

(2014) 12 KAR CK 0072

In the Karnataka High Court

Case No : Criminal RC No. 6 of 2008, Crl. A. Nos. 1205 of 2008 and 26 of 2009

High Court of Karnataka

APPELLANT

Vs

Izher Baig

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Arms Act, 1959 — Section 25(1A), 27
Civil Procedure Code, 1908 (CPC) — Section 108, 112
Constitution of India, 1950 — Article 20, 20(2), 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 100(5), 108, 161, 162, 164
Evidence Act, 1872 — Section 10, 113A, 114, 114(e), 133
Explosive Substances Act, 1908 — Section 3, 4, 5, 6, 7
Explosives Act, 1884 — Section 3, 5, 6, 6A, 8
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 107, 120, 120(B), 120A, 120A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 15

Citation : (2014) 12 KAR CK 0072

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : H.N. Nilogal, Special Public Prosecutor, Advocate for the Appellant

Judgement

N. Kumar, J.—A series of bomb blasts at Churches situate at various places rocked the State of Karnataka in the year 2000 attempting to disturb the normal tranquility of the civilized society and the peace loving people of Karnataka who believe in co-existence of all religious denominations. The Karnataka Government constituted a Special Court for trial of these cases numbering four in Bangalore. These Appeals and Reference arise out of the bomb blast that took place at St. Ann's Catholic Church situated at Wadi, on 08.06.2000 at 6.30 a.m. and 9.30 a.m.

2. Crl. A. No. 1205/2008 is preferred by A. 3, A. 4, A. 5, A. 6 and A. 7 and Crl. A. No. 26/2009 is preferred by A. 8, A. 10, A. 11, A. 12, A. 13, A. 14, A. 15, and A. 16. Both these appeals are preferred against the judgment and sentence passed in S.C. No. 570/2003 in Crime No. 77/2000, by the 34th Addl. City Civil &

Sessions Judge and Presiding Officer, Special Court for the trial of Church Bomb Blast Cases, convicting under Section 235(2) Cr.P.C. for offences under Section 120-B read with Sections 121-A, 124-A and 153-A IPC, and for other offences, for bomb blast which took place at St. Ann's Catholic Church situated at Wadi.

3. The State has preferred Crl. R.C. No. 6/2008 seeking confirmation of death sentence of A. 3, A. 4, A. 5, A. 6 and A. 7. Therefore, all these appeals are taken up for consideration together and disposed of by this common order.

BACK GROUND

4. Accused are the members of Deendar Anjuman Association having its head office at Asifnagar, Hyderabad in the State of Andhra Pradesh and branches at various places in that State as well as Karnataka, Goa, Maharashtra and other States. Late Hazrath Moulana Syed Siddique Kibla @ Siddique Deendar Channabasaveshwara, the founder of Deendar Anjuman was born on 07th June 1886 to a remarried widow at Balampet near Gurimitkal in Gulbarga District. He had primary education at Hirapura Village in Gulbarga District, studied Kannada, English, Urdu, Arabic and other languages and higher education from Mohammadan College, Madras. After graduation, he practiced as an Ophthalmologist for some days in Bijapur District. He studied Ramayana, Mahabharatha, Bible, Quran, Vachana Sahitya and other literature pertaining to different religions in India and was closely associated with Lingayath Community and its literature. Being a good orator with knowledge of different religions, he was able to establish social contact with people of all religions in that area.

5. Siddique Deendar Channabasaveshwara professed that he was a believer of "Eka Devo Bhava and "Sarva Dharma", respect for all religions and that everyone should believe in "Ekodharma, Ekojagadguru and Ekojagadeeshwara". Believing this, the gullible people blindly accepted him as their Guru and participated in all the meetings. This was the facade he adopted to fool the public at large, but in reality, Eko Jagadeeshwara meant Allah, Eko Jagadguru - Mohammad Paigambar and Eko Dharma - Islam; and Siddique Deendar Channabasaveshwara's hidden agenda was to Islamise the whole world including India.

6. To achieve this object, Siddique Deendar Channabasaveshwara came out with the theory that the ancestors of Lingayaths originally belonged to Arab Country and resided near Egypt. When Egypt was about to flourish, they migrated to South India and were called "Dravidians". 2000 years ago, rivers used to flow with red blood of cattle killed by the Hindus for consuming the meat and if a Brahmin did not eat meat, he would be an outcast. However, the Lingayaths were made to give up eating beef and chant "Hari Hari Sita Rama" instead of their mahamantra "Hara Hara Mahadeva" by the Aryan race that ruled the land. Jagadguru Shankaracharya was responsible for breeding jealousy among different communities and therefore cannot be called a Jagadguru. Idol worshipping was started because of Jagadguru Shankaracharya whereas even

the Bible says that the idol worshippers should be killed. Therefore Mohammad Paigambar alone can be the Jagadguru.

7. To propagate the above ideas and to achieve his object and hidden agenda, Siddique Deendar Channabasaveshwara wrote books titled "Lingayata" in Kannada, "Pancha Shanti Marga", "Sandhyavandana Mahasankalpa", Hindu Muslim Ikamathya", Zmama-Ul-Jihad" and Jagadguru". He also got printed, published and circulated various books interpreting Ramayana, Mahabharatha, Bible, Quran and Vachana Sahitya and other literature interpreting them in his own way, in many languages including Kannada, English, Urdu, Arabic, Tamil and Telugu. Siddique Deendar Channabasaveshwara not only claimed to be the reincarnation of Channabasaveshwara, the Lingayath saint but declared himself as Jagadguru Channabasaveshwara with an intention to establish contact with Lingayaths in the states of Karnataka, Andhra Pradesh, Goa and Maharashtra. His main object was to convert persons following other religions to Islam so that he could become the Jagadguru and rule entire India and Islam would be the only religion followed in India.

8. Siddique Deendar Channabasaveshwara and his followers, 16 in number, were prosecuted for endangering public peace by preaching new religion and thereby promoting hatred and enmity between people belonging to different communities. After enquiry, the District Magistrate, Dharwad gave a verdict in favour of the prosecution and ordered that the accused should execute personal bond for Rs. 100/- with a surety for the likesum and to maintain good behaviour for one year.

9. After liberation of Hyderabad State, the Agent-General of India in Hyderabad State, Dr. K.M. Munshi, during his stay at Hyderabad personally observed the activities of Deendar Anjuman Organization and its founder and has observed thus at pages 40 and 41 of his autobiography- "The End of an Era Hyderabad Memoirs":

"The Deendars however remained active proselytizers, though by January 1948 their influence diminished. The head of the religious sect styled himself as "Hazarat Moulana Siddique Deendar Channa Basaveshwara Qible". He posed as the avatar of Channa Basaveshwara, the ancient founder of the Lingayath sect of the Hindus and claimed to have the same divine marks on his body as that saint. Four Siddique's lieutenants also declared themselves to be the Hindu divinities viz., Vyas, Narasimha, Srikrishna and Veerabhadra. Siddique had his headquarters at Hyderabad. His followers reckoned to be 500 strong had no ostensible means of livelihood. When the situation in a village grew tense, they led the Muslims against Hindus and set out to loot the possession of the Hindus. When they set out to loot the possession of the Hindus, they dressed as Razakars. At one time Siddique even ventured to capture Hampi, the ruined capital of the vanished empire Vijayanagar, to recover buried treasure. Deendar Siddique was represented as shooting lions, tigers, leopards and foxes, all of which had the shape of Sikhs, Hindus, Christians and Lingayaths. He also

declared Jihad, a religious war against the shrines of the Hindus and issued a public appeal for one lakh volunteers and a loan of Rs. 5,00,000/- for the purpose."

10. Siddique Deendar Channabasaveshwara had four wives by name (1) Zainabi at Ramdurg, (2) Tajdar Begum at Bangalore, (3) Hazra Begum at Ramdurg and (4) Fathima Begum at Bangalore. He renamed them as Gowramma, Gangeshwari, Parvathi and Kamma respectively. After death, the 1st and 3rd wives Zainabi and Hazra Begum who were the full sisters, were buried at Bhatakurki Village in Ramdurg Taluk of Belgaum District in Karnataka. The 2nd wife Tajdar Begum died at Mardan in Pakistan. Fathima Begum, the 4th wife died in Asifnagar, Hyderabad, Andhra Pradesh and was buried at Deendar Anjuman at Asifnagar. Hazrath Siddique Deendar Channabasaveshwara died on 4th April 1952 and his body was also buried at Asifnagar in Hyderabad and a tomb was built in his memory.

11. A-17, Zia-Ul-Hassan, who later became the Guru of Deendar Anjuman Ashram is the son of Siddique Deendar Channabasaveshwara and migrated to Pakistan with his seven sons (1) Khaleel Pasha, (2) Syed Javed Hasan, (3) Sayed Javed Pasha, (4) Syed Asif, (5) Syed Khalid Hasan, (6) Syed Abid Pasha and (7) Syed Adil Pasha. Zia-Ul-Hassan's daughter Sameena is married to Abdul Saleel Choudhry, the Secretary of Deendar Anjuman Ashram and they are residing in the house situated within the ashram premises in Hyderabad.

12. During 1998 A-17 had been to Mecca and Madina, where he is said to have got the prophecy that India would become an Islamic country within two years, a dream of Deendar Anjuman, that there would be a war between India and Pakistan, that north India would suffer 70 to 75% loss and all the arms and ammunitions would be exhausted. Then he would enter India with nine lakh followers (pathans). Soon after setting foot on Punjab, his followers would create havoc in southern India, paving way for his easy entry into that part too.

13. The organisers of Deendar Anjuman Ashram, to attract young Muslims into achieving their object held secret meetings every year after celebration of Urs in the month of Rajab and motivated young people to undergo training in Jihad, Nifaaq and Siria activities. Accordingly many went to Pakistan and took training in the preparation of explosive substances, bombs etc., blasting of bombs and also operating arms and ammunitions. Further the followers of Deendar Anjuman were angered by the conversion of poor Muslims to Christianity by the Missionaries and therefore conspired to create disharmony, feeling of enmity, hatredness and ill-will between the two major communities in India i.e., the Hindus and the Christians, so that India would face the wrath of Western world and could no longer project itself as a Secular nation. In other words, they conspired to make Christian dominated Western Countries to condemn India and create hatredness towards the Govt. established by law in India.

14. In furtherance of the above object, accused persons blasted several Churches

in Andhra Pradesh, Karnataka and Goa and we are concerned only with the four blasts that took place in the State of Karnataka, of them one was accidental. The first blast took place on 08.06.2000 at St. Ann's Catholic Church, Wadi, Chittapur Taluk, Gulbarga District at about 6:30 a.m., where again one more blast took place at 9:30 a.m. The second blast took place on 08.07.2000 at St. Luthern Church in Hubli between 3:30 a.m. and 4:30 a.m. The third bomb blast was on 09.07.2000 at 10:15 p.m. at St. Peter and Paul Church on J.J. Nagar Main Road, Bangalore. Before that, a Maruti Van bearing registration No. GA-01/U-2786, carrying bombs for being planted in some other church exploded at about 8:30 p.m. near Minerva Mills killing A-14 and A-15 and causing grievous injuries to A-10.

15. Consequent to the above, the police stations at Wadi, Keshavapura in Hubli, J.J. Nagar and Magadi Road in Bangalore registered case in Cr. No. 77/2000, 87/2000, 113/2000 and 290/2000 respectively. During investigation, besides floppies, CDs, Credit cards, pass books, passports etc., the Investigating Officers seized the literature, books and pamphlets containing the objects and activities of Deendar Anjuman Ashram, from the house and office premises of the accused persons.

16. In all these cases, after investigation charge sheets were laid against the accused persons for offences punishable U/Ss. 121, 121-A, 124-A, 153-A, 295, 436, 427 r/w Sec. 120-B IPC and also Ss. 3, 4 and 5 of Explosive Substances Act, 1908 and Sec. 5 r/w Sec. 9-B of Explosives Act, 1884. On committal by the learned Magistrate, these were numbered by the court of Sessions as S.C. 570/2003, 580/2003, 696/2005 and 423/2001 respectively and the State of Karnataka constituted a Special Court to try the same. Andhra Pradesh and Goa also prosecuted the accused in connection with blasting of the Churches in those States.

17. During trial, witnesses were examined, documents were exhibited and material objects were marked by the prosecution in each case and the details of the same is as below:

(1) In S.C. No. 696/2005, 64 witnesses were examined as P.W. 1 to P.W. 64 and 262 documents were marked as Ex. P1 to Ex. P262 and 80 material objects were admitted as M.O. 1 to M.O. 80.

(2) In S.C. No. 580/2003 c/w S.C. No. 579/2003 96 witnesses were examined as P.W. 1 to P.W. 96 and 244 documents were marked as Ex. P1 to Ex. P244 and 80 material objects were admitted as M.O. 1 to M.O. 80.

(3) In S.C. No. 570/2003, 61 witnesses were examined as P.W. 1 to P.W. 61 and 161 documents were marked as Ex. P1 to Ex. P1 61 and 40 material objects were admitted as M.O. 1 to M.O. 40.

(4) In S.C. No. 423 of 2001, 67 witnesses were examined as P.W. 1 to P.W. 67 and 298 documents were marked as Ex. P1 to Ex. P298 and 212 material objects

were admitted as M.O. 1 to M.O. 212.

18. Sahabzada Zia-Ul-Hassan @ Zia-Ul-Hassan @ Hazarath, S/o. Late Hazarath Moulana Syed Siddique Hussain who is a common accused in all these cases and his four sons Syed Zahed-Ul-Hassan @ Zahed Pasha, Syed Khalid Pasha @ Khalid, Syed Shabihul Hassan @ Syed Adil Pasha @ Adil and Khaleel Pasha @ Khaleel who are also the accused, are residents of Mardan in Pakistan but, absconding. Syed Wahab S/o. Late Syed Ismail, a resident of Vijayawada in Andhra Pradesh and Sheik Ameer Ali @ Ameer Ali, S/o. Moulana are also absconding. Therefore, cases against these accused have been split up.

19. Mohammed Zakir @ Zakir, S/o. Mohammed Burhanuddin a resident of Deendar Anjuman Ashram, Asif Nagar, Hyderabad and Mohammed Fida-Ur-Rahaman Siddique @ Siddique, S/o. Mohammed Zia-Ur-Rahaman @ Mohsin Chitradurgi of Somappa Block, Church Street, J.C. Nagar, Bangalore died in Maruti Van bomb blast that took place near Minerva Circle, Bangalore. One of the main accused in all these cases Syed Khaliqzama @ Khaliqzama, a resident of Nuzvid, Krishna District in Andhra Pradesh died during trial before the Special Court and another accused by name Rishi Hiremath @ Munna, a resident of Asar Oni in Old Hubli died during the pendency of the appeals. As such the criminal proceedings against the above accused have stood abated.

20. Upon consideration of the material on record and after hearing the arguments, the Special Court passed separate orders in all the four cases and pronounced the judgment on the same day convicting all the accused in all the four cases except A. 23-Mohd. Riyazuddin in S.C. 696/2005, A-6-Mohd. Jaffar in S.C. No. 579/2003 c/w 580/2003 and A. 1-Syed Hamir Hamza and A. 2- Ismail Akkis in S.C. No. 570/2003, who were acquitted.

21. In S.C. No. 696/2005, A. 10 was imposed death sentence. A. 1 and A. 5 were imposed death sentence in S.C. No. 579/03 c/w 580/2003 and A. 3 to A. 7 in S.C. No. 570/03 for the offence under Section 121 IPC. Other accused were sentenced to life imprisonment.

22. The Sessions Court, as required U/s 366 Cr.P.C., submitted the proceedings to the High Court for confirmation of death sentence in Crl. R.C. Nos. 3, 4 and 6 of 2008, in all the cases.

23. The accused who were convicted in all these appeals have preferred appeals against the judgment of the Sessions Court.

24. Crl. A. No. 1202/08 arising from the judgment of conviction and sentence in S.C. No. 423/01 was allowed with respect to A-8, A-9 and A-17. In so far as the first appellant therein (A-1) is concerned the appeal was allowed in part by setting aside the conviction and sentence passed against him for the offence punishable U/Ss. 121, 120-B r/w Ss. 121-A, 124-A, 153-A and 304 Part II of IPC and Sec. 3 of the Explosive Substances Act, 1908; he was convicted for a lesser offence punishable U/s 304-A IPC and was sentenced to undergo RI for two

years. Further the judgment of conviction for the offence U/Ss. 337 and 427 IPC, Sec. 5 of the Explosive Substances Act, 1908 and Sec. 9(1)(b) of the Explosives Act, 1884 read with Rule 5 of the Explosives Rules 1983 is confirmed. The sentence imposed by the Sessions Court on the first accused for the said offence was also confirmed and it was ordered to run concurrently; and was also given the benefit of set off for the period of detention he had already undergone. It is submitted that against the said judgment, the State has preferred an appeal to the Supreme Court and special leave to appeal has been granted by an order dated 03.02.2014 and the appeal is registered as Criminal Appeal Nos. 351-353/2014 and the same is pending consideration.

25. We have heard the remaining appeals together as they involve common question of law, but separate judgments are rendered after appreciation of the evidence adduced in each case independently and pronounced simultaneously today.

FACTS IN S.C. No. 570/2003

26. According to the prosecution, to achieve the object as narrated earlier, Absconding A. 17 namely Sahabjada Zia-Ul-Hassan, with the assistance of his sons, i.e., A. 18, Syed Khalid Pasha, A-19 and Syed Sabihul Hassan, who were also absconding held a main conspiracy meeting in the Deendar Anjuman Ashram, Hyderabad on 20.10.1999. Subsequently, they also held various meetings at other places to commit illegal acts by illegal means, to create disharmony or feelings of enmity, hatred and ill will between two major communities, i.e., Hindus and Christians, so as to spread communal clashes in between those communities. In that conspiracy meetings, they agreed to prepare and circulate pamphlets to the Christian missionaries in the name of Hindus and vice versa to create communal ill will between the major religions of India. Plans were also prepared to commit holy jihad to achieve the above goal. In that conspiracy meeting they agreed to collect the information about the vital installations of India including bridges, roads, military bases, railways and like other important places to derail the Indian economy. They also agreed to blast churches in various places to create communal hatred. To perform this jihad activities they agreed to mobilize the funds by performing theft, robbery, dacoity etc., i.e., Siria and to send the mobilized amount to the Guru namely Zia-Ul-Hassan residing at Mardan, Pakistan. The agenda of the conspiracy was to create hatred towards the Government established by Law in India and also cause other Christian dominated western countries to condemn India.

27. In furtherance of the main conspiracy held at Hyderabad, on 20.10.1999, the conspiracies were renewed in Karnataka also by holding secret conspiracy meetings in the houses of A-10-Syed Mohd. Ibrahim at Varthur, A-11-Abdul Rehman Sait at Vijayanagar, Bangalore and in the houses of father-in-law of the accused No. 14-Zakir situated at Ganganagar and Mohisin Chitradurgi, father of deceased accused No. 15-Siddique, situated at J.C. Nagar, Bangalore. All the accused persons got prepared various provocative pamphlets in the name of

Hindus addressed to the Christians and in the name of the Christians addressed to Hindus and they circulated them in various places to promote disharmony in between two major communities. They also collected information with regard to railways, bridges, important roads and other Government establishment, defence secrets, atomic energy plants and other vital installations and transmitted the information to Mardan through internet, floppies, CDs., E-mail etc., only to derail Indian economy and cause financial loss to the Government.

28. The hidden aim and object of Deendar Anjuman Ashram was to islamise the whole world including India. In order to propagate their object and hidden agenda, they printed, published and circulated various books in many languages including Kannada, English, Urdu, Arabi, Tamil, Telugu to attract young muslims in achieving their object. The organizers of the Deendar Anjuman Asharm used to hold a secret meeting in every year after celebration of Urs in the month of Rajab and motivate the young followers to take training in Jihad, Nifaaq and Siria activities. Accordingly, many accused persons went to Pakistan and took training in preparing and operating arms and ammunitions including explosive materials, preparation and blasting of bombs.

29. In furtherance of the renewed and continued conspiracies which took place in the houses of A. 15 and A. 13 at Varthur and Vijayanagar, Bangalore and in the houses of A. 10 at Batakurki, A. 11 and A. 12 at Hubli, accused Nos. 7, 8, 13 and 15 prepared bombs in the house of A. 7 namely Sheik Hashim Ali at Hyderabad and later sent to Bangalore through deceased Zakir. On 07.06.2000 night A. 3 to 6 came from Hyderabad to Wadi through railway along with huge quantity of explosive substances and bombs prepared by them without holding any valid licence or permit issued by the competent authority with an intention to plant them and blast St. Ann's Catholic Church, Wadi, Taluk, Chittapur, District Gulbarga to create communal hatred and lawlessness in that area. Accordingly, A. 3 to 6 as per the above referred to renewed and continued criminal conspiracy with the other accused including absconding accused Nos. 17 to 19 on 08.06.2000 at about 6.30 am planted the bombs in the St. Ann's Catholic Church, Wadi and blasted them causing huge loss of property to that Church. Again at about 9.30 am one more bomb planted there blasted and caused simple and grievous injuries to C.W.-4 - Susainathan Peter and CW-3 - Namdev who were standing there along with other persons curiously watching the place of first blast. As a result of these blasts, the Christian community people of that area gathered and they felt insulted to their place of worship and their religion. Large number of people gathered there belonging to different casts and communities. The accused Nos. 1 to 19 in furtherance of their continued and renewed criminal conspiracy committed sedition, promoting enmity, disharmony between two religious groups, mischief causing damage to the Church, illegally possessing and transporting explosives and causing explosion in the place of worship to achieve jihad in India and Islamise the entire India. Accordingly, all the accused are alleged to have committed the offences punishable under Sections 124-A, 152-A, 427, 337 read with Section 120-B IPC and also under Section 5 read with Section

9-B of Explosive Act, 1884 and also under Sections 3 and 4 of Explosive Substance Act, 1908.

30. On 08.06.2000 C.W. 4 Susainathan Peter submitted the first information to the Wadi police and on the said basis case in Cr. No. 77/2000 was registered and FIR was submitted to the JMFC, Chittapur. The police inspected the entire blast place in the presence of the priest of the Church and panchas, drew mahazar, seized all the incriminating materials from the spot including the residues found there, sent the injured Susainathan and Namdev to the hospital for examination and treatment, recorded the statements of the witnesses present there. On 15.07.2000 B. Mahantesh, Dy. S.P., COD, Bangalore took up the further investigation of this case as per the direction given by his superiors. In the mean time, he came to know that one Zakir and Siddique had died and Ibrahim had sustained grievous injuries in a bomb explosion incident in Bangalore city. Thereafter, he went there and collected all the information about that place and after receiving the necessary information about the involvement of the above accused persons in this case, arrested them on different dates, enquired them, recorded their voluntary statements, searched their respective houses and place of work, seized huge incriminating articles from there, sent all the seized properties for examination to the FSL, Bangalore. The above accused persons showed the places where secret conspiracy meetings were held at Hyderabad and even in Bangalore, Hubli, Batakurki and other places. He drew mahazars in all those places as pointed out by the respective accused. A. 3 and to A. 6 in furtherance of their respective voluntary statements led the panchas and the Investigating Officer to platform No. 1 of Wadi Railway Station and pointed out the place where they alighted the train from Hyderabad and had tiffin near a canteen and went to St. Ann's Catholic Church, Wadi and they pointed out the exact place where the bomb was planted fixing the timer. The Investigating Officer drew panchanams at all those places in the presence of panchas. Accused led the Investigating Officer and the panchas to Hyderabad, pointed out the various places at which the conspiracy meetings were held by absconding accused Nos. 17 to 19. The Investigating Officer after receiving the examination report from the FSL realized that the accused had used very powerful explosive substance in preparing bombs in those places. Thus the Investigating Officer on the basis of the above oral and documentary evidence and the examination report received by him on being confirmed about the complicity of the accused in participating in the renewed and continued criminal conspiracies at various places and preparation, publication and circulation of pamphlets, hand bills etc., containing provocative and insulting religious literatures. It was also found by the Investigating Officer that some of the accused had collected information about the vital installations of India including Karnataka, defence secrets and other materials and also found sharing those secret information with others in Pakistan through E-mail and other medium to derail the Indian economy and to create communal clashes, ill-will in between Hindus and Christians and also he found circulation of pamphlets in the name of Hindus to the Christian and vice versa to

create communal clashes and he also confirmed that the accused possessed the above explosive substances without obtaining any valid licence or permit from the competent authorities.

31. Thereafter the Investigating Officer obtained the sanction order from the Deputy Commissioner, Gulbarga to prosecute the accused apart from obtaining a sanction order from the Government of Karnataka as it is required under Section 196 Cr.P.C. Thus with the completion of investigation, he submitted the final report on 20.10.2000 to the Court of the learned JMFC Chittapur. On receipt of the final report, the learned JMFC, Chittapur, registered a case in CC No. 691/2000. After taking cognizance of the offences mentioned in the final report, the learned Magistrate tried to secure the presence of all the accused. He could secure only A-1, 2 and 4. So he split up the case against all the other accused. By order dated 31.7.2003, he committed the case to the Court of Sessions, Gulbarga.

32. Later the learned District and Sessions Judge, Gulbarga, registered the case in S.C. 181/2003. Thereafter the Special Court was established to try the Church Bomb Blast Cases. Accordingly, as per the order passed by this Court bearing No. GOB I-1/2003 dated 27.08.2003, the case was transferred from the District & Sessions Court, Gulbarga to the Special Court at Bangalore for trial as per law. On such transfer, it was renumbered as S.C. 570/03. Thereafter A. 1, 2 and 4 were produced before the Special Court.

33. On 19.09.2004 after hearing the parties charges were framed for the offences under Section 124-A, 120-B, 153-A, 427, 337 read with Section 120-B IPC and also for the offences under Section 5 read with Section 9-B of Explosive Act, 1884 and also under Sections 3 and 4 of the Explosive Substance Act, 1908; read over and explained to A. 1, 2 and 4. They pleaded not guilty and claimed to be tried.

34. On 18.12.2004, on the application of the learned Public Prosecutor, the Superintendent, Central Prison, Bangalore, was directed to produce A. 3, 5 to 13, 15 and 16 and accordingly they were produced before the Special Court on 03.01.2005. A. 14 was produced on 17.01.2005.

35. On 25.07.2005, charges were framed against A. 3, 5 to 8, 10 to 16 under Section 124-A, 153-A, 324, 427 read with Section 120-B IPC and also under Section 5 read with Section 9-B of Indian Explosive Act, 1884 and also under Section 3 and 5 of the Explosive Substance Act, 1908 read with Section 120-B IPC. The same was read over and explained to the accused and they pleaded not guilty and claimed to be tried.

36. The prosecution examined 61 witnesses as P.Ws.-1 to 61. They got marked 161 documents as per Exs. P-1 to P-161 and also Ex. D-1. The seized incriminating material objects were marked as M.Os.-1 to 40. After that prosecution closed its evidence. A. 1 to A. 8 and A. 10 to A. 16 were examined under Section 313 Cr.P.C. The stand taken by all the accused is that of total

denial of the entire prosecution case; that they have been falsely implicated in this case; they know nothing about Deendar Anjuman Ashram and its aims and activities and they are all innocent persons. The accused did not lead any defence evidence.

37. While the case was being heard, the learned Special Public Prosecutor filed an application under Section 216 of the Cr.P.C., for framing of additional charges for the offences under Sections 436, 121 and 121-A IPC against A-3 to A. 8, A. 10 to A. 16. The sanction order issued by the Government of Karnataka earlier was treated as valid sanction even for those offences. Additional Charges were read over and explained to A. 3 to A. 8 and A. 10 to A. 16. They pleaded not guilty and claimed to be tried. The learned Special Public Prosecutor filed a memo stating that he has no additional oral or documentary evidence to be adduced in the matter as evidence already led is sufficient even in respect of additional charges. The learned defence Counsel, filed an application under Section 217 Cr.P.C. to recall P.Ws.-49, 52 and 61 for further cross-examination on additional charges framed. Accordingly, the aforesaid witnesses were recalled and the defence Counsel fully cross-examined those witnesses in respect of additional charges. The accused did not adduce any defence evidence.

38. The Trial Court, on consideration of the aforesaid material on record and after hearing the arguments, convicted A. 3 - Izher Baig, A. 4 - Syed Abbas Ali, A. 5 - Mohd. Sharfuddin, A. 6 - Mohd. Khalid Chowdry, A. 7 - Sheik Hashim Ali, A. 8 - Mohd. Farooq Ali, A. 10 - Meerasab, A. 11 - Rishi Hiremath, A. 12 - Muneeruddin Mulla, A. 13 - Abdul Rehaman Sait, A. 14 - Mohd. Siddique, A. 15 - S.M. Ibrahim and A. 16 - Syed Hasanuzama for the offences under Section 120-B, read with Section 121-A, 124-A and 153-A IPC and sentenced to undergo imprisonment for life.

39. A. 3, A. 4, A. 5, A. 6 and A. 7 are also convicted under Section 235(2) of Cr.P.C. for the offence under Section 121 of IPC and they are sentenced to death subject to confirmation by this Court. They were also convicted for an offence under Section 3 of the Explosive Substances Act, 1908 and under Rule 5 of the Explosives Rules, 1983 read with Section 9B of the Explosives Act, 1884. Against the said judgment and sentence, the accused have preferred this appeal. The Trial Court has sent to the High Court for confirmation of death sentence imposed on these accused.

40. It is in this background, we have to find out whether the appellants have made out sufficient grounds for interfering with the order of conviction and sentence passed by the trial court.

41. Sri. Hasmath Pasha, learned counsel for the accused-appellants has urged the following grounds:

(1) The accused persons namely A. 3, A. 5, A. 6, A. 7, A. 8, A. 10, A. 11, A. 12, A. 13, A. 15, and A. 16, all were tried for the offence of criminal conspiracy in S.C. 95 of 2001 at Hyderabad, convicted and sentenced and they could not have

been tried again for the same offence and it offends Article 20(2) of the Constitution of India as well as section 300 of Cr.P.C.

(2) The sanction accorded by the Government for prosecuting the accused for an offence U/s 124-A IPC is invalid. Similarly, the sanction accorded by the Commissioner of Police for an offence U/s 3 of the Explosive Substances Act, 1908 is also invalid.

(3) Sanction is not accorded for prosecuting the accused for offence U/s 121-A of IPC as such, the entire trial is vitiated for want of jurisdiction.

(4) The entire case of the prosecution revolves around two aspects: (a) Confession statement and (b) Evidence of an Accomplice.

(5) which are inadmissible in evidence.

(6) The original confession statements and the mahazars drawn were not produced but only the copies were produced. As such the secondary evidence adduced was inadmissible in evidence.

(7) The statement of accused to the police, which led to discovery of the material objects involved in the offence alone is admissible. The condition precedent for application of the said rule is, police should not be aware of the places and the material objects seized. If they were aware of the material objects even before seizure, Section 27 of the Evidence Act would have no application.

(8) The panch witnesses to seizure mahazars have all turned hostile and therefore seizure is not proved.

42. Per contra, the learned Special Public Prosecutor Sri H.N. Nilogal argued that the sanction accorded is legal and valid. Since additional charge was framed under Section 121A of the Indian Penal Code on the same set of facts, no further sanction in law was required. The confession statement is in the handwriting of the accused; it was given without any coercion or force and he has admitted the same. Though an attempt was made to retract after a period of 2 1/2 years, the Court below was justified in acting on the confessional statement. The witness whom the accused are terming as an accomplice is not an accomplice but an independent witness. Evidence of this witness clearly establishes the charges levelled against the accused and therefore, the Special Court was justified in acting on the said evidence. Insofar as the evidence of the eye witness is concerned, his evidence is quite natural. It is not disputed that he was near the place of incident. He has identified the accused and therefore, the Court below was justified in accepting his evidence and acting on the same. Though some of the witnesses have turned hostile, all of them have not turned hostile. A portion of the evidence of hostile witnesses corroborates other available evidence on record that these accused were the members of Deendar Anjuman organization and all are related. In so far as panch witnesses are concerned, though some of them have turned hostile, investigating officers are examined to prove the seizure mahazar.

43. Insofar as the production of secondary evidence is concerned, it was submitted by the learned Spl. P.P. that four cases were tried by the same Court. As originals were produced in one case, certified copies were produced in other cases. The originals were always available in the Court for inspection by the accused persons and the prosecution, as such no prejudice was caused to the accused. Under these circumstances, secondary evidence is admissible and the Court below was justified in acting on the same. It is true that to attract Section 27 of the Evidence Act the statement of the accused should result in seizure of the material objects. Since some of the material objects were seized on such statement, that seizure and statement are admissible in evidence, only to the extent of these recoveries leading to discovery of a fact. Even otherwise the accused persons leading the police to a place they already knew itself would not render the evidence inadmissible. The learned Trial Judge, on proper appreciation of the entire evidence has rightly convicted the accused persons and the same does not call for any interference.

POINTS FOR CONSIDERATION

44. From the aforesaid material on record and the arguments of the learned counsel for the parties, the following points arise for our consideration in this appeal:

1. Whether the Trial against the accused in this appeal amounts to second trial and is hit by Section 300 of the Cr.P.C. on the principles of Double Jeopardy?
2. Whether the sanction accorded for prosecuting the accused for the offence under Section 153A, 120B, 124 and 124A of the IPC is invalid?
3. Whether the prosecution of the accused for offence under Section 121 and 121A of IPC without sanction is one without jurisdiction?
4. Whether the sanction accorded by the Commissioner of Police for the offences under Section 3 of the Explosives Act is invalid?
5. Whether the confessional statement of A. 16 is admissible in evidence?
6. Whether the evidence of P.W. 49 could be construed as evidence of an accomplice and is inadmissible for want of corroboration?
7. Whether the seizure is not proved as all the Mahazar witnesses have turned hostile?
8. Whether Section 27 of the Evidence Act has no application as the police were aware of the places and the material objects seized?
9. Whether the production of the copies i.e., the secondary evidence in respect of the Mahazars and confessional statement of A. 16 is inadmissible in evidence as original was not produced?
10. Whether the order of conviction passed by the Trial Court is based on legal evidence and is sustainable in law?

11. Whether the death sentence imposed on A. 3, A. 4, A. 5, A. 6 and A. 7 requires to be confirmed?

45. The charges levelled against the accused can be broadly classified as charges regarding conspiracy, waging war, sedition, creating disharmony between sections of the public and contravention of the provisions of the Explosives Act and Explosive Substances Act. For a proper appreciation of the facts and application of the law to the said facts, it is necessary to have a clear understanding of the law. Therefore, firstly we have to look to the law on these aspects.

CONSPIRACY

46. What is the meaning of the term "conspiracy"?

In HALSBURYS LAWS of England (vide 4th Edn. Vol. 11, page 44, page 58), the ENGLISH LAW as to conspiracy has been stated thus:

"58. Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

47. The ENGLISH LAW on this matter is well settled. RUSSELL on crime (12 Ed. Vol. I, p. 202) may be usefully noted:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

48. In America, the concept of criminal conspiracy is no different and AMERICAN JURISPRUDENCE, 2nd Edn., Vol. 16, Page 129, defines conspiracy as below:

"A conspiracy is said to be an agreement between two or more persons to accomplish together a criminal or unlawful act or to achieve by criminal or

unlawful means an act not in itself criminal or unlawful ... The unlawful agreement and not its accomplishment is the gist or essence of the crime of conspiracy."

49. DR. SHRI HARI SINGH GOUR in his well known "COMMENTARY ON PENAL LAW OF INDIA", (Vol. 2, 11th edn., p. 1138) summed up the legal position in the following words:

"In order to constitute a single general conspiracy there must be a common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient."

50. Section 120-A and 120-B were brought on the statute book by way of amendment to IPC in 1913. The Statement of Objects and Reasons to the amending Act reveals that the underlying purpose was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means punishable under law. Before these sections were added to the Penal Code, conspiracy to commit offences was not punishable. It became punishable as abetment if the offence was actually committed. This is evident from the language of Section 107 which defines "abetment." By the amendment of the Penal Code by addition of ss. 120-A and 120-B, the Legislature brought the law in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. It made conspiracy itself punishable as a distinct offence, apart from the object of conspiracy which, if carried, out, would itself amount to an offence.

51. Section 120-A of IPC defines criminal conspiracy. It says:

120A. Definition of criminal conspiracy--

When two or more persons agree to do, or cause to be done--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

52. Under section 43 of the IPC, an act would be illegal if it is an offence or if it is prohibited by law. Section 120-B IPC which prescribes the punishment to be imposed on a party to a criminal conspiracy reads as under:-

120B. Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

53. The Apex Court in Major E.G. Barsay Vs. The State of Bombay, , held as under:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law."

54. The Supreme Court in the case of Yash Pal Mittal Vs. State of Punjab, laid as follows at page 543, para 9.

"The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators."

55. The Apex Court in the case of Mohammad Usman Mohammad Hussain Maniyar and Others Vs. State of Maharashtra, , held that for an offence under Section 120B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication.

56. Judge Learned Hand, in VAN RIPER VS. UNITED STATES (13 F 2d. 961) said of conspiracy as follows:

"When men enter into an agreement for an unlawful end, they become ad hoc agents for one another and have made a partnership in crime."

57. We may usefully refer to the case of Ajay Agarwal Vs. Union of India and others, where it was held as under:

"8.....It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of "criminal conspiracy" was stated first by Lord Denman in Jones" case that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of three judges while referring the question to the House of Lords in Mulcahy v. Reg and House of Lords in unanimous decision reiterated in Quinn v. Leatham:

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rest in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.""

58. In the case of State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, , S.S.M. QUADRI, J, after a survey of case law, the Apex Court made the following pertinent observations: (at paragraph 662)

"In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in

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

59. The Apex Court in the case of *Devender Pal Singh Vs. State, N.C.T. of Delhi and Another*, has held as under:

40. The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designated to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which coconspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is "held to be continued and renewed as to all its members wherever and whenever (See *American Jurisprudence*, Vol. 11, Section 23, p. 559) For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done an illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

WHETHER CONSPIRACY IS A CONTINUING OFFENCE?

60. In *HALSBURY'S LAW OF ENGLAND*, third edition, vol. 10, page 327, para 602, while dealing with continuing offence it was stated as under:

"A criminal enterprise may consist of continuing act which is done in more places than one or of a series of acts which are done in several places. In such cases, though there is one criminal enterprise, there may be several crimes, and a crime is committed in each place where a complete criminal act is performed although the act may be only apart of the enterprise."

61. Conspiracy to commit crime by itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, considering their overt acts, independent of the conspiracy. The agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any act or omission which constitutes an offence is done the conspirators continue to be parties to the said conspiracy. The agreement continues in operation and therefore in existence until it is discharged or terminated by completion of its performance or by abandonment or frustration.

62. Lord Pearson explaining the meaning of the term conspiracy has held that:

"A conspiracy involved an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding because it is unlawful. But as an agreement it has its three stages, namely, (1) making or formation; (2) performance or implementation; (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirator can be prosecuted even though no performance had taken place. But the fact that the offence of conspiracy is complete at the stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (termination) by completion of its performance or by abandonment or frustration or, however, it may be."

63. Conspiracy by itself is a substantive offence and is distinct from the offence to be committed in respect of which the conspiracy is entered into. That the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each one of the acts constitutes a separate offence punishable, independent of the conspiracy. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes, so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance.

64. Therefore, what follows from the aforesaid judgments is that Criminal conspiracy is an agreement, by two or more persons to do, or cause to be done, an illegal act or an act, which is not illegal, by illegal means. The agreement is the gist of the offence. The offence of criminal conspiracy is of a technical nature and the essential ingredient of the offence is the agreement to commit an offence. "A conspiracy" consists, not merely in the intention of two or more but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in the intention only it is not indictable. The entire agreement must be viewed as a whole and it has to be

ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. Consequently even if the acts done by a conspirator in furtherance of the criminal conspiracy do not strictly amount to offence, he is liable to be convicted under Section 120-B. The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance or furtherance thereof by the conspirators or not. In order to constitute a single general conspiracy, there must be a common design and common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not be knowing all its secrets or the means by which the common purpose is accomplished. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main theme and object of the conspiracy. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient.

65. The offence of criminal conspiracy under Section 120-A is a distinct offence. The conspiracy to commit a crime and the crime itself are two different offences. Conspiracy precedes the commission of crime and is complete before the crime is attempted or completed. The very agreement, concert or league is the ingredient of the offence. The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means. It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely, incidental to that object. The agreement in itself is enough to constitute the offence.

66. Although a mere agreement to do an illegal act or a legal act by illegal means is itself a conspiracy, the conspiracy is not concluded directly and the agreement is made in the sense that the offence is once and for all constituted. A criminal conspiracy may persist as long as the persons constituting it continue to act in accord in furtherance of their objects. An agreement, to do an illegal act, which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement. Although conspiracy is committed as soon as the agreement for the "unlawful" object is made, it is clear that conspiracy is a continuing offence and is committed not only when agreement is first reached but also as long as the agreement to effect the unlawful object subsists or continues. A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators

does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity irrespective of the time limit. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. Thus if the object of the conspiracy is accomplished and the conspirators disband themselves, the conspiracy comes to an end. So also would be the case if the conspiracy is routed as a result of police action and the conspirators are taken into custody. It should also be borne in mind that even after the conspirators released from the custody they may renew their conspiracy if the object is still not received.

EVIDENCE OF CONSPIRACY

67. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. Privacy and secrecy are pre-dominant characteristics of a conspiracy rather than a loud discussion in an elevated place open to public view. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. Direct evidence in proof of a conspiracy is seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out. All this is necessarily a matter of inference. The prosecution will often rely on evidence of acts of various parties to infer that they were done in consequence of their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient under given set of circumstances of an individual case.

68. In order to prove a criminal conspiracy which is punishable under Section 120-B there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. It is to be proved largely on the inferences drawn from illegal act or omissions committed by the conspirators in pursuance of common design which has been properly

proved. Conspiracy may be proved by necessary implication. The direct evidence will be seldom forthcoming and it is, therefore, necessary to look at the circumstances to see whether a conspiracy actually existed which is largely inferential. Of sheer necessity this section has to be read in conjunction with Section 10 of the Indian Evidence Act. Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the coconspirators. But this section will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained is relevant against the others not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it.

69. The Patna High Court in the case of State of Bihar Vs. Paramhans Yadav and Others, held that Conspiracy can be proved by circumstances and other materials. It states thus:

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use. (See: State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.,)."

70. In Kehar Singh and Others Vs. State (Delhi Administration), , the Apex Court observed as under:

"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is

necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

71. The Apex Court, in the case of "NAZIR KHAN & ORS. v. STATE OF DELHI" reported in 2003 SCC (Cri) 2033 has held as under:

"15. xxxx

No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

72. In DEVENDRANATH PAL SINGH'S case the Apex Court held as under:

"No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

73. The essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy. The essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in section 120B [See: Suresh

Chandra Bahri Vs. State of Bihar with Gurbachan Singh, . Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. [See: E.K. Chandrasenan Vs. State of Kerala, .

WAGING WAR (Section 121 IPC)

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.- Whoever, wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine]

74. The concept of war embodied in Section 121 IPC is not to be understood in the international law sense of inter country war involving military operations by and between two or more hostile countries. Section 121 IPC is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the Illustration to Section 121 itself makes it clear that "war" contemplated by Section 121 is not conventional warfare between two nations. The organizing or joining an insurrection against the Government of India is also a form of war. "Insurrection" as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. "Rebellion, revolution and civil war" are progressive stages in the development of civil unrest, the most rudimentary form of which is insurrection. Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilized society is, in each of the cases mentioned, disturbed either by actual force or at least by the show and threat of it.

75. The offence of waging war was inserted in the Indian Penal Code to accord with the concept of levying war in the English Statutes of treason, the first of which dates back to 1351 A.D. We should, therefore, understand the expression "wages war" occurring in Section 121 IPC broadly in the same sense in which it was understood in England while dealing with the corresponding expression in the Treason Statute. However, we have to view the expression with the eyes of the people of free India and we must modulate and restrict the scope of observations too broadly made in the vintage decisions so as to be in keeping with the democratic spirit and the contemporary conditions associated with the working of our democracy.

76. The most important is the intention or purpose behind the defiance or rising against the Government. The intention and purpose of the war-like operations directed against the Governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contra-distinction to a

private and a particular purpose; it is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force, arms and by defiance of Government troops or armed personnel deployed to maintain public tranquility. The number of force, the manner in which they are arrayed, whether armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or fire arms. Then, the other settled proposition is that the need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle-line and arraying in a war like manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

77. Even if the conspired purpose and objective falls short of installing some other authority or entity in the place of an established Government, it does detract from the offence of waging war. There is no warrant for such truncated interpretation.

78. Section 121 of the I.P. Code embraces every description of war whether by insurrection or invasion. The true criterion is the purpose or intention with which the gathering assembled. The object of the gathering must be to attain by force and violence, an object of a general public nature thereby striking directly against the Government's authority.

79. The concept of war embodied in Section 121 of the Indian Penal Code has been the subject matter of various decisions.

80. The observations of LORD HOLT, C.J. in a case reported in HOLTS REPORTS (1688-1700) at 681-682 reads as under:-

"Holt L. C.J. in Sir John Friend's case says, "if persons do assemble themselves and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and treason". "I tell you the joint opinion of us all, that, if this multitude assembled with intent, by acts or force and violence, to compel the legislature to repeal a law, it is high treason". The question always is, whether the intent is, by force and violence, to attain an object of a general and public nature, by any instruments; or by dint of their numbers".

81. The speech of LORD MANSFIELD, C.J. addressed to the Jury in LORD GEORGE GORDON'S CASE (1781) is often quoted to unfold the meaning of the expression "levying war against the King". To quote the words of Mansfield, C.J.:

"There are two kinds of levying war: one against the person of the King: to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors: the other, which is said to be levied against the majesty of the King or, in other words, against him in his regal capacity; as when a

multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the King; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn Government; and by force of arms, to restrain the King from reigning, according to law".

"No amount of violence, however great, and with whatever circumstances of a warlike kind it may be attended, will make an attack by one subject on another high treason. On the other hand, any amount of violence, however insignificant, directed against the King will be high treason, and as soon as violence has any political objects, it is impossible to say that it is not directed against the king, in the sense of being armed opposition to the lawful exercise of his power".

82. In 1820 LORD PRESIDENT HOPE in his summing up speech to the jury in REX VS. ANDREW HARDIE, (1820, 1 STATE TRIALS N.S., 610) explained the distinction between levying a war and committing a riot in the following words:

"Gentlemen, it may be useful to say a few words on the distinction between levying war against the King and committing a riot. The distinction seems to consist in this, although they may often run very nearly into each other. Where the rising or tumult is merely to accomplish some private purpose, interesting only to those engaged in it, and not resisting or calling in question the King's authority or prerogative then the tumult, however numerous or outrageous the mob may be, is held only to be a riot. For example, suppose a mob to rise, and even by force of arms to break into a particular prison and rescue certain persons therein confined, or to oblige the Magistrates to set them at liberty or to lower the price of provisions in a certain market, or to tear down certain enclosures, which they conceive to encroach on the town's commons. All such acts, though severely punishable, and though they may be resisted by force, do not amount to treason. Nothing is pointed against either the person or authority of the King".

"But, gentlemen, wherever the rising or insurrection has for its object a general purpose, not confined to the peculiar views and interests of the persons concerned in it, but common to the whole community, and striking directly the King's authority or that of Parliament, then it assumes the character of treason. For example, if mobs were to rise in different parts of the country to throw open all enclosures and to resist the execution of the law regarding enclosures wheresoever attempted, to pull down all prisons or Courts of justice, to resist all revenue officers in the collecting of all or any of the taxes; in short, all risings to accomplish a general purpose, or to hinder a general measure, which by law can only be authorized or prohibited by authority of the King or Parliament amount to levying of war against the King and have always been tried and punished as treason. It is, therefore, not the numbers concerned, nor the force employed by the people rising in arms, but the object which they have in view that determines the character of the crime, and will make it either riot or treason, according as that object is of a public and general, or private and local nature".

83. Then in 1839, TINDAL, C.J. while summing up the Jury in the trial of John Frost in the year 1839 [All ER Reprint 1835-1842 P. 106 at P. 117] stated that it was:

"essential to the making out of the charge of high treason by levying war, there must be an insurrection, there must be force accompanying that insurrection; and it must be for the accomplishment of an object of a general nature".

84. The Apex Court in the case of State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, has discussed as to what amounts to waging war or abetting or attempting to waging war, punishable under Section 121 IPC and has held as under:

258. In interpreting the expression "waging war", the Indian cases of pre-independence days, though few they are, by and large cited with approval the 18th and 19th century English authorities. The term "wages war" was considered to be a substitute for "levying war" in the English Statute of High Treason of 1351 i.e. Statute 25, Edward III, c. 2. In the famous book of Sir James F. Stephen "A History of the Criminal Law of England" (1883 publication), it was noted that the principal heads of treason as ascertained by that Statute were: (1) "imagining" the King's death (2) levying war and (3) adhering to the King's enemies.

264. Whether this exposition of law on the subject of levying war continues to be relevant in the present day and in the context of great socio-political developments that have taken place is a moot point.

272. Sections 121 and 121-A occur in the chapter "Offences against the State". The public peace is disturbed and the normal channels of the Government are disrupted by such offences which are aimed at subverting the authority of the Government or paralyzing the constitutional machinery. The expression "war" preceded by the verb "wages" admits of many shades of meaning and defies a definition with exactitude.

274. The conspiracy to commit offences punishable under Section 121 attracts punishment under Section 121A and the maximum sentence could be imprisonment for life. The other limb of Section 121A is the conspiracy to overawe by means of criminal force or the show of criminal force, the Central Government or any State Government. The explanation to Section 121-A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence.

275. War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war imbedded in Section 121 is not to be understood in international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the

legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the Illustration to Section 121 itself makes it clear that "war" contemplated by Section 121 is not conventional warfare between two nations. Organizing or joining an insurrection against the Government of India is also a form of war. "Insurrection" as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. Rebellion, revolution and civil war are progressive stages in the development of civil unrest the most rudimentary form of which is "insurrection" vide *Pan American World Air Inc. Vs. Actna Cas & Sur Co.* (505, F.R. 2d, 989 at P. 1017). An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression "war" and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or Government.

276. Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilized society is, in each of the cases mentioned, disturbed either by actual force or at least by the show and threat of it.

277. To this list has to be added "terrorist acts" which are so conspicuous now-a-days. Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. Terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.

282. The intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of government troops or armed personnel deployed to maintain public tranquility.

283. However, a settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed, or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

284. The court must be cautious in adopting an approach which has the effect of bunging within the fold of Section 121 all acts of lawless and violent acts

resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long long past. An organized movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of trying war.

285. An aspect on which a clarification is called for is in regard to the observation made in the old decisions that "neither the number engaged, nor the force employed, nor the species of weapons with which they may be armed" is really material to prove the offence of levying/waging war. These are not irrelevant factors. They will certainly help the court in forming an idea whether the intention and design to wage war against the established Government exists or the offence falls short of it. For instance, the firepower or the devastating potential of the arms and explosives that may be carried by a group of persons—may be large or small, as in the present case, and the scale of violence that follows may at times become useful indicators of the nature and dimension of the action resorted to. These, coupled with the other factors, may give rise to an inference of waging war.

286. In order to give rise to the offence of waging war, the avowed purpose and design of the offence need not be to substitute another authority for the Government of India. Even if the conspired purpose and objective falls short of installing some other authority or entity in the place of an established Government, it does not detract from the offence of waging war. There is no warrant for such truncated interpretation. The chances of success of such an operation need not be assessed to judge the nature of criminality.

CONSPIRACY TO OVER-AWE (Section 121-A IPC)

121A. Conspiracy to commit offences punishable by section 121

Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation- To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall make place in pursuance thereof.

INGREDIENTS OF THE SECTION:

85. Section 121-A deals with two kinds of conspiracies:

- (i) Conspiring within or outside India to Commit any of the offences punishable by Section 121, I.P.C.;
- (ii) Conspiring to overawe the Government by means of Criminal force or the show of criminal force.

Hence the essential ingredient of the offence under this section would be:

- (i) waging war against the Govt. of India; or
- (ii) attempting to wage war against the Govt. of India; or
- (iii) abetting the waging war against the Govt. of India.
- (iv). Conspire to overawe by means of criminal force or the show of criminal force.

86. A conspiracy is a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. This section draws a distinction between the Government of India and State Government. Any conspiracy to change the form of the Government of India or any State Government, even though it may amount to an offence under another section of the Code, would not be an offence under this section, unless it is a conspiracy to overawe such Government by means of criminal force or show of criminal force, as was illustrated in the matter of *Jhabwala v. Emperor* (1933) 55 All 1040.

87. The word "overawe" clearly imports more than the creation of apprehension or alarm or even perhaps fears. The phrase "conspiracy to overawe" has been used in this provision of the IPC. Overawe in lay man's terms means to subdue, frighten or intimidate. The words "conspires to overawe by means of criminal force or the show of criminal force, the Government of India, or any State Government" in this section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Government of India or any State Government by the organization of a serious riot or a large and tumultuous unlawful assembly as was seen in the case of *Ramanand v. Emperor*, (1950) 30 Pat 152.

88. It appears to connote the creation of a situation in which the members of the Central or the State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public. (*Ramanand vs. Emperor*, (1950) 30 Pat 152).

89. A slogan that Government can be changed by an armed revolution does not mean that there is a conspiracy to change the Government by criminal force. At

best it means that the protestors want to educate the people that by force only the Government could be changed (Aravindan and Others Vs. State of Kerala,).

90. The explanation to Section 121-A states that to constitute a conspiracy under this Section, it is not necessary that any act or illegal omission shall take place in pursuance thereof. The words in the section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Government of India or any State Government by the organization of a serious riot or a large and tumultuous unlawful assembly.

SEDITION (SECTION 124A IPC)

91. Yet another offence alleged against the accused is Sedition. Section 124A of the Indian Penal Code deals with "Sedition" which reads as under:

124A. Sedition.--Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.--The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.--Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.--Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

92. The Apex Court in the case of Nazir Khan and Others Vs. State of Delhi, at para 37 has held as under:

Section 124-A deals with "Sedition". Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the

Sovereign or the Government the laws or constitutions of the realm, and generally all endeavours to promote public disorder.

PROMOTING ENMITY BETWEEN DIFFERENT GROUPS (SECTION 153-A IPC)

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. (1) whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, [or]

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc., (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

93. Promoting enmity between different groups on grounds of religion, the Legislature contemplates that the words spoken or written which attempts to promote hatred, etc., would create sufficient mischief so as to fall within the scope of the section 153-A.

OTHER OFFENCE UNDER IPC

94. Section 295 IPC reads as under:

295. Injuring or defiling place of warship with intent to insult the religion of any class. Whoever destroys, damages or defiles any place of worship, or any object

held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

95. Section 427 of the Indian Penal Code reads as under:

427. Mischief causing damage to the amount of fifty rupees.- Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

96. Section 436 of the Indian Penal Code reads as under:

436. Mischief by fire or explosive substance with intent to destroy house, etc.,- Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

OFFENCES UNDER THE EXPLOSIVES ACT, 1884:

"SECTION- 9B. Punishment for certain offences.- (1) Whoever, in contravention of rules made under section 5 or of the conditions of a licence granted under the said rules-

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both: and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued U/s 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,-

(a) manufactures, sells, transports, imports, exports or possesses any explosive

in contravention of the provisions of clause (a) of section 6A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section,

Shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, or

(c) in contravention of the provisions of section 8 fails to give notice of any accident shall be punishable,-

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.

97. Section 3 of the Explosive Substance Act, 1908 reads as under:

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

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

98. Section 4 of the Explosive Substances Act, 1908 reads as under:

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property Any person who unlawfully and maliciously-

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

Shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,-

(i) in the case of any explosive substance, with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

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

99. Section 5 of the Explosive Substances Act, 1908 reads as under:

5. Punishment for making or possessing explosives under suspicious circumstances.- Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,-

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

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

100. Rule 5 of the Explosives Rules, 1983 reads as under:

5. Prohibition of unauthorized explosives.- No person shall import, export, transport, manufacture, possess, use or sell any explosive which is not an authorized explosive.

Provided that nothing in this rule shall apply to the manufacture and possession for test and trial purposes and not for sale of a new explosive composition under development at a place specially approved for the purpose by the Chief Controller in a licensed factory.

MENS REA

101. In the background of this legal position, before we proceed to appreciate the evidence and arguments, it is necessary to find out what is the guilty mind behind this serial blast. In other words, mens rea, i.e., the ideology that brought all these accused together to commit the acts for which they were prosecuted and the trial Court has found them guilty.

102. In the course of investigation, the police have seized several incriminating materials in including books, literature and pamphlets from the possession of several of these accused. A perusal of the same gives an insight into the activities of these accused and the ideology which prompted them to indulge in these illegal activities.

103. Late Hazarath Siddique has written a book by name "Zamamul Jihad" in Persian language and it was translated into English language. Late Hazarath

Siddique, in that book has given an ultimatum of religious war as under:

"May peace to be on you,

We, the muslims of the world, are aware of and observing that Islam is in the grips of Kafirs, in the condition of orphanage, poverty, powerless and without any supporter. The oppression and the injustice of the Kafirs has increased beyond its limits. The decision of the Holy Quran was that the power of issuing orders for good deeds and prohibition from bad deeds, should be only in the hands of Muslims. This dignity has completely gone from our hands into the hands of Kafers. In this condition there is in the rise of the calamity of Dooms-day. We are seeing what of Arabs and what of Non-Arabs, every muslim is involved in the worst condition of degradation. In this worthless age, the nominated Khilafath has been thrown off. I can dare say with my spiritual insight that there is no patron for the muslims in the present time. Every nation and tribe of the muslims has confused and has been scattered away like the flying rubbish grass.

Oh; The Heroes of Islam. We should not be desparated in this situation as our Nabi-e-Kareem [May prevail his religion] is the fountain-head of the prophets. Our religion is the perfect religion and our Holy book is the complete book. Our Holy Quran has certified us that we are the leaders of humanity. We are fully sure of the prophecy of our Holy prophet [may prevail his religion] i.e., "The Resurrection of Humanity will take place under my feet". The banner of the Exaltation of Allah will upheld only by us. According to the sayings of our Holy Prophet [May prevail his religion] i.e., All the prophets will be under my banner on that day. Every nation will take protection under the banner of Islam. In virtue of this proof, the version of the Holy Quran is "We will raise you as the head of all those prophets. Fortunately the nations of the prophets are gathered together in India by divine power. If we make them to embrace Islam, the above prophecy will be fulfilled. In this behalf I do not say by myself but I have received continuous divine good news. On the basis of these good news, I have started the Movement of the Propagation of Islam since 20 years. I have got revelations that the whole of India will embrace Islam. The Kafirs of India understanding that this movement is intolerable have spent their level best of their cheating and treachery for its uprootal. But we have tried our level best to make it successful by our sincere determination. In many place, our speeches have been prohibited and we were sent to jails. We were arrested and released by security and penalty bonds in several places. We were dragged in bazaars with chains for the cause of this movement. Under these undescribable circumstances, the propagation of Islam has been stopped. We were put to troubles, so we have to flight to the Independent Territories according to the Hadith for the organization of Islamic powers to declare the Religious war. We can make India to embrace Islam only by this source. According to version of the Holy Quran, we have to remove the obstacles that are coming in the way of the propagation of Islam.

May be the glory to Allah. Our determination have brought the clear result, i.e.,

within a few months of our attempts, the Heroes of the Independent Territories came forward with enthusiasm for our works and according to the version of the Holy Quran, they pledged themselves in my hands believing in me as the Head of the Religious war.

"Oh: the Heroes of Islam", may praise be Allah, according to my vision, Ghazi Abdus Subhan Khan alias Shehe-Jehan, the Nawab of Khar, pledged himself with sincere faith and knowledge. Afterwards according to my vision, Allama Amiruddin Khan Saheb Dabar alias Moulvi Shanger Gull, has also pledged himself in my hands. This sincere and foresight man wrote letters to moulvis, Nawabs, Malaks and Khans of Independent territories advising them to pledge themselves in my hands as he has done. This noble man has expressed in letters addressed to them that he was expecting a man who is capable of exploiting the propagation of Islam with his purity and in according to the principles of the Holy Quran and his expectation has fulfilled by my personality. This promised noble man has submitted to me a letter of confession stating that he will start on my order's whenever given to them with numberless armies as food of water for Jihad. I have received another letter with a bond of pledge from Moulvi Nawab Meeran Jan alias Sayyal. He states that "I have met the deputation of Deendar Anjuman whom I found to be very faithful to Islam and I felt glad after understanding the aims and objects of your Anjuman which are quiet consistent with the principles of Nabi-a-Kareem [May prevail his religion]. The past spiritual emotion will be born in muslims at the expected occasions. The muslims in general and especially the heroes of the independent territories are very glad and satisfied with these goodness. Therefore considering my religious duty, I am ready to do all necessary sacrifices in the service of Islam as it is true devotee.

"Oh; Heroes of Islam" according to the version of the Holy Quran Kareem. The British Government, and the Rajas of India have become enraged and furious with the organization and discipline of our movement. Ten years, ago when I was in Yagisthan the British Government from fear of their destruction they arrested me by their deceit and treachery and I have been confined in the city limits of Hyderabad Dn. in order to put an end to our movement. The Kafirs do not know that the plant which is flourishing by the Divine hands will not be fruitless.

"Be the Glory to Allah". The Lords of the worlds has maintained our movement by his own hands. In such short period 40 spiritual men has been raised according to Hadis. As return of Muslims from Hudebeya become the cause of strengthening of Islam, so our return from Jagistan on security also become strengthing of Islam. In this year, I sent a deputation to the Independent Territories in the leadership of Ghazi Mahmoodul-Qureshi, the Commander Islam to awaken the Muslim Heroes. The organization has been compelled by these faithful Muslim devotees. My object has been obtained. Again an another deputation has been sent in the leadership of Moizzul Millath, Habbibullah Sahab for the organization of the ruler of Afghan Nation.

On the way at Chukderra, the British Govt. arrested me numbers of the

deputation and sent back on security bonds. By this action it appears to be that the British Govt. do not like that the Muslim should be awakened and exhibit the merits of the Islam in the religious war for compelling the Kafirs to embrace Islam. The Govt. wants that the footings of the Kafirs should be firm and Islam should be disgraceful among them and to be destroyed and the Muslims should be deprived of the dignity of issuing orders for good needs and prohibiting from bad deeds for ever and the disgrace and dishonour of Our Nabi-e-Kareem [May prevail his religion] should also be continued permanently.

"Oh; the lovers and sacrificers of Islam," now the British Govt. prevents the revival of Islam as the Govt. of Iran had done, in its early period. The Muslims Heroes of early period wanted that the whole of Iran should embrace Islam and we want also that the whole of India should embrace Islam. In that enlightened period according to the version of the Holy Quran, they upheld the banner of religious war and put an end to the obstacles that were coming in the way of Islam. In the same manner, in this dark period Allah wants to enforce the Kafirs of India to embrace Islam by means of religious war. Now, according to the version of the Holy Quran and Hadis, I order you to give an Ultimatum as to begin the religious war with the British Govt. until they should embrace Islam and support us in our works. I have sent this order of religious war by Ghazi Mahmoodul-Qureshi, the Commander of Islamic force. As soon as you receive this order, all of you who have pledged yourselves in my hands should assemble in one place and elect an Amir. Afterwards you must complete the rulers of Swad, Deer, Chitral and Afghanistan by all necessary means to co-operate with you all their arms and ammunitions. After a complete preparation, a deputation should be sent to the Viceroy of India for their embracement of Islam and the problem of India embracing Islam should be put forth before them and we should say that we have no connection with the worldly affairs and we do not want that the British Nation should not be our rulers, and also we do not find any other nation so enlightened, wise and capable rulers of India except the British Nation. What can we do? The Obstacle come in the way of the propagation of Islam compels to come against the British Govt. Now in such a case, we want that the British Nation should embrace Islam and make an announcement of their embracement from the throne. If it is undesirable on their part, they should hand over the powers to us so that we can easily Islamise India means of Jihad. In case the Government do not accept it, the "AMIR" of the deputation should obtain their refusal in writing, so that it may be proof at the time of the execution.-- Thereafter they may come back quietly after giving a writing "ULTIMATUM" in this behalf to the Govt. declaring that we have given suggestion to the Government, stating that the settlement should be in the favour of the Islam without war. They did not consent to our suggestion. Hence we are bound to declare the religious war to India. In behalf of this, there is an order in Holy Quran to fight with the neighbouring Kafirs. According to the version of the Quran, we are bound to do the religious war in India until all the obstacles that are coming in the way of the propagation of Islam should be completely removed

off.

"OH HEROES OF ISLAM", There is promise of Allah in the Holy Quran, that VICTORY is in our favour. Try your best

D/18th Shawal 1364 [Sd.] Siddiq Deendar Chanbaswaishwer."

104. A photograph which is taken from the book "Zamamul Jihad" clearly demonstrates the intention which is behind the founder of the Deendar Anjuman Ashram.

105. The book titled "World Teacher", Jagad Guru Sarwar-E-alam (PBUH) is marked as Ex. P. 132. In the preface written by Siddiq Deendar Chanbasweshwar, it is mentioned that in the present times various persons have proclaimed themselves as Jagadgurus and their number (which increases with passage of time) itself indicates their falsity. Allah has given me the opportunity and command to rectify this evil. Then he has mentioned that he travelled all over Karnataka and Mysore States for the cause of Islamic propagation. In the process he encountered so many "Jagad Gurus and Naraharis" and was astonished to notice so many claimants to the status of Jagad Guru. When the world is one and the creator also is one, then how come there will be so many Jagad Gurus or World Teachers? There are many Jagad Gurus amongst Hindus themselves. Not a single person has assumed the title of Jagad Guru (Sarwar-e-Alam) amongst muslims because the muslims are aware of this term Jagad Guru's meaning and status. They know, fully aware that no other person except Prophet Hazrat Mohammed (Pbuh) can calibrate the criteria and eligible to be entitled as Jagad Guru. When he commenced to write this book in 1926, Prophet Mohammad (Pbuh) revealed himself in his trance and commanded him to write his biography. Therefore, he has fully projected the holy personality of Hazrat Mohammad (Pbuh) in the book which is regarded by muslims as Sarwar-E-Alam.

106. Further he discusses in the book that Prophet Momammad (Pbuh) alone can be the Jagad Guru (world teacher) whose advent is professed with particular signs and symbols by all the foregone prophets. Then he has referred to the prophecies in the books of Persians, prophecy in PSALMS, prophesy in the book of Moses, Bibi Sarah's Prophecy, Prophecy in Gospel, Augury made by Egyptian Scholars, Socrates Augury, Augury in China, Prophecy in Rome, Prophecy in Spain, Persians. Then he has referred to Prophecy in Bhagavat Puran, Kalki Puran and Bhavishyokt Puran. He has also referred to the Prophecies about the advent of Hazrat Mohammad (PBUH) in Vedas. Then he proceeds to record that the Gurus are mentors of various monasteries in the famous religious centres in India such as Shringeri, Rameshwar, Chitradurga, Srirangam, Srihatti Math, Tintini, Warui, Hubli, Arud Math, Kadgamchi Math etc., accepted the Islam after the manifestation of Prophet Mohammed. Then he has narrated that the aphorisms of Tulsidas to make it that even he believed in Prophet Mohammad (Pbuh) in accordance as a the awaited and prophesied personality mentioned in Vedas and Puranas. Therefore the prophecy made by Eashwar to his beloved son

"Shanmukh" regarding forthcoming religion and the future prophet is explained by Tulsidar in a couplet, "Jab Sangram-Ka-din hove - Bina Mohammad - (Pbuh) Par na hove" (Sangram Puran) Translated to English it means that, "When a religion which makes Jihad obligatory and declares bounties of war legal, is come, none could achieve Salvation without acceptance & belief in Prophet Mohammad (Pbuh)".

107. Then he refers to Basweshwar - the leader of the Saints of Deccan and Chanabasweshwar - another great Saint of Deccan (nephew of Basweshwar). There is also a reference to Manak Prabhu in Humnabad.

108. He has also referred to Christian community. They believe Prophet Jesus Christ is the "Son of God". Christians also believe that Allah has sent his servants as messengers before Christ since they failed to accomplish the task, he sent his beloved son. Even he could not succeed. Therefore, the spiritual father would himself descend down to this earth. True to say - Christians are awaiting and have belief in Prophet Mohammad (Pbuh) prior to his birth. However, every Christian would thus definitely believe and revere the spiritual father of Jesus Christ (A.S.) but is reluctant to declare it due to malice and hatred against muslims. The spiritual father is none but Prophet Mohammad (Pbuh). In this respect, Prophet Mohammad (Pbuh) is present in the sacred places and each and every house of Christians. However, he states it is obligatory on muslims to strive in the cause of Islam and establish peace and tranquility in the entire world. The hearts and souls devoid of this thought cannot claim to be true muslims. To absorb other nations into Islamic fold is a distinct feature of Islam. May Allah give guidance to all muslims to discharge this duty.

109. Thus, he has set out 33 criterias of Jagad Gurus. These criterias were published in a poster on the occasion of International Religious Conference held at Asif Nagar, Hyderabad, Deccan on 9th to 11th January 1935. He declared that Prophet Hazrath Mohammad alone can be the Jagad Guru who is a perfect model to the four religions i.e., Brahmin (Scholar), Kshatriya (Warrior), Vaishya (Trader) and Shudra (Servant) based on human nature. Further, he states in all the religions besides various rituals, one important obligation is "animal sacrifice" which he has discussed in the book at length. He states Brahmin who refrained to consume flesh, have been enjoying performing Yagna (animal sacrifice) as a foremost fundamental. Many perplexities have surfaced during those days concerning this issue. In these circumstances, it is our prime duty to discern the Hindu community to be cognizant of their fundamentals. God willing, this article would do a wonderful job to establish Hindu-Muslim unity. He recognized by experience the sacrifice of cow as a main issue of estrangement. There are two reasons to perpetuate enmity. Firstly, ever since muslims arrived in India the hindu political leaders inculcated the creed of cow sanctity in Hindu psyche. This flimsy creed was prevalent even before among rare communities without any basis. When it was realized that this issue has a potential to array an anti Islamic group, they began to give it leverage. And in this way they aroused antimuslim

sentiments amongst their nation. When the moghal empire got weakened they made it a main tool to achieve success. Then he declares, it is the duty of the muslims to disseminate the Hindus by all possible means that cow sacrifice is a fundamental of their religion and consuming beef is a religious privilege. He want them to repeatedly present the following facts:

"Oh Hindu Bretheren, sacrifice the cow for the sake of Hindu - Muslim unity. Sacrifice the cow just as Walmiki had sacrificed at the occasion of feast hosted in honour of Rishis and Saints, or sacrifice the cow in the manner as Manuji for the cause of harmony had sacrificed 5 lakh cows at river Narbada. Sacrifice in the same way as Sitaji had sacrificed one thousand cows at the banks of river Ganges for protection from natural calamities. Sacrifice in the same manner as Krishnaji at the occasion of Yag (Animal sacrifice) had sacrificed the cow. Sacrifice the cow just as Prophet Abraham (A.S.) to serve his guests had sacrificed calf. Sacrifice in the same cause as Prophet Moses (A.S.) to abolish idolatory had sacrificed the cow. Sacrifice in the same way as Prophet Hazrath Mohammad (Pbuh) to serve his friends had sacrificed a cow."

110. Muslims can never renunciate the example set by the Prophet (Pbuh) pertaining cow sacrifice, even though other nations with changing circumstances have relinquished and reverted the example set by their Avatars and Sages.

111. Five hundred years from now, some deceptive elements gave undue importance to cow safety. On the other hand the decline of muslim power gave vent to this treacherous and knave propaganda. In this way these cunning elements ruined the muslim economy, created animosity between the two communities and dishonoured Islam. A huge barrier has been raised against the propogation of Islam. Staunch meat eating communities like Marathas and Rajputs who do not even spare pork, have severed ties from muslims because of this problem and considered the muslims untouchables. These mischievous people by their clandestine propaganda have not just produced aversion from cow sacrifice but also fermented violence on the occasion of cow sacrifice. They are aware that these illogical prolonged campaign has shut the eyes of the people. Then he stated that the Hindus shall be cautioned:

"O bewildered & deceived brethren, try to conceive this fact, by despising those who sacrifice the cow you actually despise Sri Ramji & Sita Devi because they sacrificed 1000 cows at river Ganges - Refer Walmiki Puran. Refer Brahmadi Vrat Puran, you in fact hate Manuji, who is the avtar of Dharam Shastra, because he had sacrificed 5 lakh cows at river Narbada. Refer the Bhagvat Puran, you are not despising muslims but in fact you despise Sri Krishanji and Arjunji because they sacrificed a cow at the occasion of Yag (Animal Sacrifice). Refer Utram Charitra you would comprehend you hate not the muslims but you actually hate Walmik Rishi & Vashishta Muni because they used to sacrifice cows & consumed its flesh in Walmik Ashram. In short there is not a single rishi mentioned in Vedas shastras & puranas who has not consumed beef. Those people are accountable in front of Allah who raged hindu sentiments by this fallacious propaganda of cow

safety and caused violence and blood shed of thousands of people, and looked down upon the conduct of the World teacher Prophet Hazrat Mohammad (Pbuh), dishonoured Islam and hurt muslim sentiments."

According to him:

"Hinduism is not a religion in the real sense as this name is neither found in any of the vedas nor it is written in shastras, puranas etc. Inhabitant of Indian peninsula is a Hindu-They extract undue advantage from this name. Of the various religions in India no two of them would be devoid of differences in their basic tenets. To forge unity they acquired the name "HINDU" and gave leverage to a baseless issue of cow safety. To annul this, muslims should exert maximum efforts which would end the stratagem of diabolic elements. Only this remedy is a strong means to substantiate the identity and muslim entity in India. Another real means for them to sustain in India is to repeatedly present the clear image and nice conduct of Prophet Hazrat Mohammad (Pbuh) to the hindus."

This book is written in the year 1929.

112. Then we have another book titled "Lingayath" written by Hazrath Maulana Siddiqui Deendar Channabasaveshwararu. It is in Kannada. The relevant portion extracted by the Trial Court is as under:-

10.4 In these two books titled as Lingayatha, it is mentioned that the persons belonging to Lingayatha community, were originated from Arab country and they are the by product of Islam, and they eat flesh of Ox and Cow and they have no any religious principles. So if muslims extend their arms towards Lingayaths, these Lingayaths will embrace Islam.

113. Then there is one more book written in Kannada under the title "Jagadguru", which is marked as M.O.-79. The relevant portion extracted by the trial Court reads as under:

114. There is yet another book by name Panch Shanthi Marg marked as Ex. P. 131 where the teachings of this Maulana Siddique Channabasaveshwararu as understood by his disciples has been set-out.

115. In the book "Jagadguru" how the Hindu Gurus, who called themselves as Jagadgurus do not possess requisite qualification is set out. It only says that none of them are Jagadgurus; according to this book it is only Hazarath Mohammed Paigamber who is the Jagadguru. Then there is also reference to Hindu religion which recognizes eating flesh.

116. From the aforesaid literature it is clear that the whole object of the organization is to propagate that Islam is the perfect religion and Quran is the complete book; Quran has certified Muslims as the leaders of humanity.

117. In fact, when the said Siddique Deendar Channabasaveshwara preached his religion, the British Government initiated proceedings against him under Section 108 of the Criminal Procedure Code in the Court of District Magistrate, Dharwad

for endangering the public peace by preaching a new religion in such a way as to promote feelings of hatred and enmity between different communities. The learned Magistrate held that all the ten accused intentionally disseminate or attempt to disseminate matter, the publication of which is likely to result in feelings of hatred between different classes of his Majesty's subject. Therefore he ordered Siddiq Deendar Channabasaveshwara to give his personal surety in Rs. 100/- together with one another surety in Rs. 100/- and that he will be of good behaviour for one year.

118. This order was passed on 5th July, 1934. The said order reads as under:

"In the Court of the District Magistrate Dharwar

Order under Sec. 108 C.P.C. against

- (1) Siddiq Deendar Channa Bashweshwar
- (2) Syeb Hamiduddin W.D. Syed Hussain
- (3) Syed Kassim W.D. Syed Budan
- (6) Abdul Gaffar W.D. Mohamed Saheb of Hubli
- (7) Mohammad Azimuddin W.D. Khaja Hussain
- (8) Syed Mohammad Hussain W.D. Syed Mohammad Mastan Saheb
- (9) Hazrat Saheb W.D. Dawala Saheb Mulgund of Gadag
- (10) Abdul Jabbar W.D. Syed Azim Saheb
- (16) Raja Saheb W.D. Hussain Saheb Alias Patel Saheb of Asundi of Gadag
- (17) Syed Rasool W.D. Mohammad Hashim Katgari Belgaum

The ten respondents are the remnant of a party of 19 persons against whom Mr. Gudi Sub-Inspector of Police Dharwar laid information in my court on May 23rd that they were endangering the public peace by preaching a new religion in such a way as to promote feelings of hatred and enmity between different communities. Accordingly I passed an order under S. 112, 108, CPC requiring respondent No. 1, their leader, to show cause why he should not be bound over in Rs. 200 with one other security in the same amount to be of good behaviour for one year. While I called on the rest to show cause why their leader to show cause why he should not be bound over in Rs. 200 with one other security in the same amount to be of good behaviour for one year. While I called on the rest to show cause why they should not be bound over to be of good behaviour for the same length of time but in Rs. 100 with one security in the like amount. On June 5th I discharged respondents Nos. 12, 13 and 14 and on June 7th Nos. 4, 5, 11, 15, 18 and 19.

2. It is common ground to both the prosecution and the defence that the remaining respondents are the followers of respondent No. 1 who was himself

Hazrat Moulana Siddiq Deendar Channa Bashweshwar and who is a native of the Nizam's Dominions. He claims to be a reincarnation of Basav, the founder of the Lingayat religion who lived from about 1100 to 1160 A.D. It appears that he relies on certain marks on his hands to prove his claim to be this personage, although he claims to be the Avatar of this Lingayat Saint. He also claims to be devout Mohamadan and to have found the way to reconcile Hinduism and Mohammaddanism. Hence he and his followers use Hindu names as well as Mohamadan names, and wear pink cloth of Hindu Sadhus out into robes of Mohammadan style.

3. From this summary of the teaching of the first respondent, it will be clear that he needs to be a very tactful and discreet preacher if he is to avoid arousing the hostility of Lingayats in particular of Hindus in general and as well of orthodox Mohammadans are likely to be annoyed only because the doctrine of reincarnation is unknown to orthodox Mohammadan theology. The Lingayats are likely to be intensely annoyed because even if as the respondents say, their bards, and some of their hypocryphal writers have prophesied the return of Basava yet they cannot but repudiate the idea that their founder should now be reincarnated as a Mohammadan; while Hindus in General are not likely to approve of the idea that the man who unites Hinduism and Mohammadanism can yet assert that he remains a devout Mohammadan.

4. The prosecution alleges that so far from the respondents and his followers being discreet and tactful missionaries, they are fire brands far from dissimulating their contempt for Hinduism. They, it is alleged, occasionally give vent to it in a way that is bound to result in breaches of the public peace. The respondents on the other hand assert that their leader in particular and themselves as well, are models of sweet reasonableness and never give occasion for offence to the followers of any religion.

5. The prosecution evidence consists of

(1) evidence of two occasions in the Dharwar District when breaches of peace might easily have followed the preaching of the principle respondent No. 1 on December 26th 1930 in Dharwar. When the police had to disperse by force a large crowd which had surrounded the respondents. After which at the request of the District Magistrate the respondents left Dharwar.

And

(2) On May 20th 1934 at Hubli when the first respondent in a lecture at a place open to the public remarked after pointing out the superior protection which God has given the Kaba at Mecca as compared with the temples of Hinduism, said that the Arya Samajists propagated their religion by prostituting their wives and daughters. Luckily there was only one Hindu there and his protests were easily quitted and no breach of the peace occurred;

6. The prosecution further give evidence (2) of the many occasions which the

authorities responsible for the public peace have taken action to restrain the respondents from preaching in public in this District. In every year from and including 1930 written notices of some sort have cut short the preaching of respondents Nos. 1 and 3, 8 and 16 have also had notices served on them in this district every year since 1930. No. 17 has had a notice served on him in this District before this year. In addition similar action has had to be taken against the respondent and his party in Mysore and in Hyderabad State.

7. The prosecution have also called as witnesses both an individual Mohammadan one of several who signed a petition to me asking that the respondents should be restrained from speaking in public. And an individual Lingayat who deposed the annoyance caused to followers of their respective religions by the words of the respondents.

8. In reply the respondents over (I) that a breach of the peace has never actually followed their preaching. (2) The first respondent has further produced in order to prove that he is an orthodox Mohamadan and that his preaching fought not to annoy Mohamadans, a Fitman from H.E.H. the Nizam dated 1336 A.N. (A.D. 1928) to the effect that he was to get an allowance of Fifty rupees a month so long as he toured in the Hyderabad State and preached as he went. He was to submit reports of his sermons to H.E.H. (the allowance has since been stopped) government. (3) The defence have also called individual witness including a Lingayat and two Hindus who swear that their sermons are inoffensive and do not provoke the followers of any religion.

9. Of the two opposing views of the activities of the accused. I have no hesitation in accepting that the prosecution as correct. It is probably true that on special occasions as for instance at a conference of religions the respondents may be moderate and entirely reasonable. On such an occasion respondent No. 1 certainly would not make the offensive suggestion about Arya Samajists which I have quoted in my filth paragraph Probably indeed, he would not have made use of that phrase on May 20th at Hubli had he seen any Hindus in his audience. But at the same time I believe that respondent No. 1 did utter these words on May 20th, and that they express a contempt for educate D 4 Hindus which he really fees and which when he gets excited he might be unable to conceal.

10. In Court, respondent No. 1 and his followers have been uniformly courteous to me, But I formed the opinion that they are over-apt to insist on their rights, that they are not very scrupulous as to how they induce their witness to suppress an inconvenient opinion. And that in short they are a rather hot tampered body of men, though in court they had their tempers well under control. I believe that they have not the kind of temperament necessary in those who wishs to preach an offensive doctrine without giving offence in face. I should suppose that if no breach of the peace has over resulted from their sermons, it is largely because as soon as the police see them coming and hear what they are going to talk about, they take special precautions to maintain the public peace.

11. I therefore find that all the ten accused intentionally disseminate or attempt to disseminate matter, the publication of which is likely to result in feelings of hatred between different classes of his Majestys" subjects. And I therefore order the first respondent to give his personal surety in Rs. 100 together with one another surety in Rs. 100 that he will be of good behaviour for one year. And I direct the remaining nine accused each to give his personal security in Fifty rupees together with one other security in fifty rupees that they will be of good behaviour for one year.

12. The police prosecutor R.S. Talang presented his case ably. It was also good of him not to object the extreme latitude which I allowed the first respondent both in examining his defence witnesses and in speaking for nearly three hours in his own defence.

Dharwar

July 5th 1934

(Sd) L.N. Brown D.M. Dharwar"

119. Subsequently, after independence, Sri K.M. Munshi, Agent-General of India during his stay at Hyderabad had personally observed the activities of this Deendar Anjuman Organisation and its founder and he mentioned in his autobiography namely "The End of an Era [Hyderabad Memoirs]", about the contents of the which book judicial notice can be taken according to Section 57(13) of Indian Evidence Act. The contents of pages 40 and 41 of the said book is extracted as below:

"The Deendars, however, remained active proselytizers, though, by January, 1948, their influence had become limited.

The head of this religious sect styled himself Hazarat Moulan Siddiq Deendar Channa Basaveswar Qible". He posed as the avatar of Channa Basaveswar, the ancient founder of the Lingayat sect of the Hindus and claimed to have the same divine marks on his body as that saint.

Four of Siddiq's lieutenants also declared themselves to be the Hindus divinities, Vyas, Sri Krishna, Narasimha and Veerabhadra. Of course the Nizam had a secure place in the pantheon; he was Dharmaraja, the god of righteousness of the Hindu scriptures.

Siddiq had his headquarters in Hyderabad. His followers, reckoned to be five hundred strong, had no ostensible means of livelihood. They wore the green turban of Muslim divines, the saffron robe of Hindu sadhus and beard in the style of the Sikhs. When the situation in a village grew tense, they led the Muslims against the Hindus. When they set out to loot the possessions of the Hindus, they dressed as Razakars.

The exploits of Siddiq were reminiscent of a forgotten age. At one time he even started to collect an army for the purpose of capturing Hampi, the ruins of the

capital of the vanished empire of Vijayanagar, to recover its buried treasure.

His attacks on the Hindus were characterized by neither taste nor self-restraint. In the religious literature of the Deendars, Siddiq was represented as shooting lions, tigers, leopards and foxes, all of which had the shape of Sikhs, Hindus, Christians and Lingayats. One of their books, Awanul Nas, contained the following exhortation:-

My Muslim brethren! The Quran has taught you only one thing: that is, to change the country in which you live into Pakistan; in other words, to compel others to drink of the waters of the Quran-e-Masjid. A bowl containing one-quarter milk and three-quarters dung cannot be called clean. Whether it is Arabistan, or Turkestan or Afghanistan, so long as it contains Kafristan in its territory, it cannot be called Pakistan.

Siddiq began to pursue his proselytizing activities vigorously. He also declared a jihad [a religious war] against the shrines of the Hindus and issued a public appeal for one lakh volunteers and a loan of Rs. 5,00,000 for the purpose. No step was taken by the authorities against him. The Hindus, thereupon, on January 10, 1932, submitted a petition to the Nizam to check his activities. When the opposition became too strong, the Nizam's Government imposed some kind of restriction on Siddiq's activities, but till 1948 he continued to function, through on a very limited scale. The Nizam's Government then imposed some restriction on his activities.

Because he claimed to be a reincarnated Hindu saint, Siddiq was thoroughly disliked by the fanatic Razvi, who also considered him a potential rival. Meanwhile, although the Razakars looked upon the Deendars with contempt they tolerated them as convenient allies for the terrorization of the Hindus."

120. Therefore from the aforesaid undisputed material, at an undisputed point of time, it is clear that the intention behind this organization and its movement is to Islamize the whole of India, to preach that Allah is the only God and Hazarath Mohammad Paigamber is only the Jagadguru and to make all the people who are inhabitants of India to accept this view and to achieve the said purpose, they declared religious war.

121. It is in this background, we have to appreciate the legal and factual issues that arise for consideration in these appeals.

LEGAL ISSUES

Re: POINT NO. 1

DOUBLE JEOPARDY

(ARTICLE 20(2) OF THE CONSTITUTION AND SECTION 300(1) OF CR.P.C.)

122. Before framing the charges against accused in this case, it was contended that they were already tried and convicted for the offence of conspiracy by the

Special Court at Hyderabad in S.C. No. 95/2001. Therefore, the trial before the Special Court at Bangalore against the same accused for the same offence amounted to second trial which is hit by Section 300 Cr.P.C. on the principles of double jeopardy. After considering the said contention, vide considered order dated 18.7.2005, the trial Court held that the trial was not hit by Section 300 Cr.P.C. in spite of the previous trial conducted against the present accused and others by the Special Court at Hyderabad. Notwithstanding the said finding, this issue was once again raised in the trial Court at the time of arguments on merits and it was answered in the negative by the Trial Court.

123. Therefore, the accused urged before us that A. 3, A. 5, A. 6, A. 7, A. 8, A. 10, A. 11, A. 12, A. 13, A. 15, and A. 16, were accused in S.C. No. 95/01 on the file of the Additional Metropolitan Sessions Judge for trial of Jubilee Hills car bomb blast, Hyderabad for similar offences. After trial, these 16 accused were convicted in that case and they have undergone imprisonment. Therefore they could not be tried again for the same offence, i.e. the offence of conspiracy as that would offend Article 20(2) of the Constitution of India read with Section 300 of Cr.P.C. To answer this point, it is necessary to refer to that Hyderabad case.

HYDERABAD CASE

124. 50 accused were charge sheeted in SC No. 95/2001 on the file of the Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case-Cum-Additional Family Court, Hyderabad, for the offences under Sections 120B, 124A, 153(A), 295, 295(A), 296, 307, 324, 325, 326, 395, 436 IPC and Sections 3, 4, 5 and 6 of Explosive Substances Act and Section 25(1-A) and Section 27 of Arms Act, of them sever accused were absconding. Therefore, only 43 accused were tried for the aforesaid offences. In the said case as may as 30 charges were framed.

125. The judgment in the Hyderabad case discloses that, since there were individual overt acts alleged against some of the accused, charges under Sections 324, 336, 307, 395 were framed and separate cases were registered and the Court opined that these aspects could be gone into in individual case.

126. Therefore, though 30 charges were framed in SC 95/01 no finding was recorded in respect of 27 charges and only in respect of 3 charges finding was recorded and the accused were found guilty in respect of only charges 1 to 3, which are as under:

1. That you A-8 to A-20, A-24 to A29, A-31 to A-45 and A-50 being members of the Deendar Anjuman on or about i.e., from November, 1999 to May, 2001 attended several secret meetings i.e., a meeting on 20-10-1999 at Deendar Anjuman Office, Asifnagar, Hyderabad; a meeting on 23-11-1999 at Ashoka Lodge, Hyderabad; meetings held in the flat of Hashim for 9 times from 24-11-1999 and a meeting held on 27-5-2000 in the house of Jaleel Chowdhary; a meeting on 24-5-2000 in the house of Khaliq-us-Zama at Nuzvid; a meeting in May, 2000 in the mango grove at Nuzvid and a meeting in D.A.R. office at

Vizianagaram and agreed with Saheb Jada Syed Zia-UI-Hasan, Syed Fayyaz-UI-Hassan @ Khaleel Pasha, Syed Shabihul Hassan @ Adil Hassan, Syed Zahed-UI-Hassan @ Zahid Pasha; Syed Khalid Hassan @ Khalid Pasha, Syed Hiazul Hassan @ Abed Pasha; Javed Pasha who are residents of Pakistan and with Zakir, Siddiq & Moinuddin to do illegal acts and other acts, to wit, 1) acquisition of explosive substance; 2) disturbing religious congregations; 3) desecration of places of worship by planting LEDS; 4) sending threatening letters to Christian missionaries and 5) committing dacoities, etc., and did those acts in pursuance of the agreement to cause disaffection towards the Government established by law and thereby committed an offence punishable under Sec. 120-B of I.P.C. within my cognizance.

2. That you A-47 being a member of Deendar Anjuman Organisation in the months of February, 2000 and April, 2000 and May, 2000 agreed with the persons detailed in charge No. 1 to do an illegal act viz., supply of explosive substances and that you supplied explosive substances to A-30, A-46, A-48 and A-49 on number of occasions in February, 2000 and April 2000 in pursuance of the agreement to cause disaffection towards the Government established by law and that you attended a secret meeting on 16-1-2000 between 1400 hours and 1900 hours in the Mango Grove at Nuzvid and that you thereby committed an offence punishable under Section 120-B of I.P.C. and within my cognizance.

3. That you A-30, A-46, A-48 and A-49 being members of Deendar Anjuman Organization, in the months of February, 2000 and April 2000 and May, 2000 and on other dates agreed with the persons detailed in charge No. 1 to do illegal acts, viz., solicit, purchase, transport explosive substances and that you solicited, purchased and transported explosive substances from Kodad in pursuance of an agreement to cause disaffection towards the Government established by law and that you thereby committed an offence punishable under Section 120(B) I.P.C. and within my cognizance.

127. Evidence was adduced on behalf of the prosecution to prove those charges. All the accused filed a common statement under Section 313 Cr.P.C. stating that the Deendar Anjuman Organisation was founded by Siddique Deendar Channa Basaveshwara, Hyderabad in the year 1924 with more than 200 disciples. The main objects of the organization are Ekho Jagadeeswara (Belief in the Unity of God), Ekho Jagadguru (Belief in the oneness of world teacher), Sarva Avathara Satyaha (Belief in all the prophets of the world), Sarva Dharma Grandha Satyaha (Belief in all the revealed scriptures of the world) and Samata - Sammelana Pradhana (Belief in oneness and unity of all human beings irrespective of their caste, creed, varna, religion). They further stated that His Holiness was conducting International Religious Conferences in the Head Office at Asifnagar and he demised in the year 1952. They further contended that they were not responsible for the acts attributed against them. The atrocities were committed by the Bajarangdal and Vishwa Hindu Parishat and their parent organizations like R.S.S. & Shiva Sena, on the minorities in various parts of the country and the

same was published in the news papers. They did not adduce any defence evidence.

128. Charges 1 to 3 primarily were, entering into agreement to do illegal acts and other acts, such as acquisition of explosive substance, disturbing religious congregations, desecration of places of worship by planting LEDS, sending threatening letters to Christian missionaries and committing dacoities, etc. The question was the accused did those acts in pursuance of the agreement to cause disaffection towards the Government established by law and thereby committed an offence punishable under Sec. 120-B of I.P.C.

129. Therefore, the Court framed the following points for determination in the said case:-

1. Whether there is criminal conspiracy among the accused to foment communal disharmony and in that connection whether they have committed any specific overt acts?
2. Whether the accused maliciously insulted the religious belief, caused disturbance to the religious assemblies?
3. Whether the accused committed deliberate and malicious acts with intent to insult the religion or intending to outrage the religious feelings of any class?

130. The learned Judge, after considering the entire evidence and argument held as under:-

"44. Considering the voluminous evidence let in by the prosecution and basing on the legal propositions, I am satisfied that the prosecution is able to establish the continuation of link and strived to produce the evidence to the maximum extent and gathered information to prove the offence under Section 120B I.P.C.

Though the accused were not connected, the prosecution is able to prove the explosions and attempt to make an explosion in various places of worship and religious meetings.

There are specific cases for all the offences though my learned predecessor framed as many as 30 charges in this case they are linked with individual cases. The evidence placed by the prosecution is well considered in those cases to arrive at a conclusion, whether the accused arrayed in that case were guilty or not, therefore separate findings on those issues in this case are not warranted as provided under Sec. 300 Cr.P.C.

45. In view of my above discussion in the above paras, I am satisfied that the prosecution is able to prove the charges 1 to 3 for the offence under Sec. 120-B IPC against all the accused who are tried in this case.

Finding is not recorded in respect of other charges as they are directly connected with other cases.

46. In the result, I find that the accused are found guilty for the offence

punishable under Sec. 120 I.P.C. and they are convicted under Section 235(2) Cr.P.C.

131. Thereafter, on hearing the accused on the question of sentence it was held as under:-

"50. In the result, A8 to A. 20, A. 24 to A. 41, A. 43 to A. 50 are found guilty for the offence under Section 120-B I.P.C. and they are accordingly convicted and sentenced to under go Rigorous Imprisonment for 6 months each.

51. The period of detention undergone by the accused to be set off against the sentences of imprisonment as required under Section 428 Cr.P.C.

52. Since all the accused have completed the said period they are directed to be set at liberty forthwith if they are no longer required in any other case. M.O. 2 shall be returned to P.W. 122, M.O. 3 shall be returned to P.W. 121. M.Os. 86, 87, 89, 98-101 shall be confiscated to the State.

M.Os. 6 to 8, 81, 88 and 141 shall be confiscated to the State."

132. The conspiracy which gave raise to the said case arose out of a meeting, which was held within Andhra Pradesh at various places, i.e., a meeting on 20-10-1999 at Deendar Anjuman Office, Asifnagar, Hyderabad; a meeting on 23-11-1999 at Ashoka Lodge, Hyderabad; meetings held in the flat of Hashim for 9 times from 24-11-1999 and a meeting held on 27-5-2000 in the house of Jaleel Chowdhary; a meeting on 24-5-2000 in the house of Khaliq-uz-Zama at Nuzvid; a meeting in May, 2000 in the mango grove at Nuzvid and a meeting in D.A.R. office at Vizianagram. All those meetings relate to the offence committed within the State of Andhra Pradesh as is clear from the charges framed in the said case.

133. All those meetings relate to the offence committed within the State of Andhra Pradesh as is clear from the charges framed in the said case.

134. The offence of criminal conspiracy under Section 120A is a distinct offence. The agreement in itself constitutes the offence. The offence is of a technical nature. The conspiracy to commit a crime and the crime itself are two distinct and different offences. It is a continuing offence. A conspiracy is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at. Criminal conspiracy may come into existence, and may persist and will persist so long as the persons constituting the conspiracy remain in agreement and so long as they are acting in accord, in furtherance of the objects for which they entered into the agreement.

135. Conspiracy is itself a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. General conspiracy is distinct from number of separate offences committed while executing the offence of

conspiracy. Each act constitutes separate offence punishable independently of the conspiracy. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of a change in the text of the banner. Where a well defined brew conspires to commit multiple crimes so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship the conspiracy continues to subsist though it was entered in the first instance. A conspiracy thus is a continuing offence and continues to subsist and committed whenever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity.

136. Section 120B prescribes the punishment for criminal conspiracy. It is in two parts. The first part is contained in sub-section (1) of 120B. It provides who ever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of 2 years or upwards, shall where no express provision is made in this code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. In other words, this subsection deals with criminal conspiracy to commit certain types of offences which is committed in pursuance of a conspiracy. If, in Code, punishment for this conspiracy is expressly prescribed, then the punishment for such conspiracy is according to such express provision. If there is no express provision made in the Code for the punishment for such a conspiracy, the accused shall be punished in the same manner as if he had abetted such offence.

137. Sub-section (2) provides if the criminal conspiracy committed does not fall within sub-section (1) of Section 120B then the punishment shall be imprisonment of either description for a term not exceeding 6 months or with fine or both.

138. Therefore, when a punishment is imposed under Section 120B of IPC, it is necessary to find out whether any express provision is made in this Code for the punishment of such a conspiracy. Then the punishment to be imposed for such conspiracy is according to the said express provision. In the absence of such express provision, it is to be found out what is the offence committed by the accused in pursuance to the offence of Criminal conspiracy. Then it has to be found out whether such an offence is, punishable with death or imprisonment for life or rigorous imprisonment for a term of two years or upwards. If the accused is found guilty of such an offence, he is not only liable to be sentenced for the said offence, he is also liable to be sentenced for the Criminal Conspiracy to commit such offence for the same period prescribed under the law. However, when the offence committed by the accused in pursuance of such Criminal Conspiracy does not fall within any of the aforesaid offences, then only he shall be punished with imprisonment of either description for the term no exceeding six months.

139. Article 20 of the Constitution of India prohibits prosecution of a person who has been punished for the same offences earlier. It reads as under:-

"20. Protection in respect of conviction for offences.

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

140. Article 20(2) protects a person from being "prosecuted and punished for the same offence more than once". The question has to be answered as to whether the petitioners had previously been prosecuted and punished for the same offence for which they are now being prosecuted. However, Section 300 of Cr.P.C. reads as under:-

"300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under subsection (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under subsection (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General

Clauses Act, 1897, (10 of 1897) or of section 188 of this Code.

Explanation- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

141. The Apex Court in the case of Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao and Another, , dealing with these provisions held as under:

5. It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) of Cr.P.C. Article 20(2) states:

"no person shall be prosecuted and punished for the same offence more than once."

6. On the other hand, Section 300(1) of Cr.P.C. States:"300. Person once convicted or acquitted not to be tried for the same offence-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under subsection (1) of section 221 or for which he might have been convicted under sub-section (2) thereof."

7. Thus, it can be seen that Section 300(1) of Cr.P.C. is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that "no one can be prosecuted and punished for the same offence more than once", Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

8. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) of Cr.P.C. applies. Consequently, the prosecution under Section 420, IPC was barred by Section 300(1) of Cr.P.C."

142. Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) of the Code, or he could have been convicted for such other offence under Section 221(2) of the Code. In this context it is useful to extract Section 221 of the Criminal Procedure Code.

"221. Where it is doubtful what offence has been committed-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with] having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in

evidence that he committed a different offence for which he might have been charged under the provisions of subsection (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

143. The Calcutta High Court in the case of Jitendra Nath Gupta and Others Vs. Emperor, dealing with Section 403 of the old Code held as under:-

"The question as to whether a particular trial is barred by reason of previous prosecution ending in conviction or acquittal is a question to be determined on the facts and circumstances of a particular case: one of the tests the Commissioners of the Tribunal in the case before us have observed in their judgment is whether facts are the same or not; but the true test as has been said in cases decided by this Court is not so much whether the facts are the same in both trials as whether the acquittal or conviction from the first charge necessarily involves an acquittal or conviction on the second charge: see Ram Sahay Ram and Others Vs. Emperor, . It is necessary to indicate here that the provisions contained in Section 403, Criminal P.C., are complete by themselves on the subject of the effect of previous acquittal or convictions and no question of exercise of inherent jurisdiction or the application of the rule of res judicata arises where there are specific provisions in the law. The four sub-sections of Section 403 deal with four different kinds of cases: (1) the case of one set of facts or omissions constituting one legal offence; (2) the case of one series of facts involving more than one offence; (3) the case of one set of facts constituting more than one legal offence; and (4) a special case where a single act or set of acts has had a consequence unknown or having occurred since the first trial. The law as enacted, complete by itself, deals with the maxim that "no man ought to be tried twice upon the same facts" which must mean that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. Keeping the above consideration in view it must be held in the case before us that the contention as to the non-maintainability of the prosecution must be overruled as wholly without substance. The facts in the present prosecution under Section 121-A, I.P.C., and those involved in the earlier prosecutions are not the same; some of the facts are no doubt common, but on the facts of the previous trials a charge under Section 121-A, I.P.C., could not possibly have been framed or a trial held on that charge. As the Commissioners of the Tribunal have observed, the offences with which the accused were charged in the earlier trial were some of the limits, the present charge under Section 121-A, I.P.C., includes them, but goes much beyond them. The facts of this case therefore attract the operation not of Sub-section (1) but of Sub-section (2) of Section 403, Criminal P.C. The offence charged in the present case was a distinct offence and could not possibly be covered by a charge under Section 120-B, I.P.C."

144. Again in the case of State Vs. Ram Kanwar, it was held as under:-

"13. Giving my thoughtful consideration to the relevant provisions of the law as

also the aforesaid various authorities and especially the Supreme Court's authority in Ranchhod Lal's case (supra), I am of the view that the separate charges are to be normally framed for each offence of criminal breach of trust or dishonest misappropriation of money or defalcation of accounts as is the general rule enunciated in Section 218 Criminal Procedure Code but by way of an exception the provision contained in Subsection (2) of Section 212 Criminal Procedure Code may be resorted to by the prosecution so as to specify the gross sum of the various items of criminal breach of trust, misappropriation of money or defalcation of accounts and also the two terminal dates between which those offences are alleged to have been committed, without specifying the particular items or exact dates on which those offences were committed, and the charge as framed in respect of all those items shall be deemed to be charge of one offence within the meaning of Section 219 Criminal Procedure Code provided that the time intervening the two terminal dates does not exceed one year, and this provision of law is an enabling one for the prosecution and cannot be converted into a disabling one.

Further more, Section 300 Criminal Procedure Code enunciating the English rule of *autrefois acquit* and *autrefois convict* applicable to criminal trials to also not applicable when recourse is had by the prosecution to the aforesaid exceptional rule contemplated by Subsection (2) of Section 212 when challan or charge-sheet is filed by the prosecution against the accused person in respect of various items of misappropriations defalcation, trial held resulting in conviction or acquittal and subsequent charge-sheet/challan is filed in respect of other items of misappropriation occurring during the same period of the two terminal dates or within the same year to which the items of the previous charge-sheet pertained Even the conviction in the subsequent trial though for the items of the same period or of the same year to which the items of the earlier charge-sheet pertained, would not be illegal

(16) The well-known maxima "*nemo debet bis vexari pro eadem causa*" (no person should be twice vexed for the same offence) embodies the well established Common Law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Criminal Procedure Code is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.

145. Though Article 20(2) of the Constitution of India embodies a protection against second trial after a conviction for the same offence, the ambit of the sub-article is narrower than the protection afforded by Section 300 of the Procedure Code. It is held by the Apex Court in *Manipur Administration Vs. Thokchom, Bira Singh*, that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the sub-article embodies the

principle of *autrefois convict*, Section 300 of the Criminal Procedure Code combines both *autrefois convict* and *autrefois acquit*.

146. What follows from the aforesaid decisions is, to attract Section 300 Cr.P.C., the facts of the present case and the charges framed for the offences should be the same in the previous case already tried against the accused.

147. The plea of *autrefois acquit* arises when a person is tried again on the same offence or on the same facts for any other offence under conditions attracting Section 221. The protection afforded by these words, "nor on the same facts for any other offence extends to different offences only when they are based on the same facts and fall within Section 221. The true test is not so much whether the facts are the same in both trials as whether the acquittal on the first charge necessarily involves an acquittal on the second charge. The principle of *autrefois acquit* is not applicable when the section though is the same in both the trials, the facts are wholly different. The principle is that when a person can be tried for several offences at one trial, but has been tried only for a few, he should not be tried again for the other offences for which he could have been tried before. When a person is charged with six offences in respect of two transactions which under Section 219 of Cr.P.C. could not be tried at one trial and the case was split up into two, acquittal in one case does not bar the trial of the other. If the offences were distinct, there is no question as to the rule of double jeopardy. Two different trials for distinct offences arising out of different transactions, the common object being the same an acquittal in one case does not bar conviction in another. "Distinct offence" means an offence entirely unconnected with the former charge. Section 300(2) is no bar to subsequent trial on the offence of conspiracy, though committed in the course of the same transaction in which the offence of murders and dacoities were committed, if not known to prosecution at the time of previous trial.

148. The principle of *res judicata* or issue of estoppel is different from the principle of double jeopardy or *autrefois acquit* in Section 300 Cr.P.C. Where an issue of fact has been tried by a competent Court and a finding has been reached in favour of an accused, it would constitute *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different or a distinct offence but as precluding the reception of evidence to disturb the finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 300.

149. The charge of conspiracy which was the subject matter of criminal case before the Hyderabad Court makes it clear, that all the meetings which were held were within Andhra Pradesh. Charge No. 1 in the said case gives the date of the meetings and the place of the meetings. Para 45 of the judgment in Hyderabad case extracted above, makes it clear that the accused were not convicted for any of the offences committed in pursuance of the Criminal conspiracy. The reason being the said offences were the subject matter of various cases pending in the Hyderabad Court and therefore, no finding was recorded insofar as those

offences are concerned. But the accused were convicted for the offence of Criminal Conspiracy, which itself is an independent offence and awarded the sentence as prescribed under Sub-Section (2) of Section 120B of IPC.

150. Therefore, in the instant case, no charges are framed in respect of the main conspiracy held in the Deendar Anjuman Ashram on 20.10.1999, whereas, the charges framed in this case are in respect of the renewed and continued conspiracies entered into in the territory of State of Karnataka which were held in various places in Bangalore, Chikkaballapur, Batakurki, Kokatnur, Hubli and so many other places. The offence of conspiracy is a continuing offence and if any member of the conspiracy acts in furtherance of the continued and renewed conspiracy then all the members of the conspiracy will become responsible for that continued and renewed conspiracy and it constitutes a separate offence and they are required to be punished for such offence. The crime that is committed in Karnataka emanated from the conspiracy, which was hatched at the said places. The accused and their associates are said to have secured explosive substances, prepared the bombs, planted them in the Churches at Hubli, Wadi, Bangalore and they were attempting to plant in some other places, blasted them with an intention to create disharmony in between the major religions of India, derail the Indian economy, create lawlessness and thereby Islamise the whole India.

151. Therefore, the charges framed in this case are pertaining to the conspiracies and other offences like 120-B, 121, 121-A, 124-A, 153-A, 295, 427, 436 IPC and also under the provisions of the Explosive Substances Act and Explosives Act. All these charges pertain to the offences committed by the accused within the State of Karnataka. The same is not the subject matter of charge No. 1 to 3 in the case before the Hyderabad Court. In Hyderabad the charge was not under Section 120, 121, 121A. Charge was under Section 120B and other offences. Therefore, as the accused in this case were not tried for the same offence in the earlier proceedings, neither Article 20(2) of the Constitution of India nor Section 300 of Code of Criminal Procedure, 1973 is attracted to the facts of this case. Therefore, the trial Court rightly held the trial in this case is not hit by the aforesaid provision.

Re: POINT No. 2 - SANCTION

(SECTION 196 OF CR.P.C.)

152. The accused were prosecuted for offences under Sections 124A, 153A, 295, 436, 427 read with Section 120B of IPC and also under Sections 3, 4 and 5 of the Indian Explosive Substance Act, 1908 as well as under Section 5 read with Section 9B of the Explosive Act, 1884. To prosecute an accused for an offence under Sections 153A for criminal conspiracy, to commit such offence, previous sanction of the Central Government or of the State Government is necessary without which no Court shall take cognizance of such offence. Therefore, on 12.3.2001 PW-57 the IO submitted a request letter to IGP, COD, Bangalore, to accord sanction to prosecute 29 accused for the offences under Sections 153A,

120B and 124A as required under Section 196 of Cr.P.C. Along with the said request a copy of the FIR, mahazars, FSL reports and other connected records were submitted to accord sanction to prosecute the accused in Crime No. 77/2000 of Wadi Police Station, Wadi. After examining the records, the Government accorded sanction for prosecution of the accused under Section 196 of Cr.P.C. vide Order dated 12.10.2000, and O.E. 127 MOHIBA 2000, Bangalore dated 17.10.2000 which is marked as Ex. P. 58 and Ex. P. 59 respectively. The list of the accused for whose prosecution, the sanction was accorded was also enclosed. It is marked as Ex. 59(b).

153. It was argued by the learned counsel for the accused that the sanction order does not bear the signature of the sanctioning authority but only his name is written thereon. As such, the same cannot be looked into treating it as secondary evidence. In the light of this if Ex. P58 is perused, it bears the signature of one M. Laxminaryana, District Magistrate and Deputy Commissioner, Gulbarga, Ex. 59 bears the signature of N. Siddaramaiah, Under Secretary to the Government of Karnataka, Department of Home and Transport.

154. Further, on a plain reading, Ex. P58 discloses that the sanctioning authority took note of the fact that, on 8.6.2000 at around 6.30 AM and at about 9.10 AM a bomb exploded in St. Ann's Catholic Church situated at Wadi, Gulbarga District. S. Peter, Committee Member, St. Ann's Catholic Church, Wadi, lodged a complaint with the jurisdictional police and the police registered a case against 19 accused in Crime No. 77/2000 for offences under Sections 120-B, 124-A, 153-A, 295, 436, 427 IPC and Section 3 and 4 of Explosive Substances Act, 1908 and Sections 5 and 9(B) of Explosives Act, 1884. As offence was under Section 153A IPC, prior sanction of the Government was necessary before the case was lodged in the Court by virtue of Section 196 of Cr.P.C. Therefore, a request was made for sanction. After considering the aforesaid material, sanction was accorded to file a charge sheet against the 19 accused, whose names were listed and enclosed to the said Sanction Order.

155. One R. Rangamani, was examined in the case as P.W. 51, who has deposed on behalf of N. Siddaramaiah that Siddaramaiah was working as Under Secretary in the Government of Karnataka, Department of Home and Transport. She has deposed that herself and Siddaramaiah have worked together and hence she is acquainted with the signature of N. Siddaramaiah accordingly she has identified sanction order issued by him at Ex. P-59 pertaining to Wadi Police Station, Wadi in Crime No. 77/2000. She has also identified his signature at Ex. P-59(a).

156. The aforesaid M. Lakshminarayana was also examined in the case as PW-50, who has stated that only after examination of the records, the Government accorded sanction for prosecution of the accused under Section 196 Cr.P.C.

157. The tenor of the entire cross-examination of PW 50 and PW 51, is to the effect that the sanctioning authority has accorded sanction as per the directions issued by the higher authorities and not applied their minds independently. But,

nothing worthwhile is elicited through these witnesses to discredit them on the point of application of mind to the facts of the case before passing necessary sanction order.

158. As rightly observed by the trial Court, the sanctioning authority is the Government of Karnataka and not the Under Secretary. Under these circumstances, we are unable to accept the contention of the accused in this behalf. As long as the sanction orders prima facie disclose application of mind by the sanctioning authority and PW 50 and PW 51 who are only issuing authorities have fully supported the same, the contention that sanction order cannot be looked into does not appeal to us.

159. It was contended that the said sanction was issued without looking into the entire facts of the case, which were not placed before the sanctioning authority and, therefore, it is vitiated. Ex. P-144 was not placed before the sanctioning authority before the sanction was accorded. In the absence of Ex. P-144, there cannot be any sanction for prosecution under Sections 121 and 121-A. By filing an application under Section 260, the additional charges were framed under Sections 121 and 121-A. Therefore prior sanction to prosecute the accused for these offences cannot be inferred from the sanction order which is produced in the case. In other words, there is no valid sanction to prosecute the accused in respect of the offences under Section 121 and 121-A of IPC. Ex. P-59 is the sanction.

160. It was the further argument that a reading of the sanction accorded does not disclose any cognizable offence. The prosecution has to prove firstly, that the sanction discloses the facts constituting the offence; and secondly, that if the order does not disclose the facts constituting the offence, atleast the prosecution should adduce evidence showing the material, which they had placed before the Sanctioning Authority. In the instant case, on both the counts, the prosecution has to fail.

161. In support of the said contention reliance was placed on the judgment in the case of AIR 1948 82 (Privy Council), where at paragraphs 9 and 10, it is held as under:

"9. Upon this state of the evidence, the respondent has argued that the view which has prevailed in the High Court of Bombay is wrong and that a sanction which names the person to be prosecuted and specifies the provision of the order which he is alleged to have contravened is a sufficient compliance with cl. 23 of the said Order. In their Lordships' view, in order to comply with the provisions of cl. 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since cl. 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts

were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seems to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Looked at as a matter of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the case. Nor, in their Lordships' view, is a sanction given without reference to the facts constituting the offence, a compliance with the actual terms of cl. 23. Under that clause sanction has to be given to a prosecution for the contravention of any of the provisions of the Order. A person could not be charged merely with the breach of a particular provision of the Order; he must be charged with the commission of certain acts which constitute a breach, and it is to that prosecution - that is, for having done acts which constitute a breach of the Order - that the sanction is required. In the present case, there is nothing on the face of the sanction, and no extraneous evidence, to show that the sanctioning authority knew the facts alleged to constitute a breach of the Order, and the sanction is invalid.

10. Mr. Megaw for the respondent has suggested that this view of the law would involve in every case that the Court would be bound to see that the case proved corresponded exactly with the case for which sanction had been given. But this is not so. The giving of sanction confers jurisdiction on the Court to try the case and the Judge or Magistrate having jurisdiction must try the case in the ordinary way under the Code of Criminal Procedure. The charge need not follow the exact terms of the sanction, though it must not relate to an offence essentially different from that to which the sanction relates".

162. In support of his contention, he relied on the judgment of the Apex Court in the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , wherein at paragraph 3 it is held as under:

"3. A perusal of the Resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on 31-3-1969 or at any date prior to this. The prosecution could have proved the facts constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done. What the prosecution did was merely to

examine two witnesses P.Ws. 2 and 7. P.W. 2 has produced the order implementing the Resolution of the Sanctioning Authority which is Exhibit P. 10 and is dated 21st April, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect (sic-defect) in the prosecution, the entire proceedings are rendered void ab initio. In the instant case no evidence has been led either primary or secondary to prove as to what were the contents of the note mentioned in Exhibit P-16 which was placed before the Sanctioning Authority. The evidence of P.W. 2 or P.W. 7 is wholly irrelevant because they were not in a position to say as to what were the contents of the note which formed the subject matter of the sanction by the Standing Committee of the Corporation. The note referred to above was the only primary evidence for this purpose. Mr. Rao vehemently argued that although the Resolution, Exh. P-16 does not mention the facts, the Court should presume the facts on the basis of the evidence given by P.W. 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned."

163. The Apex Court in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another*, held as under:

"16. Reliance is heavily placed on behalf of the appellant on the case of *Ramji Dayawala and Sons (P) Ltd., (supra)*. The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the "evidence of those persons who can vouchsafe for the truth of the facts in issue". The situation is, however, different whether the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the Court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts

near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole can not be treated as having been exhibited as admitted documents."

164. From the aforesaid judgments it is clear that the grant of sanction is an executive act. The validity of sanction cannot be tested in the light of the principles applied to quasi judicial orders. 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 the sanction. A sanction which simply names the person to be prosecuted and specifies the provision of the order which he is alleged to have contravened is not a sufficient compliance. In order to make it a valid sanction it must be proved that sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction but this is not an essential requirement. Similarly, law does not require a sanction to be in any particular form. But, if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. Sanction to prosecute is an important matter. It constitutes a condition precedent to the institution of the prosecution. The Government has an absolute discretion to grant or withhold their sanction.

165. When we look into the facts of the case, in the background of the aforesaid law, Ex. P. 59 refers to the facts constituting the offence charged, the number of persons who are charged and the provisions of law under which they are charged. The evidence of P.W.-51 shows that, along with the request to accord sanction, FIR, mahazars, FSL report and other connected records were sent to the sanctioning authority and only after examination of the said records and application of mind, the Government has accorded sanction for prosecution and, therefore, the legal requirement contemplated under law is fully satisfied. Therefore, the sanction accorded is valid and legal and does not suffer from any infirmity as contended by the counsel for the appellants.

Re: POINT No. 3

ADDITIONAL CHARGE (SECTION 216 OF THE CODE)

166. Next it was contended that, the trial Court, after hearing the arguments of the parties, framed additional charges for the offences under Section 121 and 121A IPC. Before the accused could be prosecuted for the said offences, prior sanction of the Government under Section 196 of the Cr.P.C. is a must. No fresh sanction having been obtained, the conviction of the accused under Section 121 and 121A IPC is vitiated and is liable to be set aside. In this regard, it is useful to see Section 216 of the Cr.P.C. which reads as under:-

216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is

pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

167. Sub-section (5) of Section 216 provides that, if the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained. Therefore, it is clear that the Court has the power to alter or add any charge at any time before judgment is pronounced. If for the offences which are the subject matter of such additional charge sanction is required, until such sanction is obtained the Court shall not take cognizance of such offence and proceed with the matter. However, the said provision carries an exception to this general rule. The exception is, if already sanction had been obtained for a prosecution, on the same facts of those of which the altered or added charge is founded, then no fresh sanction is required for prosecuting the accused for the offences which is the subject matter of the additional charge.

168. However, the above provision carries an exception to this general rule. The exception is, if sanction had already been obtained for a prosecution, on the same facts as those on which the altered or added charge is founded, then no fresh sanction is required for prosecuting the accused for the offences which is the subject matter of the additional charge.

169. In the instant case, after the framing of additional charges for the offences under Section 121 and 121-A IPC on 29.11.2007, the same was read over and explained to the accused; they pleaded not guilty and claimed to be tried. The learned Public Prosecutor submitted a memo stating that he has no additional, oral or documentary evidence to prove the additional charges and the evidence already led was sufficient to prove the additional charges. The learned defence counsel also did not choose to lead any evidence on the additional charges. But, defence counsel sought for recalling of P.Ws. 35, 49, 52, 54, 56, 59 and 61 and

the said, request was granted. After those witnesses were recalled, they were cross-examined in the context of the additional charges.

170. Therefore, it is clear that the additional charges were framed on the same facts on which the earlier charges had been framed. As sanction had been obtained for prosecution on the same facts as those on which the additional charges were also founded, no separate sanction for prosecution of offence which are the subject matter of the additional charges was necessary in law and, therefore, we do not find any substance in the said contention of the counsel for the appellants.

Re: POINT No. 4

SANCTION UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

171. The accused are prosecuted for offences under Sections 3, 4 and 5 of the Explosive Substances Act, 1908 as well as under Section 5 read with Section 9B of the Explosives Act, 1884. Section 7 of the Explosive Substances Act, 1908 mandates that no Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate. It was contended on behalf of the accused that though consent had been obtained, before granting such sanction the authority had not applied its mind and therefore such a consent was void. The prosecution has produced the original order passed by the District Magistrate and Deputy Commissioner, Gulbarga, granting consent, which is marked as Ex. P. 58. To prove the said document the prosecution has examined the District Magistrate and Deputy Commissioner, Gulbarga M. Laxminarayan as P.W. 50. He has deposed that he served as a Deputy Commissioner in Gulbarga District from May 2000 to May 2003. On 06.10.2000, he received a letter from IGP, COD along with the entire records in Wadi Police Station, in Crime No. 77/2000 with a request to accord sanction under Section 7 of the Explosive Substances Act, 1908 to prosecute A. 1 to A. 19 for the offences under Sections 3 and 4 of the Explosive Substances Act, 1908 and also under Section 5 read with Section 9B of the Indian Explosives Act, 1884. He perused the entire records in that case and he was satisfied from the material on the record that they were sufficient to show that the accused persons had committed the aforesaid offence. Accordingly by exercising the power conferred upon him under Section 7 of the Explosive Substances Act, 1908 he accorded sanction as per Ex. P. 58. He identified the signature in the said order as Ex. P-58(a).

172. A bare perusal of the said order discloses that P.W. 83 perused the entire records sent by the Investigating Officer, applied his mind and thereafter being satisfied that the A. 1 to A. 19 prima facie had committed the above offence, issued the sanction order. Once the order itself shows that the sanctioning authority has applied its mind to the material on record and he enters the witness box and deposes that it is only after looking into the material on record and having been prima facie satisfied that accused have committed the above

offence, he has issued the order, the requirements of law are completely complied with. Therefore, the contention that there was no application of mind before according sanction is without any substance and rightly the trial Court held that the aforesaid order is valid and legal and there is no infirmity in the said finding.

173. It should be borne in mind that the Court should not attach much importance to the perception of facts and law by the sanctioning authority; different men will have different perceptions. If the Court on perusal of the sanction order, even if it broadly complies the legal requirement and no prejudice is caused to the accused, such sanction order shall not be brushed aside. Minor discrepancies are bound to occur when variety of men deal with matter. Therefore, the finding of the Trial Court that the Sanction accorded under the Explosive Substance Act, 1908, by the competent authority under the act is valid and legal does not call for any interference.

Re: POINT NO. 5

ADMISSIBILITY OF EX. P-144 (CONFESSIONAL STATEMENT OF A. 16)

174. The next legal argument canvassed by the learned counsel for the appellant-accused is that the confessional statement of A. 16, which is marked in the case as Ex. P. 144 is inadmissible in evidence and the conviction based by taking into consideration the alleged admissions in Ex. P. 144 vitiates the entire order of conviction.

175. Admissibility of Ex. P. 144 is challenged on several grounds. Firstly it is not a confessional statement. Secondly, it was obtained when A. 16 was in police custody. Thirdly, original confession statement was not produced and Ex. P. 144 is only a certified copy, produced and marked by the prosecution without laying any foundation for leading secondary evidence. Fourthly, the requirements of Sec. 164 Cr.P.C. were not complied before recording the confession statement and it was obtained under threat and by promise. Even if Ex. P. 144 were to be held an extra-judicial confession, it would be very weak evidence on the basis of which no conviction can be recorded. At any rate, Ex. P. 144 cannot be used to prove the guilt of co-accused. Fifthly, confession statement was not furnished to the accused along with the charge sheet but produced before the Court during the course of trial and therefore could not be considered at all.

176. Repelling the above arguments, the learned Public Prosecutor places reliance on Sec. 63 r/w Sec. 65 of the Evidence Act and submits that the original confession statement was produced in S.C. No. 423/2001 and therefore its certified copy was produced. P.W. 60 who spoke about this document was confronted with the original and the certified copy thereof was marked as Ex. P. 144. No objection was raised by the accused at that time with regard to marking of Ex. P. 144. The document in question is dated 31.08.2000 and it is in the handwriting of the A-16 who after being arrested at Delhi on 08.08.2000 was in police custody only till 29.08.2000. While in judicial custody, A-16 wrote this

letter and handed over the same to the Jailor - P.W. 60. Since the original is produced in S.C. 423/2001, its photo copy was forwarded to the learned Magistrate in Cr. No. 290/2000 of Magadi Road Police Station. A-16, while answering Q. No. 268 of statement U/s 313 Cr.P.C. relating to the confession has simply denied the same. Therefore, it is too late in the day to contend either that being a photo copy Ex. P. 144 is inadmissible in evidence or that it is not proved in accordance with law.

177. Before determining the question whether Ex. P. 144 is admissible in evidence, it is necessary to know and understand the meaning of "Confession", kinds of Confession, the procedure prescribed for recording a confession and the provisions relating to its admissibility.

WHAT IS CONFESSION?

178. The expression "confession" has not been defined in the Evidence Act. "Confessions" a terminology used in the criminal law is a species of "admissions" as defined in Section 17 of the Indian Evidence Act. An admission is a statement-oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession.

179. Sections 17 to 23 of the Indian Evidence Act deals with admissions whereas the law as to confessions is embodied in Sections 24 to 30 thereof and Sections 162 and 164 of Cr.P.C. Broadly speaking, confession is an admission made at any time by a person charged with crime, stating or suggesting an inference that he committed the crime. A confession or an admission is evidence against its maker if its admissibility is not excluded by some provision of law. Law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the voluntariness of the person making it, the court may refuse to act upon the confession, even if it admissible in evidence.

180. Whether a confession is voluntary or not is always a question of fact. A free and voluntary confession deserves highest credit, because it is presumed to flow from a heightened sense of guilt. The rule may therefore, be stated thus: While the evidence in proof of making of confession is always to be suspected, but once proved to have been made voluntarily, confession is one of the most reliable evidence in law. Section 25 of the Evidence Act bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate.

181. Section 24 of the Evidence Act lays down the obvious rule that if it appears to the court that the confession was as a result of any inducement, threat or promise proceeding from a person in authority, it is liable to be excluded from

evidence. Here the word "appears" can notes that such inducement, threat or promise need not be proved to the hilt and if the facts and circumstances emerging from the evidence make it reasonably probable that it was a result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it was to a Magistrate or a person other than police officer. Confession leading to discovery of a fact U/s 27 of the Indian Evidence Act is an exception to the rule of exclusion of confession made by an accused while in the custody of police. Section 30 provides for consideration of a proved confession affecting the person making it as well as the co-accused. This is briefly the scheme of the law of evidence vis-a-vis confessions.

182. Section 162 of Cr.P.C. prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any enquiry or trial in respect of any offence under investigation. However, it can be used to a limited extent to contradict a witness as provided for by Section 145 of the Evidence Act. Sub-section (2) of Section 162 Cr.P.C. makes it explicit that the embargo under this provision shall not be deemed to apply to any statement falling within clause (1) of Section 32 or to affect the provisions of Section 27 of the Evidence Act.

VOLUNTARY CONFESSION

183. In *Bharat Vs. State of U.P.*, . Hidayatullah, C.J., speaking for a three-Judge Bench observed thus:

"7. Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. 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 the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement

was true. This was laid down by this Court in an earlier case reported in Subramania Goundan Vs. The State of Madras, ."

JUDICIAL CONFESSION

164. Recording of confessions and statements: (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any, time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect.

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B. Magistrate".

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A)(a) In cases punishable under Section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in

the manner prescribed in subsection (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed;

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in Section 137 of the Indian Evidence Act, 1872 (1 OF 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried

EXTRA JUDICIAL CONFESSION

184. Extra judicial confession is a confession made to any person other than the Magistrate. The questions as to what is an extra judicial confession and how it should be proved are dealt in the case of Aneppa and Others Vs. The State of Karnataka, in Para 16 as under:

"Reliance is placed by the prosecution on the extra judicial confession stated to have been made to PW-33 Hanumanth Rao. Extra-judicial confessions should be proved in the same way as other admissions or statements by the evidence of the persons to whom they were made. They must be proved by evidence of the most reliable character. The infirmity is that in most cases owing to the absence of any writing the exact words used by the accused cannot be known and the witness may have misunderstood or may not have remembered. For this reason extra-judicial confessions are not considered of much value unless the witnesses can be depended upon. It is unsafe to convict a person only on such evidence without corroboration. As a rule of caution, Courts usually require some material corroboration to an extrajudicial confession".

185. The Privy Council in the case of PAKALA NARAYANA SWAMI's case cited supra, has explained the meaning of confession as well as the exculpatory statements in the following words at page 52:

".... no statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a

conclusively incriminating fact is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of "confession" in Art. 22 of Stephen's "Digest of the Law of Evidence" which defines a confession as a admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872: and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused "suggesting the inference that he committed" the crime.

RETRACTED CONFESSION

186. A four-Judge Bench of the Apex Court speaking through Subba Rao J, in case of Pyare Lal Bhargava Vs. State of Rajasthan, , has observed thus:

"A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that "it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

PROBATIVE VALUE OF CONFESSION

187. Blackstone describes confession as the weakest and most suspicious of all evidence.

188. In para 866 of WIGMORE ON EVIDENCE, 3rd EDN., it is noted thus:

"Now, assuming the making of a confession to be a completely proved fact-its authenticity beyond question and conceded.--then it is certainly true that we have before us the highest sort of evidence. The confession of came is usually as much against a man's permanent interests as anything well can be; and, in Mr. Starkie's phrase, no innocent man can be supposed ordinarily to be willing to risk life, liberty, or property by a false confession. Assuming the confession as an undoubted fact, it carries a persuasion which nothing else does, because a fundamental instinct of human nature teaches each one of us its significance."

(Emphasis supplied)

189. Similar view is expressed in the treatise on LAW OF EVIDENCE by TAYLOR, VOL. I, 12th EDN., in para 865:

"Indeed, all reflecting men are now generally agreed that, deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in the law, their value depending on the sound presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience."

190. Noticing the conflicting views, Chief Justice M. Monier in PRINCIPLES AND DIGEST OF THE LAW OF EVIDENCE, VOL. I, NEW EDN., has discussed various authorities and stated the rule as follows:

"The rule may, therefore, be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected, the confession, if once proved to have been made and made voluntarily, is one of the most effectual proofs in the law."

191. LORD ATKIN in the case of AIR 1939 47 (Privy Council) elucidated the meaning and purport of the expression "confession" at page 52 thereof in the following words:

[A] Confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession.....

29. Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law". (vide Taylor's Treatise on the Law of Evidence Vol. I). However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of confession. 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. So also the authority recording the confession, be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognizing the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Indian Evidence Act has excluded the admissibility of a confession made to the police officer.

30. Section 164 of Cr.P.C. is a salutary provision which lays down certain precautionary rules to be followed by the Magistrate recording a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police.

192. The Apex Court in the case of Sarwan Singh Vs. The State of Punjab, (at p. 643) has observed that:-

"In law it is always open to the court to convict an accused on his confession itself though he has retracted it at a later stage. Nevertheless usually courts require some corroboration to the confessional statement before convicting an accused person on such statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case."

193. The Apex Court in the case of State through Superintendent of Police, CBI/ SIT Vs. Nalini and Others, has held that:

671. Thus, plea of guilty by an accused at the commencement of the trial or in his statement under Section 313, Cr.P.C. will not be substantive evidence but extra judicial confession and confession recorded by a Magistrate under Section 164, Cr.P.C. of an accused will be substantive evidence. So also a confession of a person recorded under Section 15 of the TADA Act.

194. In the case of DEVENDER PAL SINGH Vs. STATE OF NCT OF DELHI AND ANOTHER reported in 2002 SCC (Cri) 978, it is observed as under:

31. xxxx So the crux of making a statement voluntarily is, what is intentional, intended unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

CORROBORATION

195. As to the extent of corroboration required, it was observed in Subramania Goundan Vs. The State of Madras, that each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. This is what the Court observed at pp. 440-41 of the said judgment:

"It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession".

196. Shankaria Vs. State of Rajasthan, was decided by a three Judge Bench of the Apex Court and Sarkaria J., noted the twin tests to be applied to evaluate a

confession as under:

(1) Whether the confession was perfectly voluntary?

(2) If so, whether it is true and trustworthy?

197. While pointing out that if the first test is not satisfied the question of applying the second test does not arise, the Court indicated a broad method for evaluation of confession in the following terms:

"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 with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test "

198. In *Parmananda Pegu Vs. State of Assam*, the Apex Court while adverting to the expression "corroboration of material particulars" used in *Pyare Lal Bhargava*'s case has observed at page 790, para 20, thus:

"By the use of the expression "corroboration of material particulars", the Court has not laid down any proposition contrary to what has been clarified in *Subramania Goundan* case as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in *Subramania Goundan* case."

199. Analysis of the legal position in paragraphs 18 and 19 at page 788 of the above judgment is also worth noting:

"18. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

19. In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true."

200. As per *SIR LAWRENCE JENKINS*, a confession can only be used to "lend assurance to other evidence against a co-accused." The legal position was then stated thus:

"Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

201. It was contended by the accused that the letter containing the confessional statement is a judicial confession since it is addressed to the Magistrate. But, the Magistrate has neither recorded the confession statement of the accused as prescribed U/s 164 of Cr.P.C., nor is he examined in this case and therefore Ex. P. 144 is not admissible in evidence.

202. As seen from Section 164 Cr.P.C., a judicial confession is recorded only by a Metropolitan Magistrate or Judicial Magistrate, in the course of an investigation at any time but, before the commencement of enquiry or trial, only after making sure that it is made voluntarily and after explaining to the person making it that he is not bound to make such confession and that if made it could be used as evidence against him. The magistrate recording the confession has to append a certificate at the foot as per Section 164(4) Cr.P.C. If a confession is recorded without complying with these requirements, it would be inadmissible in evidence.

203. Admittedly, A-16 did not appear before the Magistrate to whom Ex. P. 144 is addressed. Nor did the Magistrate have an occasion to explain to A-16 that he is not bound to make such confession and that if he does so, it would be used as evidence against him or to ensure that it was voluntarily made. Ex. P. 144 does not contain endorsement as prescribed U/s 164(4) Cr.P.C. Even according to the prosecution Ex. P. 144 is only an extra judicial confession. Since an extra Judicial Confession is distinct from a judicial confession, we find no merit in the argument of the accused that Ex. P. 144 is inadmissible in evidence for non compliance of Section 164 Cr.P.C.

204. The next limb of argument of the accused is that a statement addressed to a magistrate but, not coming under the purview of Section 164 Cr.P.C., is also not admissible in evidence. Nor can it be considered as an extra judicial confession or used against co-accused. We are unable appreciate this contention because, there is nothing in the Code of Criminal Procedure that prohibits treating a confession or a statement as an extra judicial confession merely because it does not satisfy the requirements of Section 164 Cr.P.C. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution; the Court would generally look for an independent reliable corroboration before placing any reliance upon it. However,

if an extra-judicial confession is voluntary and true and made in a fit state of mind by the person making it, the same can be relied upon by the Court and conviction can also be founded thereon. When extra-judicial confession is retracted by an accused, there is no inflexible rule that the Court must invariably accept the retraction. However, it would be unsafe to rely on retracted confession unless, the Court, upon consideration of the entire evidence, comes to a definite conclusion that the retracted confession is true and voluntarily made. The Court should find out whether there are other cogent circumstances to inspire confidence with regard to extrajudicial confession.

205. The prosecution has produced Ex. P. 144 dated 31.08.2000, certified copy of the confessional letter written by A. 16 in his own handwriting; Ex. P. 144(a) is A-16's signature on the last page of the said letter. Its original and the letter of Superintendent of Central Prison forwarding the same to the Magistrate have been produced in S.C. No. 423/2001 and marked as Ex. P260 and Ex. P261 respectively. Ex. P. 144 runs into 42 pages and A. 16 has signed at the bottom of all the pages. It also discloses that blank sheets of paper was supplied to A-16 by the prison authorities at his request - 30 sheets on 31.08.2000 and the remaining on 04.09.2000; signature of the Prison Officer, the date and UTP 2387 are found on all the pages at the left corner.

206. According to the prosecution, A-16 out of his free will, voluntarily wrote the confession statement in his own handwriting and delivered it to the prison authorities with a request to forward the same to the jurisdictional Magistrate. PW-60, the Senior Superintendent of Central Prison, Bangalore, Sri N. Jayaramaiah, in support of this has deposed to the effect that A-16 was allotted UTP No. 2387 and kept in the Cell Yard of Central Prison Bangalore. As Senior Superintendent of the said Prison from January 2000 to October 2000, he used to go around the entire prison and on one such routine round with subordinates, A-16 requested him for white paper and writing material for writing the facts pertaining to this case. His subordinates supplied white sheets of paper to A-16 by affixing the seal, date, UTP number of A-16 on the left corner of the blank sheets under their signature. A-16 took nearly 4 to 5 days to write this 42 pages letter, signed at the bottom of each page and handed over the same to UTP Officer in his presence. Thereafter, he forwarded the letter to the III Addl. C.M.M., Bangalore, with covering letter Ex. P. 145 dated 07.09.2000 and Ex. P. 145(a) is his signature.

207. It was argued that A-16 an Air Force Officer who had put in 31 years of service, was arrested from the official quarters at New Delhi on 08.08.2000 and kept in police custody till 26.08.2000. Ex. P. 144 was obtained by threat and compulsion during that period; it was manipulated and produced after A-16 was remanded to judicial custody. But PW 63's evidence that A-16 was remanded by the III Addl. C.M.M., Bangalore on 26.8.2000 to judicial custody, that the accused obtained blank sheets of paper and writing material expressing while in judicial custody, his intention to write down what transpired in this case and

accordingly he was supplied 42 sheets of paper on which Ex. P. 144 is written with A-16's UTP No., signature of the officer supplying the papers etc., has not been discredited despite cross examining him on these aspects extensively.

208. P.W. 60 was questioned regarding the endorsements made in the covering letter Ex. P. 145 and if he was satisfied about the correctness of the contents of Ex. P. 144 before it was forwarded to the concerned Court etc. However nothing is elicited to discredit the testimony of this witness regarding A-16 writing Ex. P. 144 voluntarily. The suggestions to P.W. 60 that the accused was compelled to write the letter under threat and compulsion by Dy. SP Appanna and PI Nataraj and that Ex. P. 144 is not in A-16's handwriting run counter to each other.

209. The records placed before this court shows that the prosecution through P.W. 60's evidence has dispelled the contention of the accused that Ex. P. 144 was obtained while A-16 was in police custody. The evidence on record makes it clear that Ex. P. 144, a 42 pages letter in English has been written by A-16 voluntarily while in judicial custody; the III ACMM, Bangalore has received the originals of Ex. P. 144 and Ex. P. 145. The trial court therefore rightly rejected the contentions of the accused in this behalf.

SECONDARY EVIDENCE

210. Ex. P. 144 is the certified copy of the original confession produced and marked as Ex. P. 260 in S.C. No. 423 of 2001. It was strongly urged by the accused that Ex. P. 144 is inadmissible in evidence and cannot be looked into. But, section 63 of the Evidence Act provides for leading secondary evidence and it reads as under:-

"63. Secondary evidence.--Secondary evidence means and includes--

- (1) Certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) Copies made from or compared with the original;
- (4) Counterparts of documents as against the parties who did not execute them;
- (5) Oral accounts of the contents of a document given by some person who has himself seen it."

211. Section 65 of the evidence Act is an exception to the rule contained under Section 64 that all documents must be proved by primary evidence. Section 65(f) of the Evidence Act provides for admissibility of only certified copy of a document of which certified copy is permitted by the Act but no other kind of secondary evidence. Since the original letter written by A-16 was produced and marked as Ex. P260 in S.C. No. 423/2001, its certified copy is produced and marked as Ex. P. 144 in this case. The same is admissible in evidence and therefore, we find no substance in the contention of the accused.

THREAT

212. It was argued by the learned counsel for the accused that there is sufficient material on record to imply that the confession is obtained by inducement, threat or compulsion and therefore Ex. P. 144 is inadmissible. In support of this, he relied upon the judgment of the Apex Court in Navjoth Sandhu's case cited supra.

213. In this regard it is necessary to notice what Section 24 of the Evidence Act provides for:

"24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.--A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

214. 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 Indian Evidence Act has excluded the admissibility of a confession made to the police officer.

215. It is not in dispute that A-16 was working as a Junior Warrant Officer in Indian Airforce on the day of arrest and he had put in 33 years of service; Ex. P. 144 is in English and in A-16's own handwriting. He took 4 to 5 days to write down the same while in judicial custody and it runs into 42 pages. A-16 is an educated person, knows his rights and had the assistance of his Counsel. If there was any threat, coercion, force, practiced on him on 31.8.2000, when he was supplied with 30 blank white sheets and 12 sheets on 4.9.2000, he could have narrated about the same when produced before the Magistrate on 05.09.2000. Thereafter he was produced before the Magistrate several times for the purpose of remand, but never mentioned about the alleged threat, coercion and force in order to obtain the confessional statement. Interestingly, the retraction came after a lapse of 2 years and therefore can be tended as an after thought to wriggle out of the situation. In fact, first page of Ex. P. 144 speaks to the effect that A-16 wrote the said confessional statement without any compulsion, coercion, threat or force as sought to be canvassed. Under these circumstances, we do not see any justification to interfere with the finding recorded by the trial Court in this behalf.

216. Ex. P. 144 is attacked on yet another count that its copies were furnished to

the accused before commencement of trial and there is no reference to the said document in the charge-sheet also. That the accused were completely ignorant about the contents of this document and any incriminating evidence contained in Ex. P. 144 therefore ought to have been brought to the notice of the co-accused while recording the statement U/s 313 Cr.P.C. Since no such attempt is made contents of Ex. P. 144 cannot be used against the co-accused.

217. Section 230 Cr.P.C. dealing with fixing the date for prosecution evidence enables the prosecution to compel the attendance of any witness or the production of any document or other thing. In other words, by virtue of this provision, the prosecution can even examine a witness who is not cited in the chargesheet and produce a document which is not furnished along with the police papers, for the first time before the Court during the trial. The said power is to be harmonized along with the provision contained in Sections 173(8) and 173(5) as well as Section 209(c) of Cr.P.C.

218. Moving onto the question whether Ex. P. 144 can be used against the co-accused who also faced trial with A-16, it is well established that a confession made by an accused cannot be used to convict his co-accused unless there is corroborative evidence against the co accused but a person can be convicted solely upon his own confession even if retracted if the Court believes it to be true. In this behalf it would be useful to refer to Manohar Singh Vs. Emperor, .

219. After referring to the earlier decisions, a Constitution Bench of the Apex Court in Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, observed thus:

"In dealing with a case against an accused person, the Court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the confession of guilt which the judicial mind is about to reach on the said other evidence."

220. Therefore we are of the view that though Ex. P. 144 was not produced along with the charge sheet the prosecution could produce the same in evidence at a later stage to substantiate its case by virtue of Sec. 230 Cr.P.C. Therefore, in view of the aforesaid discussion, Ex. P. 144 is admissible in evidence. However it could not be used against the co-accused unless there is corroborative evidence.

Re: POINT NO. 6

ACCOMPLICE EVIDENCE

221. The evidence of P.W.-49 Abdul Gafoor is challenged on the ground that he is an accomplice and his evidence is that of an approver. It was argued by the learned counsel for the accused that P.W.-49 also participated in the crime and should have been arrayed as accused. Only thereafter, following the procedure prescribed under the law, he could be treated as an approver. The police cannot pardon him and use him as a witness in the case. Since no such pardon is

granted by the Magistrate, P.W.-49's evidence cannot be relied upon.

222. Per contra, the learned Spl. P.P. contended that P.W-49 is not an Accomplice. Nor is he examined as an approver. He has been examined as an eye witness to the Criminal Conspiracy and therefore, neither Section 133 of the Evidence Act nor illustration of (b) of Section 114 thereof is attracted. P.W.-49's evidence is very much admissible in law.

223. The word accomplice" has not been defined by the Indian Evidence Act and should therefore be presumed to have been used in the ordinary sense. It means and signifies a guilty associate or partner in crime. In other words an accomplice is a person, who concurred in the commission of an offence. Thus the term accomplice in its fullness includes in its meaning all persons concerned in the commission of a crime, all participes criminis, whether they are considered in strict legal propriety as principals in the first or second degree or merely as accessories before or after the act. But if the participation of accessories is limited to the knowledge that crime is to be committed, they are not accomplices.

224. The mere fact that a person did not reveal his knowledge of the intended crime to the authorities does not make him an accomplice. The mere fact that a person witnesses a crime and does not give information of it to anyone else out of fear does not warrant the extreme proposition that he is an accomplice. However, the evidence of such a man should be scanned with much caution and care for corroboration of material particulars.

225. Therefore, whether a person is or is not an accomplice depends upon the facts of each case. The burden of proving that a witness is an accomplice is of course upon the party alleging it i.e. the accused. It is for the judge to decide if a witness is truly an accomplice. The only safeguard against the risk of condemning the innocent with the guilty lies in insisting upon independent evidence which in some measure implicates each accused.

226. TAYLOR says: "Accomplices are usually interested, and always infamous witnesses, and whose testimony is admitted from necessity, it being often impossible, without having recourse to such evidence, to bring the principal offenders to justice".

227. ABBOTT L. CJ, in his charge to the Grand Jury in MARCH 1880, 33 HOW ST TR 689 said-

"If it should ever be laid down as a practical rule in the administration of justice, that the testimony of accomplices should be rejected as incredible, the most mischievous consequences must necessarily ensue; because it must not only happen that many heinous crimes and offences will pass unpunished, but great encouragement will be given to bad men, by withdrawing from their minds the fear of detection and punishment through the instrumentality of their partners in guilt, and thereby universal confidence will be substituted for that distrust of each other, which naturally possesses men engages in wicked purposes, and

which operate as one of the most effectual restraints against the commission of those crimes to which the concurrence of several persons is required. No such rule is laid down by the law of England or of any other country."

228. While Section 133 of the Indian Evidence Act provides that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice., illustration (b) to Section 114 thereof provides for drawing the presumption that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus Section 133 of the Indian Evidence Act is a rule of law and illustration (b) to Section 114 is a rule of practice which vests discretion in the Court to presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.

229. The Apex Court in the case of Bhiva Doulu Patil Vs. State of Maharashtra, reconciling these two provisions has held as under:

"The combined effect of Ss. 133 and 114, illustration (b) may be stated as follows:

According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. The law may be stated in the words of Lord Reading C.J. in *R. v. Baskerville* as follows

"There is no doubt that the uncorroborated evidence of an accomplice is admissible in law (*R. v. Attwood*, 1787, 1 Leach 464). But it has been long a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice, and in the discretion of the Judge, to advise them not to convict upon such evidence, but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence (*R. v. Stubbs*, Dears 555 *In re Heunier*, 1894 2 Q.B. 415)".

230. The principle underlying these provisions is, Accomplice evidence is admitted from necessity as it is generally impossible to get sufficient evidence of many heinous and diabolical crimes, unless one of the participators is disposed to disclose the circumstances within his knowledge on account of the tender of pardon. The greatest offenders would go unpunished, if accomplice evidence were to be rejected.

231. Though accomplice evidence is admissible against a co-accused, being a participator in crime and therefore an infamous witness, his testimony is regarded with the greatest distrust and the fullest corroboration in material particulars is required for a conviction. The reasons which have led to the distrust

of an accomplices testimony are not far to seek. He may expect to save himself from punishment by procuring the conviction of others. It is true that he is also charging himself, and in that respect he has burned his ships. But he can escape the consequences of this acknowledgment, if the prosecuting authorities choose to release him provided he secures the conviction of his partner in crime. A conviction based on the uncorroborated testimony of an accomplice is not illegal. But the experience has taught us that it is not safe to rely upon the evidence of an accomplice unless it is corroborated.

232. In India, Judges and Magistrates are competent to tender pardon under Section 306 of Cr.P.C., with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence under enquiry on condition of his making a full and true disclosure of the circumstances within his knowledge. Every person accepting a tender becomes a witness under Section 306(2) Cr.P.C. He becomes a witness only after the grant of pardon.

233. Section 306 of the Criminal Procedure code reads as under:

306. Tender of pardon to accomplice.-

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to-

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)-

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has, accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,-

(a) commit it for trial-

(i) to the Court of Session if the, offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

234. The very object of this provision is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that with the aid of the evidence of the person pardoned the offence could be brought home to the rest. The policy is to prevent the escape of offenders from punishment in grave cases for lack of evidence by grant of pardon to accomplices for obtaining true evidence. Section 306 Cr.P.C. that applies only to offences of a more serious character therein specified, provides safeguard in the interests both of the State and the accused. Pardon is granted on condition that full disclosure of truth will be made and the person accepting the pardon gives evidence with the assurance that it will operate as a bar to his prosecution for the offence pardoned or for any other offence committed in connection there with. A pardon may be forfeited if the whole truth is not disclosed and the person to whom pardon was tendered may be tried for the offence. Section 306 Cr.P.C. is the only method of obtaining the evidence of co-accused.

235. Withdrawal from prosecution under Section 321 Cr.P.C. is in the discretion of the executive subject however, to the consent of the Court whereas tender of pardon under Section 306 Cr.P.C. is a judicial act. Pardon can be tendered at any stage of investigation. The moment an accused is pardoned he is presumed to have been discharged and becomes a witness. The person pardoned need not be arrayed as an accused in the case. The real culprit should not be left out in the hope of obtaining evidence against other.

236. Keeping the above principles of law in mind, when we peruse P.W. 71's evidence, it discloses that he is a resident of Solapur for the last 36 years carrying on the business in beetle leaves in a shop situated at Siddeshwara Market yard, on Solapur-Hyderabad road. He is aware of existence Hazrath Moulana Moulvi Hussain Siddique Deendar Channabaveshwara's tomb in

Deendar Anjuman Ashram at Asifnagar, Hyderabad and that Urs is held there every year in the month of Razab on 7th, 8th and 9th days. Since childhood he has been attending the Urs in Anjuman Ashram in Asif Nagar, Hyderabad.

237. P.W. 49 also has the knowledge of A-11 and A-12 hailing from Hubli, Ismail Sab from Gadag, A-13 from Bangalore and A-14 from Chikaballapur, A. 9, A. 16 and Syed Shamsuzama attending the Urs at Hyderabad besides one Iqbal and Habeeb. He remembers only A. 6 from Hyderabad amongst those attending the Urs it is in his evidence that A-17 along with his sons A-18, A. 19, Syed Shabihul Hassan and Khaleel Pasha used to come from Mardan in Pakistan to attend the Urs at the Ashram. A. 17 visited Bangalore twice or thrice while going Sholapur. While at Solapur, A. 17 stayed with Ramdas, Sufi, Iqbal and Deshmukh. During that period twice or thrice, A-17 also visited P.W. 49's house and took meals.

238. As per P.W-49's evidence. The last occasion P.W. 49 visited Urs was on 7th day of Razab in the year 1999 and all the persons mentioned above had also attended the urs; A. 17 and his sons A-18, A. 19, Syed Shabihul Hassan and Khaleel Pasha were accommodated in a room in the Ashram. After the religious ceremony he returned to Sholapur on the same day for a brief stay of 3 to 4 days. Thereafter, Basheer Sab Kokatnur met him at Solapur and informed that after he left for Sholapur A-17 addressed them. At the Ashram premises in a meeting and informed that it was the time for Jihad; and further instructions in that regard would be issued to A-16, who in return would pass on the same to Basheer Sab and A-10. Others would be instructed by the said Basheer Sab and A-10.

239. P.W. 49 refers to other meetings that took place in January 2000 and April 2000 and states that A-10 addressed those meeting, instructed them to collect where the railway bridges are and that he would tell them how to destroy the same; to raise funds for this purpose they shoot loot people and send the funds to A-17 a resident of Pakistan. A-10 also requested each one of them to pay whatever amount they could. P.W. 49 gives the number of such meetings attended by rough at four and states that he had heard the discussions in all the four meetings; A-12 was given the responsibility of finding out how many railway bridges are there and Basha sab was required to give information regarding petrol pumps and also arrange funds.

240. In December 1999 Basheer sab called P.W. 49 over telephone from Batakurki saying that he need Rs. 30,000/- to give it to who was running short of money to buy a Tata Sumo and would return the same in two months. Four days later Sangli Basha, Taylor Basha, A-10 and Basheer Sab visited him. He paid Sangli Basha Rs. 30,000/- which was invested in a chit; Basheer Sab who was present there promised to repay the same with interest. He regularly attended the meetings held in the house of some of the accused and thereby knew what they were upto but was clearly warned not to disclose the same to anyone. Otherwise, their lives would be in danger.

241. P.W. 49's evidence would further disclose that in July 2000 one Akhil, who is A. 5 in Crime No. 579/2003 clubbed with 580/2003 on the file of the Spl. Court came to his house at 10.00 p.m. and had brought a bomb in a handbag. A-9 had given that bomb kept in a square shaped tin box to Mohammed Akhil Ahamed with an instruction to give it P.W. 49 for planting the same in a Church in Sholapur. Then P.W. 49 pleaded his inability to carry out that instruction. Mohammed Akhil Ahamed spent that night in a small room in his house with the bag containing the bomb. Next day when P.W. 71 was in his shop, Akhil went there at about 9:00 am, called his uncle Siphen Sheik over the phone. When that person arrived, he was also asked by Mohammed Akhil Ahamed to explode the bomb in a church but he too refused.

242. Thereafter, Mohammed Akhil Ahamed kept the bomb in his room for about three days. On the fourth day, when the bomb blast in Goa and Hubli were telecasted, Mohammed Akhil Ahamed diffused the bomb saying that he will not blast the same, kept some stones and pieces of bricks inside that box, kept the same in a plastic bag and asked him to throw that into a well. After Mohammed Akhil Ahamed left, P.W. 49's son-in-law Sikander threw the said box in a well 500 feet deep at Garukula which is about 1 to 2 km away from the house as no one was using the water from that well. On seeing church bomb blast videos pertaining to this case and arrest of the accused on the TV he went to the police, narrated all the facts to the police. He also appeared before the JMFC and gave statement U/s 164 Cr.P.C. about all that he knew of the accused.

243. Reiving on this evidence, it was contended that P.W. 49 was present at the time of the meetings wherein a criminal conspiracy was hatched and he did not inform the police on coming to know the intention of Mohammed Akhil Ahamed. Therefore he is an accomplice to the conspiracy to the crime and his evidence cannot be relied upon.

244. The question therefore, is whether motive could be attributed to P.W. 49 merely because he was present in those meetings and becomes an accomplice to the criminal conspiracy?

245. Though P.W. 49 participated in several meetings where a criminal conspiracy was hatched, visited the Ashram at Asifnagar in Hyderabad, invited some of the accused for having food in his house and gave them shelter, he had no intention of participating in the conspiracy or commission of the crime. He had no intention to act according to the decisions taken in those meetings. Despite knowing that the meetings were held to commit an illegal act, P.W. 49 was constrained to attend them until Rs. 30,000/- lent by him was repaid. As P.W. 49 has not participated in any act in pursuance of the criminal conspiracy, he cannot be characterised as an accomplice. Before he could be characterized as an Accomplice, he must be a party to the crime; he is not a party to the crime.

246. Though P.W. 49 went to the Magistrate and gave a statement before the Magistrate about all what he did know about these meetings, as he was not a

party to the crime his statement cannot be construed as a confessional statement even under Section 164 of Cr.P.C. Pardon presupposes commission of a crime. Since P.W. 49 neither committed any crime nor was a party to the agreement to commit a crime, he did not seek any pardon from the Magistrate or the police. The contention that the police gave him pardon is without any substance. Police have recorded his statement in the course of investigation and they have examined him as a witness to prove the charges leveled against the accused.

247. P.W. 49 has been cross-examined extensively by the accused. Nowhere in evidence, he has admitted his guilt or participation in the crime; his statement is exculpatory in nature. Therefore, he is neither an accomplice nor an approver. If only P.W. 49 were to be treated as an Accomplice, Section 114 illustration (b) of the Evidence Act would be attracted and not otherwise. P.W. 49 is only a prosecution witness and not an accomplice. As such Section 133 r/w Section 114 illustration (b) of Indian Evidence Act has no application.

248. Whether the Court can act on his evidence is totally a different matter. But to say that his evidence is to be excluded as not admissible is without any basis. Because P.W. 49 was present at the conspiracy meetings, accommodated a person who came to his house with a bomb to explode a church etc., his evidence needs to be scrutinized with much care and caution as to material particulars.

MAHAZARS

249. Then, we have on record Spot Mahazar and Seizure Mahazar, which are marked in the case through witnesses. The particulars of the same are as under:

(b) SPOT MAHAZARS

250. Ex. P. 3, P4 and Ex. P36 are drawn at Wadi Railway Station plat form on the basis of A-4, A-3 and A-6's voluntary statements that they alighted there from the train, planted bomb in the St. Ann's Catholic Church at Wadi and boarded the train to Hyderabad. A-6 has stated that he was accompanied by A-5 at that time. Despite cross examining the witnesses to these mahazars at length, the accused have not been able to dislodge their credibility.

251. Ex. P. 12 is drawn in a room in PW 24 Syed Shahanawaz Ahamed's house situated at Deendar Anjuman Organisation in Hyderabad, where the main conspiracy meeting was held under the leadership of absconding A-17 Zia-Ul-Hassan; A-3 and A-4 also attended the said meeting as per their voluntary statement. PW 24 who is a signatory to Ex. P12 has deposed that late Hazrath Siddique was the husband of his father's sister and absconding A-17, the eldest son of late Hazarath Siddique is a resident of Pakistan and was staying in that room during his previous visit to Hyderabad; and except this A. 17 nobody else is using that room.

252. Ex. P. 13 is drawn in a Hall measuring 10 x 20 x 10 feet in Flat No. 202, 2nd

Floor, Yusufina Complex, Mehandipatnam in Hyderabad where deceased A-9 Syed Khaleequzama and absconding A-18 Zahid Pasha S/o. absconding A-17 Zia-UL-Hassan held conspiracy meeting to commence jihad, nifaaq and siria activities, ultimately to achieve the aims and objectives of Deendar Anjuman Organisation and finalised the action plan, entrusted the work to various members present there including A-3 and A-4. PW 36 Sheik Khasim Ali has stated that his son A-7 Hashim Ali took the said flat on lease from Muzid, a resident of Mallepalli and identifies his signature on the mahazar at Ex. P. 13[c].

253. Ex. P. 14 pertains to Room No. 2 and 3 of New Ashoka Lodge, situated in Old Phil Khan area, Hyderabad where deceased A-9 Syed Khaleequzama held another conspiracy meeting to commence jihad, nifaaq and siria activities in order to Islamise the whole of India and finalised the action plan, entrusted the work to various members present there including A-3 and A-4. PW 22 Kashinath, the Manager of the said lodge has deposed that A. 5 Sharfuddin by furnishing his shop address and telephone number - 3539575 - booked those rooms stating that it was required to accommodate the guests of a marriage and that Keshavapura Police, Hubli seized the original lodging register and the receipt book. Therefore original register and receipt book were called for from Supreme and they were marked as Ex. P. 23 and 24 respectively in this case.

254. Mahazar as per Ex. P. 33 and P34 are conducted in PW 29 and PW 30's shop in connection with A-6 and A-7 purchasing three and ten quartz clock movements respectively to prepare time bombs. Ex. P32, the bill book containing entries to that effect was seized from PW 29's shop under Ex. P33; Ex. P32(a) is the relevant entry. Ex. P. 38 pertains to Jyothi Electronics shop, Gujarat Galli, Koti Road in Hyderabad from where A-7 Hashim Ali purchased batteries, switches and wires etc., to prepare the bomb. Nothing material is elicited during the cross examination of witnesses to these mahazars so as to destroy the prosecution case.

255. Ex. P37 is drawn near two tombs in a Khabarstan (graveyard) situated near Deendar Anjuman Organisation at Hyderabad as shown by A-6 and as per his voluntary statement this is the place where absconding A-18 Zahid Pasha held secret conspiracy meetings attended by him and other youngsters in connection with jihad activities. Ex. P. 49 is drawn at Deendar Anjuman Organisation at Hyderabad by PW 5 in Cr. No. 87/2000 of Keshavapura Police Station in connection with absconding A-17 holding a conspiracy meeting after Urs celebration per the voluntary statement of A-5. Since the original panchanama was produced in S.C. 580/2003, the same was called for and marked as Ex. P. 49; and its certified copy is available in the file.

256. The evidence on record shows that the Investigation Officers who conducted the above mahazars were not aware of or known the places where the conspiracy meetings were held or the shops from where materials required for preparing the bombs with timer was purchased by the accused. Above all nothing worthwhile is elicited at the time of cross examination of witnesses to these mahazars to

discredit their testimony. For the said reason as also keeping in mind the law laid down in State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, we are of the view that the above mahazars are duly proved by the prosecution with regard to the recovery made thereunder as also the previous conduct of the accused which is relevant U/s 8 of Indian Evidence Act.

(b) SEIZURE MAHAZARS

257. Ex. P2 dated 08.06.2000 is spot cum seizure mahazar pertaining to the blast site i.e., St. Ann's Catholic Church premises at Wadi. PW 44 Manjunatha who conducted this mahazar and PW 3 Robert Nazarath, a Sr. Officer of ACC Cement Factory, Wadi and an independent witness to the mahazar have spoken about what they noticed at the scene of occurrence as also a topaz company blade tin box with wires and battery cells found in the front portion of the church exploding at about 9:10 a.m. in their presence causing injuries to PW 1 Susainathan Peter, the informant in this case and PW 4 Namdev. Besides this, they have also identified M.O. 1 to 12 and M.O. 35 to 40 seized from the spot under Ex. P2. No doubt, the Learned defence Counsel have elaborately cross-examined PW 44 and PW 3 but, no material is elicited to discredit their testimony.

258. According to the prosecution huge incriminating materials, have been seized at the instance of the A-3, A-4 and A-7 under Ex. P15, P16 and P39 i.e., M.O. 13 to 21 from A-3 Izher Baig's house bearing No. 10-2-473/1 situated at Deendar Anjuman Ashram in Hyderabad, M.O. 22 to 28 from A-4 Syed Abbas Ali's house situated at Hakeempeth, Toli chowk in Hyderabad and M.O. 29 to 34 from A-7 Sheik Hashim Ali's video shop situated at Asifnagar, Hyderabad respectively, in the presence of panch witnesses pursuant to the voluntary statements of the said accused as per Ex. P. 62, Ex. P63 and Ex. P69 respectively.

259. PW 54, the I.O. and PW 16, a retired Panchayath Extension Officer at Chittapur and Wadi have deposed consistently with regard to seizure of M.O.s under Ex. P15 and P16 at the instance of A-3 and A-4, presence of these two accused's fathers in their respective houses at that time. A-3's father's signature is identified at Ex. P15(c) and A-4's father signature is at Ex. P. 16(c). The Learned defence Counsel have cross examined these witnesses at length by putting suggestions but nothing worthwhile has been elicited to destroy the prosecution case regarding seizure of M.O. 13 to 21 from A-3's house and M.O. 22 to 28 from A-4's house as evidenced from Ex. P15 and Ex. P16.

260. In so far as Ex. P39 is concerned PW 54 though recorded the voluntary statement of A-7 entrusted further investigation to PW 45 due to pressure of work as seen from the evidence on record and PW 45 seized M.O. 29 to 34 produced by A-7 from his Video Shop in Hyderabad under the mahazar Ex. P39 in the presence of PW 31, a Revenue Inspector and PW 40, a Deputy Tahsildar. PW 45 after effecting seizure produced the above M.O.s before PW 54 together with his report. Both PW 45 and PW 54 have identified A-7 as well as the seized articles M.O. 29 to 34.

261. Having regard to the principle laid down in the afore mentioned decisions, we are of the opinion that the recoveries made as above in furtherance of the disclosure statements made by A-3, A-4 and A-7 and at their instance under Ex. P. 15, P16 and P39 stand proved despite the fact that PW 31, an independent witness to Ex. P39 has turned hostile, for the defence has not been able impeach the veracity of PW 45 in that behalf.

Re: POINT NO. 7

MAHAZAR WITNESSES TURNED HOSTILE

262. It was contended that the case of the prosecution that the incriminating materials were seized from the houses and possession of the accused cannot be believed as the panch witnesses have turned hostile. Therefore the said piece of evidence cannot be made the basis for conviction against the accused. Factually, it is not a case where all the panch witnesses have turned hostile. When the incriminating articles were seized from the houses of these accused, the Police have taken signature of the family members of these accused as panch witness, apart from outsider. The witnesses have spoken about these accused; some of them have admitted that they are the members of Deendar Anjuman Ashram and computers were found in the house of the accused at the time of search and also their inter-relationships. Yet in the cross examination they have denied the seizure. As against this evidence, we have the evidence of other panch witnesses who have stood by their signatures to the mahazars. More importantly, the prosecution has examined the Investigating Officers who recovered the material objects from the houses of these accused. All of them have spoken about the recovery of material objects and the search and seizures conducted by them. All these mahazars are marked in this case; signatures are also marked. The question is what is the effect of Mahazar witnesses turning hostile.

263. If a panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person, who effected the recovery would not stand vitiated. There is, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity merely because panch witnesses turn hostile. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their credit worthiness.

264. The statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence. Merely because the police witnesses have spoken about the search and the seizure of documents from the custody of the appellant, their version cannot be disbelieved as the independent witnesses have not supported

the search and the seizure of the documents.

265. In the case of *Modan Singh Vs. State of Rajasthan*, it is observed thus:

"where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version."

266. In the case reported in *State, Govt. of NCT of Delhi Vs. Sunil and Another*, , it is held as under:

"There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police office when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or ever strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.

It is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elucidated from the accused on its own worth.

It is an archaic notion that action of the police officer should be approached with

initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a Proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, not to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

267. In this particular decision, there Lordships ruled that when the Investigation Officer has made recoveries in furtherance of the disclosure statement made by the accused, then it is not necessary that the panchas should be present there and they should sign the recovery statement prepared by the Investigation Officer. Because S. 161 Cr.P.C. does not contemplate the presence of panchas and their signatures. So, though the panchas were not present there and though they were present they turned hostile later, the recovery can be taken as proved at the instance of the respective accused.

268. In the case of VAHAJI RAVAJI THAKORE AND ANOTHER V. STATE OF GUJARAT reported in 2004 CRL. L.J. 119 [Gujarat High Court], it is held as under:

35. In view of aforesaid legal position, we are of considered view that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It must be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of independent witnesses, in theory, it would be giving a right of veto to the panchas so far as the question of culpability of an accused is concerned. If the evidence of police officer is otherwise found to be true and dependable, judicial pragmatism requires that merely because the panchas do not support, it should not be made a ground to

discard his evidence.

269. In this particular decision, their Lordships held that though the panch witnesses turned hostile, since the Investigation Officer recovered the material objects in furtherance of the disclosure statement made by the accused, it has to be held that the discovery of material object is proved at the instance of that accused on basis of the evidence of Investigation Officer.

270. The Apex Court in the case of Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, , has held as under:

"However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even-if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case."

271. The Apex Court, also in the case of Safi Mohd. Vs. State of Rajasthan, has held thus:

"20. After referring to the evidence of the PW-22 and PW-24 the search of the house of the appellant and seizure of certain documents along with diary particularly Ex. D-3, handwritten map prepared with certain markings, it has proved the prosecution case. No doubt the independent witnesses have turned hostile, but the learned sessions judge has rightly accepted the testimony of the police witnesses after proper appreciation of their evidence and he has rightly placed reliance upon the police witnesses to prove the seizure of the documents from the house of the appellant and therefore the same cannot be held to be bad in law as contended by the learned counsel for the appellant.

22. The learned public prosecutor has rightly placed reliance on the decision of this Court in Sama Alana Abdulla Vs. State of Gujarat. In the said decision this court lays down the legal principle that merely because the police witnesses have spoken about the search and the seizure of documents from the custody of the appellant their version cannot be disbelieved as the independent witnesses have not supported the search and the seizure of the documents. The observations made by this Court in the above referred case are applied to the facts of the case in hand to accept the proof of search and seizure of the documents from the house of the appellant which are very important and sensitive for the integrity and security of the Nation. The said conclusions arrived at by the learned sessions judge and concurrence of the same by the High Court cannot be termed as erroneous in law as contended by learned counsel on behalf of the appellant. Therefore, the finding recorded by both the courts below regarding search and seizure of the documents which affect the integrity and security of the country is the concurrent finding of fact rightly recorded by the High Court after proper appreciation and appraisal of the evidence on record. The same cannot be interfered with by this Court in exercise of its jurisdiction. Even if the search is made by the Investigating Officer in illegal manner, the same does not affect the

legality of the search and investigation made by the Investigating Officer with regard to the seizure of the documents from the house of the appellant in view of the law laid down by this Court in the above case. From the evidence produced by the prosecution in the case in hand, it is clear that the documents of strategic importance to the Nation "have been recovered from the possession of the appellant and other accused and they have failed to give satisfactory explanation about the documents being in their possession."

272. In the case of Anil alias Andya Sadashiv Nandoskar Vs. State of Maharashtra, .

"Indeed all the 5 prosecution witnesses who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and, the mere fact that they are police officials does not by itself give rise to any doubt about their credit worthiness. We have carefully and critically analyzed the evidence of all the 5 police officials. There is nothing on the record to show that any one of them was hostile to the appellant and despite lengthy cross-examination their evidence has remained unshaken throughout. These witnesses have deposed in clear terms the details of the trap that was laid to apprehend the appellant and the manner in which he was apprehended. Their evidence regarding search and seizure of the weapons from the appellant is straightforward consistent and specific. It inspires confidence and learned counsel for the appellant has not been able to point out any serious, let alone fatal, infirmity in their evidence. In our opinion, the factum of search and seizure of the country-made revolver from the conscious possession of the appellant has been established by the prosecution beyond any reasonable doubt. The explanation given by the prosecution, for the son examination of the two panch witnesses, which is supported by the report Ex. 24 filed by PW-4 PI Gaikwad is satisfactory. The evidence on the record shows that the raiding party made sincere efforts to join with them two independent panches at the time of search and seizure and they were so joined. They were also cited as prosecution witnesses and summoned to give evidence. However, despite diligent efforts made by the prosecuting agency to serve them, they could not be located or traced and therefore they could not be examined at the trial. In the face of the facts stated in report Ext. 24, the correctness of which has remained virtually unchallenged during the cross-examination of PW 4, the non-examination of the two panchas cannot be said to be on account of any oblique reason. Their non production at the trial thus has not created any dent in the prosecution case. The prosecution cannot be accused of withholding these witnesses since it made every effort to trace and produce them at the trial but failed on account of the fact that they had left the addresses furnished by them at the time of search and

their whereabouts could not be traced despite diligent efforts made in that behalf. We, therefore, do not find any reason to doubt the correctness of the prosecution version relating to the apprehension of the appellant, the search and seizure by the raiding party and the recovery from the appellant of the country-made revolver and cartridges for which he could produce no licence or authority because of the non-examination of the panch witnesses. We find that the evidence of PW 1 to PW 5 is reliable, cogent and trustworthy. Learned counsel for the appellant then submitted that the delay in sending the fire arm and the cartridges to the ballistic expert rendered the report of the Ballistic Expert Ext. P-17 vulnerable and the conviction of the appellant unsustainable. We cannot agree."

273. The Apex Court in case of *STATE OF KERALA V. M.M. MATHEW & ANR*, reported in 1978 SCC (CRL) 503, though in a somewhat different context, held as under:

"..... It is true that courts of law have to judge the evidence before them by applying the well recognised test of basic human probabilities prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic Worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case....."

274. The law on the point therefore, is well settled. Even if the panch witnesses turned hostile, which happens very often in criminal cases, the evidence of the person who effected recovery would not stand vitiated. All that is expected of the Courts is that the evidence of the police officials who are interested in the outcome or the result of the case needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give raise to any doubt about the credit worthiness.

275. In this case, the evidence regarding search and seizure of the material objects, which are in the nature of books, literature, which dates back to 1920s is straight forward, consistent and specific and inspires confidence. The accused in the cross examination have admitted that in the mahazar conducted at the place of the blast near Minerva Mills, the police have-seized pamphlets and literature; some of the literatures were seized from the house of these accused. It is suggested that the pamphlets seized at the spot were fed into the computer. Therefore the seizure of the computer is also admitted. There is nothing on record to presume that the police fed into the computers these incriminating materials and that is not what the accused have stated in the statement under Section 313 Cr.P.C. Unfortunately, the case of the accused is a complete denial in their statement under Section 313 Cr.P.C. The Courts have to judge the evidence before them by applying the well recognised test of basic human probabilities. Prima facie, public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and

cannot be discarded merely on the ground that being public servants they are interested in the success of their case. As such under Section 114(e) of the Evidence Act, the Court may draw a favourable presumption in respect of judicial and official acts, that they are regularly performed. Viewed from that angle, the Investigating Officer's evidence regarding search and seizure of the weapons from the accused is straight-forward, consistent and specific. The learned counsel for the accused has not been able to point out any serious, let alone fatal, infirmity in their evidence. Therefore in our opinion, the factum of search and seizure of the material objects and documents from the conscious possession of the accused has been established by the prosecution beyond any reasonable doubt.

Re: POINT NO. 8

SECTION 27 OF THE INDIAN EVIDENCE ACT, 1872

276. The recoveries made under the above mahazars have been strongly assailed on the ground that the police knew these places before and therefore the recovery of incriminating material cannot be said to be at the instance of the accused and there is always a possibility of the investigating agency planting the same.

277. Section 27 of the Indian Evidence Act reads as under:

"27. How much of information received from accused may be proved.--Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

278. If the evidence adduced by the prosecution in this case is analyzed, it is seen that some incriminating materials were seized from the scene of occurrence and some from the house and some from the establishment of the accused that too at their instance. The recoveries so made under the above seizure mahazars has definitely led to discovery of the fact that only these accused were aware of the place where the pamphlets, books, literatures, etc., were kept with the intention of using the same to cause disharmony and hatred between two major communities of this country, i.e., Hindus and Christians. It is difficult to believe that police could have access to these places and therefore even if the IO were to be having prior knowledge as to where these accused lived or carried on their business or profession, that itself cannot be a ground to disbelieve the prosecution case.

279. The conditions necessary of operation of Section 27 of Evidence Act, are enunciated in PULUKURI KOTTAYA AND OTHERS Vs. EMPEROR reported in AIR (34) 1947 PRIVY COUNCIL, wherein it is held that:

"10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements

made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

280. In this regard it may be profitable to refer to the decision of the Apex Court

in the case of *Karan Singh Vs. State of U.P.*, wherein it is held at para 3 that there was also the fact that the blood stained knife (Ext. 5) with which the murder was committed was recovered at the instance of the appellant. We are not impressed by the argument on behalf of the appellant that this evidence is not admissible under the provisions of Section 27 of the evidence Act as the police already knew about the place where the knife could be found. This argument is wholly without substance. This was based on the fact that the appellant first told the police that he would show them the knife and then took them to the place where the knife was hidden.

281. Further in the case of *STATE [NCT OF DELHI] V. NAVJOT SANDHU ALIAS AFSAN GURU* 2005 SCC [Cri] 1715, it is held that:

"Section 27 lifts the ban against the admissibility of the confession/statement made to the police to a limited extent by allowing proof of information of a specified nature furnished by the accused in police custody. In that sense Section 27 is considered to be an exception to the rules embodied in Sections 25 and 26.

The first requisite condition for utilizing Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from a accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion.

The next component of Section 27 relates to the nature and extent of information that can be proved. "Discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental consciousness of the informant accused in relation thereto. However, it is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly related to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused, which is the direct and immediate cause of the discovery. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the

accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

Lastly, "discovery of fact" does not comprehend a pure and simple mental fact or state of mind relating to a physical object dissociated from the recovery of the physical object that is, it does not comprehend the second limb of the definition of "fact" contained in Section 3 of the Evidence Act, 1872."

282. Section 27 is considered to be an exception to the rules embodied in Sections 25 and 26. It enables certain statements made by a person in police custody to be proved. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.

283. "Discovery of fact" cannot be equated to the object produced or found. It is more than that. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. The phrase "distinctly related to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused, which is the direct and immediate cause of the discovery. It is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. In fact it is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery.

284. The discovery of any fact referred to in Section 27 does not include mental or psychological fact, example, knowledge, i.e., the mental act of becoming aware of something or intention. The word "fact" is used in the sense of physical or material fact, which can be perceived by the senses and the discovery of such facts alone can eliminate the fear of confession being induced by improper inducing and confirming the truth of the information received from the accused. The word "fact" does not refer to mental fact. Section 27 comes into operation when some material object is produced from somewhere in consequence of some information given by the accused. But the fact discovery includes not merely the object found but also the place where it lay and the accused knowledge as to the place. The knowledge of the accused as to the place indicates that the discovery was due to the information received from him, i.e., he is the informant as contemplated in the Section. The fact discovery must be such that the proof of its existence does not depend on the credibility of the accused or any other person, but is confirmed by the production of the object itself, which can be perceived by the senses Section 27 allows proof of such part of the information as it relates distinctly to the fact discovery.

285. The Apex Court in the case of Karan Singh Vs. State of U.P., , held that though the Investigating Officer already knew the place where the incriminating article was hidden but still if that incriminating article is recovered in furtherance of the discovery statement given by the accused under Section 27 of the Indian Evidence Act, the recovery of that incriminating object is held to be proved at the instance of the accused on the basis of the evidence of the Investigating Officer. Therefore, we do not find any substance in the said contention of the accused.

Re: POINT NO. 9

ADMISSIBILITY OF SECONDARY EVIDENCE

286. The material on record discloses that the Karnataka Government constituted a Special Court to try all the four cases where bombs were blasted at four different places. Most of the accused in all these cases are common. The Investigating Officer after recording the statement during the course of investigation have gone to the houses of many of these accused along with them and they have seized the articles and mahazars were drawn. Some of these mahazars are common to all the four cases. Similarly, the confessional statement of Syed Hasnuzama is common to all four cases. The originals of all these mahazars and the confessional statement were marked in the first case, i.e., S.C. No. 423/2001. Thereafter certified copies of the same are obtained and they were produced in the other three cases. As trial took place in the same Court and the accused were also represented by the same Counsel in all the four cases and the Counsel for the accused has cross examined the witnesses on the basis of the said original documents, it is not open to the accused now to contend that the originals were not shown to them or produced before the Court. All the originals are produced in one case, duly marked and the Counsel for the accused have cross examined in respect of all those documents. Thereafter certified copies are obtained from those originals and they are produced and marked in other three cases, when the same documents are required in all the four cases, it is not possible to produce the original in all the four cases. In such circumstances, law provides for production of secondary evidence. The certified copies are obtained from the very same Court and they are marked in the other three cases, which is permissible in law and the secondary evidence is admissible in evidence. Therefore, we do not find any substance in the contention of the learned Counsel for the accused that the originals were not produced and hence secondary evidence is inadmissible in evidence.

Re: POINT NO. 10

APPRECIATION OF EVIDENCE

287. In the background of the aforesaid material on record, we shall examine the evidence produced against each accused, on the basis of which the Trial Court found them guilty.

288. The case of the prosecution is that on 07.06.2000 night, A. 3 to A. 6 came

from Hyderabad to Wadi by Train along with huge quantity of explosive substances and bombs prepared by them without holding any valid licence or permit issued by the competent authority with an intention to plant them and blast St. Ann's Catholic Church, Wadi, Taluk Chittapur, Dist: Gulbarga to create communal hatredness and lawlessness in that area. In pursuance of the renewed and continued criminal conspiracy with the other accused including absconding A. 17 to A. 19, on 08.06.2000 at about 6.30 a.m. planted the bombs in St. Ann's Catholic Church, Wadi and blasted them causing huge loss of property to that Church. At about 9.30 a.m. one more bomb planted earlier also blasted and caused simple and grievous injuries to C.W. 4 namely Susainathan Peter and C.W. 3 - Namdev, who were standing there along with other persons curiously watching the place of first blast. As a result of these blasts the people belonging to the Christian community of that area" gathered there and they felt insulted to their place of worship and their religion. Even a large number of people belonging to different casts and communities also gathered at the place of the blast. Thus A. 1 to A. 19, in furtherance of their continued Criminal conspiracy committed sedition promoting enmity and disharmony between two religious groups, mischief causing damage to the Church and waging war against the country. They also committed the offence of transporting explosives and causing explosion in the place of worship to achieve Jihad in India and islamise the entire world.

289. In order to establish this case, prosecution has examined P.W. 1 - Susainathan Peter, the member of the Committee of St. Ann's Catholic Church, who was residing at a distance of 1 km. from the Church. He has deposed that on 08.06.2000 at about 6.30 a.m., when he was in the house, he heard a loud noise. He came out of the house and he was about to leave for his office. At that time, some people informed him that a bomb is blasted in the Church. Immediately he went near the Church. By that time, several persons and Police Officers were present. On inspection, he found the bomb has exploded on the Western side of the Church near Ashoka Tree. Windows and glasses were broken. All the leaves of the Ashoka Tree had withered away. ...Other office bearers were also present. As he was a member of the Church Committee, they asked him to submit a report to the police. Thereafter, he went to the police station at 7.00 a.m. and submitted a report which is marked as Ex. P1. He identified his signature as Ex. P1(a). Thereafter, he returned to the Church. He noticed that one "small box of Topaz Blade was lying in front of the Church in which, wires and battery shells were there. Police asked them to go away from the place of the blast as they felt that the said box may be a bomb. He went about 15 feet away from the place of blast and was watching. Along with him, one reporter by name Namdev was also there. By about 9.10 a.m. that box of Topaz company blasted. A part of it struck his right chin and blood started woozing out. Namdev also started shouting as there was bleeding in his right leg. Both of them went to ACC Hospital and obtained first aid. Thereafter, they went to the Government Hospital at Wadi. As there were no Doctors, they went to the Government

Hospital at Gulbarga. Namdev was admitted as an inpatient in the said hospital. The Doctors told him that the injury sustained by him is not very serious. He also gave his statement before the police. Subsequently, he gave his statement before the Investigating Officer. This witness has been extensively cross-examined. All particulars are elicited. He withstood the test of cross-examination. Except suggesting that he was not present at the Church nor has he given any complaint to the police, because he was a Christian he has been deposing falsely, nothing worthwhile is elicited in the cross-examination to disbelieve his evidence.

290. P.W. 2 is Father Dennis who was a Priest in Peen of Heaven Church, Chittapur in the year 2000 and now he is a Priest in Mother of Divine Grace Church, Gulbarga. He is aware of the bomb explosion on 08.06.2000 in St. Ann's Catholic Church as on that day, he was in Chittapur. On 08.06.2000, P.W. 1 informed him through telephone, about the blast at about 7.00 a.m. Therefore, he reached St. Ann's Catholic Church, Wad by about 8.15 a.m. He has deposed that the blast had taken place on the western side of the Church. The windows of the Church were completely broken. The leaves of the Ashoka Tree also had withered away. There a crater had occurred. All the windows and tubelights also had broken. There were cracks in the walls of the Church. When he came in front of the Church, he saw one small box of Topaz blade. Police asked all the people to go away from the place of the blast as they felt that the said box may be a bomb. He went about 15 feet away from the place of blast and was standing. By about 9.10 a.m. the small box also exploded. P.W. 1 and P.W. 4 was injured by the blast and another 6 inches crater was formed in that blast and the small box was torn into pieces. The said explosion took place in front of the Church within the premises of the Church. According to him, this explosion was to create communal disturbance. Except suggesting that what he is deposing is false and nothing is elicited in the cross-examination.

291. P.W. 3 - Robert Nazarath is a Senior Officer in ACC Cement Company at Wadi. Police summoned him at about 8.30 a.m. to be a witness. Along with him, one Ugine Delima was also present there. He saw the place where, there was a blast on the western side of the Church. The windows had broken and the glasses of the windows had completely broken. The leaves of the Ashoka Tree had withered away. When they were observing all these, one more blast took place in front of the Church at about 9.10 a.m. He and other witnesses also saw the said blast. The police removed some mud and other materials from the place of blast and drew Mahazar. They drew one more Mahazar in front of the Church, where the blast took place. The Mahazar were written at the same place. He identified Ex. P. 2 as the Mahazar and his signature as Ex. P. 2(a). Again, he went to the place of blast on 10.06.2000 at about 3.30 p.m. Police and other experts were also there. Police again showed him the place of blast and again some mud and materials were collected which was sealed in a bag. He identified the same as M.O. 1 to M.O. 12. Though this witness was also subjected to lengthy cross-examination, nothing worthwhile was elicited to disbelieve his evidence.

292. P.W. 4 is Namdev, the Press Reporter, who was also running an STD booth at Sollapur. His parents-in-law's house was situated at Wadi. He was there in Wadi, on the date of the blast. At 8.00 a.m., he went to the Church to see the place of blast. Number of people had gathered outside the Church. Many Church Authorities and Police were inside the Church. He told the police that he is a Reporter and showed them his identity card and then went inside the Church. In the Court also he showed the said identity card, which bears his photograph. It was issued by Yeshwant Rao Chauhan, Maharashtra Open University. After inspection by the Court, the identity card was returned to him. The same was issued to him by the University, when he was undergoing training of Press Reporter.

293. At the place of the blast, he was speaking to P.W. 1. At that time a small tin box of Topaz Blade was lying in front of the Church. Police asked them to go away from that place. When he was standing at about 20 feet away, immediately there was a blast. An iron piece from that blast touched his right leg and it started to bleed. Another piece hit P.W. 1 on the right cheek and injured him. The blast took place at about 9.10 a.m. Both of them were taken to ACC Hospital. Since, doctors were not there, they were taken to Government Hospital at Wadi. Even there Doctors were not available. So they were taken to Government Hospital at Gulbarga, where he was treated as an inpatient for one week. His statement was recorded by the police before going to the Hospital. He gave his statement in Hindi whereas the police wrote his statement in Kannada. Nothing worthwhile is elicited from his cross-examination.

294. P.W. 5 is Mohammed Hameen Biralkar, who was a resident of Wadi. He was residing at about 60 feet away from the Church. When he was still in the bed on 08.06.2000, at 6.00 a.m. he heard a loud noise from the Church. Thereafter he and his neighbours went near the Church. They noticed that on the western side of the Church, there was a bomb blast and there was a crater on the ground in the place of blast, the glasses of the window had broken and one plant had burned. Again at 9.00 a.m. one more blast took place when they were watching the entire area. P.W. 1 and P.W. 4 were injured in the face and leg respectively, in the said blast. He has given his statement before the police. He has reiterated what he has said in the examination-in-chief. He has denied all suggestions.

295. P.W. 42 - B.S. Hanchinamani was working as Deputy Superintendent of Police at Shahabad, within whose jurisdiction Wadi Police Station and Chittapur Police Circle are situated. When he was in Eragere village in connection with Taluk Panchayat Elections. The Circle Inspector of Chittapur and also Sub-inspector of Wadi had come there. When they received information on 08.06.2000 that a bomb had blasted at 6.00 a.m. in St. Ann's Catholic Church, he along with Chittapur Circle Inspection and Wadi Sub-Inspector reached the Church by about 7.30 am. By that time, number of persons had assembled there. First, they took steps to disburse the people, who had gathered there. He along with P.W. 1 and his officials inspected the entire Church. By the side of the

wall in the Church there was a crater, the glasses of the window were broken and the wall had cracked. They took steps to preserve the entire area till experts come and inspect. They also ordered for Dog squad. There were marks of an Ambassador Car having gone from that place. One Topaz Company tin box was lying. It was at a distance of about 8-10 feet from the place of the blast. With the help of a stick which was in his hand, he tried to examine that tin box. A probationary Sub-Inspector asked him not to touch with that stick. Which was covered with a metal. However, with the help of a wooden stick, he removed the cover of the box. Then they noticed battery shells and wires. Then the Inspector asked them not to touch the contents of the box. They asked the photographer to take a photo without using flash. The Inspector asked him and the photographer to go and stand at a distance from that box. When they did so, the tin box exploded.

296. The particles from the blast injured P.W. 1's right chin and P.W. 4 was hurt on the right leg and both started to bleed. After hearing the blast, people started to rush towards the place of blast. They disbursed them. The said fact was informed to the higher officials by wireless. The Sub-Inspector and Inspector were instructed to register the case and commence investigation. Thinking that there were some more bombs, they disbursed all the people who were there. Except suggesting that he was not present at the place, though at length he was cross-examined, nothing is elicited to disbelieve his evidence.

297. P.W. 43 - Sharanappa Jadhav was the Sub-Inspector of Wadi Police Station. He has deposed that on 08.06.2000 at about 7.00 a.m., P.W. 1 came to the Police Station and gave a written complaint. On receipt of the complaint, he registered a case in Crime No. 77/2000 under Section 153-A of IPC and Section 365 of Explosives Act, 1908. He sent the First Information Report to JMFC, Chittapur and the copies of the same were sent to higher official. It was written in English. He identified the said complaint before the Court, which was marked as Ex. P. 1. He has also identified his signature as per Ex. P. 1(b). He has also identified the FIR as Ex. P. 50 and his signature as Ex. P. 50(a) and Ex. P. 50(b). He had also been cross-examined. Nothing worthwhile is elicited to disbelieve his evidence.

298. P.W. 50 was the Deputy Commissioner of Gulbarga District. Wadi town was within his jurisdiction. On 08.06.2000 at about 7.30 a.m. or 8.00 a.m. he received information from the Superintendent of Police, Gulbarga that in St. Ann's Church, at 6.30 a.m. there was a bomb blast. Immediately, he and the Superintendent of Police travelled in a car to Wadi and inspected the place of blast. There were cracks in the wall of the Church and there were enough indication of bomb blast Glass pieces were lying there. Then he secured the Police Officers and the Tahsildar and they were directed to collect the requisite information. Padri Dennis was also summoned and they had a discussion with him and his officials. He also has spoken about the orders passed by him on receipt of the communication from the IGP, COD, Bangalore on 06.10.2000 under

the provisions of the Explosives Act, 1908. He identified these orders as per Ex. P. 58 and his signature at Ex. P. 58(a). Though he was cross-examined, nothing serious is elicited from his evidence also.

299. The aforesaid evidence clearly establishes the explosion of a bomb on 08.06.2000 at about 6.00 a.m. and 9.10 a.m. in St. Ann's Catholic Church. The first blast took place on the Western Side of the Church resulting in cracks on the wall of the Church, window and window glasses being completely broken and the leaves of the Ashoka Tree nearby had been completely withered away and in the place of blast, there was also a crater. About 8 to 10 feet away, in front of the Church, there was a tin box of Topaz Blades. When it was opened, they saw battery and wires. It exploded at about 9.10 a.m. On account of the said explosion, a particle flew and injured P.W. 1 on his right cheek which resulted in bleeding. Similarly, yet another particle flew and injured P.W. 4 on his right leg which also started to bleed. The injured were immediately taken to ACC Hospital, where they were given first-aid. Then, they were taken to Government Hospital at Wadi. Since, Doctors were not available; they were taken to Government Hospital at Gulbarga where they were treated. P.W. 4 was treated as an inpatient for nearly a week in the said Hospital. Therefore, the case of the prosecution that a bomb blast took place in St. Ann's Catholic Church in the aforesaid manner on 08.06.2000 is clearly established beyond all reasonable doubt.

300. Now the question for consideration is what is the motive behind this bomb blast and who are the persons involved in the commission of this act?

301. Therefore from this evidence, the blast in the Church premises is proved. Now the question for consideration is:

What is the role played by each of the accused in this bomb blast case?

302. Therefore, let us discuss about the overt act played by each and every accused in this case.

303. A. 1 is Syed Ameer Hamza and A. 2 is Ismail Akki. The Trial Court on appreciation of the evidence in the case insofar as the involvement of A. 1 and A. 2 in the blast is concerned, has held that the prosecution has not proved the complicity of A. 1 and A. 2 in the commission of the offence charged against them. Therefore both of them have been acquitted by the Sessions Court. The State has not preferred any appeal against the said order of acquittal.

304. A. 3 namely Izher Baig was aged about 34 years as on the date of evidence. He was doing business in Agarbathi and pooja materials. He was residing at Hyderabad at Deendar Anjuman Ashram, Asifnagar. In fact, his residential house was situated inside the Ashram. P.W. - 20-Moulvi Syed Azeemuddin, the father of A. 4 has identified A. 3. P.W.- 24-Syed Shanawaz Ahamed, who is a relative of absconding A. 17 also has identified this A. 3 before the Court along with other persons. However, both these witnesses turned hostile because of their close relationship and association with the family of A. 3 residing in Deendar Anjuman

Ashram, Hyderabad itself. P.W. - 48-Sudheer Hegde, Sub-Inspector, Mahatma Basaveshwaranagar Police Station has deposed that he was one of the special team member to trace the culprits in the bomb blast case. He ultimately traced A. 3 near the city bus stand in Varthur, Bangalore and produced him before P.W-54 on 03.08.2000 along with his report, Ex. P. 57. P.W.-54 interrogated A. 3 and arrested him. A. 3 has given his voluntary statement as per Ex. P. 62. A. 3 and A. 4 were produced before the jurisdictional Magistrate.

305. Thereafter A. 3 took P.W. 54, P.W. 6 and P.W. 7 to Wadi railway station. He pointed out at platform No. 1, the place where they had alighted the Hyderabad-Mumbai train on 08.06.2000 at 1.00 am. He also took them to St. Ann's Catholic Church, Wadi and showed the place where A. 4 stood watching and warding the Church. A. 3 had jumped the compound and entered into the Church premises and also pointed out where he had planted a timer bomb fixing the explosion time at 6.00 am. He also showed where himself and A. 4 purchased the tickets from the railway counter and where they had vada pav and he also showed the place of boarding Mumbai-Hyderabad train at 2.00 a.m. in Wadi Railway Station on the same day. P.W. 54 drew mahazar Ex. P. 4 in this regard.

306. A3 also showed the room situated in Dendar Anjuman Ashram, Hyderabad, wherein A. 17 used to stay during his visit to India. He also showed the place where absconding A. 17 used to sit and address the active members of the organization. He also pointed out flat No. 202 situated in Yusufina Complex, Mehandipatnam Road, Hyderabad, belonging to A. 7. In that flat he showed a hall wherein A. 9 and his brother A. 16 and absconding A. 18 in their leadership held secret conspiracy meetings with A. 3 and others. Ex. P. 14 the mahazar was drawn at the instance of A. 3 showing that in room No. 2 and 3 in New Ashoka Lodge, situated at Old Phil Khan, Hyderabad, A. 18 and even deceased A. 9, his brother A. 16, held secret conspiracy meeting and finalized the action plan to commit jihad, nifaaq and siria activities.

307. It is evident from Ex. P-14 coupled with the evidence of P.W.-16 - Kalyana Rao and P.W.-54, that the Investigating Officer seized the incriminating articles M.O.-13 to M.O. 21 from the house of A. 3 situated on Mehandipatnam Road, 1st cross, Hyderabad under Ex. P-15. The details of the incriminating articles seized from the house of A. 3 under mahazar Ex. P-15 are as under:

M.O. 13 Passport

M.O. 14 Jagadguru Kannada Book

M.O. 15 Pancha Shanthimarga English Book

M.O. 16 Deendar Channabasaveszhwara Kannada Book

M.O. 17 Two English pamphlets of "Profet Hazrath Mohammed"

M.O. 18 Four pamphlets of "Last warning to Christian Missionaries"

M.O. 19 Two pamphlets of "Strict warning to Christian Missionaries"

M.O. 20 Two English pamphlets of "warning to Christian Missionaries"

M.O. 21 Medel signatures of P.W. 16 and Rathod.

308. M.O. 13 shows that on 14.11.1992 A3 went to Pakistan on a Pakistan visa dated 22.9.1992, stayed in Mardan, Pakistan for about 1 1/2 months, i.e., from 23.09.1992 to 7.11.1992. A. 3 has not offered any explanation about his visit to Mardan, Pakistan, for about 1 1/2 months, at the time of examination under Section 313 Cr.P.C., Absconding A. 17 and his sons are residing at Mardan, Pakistan. The stay of A. 3 in Mardan, Pakistan, probablises the case of the prosecution that A. 3 was sent to Mardan, Pakistan, to receive training in arms and ammunities including explosives. A. 3 had no relatives at Mardan, Pakistan. A. 3 had in his possession Deendar Anjuman Organization literature books which were published and circulated by the organization. He also possessed pamphlets containing literature to compel non-muslims to embrace Islam on the ground that embracing Islam itself amounts to completion of a religion. He was in possession of M.Os. 18 to 20, the warning and threatening letters said to have been issued in the name of Vishwa Hindu Parishath to the South Christian Missionaries and in the name of South Christian Missionaries addressed to Vishwa Hindu Parishath.

309. The evidence on record also shows that A. 3 participated in the criminal conspiracy meetings in the Ashram, in flat No. 202 of Yusufina Complex belonging to A. 7, room Nos. 2 and 3 of New Ashoka Lodge, under the leadership of absconding A. 17, deceased A. 9, A. 16, absconding A. 18 to prepare the action plan and to entrust the respective works to various active members pertaining to jihad, nifaaq and siria activities. The active participation of A. 3 was even confirmed by the evidence of P.W.-53 namely Mohan, CPI, Bagalkot and his report Ex. P-61. The report discloses that a criminal case in Cr. No. 304/96 for the offence under Section 394 IPC was registered against A. 3, A. 8 and A. 10. Later the case was investigated and the aforesaid persons were charge sheeted before the JMFC, Bagalkot. It is numbered as CC. No. 7/97. A. 3 having received training in arms and ammunities in Pakistan, actively participated in the criminal conspiracy meetings in various places, possessed incriminating articles to create jihad, nifaaq and siria activities.

310. A. 16 in his confessional statement at Ex. P-144 has narrated the role of A. 3 in the conspiracy. At para 23 he has stated that on 2nd last January 2000 A. 9 and A. 16 went to Hyderabad and met A. 5, A. 7, A. 8 and A. 3 and lastly A. 6 also came over there and they all attended the meeting on third day of Urs in A. 7's flat. At para 24 he has stated that A. 16 and A. 9 went to Hyderabad to fix the date of marriage of A. 9's daughter and from there they went to A. 5's house and he took them to A. 7's apartment where A. 3 and others met as they wanted some money to purchase a site for keeping the explosives. Thereafter, A. 8 took them to the next room. These materials clearly establish the participation of A. 3 in the conspiracy and that he was actively involved in the blast of bomb at St. Ann's Catholic Church on 08.06.2000.

311. A. 4 was aged about 28 years on the date of the incident. He was a carpenter by occupation. He was residing at Toli Chowk, Hadeempet, Hyderabad. P.W.-8-Smt Tolabi, is the sister of A. 4's father. P.W.-9-Hussainbi is the elder sister of A. 4. P.W.-10-Mehanoon Begaum is the younger sister of A. 4. P.W.-11-Lalsab is a distant relative of A. 4. P.W- 12-Kasimsab is the son of P.W.-11. P.W.-8-Smt. Tholabi is a resident of Gulbarga. Her son Hussain is married to Hussainabi, who hails from Hyderabad. She deposed that A. 4 is the resident of Hyderabad. About 5 years back he had; come alone to her house at Gulbarga. As this witness turned hostile, the public prosecutor cross examined her. In cross examination, she deposed that A. 17 is from Hyderabad. She admits that A. 4 is her relative, but denied that other accused before the Court are also her relatives.

312. P.W.-9-Hussainabi is also the resident of Gulbarga. She admits that A. 4 is her brother; P.W.-8 is her mother-in-law. She hails from Hyderabad. She also turned hostile. She also admits that A. 4 is from Hyderabad. She admits that except A. 4 none others are related to her. P.W.-10 - Mehanoon Begaum is the resident of Wadi village. It takes two hours to walk from her house to the Church. She admits that A. 4 is her sister's son. She also turned hostile. P.W.-11 - Lalsab is the resident of Golabi village in Aland Taluk, Gulbarga district. He admits that A. 4 is his distant relative, i.e., her wife's sister's son. He also turned hostile. He was cross examined. P.W.-12 is Kasim Sab. He is also the resident of Gulbarga, Aland Taluk, Gulbarga District. He admits that P.W.-11 is his father and A. 4 is his distant relative. He also turned hostile. Then, we have the evidence of P.W.-17. He admits that A. 4 is his wife's brother and also identifies him in Court. This witness also turned hostile. P.W.-18 is Liyakath Ali, resident of Asifnagar, Hyderabad. His house is in Deendar Anjuman Ashram premises. He also identifies A. 4. He also admits that A. 4 is the husband of his sister. He admits that every year Urs takes place in Deendar Anjuman Ashram. He admits that there is tomb of Siddique Channabasaveshwara in the Ashram. He also turned hostile.

313. So, all these persons who are the residents of Gulbarga, admit their relationship with A. 4 and therefore it is quite natural that having spoken about A. 4's involvement in the crime during investigation all of them though turned hostile before the Court. It is however relevant to note that all of them have identified A. 4.

314. P.W.-24 is the resident of Asifnagar, Hyderabad. He is also residing within the Ashram premises. This witness admits that Deendar Channabasaveshwara Siddique was the husband of his father's sister by name Tajdar Begaum. There is a room in the house where they were residing and late Deendar Channabasaveshwara Siddique was living, in that room, with an open space in the front portion. After Channabasaveshwara Siddique's death, he has been using the said room. A. 17 is the eldest son of Deendar Channabasaveshwara Siddique and is residing in Pakistan. There is a darga and every year during Razab month, Urs takes place. Sometimes, A. 17 also came from Pakistan to

attend Urs. At that time, he was living in the premises of his son-in-law. He was not living in the room where late Deendar Channabasaveshwara Siddique was living. In 1999 when Urs took place, Zia-Ul-Hasan had come. He does not remember whether A. 4 had attended the said Urs. He also identifies A. 3, A. 4, A. 5, A. 6, A. 7 and A. 8 before the Court. But he does not remember whether they have also attended the Urs. He does not remember who had come from Gadag, Hubli, Bangalore, Maharashtra, Batakurki and other places to the said Urs. This witness also turned hostile and the Public Prosecutor has cross examined him. During such cross examination PW. 24 does not dispute identity of A. 4 and the fact that he is the resident of Hyderabad and all those persons are closely connected to each other.

315. P.W.-48 - Sudhir Hegde, Sub-Inspector has deposed that on 02.08.2000 at about 9 pm he traced A. 3 and A. 4 near city bus-stand in Varthur. He ascertained their names and addresses, and brought them to Wadi and produced before P.W. 54, the Investigating Officer on 03.08.2000 along with his report Ex. P-57. P.W.-54 interrogated them, arrested them at 6. pm. He recorded the voluntary statement of A. 4. He produced them before the jurisdictional Magistrate and secured P.C. custody till 17.08.2000. It is his evidence that on 05.08.2000, A. 4 along with P.W.-54 and P.W.-6-Jayawanth, panch, P.W.-7-Vittal another panch to Wadi railway station and pointed out platform No. 1, the place where they had alighted from Hyderabad-Mumbai train on 08.06.2000 at 1.00 am. Later, he took them to St. Ann's Catholic Church, Wadi and showed the place where this A. 3 had jumped the compound and entered into the Church premises. He also pointed out a place situated at a distance of 35 to 40 ft. from the compound towards southern side of St. Ann's Catholic Church, Wadi. He also pointed out the place where A. 3 had planted a timer bomb fixing the explosion time at 6.00 am. He also showed where they purchased the tickets from railway counter, where they had vada pav and they also showed the place of boarding Mumbai-Hyderabad train at 2.00 am on the same day. Ex. P-3 is the mahazar. A. 4 also pointed out the place of meeting in a room situated in the Deendar Anjuman Ashram, Hyderabad, wherein A. 17 namely Zia-Ul-Hasan used to stay during his visit to India. He also showed the place where A. 17 used to sit and address the active members of the organization. Ex. P-12 is the mahazar to that effect. He also pointed out Flat No. 202 situated in Yusufina complex, Mehandipatnam Road, Hyderabad belonging to A. 7 namely Sheik Hashim Ali. In that Flat, he showed a hall wherein deceased A. 9, and his brother A. 16 and absconding A. 18, in their leadership held secret conspiracy meetings with A. 4 and others. Ex. P-13 is the mahazar to that effect. Again he showed room Nos. 2 and 3 in New Ashoka Lodge, situated in Old Phil Khan, Hyderabad, where A. 18, A. 9, A. 16 held secret conspiracy meetings and finalized the action plan to commit jihad, nifaaq and siria activities. Ex. P-14 is the mahazar.

316. In fact, P.W.-54 seized the incriminating articles M.O.-22 to M.O. 28, from the house situated at Toli Chowk, Hakeempet, Hyderabad, under mahazar Ex. P-16. M.O.-22-passport was issued to A. 4 on 19.06.1993. In his house, Deendar

Anjuman Organization literature books which were printed, published and circulated by them were also seized. M.O. 23 is the pamphlets containing the literature to compel non-muslims to embrace Islam. M.O. 26 and M.O. 27 are warning and threatening letters issued in the name of Vishwa Hindu Parishath to the South Christian Missionaries and the name of South Christian Missionaries addressed to Vishwa Hindu Parishath. However, in the statement recorded under Section 313 Cr.P.C., he has pleaded complete ignorance and no explanation is offered.

317. A. 5 was aged about 39 years on the date of the incident. He was a book vendor running a shop under the name and style 'National Book Centre'. He was a resident of Asif Nagar, Hyderabad. P.W. 54 - Investigation Officer took A. 5 to New Ashoka Lodge situated in old Phil Khan area, Hyderabad. P.W. 22 - Kashinath, Manager and P.W. 23 - P. Narahari Rao, owner of the lodge identified A. 5. P.W. 22 - Kashinath had deposed that he is from Belur village, Basavakalyan Taluk, Bidar District in Karnataka. He has been working in the said lodge as Manager. He has given description of all the persons, who are working in the said lodge. He further deposed that on 22.11.1999 A. 5 came with two associates and requested for rooms to accommodate six persons in the lodge. It was about 10.15 p.m. He booked room No. 2 and room No. 3. A. 5 paid Rs. 300/- as advance. He had told them that the rent of two rooms for 24 hours is Rs. 500/-. Then he gave the address of the book stall in Asif Nagar and also the phone number. Six persons had slept in those rooms. The next day, when he came back to duty, they had vacated the rooms. He had made entries in the booking register. He identified the register as Ex. P23 and the signature of A. 5 as Ex. P23(b). He also identified the receipt book, which is marked as Ex. P24 and the receipt written by Chennappa, which was marked as Ex. P24(a) and his signature as Ex. P24(b). He also deposed that P.W. 54 had come to his lodge and seized Ex. P23 and Ex. P24. He identified A. 5 before the Court. He has been extensively cross-examined by the counsel for the accused. But nothing is elicited to disbelieve his testimony.

318. Similarly, P.W. 23 - P. Narahari Rao, owner of the lodge was also examined. He admits that P.W. 22 was employed by him. He had further deposed that on 27.07.2000, P.W. 54 brought A. 5 to the lodge. He seized Ex. P23 register and also the Carbon copy of the receipt. He also deposed to the fact that A. 5 had come to the lodge, booked two rooms No. 2 and No. 3 and he identified A. 5 in the Court. He also had been extensively cross-examined by the counsel for the accused. However, the fact that P.W. 23 - P. Narahari Rao is the owner of the lodge and P.W. 22 - Kashmath is the Manager of the lodge is not disputed. The register shows the booking of rooms No. 2 and 3 by A. 5. It further discloses that a sum of Rs. 300/- was paid in advance at the time of booking and the balance amount of Rs. 200/- was paid at the time of vacating the rooms and six persons slept in that room. In fact the Panchanama was drawn, which is marked as Ex. P. 49. It also supports the said case.

319. P.W. 59 - Investigation Officer, who had served as a Deputy Superintendent of Police in COD, has deposed that A. 5 led him to the place, where conspiracy meetings were held and on seeing the place, he drew a Panchanama as per Ex. P49. The said Mahazar discloses that A. 5 pointed out the place where main conspiracy was held under the leadership of absconding A. 17 and deceased Hazarath Siddique.

320. but he turned hostile. He has deposed that his father's sister was the wife of deceased Deendar Channabasaveshwara Siddique. He has deposed that Siddique was residing in a room in the Ashram and in front of the room there is a vacant place. After his death, they are using the said room. Further, As. 5 led P.W. 59 - Investigation Officer to flat No. 202, Yusufina Complex, which was in the possession of A. 7 and showed the place as the place, where conspiracy meeting was held in the leadership of deceased A. 9, A. 16 and absconding A. 18. Later A. 5 led them to New Ashoka Lodge, Hyderabad and pointed out room Nos. 2 and 3 referred to supra.

321. A. 16 in his confessional statement at Ex. P. 144 has spoken about his role in the conspiracy and his involvement in pursuance of the said conspiracy. A. 5 is one of the persons, who had gone to Pakistan to take training in arms, ammunitions and explosives. A. 16 has spoken about the presence of A 5 in the 3rd day of Urs in September 1999 at 7.40 hours at the premises of Deendar Anjuman Ashram, Asif Nagar, Hyderabad. In the meeting A. 19 told that he along with A. 5 would arrange for rooms in the Ashoka Lodge at Barakat for the second meeting. At para. 23 it is stated that in the second or last week of January, 2000, when Bhatakuki batch came with Tata Sumo, A. 9 and A. 16 went to Hyderabad and met A. 5, A. 7, A. 8 and others, sat in A. 7's apartment, where they attended the meeting on third day of Urs. There, A. 9 told the members to co-operate with A. 5, as he was selected by A. 17 and that they had to damage Railways, IOC, PCI, Electric (grid), Govt. installation by Sarria. At para. 24 it is stated that when A. 16 and A. 9 came to know that A. 8 had come back and he had brought some message from A. 17, which was collected through A. 5. Then A. 16 and A. 9 went to Hyderabad to fix the date of marriage of A. 9's daughter and from there they went to A. 5's house and he took them to A. 7's apartment where all of them met as they wanted some money to purchase a site for keeping the explosives. Thereafter, A. 8 took them to the next room.

322. The aforesaid evidence discloses that A. 5 was sent to Mardan, Pakistan. There, he received training in arms, ammunitions and explosives. On his return to India, A5 participated in the main criminal conspiracy held in the month of October 1999 in the room situated in the Ashram at Hyderabad. Later, he arranged rooms for holding conspiracy meetings in the room Nos. 2 and 3 of Ashoka lodge. He also arranged for securing and storing the explosives. He has acted as a communicator in between the absconding A. 17 to A. 19 and other active members including Zonal chiefs. He was an active member in all the activities like Jihad, nifaaq and siria. He actively participated in all the activities

in achieving the aims and objectives to Islamize while of India. In the examination under Section 313 Cr.P.C., he has not offered any explanations to the aforesaid incriminating material pointed out to him.

323. A6 was aged about 30 years at the time of the incident. He was an air-conditioner mechanic by occupation. He is a resident of No. 10-2-463 situated in Deendar Anjuman Ashram, Asif Nagar, Hyderabad. P.W. 24 -Shahanawaz Ahamed had identified accused No. 6 - Mohammed Khalid Chowdary. He is also residing in the Ashram at Asif Nagar, Hyderabad. P.W. 28 - Rahim Khan, resident of Wadi had deposed that one Ismail Chowdary, resident of Hyderabad, who is the father of A6 Mohammed Khalid Chowdary, is his nearest relative. He has further stated that about 7 years ago, on one night, A6 had come to his house situated at Wadi. On the same day, he returned to Hyderabad. This evidence shows that A6 was a resident of Ashram at Asif Nagar, Hyderabad, but visited Wadi and the house of P.W. 28 - Rahim Khan, which is at a distance of 30 feet from St. Ann's Catholic Church, Wadi. P.W. 54 - Investigation Officer, on 20.09.2000 took A6 - Mohammed Khalid Chowdary to police custody and recorded the voluntary statement given by accused No. 6, which is marked as Ex. P35.

324. Thereafter, A6 led them to platform No. 1 in the Wadi Railway Station and showed them the place where he and accused No. 5 - alighted from Hyderabad-Mumbai train on 08.06.2000 at about 1.00 a.m. He also led them to St. Ann's Catholic Church, Wadi and pointed out the place where accused No. 5 stood outside the Church watching and guarding. He also showed them the place from where he jumped the compound wall and also he went to the western portion of the Church below a window and showed the place where he had planted a time bomb fixing the time of blast at 6.00 a.m. Thereafter, A6 brought all of them back to the Wadi Railway Station and showed the ticket counter from where he obtained the tickets to Hyderabad. He also pointed out a place in front of the canteen where they had tiffin. He also showed them the platform from where they again boarded Mumbai-Hyderabad train on the same day at about 2.00 a.m. Ex. P. 36 is the Mahazar in this regard. Yet another circumstance pointed out against this accused is he led P.W. 54 - Investigation Officer and his staff and Panch witnesses P.W. 31 - Veerabhadra Patil and P.W. 40 - Chandrashekar to the Ashram at Hyderabad and from there he led them to Kabarstan situated there and further pointed out two tombs. He further pointed out the place near that tomb as the place where absconding accused No. 18 held secret conspiracy meetings with himself and other accused persons and finalised the action plan to commit jihad, nifaaq and siria activities. Ex. P37 is the Mahazar drawn in this regard.

325. Further, A6 led P.W. 54 - Investigation Officer and his staff to Salem Book Bureau Watch and Electronics shop situated at Maheswari Palace, Hyderabad. However, the said shop was under renovation. The shop had been shifted to Ajanta Watch Shop. All of them went near the shop and the owner of the shop P.W. 29 - Mohd. Abdul Khader was present. A6 told him that he had purchased

three quartz clock movements in his shop at the rate of Rs. 20/- per movement on 02.06.2000

326. P.W. 54 - Investigation Officer seized the receipt book Ex. P32 before the panchas and drew the Mahazar Ex. P33. This witness has been cross-examined at length. In the cross-examination, he admits that the Police had come to his shop in a Karnataka vehicle i.e., Tata sumo. Initially, they spoke in Kannada. Thereafter, they spoke in Hindi. The mahazar was written in kannada.

327. Therefore, the answers elicited during cross-examination shows that PW 29 was running a watch shop. Bill books were seized from his shop and he had obtained a licence from the Corporation to run the said business and the contents of the bill book shows that on 02.06.2000, 3 clock quartz movements were purchased at the rate of Rs. 20/- per movement. This evidence probablises the case of the prosecution that A6 had purchased 3 quartz clock movements which he had used in preparing the bombs.

328. A. 16 in his confessional statement at Ex. P. 144 at para 19 has deposed that A. 6 went to Mardan, Pakistan for receiving training in arms, ammunitions and explosives. Similarly, he has stated about the participation of A. 6 in conspiracy meetings. At para 23 he has stated that on 2nd last January 2000, when A. 9 and A. 16 went to Hyderabad and met A. 5, A. 7, A. 8, Jayyab and A. 3, A. 6 also attended the said meeting at A. 7's flat on the third day of Urs. At Para 24, he has spoken about the survey of the areas for committing Siria. He has stated that A. 6 along with others went to survey sarria in Karnataka. Thereafter they went to Bhatakurki and also they tried to do sarria at Sangli.

329. The aforesaid evidence shows that A. 6 is a member of the Deendar Anjuman Ashram, Hyderabad. He went to Pakistan for training in arms, ammunitions and explosives. He participated in the secret conspiracy meetings ":" held in the leadership of absconding A 17 - Zia-Ul-Hassan. He purchased 3 Nos. of quartz clock movements at the rate of Rs. 20/- each on 02.06.2000. He alighted in the platform No. 1 at Wadi railway station along with A5 on 08.06.2000 at 1.00 a.m. Thereafter, he went near St. Aim's Catholic Church where he planted a timer bomb, when accused No. 5 - Mohd. Sharfuddin standing outside the Church was watching and guarding him. Thereafter, he along with other co-accused returned to Wadi, had tiffin and purchased return ticket and boarded the Hyderabad - Mumbai train.

330. A-7 - Sheik Hashim Ali was aged about 30 years on the date of the incident. He was a videographer by occupation. His videograph shop namely Skyway Photo and Videography was situated inside the Deendar Anjuman Ashram, Hyderabad. He is residing at No. 10-2-469, Asifnagar, Hyderabad. P.W.-37 - Sheik Mehaboob Ali is the younger brother of A. 7. He and A. 7 were running the videography shop. A. 7 is the son-in-law of A. 14 namely Mohd. Siddique. P.W. - 36-Sheik Kasim Ali is the father of A. 7 as well as P.W.-36-father and P.W.-37-younger brother of A. 7 have identified A. 7 before the Court. P.W.-24-

Shahanawaz Ahamed, who is the relative of absconding A. 17 has identified A. 7 as known persons. P.W.-24 is residing in a house owned by absconding A. 17 and Late Hazrath Siddique situated in Deendar Anjuman Ashram, Hyderabad. A. 17 during his visit to India was residing in a room adjacent to the house of P.W.-24. P.W.-24 have seen this A. 7 visiting the Ashram, often. That demonstrates the connection between A. 7 and the Deendar Anjuman Ashram, Hyderabad. His videograph shop is situated inside the Ashram itself. A. 7 was sent to Mardan, Pakistan, for receiving training in arms and ammunitions and explosives. Accordingly he was training and became an expert in preparing, planting and blasting bombs. This fact is spoken to by A. 16 namely Syed Hasanuzama in his confessional statement at Ex. P-144 at para 19. On his return from Pakistan, the evidence discloses that A. 7 purchased devices and materials required for the preparation of bombs in various shops in Hyderabad. P.W.-54-Investigating Officer on 25.09.2000 took A. 7- to police custody. Later on 27.09.2000 he interrogated him. A. 7 gave his voluntary statement as per Ex. P-69. Subsequently, P.W.-54 entrusted further investigation to P.W.-45 namely K. Mohd. Jaffar.

331. On 03.10.2000 at about 4.30 pm, A. 7 led P.W.- 45 and panchas P.Ws.-31 to 40 to Jyothi Electronics shop situated at Guiarath Galli, Koti Road, Hyderabad. One Ramesh Batra, the owner was present there. He identified A. 7. He verified the records of the shop and confirmed that about 3-4 months ago A. 7 along with another had come to his shop and had purchased 9 volt 9 batteries, 9 switches, 9 wires for Rs. 160/-. Exx. P-38 is the mahazar. A. 7 pointed out the shop from where he had purchased 9 volt 9 batteries, 9 wires and 9 switches for Rs. 160/-. Later he also pointed out Akil watch and Radio Company situated in Jagadish Market, Abid Road, Hyderabad. There he had purchased 10 clock movements. P.W. 30 namely Mohammed Sarfraj, was the owner of the said shop. He identified A. 7, verified the records and confirmed that A. 7 had purchased 10 clock movements for Rs. 150/- from his shop. Ex. P-34 is the mahazar drawn in that regard.

332. The said evidence establishes the purchase of device of bombs and further it shows that A. 7 was an expert in preparation of bombs. On 04.10.2000 at about 1.30 pm, A. 7 lead P.W.-45 and his staff and panchas P.Ws-31 and 40 to his video shop situated in Asifnagar, Hyderabad. At that time, P.W.-37-Shiek Mehaboob, his younger brother was present. A. 7 opened the almirah kept in that shop, removed M.Os. 29 to 34 from that almirah and delivered the same to P.W.-45. In turn, P.W.-45 seized the said M.Os. as per the mahazar Ex. P-39. The details of the seized incriminating articles M.Os. 29 to 34 are as under:

M.O. 29 Air mail envelop

M.O. 30 Six telephone bills

M.O. 31 Urdu language pamphlet

M.O. 32 Receipt for Rs. 250/- given by Jamathe Islam, Chikkaballapur

M.O. 33 Marriage invitation card

M.O. 34 Kannada pamphlet of "Jagadguru Yaru"

333. M.O. 29 is the Airmail envelop containing a letter written by A. 7 from Pakistan to on Irfan Ali Siddique, Asifnagar, Hyderabad, on 11.08.1999. It shows that A. 7 was in Pakistan on 11.08.1999. This corroborates the facts stated by A. 16 at paragraph 19 in Ex. P144. M.O. 33 is the marriage invitation card of A. 7. A. 7 married Siddiqua, the daughter of A. 14 on 17.04.1999. In the invitation card, the well-wishers and elders shown were A. 17, the absconding accused and his sons. This shows the relationship between A. 7 and the founders and heads of banned Deendar Anjuman Organization. M.O. 34 is a Kannada language pamphlet on "Jagadguru Yaru". It was written by A. 12 namely Muniruddin Mulla. This shows the link between A. 7 and A. 12, who is the resident of Hubli. Absconding A. 19 held secret conspiracy meeting in the flat of A. 7 and entrusted the work of destroying vital installations and important transport services, targeting VIPs to various selected members present there.

334. In the confessional statement of A. 16 at Ex. P. 144, he has spoken about the role of A. 7 in the conspiracy. At para. 22 he has stated that on 3rd of Urs at about 11.00 hrs, some of the members of Deendar Anjuman Organization had met at A. 7's Apartment in Mehdipatnam along with A. 19. In the said meeting A. 19 told that each selected area members should choose another five followers, who can be taken in confidence and they should be given the responsibility of railways, transportation, Government depots like TCI, IOC, electrical station, Nefaque and lastly targeting VIPs in South like Chief Minister, State Minister and VIPs. Later he told about Sarria and after meeting all the members, he told them to take collective decisions and that secrecy should be maintained and lastly he told them to be ready for Qurbani and punctuality while doing some job. Then he proposed to have separate meeting after choosing "five members. At para. 23 A. 16 has stated that on 2nd January, 2000, the Bhatakurki batch came with Tata Sumo. But A. 9 and A. 16 went to Hyderabad and met A. 5, A. 7. A. 8, Tayyab and A. 3 and lastly A. 6 also came over there. All of them sat in A. 7's flat where they attended the second meeting of third day of Urs. There A. 9 told the persons to co-operate with A. 5, as he was selected by A. 17 and they had to damage Railways, IOC, FCI, Electric (Grid), Government installations by Sarria, Road TPT. In between A. 16 interfered and asked them to choose in which each were familiar. At that time, A. 7 chose Government Installations. At para. 24 he has stated that A. 16 and his brother A. 9 went to Hyderabad and met Dulhas's brother-in-law and told them that the marriage should be on April 2nd only or in August or September 2000. Somehow at last, they agreed for that. From there they went to A. 5 and he took them to A. 7's apartment. There A. 5, Mohammed Zakir, A. 7, A. 8 and A. 3 met and they wanted money for site for keeping the explosives. A. 9 told them to go to a chit fund company and take one chit by contributing the amount by themselves. After that A. 8 took them to next room and gave a letter containing that they have to meet one Madani of Jamat-Islam

President through one Chote Mulla of Bangalore, who is Secretary, Islam-E-Jamat and that he would take them to Madani. At para. 32, he has stated that in the second or third week of May, 2000 Anwar@Hanif brought one floppy from A. 5 stating that it was from A. 7 regarding DRDL information. At para. 35 he has stated that on 21.06.2000 when A. 16 arrived at A. 7's apartment, his brother A. 9 along with Fardeen Vali and driver Sheik Abdul Habeeb also came there. A. 18 went for some marriage dinner and he came to A. 7's room and then told that they would go to Bangalore. Around 24.00 hrs., they started to Bangalore in Tata Sumo. They reached Bangalore at 16.00 hrs and had lunch. Then, Fardeen Vali and A. 7 went for taking Xerox copies of the documents which A. 16 had bought as per the instructions of A. 18. Thereafter A. 7 and Fardeen Vali came back after getting the Xerox copies. All of them sat in A. 15's house and they had a meeting.

335. The aforesaid material discloses that A. 7 was a Videographer by occupation and was a resident of Deendar Anjuman Ashram, Asif Nagar, Hyderabad. He had taken training in arms, ammunitions and explosives in Mardan, Pakistan. After returning to India, he held secret conspiracy V meetings with the Zonal Chiefs of Deendar Anjuman Ashram, deceased A. 6 his brother A. 7 and absconding A. 2. He also participated in the secret conspiracy meetings in new Ashoka Lodge, Hyderabad in the house of A. 26 at Hubli as well as meeting in the house of A. 25 at Bhatkurki and other places. He did all these overt acts to commit jihad, nifaaq and siria activities ultimately to achieve the aims and objections of the banned Deendar Anjuman Organization.

336. A. 8 was aged about 34 years. He was a grocery merchant by occupation. He was also residing at Deendar Anjuman Ashram, Hyderabad. P.W.-24 has identified A. 8, as his close acquaintance being resident of Deendar Anjuman Ashram, Hyderabad. The evidence of P.W.-53 namely Mohan Suryavanshi, CPI, Bagalkot and his report Ex. P-61 shows that in Bagalkot Police Station, a case was registered against A. 8 in Cr. No. 304/96 for the offence under Section 394 Cr.P.C. and the said case is pending in the Court of JMFC, Bagalkot, against A. 8, A. 10 and A. 3. As per the contents of Ex. P-61, on 09.11.1996, A. 3 and A. 8 went on a scooter bearing No. CEY 2761 and assaulted one Yamanappa Lonare, an employee of Preeti Bar and snatched cash of Rs. 15,000/- from him and ran away. A. 10 assisted them in committing the said dacoity; it was done to mobilize the required funds for their activities.

337. The above makes it clear that A. 8 was mobilizing the funds for the activities of Deendar Anjuman Ashram by unlawful means. P.W.-49 has deposed that A. 10 called him on phone from Goa and told that himself and A. 8 planted and blasted bomb in Goa. That incident was being telecasted and he asked him to watch the details on TV. It shows that A. 8 along with A. 10 had planted a bomb in the church at Goa and blasted it. A. 8 was also trained in arms, ammunitions and explosives in Mardan, Pakistan. Accused No. 16 in his confessional statement at Ex. P. 144 has referred to the role of A. 8 in the

conspiracy and activities in pursuance of the said conspiracy. He has stated at para. 19 that A. 8 had gone to Pakistan for training. At para. 23, he has referred to the participation of A. 8 in the meeting at Mastan Basha's house, which he is not sure. Again in January, 2000, when Bhatakurki batch came in Tata sumo, A. 16 and A. 9 went to Hyderabad and met A. 5, A. 7, A. 8 and others. All of them sat in A. 7's apartment where they attended the meeting on 3rd day of Urs. There A. 9 told the persons to co-operate with A. 5, as he was selected by A. 17 and they had to damage Railways, IOC, FCI, Electric (Grid), Government installations by Sarria, Road TPT. In between A. 16 interfered and asked them to choose in which each were familiar. At that time, A. 8 told that he would manage Railways. Again, he has referred to another meeting in August or September, 2000 in A. 7's apartment, where A. 8 was present along with others. They wanted money to purchase a site for keeping the explosives. A. 9 told them to take one chit from chit fund company by contributing the amount themselves. After that A. 8 took them to next room and gave a letter containing that they had to meet one Madani of Jamat-Islam President through one Chote Mulla, and further told that he would take two code letter chart to Madani, which shows as to how to contact and what are the things to be done. The code in another correspondence shows "Mother Father Safe" means Sarria is OK, "Mother Father Unwell" means Sarria is to be carried out and etc., A. 8 gave one copy of the third message in which there was an instruction to look for transportation from Bengal if explosives come and A. 8 gave an E-mail address "adnan@USA.net", if any messages are to be sent. It is further stated that later, some of the members met in Hubli and discussed about A. 8's letter and procurement of revolvers. Then they all left for Nuzvid where they discussed about A. 8's program, which he had brought from A. 17 in March 2000. At para. 38 it is stated that SP and DSP took A. 16 to Hyderabad to cross-verify as to what A. 16 had told was correct or not. He did not know who was with A. 17 in Pakistan. A. 8 told that one Ahmedi and others were there with A. 17.

338. From the aforesaid evidence, it is clear that A. 8 was a proprietor of a grocery shop and he had taken training in arms and ammunitions in Mardan, Pakistan and he also attended various conspiracy meetings held in Bangalore, Hubli and other places. He also took code letters to Madani and he also gave the letter to the members, which he had brought from A. 1. He was involved in a dacoity to raise funds. He was also involved in Bomb blast in Goa. He was incharge of managing Railways. He did all these overacts to achieve the objects of the Deendar Anjuman Ashram.

339. A. 10 was aged 54 years on the date of the incident. He was an agriculturist by occupation. He was residing at Batkurki, Ramdurg Taluk, Belgaum district. He was the secretary of Deendar Anjuman Organization, Batkurki Branch. P.W.-53-Mohan Suryavanshi, CPI, Bagalkot, in his evidence as well as in the report Ex. P-61, has spoken about the Bagalkot Police registering a case against A. 10 in Cr. No. 304/96 for the offence under Section 394 IPC, which is pending in the Court of JMFC, Bagalkot against A. 8, A. 10 and A. 3. According to is evidence, on

09.11.1996, A. 3 and A. 8 went on a scooter bearing No. CEY 2761, assaulted one Yamanappa Lonare, an employee of Preeti Bar and snatched cash of Rs. 15,000/- from him and ran away. A. 10 assisted A. 3 and A. 8 in committing that dacoity. All this is done by them to mobilize the required funds by committing siria, i.e., theft, robbery and dacoity. P.W.-49. in his evidence has deposed that A. 10 was regularly attending Deendar Anjuman Ashram, Hyderabad in the rajab month of 7th, 8th and 9th of every year for the celebration of Urs. In the year 1999, all persons including A. 10 attended the celebration of Urs at Hyderabad. At that time, A. 17 and his sons also had come to that Urs. A. 17 held conspiracy meetings and asked all the members act as per the say of A. 10 and one Basheer Sab including A. 16 for jihad, nifaaq and siria activities. He also deposed that A. 10 was the president of Deendar Anjuman Organization, Branch Batkurki. There is a darga at Ramdurg and he was going to that place to perform rituals. At that time, A. 10 was holding a meeting in the house of Sangli Basha, Secretary of the organization on every last Saturday of the month. All the active members from various places used to attend the meeting. A. 10 used to address all the members present and tell them to mobilize the funds by committing theft, robbery, dacoity and that amount is required to be sent to absconding A. 17, residing in Pakistan. He also asked the members to collect information about the bridges, petrol bunks and other vital installations and he also deposed that he gave Rs. 30,000/- loan to Sangli Basha as per the request made by A. 10 to purchase Tata Sumo. After purchase of Tata Sumo vehicle bearing No. KA-25-P-6786, they drove to Nuzvid. On the next day morning, A. 10, A. 16 and others went to a mango grove situated near Nuzvid and held a conspiracy meeting. In the meeting A. 9 and A. 16 asked all the members present there to collect information about vital installations and to be ready to execute the work as per the message that will be sent by absconding A. 17 from Pakistan. Thereafter A. 10 went to the house of A. 12 situated at Hubli. A. 10 told P.W. - 49 that ghoda means pistol and he will arrange for it at Goa. In the presence of A. 49, a conspiracy meeting was held in the house of P.W.-49. 8-10 days thereafter A. 10, along with P.W.-49 and others went to Secunderabad to attend the marriage celebration of daughter of deceased A. 9. After the marriage, A. 16 demonstrated how to derail a moving train from the track by fixing iron plates on the track to rob the passengers. Further he has deposed that A. 10 telephoned to him from Ramdurg and told him that A. 8 and himself have planted and blasted a bomb in a church at Goa and asked him to watch the TV and ascertain the details. He also deposed that A. 10 sent motor cycle with instructions to deliver the same to a person coming from Hyderabad. Thus he had arranged motor cycle for the activities of the organization.

340. All these facts have been corroborated by A. 16 in his confessional statement at Ex. P. 144, which describes the role of A. 10 in the conspiracy. A. 10 is one of the persons, who had gone to Pakistan through Mohinuddin, to take training in arms, ammunitions and explosives. A. 16 has spoken about the presence of A 10 in the 3rd day of Urs in September 1999 at 7.40 hours at the

premises of Deendar Anjuman Ashram Asif Nagar, Hyderabad. In the confession statement, it is further stated that, at the Anwar @ Hanif's Mango garden, A. 9 told whatever A. 17 had told in Urs. Then he asked A. 16 to talk to them. A. 16 told them to give respect to A. 10 and select the job whatever they could do. Then A. 9 told A. 10 along with others that PW 49 would be working independently from Sholapur, by taking the help of A. 10's members. Further, it is stated that one day PW 49 of Solapur and A. 10 of Bhatakurki came and A. 9 told them to see about getting cavalier for which, A. 10 agreed and he told that he would try from Goa side. When A. 9 and A. 16 went to Hubli, A. 13 had informed A. 12 about their coming to Hubli home. There, they met A. 10 and A. 12 and discussed about A. 8's letter and procurement of revolvers. Then they left to Nuzvid from Hubli via Bellary. In Bhatakurki, A. 10 showed his inability regarding procurement of revolvers. The aforesaid evidence thus, shows the close association of A. 10 with the Deendar Anjuman Organization. He was involved in dacoity in raising funds. He also had been to Mardan, Pakistan to take training in manufacture of bombs and explosives. He was involved in procuring revolver and explosives to carry out the blast.

341. A. 11 was aged about 37 years on the date of the incident. He was in the business of computer sales agency and he is a resident of Asar Honda, Old Hubli, Dharwad district. P.W.-49 in his evidence has deposed that A. 11 was regularly attending the celebration of Urs in the Deendar Anjuman Ashram, Hyderabad, every year. PW 49 has identified him before the Court and deposed that A. 11 attended meetings held on the last Saturday of every month A 10 in the house of one Sangli Basha at Batkurki. In the said meeting A. 10 addressed all the members present there to collect information about vital installations like railway bridges, etc., He asked them to mobilize required funds by committing theft, dacoity and further he threatened them not to disclose these facts to anybody else, otherwise, their lives would be at risk. In the said meeting work was allotted to respective members present there. All the persons committed the above acts entrusted to them as per the directions given by absconding A. 17. This evidence of P.W. 49 is corroborated by the confessional statement of A. 16 at Ex. P-144. A. 16 in his confessional statement at Ex. P. 144 has stated about the role of A. 11 in the conspiracy. It is stated that after Ramzan festival A. 14 came to Nuzvid to know about the programme. As nothing was important, A. 9, A. 16 and A. 14 went to Vijayawada. There A. 9 and A. 14 told the members there that their first priority was money and for that they had to plan for Sarria. In the meantime, A. 12 and A. 11 came over to Mastan Basha's house, where he explained about the Railway calvets to be surveyed in Hubli area and inform him. This evidence shows that A. 11 was regularly visiting Deendar Anjuman Ashram, Hyderabad, every year. He attended secret conspiracy meetings and he has committed acts which were agreed to in the said meetings.

342. A. 12-Munirrudin Mulla was aged 44 years at the time of the incident. He was a railway employee in Hubli. P.W-49 has spoken to about the overt acts and complicity of A. 12. He has deposed that A. 12 was an active member of Deendar

Anjuman Organization, Hyderabad and was visiting the Ashram every year during the celebration of Urs. PW. 49 has identified him before the Court. He was also stated to be attending monthly last Saturday meeting along with A. 11 organized by A. 10 in the house of Sangli Basha at Batkurki. In the said meeting, A. 10 addressed all the members and asked them to mobilize the required funds by committing theft, robbery and dacoity, so that he can send the mobilized amount to A. 17 at Pakistan. He also asked them to collect information about the culverts, railway tracks and find out the ways and means to destroy them. He also asked them to create communal disturbance, disorderly situation in the society as per the call given by absconding A. 17. He threatened them not to disclose these facts to anybody.

343. P.W.-49 has also deposed that A. 10, SangliBasha, Nabi Sab, Basheer Sab and A. 12 attended the conspiracy meeting in the mango grove situated near Nuzvid under the leadership of A. 16 and A. 9. He has also spoken about their coming to the house of A. 12 and holding of secret conspiracy meeting for 20 minutes in the house of A. 12. Thereafter they went to Batkurki and Kokatnur. He has further deposed that all these persons have committed overt acts as per the direction of A. 17. All these facts have been corroborated by A. 16 in his confessional statement. A. 16 in his confessional statement at Ex. P. 144 has stated the role of A. 12 in the conspiracy and in achieving the object of the Deendar Anjuman Ashram. A. 12 is one of the persons, who had gone to Pakistan through Mohinuddin, to take training in arms, ammunitions and explosives. A. 16 has spoken about the presence of A. 12 in the 3rd day of Urs in September 1999 at 7.40 hours at the premises of Deendar Anjuman Ashram, Asif Nagar, Hyderabad. It is stated that after Ramzan festival A. 14 came to Nuzvid to know about the programme. As nothing was important, A. 9, A. 16 and A. 14 went to Vijayawada. There A. 9 and A. 14 told the members there that their first; priority was money and for that they had to plan for Sarria. In the meantime, A. 12 and A. 11 came over to Mastan Basha's house, where he explained about the Railway culverts to be surveyed in Hubli area and inform him. There, Iqbal Ahmed and A. 12 exchanged their e-mail addresses. Then A. 16 and A. 9 went to Hubli. A. 13 informed A. 12 about, they were coming to Hubli home and met A. 12, Fafur Meean there and discussed about A. 8's letter and procurement of revolvers.

344. The aforesaid evidence clearly proves the overt acts committed by A. 12, an active member of Deendar Anjuman Organization. He participated in several conspiracy meetings and under took the responsibility of furnishing of secret information about vital installations, railway culverts, tracks, arrangements in securing arms, ammunitions and explosives, since he was an expert in operating arms, ammunitions and explosives, preparing and handling explosives, as he was trained in Pakistan. In his reply to examination under Section 313 Cr.P.C. he has pleaded ignorance.

345. A. 13. Abdul Rehaman Sait, was aged about 53 years. He was working as

Senior Administrative Assistant in BEML factory, Bangalore. He was residing at No. 209, 9th B main, 2nd cross, Vijayanagar, Bangalore. He was also one of the active member of Deendar Anjuman Organization. He had visited the Ashram at Hyderabad every year along with his family members. He also participated in the conspiracy meeting. He had collected vital information about defence services, Air Force, Railway and other vital installations, recorded them in floppies and e-mailed all those information to absconding A. 17 and his sons, residing at Pakistan. P.W.-49 in his evidence has deposed that A. 13 was regularly attending the celebration of Urs in the Ashram at Hyderabad. He has identified him before the Court. A. 13 in his examination under Section 313 has admitted that he has faith in five principles of Deendar Anjuman Organization contained in the books written, printed and published by that organization. He was an active member of Deendar Anjuman organization. He had gone through the books written and published by the organization; and has faith in that organization. When A. 17 had come to Hyderabad, he called A. 16 inside a room and in the presence of A. 13 and other active members, appointed A. 16 and his elder brother A. 9 as the Southern Indian Zonal Chiefs of the organization; A. 17 directed the others present there to obey their commands and furnish necessary secret information to them. A. 16 in his confessional statement at Ex. P. 144 has extensively referred to the role of A. 13 in the conspiracy. At para. 21, he has referred to the presence of A. 13 in the 3rd day of Urs in September 1999 at 7.40 hours at the premises of Deendar Anjuman Ashram, Asif Nagar, Hyderabad. At para 25 of his statement, he has referred to A. 9 giving a ring to A. 13. Thereafter, he along with his brother and others reached A. 13's house and handed over the floppy, which was brought from A. 15 to A. 13 and A. 13, after seeing the same tried to open the program. When he could not succeed in opening the program in his Computer A. 13 told them that when they visit next., he will make the arrangement. Again at para 27, he has stated that A. 9 and A. 16 went to the house of A. 13 at Bangalore, where a new floppy of unit location from outside was made. He has also stated that A. 13 had typed some information regarding BEML and HAL. Then A. 13 told them that they shall go to Bade Mulla's house and from there they could send e-mail to A. 17. Then A. 13 along with others went to Bade Mulla's house where A. 13 and A. 9 discussed about giving a name for a new e-mail ID and also the password. A. 16 has further stated that A. 13 taught him to open an E-mail. At para. 28 he has referred to the presence of A. 13 in their meeting at Nuzvid in the last week of April 2000, in the Mango Garden. The garden watchman was sent for tea and then gelatin sticks, detonators and fuse wire with pistol was shown to them. There when IFT fuse wire was burnt by Syed Abdul Khadar Jilani, A. 13 was watching his wrist watch plus running. Around 60 to 80 feet fast walk was done and it took about 9 to 12 seconds for burning the IFT fuse wire. After the demonstration, they proposed that if there was a timer, then it would be better. Then, they all came back to home, where on the terrace they all discussed about Farooq program, which was brought from A. 17 in March 2000. A. 16 and A. 13 went to internet shop and checked that if any incoming mail was there and then one letter was typed to A.

17 about the health of A. 9's son and they waited for the reply. In all the messages sent by A. 13, A. 9 and Fardeen Vali, they used to address the sender's name as Qasim. At para. 30, he has stated that A. 9 and A. 16 proposed to go to Bangalore and Bhatkurki and both of them started for Bangalore by private bus in the last or second week of May, 2000. They went to A. 13's house directly, where they showed the papers of Fardeen Vali. A. 16 had one old telephone directory of IOC with some E-mail addresses also. The telephone numbers" and Fardeen Vali's message were scanned and floppies were made. Thereafter, they went to nearby internet shop trying to send e-mail on J.H.M.@USA.net, but due to some technical fault, they could not do it. As it was around 20.30 hours, they came back to A. 13's house, had dinner and left for Bhatkurki by Hubli fast passenger. On 22nd May, 2000 night around 22.00 hours on their way to Hyderabad, they rang up A. 15 and A. 13, requesting them to come and meet them immediately. They came the next day and met in Anwar@ Hanif's house. They were made to sit and were told that if anybody does Sarria, that amount should be completely handed-over to A. 9 and from that, their expenditure, if required to be taken back and that all have to work collectively and there should not be any misunderstanding. Later A. 13 was talking to A. 9 for half an hour and others were also present in that meeting. Around 20.00 hours was brought by Abdul Khader Jilani and Maqbool and was shown to him. On 21st June, 2000, A. 1.6 along with others was coming to Bangalore. On the way Fardeen Vali rang up A. 15 and A. 13 and told them that A. 18 was coming and that they should be at A. 15's house. All of them met at A. 15's house. Fardeen Vali brought a chart of duties to be carried out by each individual, which had few columns of training the persons.

346. From the aforesaid evidence it is clear that A. 13 was an active member of the Deendar Anjuman Organization. He was regularly visiting the Deendar Anjuman Organization at Hyderabad along with his family members. He met absconding A. 17 and his sons and at that time secretly on the guise of taking blessings from him, he participated in all the secret conspiracy meetings held under the leadership of A. 9 and A. 16 in various places in Hyderabad and even in his house at Bangalore, in the house of A. 15-S.M. Ibrahim, in the house of A. 12-Muniruddin Mulla and in the house of A. 10-Meerasab at Batkurki. He surveyed and collected vital secret information about defence establishments, IOCL, Railways, HAL, recorded in a floppy, e-mailed to absconding A. 17 and his sons at Pakistan. He also actively participated in procuring arms, ammunitions and explosives through one Madani, as per the instructions of A. 17. He admitted his involvement in the organization in his statement under Section 313 Cr.P.C. He has read the books and literature of the organization. He fairly believes in the said principles enunciated therein. According to him the principles of Eko Jadadeshwara, Eka Devo Bhava, means Mohd. Paigambar is the only Edo Jagadeeshwara for the whole of the world and all religious and their respective heads were incapable of becoming Jagadgurus. Sarva Dharma Satya, Sammilana Prarthana, Samanathe, according to the said literature Samanathe could be

achieved only by codifying the religions prevailing in India into one religion, i.e., Islam and by Islamizing the whole of India. According to the above literature Samanathe could be achieved only by converting all religions into one religion, i.e., Islam. Therefore the intention behind all these acts can be easily gathered and stands established.

347. A. 14 - Mohd. Siddique was aged about 55 years on the date of the incident. He was the owner of a readymade garment shop. He was residing at Chikkaballapur. A. 7-Sheik Hasim Ali, is his son-in-law. P.W-49-Abdul Gaffoor has deposed that A. 14 was attending Deendar Anjuman Ashram, Hyderabad, every year regularly during Urs. He identified him in Court. In the confession statement of A. 16 as per Ex. P-144, there is a reference to the role of A. 14 in the conspiracy. A. 16 has stated that on the third day of Urs, around 7.30 hours, he and his elder brother reached Deendar Anjuman Ashram, Asif Nagar. They found that already some members were sitting there. By 7.40 hours everybody came inside the room. A. 17 was sitting on the carpet and by his side Khalid Pasha was standing. The other remaining members including A. 14 were sitting. In that meeting A. 17 told all of them that A. 9 would be incharge for all operations and he would give instructions regarding the work to be done. If any messages are there, that also would be passed on to him.. At para. 23, he has stated that after Ramzan festival, A. 14 came to Nuzvid to know about the program. From there, they went to Vijayawada. A. 16's brother i.e., A. 9 and A. 14 told that first priority is money. For that they had to plan for Sarria. At para. 25 it is stated that when A. 9 asked Anwar @ Hanif to take him to Hyderabad and show some room, they started to Chakkaballapur in the evening and reached next evening to A. 14's house. A. 9 did not know Chote Mulla and so A. 14 rang up to Chote Mulla and informed him that A. 9 would bring message for Chote Mulla from A. 17, which later A. 9 gave him the message. At para. 30 it is stated that after A. 9, A. 16 and some other members reached Nuzvid after attending a meeting at Bhatakurki, A. 14 was also called to come to Nuzvid. After two or three days A. 14 came to Nuzvid. Then, A. 9 asked him about the procurement of revolvers. A. 14 told that he had to got to Calcutta to search for someone who could get the revolvers. A. 14 was paid Rs. 3,000/- and told that if it were available, to call them, so that they could send money. After three days, A. 14 called and told that he could not trace the person., but requested that his family requires Rs. 1,000/- urgently and requested for TMO. After two or three days A. 9 sent the TMO to A. 14's family.

348. The aforesaid evidence shows that A. 14 was a regular visitor to Deendar Anjuman Organization. He was a party to the conspiracy meetings held under the leadership of absconding A. 17 and his son A. 18 as well as A. 9 and A. 16. In A. 14's presence the action plans to commit jihad, nifaaq and siria activities were finalized. These accused assisted the other accused in securing arms, ammunitions and explosives. A. 14 also took active part in the mobilization of the amount; had been to Calcutta to procure arms, ammunitions like revolvers and explosives. In the statement under Section 313 Cr.P.C., A. 14 has denied all the

accusations against him and has pleaded his innocence, which on the face of it, cannot be accepted.

349. A. 15 - Ibrahim @ Syed Mohd was aged about 45 years on the date of the incident. He was working as Accountant in a private company viz., Compudyne. He was residing in the house of his father-in-law Chinnappareddy Layout, near Sharada Vidya Mandir, Varthur, Bangalore. P.W.-49 has deposed that A. 15 was regularly visiting Deendar Anjuman Ashram, Hyderabad, during Urs. He identified him before the Court. A. 17, when he came to Hyderabad, he called A. 16 inside a room and in the presence of A. 15 and other active members, appointed A. 16 and his elder brother A. 9 as the Southern India Zonal Chiefs of the Deendar Anjuman Organization. He directed everyone present including A. 15 to obey their commands and furnish necessary secret information to them.

350. In addition to the above, A. 16 has extensively referred to the role of A. 15 in the conspiracy and in executing the object sought to be achieved, in Ex. P. 144. He has spoken about the presence of A. 15 in the 3rd day of Urs in September 1999 at 7.40 hours at the premises of Deendar Anjuman Ashram, Asif Nagar, Hyderabad. At para 21 of the confessional statement, he has clearly set out the other persons, who were present in the said meeting. Again in April, 2000, A. 9 and A. 16, went to Bangalore for meeting Chote Mulla at R.T. Nagar. From there they went to A. 15's house and made the floppy showing the Air location, which A. 16 had taken from SQN leader Vasudevan's cupboard. From there, they went to A. 13's house. On the way, A. 15 told that he had purchased a van and it is under repair. After dinner, A. 15 and A. 14 left their house. A. 16 handed over the floppy collected from A15 to 13. Again in May, 2000, last week or second week, they went to A. 13's house directly. Thereafter, they met A. 15 with others. On 22nd May, 2000, at night around 22.00 hours, A. 5 had come from Hyderabad and A. 18 came from Pakistan to see them. Then they took Tata Sumo and went to Hyderabad. While coming on the way, they rang up A. 15 and others. They came next day and met at Anwar @ Hanif's house. There all of them were made to sit and he told that if anybody does Sarria, that amount should be completely handed over to A. 9 and from that their expenditure, if required, should be taken back and that all of them had to work collectively and there should not be any misunderstanding. A. 15 was present throughout the meeting. On 23.05.2000, as per the telephone call made by A. 16 to A. 15 as per the direction of absconding A. 18, A. 15 immediately went to Nuzvid and met absconding A. 18 and finalised the Church program. Further, in the house of one Anwar, A. 18 instructed A. 15 and other members present as to, how to spend the mobilized amount in the organization activities. On 20.06.2000, deceased A. 9, A. 18 and others went to the house of A. 15 at Bangalore and there they finalised the Mosque plan. Then Fardeen Vali presented the chart prepared by him as per the instructions of A. 18 wherein, the action plans of various programs were written and the work of each program was entrusted to the members of the Deendar Anjuman Organization. At that time, A. 15 himself cooked the food and served all the persons. They finalised the plan to secure

arms, ammunitions and explosives either from Bengal side or Jaisalmer (Rajasthan) side.

351. The pamphlets which were seized from the accused reads as under:

352. The pamphlets clearly demonstrates the mischief, which the accused were indulging in. They were sending threatening letters and making publications in the name of Hindu organization to the Christians and to the Hindus in the name of Christians. They wanted to create disharmony between these two communities.

353. The aforesaid evidence clearly establishes the overt acts committed by A. 15, his involvement in Deendar Anjuman Organization., his meetings with A. 17 and his sons at the Ashram, active participation in the several conspiracy meetings held at Hyderabad as well as at Bangalore, in particular, in the house of A. 13, in the house of A. 10 at Batkurki and in the house of A. 12 at Hubli. It is in his presence, A. 17 appointed A. 9 and A. 16 as Zonal Chiefs of the organization. They finalized the plan to secure arms, ammunitions and explosives either from Bengal side or from Jaisalmer (Rajasthan) side. All this shows that he was one of the active members of the organization and was party to the conspiracy to Islamise the whole of India and he actively participated in all these jihad, nifaaq and siria activities. He was injured in the bomb blast at Bangalore while he was carrying on the bombs in the Maruthi Omni Van.

354. A. 16 was aged about 57 years on the date of the incident. He is the younger brother of deceased A. 9 and elder brother of Shamshuzama and Abdul Khader Jeelani. He was serving as Junior Warrant Officer in the Air Force in the Air Force Head Quarters, R.K. Puram, New Delhi. He was residing in the official quarter No. SMQ 60/3, Safedsagar, Gurgaon, Haryana. P.W.-49 has deposed before the Court about the acts done by A. 16 and the conspiracies held under his leadership in various places as Southern India Zonal Chief of the organization, though he was serving as Junior Warrant Officer in IAF on full time basis. He was regularly visiting Deendar Anjuman organization at Hyderabad during Urs. He used to meet the absconding A. 17 and his sons in a secret place. He has identified him in Court. He has further deposed that A. 17 would intimate A. 16 about the future course of action about jihad, nifaaq and siria activities. In turn, he would intimate A. 10 and give instructions to all the active members to be ready for jihad, nifaaq and siria activities. P.W. 49 has further deposed that on 13.01.2000 the Tata Sumo bearing P.C. No. KA 25 P 6786 was secured for the use of the activities of the organization and to deliver the same to A. 9 and to this A. 16, A. 10 and others went to Nuzvid. They stayed there itself on that day. Next day A. 16 and A. 9 took them to a mango grove situated near Nuzvid and held a secret conspiracy meeting there. A. 16 addressed all the persons present there. In that address he asked all the members to be ready to undertake the work as per the message that would be sent from Pakistan. He also asked them to be ready with the information about railway bridges. He warned them not to disclose these facts to anybody else. A. 16 asked P.W-49 to wait for two months for the return of the loan amount of Rs. 30,000/- paid by him for the purchase of

Tata Sumo vehicle. 15 days thereafter A. 16 and his brother went to the house of P.W.-49 and held a secret conspiracy meeting and he asked all the members present there to mobilize the required funds even by committing theft, robbery, dacoity and he assured all the members that he himself would make arrangements for ghoda (pistol). When all of them had been to marriage of the daughter of the deceased A. 9 at Secunderabad, when all the members were sitting in a small hall, at that time A. 16 with the help of iron plates demonstrated how to derail the moving train from the track and to rob the passengers to mobilize the funds. P.W.-49 further deposed that all these acts were committed by A. 16 and others as per the directions of absconding A. 17 from Pakistan. In his confessional statement, which is marked as Ex. P-144 he has clearly set out all the acts committed by him and his co-accused.

355. In Ex. P-144, A16 has clearly given his bio-data, his family background, details of his brothers and sisters, about the poverty of his father, how he was educated and how he joined Indian Air Force. He has described the visit to Deendar Anjuman Ashram in January, 1991, as commencement of his bad days. It is narrated that, during the said visit A. 9 introduced him to A17 as a person serving in IAF; and A. 17 blessed him. At that time, he sent out one Munna who was there and in the presence of Mohinuddin and others A. 17 told that he has 9 lakh followers in Mardan, Pakistan and to show that he has followers in India, defence information was needed and therefore A. 16 was asked to provide the same. Though A. 16 pleaded his limitation in furnishing the particulars only to the extent of his current and past postings. A. 17 asked him to furnish the defence information to one Mohinuddin who was present there whenever he made request. The said Mohinuddin went on demanding the defence information, progress reports, equipment production plants, etc., and A. 16 went on furnishing the said information. A. 16 also confesses that he took files from his work place in the Air Force Head Quarters "and gave it to Mohinuddin; sometimes he has even taken documents kept on the table of Squadron Leaders and P.A. to defence officers, copied them and delivered to Mohinuddin for onward forwardal of the same to A. 17 at Pakistan.

356. A. 16 furnished quarterly reports of 28 equipment depots in the month of January, 1994 to Mohinuddin. He has spoken about his appointment as southern zonal chief of the organization along with his elder brother A. 9. By virtue of that position he furnished all the defence secret information A. 17, through his agent Mohinuddin, who had secured a ship-load of arms and ammunitions through LTTE Kittu and later his residential room was raided and he was jailed. He also admits about possessing a country made pistol having capacity 303 along with two cartridges from his colleague friend Devanandam and later it was seized by Andhra police. He has furnished the names of associates whom A. 17 sent to Mardan, in Pakistan for receiving training in arms and ammunition, preparation, planting and explosion of explosive substances.

357. As per the directions of A. 17 as well as his sons along with A. 18 and A. 19,

they committed disruptive activities including jihad, nifaaq and siria. They mobilized the required fund by committing theft, robbery and dacoity. They prepared threatening letter addressed to Christians in the name of Vishwa Hindu Perished and to Vishwa Hindu Parishad in the name of Christians, apart from "Quit India warning letters" to various religions existing in India as a part of nifaaq. They also collected secret information about defence locations, availability of military capabilities, equipments, Jaguar planes, Kiran helicopter, DRDO details including the names of the officers, their residential and official telephone numbers, railway bridges, their locations and he also demonstrated skills to derail a moving train and rob the passengers to mobilize funds for the organization. He was also actively involved in purchase of vehicle out of the fund mobilized through siria and visited many places in Karnataka including Bangalore, Hubli, Wadi, Kokatnur, Batkurki and other places. He also held various secret conspiracy meetings, purchased the explosives, prepared the bombs, planted in various churches in Hubli, Wadi, Bangalore and blasted them. He has also in detail set out the overt acts committed by the co-accused. In the end he pleaded that he has done all that with half knowledge and blind belief.

358. It is to be remembered that A. 16 was a Junior Warrant Officer in Indian Air Force. If he has indulged in all these anti national activities, it is nothing but a deliberate act. He is not a child to be misled. Therefore the entire evidence of P.W.-49 and the confessional statement Ex. P-144 clearly proves the overt acts committed by A. 16, the conspiracy meetings held by him and the way he was responsible for raising funds and that he sent several persons to Mardan, Pakistan for training in operating arms and ammunitions, preparation of bombs. He has pointed out the plans to plant and explode the bombs in various churches and temples. He was one of the leader in Southern India who took active part in implementing the aims and objectives of the Deendar Anjuman Organization along with his three brothers.

359. Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the coconspirators. But this section will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima-facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained is relevant against the others not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. Section 10 of the Evidence Act reads thus:

SECTION 10 OF THE EVIDENCE ACT

"10. Things said or done by conspirator in reference to common design-Where there is reasonable ground to believe that two or more persons have conspired

together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

360. This particular aspect of the law has been considered by the Privy Council in AIR 1940 176 (Privy Council) at p. 180, where Lord Wright said that there is no difference in principle in Indian Law in view of sec. 10 of the Evidence Act. It is held thus:

"16. In their Lordships' judgment, the Judicial Commissioner misconstrued the effect of Section 10. The English rule on this matter is in general well settled. It is a common law rule not based on, or limited by, express statutory words. The leading case of *The Queen v. Blake* (1844) 6 Q.B. 126. illustrates the two aspects of it, because that authority shows both what is admissible and what is inadmissible. What in that case was held to be admissible against the conspirator was the evidence of entries made by his fellow conspirator contained in various documents actually used for carrying out the fraud. But a document not created in the course of carrying out the transaction, but made by one of the conspirators after the fraud was completed, was held to be inadmissible against the other. No doubt what was contained in it amounted to a statement evidencing what had been done and also the common intent with which at the time it had been done, but it had nothing to do with carrying the conspiracy into effect. Lord Denman said at p. 138 that the evidence must be rejected the principle that a mere statement made by one conspirator to a third party or any act not done in pursuance of the conspiracy is not evidence for or against another conspirator.

17. Patten J. described it as "a statement made after the conspiracy was effected". Williams J. said that it merely related "to a conspiracy at that time completed". Coleridge J. said that it "did not relate to the furtherance of the common object". The words relied upon in Section 10 of the Indian Evidence Act are "in reference to their common intention". These words may have been chosen as having the same significance as the word "related" used by Williams and Coleridge J J. Where the evidence is admissible it is in their Lordships' judgment on the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy (per Patten J. at p. 139). The words written or spoken may be a declaration accompanying an act and indicating the quality of the act as being an act in the course of the conspiracy: or the words written or spoken may in themselves be acts done in the course of the conspiracy. This being the principle, their Lordships think the words of Section 10 must be construed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to

past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, the words "common intention" signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment Section 10 embodies this principle. That is the construction which has been rightly applied to Section 10 in decisions in India, for instance, in *Emperor v. Vaishampayan* (1931) I.L.R. 55 Bom. 839 : S.C. 33 Bom. L.R. 1159, *Emperor Vs. Abani Bhushan Chuckerbutty*, . In these cases the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of the conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past."

361. The decision of the Privy Council in *Mirza Akbar's* case has been referred to with approval in *Sardul Singh Caveeshar Vs. The State of Bombay*, at p. 193, where Jagannadhadas, J., said:

"The limits of the admissibility of evidence in conspiracy case under s. 10 of the Evidence Act have been authoritatively laid down by the Privy Council in *Mirza Akbar v. The King Emperor*, (supra). In that case, their Lordships of the Privy Council held that sec. 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under s. 10 of the Evidence Act of "anything said, done or written, by one of such persons" (i.e., conspirators) must be "in reference to their common intention." But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well-known principle above enunciated."

362. In this connection, one may with advantage refer to *American Jurisprudence*, Vol. 11 S. 23, at page 559, where it is stated thus:

"The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

363. In *UNITED STATES V. KISSEL*, (1909) 218 US 601 : 54 LAW ED 1168 Mr. Justice Holmes in answer to a contention that the prosecution was barred by the law of limitation said:

"But when the plot contemplates bringing to pass a continuous result that will

not continue without the continuous co-operation of the conspirators to keep it up, and there is such continuous co-operation, it is a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distant conspiracies, rather than to call it a single one ... A conspiracy is constituted by an agreement, it is true, but it is the..... result of the agreement, rather than the agreement itself, just as a partnership, although constituted by a contract, is not the contract, but is a result of it.....A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that an overt act of one partner may be the act of all without any new agreement specifically directed to that act."

364. The Apex Court in the said case of "STATE (NCT OF DELHI) v. NAVJOT SANDHU ALIAS AFSAN GURU" reported in 2005 SCC (CrI) 1715 has held at paragraphs 101 and 103 asunder:

101. One more principle which deserves notice is that 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 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.

365. The Apex Court in Ferojuddin's case observed thus at para 25: (SCC p. 607)

"Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission."

366. In Ajay Agarwal Vs. Union of India and others, , while discussing the question whether the conspiracy is a continuing offence, the following pertinent observations were made by K. Ramaswamy, J, speaking for the Bench at para 11: (SCC p. 618)

108. Thus, a distinction was maintained between the conspiracy and the offences committed pursuant to the conspiracy. It is only in order to prove the existence of conspiracy and the parties to the conspiracy, that a rule of evidence is enacted in Section 10 based on the principle of agency. We may recall that Section 10 of the Evidence Act provides that anything said, done or written by one of the conspirators in reference to the common intention of all of them can be proved as a relevant fact as against each of the conspirators, subject to the condition prescribed in the opening part of the section. Thus, the evidence which is in the nature of hearsay is made admissible on the principle that there is mutual agency amongst the conspirators. It is in the context of Section 10 that the relevant observations were made in the first Sardul Singh Caveeshar Vs. The State of Bombay, and Nalini's case at page 517. In the former case,

Jagannadhadas, J, after referring to the passage in Roscoe's Criminal Evidence (16th Edn.) that "an overt act committed by any one of the conspirators is sufficient, on the general principles of agency, to make it the act of all", observed that.

"the principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency" (SCR p. 205).

113. It may be noted that by the 1977 Act, the offence of conspiracy at common law was abolished and a statutory definition of "conspiracy to commit the offence" was enacted. The provision that was interpreted by the House of Lords is not in pari materia with the provision in the Indian Penal Code. However, one clarification is needed. If there is proof to the effect that the accused played a role, attended to certain things or took steps consistent with the common design underlying the conspiracy, that will go a long way in establishing the complicity of the accused, though it is not a legal requirement that the conspirator should do any particular act beyond the agreement to commit the offence."

44. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out all this is necessarily a matter of inference.

48. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in section 120B [See: Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh,].

49. The conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. [See: E.K. Chandrasenan Vs. State of Kerala,].

51. Where trustworthy evidence establishing all links of circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. (See Baburao Bajirao Patil v. State of Maharashtra). It can in some cases be inferred from the acts and conduct of the parties. (See Shivnarayan Laxminarayan Joshi v. State of Maharashtra)

SECTION 30 OF THE EVIDENCE ACT

367. Similarly, Section 30 of the Evidence Act, which deals with consideration of proved confession affecting person making it and others jointly under trial for same offence, is quoted below:

"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence - When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation--"Offence" as used in this section, includes the abetment of or attempt to commit, the offence"

368. This Section says that when more persons than one are being tried jointly for the same offence and a confession, made by one of such persons affecting himself and some other of such persons, the Court may take into consideration such confession against the maker of the confession as well as against such other person when such a confession is proved in Court.

369. Sir John Beaumont, speaking for the Privy Council, in AIR 1949 257 (Privy Council), an oft-quoted authority, observed in regard to Section 30 of the Evidence Act, thus:

"Section 30 seems to be based on the view "that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other

evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction."

370. In *Kashmira Singh Vs. State of Madhya Pradesh*, the Apex Court approved the principles laid down by the Privy Council in *Bhuboni Sahu's* case (supra) and observed:

"But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

371. In *HARI CHARAN KURMI AND JOGIA HAJAM V. STATE OF BIHAR* (1964 (2) Cri LJ 344), a Constitution Bench of this Court after referring to *Bhuboni Sahu's* case (supra) and *Kashmira Singh's* case (supra), observed thus:

"Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, S. 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession..... When S. 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals.

It was held that technically construed, the definition of the term "evidence" in S. 3 would not apply to confession. It was observed:

"Even so, S. 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by S. 3 of the Act, it is an element which may be taken into consideration by the criminal Court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the Court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach, can, however, be adopted by the Court in dealing with a confession, because S. 30 merely enables the Court to take the confession into account."

372. In the cases, referred to above, it was held that confession of a co-accused is not evidence as defined in Section 3 of the Evidence Act and that Section 30 enables the Court to take into consideration the confession of a co-accused to

lend assurance to other evidence against the co-accused. The expression "may take into consideration" means that the use of the evidence of confession of an accused may be used for purposes of corroborating the evidence on record against the co-accused and that no conviction can be based on such confession.

373. It is also to be borne in mind that the evidence of confession of co-accused is not required to be given on oath, nor is given in the presence of the accused, and its veracity cannot be tested by cross-examination. Though the evidence of an accomplice is free from these shortcomings yet an accomplice is a person who having taken part in the commission of offence, to save himself, betrayed his former associates and placed himself on a safer plank-"a position in which he can hardly fail to have a strong bias in favour of the prosecution" the position of the accused who has given confessional statement implicating a co-accused is that he has placed himself on the same plank and thus he sinks or sails along with the co-accused on the basis of his confession. For these reasons, in so far 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.

374. A plain reading of Section 30 of the Evidence Act discloses that when the following conditions exist, namely, (i) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons who are being tried jointly for the same offence; and (v) such a confession is proved in Court. The Court may take into consideration such confession against the maker thereof as well as against such persons who are being jointly tried for the same offence.

SECTION 313 CR.P.C. STATEMENT

375. The learned Special Public Prosecutor submitted that though the incriminating materials were put to the accused by way of statement under Section 313 Cr.P.C. and an opportunity was given to them to explain the incriminating evidence against them, the accused have chosen to remain silent. They have not explained the incriminating circumstances. Therefore, their silence and failure to explain the circumstances is a strong circumstance that could be put against them, which would be counted as providing a missing link for building the chain of circumstances. In this context, it is necessary to look into Section 313 of the Cr.P.C.

376. Section 313 of the Cr.P.C. reads as under:

313. Power to examine the accused.-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions

to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defense, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may, tend to show he has committed.

377. The object of Section 313 Cr.P.C. is to give an opportunity to the accused to explain any circumstance against him in the evidence. It is intended to secure to the accused an opportunity to explain the evidence against him and therefore, to benefit the accused and not to operate as to his detriment. This section indicates that in every enquiry or trial with a view to enable the accused to explain anything against him in the evidence, (a) the Court may at any stage put questions to the accused, and (b) shall after the examination of all prosecution witnesses question him generally. No oath shall be given when the accused is examined by Court under Sub-section (1). Examination of accused cannot be in the form of cross-examination. A statement of accused recorded under Section 313 Cr.P.C. is not to be treated as evidence much less as a substantive piece of evidence. The act of examination of the accused under Section 313 is a solemn act of the Trial Court and should not be treated as an empty formality. The examination of the accused is a very important duty which should be performed with particular care and in the proper way.

378. The Section is intended mainly for the benefit of the accused and also to help the Court in finding the truth. The principle on which it is based is that before the damaging points in the prosecution evidence are used against the accused for determining his guilt, it is essential that his pointed attention should be drawn to them one by one avoiding the form of cross-examination in order to afford him an opportunity of giving an explanation consistent with his innocence. The correct method of performing the duty in Section 313 Cr.P.C. is not to ask generally if the accused has anything to say about the charges or the evidence against him, but to place before him separately one by one in short sentences all the vital and salient parts of the evidence appearing against him in the simplest possible language so that he can realize what things he has got to explain and to ask him after putting to the accused each material fact against him whether he

wanted to say anything about the matter. It is irregular to roll up several distinct matters of evidence in single question. The questions should be split-up so as to deal with each distinct feature or material piece of evidence separately. The accused is not bound to answer or say anything nor is there any compulsion. If he says anything he does it voluntarily, knowing that under the law he could have stood mute. The guarantee against testimonial compulsion in Article 20(3) of the Constitution of India afforded by the words "to be a witness" is not confined to the statement of the accused called to the witness-stand, but may well extend to compelled testimony previously obtained from him. The accused cannot be punished for refusing to answer. The answers of the accused may be taken into consideration for or against him. It should be remembered that the question to the accused must relate to the circumstances in the evidence which go against him and not the inference which flows from the circumstances. The Court must put aside all Counsel, and the accused shall be brought face to face in order that the Court may hear the defence from his own lips. This examination is a matter entirely between the accused and the Court and the legal advisers do not come in or count at all in it. The Statement made in the defence under Section 313 Cr.P.C. can be taken aid of to lend a credence to the evidence led by the prosecution. However, only a part of such statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. can either be relied in whole or in part. The statement of the accused under Section 313 is not a substantive piece of evidence, it can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. The statement under Section 313 Cr.P.C. is quite different from a confessional statement under Section 164 Cr.P.C. in which the Court has to be satisfied about the voluntariness by questioning. When there is no incriminating circumstance against him in the evidence, there should not be any question under Section 313 Cr.P.C. calling before accused to explain the circumstances not appearing against him.

379. The examination under Sub-Section (1)(a) can be made at any stage, but as the questioning is only for the purpose of explaining any evidence appearing against the accused, it follows that the Court cannot question before any evidence is recorded against him which requires explanation. Examination is not an idle formality but has to be carried out in the interest of justice and fair play to the accused.

380. Explaining the importance of this statement, the Apex Court in the case of State of Maharashtra Vs. Suresh, held thus:

"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 accounted 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 accounted as providing a missing link for completing the chain of circumstances."

381. The Apex Court again in the case of Mani Kumar Thapa Vs. State of Sikkim, placing reliance on the aforesaid judgment of the Apex Court in Suresh's case has reiterated the aforesaid legal position.

382. Again in the case of Avtar Singh and Others Vs. State of Punjab , the Apex Court held thus:

"The object of examination under Section 313 is well known i.e., it is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. His silence and failure to explain the circumstances is a one strong circumstance that could be put against him. A case of drawing presumption under Section 114 of the Evidence Act can perhaps be made out."

383. The Apex Court in the case of Rohtash Kumar Vs. State of Haryana, at para 22 has held as under:

"It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not, the chain of circumstances is complete."

384. Again in the case of Harivadan Babubhai Patel Vs. State of Gujarat, at para 28 had held as under:

Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section 313 of Cr.P.C. except chasing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances, that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances.

385. In support of the said contention, the learned counsel for the accused relied on the judgment of the Apex Court in the case of Inspector of Customs, Akhnoor J and K Vs. Yash Pal and Another, wherein at Paragraph Nos. 20, 21 and 22, it is held as under:

"20 What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Jai Dev Vs. The State of Punjab, Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focused on the ultimate test in determining whether the provision has been fairly complied with. He observed thus:

"The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.

"21. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion.

22. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the Court does not put any question under that clause the accused cannot raise any grievance for it. But if the Court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him".

386. Though the explanation offered by the accused under Section 313 Cr.P.C. is not a substantive piece of evidence nor evidence under Section 3 of the Indian Evidence Act, the said statement could be taken into consideration by the Court while deciding the guilt of the accused. It can be counted as providing a missing link for building the chain of circumstances. His silence and failure to explain the circumstances is one strong circumstance that could be inferred against him. A false explanation may be accounted as providing a missing link for completing the chain of circumstances.

387. Similarly, though the statement of accused recorded under Section 313 Cr.P.C. is not to be treated as evidence, much less as substantive piece of evidence, the said statement could be taken aid of to lend credence to the evidence led by the prosecution. However, the said statement could be taken into consideration by the Courts while deciding the guilt of the accused. It can be counted as providing a missing link for building the chain of circumstances with silence and failure to explain the circumstances is one strong circumstances that could be put against him. A false explanation may be counted as providing a missing link for completing the chain of circumstances. Therefore, when an opportunity is given to the accused to have their say explaining the incriminating circumstances which are proved against them, if they have chosen to be silent and if they have chosen to flatly deny all those allegations that would be a strong circumstance, which can be counted as providing a missing link for completing the chain of circumstances. Certainly, the Court can take into consideration the said conduct of the accused while deciding the guilt of the accused.

BURDEN OF PROOF

388. Further it was contended that the evidence on record do not establish the charge against all the accused. Not only the prosecution has to prove the charges levelled against the accused, but the said charges have to be proved beyond reasonable doubt. Viewed from that angle, the evidence on record do not establish the guilt of the accused beyond reasonable doubt.

389. The onus of proving each fact essential to the establishment of the charge against the accused lies on the prosecution as every man is presumed to be innocent. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. The weakness of the defence can only be called as additional link to aid the prosecution. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted, by a Court. The accused merely invoking a reasonable doubt in the prosecution case has to be acquitted. The prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case beyond all reasonable doubt or any evidence in defence is produced, the silence of the accused being of no consequence. In criminal cases, the main burden, i.e., of proving the guilt of the accused beyond reasonable doubt always rests on the prosecution and never shifts even though any statute provides for the drawing of some presumption against the accused in certain cases. The burden of proving guilty intention lies upon the prosecution where the intent is expressly stated as part of the definition of crime. The burden of proving intention or knowledge is on the prosecution and the burden is not on the accused of showing absence of knowledge. It is the duty of the Public Prosecutor to call every witness who can throw any light on the enquiry whether they support the prosecution theory or the defence theory.

390. Burden of proof lies upon the person who has to prove a fact and it never shifts, but the Onus of proof shifts. Such a shifting of Onus is a continuous process in evaluation of evidence. So basically the burden lies on the Prosecution but there are times when the accused is called upon to prove that his case falls under an exception. Then the onus is on the accused and it is considered as discharged if the accused person succeeds in proving the preponderance of probability in his favor and he need not prove his stand beyond reasonable doubt. It is the prosecution which has to prove the guilt of the accused beyond reasonable doubt. What is beyond reasonable doubt has been the subject matter of various decisions of the Apex Court.

STANDARD OF PROOF IN CRIMINAL CASES

BEYOND REASONABLE DOUBT

391. The criminal jurisprudence as has developed on the basis of British model, is that the offence alleged is required to be proved "beyond all reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond a shadow of a

doubt. "Reasonable doubt", does not mean a vague, speculative or whimsical doubt or uncertainty, nor a merely possible doubt of the truth of the fact to be proved. It also does not mean proof to a mathematical certainty nor proof beyond the possibility of a mistake. 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. The requirement in criminal case of proof "beyond reasonable doubt" to support conviction, therefore, does not mean proof beyond all possible doubts. What is to be noted is that the doubt which is required to be removed is of a reasonable man and not every kind of doubt based on surmise or guess. That degree is "well settled. It need not reach certainty, but it must carry a high degree of probability. The courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting of some guilty persons. While the protection given by the criminal process to the accused-persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.

392. The Apex Court in case of SHIVAJI SAHEBRAO BOBADE v. STATE OF MAHARASHTRA, reported in 1973 SCC (CRI.) 1033, held as under:-

"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 a 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 guiltless....." "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....."

393. The Apex Court in case of STATE OF U.P. v. KRISHNA GOPAL AND ANOTHER reported in 1988 SCC (Cri.) page 928, after referring to the several judgments has held as under:-

25. 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 the inter-dependence of evidence and the confirmation

of one piece of evidence by another a learned author says: (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 favorite other than truth. 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 common-sense. It must grow out of the evidence in the case.

26. 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, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.

394. The Apex Court in case of Gurbachan Singh Vs. Satpal Singh and others, , held as under:-

"4..... Criminal charges must be brought home and proved beyond all reasonable doubt. While civil case may be proved by mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. (See Mancini v. Director of Public Prosecutions, [1942] AC 1, Woolmington v. The Director of Public Prosecutions, [1935] AC 462). It is true even today, as much as it was before. There must not be any "reasonable doubt" about the guilt of the accused in respect of the particular offence charged. The courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting off some guilty persons. Even after the introduction of s. 498A of

the I.P.C. and s. 113A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt. There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases (See the observations of Lord Denning in *Bater v. Bater*, [1950] 2 AER 458 at 459) but the doubt must be of a reasonable man. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions 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.

5. The conscience of the court can never be bound by any rule but "that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated."

395. The Apex Court in case of *Sucha Singh and Another Vs. State of Punjab*, , has held as under:-

20. 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. Prosecution is not required to meet any and every hypothesis put forward by the accused. 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 inevitable flaws 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. Vague hunches cannot take the 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 in *Stirland v. Director of Public Prosecution* (1944 AC 315) quoted in *State of U.P. Vs. Anil Singh*, . Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than truth."

396. The Apex Court in case of *Ashok Debbarma @ Achak Debbarma Vs. State of Tripura*, , referring to the case of *COMMONWEALTH V. JOHN VI. WEBSTER* 5 CUSH. 295, 320 (1850), MASSACHUSETTS COURT, AS EARLY AS IN 1850, wherein the expression the reasonable doubt is explained as follows:

"Reasonable doubt ...is not a mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction.

397. The Apex Court with reference to the above judgment held that:

"In our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty, but only beyond reasonable doubt. Criminal Courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt", even though the Courts are convinced of the accused persons" guilt beyond reasonable doubt. For instance, in the instant case, it was pointed out that, according to the prosecution, 30-35 persons armed with weapons such as fire arms, dao, lathi etc., set fire to the houses of the villagers and opened fire which resulted in the death of 15 persons, but only 11 persons were charge-sheeted and, out of which, charges were framed only against 5 accused persons. Even out of those 5 persons, 3 were acquitted, leaving the appellant and another, who is absconding. The court, in such circumstances, could have entertained a "residual doubt" as to whether the appellant alone had committed the entire crime, which is a mitigating circumstance to be taken note of by the court, at least when the court is considering the question whether the case falls under the rarest of the rare category."

398. Further the Apex Court observing that Residual doubt is a mitigating circumstance, sometimes, used and urged before the Jury in the United States and, generally, not found favour by the various Courts in the United States, referred to the judgment in the case of DONALD GENE FRANKLIN V. JAMES A. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS (487 US 164 (1988); 101 LED 2D 155), wherein while dealing with the death sentence, the Court held as follows:

"The petitioner also contends that the sentencing procedures followed in his case prevented the jury from considering, in mitigation of sentence, any "residual doubts" it might have had about his guilt. Petitioner uses the phrase "residual doubts" to refer to doubts that may have lingered in the minds of jurors who were convinced of his guilt beyond a reasonable doubt but who were not absolutely certain of his guilt Brief for Petitioner 14. The plurality and dissent reject the petitioner's "residual doubt" claim because they conclude that the special verdict questions did not prevent the jury from giving mitigating effect to its "residual doubt[s]" about petitioner's guilt. This conclusion is open to question, however. Although the jury was permitted to consider evidence presented at the guilt phase in the course of answering the special verdict questions, the jury was specifically instructed to decide whether the evidence supported affirmative answers to the special questions "beyond a reasonable

doubt." Because of this instruction, the jury might not have thought that in sentencing the petitioner, it was free to demand proof of his guilt beyond all doubt."

399. The Supreme Court also referred to the judgment in the case of CALIFORNIA V. BROWN 479 U.S. 541 and other cases, wherein the US Courts took the view that,

"Residual doubt" is not a fact about the defendant or the circumstances of the crime, but a lingering uncertainty about facts, a state of mind that exists somewhere between "beyond a reasonable doubt" and "absolute certainty." Petitioner's "residual doubt" claim is that the States must permit capital sentencing bodies to demand proof of guilt to "an absolute certainty" before imposing the death sentence. Nothing in our cases mandates the imposition of this heightened burden of proof at capital sentencing.

Then the Supreme Court observed that:

"We also, in this country, as already indicated, expect the prosecution to prove its case beyond reasonable doubt, but not with "absolute certainty". But, in between "reasonable doubt" and "absolute certainty", a decision maker's mind may wander possibly, in a given case, he may go for "absolute certainty" so as to award death sentence, short of that he may go for "beyond reasonable doubt".

400. The judicial instrument has a public accountability. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence "of course, it is possible but not in the least probable," the case is proved beyond reasonable doubt. Under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land. 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. The evil of acquitting a guilty person light heartedly 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. A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.

401. 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. 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. If accused persons are let off light heartedly picking holes in the prosecution case without any sense of responsibility then the very existence of the Criminal justice delivery system could be questioned, having regard to the expenses involved in maintaining the administration. It also amount to abdicating a solemn duty.

CONCLUSION

402. We have set out above the evidence regarding the role played by each accused in the commission of crime. The evidence on record clearly establishes that each of the accused is a party to the conspiracy. Conspiracy is hatched in secrecy and therefore, direct evidence in proof of the same is seldom available. It is a matter of inference. The law does not require that each and every person, who is a party to the conspiracy must do some overtact towards the fulfillment of the object of conspiracy. A conspiracy is nothing but a partnership for criminal purposes. An overtact of one accused may be the act of all without any new agreement specifically directed to that act. One who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives whether or not, he knew of the crimes committed or aided in their commission. Whoever is a party to the conspiracy is liable to be punished under Section 120-B of IPC. An act done by one accused is admissible against the co-conspirators in view of Section 10 of the Evidence Act. It can, in some cases be inferred from the acts and conduct of the parties. The conspiracy hatched by these accused is continuous and renewed as to all the members whenever any member of the conspiracy acts in furtherance of the common design. The cumulative effects of the proved circumstances should be taken into account in determining the guilt of the accused. Where trustworthy evidence establishing all links of circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration by virtue of Section 30 of the Evidence Act.

403. The material on record clearly establishes that all these accused are members of Deendar Anjuman Ashram. The common intention and object which brought them together could be easily gathered from the documentary evidence such as books, literature, pamphlets" which are seized from them for which, they have offered no explanation at all. The literature published by this Ashram and its recovery from the possession of the accused in this case clearly establishes the "mens rea", with which all these conspirators came together. The pamphlets and letters seized from the accused also proves the mens rea. They are all bound by a common philosophy, i.e., Islam is the only religion in the world; Mohammed Paigambar is the only Jagadguru and Allah is the only God in this world. The aim

of all these accused is to Islamise the whole humanity. They believe in the prophecy that India would become Islam State; there would be war between India and Pakistan and Pakistan will burn for 8 days and Northern India will suffer 70-75% loss. Then A. 17 would come with 9 lakh followers (Pathans) to India and in order to enable him to conquer Southern India, the accused should make hangama and cause dhamaka in the Southern States. They believe that in order to achieve this so called noble object, called Jihad, they could indulge in nifaaq and sirria activities. They continued to conspire within the State of Karnataka at several places and committed acts against the State by blasting bombs in Church with the intention of causing disharmony between the various sections of public.

404. All of the accused have grievance against Christians because the Christian Missionaries are trying to convert poor Muslims into Christianity. They wanted to blast the Churches in Karnataka, the place of worship of Christians. They wanted to make it appear that it is the Hindu Organizations which are behind the said blasts, so that Christians may attack Hindus. This would also give an impression that Christians are not safe in India. They wanted the Western world to take note of this situation, that India does not believe in Secularism and Christianity is in danger in India. Thus, they wanted to create disharmony and unrest in the Society and the country. They wanted communal clashes to take place in India. Taking advantage of such a situation, A. 17 would come to Southern India with a strong contingent of nine lakh" followers (Pathans) and establish Muslim rule in Southern India. In order to achieve this object, they stealthily declared war against India. They conspired to overawe the Government of India. They wanted to show Criminal force against the Government of India and the State of Karnataka. They wanted to create apprehension or alarm of fears in the minority communities in India, thus disturbing the normal tranquility of a civilized Society by use of force or atleast by show and the threat of it.

405. The evidence on record also establishes the series of meetings held at various places in Andhra Pradesh and Karnataka, where plans were hatched to give effect to the objects of the said organization. The evidence of kith and kin of the accused discussed earlier, speaks volumes about the participation of these accused in such meetings at Bangalore. The admitted relationship between the accused clearly demonstrate that they were intimately related to each other and each one of them was frequenting the other. It is proved that A. 3, A. 5, A. 6, A. 7, A. 8, A. 10, A. 11, A. 12, A. 13, A. 15 and A. 18 were accused in S.C. No. 95/2001 and after trial, these 11 accused were convicted and underwent sentence in the Hyderabad Court.

406. The material seized from the possession of these accused show that they were in possession of the literature of the said Ashram, photographs of the original founder as well as A. 17. Some of the accused even possessed computers in which they had stored all these materials. They were generating pamphlets which were meant to bring disharmony between Hindus and

Christians. The evidence on record, particularly the M.Os. seized from the house of A. 15, A. 13, Amanath Hussain Mulla and A. 11 prove that these accused created the warning and letters of threat in the name of Hindus addressed to Christians and in the name of Christians addressed to Hindus and circulated the same. These warning letters and letters of threat were found in the possession of all the accused persons when their houses and work places were searched and it was seized by the Investigating Officers P.W. 56 and P.W. 61.

407. The sole object behind this exercise of the accused was to create Nifaaq i.e., communal disturbance in the entire country. Similarly, the accused also made use of the books containing the literature defaming religious entities like Lingayaths, Brahmins, Jains and Buddhists and all other major communities of India. They further attempted to propagate that all these non-muslim religious entities are the by-products of Islam and originated in Arab countries. The books referred to earlier were written, printed and published by the Deendar Anjuman Organization, created hatred and ill-will between the followers of different religions of India. In all these writings, an attempt is made to showcase that, these non-muslim religions prevailing in India are weak and without any principles; and adopt practices to fool the gullible public. In contrast to this, they attempted to project that Islam religion is a very powerful dominating religion in the whole world having very powerful basis and principles. There is ample material on record to show that the prosecution has proved the offence under Section 153-A and 124-A of IPC against A. 3 to A. 8 and A. 10 to A. 16.

408. The evidence on record also discloses that A. 15 and A. 13 knew how to operate computers, to send emails. They were in constant touch with A. 17 and his sons, who were residents of Mardan, Pakistan and exchanged information about civil and military installations in India. They collected all vital information concerning the security of the nation and passed on the said information through e-mail to A. 17 who was at Pakistan, besides storing the same in floppies.

409. The accused persons are not innocent persons. It is not a case of these accused persons being falsely implicated in this case. Many of them had gone to Mardan in Pakistan for receiving training in arms and ammunitions including explosive substances as is clear from the passport seized. They had prepared a written sketch/plan to execute the bomb blasts in various Churches. The same was circulated and discussed in the conspiracy meetings held at various places. They were also sharing the information received from A. 17 in Pakistan. The presence of A. 17 and his children at Deendar Anjuman Ashram during Urs is also proved. The meetings with them is also established. The entrustment of responsibility to each of them is also proved. These accused were already convicted in the Hyderabad case. A. 17 and his children who are accused in the case are absconding.

410. For the purpose of raising funds for their illegal activities the accused resorted to sirria-dacoity, robbed a bank official, who was carrying cash and utilized the said funds in procuring explosives, timers etc., and for the

manufacture of the bombs. Whenever Siria was conducted, expenses towards the same was defrayed and the balance was sent to A. 17. The accused had even bought a second hand Tata Sumo for their conveyance out of money so raised. They procured explosives, geletine sticks, timer and other parts required for preparing bombs and they prepared them. Thereafter the bombs were transported to the place of V the blast.

411. The mahazars showing the spot of the incident, the place where the incriminating materials were kept and the seizure of the material, on the information furnished by the accused is proved beyond reasonable doubt by examining the Investigating Officer and Panch witnesses. In fact, no explanation is offered by the accused in their statement under Section 313 Cr.P.C., except a blanket denial.

412. The above clearly establishes the offences of criminal conspiracy entered into with the intention of waging war against the Government as well as conspiring to overawe the Government by means of criminal force or the show of criminal force under Sections 120A, 121 and 121A of the Indian Penal Code. Procurement of explosives, carrying explosives in a van for keeping those explosives in Church with the timer and exploding the same are all proved.

413. The oral and documentary evidence on record coupled with undisputed fact that these accused are convicted by the Hyderabad Court for the offence of conspiracy is sufficient to hold that the prosecution has proved beyond reasonable doubt its case against the accused. However, in a criminal case, based on circumstantial evidence, in order to convict an accused, there should be a chain connecting each event or incident. In the nature of offence involved in this case, there can hardly be any direct evidence. Since conspiracies are hatched in secrecy, seldom direct evidence is available of such conspiracies. In this case, in addition to the circumstantial evidence, placed on record by the prosecution in proof of the conspiracy and the acts done in pursuance of the conspiracy beyond reasonable doubt, we also have the direct evidence by way of confessional statement of A. 16, who is a party to all these conspiracies. Similarly, we have the evidence of P.W.-49 who was present in some of the conspiracy meetings. Though the evidence on record is sufficient to hold the accused guilty, we have called in aid the confessional statement of A. 16 to lend assurance to other evidence and to fortify the conclusion that the accused are guilty of the said offence. We have also drawn support from the evidence of P.W.-49 for the purpose of corroboration alone as the evidence to prove a conspiracy can only be circumstantial and not direct. Realizing the probative value the Courts would attach to the confessional statement of A. 16 and the evidence of P.W. 49, a futile attempt was made to demonstrate that these are inadmissible in evidence and therefore should not be looked into. But we have already set out in detail how the confessional statement and the evidence of P.W.-49 is valid, legal and admissible, by exhaustively referring to the law on the point as such the said contention cannot be sustained.

414. The learned Sessions Judge, has set out in detail the evidence adduced by the prosecution, to prove the offence under Rule 5 of the Explosives Rules, 1983 read with Section 9-B of the Indian Explosives Act, 1884 and also Sections 3 and 5 of Explosive Substances Act, 1908. In fact the said findings are not challenged in the appeal as no arguments were addressed by the learned counsel for the accused. Probably the reason being that accused has already undergone the sentence imposed for those offences.

415. Therefore, we are satisfied that the prosecution has proved its case beyond reasonable doubt, the guilt of the accused/in respect of the offences alleged against them. The finding of the Sessions Court holding the accused guilty of all the offences is based on legal evidence. There is no justification whatsoever to interfere with the well considered judgment of the Sessions Court and therefore we find no merit in this appeal.

Re. POINT NO. 11

SENTENCE

416. On the question of sentence, the learned Judge of the Sessions Court after taking into consideration the judgments of the Apex Court on the point and after considering the aggravating circumstances as pointed out by the learned Public Prosecutor and the mitigating circumstances as pointed out by the learned Counsel for the accused, found no grounds for imposing lenient punishment on these accused. Therefore except A. 3, A. 4, A. 5, A. 6 and A. 7, life imprisonment was imposed for other accused. In so far as, A. 3, A. 4, A. 5, A. 6 and A. 7 are concerned, in the facts of the case, the learned Sessions Judge was of the view that a case for death sentence is made out, as it falls under the category of rarest of rare cases. After imposing the death sentence under Section 366(1), the trial Judge submitted the proceedings to this Court for confirmation. Therefore, the question that arises for our consideration is:

(a) Whether the learned Judge of the Sessions Court is justified in imposing death sentence on A. 3, A. 4, A. 5, A. 6 and A. 7, treating it as a rarest of rare cases?

(b) Whether imposition of life imprisonment on other accused is proper?

POINT (a)

417. The law on the point is fairly well settled. The leading judgment on this point is the Constitution Bench Judgment of the Apex Court in the case of Bachan Singh Vs. State of Punjab, . Though the said judgment was rendered in the context of Section 302 of IPC, the guidelines laid down in that judgment aptly applies to the offence under Section 121 IPC also.

418. In Machhi Singh and Others Vs. State of Punjab, , the Apex Court summarized the principles emerging from BACHAN SINGH'S case as under:

"38. In this background, the guidelines indicated in Bachan Singh Vs. State of

Punjab, will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case (supra):

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

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

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

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

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

419. In *Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra*, , the Apex Court held as under:

"45. These principles have been applied in various judgments of this Court thereafter and it is unnecessary to multiply the cases here. Whether the case is one of the rarest of the rare cases is a question which has to be determined on the facts of each case. Suffice it to mention that the choice of the death sentence has to be made only in the rarest of the rare cases and that where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society and; where the crime is committed in an organised manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed persons are attacked and murdered without any provocation, the case would present special reason for purposes of sub-section (3) of Section- 354 of the Criminal Procedure Code."

420. In *State of Maharashtra Vs. Goraksha Ambaji Adsul*, , the Apex Court made

the following observation:

"30. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement of the Constitution Bench judgment of this Court in *Bachan Singh v. State of Punjab*, (2010) 8 SCC 775. Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in [pic] the case and the impact of awarding punishment. These are the nuances which need to be examined by the court with discernment and in depth.

31. The legislative intent behind enacting Section 354(3) Cr.P.C. clearly demonstrates the concern of the legislature for taking away a human life and imposing death penalty upon the accused. Concern for the dignity of the human life postulates resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option is unquestionably foreclosed. In exercise of its discretion, the court would also take into consideration the mitigating circumstances and their resultant effects.

32. The language of Section 354(3) demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, "in the case of sentence of death, the special reasons for such sentence" unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence. This is how the concept of the rarest of rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are at ad idem in law. The death penalty should be imposed in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the prerequisites contemplated under Section 354(3) Cr.P.C. in light of the dictum of the Court in *Bachan Singh* (supra).

34. The judgment in *Bachan Sing* (supra), did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues and they are as follows: (SCCp. 750, para 206)

"206. ... "Mitigating circumstances. - In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of 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 the 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. The State shall by evidence prove that the accused does not satisfy Conditions (3) and (4) above

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That 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 that the said defect impaired his capacity to appreciate the criminality of his conduct."

35. Now, we may examine certain illustrations arising from the judicial pronouncements of this Court.

36. In *Munshi Prasad and Others Vs. State of Bihar*, , this Court took the view that custodial torture and consequential death in custody was an offence which fell in the category of the rarest of rare cases. While specifying the reasons in support of such decision, the Court awarded death penalty in that case.

37. In *Pala Singh and Another Vs. State of Punjab*, , this Court also spelt out in paras 56 to 58 that nature, motive, impact of a crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation are the factors which the court may take into consideration while dealing with such cases. In that case the friends of the victim had called him to see a movie and after seeing the movie, a ransom call was made, but with the fear of being caught, they murdered the victim. The Court felt that there was no evidence to show that the criminals were ... incapable of reforming themselves, that it was not a rarest of the rare case, and therefore, declined to award death sentence to the accused.

38. Interpersonal circumstances prevailing between the deceased and the accused was also held to be a relevant consideration in *The State of Karnataka Vs. Moin Patel and Others*, , where constant nagging by family was treated as the mitigating factor, if the accused is mentally unbalanced and as a result murders the family members. Similarly, the intensity of bitterness which prevailed and the escalation of simmering thoughts into a thirst for revenge and retaliation were also considered to be a relevant factor by this Court in different cases.

39. This Court in *Satishbhushan Bariya (supra)* also considered various doctrines, principles and factors which would be considered by the Courts while dealing with such cases. The Court discussed in some elaboration the applicability of the doctrine of rehabilitation and the doctrine of prudence. While considering the application of the doctrine of rehabilitation and the extent of weightage to be given to the mitigating circumstances, it noticed the nature of the evidence and the background of the accused. The conviction in that case was entirely based

upon the statement of the approver and was a case purely of circumstantial evidence. Thus, applying the doctrine of prudence, it noticed the fact that the accused were unemployed, young men in search of job and they were not criminals. In execution of a plan proposed by the appellant and accepted by others, they kidnapped a friend of theirs. The kidnapping was done with the motive of procuring ransom from his family but later they murdered him because of the fear of getting caught, and later cut the body into pieces and disposed it off at different places. One of the accused had turned approver and as already noticed, the conviction was primarily based upon the statement of the approver.

41. The above principle, as supported by case illustrations, clearly depicts the various precepts which would govern the exercise of judicial discretion by the courts within the parameters spelt out under Section 354(3) Cr.P.C. Awarding of death sentence amounts to taking away the life of an individual, which is the most valuable right available, whether viewed from the constitutional point of view or from the human rights point of view. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable. The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the court to the extent that the only and inevitable conclusion should be awarding of death penalty."

421. The Supreme Court in the case of Ramnaresh and Others Vs. State of Chhattisgarh, , noticed the aggravating and mitigating circumstances with respect to a crime and held as follows:

"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh Vs. State of Punjab, , and thereafter, in Machhi Singh and Others Vs. State of Punjab, . The aforesaid judgments, primarily dissect these principles into two different compartments-one being the "aggravating circumstances" while the other being the "mitigating circumstances". The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other-classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) Cr.P.C.

Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial

history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with, the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the

defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

422. From the aforesaid judgments, it is clear that the extreme penalty of death sentence need not be imposed except in rarest case of extreme culpability. The life imprisonment is a rule and death sentence is an exception. A death sentence must be imposed only when the life imprisonment appears to be of altogether inadequate punishment. 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. The Court has to find out whether there is anything uncommon about the crime which renders a sentence of imprisonment for life inadequate and calls for a death sentence. Where the crime is committed in an organised manner and is gruesome, cold-blooded, heinous and atrocious, where innocent and unarmed persons are attacked and murdered without any provocation, the case would present special reason for purposes of sub-section (3) of Section 354 of the Criminal Procedure Code. A death penalty should be imposed in rarest of rare cases and that too for special reasons to be recorded. A death sentence is not a rule but an exception.

423. In the background, the mitigating circumstances that emerge in this case are as under:

(1) In the explosions which took place at St. Ann's Church, situated in Wadi, Taluk Chithapur, District Gulbarga, though the bomb blasted, it resulted in only damage to the building to a small extent.

(2) No clashes took place between Hindus and Christians as intended by the men behind the said blasts.

(3) Though, they indulged in printing, publishing and circulating the pamphlets and literature in the name of Christians attacking Hindus and in the name of Hindus attacking Christians, no clashes took place between these two communities on account of such hand bills and no loss of life was reported.

(4) From the date of arrest, A. 3, A. 4, A. 5, A. 6 and A. 7 are in judicial custody

in connection with one or the other case, initiated against him in Andhra Pradesh, Karnataka and Goa.

(5) The literature which was seized from the custody of A. 3, A. 4, A. 5, A. 6 and A. 7 shows that in so far as religious matters are concerned, they were not very intelligent and easily misguided by A. 18, which resulted in their involvement in these conspiracies and the acts pursuant to such conspiracies.

(6) No life is lost on account of the said bomb blast.

(7) The intention was not to kill any person at all. The intention was to bring hatred among different communities, which may give rise to clashes between them. There was no intention to kill innocent and unarmed persons and certainly there was no intention to murder any person.

(8) A. 3, A. 4, A. 5, A. 6 and A. 7 were unable to comprehend that these acts of blasting the bombs and destroying the Church buildings would neither enable them to destroy India nor other religions in the world. It only shows their lack of knowledge, understanding of the society, the country and the affairs world over.

424. The Sessions Court has not taken into consideration the aforesaid mitigating circumstances, while imposing death penalty. However the offence proved against them is waging war against the Government of India or attempt to wage such war which is punishable with death and it is a very grave offence against the society and the country.

425. We have seen from the evidence on record that A. 3, A. 4, A. 5, A. 6 and A. 7 were day dreaming about Islamizing this country. With the resources at their command and the other conspirators, they could not have achieved the said object. In those circumstances and the mitigating circumstances, imposition of death sentence would not be proper. Ends of Justice would be met if the punishment of imprisonment for life, instead of the capital punishment of death, is imposed. Therefore, in so far as A. 3, A. 4, A. 5, A. 6 and A. 7 are concerned, the sentence is reduced to imprisonment for life, by confirming the judgment of conviction passed by the Sessions Judge.

426. But a few words of explanation are necessary to be mentioned here as regards the meaning of life imprisonment. The Supreme Court in the case of Md. Munna Vs. Union of India (UOI) and Others, , has clearly observed as below:

13 In K.M. Nanavati Vs. State of Maharashtra, the High Court of Bombay had sentenced the offender to undergo rigorous imprisonment for life. The appeal was dismissed by this Court with the observation that the High Court rightly passed the sentence of imprisonment for life. Therefore, we are of the view that "imprisonment for life" is to be treated as "rigorous imprisonment for life".

14. In Naib Singh's case (supra), it was further held as under:

"17. In the first place, a distinction between "imprisonment for life" and "imprisonment for a term" has been maintained in the Penal Code in several of

its provisions Secondly, by its very terms Section 60 is applicable to a case where "an offender is punishable With imprisonment which may be of either description" and it is only in such case that it is competent for the court to direct that "such imprisonment shall be either wholly rigorous or wholly simple or that any part of such imprisonment shall be rigorous and the rest simple." And it is clear that whenever an offender is punishable with "imprisonment for life" he is not punishable with "imprisonment which may be of either description", in other words Section 60 would be in applicable.

18. However, for the reasons discussed above and in view of the authoritative pronouncements made by the Privy Council and this Court in Kishori Lal case and Gopal Godse case respectively, it will have to be held that the position in law as regards nature of punishment involved in a sentence of imprisonment for life is well settled and the sentence of imprisonment for life has to be equated to rigorous imprisonment for life....."

18. In Godse's case, the Constitution Bench of this Court held that the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convict person's natural life. It was also held in paragraph 5 as follows:

".....It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words imprisonment for life" for "transportation for life" enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prime facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

Summarising the decision, it was held in para 8 as under:

"Briefly stated the legal position is this: Before Act XXVI of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions ordinary, special and State and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a

convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under S. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under S. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

19. We are bound by the above dicta laid down by the Constitution Bench and we hold that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years as contended by the petitioner.

427. The Supreme Court in the case of Swamy Sharaddananda @ Murali Manohar Mishra Vs. State of Karnataka, has held as under:

"100. However, while saying so, we direct that in a case of this nature life sentence must be meant to be life sentence. Such a direction can be given, as would appear from some precedents."

428. Therefore in this case too life imprisonment imposed on A. 3, A. 4, A. 5, A. 6 and A. 7 is for the rest of their life and it shall be rigorous.

POINT (b)

429. In so far as convicting the other accused to undergo life imprisonment is concerned, the offences which they have committed are also grave in nature and it would threaten the unity and integrity of this country apart from destroying the communal harmony prevailing in the country/society. It is a crime against society, nation and the principle of co-existence for which this country is known for, since centuries; this noble principle is sought to be destroyed by these evil minded acts. In this regard it is necessary to notice that all the accused are the members of Deendar Anjuman Organization. The facts set out above as reflected in the various books demonstrate that all of them are interested in Islamizing India, propagating Islam and warned the world that they have to accept that Mohammed Paigambar is the only Guru. They believe in the prophecy that India would become a Islam State, there would be war between India and Pakistan and Pakistan will burn for 8 days and Northern India will suffer 70-75% loss. A. 17 would come with 9 lakh followers (Pathans) to India which enables him to conquer Southern India. So that, by that time, if they create hangama and dhamaka in Southern India, it would enable him to capture the Southern India and rule this Country. It only shows how foolish they are. However, all of them have whole-heartedly contributed their might and mind, indulged in sirria to raise funds for the aforesaid object. Some of them went to Mardan in Pakistan for receiving training in preparation and operation of arms and ammunitions including explosive materials, preparation and blasting of bombs. Actually in the mango grove situated at Nuzvid, they participated in the preparation of bombs,

its detonation, they prepared plans, carried explosives, kept them in the Church with the timer, which resulted in a blast. They wanted to see how Hindus and Christians fight among themselves, so that peace of the society is destroyed. With this object, they printed pamphlets, fed them in the computers, generated them and circulated them, with the fond hope that Christians and Hindus would lock horns. In a country which believes in peaceful co-existence of all religions and which believes in unity in diversity; and a country where all religious faiths have prospered, the action of these accused is unpardonable.

430. In fact, Rashtrakavi Kuvempu in the State Anthem of Karnataka has vividly put how these religions exist in the State. It reads thus:

(This garden of calamity belongs to all sects, its scenery attracts the admirers, this is garden of Hindus, Christians, Mulsims, Parsis and Jains)

431. The State is known for communal harmony, peaceful co-existence and all faiths have taken deep roots in the State. Any attempt to destroy the serene atmosphere cannot be countenanced. The action of the accused in attempting to destroy the social fabric is a heinous crime, which cannot be pardoned.

432. The said Deendar Anjuman Organization was banned in the year 2001. The proceedings to ban this Organization was commenced in the year 2000 and it was concluded in the year 2001 and the said ban is being continued year to year. As on today, it is a banned Organization. Therefore, it is of utmost importance that a strong message is to be sent to all these mis-guided, evil minded elements in the society and in particular, the youth of the Muslim community to desist from indulging in any such anti-national activities lest the entire community gets a bad name. This is a country and the State, which equally belongs to all religious denominations.

433. The Constitution confers to each citizen of this Country, an absolute freedom to profess, practice and propagate religion. The right to propagate religion does not mean one religious denomination can convert people belonging to other religious denomination by force, threat or inducement and such acts are unconstitutional. Taking advantage of Constitutional right of freedom to practice, profess and propagate any religion, if unconstitutional things are done, the same requires to be dealt with a firm hand. There is no question of showing any mercy on such persons. Any mercy shown to them would only result in their indulging in such activities, which would be against the interest of the very community, as the evidence on record shows that most of the witnesses are the family members of the accused, but were not aware of the real motive and intention behind the acts of these accused.

434. After considering all the aggravating and mitigating circumstances, the learned Sessions Judge has rightly imposed life imprisonment on all these accused. No grounds are made out for interfering with the said order. It would send a strong message and act as a deterrent to all fence sitters who have imaginary and fanciful ideas of Islamising the whole of India. Such stringent

punishment is the need of the hour in cases of this kind to make such persons to fall in line and be a part of the main stream of the country. The sentence of life imprisonment to these accused should be an eye opener to such misguided elements in the Society. Therefore, we do not see any justification to interfere with the imposition of life imprisonment to the aforesaid accused.

435. In the result, we pass the following:

ORDER

(a) Criminal Appeal No. 1205/2008 is partly allowed.

(b) The Judgment of Conviction against A. 3, A. 4, A. 5, A. 6 and A. 7 is hereby confirmed on all counts. However, the sentence of death is modified by reducing it to sentence of imprisonment for life.

(c) Criminal Appeal No. 26/2009 is dismissed.

(d) Criminal Reference No. 6/2008 is disposed of with the modification as above and accordingly it is answered.