answers that he gave about his jurisdiction starting from Mira Road after Dahisar in the western suburban explaining that Dahisar is part of Greater Bombay, but Dahisar subway is in Thane district. He described that the panchanama was the document that showed that the explosive material was found near Dahisar subway, which was in the geographical area of Thane district. When asked to explain, he specifically stated that the Dahisar subway is about one and a half kilometers north of Dahisar where the boundary of BMC ends and it is actually in Mira Road. The purpose for which the consent was sought for is also nicely explained by him in his cross-examination that preparation and planting of explosives in this case was not within his jurisdiction, both are the acts prior to the explosion. He explained that the proposing authority had asked for consent for planting explosive by an accused that exploded in his jurisdiction and secondly for finding explosives within his jurisdiction in respect of the two accused. He also explained that preparation, planting and

explosion of explosives is a continuous offence and that obtaining the consent for preparation and planting of explosive is not sufficient, but it should also be taken in relation to the explosion that took place. He admitted that the exact postal address in Mira Road of the A13 is not written in the consent order, but explained that it must be in his file and when confronted with the consent order Ext. 1762 issued by Vishwas Patil, PW-165, he admitted that the contents are similar and even the difference in the spelling of the name of the A2 at two places is similar in both the orders. Some typographical mistakes similar and dissimilar in both the orders is admitted by him stating that it is a coincidence. All these things do not affect the application of mind that he did while according the consent though he admitted that the order does not describe the statements and panchanamas and as to with whom he had discussions and who had prepared the draft and the order. In his re-cross-examination by learned advocate Wahab Khan, certified copy of the consent order in MCOC Special Case No. 04/09 was got proved and marked as Ext. 2842, to prove its contents in respect of the consent being given for Indian Mujaheedin having committed the blasts in Mumbai also, i.e., the blasts in this case. That is a different issue and it will be discussed at the appropriate place.

1595. In view of the above discussion, it will have to be held that the prosecution has proved that there is valid sanction under section 7 of the Explosive Substances Act for prosecuting the A3, A4 and A13 for the offences under sections 3, 4, 5 and 6 of the said act.

1596. Vishwas Patil, PW-165, who was Collector of

Brihanmumbai Suburban District from 15/12/06 to 21/05/10, issued the sanction under section 7 of the Explosive Substances Act for the prosecution of the A1, A2, A3, A4, A6, A7, A9, A12 and A13 for prosecuting them for the offences under sections 3 to 6 of the said act. It has come in his evidence that he got the proposal in the first week of March, 2007, that it was scrutinized by his office and by him also, that he, the Dy. Collector and Tahsildar went through the proposal and the documents sent with it, which included the FSL reports, statements, panchanamas, FIRs etc., and on perusing the documents and the proposal and applying his mind, he was satisfied that the case was fit for granting the sanction for prosecution. He proved the contents of the sanction order Ext. 1762. Though, he mentioned it as a sanction order in his chief-examination, he admitted in his cross-examination that he was empowered to issue consent and not sanction order. In fact, Ext. 1762 mentions the word consent and not sanction. The efforts that he took were brought on record during his cross-examination, during which he described that a Tahsildar and one RDC helped him in scrutinizing the proposal, that the RDC was one Amol Yadav, that the Tahsildar scrutinized it for four days and the RDC scrutinized it for three days and he had a joint meeting with both of them on 11/03/07. When asked to describe about the documents, he explained that he does not recollect the number of documents that were in the proposal, but it was one big bunch and there may be more than 200 pages. He described that there were arrest panchanamas, gathering explosive substances from one doctor, from Govandi, from Perry Road, Bandra,

from one place from Dahisar and one from Bihar. This shows his knowledge about facts and endorses the inference that he had applied his mind about which he stated that the material that was sent was sufficient. When asked to describe the contents of the table that is on page 4 of the order and the blast sites at sr. no. 1 and 7, being not within his jurisdiction, which he admitted, he volunteered that as the facts were that the material was transported from Bandra to Churchgate, Perry Road in Bandra was in his jurisdiction. While admitting that the blast site at sr. no. 2 in the table was not in his jurisdiction, he volunteered and explained that as the material was gathered from Shivaji Nagar, Govandi, it was within his jurisdiction and also explained that as the material was gathered from Shivaji Nagar, Govandi and transported to Perry Road, Bandra, both the places come in his jurisdiction. His knowledge about the factual aspects is also clear from his answers that unknown persons are described as arrested and wanted in respect of the blasts at Mahim and Bandra.

1597. He also admitted that the contents of his order are similar to the contents of the order Ext. 1634 passed by Valsa Singh, PW-151, and there are some spelling mistakes in the name of the A2 at two places. These things do not affect his credibility or his application of mind, because he has deposed about the procedure by which he arrived at the conclusion and accorded the consent. He admitted that the proposal that was with him indicates the name of Rahil, wanted accused no. 3 as based in the UK and the name of Rizwan Dawrey as wanted accused no. 2 as based in Dubai and the

order does not indicate their names. He explained perfectly that they are not included in the order as a separate proposal will be moved after their arrest and the ATS did not ask for consent against them. He also clarified that the consent for prosecution against the A7 was for possessing explosive substance and against the A4 it was given for transporting, and, for according consent, he basically relied upon the FSL report. During his re-cross-examination by learned advocate Wahab Khan, he was shown certified copy of the consent order given by him in MCOC Special Case No. 04/09, which was marked as Ext. 2842, which is again in respect of the case against the members of the Indian Mujahedeen and the allegation that they committed the bomb blasts in Mumbai also, including the blasts in this case, which is a different issue.

1598. It will thus have to be held that the prosecution has proved that there was a valid sanction under section 7 of the Explosive Substances Act issued by the District Magistrate of Mumbai Suburban District against the A1 to A4, A6, A7, A9, A12 and A13 for prosecuting them under the provisions of the Explosive Substances Act.

1599. Last is Valsa Nair Singh, PW-151, Collector and District Magistrate, Mumbai City from July, 2006 to April, 2007 and she gave the consent under section 7 of the Explosive Substances Act in C. R. No. 05/06 against the A1, A2, A3, A4, A12 and A13 for prosecuting them under sections 3 to 6 of the said act. It has come in her evidence that she received a proposal from the ATS on 02/03/07 for issuing the sanction order for prosecution of accused regarding

the bomb blasts in seven local trains. It has come in her evidence that she had received a large bunch of documents with the proposal, that on going through it, she realized that she would have to scrutinize it carefully, therefore, she called the investigating officer ACP Patil, PW-186, and had three rounds of discussions with him and his staff. She stated that she scrutinized all the documents that were produced before her and after she satisfied herself she issued the consent order on 17/03/06 for prosecuting six accused. She proved the contents of the consent order Ext. 1634. The first problem that she encountered during her cross-examination is that her signature on the order and the schedule with it is a photocopy, about which she explained that the order and schedule containing her original signature was sent to the office of the ATS. This problem was overcome by the prosecution by producing the original order Ext.1648, the contents of which she proved during her re-cross-examination by the learned SPP.

1600. Once again her cross-examination has also not discredited her version in respect of her application of mind for issuing the consent order. A small issue is raised about the date of the order as to whether it is 17/03/07 or 16/03/07 and she remained firm about it by stating that it is 17/03/06. I do not think that this makes any difference. It has also come in her cross-examination that the proposal was accompanied with copies of panchanamas, reports of the FSL, that she had asked for copies of interrogation reports and statements before and after the identification parade on the subsequent occasions. She stated that she remembers that there

were statements of witnesses concerning five accused and the statement concerning one accused was not there. She admitted that the ATS had sent draft order and ACP Patil, PW-186, corroborated her version about she having discussions with him. In my humble opinion, even if the few mistakes and irregularities in the consent order pointed out during her cross-examination are considered, the only aspect that conclusively proves that she had applied her mind is the fact that the investigating officer had asked for consent for prosecution of nine accused, however, she accorded consent for six accused only. Her knowledge of the facts is also clear from her answer that consent was given against the A4 as he was the planter of the explosives, which indicates possession.

1601. It is clear from the above discussion that the prosecution has proved that there was valid consent under section 7 of the Explosive Substances Act issued by the District Magistrate of Mumbai City against the A1, A2, A3, A4, A12 and A13 for prosecuting them under sections 3 to 6 of the Explosive Substances Act.

1602. In respect of the sanctions, learned advocate Sharif Shaikh relied on the following authorities :-

(i) **Rambhai Nathabhai Gadhvi, State of Gujarat, Appellant V. State of Gujarat, Rambhai Nathanhai Gadhvi, Respondents (SCC-1997-7-744).**

(ii) **John D'Souza, Appellants V. Assistant Commissioner of Police, B-1/Special, DCB, CID, Joint Commissioner of Police (Crime), Crime Branch, CID, Commissioner of Police and the**

State of Maharashtra, Respondents (MANU/MH/0235/2007).

(iii) State of Maharashtra, Appellant V. Lalit Somdatta Nagpal, Respondent (LAWS(SC)-2007-2-171).

(iv) State of Maharashtra, Appellant V. Rahul Ramchandra Taru, Respondent (LAWS(BOM)-2011-5-58).

(v) Sherbahadur Akram Khan, Akhtar Hussain Siddiqui, Appellant V. State of Maharashtra, Respondents (LAWS(BOM)-2006-12-105).

I have carefully gone through all the authorities. In the case of **Rambhai Nathabhai Gadhvi** the sanction order granted by the DIG, Gujarat, Ahmedabad under section 20-A(2) referred only to two documents, i.e., FIR and the letter by DSP, Jamnagar and what he did was that he granted permission to add sections 3, 4 and 5 of the TADA Act to the crime. Thus, it was held that it was not a sanction as required by section 20-A(2) of the TADA Act. Thus, this authority is inapplicable to the facts of the present case. In the case of **John D'Souza** the issue was unrelated to the grant of sanction under section 23(2) of the MCOC Act. The issue in the matter before the Division Bench of our High Court was as to whether there should be a separate recording and registration of the FIR after the prior approval under section 23(1) of the MCOC Act is granted. In **Lalit Somdatta Nagpal's** case the previous cases against the accused were in respect of violation of the provisions of the Sales Tax and Excise Laws, which were found to be not covered under the definition of organised crime and it was held that such cases were not intended to be the basis for application of the provisions of the MCOC Act.

Thus, this authority is not applicable to this case. **Rahul Ramchandra Taru's** case is also not applicable as it relates to the interpretation of the terms 'continuing unlawful activity', 'organised crime' and 'organised crime syndicate' defined in sub-clauses (d), (e) and (f) respectively of sub-section (1) of section 2 of the MCOC Act and there was no question of interpretation of section 23(2) of the said act. The judgement in the case of **Sherbahadur Akram Khan** is also not on the point of requirement of sanction under section 23(2). Hence, it is inapplicable. It was only found that the sanction order did not in any manner indicate that there was any material before the Commissioner or that he had considered the material showing that the accused had assaulted others for the purpose of economical gain.

1603. Learned SPP has relied on the following authorities :-

- (i) **State of Madhya Pradesh, Appellant V. Jiyalal, Respondent (Criminal Appeal No. 1386/08 decided on 31/07/09 by Hon'ble Supreme Court).**
- (ii) **Satyavir Singh Rathi, Appellants V. State thr. C. B. I., Respondent (AIR 2011 SC 1748).**
- (iii) **Indu Bhusan Chatterjee, Appellants V. The State of West Bengal, Respondent (AIR 1958 SC 148).**
- (iv) **State (N.C.T. of Delhi), Appellants V. Navjot Sandhu @ Afsan Guru, Respondent (AIR 2005 SC 3820).**

The law in the case of **Jiyalal** is about non-examination of District Magistrate who passed the sanction order for prosecution of the offences under the Prevention of Corruption Act. It was held

that, *'the sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution'*. However, it is not applicable to the present issue. In the case of **Satyavir Singh Rathi** in paragraph 47 it is mentioned that the CBI had made a request for according sanction for the prosecution of the appellants in that case alongwith the investigation report and a draft of the sanction order. On facts, it was found that from the various documents on record that adequate material was available before the Lt. Governor for according sanction and the sanction order was found to be extremely comprehensive as all the facts and circumstances of the case had been spelt out. Admittedly, in that case only the investigation report and the draft sanction order had been put up before the Lt. Governor, even then, the Supreme Court found from a reading of the sanction order that it referred to the entire evidence collected in the matter. Thus, this authority is applicable to the present case insofar as the draft of sanction order being supplied to one or two sanctioning authorities by the investigating officer ACP Patil, PW-186,, as is admitted by him. It is also applicable insofar as the sanction and consent orders containing factual details of the case and the material that was collected against the accused.

1604. Learned SPP while discussing the case of **Indu Bhusan Chatterjee**, submitted that probably he could not have a better

judgement than this in respect of all the sanctions. He relied on paragraph 10, which is a discussion about the sanction order that is reproduced in the preceding paragraph 9. It was held that the sanction also clearly states all the facts which are concerned with the prosecution case alleged against the appellant, that it clearly states that the sanctioning authority had applied his mind and was of the opinion that in the interest of justice appellant in that case should be prosecuted. The Supreme Court wondered as to what more facts were required to be stated in the sanction itself and it was unable to understand it. It was admitted by the sanctioning authority that the sanction order was prepared by the police and it was put up before him by the personal branch of his office, that he did not call for any record in connection with this matter from his office and that he did not call for the connected claim cases nor did he enquire about the position of those claim cases. It was also found that the observations of the High Court of Calcutta about there being no proper discharge of duty in granting the sanction order by merely putting one's signature on a ready-made sanction presented by the police are not correct and it was held that it is true that the sanctioning authority did not himself dictate or draft the sanction, but his evidence does not prove that he merely put his signature on a ready-made sanction presented by the police. It was held that sanctioning authority was an officer of high rank in the Railway and it is inconceivable that he would blindly sign a ready-made sanction prepared by the police. It was observed that apparently the sanction already drafted contained all the material facts upon which the prosecution was to be

launched. It was observed that there was no reason to disturb the sanctioning authority's statement that before he accorded his sanction he went through all the papers and after being satisfied that sanction should be given he accorded it. It was held that it was not for the sanctioning authority to judge the truth of the allegations made against the appellant by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers that were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction. On a careful scrutiny of the sanction order and the evidence of the sanctioning authority and reading them together it was found that there can be no doubt that the sanction accorded was a valid sanction.

1605. Learned SPP relied on the topic sanction in paragraph 5 of the judgement in the case of **Navjot Sandhu @ Afsan Guru** and in respect of the submissions of the advocate of the accused that there was no sanction for the offences under the POTA, whereas, the sanction was given for inapplicable offences under the Indian Penal Code, the facts constituting the offence have not been stated in the sanction order and no evidence had been adduced to show that the competent authority addressed himself to the relevant facts and material. The Supreme Court observed that the careless and inept drafting of the sanction order has given scope for some of those comments and found that the offences were not mentioned in the first paragraph of the order containing the recital as to the *prima facie* satisfaction of the Lt. Governor. However, it observed that the

drafter reversed that process by mentioning the POTA offences under the residuary expression 'apart from other offences'. It is further held that this careless drafting cannot deal a fatal blow to the sanction order. It was found that a distinction was maintained between the sanction under POTA and the sanction under Cr. P. C., because there was a separate sanction order under section 196 of the Cr. P. C.

1606. The Supreme Court dealt with the submissions that the addition of the offence under section 120B, which does not require sanction, reveals total non-application of mind. It was observed that, *'though the conspiracy to commit the offences punishable by Section 121 is covered by Section 121A, probably Section 120B was also referred to by way of abundant caution though the prosecution for the said offence does not require sanction. At any rate, the insertion of a seemingly overlapping provision does not and cannot affect the validity of the sanction order. Nor can it be said that the addition of Section 124 which has really no application to the present case by itself vitiates the sanction order. From the insertion of one inapplicable provision, a reasonable inference cannot be drawn that there was no application of mind by the competent authority. A meticulous and legalistic examination as to the offences applicable and not applicable is not what is expected at the stage of granting sanction'*. It was held that the mention of an inapplicable section does not go to the root of the matter or otherwise make it vulnerable to attack.

1607. It was held by the Supreme Court that, *'ultimately the test to be applied is whether relevant material that formed the basis of allegations constituting the offence was placed before the sanctioning*

authority and the same was perused before granting sanction. We are of the view that this test has been amply satisfied in the instant case. The sanction orders on their face indicate that all relevant material, viz., FIR, disclosure statements, recovery memos, draft charge sheet and other material on record was placed before the sanctioning authority. The fact that the sanctioning authority perused all this material is also discernible from the recital in the sanction orders. The sanction orders make it clear that the sanctioning authority had reached the satisfaction that prima facie the accused committed or conspired to commit the offences mentioned therein. The elaborate narration of facts culled out from the record placed before the sanctioning authority and the discussion as to the applicability of each and every Section of the penal provision quoted therein is not an imperative requirement. A pedantic repetition from what is stated in the FIR or the draft chargesheet or other documents is not what is called for in order to judge whether there was due application of mind. It must be noted that the grant of sanction is an executive act and the validity thereof cannot be tested in the light of principles applied to the quasi-judicial orders'. Hence, on principles of law this authority is squarely applicable to the present case.

1608. In view of the above discussion, the law laid down by the Supreme Court in the 2nd, 3rd and 4th authorities is squarely applicable to the factual aspects of the sanction orders in the present case and there is no legal impediment in holding that all the sanctions were validly given.

**Defence theory about the Indian Mujaheedin organisation
having committed the blasts in the present case :-**

1609. The discussion upto now is about the evidence given by the prosecution to prove the charges levelled against the accused. The defence has come out with a very strong case and allegation that it was not the present accused, but it was the members of Indian Mujaheedin, who committed the blasts in this case, which is clear from the confessional statements of three accused given in MCOC Special Case No. 4 of 2009. For that purpose they examined accused no. 2, 3 and 5 in that case, i.e., Sadiq Israr Ahmed Shaikh, DW-33, Mohd. Arif Badruddin Shaikh, DW-34, and Ansar Ahmed Badshah Shaikh, DW-35.

1610. In this respect the learned SPP submitted that though the defence called these witnesses, they themselves declared them hostile. He submits that the court will appreciate that little more than denial under section 313 of the Cr. P. C., the accused have taken the further step of calling them to the witness box. Therefore, they have volunteered to take on their shoulders the burden to prove a particular fact, which they have failed to prove. He submits that another issue is that Sadiq Israr, DW-33, was given a clean chit, though he was the real culprit. He submits that the entire record in that respect is before the court and what transpired is before the court. The order discharging Sadiq Israr, DW-33, has not been assailed in any higher court and it has attained finality. Therefore, there is absolutely no damage done to the case of the prosecution. In this respect, learned advocate Wahab Khan has made voluminous

submissions pointing out to certain answers given by Sadiq Israr, DW-33, and he not giving answers to some questions and submitted that therefore so and so inference should be drawn. He submits that in the e-mails that were sent to media homes, the Indian Mujaheedin challenged the police to do whatever they can do and owned responsibility of 25-30 blasts and it was conveyed that all blasts in Mumbai after the year 2000, including the train blasts of the year 2006 were done by them. He submits that a video recording was made of Sadiq Israr, DW-33, making the confession and a clip was shown by the media which was of 2-3 minutes. However, it was just the tip of iceberg. The said witness has narrated the entire truth before the court and has corroborated the defence of the accused. He submits that the witness admitted before the court that the officers of the Crime Branch were confessing to him about falsely implicating the 13 boys in this case, i.e., the present case. He submits that the ATS considered this issue and had a deal with Sadiq Israr, DW-33. They got him arrested in this case and the deal was that they will discharge him. They decided to give a go-by to whatever evidence they had gathered. The Santacruz shopkeepers were not called in a test identification parade to identify Sadiq Israr, DW-33, as no parade was held. He submits that it was submitted by the ATS that he wanted to make a statement and the court permitted it and it is claimed that he pointed out the pressure cooker shop, but it was submitted that the pressure cookers available there were too costly on comparing. Sadiq Israr, DW-33, pointed out a shop from where he purchased bags, but the shop was not there. He pointed

out the house of Rashid, but it was not there. It is alleged that timers were prepared by an accused who was in custody. He was inquired, but he denied. He submits that with this material, the ATS filed discharge application and this court believed their words and discharged him. He further submits that in respect of this, it was thought that certain issues were not explained by the prosecution, because as per law they have to lead concrete evidence. Therefore, it was decided that they will lead contradictory evidence and will leave it to the discretion of the court and will say that this is natural and we are not giving watertight evidence. He alleges that there was a design to drop the shopkeepers and certain things were kept in the grey area to give it a natural colour. He also took much pains to take me through the entire evidence given by DW-33 to DW-35 and at particular places submitted that so and so inference should be drawn. He submitted that Sadiq Israr, DW-33, was tutored by the prosecution to admit in his cross-examination by the learned SPP that he was fed up with the repeated questions by advocate Khan Abdul Wahab in respect of 7/11 railway bomb blasts case, therefore, he said to one question that he does not want to answer it.

1611. To my mind, the submissions of the learned advocate are stretching the point to unacceptable limits. His submission about this court discharging the accused, believing the words of the ATS, is not justifiable. There is no reason why the defence did not challenge the discharge order though it is vehemently submitted by the learned advocate, that too wrongly, that since beginning it is their case that some other organization had done the bomb blasts. This is because

Sadiq, DW-33, made this claim in his confessional statement after he was arrested in 2008, i.e., two years after this case. The submission that Sadiq, DW-33, was tutored by the prosecution is not only ridiculous and scandalous, it is also an attempt to win at any cost, be it heads or tails, because it is the defence who had called him. His submissions about the prosecution leading contradictory and inconsistent evidence is also unacceptable. Why would the prosecution do this and damage its own case. The prosecution has to lead cogent and convincing evidence to prove its case. His submission about the design to drop the shopkeepers and the keep certain things in the grey area to give a natural colour is an indirect admission that there is something natural in the evidence given by the prosecution. One cannot go on suspecting everything and making allegations against everyone.

1612. In this context, it is pertinent to see the confessional statement given by Sadiq Israr, DW-33, in MCOC Special Case No. 4 of 2009, who was arrested in this case and produced before this court. Before going any further, it is also necessary to point out what the said witness stated in his confessional statement in that case, about the bomb blasts in this case. Certified true copy of the confessional statement is at Ext. 3727, which has not yet been legally proved in that case. It was just marked for the purpose of identification and though Sadiq Israr, DW-33, admitted his signatures he has not admitted the contents therein. Even otherwise, it is in his confessional statement Ext. 3727 on page 8 that when some boys came back after taking training in Pakistan, Amir Raza

told him to show some work. He, Riyaz Bhatkal, Arif Badruddin Shaikh, DW-34, Atif, Dr. Shahnawaz with the help of all remaining boys did the blasts on the say of Amir Raza at Momin Pura, Delhi, Sankatmochan Mandir in Varansi, in the Shramjeevi Express and Mumbai Railway Blasts, that these blasts were done by them during the period from February, 2005 to September, 2008. Amir Raza used to send explosives and material for this purpose with the help of Riyaz Bhatkal or his boys. Arif Badar prepared clock timer circuit. He, Arif Badar, Riyaz Bhatkal and Atif knew how to prepare bomb and circuit. These are only statements that are concerned with the present blasts and it is obvious that they are vague statements.

1613. It appears that the investigating agency fell prey to the tactics or the strategy of terrorist organizations to confuse the investigating agency and in their exuberance another branch of the police may have given an interview in the media. Be that as it may, the fact remains that on the basis of the alleged confessional statements of DW-33 to DW-35, which they had given in MCOC Special Case No. 4 of 2009, the investigating machinery in this case, i.e., the ATS, duly took the custody of Sadiq Israr, DW-33, in this case and thoroughly inquired with him and only when it was established that he had stated falsely about the involvement of the Indian Mujahedin at the behest of one Atif, did they come to the conclusion that he or members of the Indian Mujahedin were not responsible for the blasts and therefore they applied for his discharge. The thoroughness of the inquiry is very much evident from the contents of the Remand Application No. 28/09.

1614. Sadiq Israr, DW-33, was arrested in this case by the ATS on 21/02/09 after they received a true photocopy of the confessional statement made by him in C. R. No. 152/08 forwarded to it by Jt. CP, Crime Branch, Mumbai. He was produced before this court on the same day and remanded to police custody on that day and subsequently upto 21/03/09, on which day he was remanded to judicial custody upto 03/04/09 and further upto 11/05/09. On 12/03/09 he was produced before the in-charge judge in C. R. No. 55 of this court in Remand Application No. 16/09 and at that time the accused reported to the judge that he has no concern with the 7/11 bomb blasts and related matters, that he also claims to have no acquaintance with any of the co-accused person, that whatever statement he made, was a story reported under duress, that one Atif from Azamgarh had asked him to take responsibility of the 7/11 bomb blasts lest his family members would have to face problems. He also stated to the judge that he, therefore, took responsibility of this bomb blasts without there being any involvement on his part and whatever he was asked to disclose by Atif has been reported by him in his statement (i.e., in his confessional statement). His advocate was present on that day and the learned SPP requested to pass necessary order to record the necessary statement of the accused by a competent magistrate under section 164 of the Cr. P. C. On 11/05/09, Remand Application No. 28/09 was filed praying for releasing him from this crime, i.e., C. R. No. 05/06, under section 169 of the Cr. P. C., as there is no sufficient evidence against him to indicate his involvement in the crime. On hearing the learned SPP,

on going through the case diary and the statement of the accused under section 164 of the Cr. P. C. recorded by the magistrate, Ext. 4, it was found that there was no sufficient evidence against the accused to indicate his involvement in C. R. No. 05/06. Hence, the application was allowed and he was released under section 169 of the Cr. P. C. in C. R. No. 05/06 of the ATS, Mumbai.

1615. The thoroughness of the inquiry made by the ATS is clear from the contents of Remand Application No. 28/09, wherein, it was revealed that after deep investigation and inquiry with the accused and with the information given by him, it was found that he had indicated his involvement on the say of Riyaz Bhatkal and one Atif with the intention of confusing the investigating agency and this was done as per the Al-Quiada manual. The points on which the inquiry was made is that in the initial questioning he stated about the use of 5 ltr. pressure cookers, which were purchased at Rs.300/- each and he showed the shop, statements of the shop owners and salesmen were recorded, but they stated that no 5 ltr. cooker, branded or local, was price at Rs.300/- three years before. When the accused showed the shop from where he allegedly purchased the bags that were used in the bomb blasts, it was found that there was no such shop there, but the shop there was of sale of chappals. About his residence in the Raza Society, Sewree Cross Road, Mumbai, in which he had allegedly stayed on the 5th Floor, it was found that one Iklak Shaikh and his son Abu Rashid and their families stay there. It was found that Crime Branch officers had visited that place earlier, but their visit was concerned with the crime that they were investigating. The

visit of the ATS was in respect of serial bomb blasts in the railway locals. A correspondence was made with the Registrar, Maharashtra Counsel of Indian Medicine, having its office in Fort, Mumbai, to inquire whether Dr. Shahnawaz Shadab Ahmed Shaikh (Unani) was registered as a medical practitioner, but the reply was in the negative, therefore, the information given by the accused was not corroborated. Inquiry was also made with the accused in custody from whom, as per Sadiq Israr, DW-33, the timers for the bombs were prepared. However, the said accused informed that different types of timers were used in the railway bomb blasts and they, i.e., Indian Mujaheedin, had used Samay table clocks as timers. It was alleged that Indian Mujaheedin is a terrorist organization inclined towards Pakistan, whose founder is Riyaz Bhatkal and members of this organisation had committed the bomb blasts at Lucknow, Delhi, Waransi, Ahmedabad, Surat, that Atif, referred to by Sadiq Israr, DW-33, was killed in an encounter at Batla House in Delhi in September, 2008 and Abu Rashid, Dr. Shahnawaz and Sajid are wanted accused in the bomb blasts at Sarojini Nagar, Delhi. It was informed that on a minute investigation, it was revealed that Sadiq Israr, DW-33, is involved in terrorist activities and he knows Riyaz Bhatkal, however, he has no concern with the crimes of the bomb explosions in the suburban railways in Mumbai.

1616. The order of this court dtd. 11/05/09 in Remand Application no. 28/09 has not been challenged and has become final. There is no suggestion from the side of the defence to Sadiq Israr, DW-33, that the accused facing the trial had not done the

blasts. Obviously, the defence could not have taken such a stand because of the risk involved if the witness spoke otherwise.

1617. The defence case that the Indian Mujaheedin is responsible for the blasts cannot be accepted for one more reason. It is the alleged known strategy of the Indian Mujaheedin to make e-mails to media houses informing that a bomb blast is about to take place. The involvement of the Indian Mujaheedin in the present case is indicated in the confessional statement of Sadiq, DW-33, only. It was obviously a plan to disorient the investigating machinery, which was disclosed after the arrest of the one of the accused in MCOC Special Case No.4 of 2009, i.e., accused no. 2 Sadiq, DW-33, in this case and his subsequent statement under section 164 of the Cr. P. C. How much the plan was successful is evident from the manner in which higher ups of the police fell prey to it and went public and made irresponsible and inconsistent statements. The *modus operandi* alleged against the Indian Mujaheedin is that they send e-mails before any blasts and have no hesitation in owning responsibility of any blast that its members had committed. However, no such thing happened in this case. There was no e-mail before the blasts and no one owned up the responsibility after the blasts. Again no such thing happened in this case for two years and it was only in 2008, i.e., after two years, that the accused no. 2 in MCOC Special Case No. 4 of 2009, i.e., Sadiq Israr, DW-33, made such a statement in his confessional statement, that too vague. The confessional statements of the accused no. 3 and 5 in MCOC Special Case No. 4 of 2009, i.e., DW-34 and DW-35 in this case, are of no consequence because they

straight away amount to hearsay. Insofar as Sadiq Israr, DW-33, is concerned, he has been examined by the defence and he has disowned everything. So, the holding of conference in which the alleged statements were made by the higher officers of the police is of no consequence, because it appears that they fell into the trap of the Indian Mujaheedin and made the statements based on the statements made by the accused and not based on any independent investigation as conducted by the ATS in this case.

1618. Sadiq Israr, DW-33, has emphatically denied in his cross-examination by the defence advocate after being declared hostile, that he and his associates have done the 7/11 blasts, that he gave a confessional statement before the DCP voluntarily, that he had voluntarily stated a true story at the time of video shooting and that he is deposing falsely so that he may not be implicated in this case.

1619. In view of the above discussion, the involvement of the members of the Indian Mujaheedin is ruled out as it is not proved by the defence. Therefore, the evidence given by the accused about it and the cross-examination of prosecution witnesses, particularly the investigating officers, is redundant and needs no discussion. Reliance placed on the certified copy of the chargesheet in MCOC Special Case No. 4 of 2009 and on the consent order Ext. 1764 issued by Vishwas Patil, PW-165, is also of no use. At the cost of repetition, it will have to be stated that the authority issuing the consent has only to go through the *prima facie* material to issue the consent order and he is not expected to verify the truthfulness of the contentions in the proposal. In view of the above discussion, no

inference as argued by the learned advocates for the accused can be drawn on the basis of the evidence of DW-33 to DW-35 and on the basis of the contents of the certified copies of their confessional statements and the statement made by Sadiq Israr, DW-33, under section 164 of the Cr. P. C. Moreover, even if Sadiq, DW-33, would have admitted the contents of his confessional statement, which was an impossibility, his confessional statement would not have been admissible in this case in view of the provisions of Sec.18(1) of the MCOC Act, which says that a confessional statement of a person recorded under section 18 shall be admissible in the trial of such person or co-accused, abettor or conspirator, provided they are charged and tried in the same case together with the accused. Leaving aside drawing inferences, no doubt is created on the basis of their evidence about the involvement of the members of the Indian Mujaheedin in causing the bomb explosions in this case. Hence, this defence taken by the accused is not proved and is not probable also. It is clear that the accused have taken this false defence. Hence, it will have to be held that this is the 10th additional circumstance in the chain of circumstances proved by the prosecution against the accused.

Applications filed during the course of arguments :-

1620. Before going to the concluding part of the judgment, it would be appropriate to consider the applications filed by the defence containing the prayers for production of documents during the course of arguments and even after the final arguments were concluded.

(i) Ext. 4600 is an application filed by learned advocate Wahab Khan on 28/03/14, before the final arguments could start, for production of true photocopies issued by Sr. PI of Charkop Police Station of two FIRs, two certified true photocopies of orders under section 156 (3) of the Cr. P. C. passed by the ACMM, 24th Court, Borivali, Mumbai on 15/04/13 and the photocopies of a private complaint, which include the name of API Revle, PW-154, as an accused. Learned SPP by his say has objected to the production of documents on the ground that they are totally irrelevant to the facts in issue. These documents are obtained under the RTI Act and have not been proved. Even otherwise they are in respect of incidents from January, 2011 upto 2013 and have no relevance to the fact in issue in the present case and they do not affect the evidence given by API Revle, PW-154. Hence, the application is rejected and disposed off at the time of judgment.

(ii) Ext. 4616 is an application filed on 04/04/14 by the A2 submitted by learned advocate Wahab Khan for producing certified true photocopy of charge in Special Case (ACB) No. 13/11 against Jayant Aher, PW-131, on 21/12/13. Its production is objected to by learned SPP on the ground that the arguments have already progressed. Again this is a document obtained under the RTI and though it is the certified true photocopy it is stamped 'For private use only'. Even otherwise as it is certified true photocopy issued by a court, it is received in evidence. The application Ext.4616 is allowed and disposed off at the time of judgment and the certified true photocopy of charge is marked as Ext.4807. Once again it does not

affect the case of the prosecution considering the fact that it is of a subsequent period and the evidence of Jayant Aher, PW-131, is not relied upon to arrive at any conclusion.

(iii) Ext.4640 is an application filed by the A2 submitted by advocate Wahab Khan for producing certified true photocopies of panchanama and depositions of three witnesses in Session Case No. 674/09 concerning witness Rohit Warang, PW-19. Its production is objected to by the learned SPP on the ground that final arguments have started and are in progress and no document be permitted to be produced at all at this stage. Considering the fact that they are certified true copies of proved documents and deposition issued by the copying section of this court and they are concerning the said witness and PI Khanvilkar, PW-168, the application deserves to be allowed. Hence, it is allowed at the time of judgment and the documents are received in evidence and marked as Exts. 4808, 4809, 4810 and 4811. The effect of these documents has already been considered during the discussion of the evidence of Rohit Warang, PW-19.

(iv) Application Ext. 4647 is filed by advocate Sharif Shaikh on 06/05/14 for producing certified copies of panchanama and deposition in MCOC Spl. Case No. 16/06. The learned SPP has objected on the ground that they are being produced at a belated stage. Considering the description in the list of documents alongwith the application that they are in connection with Ext.2886, which was already produced by the defence and as they relate to a witness Mukesh Walji Rabadia, employer of Vishal Parmar, PW-74, the

application deserves to be allowed. Hence, Ext. 4647 is allowed and disposed off at the time of judgment and the certified true copy of panchanama and deposition are received in evidence and marked as Exts. 4812 and 4813. Contents of Ext. 2886, which are the same as Ext. 4812, have already been considered while discussing the evidence of Vishal Parmar, PW-74.

(v) Application Ext.4652 is an application dated 07/05/14 by the A8 submitted by his advocate for producing a letter received by him from the RPO, Central Public Information officer in connection with his passport. It is objected to by the learned SPP on the ground that no new material be allowed to be produced at this belated stage. As it is just an information obtained under the RTI Act, there is no point in allowing its production at this stage. Hence, the application is rejected and disposed off at the time of judgment. Even otherwise evidence relating to the passport of the A8 is irrelevant to the fact in issue.

(vi) Ext.4693 is an application filed by learned advocate Wahab Khan for producing of certified copy of final report and panchanamas in Session Case No. 761/13 submitting that it is in connection with Subhash Nagarsekar, PW-57. Learned SPP has objected to their production on the ground that his final arguments are over and production should not be allowed at this belated stage. Since the documents are certified copies issued by the copying section of this court and are concerning the witness Subhash Nagarsekar, PW-57, the application deserves to be allowed and it is allowed and disposed off at the time of judgment and the documents

are received in evidence and marked as Exts. 4814 to 4818. The contents of final report form can be read, however, the panchanamas do not appear to have been proved in that case. The Final Report Form Ext.4814 shows the name of Subhash Nagarsekar, PW-57, as a panch witness concerning some incident that had taken place on 13/05/13. Even if he has acted as panch witness in that crime, it is about seven years after he being a witness in this case and his evidence has been accepted as a cogent and convincing evidence inspite of searching and voluminous cross-examination to him. Subhash Nagarsekar, PW-57, acting as panch witness subsequently in some other case is of no consequence and does not affect his credibility.

(vii) Ext.4713 is an application dated 07/08/14 by the A8 submitted by his advocate Sharif Shaikh for production of several documents under the RTI Act, including photocopies of his applications that he sent to the PIO of Bongaon Municipality, District Parganas, West Bengal and also to the Intelligence Bureau, Ministry of Home Affairs and Police Station Bongaon. The production of the documents is objected by the learned SPP submitting that at this stage when his final arguments have been completed, the unending requests for taking on record the documents being made by the accused deserve to be rejected. To my mind, once again they are the documents obtained under the RTI Act and cannot be proved now. Even otherwise the information that was sought by the A8 is about the map of Bongaon from the Bongaon Municipality and information from the Intelligence Bureau as well as Bongaon Police Station about

the wanted accused nos. 8 to 13 having entered into India from Bangladesh. The Intelligence Bureau has not given information as it is exempted from providing information under the RTI Act and police station also did not give any information. Even otherwise it is not the prosecution case that wanted accused nos. 8 to 13 crossed the Bangladesh border and came to Bongaon legally by showing their passports and valid visas. It is proved by the prosecution that they crossed the border illegally, so there cannot be any record. Even otherwise since the documents are consisting of only information, the application is liable to be rejected. Hence, the application Ext. 4713 is rejected and disposed off at the time of judgment.

(viii) Ext.4714 is an application dated 07/08/14 filed by advocate Sharif Shaikh for production of true copies of proposal dated 02/03/07 by ACP Patil, PW-186, and consent dated 15/03/07 issued by Vishwas Patil, PW-165. They are documents issued under the RTI Act. Learned SPP has objected for the production of the documents on the same grounds as above. The true photocopies are issued by the office of the Collector, Mumbai Suburban District under the RTI Act. Since they are relevant to the fact in issue, the applications deserves to be allowed. Hence, the application Ext.4714 is allowed and disposed off at the time of judgment. The documents are received in evidence and marked as Exts. 4819 and 4820. It is submitted in the application itself that there are extra things in proposal Ext.4819, which are not in the consent order Ext.4820 issued by Vishwas Patil, PW-165, and the documents mentioned in the consent order Ext.1762 were not provided by ACP Patil, PW-186,

to Vishwas Patil, PW-165, which shows that readymade draft copy of the consent order was provided to the collector. The evidence given by Vishwas Patil, PW-165, and the consent order Ext.1762 issued by him has been discussed and it is concluded that it is proved that he had applied his mind in issuing consent order. Hence, these documents do not affect his evidence.

After conclusion of final arguments :-

(i) Ext.4742 is an application dated 21/08/14 sent by the A8 by post from the prison forwarding an information obtained by him under the RTI Act from the public information officer in the office of SP, North-24-Parganas, Barasat. Learned SPP has objected to the production of this document on the grounds that the stage of taking on record any evidence was over long back, the final arguments were also concluded long back and reply on law points were also given and the case is posted for pronouncement of judgment. Hence, there is no question of considering any new material at this stage when the dictation of judgment must be in progress. The document sought to be produced is only an information under the RTI Act which cannot be proved now and it will be pointless if such type of production is allowed. Hence, the application Ext.4742 is rejected and disposed off at the time of judgment. Even otherwise it is similar to the information that was sought by the A8 in respect of wanted accused nos. 8 to 13.

(ii) Ext. 4757 is an application dated 10/12/14 sent by the A4 by post for producing certified copies of judgments dated 20/11/14 in CC 79/P/2003 and 80/P/2013 concerning LAC No. 1839/01 and CR

No. 275/01 of Kurla Police Station in which the A4 and A2 were the accused and they were acquitted by the MM, 51st Court, Kurla. Learned SPP has consented to take the documents on record as they are certified copy of judgments, but has submitted that the outcome of the judgments is immaterial for the purpose of section 2(1)(d) of the MCOC Act. As they are certified copies of judgments issued by a court and are concerning the previous cases against the A4 and the A2 relied upon by the prosecution, the application deserves to be allowed. Hence, the application Ext.4757 is allowed and disposed off at the time of judgment. The documents are received in evidence and marked as Exts. 4821 and 4822. It is rightly submitted by the learned SPP in his say that the outcome of the previous cases against the A2 and the A4 is immaterial for the purpose of section 2 (1) (d) of the MCOC Act. To my mind, what is material is that they were arrested in connection with certain allegations and the competent court had taken cognizance of the offences against them. Of course, these are not the cases on the basis of which the provisions of MCOC Act were applied in the crime in the present case.

(iii) The application Ext.4762 dated 05/01/15 is sent by the A4 by post for producing certified copy judgment dated 26/11/14 in CC No. 577/PW/08 acquitting the A4 for the offences under section 353, 506 (2) of the IPC. Learned SPP consented for the production of the document as it is a certified copy, but submitted that it is immaterial for the purpose of section 2 (1)(d) of the MCOC Act. Hence, the application Ext.4762 is allowed and disposed off at the time of judgment and the document is received in evidence and

marked as Ext.4823. It is irrelevant inasmuch as it is concerning the incident dated 25/03/08 during which the A4 allegedly assaulted the escort policeman. Thus, it is of no consequence.

(iv) The application Ext.4789 dated 03/05/15 is sent by the A13 by post for producing certified true copy of judgment dated 29/04/15 in RCC No. 30/07. Learned SPP has consented for producing it and has submitted that the result of the case is immaterial for the purpose of section 2 (1) (d) of the MCOC Act. Hence, the application Ext. 4789 is allowed and disposed off at the time of judgment. The document is received in evidence and marked as Ext. 4824. It is concerning one of the previous cases against the A13 relied upon by the prosecution, i.e., RCC No. 219/01 filed against the A13 in which the A13 absconded after being released on bail. However, as is submitted by the learned SPP the result of the case is immaterial for the purpose of section 2(1) (d) of the MCOC Act. What is material is that the A13 was arrested in that case in connection with certain allegations and the competent court had taken cognizance of the offences against him. This case was considered as a previous chargesheet for applying the provisions of the MCOC Act to the present crime.

Some more issues raised by the defence during the trial :-

1621. There are some issues raised during the trial by the defence like alleged illegal detention by the Crime Branch of some accused before they were arrested by the ATS, sending the accused to the Crime Branch office at Kurla, prosecution not confirmed about the theory of pressure cooker, i.e., containers used for keeping the

bombs and about triggering device being not established and there being no evidence about the purchase of bags. There are also issues about the date of transfer of ACP Patil, PW-186, to the ATS and the date on which he took charge and non-examination of alleged material witnesses.

1622. All these issues, to my mind, do not affect the nature and quality of the evidence given by the prosecution to bring the home the guilt to the accused. Therefore, I find no need to discuss them independently and in detail. It will suffice if a brief reference is made. Insofar as the allegation of illegal detention of some accused prior to their arrest by the ATS is concerned, the certified copies of the station diary entries of the Crime Branch proved during the evidence of Sr. PI Rathod, PW-176, indicate that the concerned accused were called to their office on getting information that they are members of the terrorist organisation L-e-T and were inquired with and it was disclosed that they had gone to Pakistan *via* Iran, where they obtained militant training and it was suspected that they conspired to commit the bomb blasts in this case, therefore, they were detained on suspicion and thereafter handed over to the ATS for further investigation. Insofar as non-examination of material witnesses is concerned, Sr. PI Wadhankar, PW-167, has given specific evidence about the inquiry in connection with two Kashmiri youths, who had allegedly purchased pressure cookers from a shop in Santacruz and about taking statements of the shopkeepers, etc. PI Agrawal, PW-173, has explained about an injured Ramanand Machewar and about four persons being apprehended under section

41(2) of the Cr. P. C. and on inquiring with them he ruling out the possibility of they being suspects in our case. ACP Khandekar, PW-174, clarified the position of Suresh Suvarna and PC Khanvilkar. Thus, non-examination of these so called material witnesses is of no consequence. In fact they were not material witnesses.

1623. In respect of the triggering device or containers that were used to keep the bombs, in all probability the prosecution could not go ahead with a specific theory about the triggering device or container, whether it was a timer device or a remote operated device, as no such articles were found. To my mind, they could not have been found because of the effect of the powerful explosions. The circuit that was shown to API Revle, PW-154, is not the circuit that was used or that similar circuits were used. It was just shown to him to give an opinion about it. In fact in paragraph 13 he says that bomb triggering mechanism can be prepared with the help of the PCB, Art.349 and the other electronic components, Arts.354, 355, 357, 358 and 359. It appears that the learned SPP wanted the witness to demonstrate to the court as to how a bomb is prepared with explosives, detonators, power source and triggering mechanism if pressure cooker is used and the witness explained it as per his knowledge. His evidence is not specifically about the triggering device in this case or that the circuit boards similar to the circuit board shown to him were used as timer device or triggering device. It appears that the accused have very cleverly side stepped and not mentioned about the triggering device and the containers in their confessional statements. The absence of any explanation or physical

evidence from the side of the prosecution cannot be read against the prosecution and cannot lead to an inference that because it has failed to explain this, its case is not true. It is quite probable that some sophisticated circuit or triggering device was brought by the Pakistani national, who are wanted accused in this case and the A7 did the work of soldering the wires and completing the circuit as per the instructions that were given to him by them. In this connection perfect reliance is placed by the learned SPP on the law laid down in the case of **Inspector of Police, Tamil Nadu, Appellants V. John David, Respondent ((2011)2SCC(Cri)647)**. It is held in paragraphs 38 and 39 that, '38. *It is well-settled proposition of law that the recovery of crime objects on the basis of information given by the accused provides a link in the chain of circumstances. Also failure to explain one of the circumstances would not be fatal for the prosecution case and cumulative effect of all the circumstances is to be seen in such cases. At this juncture we feel it apposite to mention that in the case of State of Karnataka v. K. Yarappa Reddy reported in MANU/SC/0633/1999 : (1999) 8 SCC 715 this Court has held that; the court must have predominance and preeminence in criminal trials over the action taken by the investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it.*

39. *Hence, minor loopholes and irregularities in the investigation process cannot form the crux of the case on which the*

Respondent can rely upon to prove his innocence when there are strong circumstantial evidences deduced from the said investigation which logically and rationally point towards the guilt of the accused.'

1624. The arrest, prosecution and conviction of a Pakistani national by name Riyaz Nawabuddin was tried to be connected with this case and the concerned investigating officers have been suggested that in fact the said person is involved in the bomb blasts in the present case. However, the investigating officers have sufficiently and clearly explained about the facts in respect to that person, while admitting that he had shown the hideout of deceased accused no. 2 Abu Osama @ Abu Umed @ Mohd. Ali, who was then killed in the encounter by the ATS staff.

1625. By examining ACP Shengal, DW-51, as a defence witness, who was the investigating officer in the case of bomb blasts at Malegaon in 2006, it was tried to be shown that it was the *modus operandi* of the ATS officers to show the recovery of traces of RDX from the houses of the accused. It was submitted that there is a similarity in the investigation of that case and in the investigation of this case where also traces of RDX have been found during the search. To my mind, it may be that traces or stains were also found in the investigation of the Malegaon bomb blast case, the incident of which took place after the incident of the present case. But then what else can be found if RDX has been used. Chemicals that are in powder form have the tendency to leave traces, e.g., talcum powder, cement, dust, etc., and it is a commonly observed phenomenon that howsoever they may be packed, they still leave traces at the places

where they are kept.

Conclusion :-

1626. The stage is now set for considering whether the prosecution has succeeded in establishing the charges against the accused. The circumstances proved by the prosecution against all the accused, the additional circumstances against the individual accused and the substantive evidence by way of confessional statement of eleven accused, which is not only substantive, but also substantial, will have to be considered.

1627. What lies at the bottom of the various rules shifting evidential burden or burden of introducing evidence in proof of one's case, as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shifts, is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand, and it is, therefore for the accused to give evidence on them, if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions.

1628. The evidence that is produced by the prosecution in the present case is of a sterling quality. Some of the circumstances are

brought on record by the accused themselves and they are consistent with the case of the prosecution. Whereas if the defence evidence is considered, it does not pass the test of reliability and acceptability and does not even show preponderance of probabilities. The position is different *vis-a-vis* a statement under section 313 and the evidence given by the accused on oath. If the accused would have mentioned certain things in 313, the court would have taken it into consideration for appreciation, but if they gave evidence then it is required to be established by them and if in that case they fail, then the position is different. This is what has happened in the present case. The learned SPP has turned the tables on the defence by completely demolishing the credibility of the defence taken by the accused who gave evidence and on the other hand succeeded in showing the interconnectivity between the accused and has exposed the falsity of the specific defences like alibi, torture, etc., taken by them.

1629. The cumulative effect of the totality of the circumstances proved by the prosecution and a combined reading of the confessional statements of the accused gives a clear picture and proves the allegations of the prosecution. The circumstances/facts proved by the prosecution corroborate the relevant portions of the confessional statements and where there are gaps, they are filled in and supplemented by the contents of the confessional statements of multiple accused, which is substantive evidence.

What is proved by the prosecution :-

1630. The circumstances proved by the prosecution are :-

(I) Prosecution has proved that on 11/07/06 the A3 alongwith one more person had travelled in a taxi from Carter Road, Bandra at about 3.30 or 4.00 p.m. to a subway of Churchgate Railway Station, reached there at about 5.00 p.m. and that they were carrying a black coloured bag with them that was of rexine. (Circumstance no. 1).

(II) Prosecution has proved that on 11/07/06, the A13 alongwith one more person had travelled in a taxi from Perry Cross Road, Bandra at about 3.15 to 3.30 p.m. to a subway of Churchgate Railway Station reaching there at about 4.45 to 5.00 p.m. and that they were carrying a black heavy bag with them. (Circumstance no. 2).

(III) It is held that the A13 has taken a false plea of alibi about being at his work place on 9th, 10th and 11/07/06. (1st additional circumstance).

(IV) Prosecution has proved that on 11/07/06 the A1 had kept a big rexine bag in the first-class compartment in the 5.57 p.m. Virar fast train at Churchgate and he was accompanied by a person, who did not get down at Dadar. (Circumstance no. 3).

(V) It is held that the A1 has taken a false plea of alibi about being at his native place on 10 and 11/07/06. (2nd additional circumstance).

(VI) Prosecution has proved that on 11/07/06 the A3 had kept a black coloured bag in the first-class compartment of the 5.36 p.m. Churchgate-Borivali slow train at Churchgate and he was accompanied by one more person. (Circumstance no. 4).

(VII) Prosecution has proved that on 11/07/06 the A4 had a black

rexine bag with him when he boarded the first-class compartment of the 5.19 p.m. Virar train with a black rexine bag at Churchgate and he was accompanied by one more person and they got down at Dadar empty handed. (Circumstance no. 5).

(VIII) It is held that the A4 has taken a false plea of alibi about being at Mira Road on 11/07/06. (3rd additional circumstance).

(IX) Prosecution has proved that on 11/07/06, the A13 had kept a black coloured bag having chain in the first-class compartment of the 5.37 p.m. Virar fast local at Churchgate and he was accompanied by one more person. (Circumstance no. 6).

(X) Prosecution has proved that RDX was found in the house of the A1 at Basopatti, Dist. Madhubani, Bihar on 20/07/06. (Circumstance no. 7).

(XI) Prosecution has proved that the A3 was in possession of flat no. 24, 3rd floor, Lucky Villa, 'A' building, Perry Cross Road, Carter Road, Bandra (W), Mumbai and that Cyclonite (RDX) was found in that flat on 28/07/06. (Circumstance no. 8).

(XII) Prosecution has proved that on 28/07/06, 15000 Saudi Riyals, 8 books relating to SIMI Arts. 150 to 152, map of Mumbai Art.153 and photocopy of international map Art. 161, Ext.1486, were found in the flat in possession of the A3. (Circumstance no. 9).

(XII) Prosecution has proved that on 12/08/06 bottles of chemicals, i.e., sulphuric acid, acetone and hydrogen peroxide, Arts. 34 to 36 respectively, were seized from the locker of the A2 in the Sabu Siddiqui Hospital where he was working and that the chemicals can be used for preparing explosive mixture. (Circumstance no. 10).

(XIII) Prosecution has proved that on 29/09/06 Cyclonite (RDX), Ammonium Nitrate and traces of Cyclonite were found in the house of the A6. (Circumstance no. 11).

(XIV) Prosecution has proved that on 08/10/06 seven black rubber cooker rings, Arts. 331(1 to 7), five steel cooker whistles, Arts. 332 (1 to 5), printed circuit board, Art.334 and plastic bags, Arts. 335 and 336, were recovered at the instance of the A3 and Cyclonite (RDX) was detected on the plastic bags and the circuit board Art. 334 can be used to form a triggering device. (Circumstance no. 12).

(XV) Prosecution has proved that the A13 was residing in flat no. 101, 'A' Wing, Poonam Park Apartment, Naya Nagar, Mira Road, that on 09/10/06 at his instance following articles were recovered :

(i) A rexine bag Art. 279, the blackish oily lumps in which were found to contain RDX cyclonite, Charcoal and Petroleum Hydrocarbon Oil, (ii) 2.700 kgs. white granules, Art.284 in which Ammonium and Nitrate radicals were detected and (iii) 10 aluminum tubes joined with wires, Arts. 281 and 282(colly), which were proved to be live detonators. (Circumstance no. 13).

(XVI) Prosecution has proved that A9 had purchased Maruti car no. MH-01-V-9568 on 04/06/06 and was handed over its possession. (Circumstance no. 14).

(XVIII) Prosecution has proved that on 22/10/06 Maruti car No. MH-01-V-9568 was seized at the instance of the A12, that there were black spots in the car, which were found to contain Cyclonite (RDX), Petroleum Hydro Carbon Oil and Charcoal and also Ammonium, Nitrate, Nitrite, Petroleum Hydrocarbon Oil and Charcoal.

(Circumstance no. 15).

(XIX) Prosecution has proved that on 23/10/06 at the instance of the A7 there was recovery of articles, i.e., Arts. 346 to 352, 354, 355 and 357 to 359 and that a timer/triggering device to trigger the detonator can be built with the help of resistors, Arts. 354 (1 to 22), capacitors Arts. 355 (1 and 2), coil, Art. 356, transistors, Arts. 357 (1 to 8), LEDs, Arts. 358 (1 to 9) and diodes, Arts. 359 (1 to 6). (Circumstance no. 16).

(XX) Prosecution has proved that sometime in the second or third week of May, 2006, the A5 brought six Pakistani persons from Bongaon, which is just adjacent to the Bangladesh border of India, to Kolkata for being further taken to Mumbai. (Circumstance no. 17).

(XXI) Prosecution has proved that a few days before the blasts the A2 and A4 were outside the house of the A6, who was also present. (Circumstance no. 18).

(XXII) It is held that the A2 has taken a false plea of alibi about he being continuously at his place of work in the Sabu Siddiqui Hospital on 8th, 9th and 10/07/06. (4th additional circumstance).

(XXIII) It is held that the A7 has taken a false plea of alibi about he being at his shop at Jogeshwari on 08/07/06 and 10/07/06. (5th additional circumstance).

(XXIV) It is held that the A4 has taken a false plea of alibi about he being at Mira Road on 8th and 10/07/06 and at Mumbra on 09/07/06 for the whole day. (6th additional circumstance).

(XXV) It is held that the A6 has given a false story that his and his

two brother's family members were present in his house continuously from 8th to 10/07/06. (7th additional circumstance).

(XXVI) Prosecution has proved that (i) the A3 was concerned with the atrocities being committed on Muslims and was of the view that the only way to solve their problems was by jihad, (ii) that the A3 had gone to Pakistan twice and had taken training in the camp of the L-e-T, (iii) that the wanted accused no. 1 Azam Chima rendered financial assistance to the A3, (iv) that the A3 was the commander of L-e-T in Mumbai, (v) that A2, A4, A9, A10 and A13 had assembled in the house of the A3 in February, 2006, (vi) that A2, A3, A4, A12 and A13 had assembled near Shams Masjid in Mira Road in March, 2006 and (vii) that wanted accused no. 5 and 14 and deceased accused no. 1 and 2 were in the house of the A3 in the second or third week of May, 2006 and later on they were shifted to the house of the A3 in Millat Nagar, Andheri (W), Mumbai. (Circumstance no. 19).

(XXVII) Prosecution has proved seizure of passport Ext.449 of the A2 at his instance on 26/07/06. (Circumstance no. 20).

(XXVIII) Prosecution has proved that on 28/07/06 at the instance of the A9 map of Mumbai, Art. 164, photocopy of international map, Art. 165, Ext.1487, his passport, Art.178, Ext.620 and four books, Arts. 166 (1 and 2), 167 and 168 allegedly connected to SIMI were recovered. (Circumstance no. 21).

(XXIX) Prosecution has proved that on 30/07/06 at the instance of the A10, his passport Art. 251, Ext. 621, map of Mumbai, Art. 248, photocopy of international map, Art. 250, Ext. 1489 and six books,

Art. 249 (1 to 6) allegedly connected to SIMI were recovered. (Circumstance no. 22).

(XXX) Prosecution has proved that on 31/07/06 at the instance of the A11, his passport Art.133, Ext.619, photocopy of international map, Art.137, Ext.1488, map of Mumbai Art. 137, Ext.1664, road map of Mumbai and Navi Mumbai, Art. 138, Ext.1665 and two books allegedly connected to SIMI Arts. 135 and 136 were recovered. (Circumstance no. 23).

(XXXI) Prosecution has proved that on 01/08/06 at the instance of the A2, map of Mumbai, Art.42, photocopy of international map, Art. 116, Ext.1490 and eight books, Arts. 43(1 and 2), 44 (1 to 4), 47 and 48 allegedly connected with SIMI were recovered. (Circumstance no. 24).

(XXXII) Prosecution has proved that on 03/07/06 wanted accused no. 2 Rizwan Dawrey had sent 15000 Saudi Riyals for being handed over to the A9 at Pune and that ultimately the said Saudi Riyals were collected by the A3 at Mumbai and are the same Saudi Riyals that were seized from his house on 28/07/06. (Circumstance no. 25).

(XXXIII) Prosecution has proved that on 14/07/06 wanted accused no.2 Rizwan Dawrey had sent 11200 Saudi Riyals for being handed over to the A3 and they were seized on 30/07/06. (Circumstance no. 26).

(XXXIV) Prosecution has proved that foreign currency, i.e., the 15000 Saudi Riyals seized from the A3 and 11200 Saudi Riyals, both of which were sent for him by the wanted accused no. 2 Rizwan

Dawrey, was a contravention of the provisions of the FEMA Act. (Circumstance no. 27).

(XXXV) Prosecution has proved that the A3 had traveled by train to Pakistan from Attari Railway Station, Amritsar on 01/10/01 and returned by the same method on 29/11/01. (Circumstance no. 28).

(XXXVI) Prosecution has proved that in the year 2003 the A3 had obtained visa for himself and wanted accused no. 3 Rahil Ataur Rehman Shaikh for Umrah in Saudi Arabia and had booked an air ticket on 16/09/03 for going from Mumbai to Jeddah and on 16/09/03 for wanted accused no.3 Rahil and had booked an air ticket for himself, i.e., the A3, on 21/10/03 for going from Mumbai to Jeddah and back. (Circumstance no. 29).

(XXXVII) Prosecution has proved that the wanted accused no. 3 Rahil had gone to Jeddah in Saudi Arabia in 2003 from Mumbai and the A3 had gone to Jeddah in Saudi Arabia from Mumbai on 08/11/03 and was deported from Jeddah on 01/12/04 as he did not have a valid passport. (Circumstance no. 30).

(XXXVIII) Prosecution has proved that in 2004 the A3 had sent the passport of the A2 with the A9 to the travel agent for obtaining visa for Iran and the A2 had traveled from Mumbai to Tehran on 21/05/04 and returned on 25/06/04. (Circumstance no. 31).

(XXXIX) Prosecution has proved that in 2004 the A9 had obtained visa for Iran and had traveled from Mumbai to Iran on 06/08/04 and returned on 10/09/04. (Circumstance no. 32).

(XL) Prosecution has proved that in 2005 the A3 had obtained visa for Iran for A11 and that the A11 had traveled from Mumbai to Iran

on 04/04/05 and returned on 29/04/05. (Circumstance no. 33).

(XLI) Prosecution has proved that the A3 had obtained visas for Iran for Chipa Mohd. Ali and Zulfiquar Faiyyaz Ahmed and they were to go to Iran in the year 2005 and on 02/05/06 respectively. (Circumstance no. 34).

(XLII) Prosecution has proved that in the year 2005 the A9 obtained visa for Iran for Firoz Ghaswala. (Circumstance no. 35).

(XLIII) Prosecution has proved that the A10 went from Mumbai to Iran on 01/11/02 and returned on 29/11/02. (Circumstance no. 36).

(XLIV) Prosecution has proved that the A6 had traveled from Mumbai to Muscat on 01/02/03. (Circumstance no. 37).

(XLV) Prosecution has proved that the A3 was instrumental in obtaining visas of Iran for A2 and A11 and the A2, A9, A10 and A11 traveled to Iran on Ziarat visa as a camouflage. (Circumstance no. 38).

(XLVI) Prosecution has proved that Students of Islamic Movement of India, i.e., SIMI, is declared as an unlawful association under section 3(1) of the UA(P) Act and the ban has been extended from time to time and even after the date of the bomb blasts. (Circumstance no. 39).

(XLVII) Prosecution has proved that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 were members of and were either activists or office bearers of SIMI organisation and continued to work for the said organisation even after the ban on SIMI in 2001. (Circumstance no. 40).

(XLVIII) Prosecution has proved that an unidentified dead body that was found at the site of the Matunga blast was that of Salim, a Pakistani national. (Circumstance no. 41).

(XLIX) (i) Prosecution has proved that the A2, A4 and A6 have been identified in the test identification parade as the persons who were present outside the house of the A6 a few days before 11/07/06. (Circumstance no. 42).

(ii) Prosecution has proved that A4 has been identified in the test identification parade as having boarded the 5.19 p.m. Virar train at Churchgate on 11/07/06 with a black rexine bag and he got down at Dadar without the bag. (Circumstance no. 42).

(XLX) Prosecution has proved that provisions of the MCOC Act have been properly invoked in C. R. No. 156 of 2006 of Borivali Railway Police Station. (Circumstance no. 43).

(XLXI) It is held that the A5 has taken a false plea of alibi about he being in Kolkata in the second week of May, 2006. (8th additional circumstance).

(XLXII) It is held that the A5 has taken a false plea of alibi about he being in Kolkata on 10th, 11th and 12/07/06. (9th additional circumstance).

(XLXIII) Prosecution has proved beyond reasonable doubt that the confessional statements given by the A1 to A7 and A9 to A12 are voluntary, true and trustworthy. (Circumstance no. 44).

(XLXIV) It is held that the accused have taken the false defence of the Indian Mujahedin organisation having committed the blasts in the present case. (10th additional circumstance).

1631. Proof of the point no. 6 about the A2 to A4, A6 to A11 and A13 and wanted accused no. 2 and 3 being members of an unlawful association read with the contents of their confessional statements in respect of the ideology of SIMI shows how they developed their mindset to commit jihad. The ideology of SIMI is reflected in the passage in one of the books, the translation of which is in paragraph 1096 supra, which says that the democracy in this country is completely contrary to the thought and way of Islam is not acceptable and it is necessary to uproot it from the very root, which is the solemn duty of every Muslim. That they could go to any length to achieve their objects is proved by the circumstances of A2, A3 and A9 to A11 travelling to Pakistan under a camouflage. The contents of their confessional statements prove that they took militant training in Pakistan which included handling of sophisticated arms, preparation of bombs and causing explosions. It is also proved from the confessional statement of the A3, A10, A9, A2 and A11 that they travelled to Iran and from there they clandestinely entered into Pakistan and undertook the training and their journey was financed by wanted accused no. 1, 2 and 3, who were the members of the L-e-T. It is proved by the confessional statements of the A4, that the A3 had told him to print a book on jihad and had given Rs.25,000/- and he published the book titled 'Islam Ko Choti' and the A3 also told him about his close relations with wanted accused no. 4. The contents of the confessional statements of the A2, A3 and A9 to A11 prove that they came in contact with the wanted accused no. 1, training commander of L-e-T at Bahawalpur in Pakistan, wanted

accused no. 14, 15, 2, 3 and 5 during the training and that they were the members of the L-e-T.

1632. The contents of the confessional statements of the A3 and A9 prove that the A3 was instrumental in sending the A2 and A9 to A11 for obtaining militant training in Pakistan and he had also sent three more persons for the said reason, who are unconnected with the present case. It is proved by the contents of the confessional statement of the A1 that he had taken militant training in the camp of the L-e-T in Muzzafarabad at the instance of the wanted accused no. 4 Hafiz Zuber in the year 2000. It is proved by the contents of the confessional statement of the A6 that he took militant training in Pakistan in February, 2003.

1633. Prosecution has proved by the proof of the circumstances, the connection and the association of the A2 to A4, A6 to A11 and A13 wanted accused no. 2 and 3 with the unlawful association SIMI and has also proved the circumstances which prove travel of the A2 and A9 to A11 to Iran as a camouflage and of the A3, firstly directly to Pakistan in the year 2001 and secondly to Jeddah in Saudi Arabia for 13 months in 2003-04. All these circumstances proved by the prosecution read with the contents of the confessional statements of the respective accused prove that they had obtained militant training in Pakistan and it was the A3 who motivated the other accused to undergo the training.

1634. The contents of the confessional statement of the A3 prove that wanted accused no. 1 Azam Chima sent him back after he had undergone the training on the second occasion as he, i.e., wanted

accused no. 1 Azam Chima, wanted to commit a big incident in Mumbai. This and the earlier contents of his confessional statement wherein the wanted accused no. 1 Azam Chima told the A2, A3 and A9 to A11 about doing jihad, which is the duty of every Muslim for the purpose of avenging the atrocities on Muslims in Kashmir in Hindustan proves the start of the conspiracy. In this respect, arguments were made by both sides on the law of conspiracy and reliance is placed on several authorities including the authorities in respect of the cases on circumstantial evidence.

1635. Learned advocate Yug Choudhary placed reliance on following authorities, which are concerning the cases of circumstantial evidence and how the circumstantial evidence is to be assessed and considered for the purpose of proof of guilt. They contain the oft-quoted conditions that have to be satisfied in the case of circumstantial evidence.

(i) Jaharlal Das, Appellant V. State of Orissa, Respondent ((1991) 3 Supreme Court Cases 27).

(ii) State through Central Bureau of Investigation, Appellant V. Mahender Singh Dahiya, Respondent ((2011) 3 Supreme Court Cases 109).

In the case of **Mahender Singh Dahiya** it is held that burden of proof *vis-a-vis* strong feeling of repulsion and disgust in case of diabolical crime, the initial burden still remains on prosecution howsoever heinous commission of crime may be. It is held that the court's duty is to base its conclusions on evidence, instead of being swayed by public emotion.

1636. Learned advocate Sharif Shaikh relied on the following authorities :-

- (i) **State of U. P, Appellant V. Babu Ram, Respondent ((2000) 4 Supreme Court Cases 515).**
- (ii) **Mohd. Faizan Ahmad Alias Kalu, Appellant V. State of Bihar, Respondent ((2013) 1 Supreme Court Cases (Cri) 872).**
- (iii) **Munish Mubar, Appellant V. State of Haryana, Respondent ((2013) 1 Supreme Court Cases (Cri) 52).**

The first one is in respect of the motive in a criminal trial being equally relevant where the case is based on circumstantial evidence. It is also held in the said authority that if prosecution proves existence of some motive its failure to show how it developed in the mind of the accused impelling him to commit the crime, would not be fatal to the prosecution case. In the case of **Mohd. Faizan** it was held by the Supreme Court that if a criminal court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on the basis, in the absence of any credible evidence, it would be doing great violence to the basic tenets of criminal jurisprudence. In the case of **Munish Mubar** it is held by the Supreme Court that, *'in a case of circumstantial evidence motive assumes great significance and importance for the reason that the absence of motive would put the court on its guard and cause it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often not within the reach of others.*

The said motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same.'

1637. Learned advocate Shetty is to the point on placing reliance on the following authorities :-

- (i) **R. Venkatkrishnan, Appellant V. Central Bureau of Investigation, Respondent ((2010) 1 Supreme Court Cases (Cri) 164).**
- (ii) **N. V. Subba Rao, Appellant V. State, through Inspector of Police, CBI/SPE, Visakhapatnam, Andhra Pradesh, Respondent ((2013) 1 Supreme Court Cases (Cri) 891).**

In the case of **R. Venkatkrishnan** the Supreme Court held that the criminal conspiracy is an offence which is independent of other offences, it takes place when there is an agreement to do or cause to be done an illegal act, or an act which may not be illegal but by illegal means. It was held that in the absence of agreement, mere thought to commit a crime does not constitute an offence, that conspiracy is generally hatched in secrecy, direct evidence is therefore difficult to become available and criminal conspiracy can

be proved on the basis of circumstantial evidence and/or by necessary implication. Similar observations are made in the case of **N. V. Subba Rao**.

1638. Learned SPP relied on the following authorities :-

- (i) **State of Maharashtra, Etc. Etc., Appellants V. Som Nath Thapa, Etc. Etc., Respondent ((1996) 4 SCC 659).**
- (ii) **State (NCT of Delhi), Appellant V. Navjot Sandhu Alias Afsan Guru, Respondent (2005 Supreme Court Cases (Cri) 1715).**

In the case of **Som Nath Thapa** it was held in paragraph 22 that, *'as in the present case the bomb blast was a result of chain of actions, it is contended on behalf of the prosecution, on the strength of this Court's decision in Yash Pal Mittal v. State of Punjab, MANU/SC/0169/1977 : 1978CriLJ189, which was noted in para 9 of Ajay Aggarwal's case, that of such a situation there may be division of performances by plurality of means sometimes even unknown to one another; and in achieving the goal several offences may be committed by the conspirators even unknown to the others. All that is relevant is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy, even though there may be sometimes misfire or over-shooting by some of the conspirators.'* A reference was made to the case of Ajay Aggarwal wherein it was stated that, *'the law has developed several or different models or technique to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other, a role that aids succeeding parties in accomplishing the criminal*

objectives of the conspiracy. Reference was made to the illustration of procuring and distributing narcotics and it was held that, '*thus the conspirators at one end at the chain know that the unlawful business would not, and could not, stop with their buyers, and those at the other end know that it had not begun with their settlers. The action of each has to be considered as a spoke in the hub, there being a rim to bind all the spokes together in a single conspiracy.*' learned SPP has relied in the case of **Navjot Sandhu Alias Afsan Guru** wherein it is held referring to Nalini's case that mostly conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. It is held in paragraph 97 that, '*the well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible"*.' It is held in paragraph 98 that, '*in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. In most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material.*' Lastly it is held in paragraph 101

that, '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.'

1639. In the light of the above law in respect of conspiracy, the subsequent conduct of the respective accused is relevant. First is the preparatory acts. The contents of the confessional statement of the A3 prove that he was in continuous contact with the wanted accused no. 1, who told him to search for a good target, therefore, the A3, A10 and A11 toured Mumbai and went to different places in Mumbai and realized that local train target was proper as the security arrangements were not tight. This has also come directly in the confessional statement of the A10 and A11 and knowledge about the reconnaissance of various targets has come in the confessional statements of the A4 and A10. Subsequent to that is the act of the A2 of collecting chemicals as per the demand of the A4 and keeping them in his locker at his place of work, which has come in the confessional statement of the A2 and is corroborated by circumstance no. 10 proved by the prosecution. That there was a conspiracy meeting in February, 2006 in between the A2, A3, A4, A9, A10 and A13 in the house of the A3 is proved by the circumstance

no. 19 proved by the prosecution. The contents of the confessional statements of the relevant accused are, therefore, corroborated and even the A11 has stated that he was present in the meeting.

1640. That there were other conspiratorial meetings in March and April, 2006, which is the circumstance no. 19 proved by the prosecution and it corroborates the contents of the confessional statement of the A12, A6 and A2. Collection of articles required for preparing bombs by the A13 is proved by the contents of the confessional statements of the A2 and A3 and that they were kept in the house of the A6 is also proved. The contents of the confessional statement of the A3 prove that wanted accused no. 1 Azam Chima had finalized the target of local trains for causing the bomb explosions and this is also corroborated by the A2, A6 and A12 in their confessional statements. It is proved by the contents of the confessional statement of the A3 that on the instructions of the wanted accused no. 1, A6, A12, A13 and A7 were in constant contact with the A4 and the A11, A10 and A2 were also in contact with him. It is also proved that the A1 and A5 were maintaining contact with the A3 and wanted accused no. 1 had talk about sending eleven guests from Pakistan to Hindustan.

1641. Contents of the confessional statement of the A6 and A12 prove that A2, A3, A4 and A12 had gone to the house of the A6 at Shivaji Nagar, Govandi and surveyed it as bombs were to be prepared in his house, which was decided in the meeting in March, 2006, which is proved by the contents of the confessional statements of the A2, A6 and A12. The contents of the confessional statements

of the A3, A4, A2, A11, A9 and A10 prove specific reconnaissance of final target, i.e., the local trains from Churchgate to Virar.

1642. Possession of RDX by the A1 is proved by the prosecution by the proof of circumstance no. 7 and it corroborates the contents the contents of his confessional statement.

1643. Wanted accused no. 8 to 13, who are Pakistani nationals, entering India in May, 2006 from the Dhaka border of Bangladesh with the help of the A5 is proved by the prosecution by proving the circumstance no. 17 and it corroborates the confessional statements of the A3 and A5 and the presence of those Pakistani persons in the house of the A3 is proved by the contents of the confessional statements of the A2, A4, A6, A7 and A12. It is also proved by the contents of the confessional statement of the A3 and A5 that wanted accused no. 12 brought 15 kgs. RDX with him to Mumbai.

1644. Wanted accused no. 6 and 7 being brought by the A1 to Mumbai by crossing the Nepal border at the end of May, 2006 is proved by the contents of the confessional statement of the A1, A3 and A4. By the proof of circumstance no. 19 prosecution has proved that the wanted accused no. 5 and 14 and two deceased accused had come to Mumbai and were in the house of the A3 in the second or third week of May, 2006.

1645. Prosecution has by the proof of circumstances no. 26, 25 and 19 proved that funds were provided by the wanted accused no. 1 and 2 for causing the bomb blasts and meeting the expenses after the explosions, which is corroborated by the contents of the confessional statements of the A3 and A9.

1646. By the contents of the confessional statements of the A3, A4, A6, A9, A10, A11 and A12 prosecution has proved that 11th July was fixed as the date for causing the bomb explosions in the local railways. Prosecution has proved circumstances no. 14 and 15 about purchase of Maruti car bearing no. MH-01-V-9568 by the A9 and it being recovered at the instance of the A12 and the black spots in which were found to contain Cyclonite (RDX) and other chemicals and by the proof of the circumstance no. 18 presence of the A2, A4 and A6 at the house of the A6 on 8th, 9th and 10/07/06 has been proved. The contents of confessional statements of the A3, A4, A6 prove that the assembling of the bombs was to be done at the house of the A6 on 8th, 9th and 10/07/06. The contents of the confessional statements of the A3, A12, A2, A4, A6 and A7 prove that the work of assembling bombs was done in the house of the A6 at Shivaji Nagar, Govandi and the bombs were assembled by wanted accused no. 5 and one more Pakistani person and also the A7 and that A13 and wanted accused no. 11 were also present there. The contents of the confessional statement of the A6 prove that wanted accused no. 12 had brought 15 kgs. RDX with him for preparing bombs, that the A3 brought the said RDX to his house, that the A13 had already brought remaining articles like eight black coloured rexine bags, Ammonium Nitrate, detonators, cords, watches, etc., and kept them in the house of the A6 and the A7 had brought battery, wire, soldering gun, circuit board, etc., articles, as he was to do the work of electric circuitry.

1647. The contents of the confessional statements of the A3,

A12, A2, A4, A6 and A7 also prove that the assembling of seven bombs was completed on 10/07/06 and they were transported in the Maruti car abovementioned and in a taxi from the house of the A6 in Shivaji Nagar at Govandi to the flat of the A3 in Lucky Villa, Bandra. By the proof of circumstance no. 11 prosecution has proved that Cyclonite (RDX), Ammonium, Nitrate and traces of Cyclonite were found in the house of the A6, that by proof of circumstance no. 16 it has proved that timer/triggering device to trigger the detonators can be built with the help of resistors, capacitors, etc., that by the proof of circumstance no. 8 prosecution has proved that Cyclonite (RDX) was found in the flat of the A3 in Lucky Villa, Bandra, that by proof of circumstance no. 12 prosecution has proved that Cyclonite (RDX) was detected on the plastic bag recovered at the instance of the A3 alongwith a printed circuit board that could be used to form a triggering device and that RDX(Cyclonite), Charcoal and Petroleum Hydrocarbon Oil were detected in a rexine bag and 2.700 kgs. white granules in which ammonium and nitrate radicals were detected and ten live detonators were recovered at the instance of the A13 from a flat in Mira Road by proof of circumstance no. 13.

1648. The contents of the confessional statement of the A3 prove that as per the instructions of the wanted accused no. 1 Azam Chima, seven pairs consisting of one Pakistani and one local person were formed for planting the bombs, that he, i.e., the A3, was one of the local person and wanted accused no. 9 was with him and that the A4, A12, A1 and A7 were amongst the other persons. It is further

proved by his confessional statement that on 11/07/06 all pairs started from Bandra in between 3.00 p.m. to 4.00 p.m. by separate taxis for going to Churchgate and he and the wanted accused no. 9 started similarly, that no one out of them had kept their mobiles with them as per the instructions, that all pairs went one by one to the east side of the Churchgate station and as per the plan came to the platforms coming out of the subway with the bomb laden bags, that each pair kept the bags in different locals as per the plan. By the proof of circumstance no. 1 prosecution has proved that on 11/07/06 the A3 alongwith one more person had traveled in a taxi from Carter Road, Bandra at 3.30 p.m. or 4.00 p.m. to a subway of Churchgate Railway Station, reaching there at about 5.00 p.m. and that they were carrying a black coloured bag with them that was of rexine.

1649. It is proved by the contents of the confessional statement of the A3 that he and wanted accused no. 9 boarded the first-class compartment of the decided train, that as per the plan he had to keep the bag on the rack above the seat, but the racks were full of luggage, therefore, he kept the bomb laden bag below a seat. By the proof of circumstance no. 4 the prosecution has proved that on that day A3 had kept a black coloured bag in the first-class compartment in the 5.36 Churchgate Borivali slow train at Churchgate and he was accompanied by one more person.

1650. The contents of the confessional statement of the A1 corroborate the contents of the confessional statement of the A3 and it is proved that he reached Mumbai on 11/07/06 at the house of

the A7, where wanted accused no. 6 and A7 were present and from there they three went to Bandra and met the A3 in his house and he, i.e., the A1, was given a bag and as directed he, wanted accused no. 6 and 7 and deceased accused no. 1 Salim went by taxi, reached Churchgate Railway Station at about 5.00 p.m., boarded the first-class compartment of the 5.57 train and he, i.e., the A1, kept the bag containing the bomb on the passenger rack. It is also further proved that when the train reached Dadar Railway Station, because of rush, deceased accused no. 1 Salim could not get down and was trapped inside. By the proof of circumstance no. 3 prosecution has proved that on that day the A1 had kept a big rexine bag in the first-class compartment in the 5.57 p.m. Virar fast train at Churchgate and he was accompanied by a person, who did not get down at Dadar. By the proof of circumstance no. 41 prosecution has proved that the unidentified dead body that was found at the Matunga blast site was that of the deceased accused no. 1 Salim, a Pakistani national.

1651. The contents of the confessional statement of the A4 corroborate the contents of the confessional statement of the A3 and it is proved that he reached the house of the A3 at 3.30 p.m. on 11/07/06, that the A3 gave him a bag containing bomb and he alongwith wanted accused no. 11 went to Churchgate by taxi, that they both boarded the front first-class compartment of the train and he, i.e., the A4, kept it on the luggage rack and as per the plan both got down at Dadar. By the proof of circumstance no. 5 prosecution has proved that on that day, the A4 had a black rexine bag with him when he boarded the first-class compartment of the 5.19 p.m. Virar

train at Churchgate and that he was accompanied by one more person and they got down at Dadar empty handed. By the proof of circumstance no. 42 prosecution has proved that the A4 was identified in the test identification parade as having done the above acts and he and one more person getting down at Dadar without a bag.

1652. The contents of the confessional statement of the A12 corroborate the contents of the confessional statement of the A3 and it is proved that he got down at Bandra Station as per the instructions of the A3, gave his mobile to the A7 in between near Lucky Hotel and reached the house of the A3 at about 4.15 p.m. The contents of the confessional statement of the A7 corroborate the confession of the A12 about he, i.e., the A12, giving him his mobile phone at Bandra at about 4.15 p.m. It is proved by the contents of the confessional statement of the A12 that A3 gave him a bag containing the bomb and he alongwith the deceased accused no.2 went by taxi and reached Churchgate at about 5.30 p.m., boarded the first-class bogie of Borivali slow local and he, i.e., A12, kept the bag containing the bomb on the luggage rack and they both got down at Dadar. It is also proved that he collected his mobile from the A7 by going to Mira Road and this is also corroborated by the contents of the confessional statement of the A7.

1653. Though the prosecution could not prove any circumstance to show that the A12 was one of the planters, it is proved by the substantive evidence by way of contents of the confessional statements of the A3 and the A12 himself and the recovery of car

that was proved to have traces of RDX, which is the circumstance no. 15 proved by the prosecution.

1654. A13 did not give any confessional statement, but he being a planter is proved by the contents of the confessional statement of the A3 wherein he stated that he came to know later on that out of the pair of the A13 and the deceased accused no. 1 Salim, the deceased accused no. 1 Salim could not get down on time. Other than this, there is direct evidence, because by the proof of circumstance no. 2, it is proved that on 11/07/06 the A13 alongwith one more person traveled in a taxi from Perry Cross Road at Bandra at about 3.15 to 3.30 p.m. and reached a subway of Churchgate Railway Station at about 4.45 to 5.00 p.m. and they were carrying a black heavy bag with them. By the proof of circumstance no. 4 it is proved that on that day, the A13 kept a black coloured bag in the first-class compartment of the 5.36 p.m. Churchgate Borivali slow train at Churchgate and he was accompanied by one more person.

1655. It is proved by the contents of the confessional statement of the A3 that after the blasts, all the Pakistani persons, i.e., wanted accused, went by bus one by one out of Mumbai to other cities and from there by catching different trains went to Pakistan. It is proved by the contents of the confessional statement of the A4 that four more Pakistanis, i.e., the wanted accused, who had executed the conspiracy went outside Mumbai by bus. It is proved by the contents of the confessional statement of the A5 that he took the wanted accused no. 8 to 13 first by bus to Gujarat and from there by train to Kolkata and through Kallu, he reached them in Bangladesh by

crossing the India border.

1656. It is proved by the contents of the confessional statement of the A5 that he reached Mumbai on 10/07/06, that the A13 received him and took him to Mumbra, which is outside Mumbai area, to the house of the A8, a SIMI member, that late in the night of 11/07/06 wanted accused no. 8 to 13 came to the house of the A8 and then he took them outside Mumbai. These statements are corroborated by the contents of the confessional statement of the A4 wherein he has stated that after planting the bomb, he and wanted accused no. 11 went to the house of the A8 where four more Pakistanis, who had taken part in executing the conspiracy also came and halted there for 2-3 hours and then went out of Mumbai by bus. However, prosecution has not been able to prove any independent circumstance to show that A8 harboured any of the wanted accused in his house, that he took part in the conspiratorial meetings and that he had any role to play in the subsequent activities leading to the bomb blasts. Hence, he will have to be given the benefit of doubt.

1657. During the course of judgement, learned advocate Wahab Khan produced on 18/05/15 a downloaded and printed copy of the judgement of the Supreme Court dtd. 15/04/15 in Criminal Appeal No.1969-1970 of 2010, Ext.4781, and relied on pages 11, 12, 46, 47, 74 to 79, 91 to 94 and 95. I have carefully gone through the judgement and I do not see how it is helpful to the accused. In that case, two previous chargesheets of which cognizance of the offence in which was taken by the competent courts, which were in respect

of the A7 in that case, were *prima facie* held to be not connected with the crime for which the other accused in MCOC Special Case No. 01/09 are chargesheeted. Nexus of the said accused with the crime at Malegaon was also *prima facie* found. However, in our case the offence for which the two chargesheets were filed against the A13 at Jalgaon and which were considered for the invocation of the provisions of the MCOC Act, were in respect of the banned organisation SIMI and alleged activities of the A13 as a member and office bearer of that organisation. It has been proved by the prosecution in this case that A2 to A4, A6 to A11 and A13 and wanted accused no. 2 and 3 knew each other even prior to the ban on SIMI and that they were members or were either activists or office bearers of the SIMI organisation and continued to work for the organisation even after the ban on SIMI. Thus, the offences with which the A13 was charged in the two previous cases against him has a direct nexus to the banned organization SIMI and were a part of its activities as the co-accused mentioned above were also members of the SIMI organisation and all had developed the mindset to commit jihad. Hence, this authority is of no help to the defence.

Offences proved by the prosecution :-

1658. In view of the entire discussion upto now, in view of the points no. 1 to 5 proved by the prosecution, in view of the 44 circumstances proved by the prosecution against the accused, in view of the 10 additional circumstances in the chain of circumstances proved against the accused, which completes the

chain of circumstances, in view of the contents of the confessional statements of A1 to A7 and A9 to A12, which are corroborated by the circumstances proved by the prosecution and in view of the conclusions arrived at, it will have to be held that :-

(i) the prosecution has proved beyond reasonable doubt by proving point no. 6 that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 and wanted accused no. 2 and 3 are members of an unlawful association, i.e., SIMI, and all of them except the A8, continued to be its members and have thereby committed the offence under section 10(a)(1) of the UA(P)A, 1967. Though it is proved that the A8 was also a member of SIMI, no overt act has been attributed to him and proved in connection with this crime. I, therefore, hold the A2, A3, A4, A6, A7, A9, A10, A11 and A13 guilty for having committed the offence punishable under section 10(a)(i) of the UA(P)A, 1967.

(ii) The prosecution has proved beyond reasonable doubt that all accused facing trial, except A8, were directly or indirectly connected and affiliated to a terrorist organisation, i.e., Lashkar-e-Taiba, of which the 15 wanted accused and 2 deceased accused were members, and, therefore A1 to A7 and A9 to A13 were also its members and have thereby committed the offence punishable under section 20 of the UA(P)A, 1967. **I have to, therefore, answer point no. 7 accordingly in the affirmative.** I, therefore, hold the A1 to A7 and A9 to A13 guilty for having committed the offence punishable under section 20 of the UA(P)A, 1967.

(iii) The prosecution has proved beyond reasonable doubt that the

A1 to A7 and A9 to A13 are members of an organised crime syndicate. It is manifest from the actions and conduct of the said accused that though the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 were members of the unlawful association SIMI and though they, except the A8, were guided, instigated, aided and financed by the terrorist organisation L-e-T, they alongwith the A1, A5 and A12 formed an organised crime syndicate under the leadership of the A3 and the A13, with the objective of promoting insurgency and were therefore its members and have thereby committed the offence under section 3(4) of the MCOC Act, 1999. **I have to, therefore, answer point no. 8 accordingly in the affirmative.** I, therefore, hold the A1 to A7 and A9 to A13 guilty for having committed the offence punishable under section 3(4) of the MCOC Act, 1999.

(iv) The prosecution has proved beyond reasonable doubt that A1 to A7 and A9 to A13 alongwith the 15 wanted accused and 2 deceased accused conspired, did preparatory acts and abetted each other for causing the bomb explosions. While discussing the point no. 5 supra, I have drawn the inference from the facts that are established by the prosecution for proving points no. 1 to 4 supra, that the facts speaks for themselves, i.e., the bomb explosions amount to conspiring to wage war against the Government of India or attempting to wage such a war or abetting the waging of such war or to overawe, by means of force or the show of criminal force, the Government of India or the Government of Maharashtra and is a terrorist act and also an act of promoting insurgency. Hence, it will have to be held that the A1 to A7 and A9 to A13 alongwith 15

wanted accused and 2 deceased accused conspired and caused the bomb explosions, which was an unlawful activity, that they did a terrorist act, that they committed an organised crime, that they conspired to wage war against the Government of India, that they collected men and ammunition and otherwise prepared themselves for waging war against the Government of India with the intention of doing so, that they concealed the existence of a design to wage war against the Government of India, intending by such concealment to facilitate or knowing it to be likely that such concealment will facilitate the waging of war and thereby committed the offence punishable under section 120-B read with sections 121-A, 122 and 123 of the IPC read with sections 13 and 16 of the UA(P)A, 1967 read with sections 3(1)(i), 3(1)(ii) and 3(2) of the MCOC Act, 1999. **I have to, therefore, answer points no. 9, 10, 11, 15, 16, 17, 20, 21 and 34 accordingly in the affirmative.** I, therefore, hold the A1 to A7 and A9 to A13 guilty for having committed the offence punishable under section 120-B read with sections 121-A, 122 and 123 of the IPC read with sections 13 and 16 of the UA(P)A, 1967 read with sections 3(1)(i), 3(1)(ii) and 3(2) of the MCOC Act, 1999.

(v) The prosecution has proved beyond reasonable doubt that the A3 harboured terrorists, i.e., wanted accused no. 5 and 8 to 14 and deceased accused no. 1 and 2 in his house, which is the offence punishable under section 19 of the UA(P)A, 1967, but has not proved that the A1, A4, A5, A7, A8 and A13 harboured them. **I have to, therefore, answer point no. 12 in the affirmative accordingly.**

I, therefore, hold the A3 guilty for having committed the offence punishable under section 19 of the UA(P)A, 1967.

(vi) The prosecution has proved beyond reasonable doubt that the A3 and the wanted accused no. 2 held property derived or obtained from the commission of an organised crime or acquired from the funds of an organised crime syndicate, which is the offence punishable under section 3(5) of the MCOC Act, 1999. **I have to, therefore, answer point no. 13 in the affirmative.** I, therefore, hold the A3 guilty for having committed the offence punishable under section 3(5) of the MCOC Act, 1999.

(vii) The prosecution has proved beyond reasonable doubt that the A3, A7 and A13 knowing that they had the articles required for preparing bombs, which is the evidence of that offence, caused it to disappear or concealed them, with the intention of screening themselves and the co-accused involved in the process of bomb making and thereby committed an offence punishable under section 201 of the IPC. **I have to, therefore, answer point no. 19 in the affirmative.** I, therefore, hold the A3, A7 and A13 guilty for having committed the offence punishable under section 201 of the IPC.

(viii) The prosecution has proved beyond reasonable doubt that A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2, used and transported explosives in contravention of the rules made under section 5 of the Explosives Act, 1884 and thereby committed an offence punishable under section 9-B of the said Act. **I have to, therefore, answer point no. 24 in the affirmative.** I, therefore, hold the A1, A3, A4,

A12 and A13 guilty for having committed the offence punishable under section 9-B of the Explosives Act, 1884.

(ix) The prosecution has proved beyond reasonable doubt that the A1, A3, A6, A12 and A13 were in possession of explosives for an unlawful object and thereby contravened the rules under section 5 of the Explosives Act, 1884 and thereby committed an offence punishable under section 9-B of the said Act. **I have to, therefore, answer points no. 26 and 28 in the affirmative.** I, therefore, hold the A1, A3, A6, A12 and A13 guilty for having committed the offence punishable under section 9-B of the Explosives Act, 1884.

(x) The prosecution has proved beyond reasonable doubt that the A2 was in possession of explosives in contravention of the rules made under section 5 of the Explosives Act, 1884 and thereby committed an offence punishable under section 9-B of the said Act. **I have to, therefore, answer point no. 25 in the affirmative.** I, therefore, hold the A2 guilty for having committed the offence punishable under section 9-B of the Explosives Act, 1884.

(xi) The prosecution has proved beyond reasonable doubt that the A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2 caused explosions by explosive substance, likely to endanger life or to cause severe injury to property and thereby committed the offence punishable under section 3 of the Explosive Substances Act, 1908. **I have to, therefore, answer point no. 27 in the affirmative.** I, therefore, hold the A1, A3, A4, A12 and A13 guilty for having committed the offence punishable under section 3 of the Explosive Substances Act,

1908.

(xii) The prosecution has proved beyond reasonable doubt that the A3 and A6 provided premises and A7 and A13 supplied material and were accessory to the commission of the offence under the Explosive Substances Act, 1908 and thereby committed the offence punishable under section 6 of the said Act. **I have to, therefore, answer point no. 29 in the affirmative.** I, therefore, hold the A3, A6, A7 and A13 guilty for having committed the offence punishable under section 6 of the Explosive Substances Act, 1908.

(xiii) The prosecution has proved beyond reasonable doubt that the A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9, 11 and 12 and deceased accused no. 1 and 2 committed mischief by damaging and destroying public property by explosive substance and thereby committed the offence punishable under section 3 of the Prevention of Damage to Public Property Act, 1984. **I have to, therefore, answer point no. 30 in the affirmative.** I, therefore, hold the A1, A3, A4, A12 and A13 guilty for having committed the offence punishable under section 3 of the Prevention of Damage to Public Property Act, 1984.

(xiv) The prosecution has proved beyond reasonable doubt that the A1, A3, A4, A12 and A13 alongwith wanted accused no. 6 to 9 11 and 12 and deceased accused no. 1 and 2 damaged and destroyed property of the railway by explosive substance with the intention of doing so knowing it likely that they can do so and endangered the safety of persons traveling on the railways by causing explosions by explosive substance and thereby committed the offence punishable

under sections 151, 152 and 153 of the Railways Act, 1989. **I have to, therefore, answer points no. 31 and 32 in the affirmative.** I, therefore, hold the A1, A3, A4, A12 and A13 guilty for having committed the offences punishable under sections 151, 152 and 153 of the Railways Act, 1989.

(xv) The prosecution has proved beyond reasonable doubt that :-

(a) the A1 alongwith wanted accused no. 6 and 7 and deceased accused no. 1 conspired and committed the murders of 28 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 110 persons,

(b) the A3 alongwith wanted accused no. 9 conspired and committed the murders of 28 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 100 persons,

(c) the A4 alongwith wanted accused no. 11 conspired and committed the murders of 32 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 115 persons,

(d) the A12 alongwith deceased accused no. 2 conspired and committed the murders of 9 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 102 persons,

(e) the A13 alongwith wanted accused no. 8 conspired and committed the murders of 26 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 130 persons,

and thereby committed the offences punishable under sections 302, 307, 326, 325 and 324 read with section 120-B of the IPC. **I have to, therefore, answer point no. 14 in the affirmative.** I, therefore, hold the A1, A3, A4, A12 and A13 guilty for having

committed the offence punishable under sections 302, 307, 326, 325 and 324 read with section 120-B of the IPC.

(xvi) Prosecution has not proved that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 alongwith wanted accused no. 2 and 3 committed the offence punishable under section 124-A of the IPC. **I have to, therefore, answer point no. 18 in the negative.** I, therefore, hold that the A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 are not guilty of having committed the offence punishable under section 124-A of the IPC.

(xvii) Prosecution has not proved that the A4 committed the offence punishable under section 17 of the UA(P)A, 1967. **I have to, therefore, answer point no. 22 in the negative.** I, therefore, hold that the A4 is not guilty of having committed the offence punishable under section 17 of the UA(P)A, 1967.

(xviii) Prosecution has not proved that the A1, A3, A6, A7 alongwith wanted accused no. 2 and 3 committed the offence punishable under section 40 of the UA(P)A, 1967. **I have to, therefore, answer point no. 23 in the negative.** I, therefore, hold that the A1, A3, A6 and A7 are not guilty of having committed the offence punishable under section 40 of the UA(P)A, 1967.

(xix) Prosecution has not proved that the A3 and A6 committed the offence punishable under section 12(1)(C) of the Passport Act, 1967. **I have to, therefore, answer point no. 33 in the negative.** I, therefore, hold that the A3 and A6 are not guilty of having committed the offence punishable under section 12(1)(c) of the Passport Act, 1967.

The summary of the above conclusions is as follows :-

(I) (i) A1, A3, A4, A12 and A13 are found guilty of having committed the offence punishable under sections 302, 307, 326, 325 and 324 read with 120-B of the IPC.

(ii) They are also found guilty of having committed the offence punishable under section 3 of the Explosive Substances Act, 1908.

(iii) They are also found guilty of having committed the offence punishable under sections 151, 152 and 153 of the Railways Act, 1989.

(iv) They are also found guilty of having committed the offence punishable under section 3 of the Prevention of Damage to Public Property Act, 1984.

(v) They are also found guilty of having committed the offence punishable under section 9-B of the Explosives Act, 1884.

(II) A2, A3, A4, A6, A7, A9, A10, A11 and A13 are found guilty of having committed the offence punishable under section 10(a)(i) of the UA(P)A, 1967.

(III) (i) A1 to A7 and A9 to A13 are found guilty of having committed the offence punishable under section 20 of the UA(P)A, 1967.

(ii) They are also found guilty of having committed the offence punishable under section 3(4) of the MCOC Act, 1999.

(iii) They are also found guilty of having committed the offence punishable under section 120-B read with sections 121-A, 122 and 123 of the IPC read with sections 13 and 16 of the UA(P)A,

1967 read with sections 3(1)(i), 3(1)(ii) and 3(2) of the MCOC Act, 1999.

(IV) (i) A1, A2, A3, A6, A12 and A13 are found guilty of having committed the offence punishable under section 9-B of the Explosives Act, 1884.

(V) A3, A6, A7 and A13 are found guilty of having committed the offence punishable under section 6 of the Explosive Substances Act, 1908.

(VI) A3, A7 and A13 are found guilty of having committed the offence punishable under section 201 of the IPC.

(VII) (i) A3 is found guilty of having committed the offence punishable under section 19 of the UA(P)A, 1967.

(ii) A3 is also found guilty of having committed the offence punishable under section 3(5) of the MCOC Act, 1999.

(VIII) (i) A2, A3, A4, A6, A7, A8, A9, A10, A11 and A13 are found not guilty of having committed the offence punishable under section 124-A of the IPC.

(ii) A4 is found not guilty of having committed the offence punishable under section 17 of the UA(P)A, 1967.

(iii) A1, A3, A6 and A7 are found not guilty of having committed the offence punishable under section 40 of the UA(P)A, 1967.

(iv) A3 and A6 are found not guilty of having committed the offence punishable under section 12(1)(c) of the Passport Act, 1967.

(v) A1, A4, A5, A7, A8 and A13 are found not guilty of

having committed the offence punishable under section 19 of the UA(P)A, 1967.

(vi) A8 is found not guilty of having committed any offence with which he is charged. Hence, I pass the following order :-

ORDER

1. Accused No. 8 - Abdul Wahid Din Mohammad Shaikh is acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offences punishable under sections 120-B, 121-A, 122, 123, 124A, 201, 324, 325, 326, 307, 302 read with 120-B of the Indian Penal Code, 1860, sections 10, 13, 15, 16, 17, 19, 20, 40 of the Unlawful Activities (Prevention) Act, 1967 read with section 120-B of the Indian Penal Code, 1860, sections 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 read with section 120-B of the Indian Penal Code, 1860, section 5 punishable under section 9-B of the Explosives Act, 1884 read with section 120-B of the Indian Penal Code, 1860, sections 3, 5 and 6 of the Explosive Substances Act, 1908 read with section 120-B of the Indian Penal Code, 1860, section 3 of the Prevention of Damage to Public Property Act, 1984 read with section 120-B of the Indian Penal Code, 1860 and section 151, 152, 155 of the Railways Act, 1989 read with section 120-B of the Indian Penal Code, 1860 and section 12 (1)(c) of the Passport Act, 1967 read with section 120-B of the Indian Penal Code, 1860.
2. He be released forthwith if not required in any other case.
3. He is directed to furnish PR Bond of Rs.25,000/- (Rupees

Twenty Five Thousand Only) with solvent surety in the same amount under section 437-A of the Code of Criminal Procedure, 1973 to appear before the higher court as and when it issues notice in respect of any appeal or petition filed against the judgement of this court.

1659. On reaching the above conclusions, I stop here to hear the accused on the point of sentence.

(Y. D. SHINDE)
Spl. Judge, under
MCOC Act & NIA,
Special Court No.1,
Mumbai.

Date : 11/09/2015

Date : 14/09/2015

1660. A1 to A7 and A9 to A13 were called ahead one by one and were asked to say what they want to say on the point of sentence. They made oral submissions and also filed written submissions prepared by their advocates and some of the accused also filed handwritten submissions. The typed written submissions prepared by their advocates contain common grounds except for some personal aspects about the accused. I will take the common submissions at the end and the submissions about particular accused individually after their oral submissions alongwith the witnesses, if any, examined by them.

1661. A1 orally submits that he has five small children, who are dependent on him and therefore, minimum punishment be imposed on him. He submits that he is also filing the written statement. In his written submissions Ext. 4831, A1 after reproducing the contents of

his confessional statement about he having gone to Pakistan for training and threats given by wanted accused no. 4 Hafiz Zuber, has submitted that it was in this context and background that he is alleged to have participated in the commission of the present offence, that even according to the prosecution he was not the mastermind or the main conspirator in this offence. He has given his age as 32 years on the date of the offence and submits that during the period of nine years he was in prison he has been under treatment for psychological illness, he has also contracted glycoma and this has severely affected his eyesight. He submits that his children had to drop out of school as they were unable to pay for their education and he is an illiterate labourer.

1662. A2 orally submits that he is a doctor and he has chosen the medical profession of critical care and had chosen a charitable hospital on humanitarian grounds. He submits that he has no criminal record. He submits that during his stay in the prison he improved his behaviour and has done his post graduation in disaster management. He submits that he is not a threat to the community and submits that he be given the minimum possible sentence. He submits that he is filing written submissions. In his written submissions Ext. 4832, he submits that as per his confession, as the member of SIMI, he was exposed to inflammatory speeches about atrocities committed on Muslims and he was filled with a desire to avenge them. He gave his age as 32 years on the date of the offence. He submits that during the nine years of his undertrial incarceration, he has endeavoured to improve himself by enrolling in various

educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens and has enrolled in IGNOU for a management course in medicine, that he is a Unani doctor and was working as a resident medical officer, that he comes from a very poor family and that he has been giving medical treatment to fellow prisoners and helping them cope with the harsh prison regime. He submits that he has been receiving treatment for psychiatric problems suffered by him, his mother died in 2008 and shortly thereafter his younger sister also died and his daughter's education has been affected.

1663. In his handwritten submissions Ext. 4833 he submits that he is innocent, has nothing to do with the offence in this case and is falsely implicated by the ATS, Mumbai. Most of the submissions in it are the repetition of the submissions Ext. 4832 and in addition he submits that he spent the period in the prison as a law abiding prisoner, not having any bad habits like smoking, etc., that he studied law books to know and better understand the law of the land, that he successfully completed a post graduation diploma course in Disaster Management (P. G. D. D. M.) from IGNOU to improve his educational record and has taken admission in a master degree course in Public Administration (M. P. A.) from the said university. He submits that being an experienced and trained doctor, specially in critical care management and emergency, he helped many jail police personnel medically, gave them advice as per their ailments and diseases, prescribed medical treatment and sent them

to the right medical department of hospitals and referred them to some best physicians, surgeons known to him. He submits that before his arrest he was a law abiding citizen, duly paying government taxes, has performed his duty as a doctor and made good efforts to save the lives of human beings without thinking of cast, sect, religion, etc. He submits that he was prevented from performing his duty towards his old aged father, disabled sister, wife and to his only daughter as he was in the prison. He submits that he has full faith in the Indian judiciary and prays for mitigating the punishment and pardon the fines as he has no property and wealth. He examined his elder brother Ishtiyak Ahmed Mohd. Ibrahim Ansari, witness no. 2 for the defence on the point of mitigating circumstances, Ext. 4856 and Dr. Kedar Toraskar, witness no. 5 for the defence on the point of mitigating circumstances, Ext. 4864.

1664. A3 orally submits that he has not committed any crime, that he has no criminal background and has no intention of committing any crime in future. He submits that he has calmly and silently conducted himself during the period of nine years in the prison. He submits that he developed a brain tumor during the period in prison and also spine problem. He submits that his parents are very old and there is no one to take care of them and they are afflicted with many diseases. He submits that he be given minimum possible sentence. He submits that he is filing written submissions and photocopies of medical papers. A3 submitted in his written submissions Ext.4834 that as per his confession, he met some persons at the mosque, at whose instance he attended some

meetings held by SIMI about education to Muslim children, that during subsequent SIMI programs, he was informed about atrocities on Muslims especially in Gujarat and was instigated to avenge this and was also given money. It is in this context and background that he is alleged to have participated in the commission of the present offence. He gave his age as 32 years on the date of the offence and submits that he is illiterate, studied upto 5th standard, had no fixed job and comes from a very poor family, that during the period in prison, he had developed a brain tumor and advanced spondylitis because of which he is unable to sit and requires a rubber balloon. He submits that his parents are very aged. He has produced photocopies of OPD case papers of JJ Hospital and reports of tests.

1665. A4 orally submits that he is from a poor family, that he used to maintain it by doing some small work, that because of his arrest his brother had to stop education and his household is run with great difficulty. He submits that he obtained education during his period in prison, that he is producing certificates, that he is pursuing the second L.L.B course. He submits that there is no one to look after his family and requests that he be given minimum possible sentence. He submits that he is filing written submissions. In his written submissions Ext.4835 he gave his age as 24 years on the date of the offence. He submits that during the period of nine years he was in prison, he endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens, that he has completed a three years

degree of Bachelor in Tourism Studies (BTS), six months certificate course in Arabic, six months certificate course in Urdu, six months certificate course in Human Rights, six months certificate course in Guidance, six months certificate course in Rural Development and is presently enrolled in a two years Master Degree Program in Political Science and a six months certificate course in English teaching. He submits that he is also currently pursuing his LLB and has completed his first year, the during that entire time that he was in prison, he has not asked the court for any facilities but has concentrated on his studies. Ever since access to the open university educational facilities (IGNOU) were made available in the prison, he has convinced many prisoners to avail of this and improve themselves. He submits that he has helped indigent prisoners for making applications for bail, etc., before their trial courts and has helped them in their studies. He submits that he comes from a very poor family, that he used to publish books from his house using his computer, that during the period in the prison his grandmother, who had brought him up, died and his wife is waiting for him since last nine years. He has produced certified true copies of the certificates of his education. He has examined the jail teacher Ankush Vishnu Dhengle, witness no. 6 for the defence on the point of mitigating circumstances, Ext. 4865 and Nadeem Akhtar Ashfaq Ahmed Shaikh, witness no. 4 for the defence on the point of mitigating circumstances, Ext. 4858.

1666. A5 orally submits that he has no previous criminal record, that he has a footwear shop, that his entire family is educated, that his wife is homeopathy doctor, that after he was put in prison his

family contracted many illnesses, that his wife has problems of both kidneys, arthritis and problems in the eyes, that he has a small daughter and his wife is looking after her, that his mother is over 75 years of age and suffering from many diseases. He submits that his behaviour in the prison was good and his record is good, that he has never quarreled with any accused or prison staff, that he always told other accused who came in the prison not to do crimes. He submits that he has taken education during his stay in prison and is pursuing B.A. first year. He submits that he is producing a file of medical papers of his wife and mother along with his written submissions and the treatment of his wife is going on. He submits that considering all these things he be given minimum possible sentence. He submits that he is filing written submissions and photocopies of medical papers. In his written submissions Ext. 4836, he has given his age as 28 years on the date of the offence and submits that he comes from a poor family, was a shopkeeper selling slippers, that during the nine years of his under trial incarceration in the prison, he has endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens. He submits that he has passed his HSC (BPP) from IGNOU and commenced his BA in Urdu. He submits that he is suffering from psychiatric illness for which he has been receiving treatment and also suffering from Asthma and spondylitis. He submits that his mother is bedridden and his wife's kidneys have failed and she is on dialysis, that she is suffering from arthritis, eye

infection and cataract and also undergoing psychiatric treatment, that his daughter was born after his arrest and due to financial constraints, her education has been compromised.

1667. In his handwritten submissions Ext. 4837 he has repeated all the things that he stated orally and in the written submissions Ext. 4836 and also submits that he is innocent and having no direct or indirect connection with any accused in this case, that he shall restart the business in Kolkata for which he will have to double the hard work in order to raise his daughter, who is currently in 3rd standard, for providing better education to her. He submits that there is a huge void in the father-daughter relationship and his wife is not getting the proper medical treatment because of financial constraints. He submits that because of age and various illnesses his mother is vulnerable and helpless and requires special care and continuous physical help. He submits that he will become a law abiding citizen of India after having been in the prison for nine years, which has instilled a sense of responsibility in him to be sensitive toward family and their welfare, that he does not wish to remain in jail for any longer. He submits that during the period in prison, he advised a lot of inmates not to commit any crimes and live a respectful life by doing hard work and earn a living and not to steal, that there have been temptations in the prison, but he has overcome the enticements and practiced self-control, which has helped one in becoming a better person. He submits that he always assisted people in need and helped them and never harmed any one in his whole life, that in the prison new people are easily pulled by

hardcore criminals and they form gangs and when they get acquitted they perform more confidently and become hard core criminals themselves. He submits that he has cleared Business Preparatory Programs in the prison and taken admission in BA in Urdu language. He submits that he is an educated person and has full faith in Indian judiciary and prays for mitigating punishment and pardon the fines as he has no property and wealth. He has produced his own OPD case papers in original as well as photocopies and the photocopies of the medical papers of his mother and wife. He has examined his wife Farzana Yasmin Majid, witness no. 3 for the defence on the point of mitigating circumstances, Ext. 4856.

1668. A6 orally submits that he is innocent, that he was hawking during the period of bomb blasts, that he is known as a social worker in his area and he had stopped illegal businesses, because of which hafta of Rs. 16 lakhs to the police stopped and therefore, they threatened that they would involve him in a big case, that he was illegally detained for two months during which he lost his mother, that his father suffered heart attack twice after his arrest, that during custody he suffered injury to his scapula because of torture and he is still suffering from that, that during custody he was in the good books, that he completed his graduation in the prison and has taken admission for M.A. now. He submits that he is not a threat to the society and he has witnesses who can vouch for his character. He submits that he be given minimum possible punishment and that he is filing written submissions. In his written submissions Ext. 4839 A6 submits that he was working with Asudha Urban Credit Co-operative

Bank, that he lost his job as the bank shut down, that wanting to earn a means of livelihood, he sought a loan and was told that if he did something for Islam that person would help, to which he agreed and in March, 2002 Riyaz Bhatkal paid him Rs. 5,000/- and assured that he would be paid Rs. 5,000/- each month, hence he agreed to go to Pakistan. He submits that he was told about the atrocities committed against Muslims during the communal riots in Gujarat and submits that during his illegal detention his mother died, but he was not allowed to attend her funeral. He gave his age as 37 years on the date of the offence and submits that during the period in prison he enrolled for a graduation course through IGNOU and completed the same, that he has also completed a one year Tourism Course, that he also did a Urdu language certificate course and had obtained and read 20 books on Mahatma Gandhi in order to reform himself. He submits that he is illiterate, having studied upto 10th standard and was working as a hawker selling seasonal items. He submits that he is married and has four children, who were studying in school at the time of his arrest and that his father is paralyzed.

1669. A7 orally submits that he is innocent as is the case with the accused in the Malegaon 2006 case who have been released on bail, that the ATS has implicated him in a false case by giving false evidence, that the court has failed to recognize the falsity of the ATS, that he has sympathy for all the victims of this blast, that he is with them in their grief and pain, because he is also a victim of the blasts. A7 was unwilling to file the written submission prepared by his advocate, though learned advocate asked him to do so and he went

back to the dock. Thereafter, his advocate filed it under his signature. It is submitted in his written submissions that according to his confession he attended an educational program at Haj House, where he heard speeches about the problems of Muslims and the need to do something about it, that he then joined SIMI where discussions focused on the killing of Muslims in Gujarat, the demolition of Babri Masjid, atrocities on Muslims in Kashmir, and how this should be avenged, that it was in this context of ideological brainwashing that he is alleged to have participated in the commission of the present offence. He gave his age as 29 years on the date of the offence. He submits that he has endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens and that he has completed his BA with 75% and also a diploma in Tourism Studies. He is presently enrolled in a Masters Degree program in Rural Development in IGNOU and LLB in Siddharth College. He submits that he comes from a poor family, has a diploma in electronic repairs and had a mobile repairing stall on rent, that during his imprisonment his mother expired after a prolonged illness that commenced shortly after his arrest and his daughter's education was compromised due to financial constraints. He has examined his elder brother Khalid Marghoob Ansari, witness no. 8 for the defence on the point of mitigating circumstances, Ext. 4868.

1670. A9 orally submits that he still considers himself innocent, that he has no previous case before this case, that there is no one to

look after his old parents, that his brother is also shown as wanted and it is not known whether he is alive or dead, that he has forgotten his profession because of being in custody for nine years, that he is suffering from memory loss and has forgotten many basic things and that minimum possible punishment be given to him and he be transferred to the prison nearest to Mumbai so that his parents will not be troubled. In his written submissions Ext. 4841, A9 submits that he was informed about Babri Masjid demolition and the Gujarat riots and atrocities committed against Muslims and such information caused him mental disturbance. He submits that such information made him vulnerable to manipulation and he was repeatedly instigated to seek vengeance, that during his arms training he met the mastermind and main conspirator wanted accused no. 1 Azam Chima, who told him that atrocities were committed against Muslims in Kashmir therefore it is necessary to do jihad in India. He gave his age as 22 years on the date of the offence. He submits that his brother is his co-accused in this case, another brother is shown to be absconding, that his entire family's life is disrupted, that his parents are old with nobody to care of them, that during the police custody his father was brought to the police station and stripped naked in front of him and his brother and some of the co-accused.

1671. A10 orally submits that if the court is passing sentence on him then leniency be shown, that he was serving the society as a spiritual healer before he was put in prison, that he learnt Kyro practice and acupressure in the prison and was treating the other

prisoners, that this means that he was serving the society when he was outside and even when he was in the prison, that he and his family has suffered during these nine years, that his father and mother have both died during this period, that his elder son was in 12th standard when he was arrested and because of his arrest he could not pursue his studies further, that his other two children are taking education with great difficulty, that his wife has contracted many diseases like cervical spondylitis, backache. He submits that if this court is imposing sentence on him, he be sentenced to the period undergone by him. He submits that he is pursuing second year BA from IGNO University. He submits that he is filing written submission. In his written submissions, Ext. 4842 he submitted that he was mentally disturbed and provoked by the demolition of Babri Masjid and therefore vulnerable to manipulation. He submits that he was in dire economic condition, that for work purpose, he was to go to Japan but due to financial constraints was unable to do so, that to earn money he gathered Rs. 2,50,000/- and invested it in a scheme on the internet, but it was a bogus scheme, and he lost the money, that thereafter he was told to go to Pakistan for training and told that for the same he will receive Rs.1,00,000/- and desperate to earn money to care for his family, he went to Pakistan. He submits that his confession shows that he did not play any role on the date of the incident. He gave his age as 36 years on the date of the offence and submits that he has endeavoured to improve himself by enrolling for his graduation and has passed the same from IGNOU, that he has self-taught himself in jail by reading books regarding bones, sprains,

etc., and had acquired a skill in treating such ailments and used to help or treat other prisoners and jail staff who suffered such ailments. He submits that his family is crippled by his absence and it has suffered greatly. He examined his younger brother Ahmed Mehmood Shaikh, witness no. 7 for the defence on the point of mitigating circumstances, Ext. 4866.

1672. A11 orally submits that he is a graduate and even then he used to help his father in his business, that his father is now 75 years old, that his one eye is removed and there is cataract in the second eye and can only see with 10-11 numbered glasses, that even then he goes to the shop and works as he has to maintain the family, that his mother died when he was in custody, that his brother, who earlier used to drive a taxi is now also required to look after the business and because of which the condition of the family has become critical, that day-to-day needs of the family are met by help from outsiders, that his two children and his brother's three children are taking education inspite of all these difficulties and he feels that they should become good members of the society. He submits that his brother's one leg is 1½ inches short, that his brother has suffered accident twice because of which he was required to be operated and a plate has been inserted below the knees, because of which he cannot drive the taxi for long and it is possible that he may have to stop driving the taxi and to sit in the shop. He submits that he has a family and relatives and even after his arrest they have not severed their relations with him and are meeting him regularly in the prison and in the court, that during his period of custody his conduct was

good and he has not done any activity against the society, that he is helping the other prisoners by writing their applications, that he has passed the first year post graduation and will be giving the second year post graduation examination shortly. He submits that he was of a social point of view, therefore, during the prison he did courses that would enable him to serve the society when he comes out, that he is not a threat to society, that it is the say of the prosecution also that out of the thirteen accused he is the only one who says that the victims are innocents. He submits that he is a family man and is not of a bad character and therefore, leniency be shown while imposing the sentence. He submits that he is filing written submissions. He requests that his father be called and his condition be seen.

1673. In his written submissions Ext.4843 he submits that as per his confession, he was passing by SIMI office in 1999 and saw some posters about the demolition of Babri Masjid which made him very emotional, that a person came up to him and advised him to join SIMI, that from 2004 onwards he was repeatedly told about atrocities against Muslims and that those who fight such oppression would be blessed in paradise. He submits that he was instigated by this and underwent arms training, that during the training he was instigated to avenge the massacre of Muslims during the Gujarat riots, that he replied that in revenge innocent persons should not be killed. He submits that this upset the trainer and his training was suspended for some time, that he was again indoctrinated into such thoughts of revenge. He submits that it was in this context and background that he is alleged to have participated in the commission

of the present offence. He submits that he was a key maker, had a stall on the road, comes from a poor family and used to drive a taxi to supplement his income. He gave his age as 31 years on the date of the offence and submits that during the nine years of his undertrial incarceration, he has endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens. He submits that he has been suffering from various psychiatric ailments and has been under medical treatment and submits that his mother died in 2010 and his children's education was disrupted after his arrest.

1674. A12 orally submits that he is a responsible and law abiding citizen of India, that he has been working in multinational companies since he was studying, that he does not have any past criminal record, that he does not have any contact with any illegal criminal organization, that unfortunately he is convicted in this case but he is not disheartened as he has faith in the judiciary, that he belongs to a literate family, that his late mother was a vice principal, that his father still works in Kuwait, that his elder brother works with the IVth Estate, that he himself was working and he plans to do his LLB and wants to join his advocate Shetty, that he is not a threat to society and he never has been. He submits that his conduct and behaviour in the prison was good and this can be verified from the prison superintendent who is now DIG. He submits that considering all these things his sentence be restricted to the period that he has undergone in the prison. He submits that he is filing written

submission. In his written submissions Ext. 4844 he submits that as per his confession he was not initially interested in religion, that two months before the offence, in March, 2006, he came into contact with some persons who persuaded him to take up religious work, that in April, 2006 he was told about the massacre of Muslims in the Gujarat riots and instigated to take revenge and it was in this context and background that he is alleged to have participated in the commission of the present offence. He gave his age as 26 years on the date of the offence and submits that during the period of his imprisonment he has endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens. He submits that he has completed his HSC (BPP) in prison and is in the final year of his BA (Psychology) degree course, that he has also persuaded many prison inmates to take up education and has helped them in obtaining admission in such courses. He submits that he comes from a poor family, has studied upto 12th standard and was employed in a call centre in Secundrabad, that he has been suffering mental illness and is under psychiatric treatment in the prison.

1675. A13 orally submits that he has full faith in the Indian judiciary, that he has done diploma in civil engineering, that before arrest he was maintaining his family consisting of his parents, wife and three children, that he used to work for labour reforms at the work sites, that he used to give financial help for the education of children of labourers, that when he heard about the blasts on

11/07/06 he was saddened, that his arrest in this case has badly affected his family, that his father died of cancer in 2011 without getting any treatment, that his mother is suffering from many illnesses including gangrene and heart problem and is not getting proper medical treatment, that his son is taking education in first year B. Sc. and is not getting proper education, that his two daughters are being educated on charity, that his brother who is a mechanical engineer stays separate with his wife and children and he is also burdened with maintaining his, i.e., the A13's family, that his financial condition is bad, therefore, he took legal aid from an NGO. He submits that he was kept in solitary confinement in the prison for nine years, because of which his mental condition is bad, that he has continuous pain in his stomach, that he took admission for BA in the IGNOU University when he was in the prison, that he participates in activities like yoga in the prison, that he has read 27 books on Mahatma Gandhi from the prison library, which has brought about a positive change in him and the desire to serve humanity and weak people is created in him, that because of this he has done blood donation twelve times, that because of reading the books the feeling of forgiveness has been developed in him, that he has no ill-feeling or malice towards anyone, that he forgives the ATS because they fabricated evidence against him though he is innocent. He submits that during the period that he is in prison, his family has been put to a lot of trouble and he wishes that this should not happen to the ATS people. He submits that he used to help the other prisoners by writing letters for them to their families. He submits

that he is not a threat to society. He prays to the court for imposing minimum sentence. He submits that he is filing written submission and an application written by him in the prison.

1676. In his written submissions Ext.4845 he gave his age as 35 years on the date of the offence and submitted that during the period in the prison he has endeavoured to improve himself by enrolling in various educational and self-help programs offered by the prison administration to enable the prisoners to reform themselves and become responsible citizens. He submits that he is presently doing his BA from IGNOU, that he has read 27 books written by or on Mahatma Gandhi which has brought about a great transformation in his thinking and character and that he has donated blood 12 times during the nine years he was in prison. He submits that he has chronic stomach and knee pains and is also afflicted with neurological ailments which cause blackouts and splitting headaches. He submits that his father died in 2011. He submits that the education of his son and two daughters was compromised because of his arrest.

1677. In his handwritten submissions Ext. 4846 he repeated most of the things that he stated orally and submits that his elder brother is B.E.(Mech), that he stays separate with his wife and two sons and is burdened of maintaining his, i.e., the A13's family, and of the treatment of their mother. He has examined his brother Aziz Bashir Khan, witness no. 1 for the defence on the point of mitigating circumstances, Ext. 4855. A1, A2, A5 to A7 and A9 to A13 examined Arun Thomas Ferreira, witness no. 9 for the defence on the point of

mitigating circumstances, Ext. 4874.

1678. The common mitigating circumstances in the written submissions prepared by learned advocates for the accused are divided into two parts, viz., the facts relating to the offence and the facts relating to the accused. In the first part it is submitted that as per the confessions relied upon by the prosecution, the offence was planned by wanted accused no. 1 Azam Chima, a Pakistani national and ISI operative, that he made the plans, gave the orders, selected the target and the time when the bombs would be exploded and provided the explosives. It is submitted that according to the prosecution the present accused were mere pawns in this offence which was masterminded by wanted accused no. 1 Azam Chima and others. Then the role ascribed to the accused by the prosecution is described. It is further submitted that this court has relied on the confessions allegedly made by the accused under the MCOC Act and then the contents of the confessional statement of the A1 pertaining to he going for training to Pakistan, etc., are reproduced and it is submitted that it was in this context and background that the accused is alleged to have participated in the commission of the present offence. It is submitted that the prosecution case against the accused is based on confessions to the police officers recorded under the MCOC Act and circumstantial evidence and the said confessions provided detailed information about Pakistan's covert operations against India, the role of the ISI and Lashkar-e-Taiba and other terrorist organizations. This information has proved invaluable to the security services in India.

1679. The case of the prosecution in respect of the wanted accused no. 1 Azam Chima that he incited the trained youth to avenge the alleged atrocities committed on Muslims in India by causing widespread insurgent and terrorist activities, etc., is reproduced and it is submitted that it is, therefore, the prosecution's case that the extensive brainwashing disturbed the mental condition of the accused and rendered them extremely vulnerable to manipulation by wanted accused no. 1 Azam Chima and others who masterminded this offence. It is submitted that this court has held that the accused made free, voluntary and truthful confessions, which shows that the accused have cooperated in the investigation. It is also submitted that the accused did not abscond and were arrested from the place of their residence or work, etc., and did not resist their arrest.

1680. In the facts relating to the accused in addition to the particular circumstance in respect of the each accused mentioned above, it is submitted that the accused have not been convicted in any case apart from this, that they thus have no criminal antecedents, that there is no adverse report against the accused from the prison authorities, that right through the trial of this case, the conduct of the accused has been exemplary, that right through the investigation and trial of this court, i.e., about 9 years, the accused were not abandoned by their friends and family, which shows that they have roots in society and that they can be reformed and rehabilitated. It is submitted that the accused have already suffered 9 years of imprisonment, during this period they have suffered

tremendous hardship due to the harsh prison conditions, that the accused's families have been crippled by their absence and they too have suffered greatly, that they have led a hand-to-mouth existence as the accused were the chief bread earners. Poor to begin with, they have been reduced to abject poverty and reduced to living on hand-outs given by their friends and relatives.

1681. It is submitted that for almost the entire nine years of their incarceration, the accused were not kept in the prison barrack with the general population, but were kept in the extremely harsh, punitive and restricted confines of the anda cell and thereafter the anda cell is described and it is submitted that the anda cell prisoners are not allowed to leave the anda barrack even to meet the doctor or to visit the canteen, that the doctor is brought to the cell, as are the desired canteen products, that there is no fresh air, vegetation, trees or sunlight, that the prisoners are surrounded by iron rods and thereafter the accused have already been punished very severely by the harsh nature of the incarceration inflicted on them.

1682. It is alleged that the accused were tortured during the police custody, about which they have given evidence. Thereafter, it is alleged that the accused were brutally assaulted by the prison staff on 28/06/08, which has been documented in the judgement of the Bombay High Court dtd. 21/07/09 passed in Writ Petition (Crl) No. 1377 of 2008 and the observations of the High Court in paragraph 9 of this judgement is reproduced.

1683. It is further submitted that the accused belong to very poor families, they were represented by lawyers appointed by an NGO

and then the dates of the arrest of the accused are mentioned and the dates upto which they did not have a lawyer during the remand stage are also mentioned. It is submitted that the accused have shown that they are capable of leading a law-abiding life as a responsible member of society, that they are not a danger to society and do not pose a threat to any person. It is, therefore, submitted that the accused have already been punished very severely in many ways, that no additional benefit will be derived by sentencing the accused to death and that the mitigating circumstances enumerated above show that the accused do not deserve to be given the death sentence.

1684. Learned advocate Prakash Shetty for A1, A3, A8, A9, A11 and A12 submitted that this court has held the A1, A3, A4, A12 and A13 guilty for the offence under section 302 read with section 120-B and read with 307, 326, etc., and also for the offences punishable under section 3 of the Explosive Substances Act, etc., and also under the provisions of the MCOC Act and UA(P)A, that for the offences under section 302 read with 120-B, there are two options, i.e., capital punishment of death or imprisonment for life, that the law has been discussed on many aspects that we have to see the possibility of reform and also the mitigating circumstances. He submits that so far as the A1, A3 and A13 are concerned, there is one eyewitness for them each, but so far as the A12 is concerned, there is no such evidence and it is only on the basis of circumstantial evidence, therefore, he should not be awarded capital punishment, though he has been held guilty. He submits that whatever evidence

has been adduced is a weak type of evidence and while awarding sentence, this should be taken into consideration alongwith considering whether the witnesses have actually spoken the truth. He submits that so far as the confessional statements are concerned, there were circumstances which throw the confessional statements in the shadow of doubt, therefore, on this count minimum punishment of life imprisonment be awarded to the A1, A3 and A12. In respect of the evidence against the A12, he submits that the circumstance of recovery of car is after 3-4 months of the incident and 2 months after his arrest and finding of black spots in the car is overshadowed with the possibility of use and it is a suspicious circumstance and these are the factors that have to be considered. He submits that the capital punishment of death is exceptional if there is such type of weak evidence and life imprisonment is the rule. About the offences under the MCOC Act and UA(P)A which carry death sentence, he submits that the above submissions also hold good for them. He submits that it is not a case where a strong evidence has been adduced through the eyewitness and their evidence has not come out of the shadow of doubt and, therefore, it is not sufficient to award capital punishment.

1685. He submits that the chain of circumstances against the A1 is not complete because the black powder allegedly seized from his house was brought in unsealed condition. Insofar as the A3 is concerned, there was a draft of the confessional statement and it as well as the final confessional statement have loopholes.

1686. He submits that the accused are in custody for nine years

and they have undergone hardship in custody and this factor is required to be considered. The time taken from the date of the incident till the date of the final order will again be a factor to say that death penalty should not be awarded. He submits that it cannot be said that it was the accused who caused the delay, because if they have appealed against any order of this court being aggrieved by it, they did so as they have the fundamental right to do it. He submits that from the date trial started, it was going on day-to-day and he candidly stated that he has not saying that there is delay and therefore the time factor will have to be considered. He submits that the court has observed the conduct of the accused, that nothing abnormal or adverse was brought on record so far as their behaviour or conduct in court or outside is concerned and this calls for leniency.

1687. About the background of the accused, he submits that there is nobody of the A1 in Mumbai, his family and everyone is in Bihar and he had not indulged in any criminal activity. About the A3, he submits that his entire family is involved because A9 is his brother and his one more brother, i.e., wanted accused no. 3 Rahil, is termed as absconding. In such circumstances in the family where there is a 75 years old father, who had to undergo all this trauma and there is nobody else to look after them. A9 is a software engineer, who was working in Bangalore and he is also involved and lost everything. A12 comes from an educated family and has no antecedents and no adverse remarks. A11 is from the work strata of the society and he has narrated the pitiable condition of his family,

wherein, his father is almost blind and brother is handicapped and there is nobody to look after his family. He submits that A3 and A12 both are suffering from ailments. A3 has brain tumor and spinal problem. These factors have to be considered while awarding the sentence. Each and every accused has narrated his plight and condition of his family and their background, which may be considered and A1, A3, A9 and A12 be awarded minimum sentence. He submits that the charge under the MCOC Act is against all the accused, that the A9 and A11 cannot be termed as the persons who planted the bombs. The participation in a conspiracy is different from actual participation in the crime. It is nobody's case that all the accused have taken part in planting the bombs and this factor will have to be considered though provisions under the MCOC Act provide for death penalty if death is caused.

1688. Lastly he submits that the court has always to see the chances to reform, that even during their custody the accused have taken education and it cannot be said that there are no chances of reformation.

1689. Both sides argued extensively on the point of sentence and placed reliance on several authorities of the Apex Court in support of their submissions, the defence lawyers placing reliance on the authorities that lay down the law that as far as possible capital punishment should not be awarded and for the offences which invite the capital punishment, the court should consider the mitigating circumstances of the accused and possibility of reform and have indicated the procedure that has to be adopted for assessing these

two factors and the learned SPP has relied on the authorities which lay down the law as to what are the rarest of the rare cases and the theory of penology and why the capital punishment should be imposed.

1690. I have held 12 accused guilty of having committed different types of offences including the offences which are punishable with death. It is, therefore, necessary to consider first as to who out of the 12 accused are liable for imposing the capital punishment and who are not *vis-a-vis* their participation in the crime. The offences that invite the capital punishment of death are sections 302 read with 120-B of the IPC and section 3 of the Explosives Substances Act, 1908 for which the A1, A3, A4, A12 and A13 are found guilty and the offences under section 16 of the UA(P)A and section 3(1)(i) of the MCOC Act for which all the 12 accused, i.e., A1 to A7 and A9 to A13 have been found guilty. No doubt, the prosecution has proved and I have held all the 12 accused guilty for having committed a terrorist act punishable under section 16 of the UA(P)A and for having committed the offence of organised crime punishable under section 3(1)(i) of the MCOC Act, both of which sections carry the capital punishment. However, the last step taken by the A1, A3, A4, A12 and A13 in actually planting the bombs, shows that they are the most culpable out of the twelve accused. One cannot say with certainty that the remaining seven accused would have taken the last step of pulling the trigger, planting the bombs or would have backed out. One does not know whether they also had been asked to do that work, but they declined

out of fear or because their confidence level was not to the extent that it would help them in doing that work. Hence, in my humble opinion though all 12 accused have been found guilty for having committed two offences punishable with death, it would not be justifiable to impose the death penalty on the A2, A5, A6, A7, A9, A10 and A11. Insofar as the A1, A3, A4, A12 and A13 are concerned, alongwith being found guilty for the offences under section 16 of the UA(P)A and section 3(1)(i) of the MCOC Act, which carry the capital punishment of death, they are found to have actually planted the bombs that caused the deaths of so many lives alongwith the near fatal injuries to hundreds and loss of property. All the 12 accused who are found guilty for having committed several offences are not foot soldiers. Though the idea of the present crime generated from across the border, they formed an independent organized crime syndicate on the basis of their background of being members/activists of the banned organization SIMI. They did the spadework and the ground work using their brains. The idea of assembling bombs at the house of the A6 was of the A3. The culpability of all the accused insofar as conspiring to commit all the offences with which they are charged is equal. Some of them procured RDX, some of them did reconnaissance of general targets as well as the specific targets, some transported it to particular place, some procured some more articles that were necessary for preparing the bombs, some brought wanted accused Pakistani persons from across the border, some supervised over and participated in the work of assembling the bombs, some transported

the bombs from the place where they were assembled to the house of the A3 in Bandra and it was the A1, A3, A4, A12 and A13 who actually planted the bombs. Thus, each and every accused is involved in the conspiracy that culminated in the bomb blasts. However, the most culpable are the above five as they took the final step that killed so many persons and injured hundreds, etc. Insofar as the A1 is concerned he travelled all the way from Bihar and reached Mumbai in the morning on 11/07/06 with the specific knowledge that he has to execute a big work of L-e-T commander wanted accused no.1 Azam Chima with the help of wanted accused no. 6 and 7 as it was told to him by wanted accused no. 15 and did not hesitate in carrying out the work to its logical end. A4 was a very proactive activist of SIMI, being acquainted with Riyaz Bhatkal also and having had discussions with him about jihad and setting up camps for training Muslims for jihad, about having knowledge of the A3, A2 and A9 having gone for training and maintaining continuous contact with the A3 from whom he came to know about reconnaissance of the targets in Mumbai as per message of wanted accused no. 1 Azam Chima, having knowledge about the plan of causing bomb explosions in the seven trains, that he was present in conspiracy meetings and he himself surveying specific targets alongwith other accused and being a part of the team that assembled the bombs in the house of the A6. He did not stop there, but he went to the extent of taking the final step of planting the bombs without any hesitation and of taking the conspiracy to its logical end. A12 was closely associated with the A3, not only with

respect to the conspiracy in this case, but their vice of going to the dance bars, he was present in conspiracy meetings wherein his wish for doing something for Muslim brothers was awakened and got the knowledge from the A3 that they are going to make preparations for a big incident and he, i.e., the A12, would also be given some work and was asked to remain in contact with the A3. He had knowledge about the plan of targeting Gujarati people in Mumbai by causing explosions in the first-class bogies of the western railway local trains. He had seen Pakistani persons staying in the house of the A3, he drove the A3 in the car of the A9 wherever he wanted to go including visiting the wanted accused, going to the house of the A6 at Govandi alongwith the A3 and A7, transporting the bags containing bombs from Govandi to Bandra on 10/07/06 and then taking the final step in executing the conspiracy by planting the bomb in a particular railway train. A3 and A13 were masterminding and co-ordinating the entire operation and had a part to play in every aspect of the conspiracy right from planting, preparation, recruitment upto the final execution of the conspiracy by planting the bombs in specific local trains. It was they who convened conspiratorial meetings and saw to it that their mission would be accomplished by planing it in great detail.

1691. In view of the above discussion, it is clear that the A1, A3, A4, A12 and A13 deserve nothing less than the death punishment and insofar as the remaining seven accused are concerned, it will suffice if the alternative punishment of life imprisonment is awarded to them. Thus, it will be necessary to consider the mitigating

circumstances insofar as the A1, A3, A4, A12 and A13 are concerned only.

1692. In this context, as mentioned earlier learned advocate Shetty for the A1, A3, A8, A9, A11 and A12 and learned advocate Dr. Yug Choudhary h/f learned advocates Wahab Khan and Sharif Shaikh for the remaining accused have made submissions in respect of the general principles about the law of death penalty in India relying on the law laid down in the cases of **Bachan Singh, Appellant V. State of Punjab, Respondent ((1980) 2 Supreme Court Cases 684)** and **Santosh Kumar Satishbhushan Bariyar, Appellant V. State of Maharashtra, Respondent ((2009) 6 Supreme Court Cases 498)**. Learned advocate Dr. Yug Choudhary took me in great detail through most parts of the said judgements and took great pains to explain what the Supreme Court has said. He particularly relied on several paragraphs in the case of **Bachan Singh** and was at great pains to emphasis repeatedly the mitigating circumstances enumerated in paragraph 206 and to think about imposing the death penalty only after eliminating the circumstances no. 3 and 4 from the mind. It would be appropriate to summarize the law laid down in the said authority as it is relevant to our case. This was a landmark decision in which the Apex Court upheld the Constitutional validity of death penalty and for the first time evolved the formula of 'rarest of rare' case and laid down the following propositions in the said 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' are also required 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 the words of the Apex Court, as laid down in **Bachan Singh**, there are certain mitigating circumstances in every case. Similarly, there are aggravating circumstances also. The Apex Court has listed some aggravating circumstances as follows by stating the Court may in the following cases impose the penalty of death in its discretion.

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity

So far as mitigating circumstances are concerned, the Apex

Court has laid down that Courts shall take into account following circumstances viz.,

- (1) extreme mental or emotional disturbance;
- (2) the age of the accused. If the accused is young or old, he shall not be sentenced to death;
- (3) the probability that accused would not commit criminal acts of violence as would constitute a continuing threat to society;
- (4) the probability that the accused can be reformed and rehabilitated;
- (5) that in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence;
- (6) the accused acted under the duress or domination of another person;
- (7) that the condition of the accused showed that he was mentally defective and the said defect impaired his capacity to appreciate the criminality of his conduct.

As regards all these aggravating and mitigating circumstances, the Apex Court has made clear that these circumstances are not exhaustive and every case will again depend on the facts and circumstances of each case.

1693. In the case of **Santosh Kumar Bariyar** the Supreme Court concluded that, *'we have previously noted that the judicial principles for imposition of death penalty are far from being uniform. Without going into the merits and demerits of such discretion and subjectivity,*

*we must nevertheless reiterate the basic principle, stated repeatedly by this Court, that life imprisonment is the rule and death penalty an exception. Each case must therefore be analysed and the appropriateness of punishment determined on a case-by-case basis with death sentence not to be awarded save in the 'rarest of the rare' case where reform is not possible', after analysing entire cases from **Bachan Singh** onwards.*

1694. Learned advocate Dr. Yug Choudhary relied on as many as 43 authorities that he gave in the compilation of two volumes and two more authorities that he gave during the course of his arguments. Learned SPP Raja Thakare has relied on as many as 21 authorities. Both have submitted written submissions, Ext. 4875 by learned advocate Dr. Yug Choudhary and Ext. 4877 by learned SPP Raja Thakare, which more or less reiterate what they have submitted across the bar and therefore I do not feel it necessary to reproduce their arguments. I have gone through them carefully. I also do not feel it necessary to discuss all the authorities relied upon by them and it will be sufficient if the landmark decisions and important latest case laws are pointed out and summarized.

1695. In the case of **Machhi Singh and Ors., Appellants V. State of Punjab, Respondent (AIR 1983 SC 957)** relied upon by the learned SPP which is also a landmark decision, the Apex Court has stated that the following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted :

(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?

In this authority, the Apex court laid down following five criterion as parameters for the assistance of the Courts in determining whether a case falls in the category of 'rarest of rare' :

- I. Manner of commission of murder.
- II. Motive for commission of murder.
- III. Anti-social or socially abhorrent nature of the crime.
- IV. Magnitude of crime.
- V. Personality of victim of murder.

1696. In this context, to my mind, the observations in the case of **Ajitsingh Harnamsingh Gujral V. State of Maharashtra ((2011 14 SCC 401))** are relevant. The Apex Court after examining the entire gamut of case law summed up the position in paragraph 96 of its judgment as under :-

'It is only the legislature which can abolish the death penalty and not the courts. As long as the death penalty exists in the statute book it has to be imposed in some cases, otherwise it will tantamount to repeal of the death penalty by the judiciary. It is not for the judiciary to repeal or amend the law as that is in the domain of the legislature. The very fact that it has been held that death penalty should be given only in the rarest of rare cases means that in some cases it should be

given and not that it should never be given. As to when it has to be given, the broad guidelines in this connection have been laid down in Machhi Singh case [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] which has been followed in several decisions referred to above.'

1697. Similarly, in the case of **Mohammed Ajmal Mohammed Amir Kasab @ Abu Mujahid V. State of Maharashtra ((2012) 9 SCC 1)**, the Apex Court observed :

'Putting the matter once again quite simply, in this country death as a penalty has been held to be constitutionally valid, though it is indeed to be awarded in the – rarest of rare cases when the alternative option (of life sentence) is unquestionably foreclosed. Now, as long as the death penalty remains on the statute book as punishment for certain offences, including – waging war and murder, it logically follows that there must be some cases, howsoever, rare or one in a million, that would call for inflicting that penalty.....'.

1698. In the case of **Sandesh alias Sainath Kailash Abhang V. State of Maharashtra ((2013) 2 SCC 479)**, the Apex Court reiterated :

'22. it is not only the crime and its various facets which are the foundation for formation of special reasons as contemplated under Section 354(3) CrPC for imposing death penalty but it is also the criminal, his background, the manner in which the crime was committed and his mental condition at the relevant time, the motive of the offence and brutality with which the crime was committed are also to be examined. The doctrine of rehabilitation and doctrine of prudence are the other two guiding principles for proper

exercise of judicial discretion'.

1699. In the case of **Sunder V. State ((2013) 3 SCC 215)**, the Apex Court noted the extreme misery and trauma caused to the aggrieved party (the victim) and held that, misery of a nature which can never be effaced from the minds of the parents of the victim, is of critical significance and hence it needs to be considered by the Court.

1700. It is also held by the Apex Court in the case of **Machhi Singh**, while justifying the punishment of death in 'rarest of rare case' that, '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 realized 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 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*

withdrawn 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....'.

1701. Learned advocate Dr. Yug Choudhary lastly relied on the judgement in the case of **Kalu Khan, Appellant V. State of Rajasthan, Respondent (Criminal Appeal Nos. 1891-92 of 2014 delivered on 10/03/15)** and read out paragraphs 22 to 28 containing the analysis of the evolving jurisprudence on the aspects of 'quality of evidence' as a mitigating factor, so as to indicate that the case proved entirely on circumstantial evidence must not be placed into the category of 'rarest of the rare' without due examination of the factual matrix. The observations in paragraph 29 of the judgement are in the facts of the case discussing the evidence in that case and it is held in paragraph 30 that, *'that the first and foremost effort of the court should be to continue the life till its natural end and the delegated divine authority should be exercised only after arriving at a conclusion that no other punishment but death will serve the ends of justice'.*

1702. It is in context of the above judgement and that the learned SPP submitted that two out of the three judges, who decided

Kalu Khan's case alongwith one more judge also decided the case of **Shabnam and Ors., Appellants V. State of U. P., Respondent ((2015) 6 SCC 632)** on 15/05/15 and the observations therein squarely applicable to the fact of the present case. It will be appropriate to reproduce the said observations wherein report of the probation officer was not called. The Supreme Court held that, *'having regard, however, to the conditions in India, to the variety of social upbringing of its citizens, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, in evaluating a crime and apportioning the most appropriate punishment, one of the most important functions court performs while making a selection between life imprisonment and death is to maintain a link between contemporary community values and the penal system. Criminal jurisprudence indicates that society's perceptions of a crime with respect to appropriate penalties are not conclusive. Concurrently, it also stands that the said standards have always been progressive and acquire meaning as public opinion becomes enlightened by a humane justice. The scope of determining the standards is never precise and rarely static. The courts must thus draw its meaning from the evolving standards of public morality and consciousness that mark the progress of a maturing society.'*

1703. It is also held that, *'the aggravating circumstances indicate the extreme brutal, calculated and diabolical nature of the crime, which suggests that there is little likelihood of reform of these accused*

and of their abstaining from future crime'. It is finally held that, 'death penalty is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. This however does not seem to be the case herein. The Appellant-accused persons' preparedness, active involvement, scheming execution and subsequent conduct reeks of calculated and motivated murders. The act of slaughtering a ten month old child by strangulation in no chance reflects immature action but evidence for the lack of remorse, kindness and humanity. The crime is committed in the most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting. Therefore, as the instant case requires us to award a punishment that is graduated and proportioned to the crime, we have reached the inescapable conclusion that the extreme culpability of both the Appellants-accused makes them the most deserving for death penalty'.

1704. Finally learned advocate Dr. Yug Choudhary also relied on extracts from the report no. 262 of the Law Commission of India that was given in August, 15 submitting that he is not on the point of the recommendations made by the Law Commission in respect of the death penalty, but he wants to point out the discussion on the said topic by the Law Commission. Perusal of the said report shows that the discussion of the case laws including **Bachan Singh** and other case laws that has been relied upon by the learned advocates and the empirical data on the imposition of death penalty which shows that in only 4.3% of the cases, the death sentence was confirmed by the Supreme Court and which shows that the trial

courts erroneously imposed the death penalty in 95.7% cases.

1705. Learned SPP submitted the entire report and pointed out to the discussion on page 84 under the topic no. IV pertaining to the cases of terrorism and the final recommendations of the Commission that the death penalty be abolished for all crimes other than terrorism related offences and waging war.

1706. On the background of the law laid down in the abovereferred authorities as well as the other authorities relied upon by both the sides, I propose to draw up the balance-sheet of the aggravating and mitigating circumstances. They are succinctly enumerated by the learned SPP in paragraph 4 of his written submissions as follows :-

(a) This offence is not directed against an individual out of any previous enmity or for settling any other personal score.

(b) The conspiracy was hatched in the most calculated manner almost in such a way that within a span of just 5 minutes 7 powerful bomb blasts caused the disaster.

(c) The time and target chosen is also significant. The suburban trains going from Churchgate to Virar in the evening time are very crowded and therefore the helpless and defenseless innocent commuters would have no opportunity to save themselves from the dastardly act in any manner.

(d) The terror wave which was created not only disturbed the even tempo of the community but the life of the entire city of Mumbai was totally disrupted as suburban railways are the lifeline of Mumbai which is the capital city of the State.

- (e) The act is motivated with the object of promoting insurgency.
- (f) There is a foreign hand in the commission of the offence and some of the accused involved have even obtained training in preparation of bombs, arms and explosives and handling explosives etc., in Pakistan based training camps.
- (g) A special category explosive viz., RDX, has been used in the commission of the offence which is capable of mass destruction and this is the special feature of the crime. 189 lives are extinguished from the surface of the earth and around 825 were seriously injured.
- (h) There is a loss of around Rs.28 crores to the State Exchequer.
- (i) Apart from the physical damage, the fear psychosis that was created in the minds of the general public specially the suburban train travellers did cause incalculable trauma and agony in the minds of the public.
- (j) It is not just an isolated incident but it's a case of systematic planting of 7 powerful bombs in a diabolic manner which was set with extreme precision so that all the explosions occurred within a span of just 5 minutes to cause utter chaos and confusion amongst helpless and defenseless victims.
- (k) Even considering the period of conspiracy it can be seen how determined the accused were in causing the disaster without caring for lives and limbs of innocent citizens.
- (l) From the background of all the accused persons as stated by them while making submissions on sentence it can be seen that all of them were settled in their life and none of them was a victim of monetary temptation or was unwillingly dragged in to the

conspiracy. Most of the accused are well educated and having families. They never had a second thought of retreating from commission of such offence. All these aggravating circumstances certainly make out a case of rarest of the rare.

1707. I have reproduced the mitigating circumstances orally submitted by all the accused and also pleaded by the in their written submissions and I propose to discuss them one by one.

1708. Insofar as the age of the accused on the date of the offence is concerned, it is submitted that the A1 and A3 were of 32 years, A4 was of 24 years, A12 was of 26 years and A13 was of 35 years on the date of the offence. In this context both sides have relied on several judgements, which show both views. To my mind, young or old age is not universally accepted as a mitigating circumstance. Even in the latest case of **Shabnam** the Supreme Court did not consider the young age of the accused as a mitigating circumstance and even the pregnancy of **Shabnam** was not held to be a good ground for reducing the sentence. It was held in paragraph 33 that, *'the mitigating circumstances regarding young age of the Appellants-accused at the time of commission of crime do not bear any significance in terms of outweighing the aggravating circumstances of their wanton act. Further, it has also been pointed out before us that the Appellant-accused Shabnam was pregnant at the time of commission of offence and the couple now has a dependent minor child. While the said circumstances stand as such, it is pertinent to notice that this Court has consistently held that such compassionate grounds are present in most cases and are not relevant in considering*

commutation of death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor, was further affirmed by this court in Mofil Khan case (supra). It is however shocking that at the pink of their youth, the couple indulged in such debased act of multiple murders driven by infatuation and exhibited no remorse'.

1709. Thus, this mitigating circumstance is not available to the five accused who face the death penalty.

1710. The second mitigating circumstance is that the prosecution has relied on the confessions made by the accused to the police officers, which have provided detailed inputs to the security agencies regarding the extent of the covert operations of Pakistan against India. It is submitted that thus the confessions of the accused are not only are a sign of remorse by them, but also their willingness to co-operate with the investigative machinery in their fight against terror. In my humble opinion, this is nothing but trying to win whether it is heads or tails. It is submitted by the learned SPP in his written submissions that the court accepting the confessions as voluntary cannot be understood to mean that the accused co-operated in the investigation. In my humble opinion, the reason for making the confessional statement is made clear by the chief investigating officer ACP Patil, PW-186, who explained that when the accused were confronted with the evidence that was gathered against them, they decided to make a clean breast of the crime. It has nowhere come in the evidence of the DCPs or any of the investigating officers

or in the contents of the confessional statement that the accused were prompted to give their confessional statements out of remorse or repentance. In fact, the A13 though volunteered to make a confessional statement and was sent to the DCPs, refused to make it. Thus, he has not given any confessional statement. In this context, the learned SPP submitted that this submission has to be rejected because the subsequent conduct of the accused does not show any remorse or repentance for the acts. To my mind, there is not a single word by the said accused as well as the remaining seven accused in their oral submissions as well as in their written submissions that they repent the act which the court has held to be done by them. Learned SPP submitted that many accused are saying that they read number of books on Mahatma Gandhi during the prison and he does not want to raise any controversy, but if the accused claim that they showed repentance by giving the confessional statements, where was the question of filing retractions? In my humble opinion, therefore, this aspect will not be a mitigating circumstance.

1711. The next mitigating circumstance is the illness and though the learned advocate relied on the judgement in the case of **Yakub Abdul Razak Memon V. State of Maharashtra in Criminal Appeal No. 1728 of 2007**, learned SPP has also relied on the same authority submitting that it was submitted to the Supreme Court that Yakub Memon was suffering from depression since 1996, but this fact did not weigh to the Supreme Court and ultimately he was hanged. General submission in respect of all the accused are made about they being subjected to narco analysis repeatedly and they

being assaulted by the prison staff in the year 2008. However, as is rightly submitted by the learned SPP, as on the date on which the scientific tests were performed, they were not considered ultra vires. Hence, they cannot be considered as mitigating circumstance. In respect of the incident in the Mumbai Central Prison in the year 2008, to my mind, it is irrelevant and cannot be considered as a mitigating circumstance.

1712. It is, however, necessary to take up the case of the individual accused in respect of the ill health. It is pertinent to point out at this juncture that the mitigating circumstance enumerated in the written submissions filed by the learned advocates for the accused are obviously based on the law laid down in the several authorities and *prima facie* do not appear to be *bona fide* and are made just for the purpose of making them. They are stereotype written submissions.

1713. It is the contention of the A1 that he is under treatment for psychological illness, has also contracted glycoma whilst in the prison and this has severely affected his eyesight. At the request of the defence, the prison authority was directed to produce the entire medical file of all the accused. Perusal of the medical file of the A1 which comprises of photocopies of the OPD case papers of the JJ Hospital, do not show any finding of psychological illness or any treatment given to him for that purpose. He seems to be suffering from headache and giddiness, etc., and the latest OPD case paper of 04/08/15 shows that he complained of difficulty in reading, but does not use spectacles. There is also a finding that there are discs

0.5 CDR and 0.6 CDR in the right and left eye respectively. To my knowledge, they are signs of glycoma, which is curable by timely drugs or operation and it is not a chronic illness that would affect his health adversely. Hence, this ground is not made out by the A1.

1714. A3 has contended that he has developed a brain tumour and also advanced spondylitis because of which he is unable to sit and requires a rubber balloon. He has produced the photocopies of the OPD case papers. The first one is dtd. 12/12/13 wherein he complained of numbness of right thumb and index finger alongwith numbness of right side of lips, tongue and face and there were multiple episodes on 07/12/13 and 08/12/13 between 12.00 p.m. to 9.00 p.m. He was investigated and it was found that there was no neuro deficit and the MRI brain plus angiography was done, which gave the finding and the report is that the findings are suggestive of infective granuloma most likely tuberculoma. To my knowledge, this is a nodule of tuberculosis, which is caused by tuberculosis infection. Tuberculosis is very common in India and even tuberculoma is common in India. It is totally curable if treated properly and it is a very common infective disease in India. The OPD case paper shows the history given by this patient as cigarette smoking, which means that it is because of this habit that he has contracted tuberculosis as well as he being obese. The ECG report is normal and it does not show any epileptogenic focus. He was put under treatment of tuberculosis, i.e., AKT, from January, 2014, which was planned for nine months. The medical files of the A3 produced by the prison authority contains the sheet of Therapeutic Drug Monitoring (TDM)

dtd. 05/06/15 wherein it is mentioned that AKT medicines now stopped from 27/01/15. Thus, in all probability the tuberculosis of the A3 must have been cured. Insofar as spondylitis is concerned, it is probably because of his obesity as well as wrong sitting posture.

1715. A4 has not pleaded the ground of illness.

1716. A12 has submitted that he has been suffering from mental illnesses and is under psychiatric treatment. The medical file of OPD case papers of JJ Hospital produced by the prison authority shows his complaints of decreased concentration, forgetfulness, irritability, etc., since 2013 and that he is a tobacco chewer. However, there is no report about any psychiatric illness like schizophrenia, etc., and he has been receiving regular and timely treatment.

1717. A13 has pleaded that he has chronic stomach and knee pains and is also afflicted with neurological ailments which cause blackouts and splitting headaches. The last OPD case paper in his file of the JJ Hospital is about one year before, i.e., 22/11/14, which does not indicate the said illness and the complaint of pain in knees on 22/11/14, is referable to a trauma six months back. There is no further medical case paper since November, 2014 showing the ailments that he has mentioned in his written submissions.

1718. Thus, it is clear that the accused have failed to make out the ground of ill health as a mitigating circumstance.

1719. Next circumstance pleaded by all the accused is their economic hardship and socio-economic background. To my mind, it cannot be a consideration. Learned SPP has rightly submitted that it is not the case of a single accused that he was living below poverty

line and it was a monetary temptation of quick earning that prompted him to commit the crime. To my mind, there is no point for the accused in now saying that their family is poor or that there is no one to take care for their family including their own parents. This, therefore, cannot be considered as a mitigating circumstance.

1720. A4, A12 and A13 have pleaded about they taking education during custody as a mitigating circumstance. I do not see how this can be a ground. A4 examined the jail teacher Ankush Vishnu Dhengle, witness no. 6 for the defence on the point of mitigating circumstances, Ext. 4865 to prove that he pursued education even while within the prison. His evidence is equally relevant for the A12 and A13. However, A4 did not get any support from his evidence, which equally applies to the A12 and A13 also. It was the attempt of the A4 to show that he has encouraged other prisoners to take education and about change in his behaviour or improvement in him by examining this witness. However, he stated that as the A4 is in the high security cell, he cannot tell whether he has encouraged other prisoners to take education. On being asked about the reason why prisoners take education, he stated that they do so as they, i.e., the witness, and others like him encourage them, as they, i.e., the prisoners, have ample free time on their hands and, this is most important, that as the open universities do not take any fees from them, which means that it is a free education. In this context, the learned SPP submitted that Yakub Memon was a Chartered Accountant and had impeccable antecedents. However, this did not appeal to the Supreme Court. He also submitted that the

accused take education in the prison as they have ample time and under that guise they get an opportunity to mix with the outer world. Therefore, taking education in the prison will not show that they are reformed. He submits that this is the first case in which this court has examined nine witnesses on the request of the accused to show their conduct though it is a known fact that ordinarily in no case such procedure is followed.

1721. Arun Thomas Ferreira, witness no. 9 for the defence on the point of mitigating circumstances, Ext. 4874, was examined to show the good conduct of the A1, A2, A5 to A7 and A9 to A13 as he had met them in the Nagpur Central Prison, where he himself was lodged as there were 11 cases against him. He also deposed about keeping him and A5, A7 and A9 in the 'Fasi Yard', which is a collection of solitary cells adjoining the gallows, etc., and he knows that they are very soft spoken persons and he also personally knows the A5, A7 and A9 and stated about their nature. About the A1, A12 and A13 he has not stated anything. His cross-examination has revealed that the charges against him were for the offences under sections 302, 307 of the IPC and under the UA(P)A and they were concerning Maoist activities in respect of cases registered by the police stations in Nagpur, Gondia and Gadchiroli districts. No doubt, he denied the suggestion given by the learned SPP that the ideology of Maoist is to go against the administration and to have a grudge against the government, therefore, he came to the court to give evidence. However, it is common knowledge that the ideology of persons who follow the Maoist ideology is as suggested by the

learned SPP. Hence, it is a question how much reliance can be placed on his evidence in respect of A5, A7 and A9. His evidence does not throw any light insofar as the good conduct of the A1, A12 and A13 are concerned.

1722. A13 examined his younger brother Aziz Bashir Khan, witness no. 1 for the defence on the point of mitigating circumstances, Ext. 4855, who stated about their family, his and A12's educational conduct in school and at the place of service and the problems faced by their families after the arrest of the A13 and the views of the A13 about the law. However, the utility of his evidence is negated by his answers in cross-examination. If the A13 was staying at Jalgaon continuously upto 2001, the witness must be knowing about his arrest in the case at Jalgaon in the year 2001. However, what he stated is that there were two cases registered against the A13 at Jalgaon after this case, which is obviously factually incorrect. He also stated incorrectly about the allegations in those cases. He also obviously stated falsely about coming to know about those cases when Jalgaon police arrested the A13 after he was arrested in this case and then arrested in Malegaon 2006 case. On top of that he is not consistent with the story of the A13 about living in Jalgaon upto 2003, because he stated that A13 is not residing in Jalgaon since 2001. The height of the uselessness of his evidence is proved by a single answer in his cross-examination that he does not know from which place A13 was arrested whereas it is the case of the A13, who has given the evidence accordingly, that the ATS team of Mumbai picked up his brother from Jalgaon on

01/10/06 and inquired about him, he, i.e., the witness Aziz, told them that he had gone to Belgaon with his parents and family and, this is important, that he, i.e., the witness, accompanied them on 02/10/06 from Jalgaon to Belgaum to show them his address and they came to the house where he was staying on 03/10/06. Thus, it is a question as to how much reliance can be placed on the evidence of Aziz Bashir Khan, witness no. 1 of the A13. Thus, the previous good conduct of the A13 is not made out and it is also irrelevant.

1723. Insofar as the next circumstance that is pleaded, it is the conduct of the accused in the prison and it is vehemently submitted across the bar that the conduct of the accused in the prison has been exemplary and learned advocate Shetty has also submitted that this court has observed the conduct of the accused in the period of seven years and their conduct has been beyond reproach. Learned SPP submitted in this respect that the court record will itself show the conduct of the accused and has then referred to several reports sent by the prison authorities of Kolhapur, Nagpur and Mumbai about the misconduct of the accused submitting that the A4 used foul language in connection with the presiding officer of this court, some of the accused were found in possession of unauthorised money and the applications Exts. 74 to 84 given by accused to my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) show totally non-co-operation of the accused and their effort to cause hurdles in the trial. He submits that this material on record is sufficient for drawing the inference that they are neither reformed nor capable of reformation and they have

shown stand regard for the judicial officers also. To my mind, this material cannot be looked into as indications of misconduct of the accused. However, no inference can be drawn otherwise that the conduct of the accused has been good or exemplary which is the word used by learned advocate Dr. Yug Choudhary. This is because of the simple reason that the accused were in prison which is a controlled situation and there is no other option, but to behave as per the discipline of the prison. However, the relevance of the reports of the prison authorities and the various applications given by the accused against my learned predecessor judge Mrs. Mridula R. Bhatkar (now Hon'ble Justice of the Bombay High Court) is a pointer that they have scant regard for the judicial system and there is no scope for any reformation in them. It is, therefore, as submitted by the learned SPP, not necessary for the prosecution to lead evidence and to prove that they are not capable of reform. In fact what evidence can the prosecution lead? The learned SPP submits that as per the tactics adopted by the accused to examine the witnesses to show the mitigating circumstances, the prosecution could have also produced ten witnesses to show their bad conduct or to show that they are incapable of being reformed. What the learned SPP has submitted is the correct position and therefore this circumstance is also not made out by the accused and it also covers the submissions of the learned advocate that the possibility of reform of the accused should be considered.

1724. The next two circumstances are that families of the accused have not abandoned them, they are meeting them regularly

in the prison and in the court and there will be a devastating effect of the death sentence on the family of the accused. A3, A9 and A12 are unmarried and it is a common thing that parents of persons who are of this age are generally old and generally suffer from some or the other illness. Insofar as family of the accused having not abandoned them, as is rightly submitted by the learned SPP, the members of the family of the prisoners do not forsake them just because they have committed some crime. Hence, this will not be a mitigating circumstance. Insofar as the effect of death sentence on the family, learned SPP submitted that it is now that the accused are saying that there will be an effect on their family members, but did they bother about the family members of the deceased and the injured? They never thought anything else and now when they are faced with the death penalty, they are pleading as to what will happen to their families after their death. In this context, the Hon'ble Supreme Court while dealing the Nitish Katara murder case said that 'criminals cry for justice, but they do not understand what they did. They commit the crime first and then cry for justice'. Thus, this will not be a mitigating circumstance.

1725. The next two mitigating circumstances are that the long custody period is a relevant consideration and the accused have endured harsh prison conditions and solitary confinement prohibited by law. In this context the learned SPP submitted that the custody period is irrelevant because the process of trial, that too such a big trial, naturally takes a long time and it cannot be considered as a mitigating circumstance. Insofar as solitary confinement is

concerned he submits that it is the accused themselves who have by their applications Exts. 87, 89, 90, 91, 92, 93 and 94 applied to this court to keep them in high security cell and now they are saying that they were kept there. This cannot be accepted. He has also pointed out that Ajmal Kasab was kept in a solitary cell for security reason and even then he was hanged.

1726. The next mitigating circumstance is about the custodial torture. It is irrelevant at this stage and it is also held that those are only allegations by the accused which have not been proved. It is submitted by the defence advocates that the offence was committed out of frustration and neglect, they were misguided and they are not extremist. In this respect the learned SPP has rightly pointed out the the education and work of the A4 and A12 and submitted that during the course of the trial all accused have given number of applications in their own handwriting which shows that they are sufficiently matured and are capable of knowing what is right and wrong and what is humanity and what is not. It cannot be, therefore, stated that they were victims of circumstances or that they were unknowingly dragged in the unlawful activity. He submits that the prosecution has led evidence to show that some of the accused had gone to Pakistan for taking militant training and A3 had gone twice. He submits that what is important to note is that the act is not performed on the spur of moment, but it is the outcome of a long planning. There is a long time gap between the time they had gone for training and between the bomb blasts. In other words they had ample opportunity to retract and to reform. On the contrary they

continued in their activity with utmost secrecy. Learned SPP then tried to show the specific evidence against the particular accused, but he was stopped because the facts of the case are not relevant for considering the mitigating circumstance. In any case what the learned SPP has submitted is the correct position. The accused, therefore, have not shown that they committed the offence out of frustration and neglect, etc. On the other hand the meticulous planning, the synchronization of events and the exactness with which they successfully accomplished their mission shows their extreme culpability. Therefore, this circumstance cannot be considered as a mitigating circumstance. Not only that, the alternative option of sentencing them to life imprisonment is also foreclosed by the simple fact of the massacre of human beings. The prosecution has proved that the A1 committed the murders of 28 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 110 persons, the A3 committed the murders of 28 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 100 persons, the A4 committed the murders of 32 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 115 persons, the A12 committed the murders of 9 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 102 persons and the A13 committed the murders of 26 persons and attempted to murder and voluntarily caused hurt and grievous hurt to 130 persons. These are not the simple murders and this is not a simple murder case. It was mindless, cold-blooded and wanton killings of innocent defenceless and unsuspecting

persons. The learned SPP has rightly described the accused as '**MERCHANTS OF DEATH**'. Hence, the alternative option of imprisonment for life is foreclosed and there are no two views possible and it is only the death penalty which is the appropriate penalty.

1727. A13 has pleaded in his written submissions Ext.4845, as is pleaded by all the accused, that he did not abscond and was arrested from Belgaum where he had gone with his family for visit. This is nothing but a palpable untruth, because the fact of he going with his family and parents, though mentioned in his written submissions Ext. 2834, is elaborated in a different manner when he gave evidence. It has come in his evidence that he came to know on 19/08/06 that his mother had suffered a severe heart attack, therefore, he went to Jalgaon with his family, admitted her in the hospital and served her and he also stated that as his father was also not well, he stayed at Jalgaon. He further stated that he went to Belgaum with his family for an outing after his mother started feeling better and stayed at the house of his friend at Hassan Cottage. The said friend is not examined by him and on the other hand his brother has stated that he does not know from where the A13 was arrested. In his cross-examination the learned SPP suggested to him that he left Mumbai and absconded on 18/08/06 when he came to know about the A7 being caught by the police on 17/08/06 and therefore he did not mention in his written submissions that he went to Jalgaon as his mother was sick. Thus, the reason that he gave about leaving Mumbai and going to Jalgaon

is obviously an improvement made by him to cover his abscondence. As per section 114 of the Evidence Act the court may presume existence of certain facts. Ordinarily the mere fact that the accused had absconded does not lead to a presumption of guilt. But if the circumstances warrant, a fair inference can be drawn that the fact that they did abscond is due to consciousness of guilt. Learned SPP rightly submitted in this respect that it is not merely a coincidence that the mobiles of the A7 and A13 were switched off after the arrest of the A2, therefore, no calls are reflected in the CDRs of the mobiles during that period. He submits that ordinarily if a person is required in some emergency, he takes leave from his job, e.g., he himself is sick or some of his family member is sick. What is expected is that the person will join his duty at the earliest. However, what the A13 has done in this case is that instead of going and joining his duty which was his source of livelihood, he vanishes and says that he went to Belgaum for outing, which is not palatable. To my mind, as per the accused himself, he left Mumbai with his family on 19/08/06. There is no evidence that he went to Jalgaon and his brother has also not stated about it. He was found after a period of one and a half months that too at Belgaum. A positive inference can be drawn from this fact that the dragnet was closing in and coming to know of the arrest of the A2 and A7, the A13 had the apprehension that he would be apprehended soon. This inference proves his guilty consciousness, because till that time his involvement in the crime had not been disclosed.

1728. Next comes the turn of the A7. No doubt he stated in his

written submissions Ext.2828 that he had gone to his native place in Bijnour District in UP on 25/07/06 with his aunt and then has stated about coming to know from his brother on phone that he was called by the ATS office and returning to Mumbai on 15/08/06 and then contacting the ATS officer on 18/08/06. Thus, for a period of more than 20 days he was not available in Mumbai. He has accordingly given evidence, but the most damaging aspect is that he had stopped his business of mobile repairing before going to UP. It has come in his evidence that he concluded his agreement with the shop owner in July, taking back his deposit and had gone to UP on 25/07/06. The date is very relevant because the reason for doing this that he gave is that the classes at the institute were disturbed because of all this and there was a problem at the shop. What the problem at the shop was is not explained by him. The disturbance of the classes at the institute was, the events calling him for inquiry that he narrated before he stated this. However, they are totally inconsistent because they are the events of August and September, 2006 and how come he concluded the agreement on 25/07/06, i.e., in July, 2006? Does this not show guilty consciousness or culpable mind because the A2, A3, A9, A10 and A11 had been arrested by that time? A positive inference of guilty consciousness on the part of the A7 can be drawn from this conduct.

1729. Next is the conduct of the A9. Ext. 1522 is the copy of the FIR lodged at the High Ground Police Station, Bangalore in Karnataka against him by the office of Data Core Technologies Pvt. Ltd., through whom the A9 had secured employment in the

prestigious Oracle Company at Bangalore. The contents of the complaint dtd. 30/08/06 alongwith the FIR are very relevant and show how the accused were trying to infiltrate into prestigious organizations for achieving their goal of terrorist activity. In his complaint to the police station, the officer has mentioned that the A9 was given employment letter on 28/06/06 and was deputed at the place of their client, i.e., Oracle India Pvt. Ltd. at Bangalore. It is mentioned in the complaint that they were informed by the officer of the Central Crime Branch, Bangalore that A9 was arrested by Mumbai Police as a suspect in recent Mumbai blasts. The officers who had visited their office had inquired about the credibility of the A9 and collected his details. The subsequent words are very important. It is mentioned in Ext. 1522 that, *'looking into the seriousness of the matter, we had initiated further inquiry to know the fact of the same and his intentions wherein we found that he had made an attempt to enter into unauthorized areas at our client Oracle, Bangalore Office (where he was officially deputed) which was restricted to intended members only'*.

1730. The above instances prove that the accused are not innocent and their culpability is evident.

1731. It is clear that the mitigating circumstances pleaded by all the accused by their nature are not sufficient to displace the aggravating circumstances. They pale into insignificance in the light of the aggravating circumstances. This case, therefore, without any doubt, falls into the category of the 'rarest of rare case'. The aggravating circumstances far outweigh the mitigating

circumstances even if they are held to be so. These accused are not like hardened criminals, in the sense the criminals whose source of livelihood is crime. They are terrorists with a particular mindset and followers of an ideology that is adverse to the society and the democratically established government. They have been shouting at the top of their voices that they are innocent. To my mind, it is but natural. No criminal will say that he is guilty for having committed any crime. The accused in this case thought that they can outsmart the intelligence and investigating agencies and therefore developed new stories every time and adopted various tactics. I am, therefore, constrained to hold that A1, A3, A4, A12 and A13 deserve only death penalty and nothing less than that.

1732. To show leniency or mercy in the case of crime of such magnitude to the accused, who have shown no repentance or remorse after exhibiting extreme depraved mentality, would be a travesty of justice. Though, I am fully conscious of the irrevocable nature of the death penalty, I have to award the death penalty to the A1, A3, A4, A12 and A13. Law is well settled that the court has to do justice not only to the accused but also to the victim and the society at large. As held by Apex Court itself, undue sympathy to impose inadequate sentence would do more harm to the justice system and would undermine the public confidence in the efficacy of law and society would no long endure such serious threats. Therefore, it is the duty of this court to award proper sentence having regard to the nature of offence and the manner in which it was executed. To expect society to be a silent spectator to this kind of depraved

behaviour and to continue to extend its protective arms to the convicts would be both unnatural and ridiculous. Hence, the exemplary and rarest of rare punishment is required. The Chinese philosopher Confucius said 'If justices goes astray, the people will stand about in helpless confusion'.

1733. In the context of the nature of the crime and the purpose for which it was committed, the words of the Islamic Scholar Maulana Wahiduddin Khan reported in the article in the Times of India publication of The Speaking Tree dtd. 09/11/14 are very relevant. It was in connection with the deadly suicide bomb attack that took place on November 2, 2014, at the Wagah border in Pakistan. He pleaded that the terrorists need to come out of their primitive, violent mindsets by getting educated and embracing peaceful methods. He wrote that,

'A deadly suicide bomb attack took place on November 2, 2014 at the Wagah border in Pakistan. The blast left more than 60 dead and about 200 injured. Why should there be news of this kind from Muslim countries? Obviously, the purpose of this violence is to achieve some goal. But, whatever be the goal, the violent method has become quite irrelevant in present time. The violent method was perhaps relevant in previous centuries when people lived in a primitive and/or tribal culture. But, now we are living in the age of freedom and science. Now, the peaceful approach is far more effective than violence. But, it seems that certain groups of Muslims are still beset by outdated tribal obsessions and are totally unaware of the fact that times have changed and that peaceful methods have replaced violent methods.'

It is a fact that no religion, including Islam, advocates terrorism or militancy. Islam is a religion of peace. All teachings of the Quran are based on peace, directly or indirectly. For example, there is a relevant verse in the Quran that tells us that the peaceful way is the best one (4:128). Moreover, Islamic teachings are crystal clear with regard to sanctity of life. The Quran says, "Whoever killed a human being--except as punishment for murder or for spreading fasad, disorder, in the land—shall be regarded as having killed all of mankind." (5:32) According to this verse, life is the fundamental right of every human being. No one is allowed to take away a life, except by way of a judicial verdict that is issued after passing through the due process of law.

According to my experience, the solution to the problem of violence lies in education. The greatest problem with a large section of the Muslim community is that its members are lagging behind in modern, scientific education. It is modern education alone that can change traditional mindsets.

There is another problem. Some Muslim thinkers of the 20th century have interpreted Islam in political terms. A number of such Muslims are obsessed with a politicised ideology of Islam. The need of the hour is to counter this problem. However, it cannot be countered by means of the gun. This problem can be solved only through ideology. It is not an issue of 'gun versus gun', but is rather an issue of 'gun verses ideology'. We have to present Islam as a religion of peace. Changing minds through this method will take some considerable time, as it is a long-term method. Countering the problem with the gun cannot make

those who are engaged in violence abandon their violent ways. Because these people are engaged in violence in the name of Islam, they can be stopped from indulging in such activities only if the true peaceful picture of Islam is shown to them .

The veracity of this method can be judged from the example of Kashmir. After Independence, militancy became widespread among a few groups of Kashmiri Muslims. We, at the Centre of Peace and Spirituality, quietly disseminated peaceful literature among Kashmiris. Today militancy in Kashmir has reduced considerably. The same literary campaign is required in other militancy-affected areas.

There is the widespread notion that Islam promotes violence. However, this is the result of sheer misunderstanding. The reason is that people fail to differentiate between Muslims and Islam. All these violent activities we hear of today are launched by misguided Muslims. It is this group which is to blame and not the religion of Islam.

It is a fact that some Muslims are engaged in militancy in the name of Islam. But, this is an example of the exploitation of Islam and not of the following of Islam. The problem is that under the influence of certain thinkers, some Muslims have come to believe in the concept of establishing an Islamic system in the world. For this, they required political power. But when they set out to establish this system, they see that a group is already occupying the political seat. So, they try to overthrow or unseat those who are in possession of political power. It is this thinking that has led such irate groups to perpetrate violence. But this thinking is completely un-Islamic, because Islam enjoins on its followers to follow its teachings at the individual level,

rather that foisting them on others by force or violence.

Then, there is the question of why religions advocate peace and not violence. The reason is very clear. The target of religion, including Islam, is to bring about reform in the individual and not in the political system. And, any kind of spiritual or intellectual change can be brought about in an individual only when he is addressed peacefully. Only those who have set political targets for themselves engage in violence, and since religions do not have any political target, they do not enjoin violence. Islam has adopted a very practical formula in this matter, that is, idealism at the level of the individual and pragmatism at the level of society.

There is a prophetic saying that some Muslims will indulge in un-Islamic activities in their later generations. The Prophet was asked how this would happen. The Prophet answered that they would give Islamic names to non-Islamic activities. What is wrong with them is that they have given the name of jihad to their militancy to seek justification for their militant activities. The need of the hour is to correct this self-styled interpretation of Islam and then everything will fall into place.

1734. I will be failing in my duty if I do not appreciate the help and support given by my staff members, i.e., Sheristedar, Interpreter, Stenographer, Typist and my peons, who were prevented from taking leaves when the occasion arose and who remained present even on holidays and during vacation. I must also make a mention of the assistance of PI D. N. Mohite, Court Liaison Officer of the ATS, whose complete knowledge of each and every document of the case

has not only helped me, but also the defence counsel.

1735. Hence, I pass the following order :-

ORDER

1. Accused no. 1 - Kamal Ahmed Mohd. Wakil Ansari, no. 3 - Mohd. Faisal Aatur Rahman Shaikh, no. 4 - Ehtesham Qutubuddin Siddique, no. 12 - Naveed Hussain Khan Rasheed Hussain Khan and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed :

(i) the offence punishable under section 302 read with section 120-B of the Indian Penal Code, 1860 and each one is sentenced to death and to pay a fine of Rs.30,000/- (Rupees Thirty Thousand Only), in default to suffer simple imprisonment for three (3) months. They shall be hanged by their necks till they are dead.

(ii) the offence punishable under section 307 read with section 120-B of the Indian Penal Code, 1860 and each one is sentenced to suffer imprisonment for life.

(iii) the offence punishable under section 326 read with section 120-B of the Indian Penal Code, 1860 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/- (Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.

(iv) the offence punishable under section 325 read with section 120-B of the Indian Penal Code, 1860 and each one is sentenced to suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only), in default to suffer simple

imprisonment for one (1) month.

(v) the offence punishable under section 324 read with section 120-B of the Indian Penal Code, 1860 and each one is sentenced to suffer rigorous imprisonment for three (3) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only), in default to suffer simple imprisonment for one (1) month.

(vi) the offence punishable under section 3(b) of the Explosive Substances Act, 1908 and each one is sentenced to death and to pay a fine of Rs.30,000/- (Rupees Thirty Thousand Only), in default to suffer simple imprisonment for three (3) months. They shall be hanged by their necks till they are dead.

(vii) the offence punishable under section 16 of the Unlawful Activities (Prevention) Act, 1967 and each one is sentenced to death and to pay a fine of Rs.30,000/- (Rupees Thirty Thousand Only), in default to suffer simple imprisonment for three (3) months. They shall be hanged by their necks till they are dead.

(viii) the offence punishable under section 3(1)(i) of the Maharashtra Control of Organised Crime Act, 1999 and each one is sentenced to death and to pay a fine of Rs.1,00,000/- (Rupees One Lac Only), in default to suffer simple imprisonment for six (6) months. They shall be hanged by their necks till they are dead.

(ix) the offence punishable under section 152 of the Railways Act, 1989 and each one is sentenced to suffer imprisonment for life.

(x) the offence punishable under section 151(1) and 153 of the Railway Act, 1989 and each one is sentenced to suffer imprisonment for five (5) years on each count.

(xi) the offence punishable under section 3(2)(e) of the Prevention of Damage to Public Property Act, 1984 and each one is sentenced to suffer imprisonment for five (5) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand Only), in default to suffer simple imprisonment for one (1) month.

(xii) the offence punishable under section 9-B(2) of the Explosives Act, 1884 and each one is sentenced to suffer imprisonment for three (3) years.

2. Accused no. 2 - Tanveer Ahmed Mohd. Ibrahim Ansari, no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 4 - Ehtesham Qutubuddin Siddique, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 7 - Mohammad Sajid Margub Ansari, no. 9 - Muzzammil Ataur Rahman Shaikh, no. 10 - Suhail Mehmood Shaikh, no. 11 - Zameer Ahmed Latifur Rehman Shaikh and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed the offence punishable under section 10(a)(i) of the Unlawful Activities (Prevention) Act, 1967 and each one is sentenced to suffer imprisonment for two (2) years and to pay a fine of Rs.10,000/-(Rupees Ten Thousand Only), in default to suffer simple imprisonment for one (1) month.

3. Accused no. 1 - Kamal Ahmed Mohd. Vakil Ansari, no. 2 - Tanveer Ahmed Mohd. Ibrahim Ansari, no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 4 - Ehtesham Qutubuddin Siddique, no. 5 - Mohamad Majid Mohamad Shafi, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 7 - Mohammad Sajid Margub Ansari, no. 9 - Muzzammil Ataur Rahman Shaikh, no. 10 - Suhail Mehmood Shaikh, no. 11 -

Zameer Ahmed Latifur Rehman Shaikh, no. 12 - Naveed Hussain Khan Rasheed Hussain Khan and no. 13 - Asif Khan Bashir Khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed :

(i) the offence punishable under section 20 of the Unlawful Activities (Prevention) Act, 1967 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/-(Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.

(ii) the offence punishable under section 3(4) of the Maharashtra Control of Organised Crime Act, 1999 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.5,00,000/-(Rupees Five Lacs Only), in default to suffer simple imprisonment for one (1) year.

(iii) the offence punishable under section 120-B read with sections 121-A and 122 of the Indian Penal Code, 1860 and each one is sentenced to suffer imprisonment for life on each count and to pay a fine of Rs.20,000/-(Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.

(iv) the offence punishable under section 120-B read with section 123 of the Indian Penal Code, 1860 and each one is sentenced to suffer rigorous imprisonment for ten (10) years and to pay a fine of Rs.15,000/-(Rupees Fifteen Thousand Only), in default to suffer simple imprisonment for one and a half (1½) months.

(v) the offence punishable under section 120-B read with section 13(1) of the Unlawful Activities (Prevention) Act, 1967 and each

one is sentenced to suffer imprisonment for seven (7) years and to pay a fine of Rs.10,000/-(Rupees Ten Thousand Only), in default to suffer simple imprisonment for one (1) month.

(vi) the offences punishable under section 3(1)(ii) and 3(2) of the Maharashtra Control of Organised Crime Act, 1999 and each one is sentenced on each count to suffer imprisonment for life and to pay a fine of Rs.5,00,000/-(Rupees Five Lacs Only) on each count, in default to suffer simple imprisonment for one (1) year.

4. Accused no. 2 - Tanveer Ahmed Mohd. Ibrahim Ansari, no. 5 - Mohamad Majid Mohamad Shafi, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 7 - Mohammad Sajid Margub Ansari, no. 9 - Muzzammil Ataur Rahman Shaikh, no. 10 - Suhail Mehmood Shaikh and no. 11 - Zameer Ahmed Latifur Rehman Shaikh are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed :

(i) the offence punishable under section 120-B of the Indian Penal Code, 1860 read with section 16 of the Unlawful Activities (Prevention) Act, 1967 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/-(Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.

(ii) the offence punishable under section 120-B of the Indian Penal Code, 1860 read with section 3(1)(i) of the Maharashtra Control of Organised Crime Act, 1999 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.1,00,000/-(Rupees One Lac Only), in default to suffer simple imprisonment for six (6)

months.

5. Accused no. 1 - Kamal Ahmed Mohd. Vakil Ansari, no. 2 - Tanveer Ahmed Mohd. Ibrahim Ansari, no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 12 - Naveed Hussain Khan Rasheed Hussain Khan and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed the offence punishable under section 9-B(2) of the Explosives Act, 1884 and each one is sentenced to suffer imprisonment for three (3) years.
6. Accused no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 7 - Mohammad Sajid Margub Ansari and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed the offence punishable under section 6 read with section 4(ii) of the Explosive Substances Act, 1908 and each one is sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/-(Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.
7. Accused no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 7 - Mohammad Sajid Margub Ansari and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed the offence punishable under section 201 of the Indian Penal Code, 1860 and each one is sentenced to suffer imprisonment for seven (7) years and to pay a fine of Rs.10,000/-(Rupees Ten Thousand Only), in

default to suffer simple imprisonment for one (1) month.

8. Accused no. 3 - Mohd. Faisal Aatur Rahman Shaikh is convicted under section 235(2) of the Code of Criminal Procedure, 1973 for having committed :

(i) the offence punishable under section 19 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/-(Rupees Twenty Thousand Only), in default to suffer simple imprisonment for two (2) months.

(ii) the offence punishable under section 3(5) of the Maharashtra Control of Organised Crime Act, 1999 and sentenced to suffer imprisonment for life and to pay a fine of Rs.2,00,000/-(Rupees Two Lacs Only), in default to suffer simple imprisonment for nine (9) months.

9. (i) Accused no. 2 - Tanveer Ahmed Mohd. Ibrahim Ansari, no. 3 - Mohd. Faisal Aatur Rahman Shaikh, no. 4 - Ehtesham Qutubuddin Siddique, no. 6 - Shaikh Mohd. Ali Alam Shaikh, no. 7 - Mohammad Sajid Margub Ansari, no. 9 - Muzzammil Aatur Rahman Shaikh, no. 10 - Suhail Mehmood Shaikh, no. 11 - Zameer Ahmed Latifur Rehman Shaikh, and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offence punishable under section 124-A of the Indian Penal Code, 1860.

(ii) Accused no. 4 - Ehtesham Qutubuddin Siddique is acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offence punishable under section 17 of the Unlawful

Activities (Prevention) Act, 1967.

(iii) Accused no. 1 - Kamal Ahmed Mohd. Vakil Ansari, no. 3 - Mohd. Faisal Ataur Rahman Shaikh, no. 6 - Shaikh Mohd. Ali Alam Shaikh and no. 7 - Mohammad Sajid Margub Ansari are acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offence punishable under section 40 of the Unlawful Activities (Prevention) Act, 1967.

(iv) Accused no. 3 - Mohd. Faisal Ataur Rahman Shaikh and no. 6 - Shaikh Mohd. Ali Alam Shaikh are acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offence punishable under section 12(1)(c) of the Passport Act, 1967.

(v) Accused no. 1 - Kamal Ahmed Mohd. Vakil Ansari, no. 4 - Ehtesham Qutubuddin Siddique, no. 5 - Mohamad Majid Mohamad Shafi, no. 7 - Mohammad Sajid Margub Ansari and no. 13 - Asif Khan Bashir khan @ Juned @ Abdulla are acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of the offence punishable under section 19 of the Unlawful Activities (Prevention) Act, 1967.

10. Accused no. 8 Abdul Wahid Din Mohammad Shaikh is already acquitted under section 235(1) of the Code of Criminal Procedure, 1973 of the charge of all the offences with which he is charged as per the order dated 11/09/15.

11. All substantive sentences of imprisonment are to run concurrently.

12. Accused are entitled to set off for their period of detention as per section 428 of the Code of Criminal Procedure, 1973 (subject to

the Prison Rules and G. R. No. RLP-1006/C.R.621/PRS-3, dated 15/03/2010 issued by the Home Department, Government of Maharashtra).

13. Seized articles/muddemal property be preserved for trial of wanted accused.
14. The entire proceedings be submitted to the High Court and the sentence of death shall be subject to confirmation by the High Court and shall not be executed until it is confirmed.
15. ATS, Mumbai is directed to file separate chargesheet against the wanted accused after their arrest.

(Y. D. SHINDE)
Spl. Judge, under
MCOC Act & NIA,
Special Court No.1,
Mumbai.

Date : 30/09/2015

Dictated on : 30/09/2015
Transcribed on : 30/09/2015
Signed on : 07/10/2015

“I affirm that the contents of this PDF file are the same, word to word, as per the original judgement”.

Name of Steno with post : Mrs. Mugdha M. Paranjape (Stenographer H. G.)

Name of the Judge : H. H. J. Shri Y. D. Shinde (C. R. No. 57)

Date of pronouncement
of order : 30/09/2015

Order signed by the
P. O. on : 07/10/2015

Order upload on : 07/10/2015