(2014) 12 KAR CK 0282

In the Karnataka High Court

Case No : Criminal RC No. 3 of 2008 and Criminal Appeal Nos. 1203 of 2008 and 24 of 2009

High Court of Karnataka APPELLANT

Vs

Syed Mohammed Ibrahim RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Arms Act, 1959 — Section 25(1-A), 27
Civil Procedure Code, 1908 (CPC) — Section 108
Constitution of India, 1950 — Article 20, 20(2), 22
Criminal Procedure Code, 1973 (CrPC) — Section 100(5), 108, 144(2), 161, 162
Evidence Act, 1872 — Section 10, 114, 114(e), 133, 137
Explosive Substances Act, 1908 — Section 3, 4, 5, 6, 7
Explosives Act, 1884 — Section 5, 6A, 8, 9(1)(b), 9(B)
Penal Code, 1860 (IPC) — Section 107, 120, 120(B), 120A, 120-A

Citation : (2015) ILR 1118 : (2015) 1 KCCR 513

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

Bench : Division Bench

Advocate : H.N. Nilogal, Special Public Prosecutor, Advocates 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. Peter and Paul Church situated at J.J. Nagar Main Road, Bangalore, on 09.07.2000 at 10.15. p.m. Crl. A. No. 1203/2008 is preferred by A. 10 and Crl. A. No. 24/2009 is preferred by A. 7, A. 8, A. 9, A. 11, A. 12, A. 13, A. 18, A. 19, A. 20, A. 21, A. 22, A. 24, A. 25, A. 26 and A. 27 against the judgment and sentence passed in S.C. No. 696/2005 in Crime No. 113/2000, by the 34th Addl. City Civil & Sessions Judge and Presiding Officer., Special Court for the trial of Church Bomb Blast Cases, Central Prison Premises, Bangalore, convicting the accused under Section 235(2) Cr.P.C. for offences under Section 120-B read with Sections 121-A, 124-A and 153-A I.P.C., and for other offences, for bomb blast which took place at St. Peter and Paul Church situated at J.J. Nagar Main Road, Bangalore.

2. The State has preferred Crl. R.C. No. 3/2008 seeking confirmation of death sentence of A. 10. Therefore, all these appeals are taken up for consideration together and disposed of by this common order.

BACK GROUND

3. 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 practised 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.

4. 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, Ekojagadguru - Mohammad Paigambar and Eko Dharma - Islam; and Siddique Deendar Channabasaveshwara''s hidden agenda was to Islamise the whole world including India.

5. 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.

6. 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.

7. 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 behavior for one year.

8. 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 recorded 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 Channabasaveshwara Qible''. He posed as the avatar of Channabasaveshwara, 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 Siddiuqe 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".

9. 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 Kalamma 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. Hazarat 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.

10. A-1, 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.

11. During 1998 A-13 Zia-Ul-Hassan 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.

12. 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 enemity, 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.

13. 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.

14. 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, C.Ds., 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.

15. 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 I.P.C. 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.

16. 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. P161 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.

17. 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.

18. A-14-Mohammed Zakir @ Zakir, S/o. Mohammed Burhanuddin a resident of Deendar Anjuman Ashram, Asif Nagar, Hyderabad and A-15 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 Khaliquzama @ Khaliquzama, 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.

19. 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.

20. 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 I.P.C. Other accused were sentenced to life imprisonment.

21. 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. No. 3, 4 and 6 of 2008, in all the cases.

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

23. 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 I.P.C. and Sec. 3 of the Explosive Substances Act, 1908; he was convicted for a lesser offence punishable U/s. 304-A I.P.C. and was sentenced to undergo RI for two years. Further the judgment of conviction for the offence U/Ss. 337 and 427 I.P.C., 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.

24. 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. 696 OF 2005

25. According to the prosecution, to achieve the object as narrated earlier, A. 1 conspired with his sons A. 2, A. 3, A. 4 and A. 5 held meeting at Deendar Anjuman Ashram, Hyderabad on 20.10.1999 and this was followed by several meetings at other places including the house of A-10 at Varthur, A-11 at Vijayanagar, Bangalore and deceased A-14''s father-in-law''s house at Ganganagar and deceased A-15''s father''s house at J.C. Nagar, Bangalore. A-10, A-11, A-19 and A-20 in furtherance of such conspiracy prepared bombs in the house of A-19 Sheik Hashim Ali at Hyderabad, transported the same to Bangalore through A-14. A-9 namely Syed Abdul Khadar Jilani, who was specially trained in preparing time bombs, prepared the bombs and later transported to various places. A-10 went to the house of A-11 situated at Vijayanagar, Bangalore along with deceased A-14 and A-15 in his Maruti Van bearing registration No. GA-01-U-2786 and took delivery of highly explosive substances and bombs including IED on 09.07.2000 and planted the same near the rear window of St. Peter and Paul Church situated at J.J. Nagar Main Road, Bangalore around 7.30 p.m. to 9.00 p.m. As per the time set by the accused, the bombs exploded at 10.15 p.m. causing heavy damage to the church building. This caused widespread disaffection in the minds of the Christians and they resorted to large scale destruction of public property in retaliation; 17 vehicles were damaged in that incident. The situation turned very tense warranting deployment of additional forces. Crime No. 114/2000 was registered with respect to the incident of stone pelting, causing damage to the property and life.

26. On 10.07.2000 at about 2.25 a.m., Father Tomeyar, the Priest of St. Peter and Paul Church gave First Information as per Ex. P-1 and J.J. Nagar Police registered Cr. No. 113/2000 for the offence U/Ss. 3 and 4 of Explosive Substances Act r/w Section 427 I.P.C. After completion of investigation, the Investigating Officer obtained necessary sanction from the Government of Karnataka to prosecute the accused persons as required u/s. 196 Cr.P.C. and also the sanction from the Police Commissioner, Bangalore to prosecute them for the offence punishable under Explosive Substances Act and Explosives Act,

submitted the final report on 19.03.2001 before the learned 3rd ACMM, Bangalore, against 29 accused persons showing A-1 to A-5, A-16 and A-29 as absconding and A-6, A-14 and A-15 as dead, for the offence punishable U/Ss. 124-A, 153-A, 295, 436, 427 I.P.C. r/w Sec. 120-B I.P.C. and Ss. 3, 4 and 5 of the Explosive Substances Act, 1908 and Sec. 5 r/w Sec. 9-B of Explosives Act, 1884. This was registered as C.C. 6264/01 and committal order was passed only in respect of A-17 and A-28 by splitting up the case against other accused who, were in custody in connection with the criminal case on the file of the Sessions Court at Hyderabad. The case against A-17 and A-28 was registered as S.C. No. 425/2001 and made over to the Special Court for trial of Church Bomb Blast Case. After trial, S.C. 425/2001 ended in the acquittal of A-17 and A-28.

27. In the split up case C.C. No. 6678/01 warrants were issued against the remaining accused by the 3rd ACMM, Bangalore pursuant to which the presence of A-7 to A-13 and A-18 to A-27 was secured. After complying with the requirement of Section 207 Cr.P.C. and by once again splitting up the case against absconding A-1 to A-5, A-16 and A-29, this case too was committed U/s. 209 Cr.P.C. to the Sessions Court by order dated 04.07.2005. On receipt of records, the Principal City Civil & Sessions Court, Bangalore City, registered the case in S.C. No. 696/05 and made it over to the Special Court.

28. A-7 to A-13 and A-18 to A-27 were produced before the Special Court on 12.09.2005 and as per their request, once again copies of the prosecution papers were furnished to them. Thereafter the Public Prosecutor and the Counsel appearing for the accused were heard on the question of framing of charges. Since there was no objection to frame the charges, on 26.09.2005, charge came to be framed against A-7 to A-13 and A-18 to A-27 for the offence punishable U/Ss. 124-A, 153-A, 295, 436 r/w Sec. 120-B I.P.C., Sec. 5 r/w Sec. 9-B of Explosives Act, 1884 r/w Sec. 120-B I.P.C. and Ss. 3 and 5 of the Explosive Substances Act, 1908 r/w Sec. 120-B I.P.C., read over and explained to them; A-7 to A-13 and A-18 to A-27 pleaded not guilty and claimed to be tried.

29. The prosecution examined 64 witnesses as P.W. 1 to PW 64 and got marked 262 documents as Ex. P-1 to P-262; 80 material objects are also marked for the prosecution as M.O. 1 to 80. After the prosecution closed its side, accused A-7 to A-13 and A-18 to A-27 were examined as required u/s. 313 Cr.P.C. and all the incriminating evidence was denied by them in toto. However, A-7 to A-13 and A-18 to A-27 did not choose to lead oral or documentary evidence in support of their defence.

30. At the time of arguments, the learned Special Public Prosecutor made an application u/s. 216 Cr.P.C., for framing of additional charges for the offence punishable U/Ss. 121 and 121-A I.P.C. After hearing the prosecution and the Counsel appearing for A-7 to A-13 and A-18 to A-27, the Spl. Court framed additional charges on 12.12.2007, read over and explained the same to A-7 to A-13 and A-18 to A-27 for which they pleaded not guilty and claimed to be tried. Neither the prosecution nor the accused persons chose to adduce additional

evidence in respect of the additional charges. However PW 36, PW 42, PW 43, PW 54 and PW 64 were recalled and further cross examined by A-7 to A-13 and A-18 to A-27.

31. The Trial Court, on consideration of the material on record convicted A-7 Syed Hasanuzama, A-8 Syed Shamsuzama, A-9 Syed Abdul Khadar Jilani, A-10 Syed Mohammed Ibrahim, A-11 Abdul Rahaman Sait, A-12 Amanath Hussain Mulla, A-13 Mohammed Siddique, A-18 Sheik Fardeen Vali, A-19 Sheik Hashim Ali, A-20 Mohammed Farooq Ali, A-21 Sheik Abdul Habeeb, A-22 - Mohammed Gayasuddin, A-24 Mohammed Sharfuddin, A-25 - Meera Sab, A-26 - Syed Muniruddin Mulla and A-27-Rishi Hiremath, for the offence U/s. 120-B r/w Ss. 121-A, 124-A and 153-A I.P.C. and sentenced them to undergo imprisonment for life. A-10 Syed Mohammed Ibrahim, is also convicted for the offence u/s. 120-B r/w Section 121-A of I.P.C. and sentenced to death subject to confirmation by this Court. A-10 was also convicted for an offence under Section 3 of the Explosive Substances Act, 1908 and under Rule 5 of the Explosive Substances Rules, 1983 read with Section 9-B of the Explosives Substances Act, 1884. Against this the accused have preferred the appeal.

32. 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.

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

(1) The accused persons, except A-13, were are all 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 I.P.C. 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) That no sanction is accorded for prosecuting the accused for offence u/s. 121-A of I.P.C. as such, the entire trial is vitiated for want of jurisdiction.

(4) The entire case of the prosecution revolves around three aspects: (a) Confession statement; (b) Evidence of an Accomplice; and (c) Evidence of an eye witness. While (a) and (b) are inadmissible in evidence, (c) is not trustworthy.

(5) Identification of the accused in the identification parade is vitiated as the parade conducted is contrary to law.

(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.

34. 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 those witnesses who turned hostile corroborates other available evidence that these accused were the members of Deendar Anjuman organization and are all 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.

35. 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 discovery of fact. Since some of the material objects were seized on such statement, of the accused, the part which led to discovery of the fact that the accused knew where the incriminating materials were found, becomes relevant and admissible in evidence. 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

36. 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 I.P.C. is invalid?

3. Whether the prosecution of the accused for offence under Section 121 and 121A of I.P.C. 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. 7 is admissible in evidence?

6. Whether the evidence of P.W. 54 could be construed as evidence of an accomplice and is inadmissible for want of corroboration?

7. Whether the evidence of P.W. 3 - eye witness in the case is vitiated because of the defect in the identification parade conducted?

8. Whether the seizure is not proved as all the Mahazar witnesses have turned hostile?

9. Whether Section 27 of the Evidence Act has no application as the police were aware of the places and the material objects seized?

10. Whether the production of the copies i.e., the secondary evidence in respect of the Mahazars and confessional statement of A. 7 is inadmissible in evidence as original was not produced?

11. Whether the order of conviction passed by the Trial Court is based on legal evidence and is sustainable in law?

12. Whether the death sentence imposed on A. 10 requires to be confirmed?

37. 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

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

In Halsbury''s 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."

39. 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."

40. 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."

41. 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."

42. Sections 120-A and 120-B were brought on the statute book by way of amendment to I.P.C. 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.

43. Section 120-A of I.P.C. 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.

44. Under Section 43 of the I.P.C., an act would be illegal if it is an offence or if it is prohibited by law. Section 120-B I.P.C. 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.

45. 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."

46. 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-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators."

47. 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 I.P.C., 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.

48. 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."

49. 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 the 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. Leathern:

''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.''

50. 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."

51. 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 co-conspirators 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. II, 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?

52. 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 a part of the enterprise."

53. 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 acts or omissions which constitute an offence are 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.

54. 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."

55. 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 act 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.

56. 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.

57. 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.

58. 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

59. 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.

60. 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 co-conspirators. 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.

61. 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., ."

62. 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."

63. The Apex Court, in the case of Nazir Khan and Others Vs. State of Delhi, 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."

64. 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."

65. 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. 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.

WAGING WAR (Section 121 I.P.C.)

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.

66. The concept of war embodied in Section 121 I.P.C. 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 I.P.C. 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.

67. 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 I.P.C. 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.

68. The most important is the intention or purpose behind the defiance or rising against the Government. 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 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, 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 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 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.

69. 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.

70. 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.

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

The observations of Lord Holt, C.J. in a case reported in Holt''s 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".

72. The speech of Lord Mansfield, CJ 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".

73. 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".

74. 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".

75. 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 I.P.C. 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 bringing 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 levying 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 I.P.C.)

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:

76. 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.

77. 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 S.H. Jhabwala and Others Vs. Emperor, .

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 I.P.C. 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 Vs. Emperor, (1950) 30 Pat 152.

78. 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).

79. 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 petitioners want to educate the people that by force only the Government could be changed Aravindan and Others Vs. State of Kerala, .

80. 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 merelely 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 I.P.C.)

81. 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.

82. The Apex Court in the case of Nazir Khan and Others Vs. State of Delhi, 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 endeavor 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 endeavors to promote public disorder."

PROMOTING ENMITY BETWEEN DIFFERENT GROUPS (SECTION 153-A I.P.C.)

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.

83. Promoting enemity 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 I.P.C.

84. Section 295 I.P.C. reads as under:

295. Injuring or defiling place of worship 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.

85. 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.

86. 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.

87. 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.

88. Section 4 of the Explosive Substance 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.

89. Section 5 of the Explosive Substance 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.

90. Rule 5 of the Explosive 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."

MENSREA

91. 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, mensrea, i.e., the idealogy that brought all these accused together to commit the acts for which they were prosecuted and the trial Court has found them guilty.

92. 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.

93. 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 untolerable 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.

(Continued in Part 4)

"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 flood 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 faithfull 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 deceipt 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 faithfull 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 sacrifiers 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-urashi, 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 no 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 neighboring 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."

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

95. 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 caliberate 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 (Phuh) in the book which is regarded by muslims as Sarwar-E-Alam.

96. 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 athe 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 Jehad obligatory and declares bounties of war legal, is come, none could achieve Salvation without acceptance & belief in Prophet Mohammad (Pbuh)".

97. 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.

98. He has also referred to Chiristian 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 Mohamad (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.

99. 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 sacrified 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."

100. 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 Avtars and Sages.

101. 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 propagation of Islam. Staunch meat eating communities like Marat has and Rajputs who do not even spare pork, have severed ties from muslims because of this problem and considered the muslims untouchables. These mischieveous 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 bevildered & deceived bretheren, 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.

102. 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:-

(Kannada Matter)

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.

103. 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:

(Kannada Matter)

104. 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.

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

106. 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.

107. In fact, when the said Siddique Deendar Chennabasaveshwara 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 Majestys'' 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 behavior for one year.

108. 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) Mohamad Azimuddin W.D. Khaja Hussain

(8) Syed Mohamad Hussain W.D. Syed Mohamad 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. Mohamad 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 be should not be bound over in Rs. 200 with one other security in the same amount to be of good behavior 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 behavior for one year. While I called on the rest to show cause why they should not be bound over to be of good behavior 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 Channabasaveshwara 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 Mohammadan and to have found the way to reconcile Hinduism and Mohammaddanism. Hence he and his followers use Hindu names as well as Mohammadan 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 Hindusim and Mohammaddanism 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 tactual missionaries, they are fire brands far from dissimulating their contempt for Hindusim. 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 Hindusim, 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. (3) 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 (1) 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 Mohammadan and that his preaching

ought not to annoy Mohammadans, a Firman 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 fifth 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 educated 4 Hindus which he really feels 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 tempered 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 wishes 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 behavior 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 behavior 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 fours in his own defence.

Dharwar July 5th 1934

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

109. 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 made a record 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 Moulana 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 were 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 Kafiristan 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."

110. 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.

111. 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.)

112. 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 again raised in the trial Court at the time of arguments on merits and it was answered in the negative by the Trial Court.

113. Even in this appeal, the accused urged before us that except A. 13, others accused were tried 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 it 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

114. 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 I.P.C. and Sections 3, 4, 5 and 6 of Explosive Substances Act and Section 25(1-A) and Section 27 of Arms Act, of them seven accused were absconding. Therefore, only 43 accused were tried for the aforesaid offences. In the said case as may as 30 charges were framed.

115. 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.

116. Therefore, though 30 charges were framed in SC95/01 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 Vizianagrram and agreed with Saheb Jada Syed Zia Ul Hasan, Syed Fayyaz Ul Hassan @ Khaleel Pasha, Syed Shabihul Hassan @ Adil Hassan, Syed Zahed Ul 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.

117. 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 Chennabasaveshwara, 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.

118. 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.

119. 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?

120. 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 I.P.C. 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.

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

"50. In the result, A. 8 to A. 20, A. 24 to A. 41, A. 43 to A. 50 are found guilt 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."

122. The conspiracy which gave raise to the said case arose out of meeting,

which was held within Andhra Pradesh at various places, i.e., one held on 20-10-1999 at Deendar Anjuman Office, Asifnagar, Hyderabad; on 23-11-1999 at Ashoka Lodge, Hyderabad; and those 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 Vizianagrram. 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.

123. The offence of criminal conspiracy under Section 120-A 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. A conspiracy is complete as soon as the agreement is made or as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. 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.

124. 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 group 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.

125. 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 sub-section 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.

126. 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.

127. Therefore, when a punishment is imposed under Section 120B of I.P.C., 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 rigourous 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 not exceeding six months.

128. 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."

129. 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 sub-section (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 sub-section (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."

130. 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 sub-section (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, I.P.C. was barred by Section 300(1) of Cr.P.C."

131. 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 sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

132. 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."

133. 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 sub-section (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 authrefoid convict applicable to criminal trials to also not applicable when recourse is had by the prosecution to the aforesaid exceptional rule contemplated by sub-section (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."

134. 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.

135. 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.

136. 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.

137. 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.

138. 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 I.P.C.

139. 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.

140. 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 I.P.C. 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(1) 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.)

141. The accused were prosecuted for offences under Sections 124A, 153A, 295, 436, 427 read with Section 120B of I.P.C. 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 F.I.R., mahazars, FSL reports and other connected records were submitted to accord sanction to prosecute the accused in Crime No. 113/2000 of J.J. Nagar Police Station. After examining the records, the Government accorded sanction for prosecution of the accused under Section 196 of Cr.P.C. vide Order bearing OE27 MOH IB/2001 dated 17.3.2001 which is marked as Ex. P61. The list of the accused for whose prosecution, the sanction was accorded was also enclosed. It is marked as Ex. P62.

142. Ex. P61 bears the signature of one V.G.A. Ashirvadam, Under Secretary to the Government of Karnataka, Department of Home and Transport. A perusal of Ex. P61 discloses that the sanctioning authority took note of the fact that, on 9.7.2000 at 10.15 PM a bomb exploded in St. Peter''s Pal Church situated in J.J. Nagar main Road. The Priest of the Church, Father Tomeyar, lodged a complaint with the jurisdictional police. The police registered a case against 29 accused in Crime No. 113/2000 for offences under Sections 120-B, 124-A, 153-A, 295, 436, 427 I.P.C. and Sections 3 and 4 of Explosive Substances Act, 1908 and Sections 5 and 9(B) of Explosives Act, 1884. As offence was under Section 153A I.P.C., 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. After considering the aforesaid material sanction was accorded to file a charge

sheet against the 29 accused, whose names were listed and enclosed to the said Sanction Order.

143. The aforesaid V.G.A. Ashirvadam was also examined in the case as PW 43. He has deposed that he served as Under Secretary in the Government of Karnataka, Department of Home and Transport from 31.5.1996 to June 2003. On 12.3.2001 his department received a requisition from DGP, COD, Bangalore, to accord sanction to prosecute the accused in Crime No. 113/2000 of J.J. Nagar Police Station. Along with the requisition, the DGP, COD, Bangalore, sent F.I.R., Mahazars, FSL report and other connected records. After examination of the records, the Government accorded sanction for prosecution of the accused under Section 196 Cr.P.C. The stencil portion of the Government Order dated 17.3.2001, which bears his signature was marked as Ex. P61 and his signature was marked as Ex. P61A. The list of the accused enclosed with Ex. P61 was marked as Ex. P62 and his signature was marked as Ex. P62A. He was cross-examined. The tenor of the entire cross-examination is to the effect that though he is the sanctioning authority, he has accorded sanction as per the directions issued by the higher authorities and he has not applied his mind independently and, therefore, the sanction is vitiated.

144. As rightly pointed out by the trial Court, the sanctioning authority is the Government of Karnataka and not the Under Secretary. Therefore, the entire cross-examination is not tenable. We find full force in the said observations of the learned trial Judge.

145. 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-245 was not placed before the sanctioning authority before the sanction was accorded. In the absence of Ex. P-245, 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 Sections 121 and 121-A of I.P.C. Ex. P61 is the sanction.

146. The argument is that the original order of sanction is not produced and only a stencil copy is produced without laying foundation for adducing the secondary evidence. The requirement of law is to produce the original sanction order in a criminal trial, whether the accused objects or not the document sought to be produced should be admissible in evidence. Even if at the time of production, objection is not raised, it could be raised at a subsequent stage including the appellate stage. The author of sanction is not examined. Therefore the sanction order ought to have been held as not proved.

147. The tenor of the entire cross-examination is to the effect that though they

are the sanctioning authority, they have accorded sanction as per the directions issued by the higher authorities and have not applied their minds independently and, therefore, the sanction is vitiated. As rightly pointed out by the trial Court, the sanctioning authority is the Government of Karnataka and not the Under Secretary. Therefore, the entire cross-examination is not tenable, and there is no substance in the said contention.

148. 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.

149. It was further argued 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 investigating agency had placed before the Sanctioning Authority. In the instant case, on both the counts, the prosecution has to fail.

150. In support of the said contention reliance was placed on the following judgments.

In Manipur Administration Vs. Thokchom, Bira Singh, , 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".

151. In the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , 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 difficult (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."

152. The Apex Court in the case of Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another, has 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."

153. 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.

154. When we look into the facts of the case, in the background of the above legal principles, Ex. P61 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 PW 43 shows that, along with the request to accord sanction, F.I.R., mahazars, FSL report and other connected records were sent to the sanctioning authority. His evidence further discloses that, 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)

155. 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 I.P.C. 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 Sections 121 and 121A I.P.C. is vitiated and is liable to be set aside.

156. In this regard, it is useful to see what Section 216 of the Cr.P.C. provides for:

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."

157. 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.

158. 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.

159. In the instant case, after the framing of additional charges for the offences under Sections 121 and 121-A I.P.C. on 12.12.2007, they were read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The learned State Prosecutor submitted a memo stating that he had no additional, oral or documentary evidence to prove the additional charges framed and that the evidence already led is sufficient to prove the additional charges.

160. The learned defence Counsel also did not choose to lead any evidence on the additional charges, but sought for recalling of PWs 36, 42, 43, 54 and 64 and the said request was granted. After those witnesses were recalled, they were cross-examined in the context of the additional charges. From this, it is clear the additional charges were framed on the same facts on which charges has been framed earlier. Since sanction had already been obtained for prosecution on the same facts as those on which the additional charges were also founded, no separate sanction was necessary in law and therefore, we do not find any substance in the said contention of the Counsel for the appellants.

161. In so far as non-production of the original sanction order is concerned, the document produced before the Court shows that it is a stencil copy of the original sanction order.

162. Section 62 of the Evidence Act deals with primary evidence. ''Primary evidence'' means the document itself produced for the inspection of the Court. Explanation (2) to Section 62 of the Evidence Act provides that where a number of documents are all made by one uniform process, as in the case of printing,

lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original. Primary documentary evidence of a transaction is the document itself and it exists and obtainable, it should be produced in original to prove the terms of the contract. This is the best attainable evidence. The existence of primary evidence generally excludes secondary evidence.

163. Secondary evidence of contents of written instruments cannot be given unless there is some legal excuse for non-production of the original. Where a number of documents are made by a uniform process, example, printing, photography, cyclostyle or lithography, they are not copies in the legal sense of the term. They are all counter part originals and each is primary evidence of the contents of the rest, but only secondary evidence of the common original. In order to bring a case within explanation (2) of Section 62 of the Evidence Act, the whole document with the signature must have been made by one uniform process.

164. Section 63 of the Evidence Act deals with Secondary evidence. Sub-section (2) of Section 63 deals with copies made from the original by mechanical process which in themselves ensure the accuracy of the copy and copies compared with such copies. The first portion refers to all copies made from the original by some mechanical processes which ensures their accuracy, example: copies by photograpy, lithography, cyclostyle, carbon and etc., mentioned in Explanation (2) to Section 62 of the Evidence Act.

165. In the instant case, after the Government accorded sanction to prosecute the accused and the said fact is to be communicated to various authorities. Ex. P. 61 shows that copies of the sanction order are sent to six authorities. For this purpose they have prepared six copies of the sanction order by the process of stencil cutting, which also clearly discloses the signature of the sanctioning authority. It is not the case of the accused that Ex. P. 61 is not a copy made from the original by a Mechanical process or that it does not ensure accuracy. Their case is, that the original is not produced.

166. During the examination-in-chief, P.W. 43 - V.J.A. Arshirwadam, whose signature is found on Ex. P. 61 has deposed to the effect that the Government accorded sanction for prosecution of the accused under Section 196 Cr.P.C. He identified the said Government order as well as his signature thereon. It is through him Ex. P. 61 is marked. In the cross-examination, the entire attention of the defence was focused to demonstrate that sanction has been accorded without application of mind. Even there is no suggestion that Ex. P. 61 is not the original sanction order or that and it is not a copy made from the original. Therefore, we do not find any merit in the contention that Ex. P. 61 is inadmissible in evidence for want of original sanction order or that there is no sanction order for prosecuting the accused.

Re: POINT No. 4

SANCTION UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

167. 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 Police Commissioner and the District Magistrate, Bangalore, granting consent which is marked as Ex. P90. To prove the said document the prosecution has examined the Police Commissioner and District Magistrate of Bangalore City, Shri T. Madiyal as PW 55, who has deposed that he served as a Police Commissioner in the Bangalore City from November 1999 till October 2001. At that time the power of District Magistrate was conferred upon him. On 12.3.2001 he received a letter from IGP, COD along with the entire records in J.J. Nagar Police Station Crime No. 113/2000 with a request to accord sanction under Section 7 of the Explosive Substances Act, 1908 to prosecute accused Nos. 1 to 29 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. P90. He identified the signature in the said order as Ex. P90(a).

168. A bare perusal of Ex. P90 discloses that PW 55 after perusal of the entire records sent by the Investigating Officer, applied his mind and only on being satisfied that the accused Nos. 1 to 29 prima facie had committed the above offence issued the sanction order. Once the order itself shows that the sanctioning authority has applied mind to the material on record; entered the witness box and deposed to that effect, 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.

169. 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. Perception varies from person to person. If the Court on perusal of the sanction order is satisfied that the legal requirements are broadly complied with and no prejudice is caused to the accused, it shall not brushed aside, such sanction order. 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 and do not call for any interference.

Re: POINT No. 5

ADMISSIBILITY OF EX. P-245 (CONFESSIONAL STATEMENT OF A. 7)

170. The next legal argument canvassed by the learned Counsel for the appellant-accused is that the confessional statement of A. 7, which is marked in the case as Ex. P. 245 is inadmissible in evidence and the conviction based by taking into consideration the alleged admissions in Ex. P. 245 vitiates the entire order of conviction.

171. Admissibility of Ex. P245 is challenged on several grounds. Firstly it is not a confessional statement. Secondly, it was obtained when A7 was in police custody. Thirdly, original confession statement was not produced and Ex. P245 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. P245 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. P245 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.

172. 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. PW 63 who spoke about this document was confronted with the original and the certified copy thereof was marked as Ex. P245. No objection was raised by the accused at that time with regard to marking of Ex. P245. The document in question is dated 31.08.2000 and it is in the handwriting of the A-7 who after being arrested at Delhi on 08.08.2000 was in police custody only till 29.08.2000. While in judicial custody, A-7 wrote this letter and handed over the same to the Jailor-PW 63. 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-7, 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. P245 is inadmissible in evidence or that it is not proved in accordance with law.

173. Before determining the question whether Ex. P245 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?

174. 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.

175. Sections 17 to 23 of the Indian Evidence Act deal with admissions whereas the law as to confessions is embodied in Ss. 24 to 30 thereof and Ss. 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.

176. 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.

177. 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'' connotes 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.

178. 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

179. 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 after-thought 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 after-thought 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 sub-section (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

180. 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, 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 extra judicial confession".

181. 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

182. 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

183. Blackston describes confession as the weakest and most suspicious of all evidence. 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 crime 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)

184. Similar view is expressed in the treatise on Law of Evidence By Taylor, Vol. 1, 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."

185. Noticing the conflicting views, Chief Justice M. Monior in Principles and Digest of The Law of Evidence, Vol. 1, 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."

186. Lord Atkin in the case of Pyare Lal Bhargava Vs. State of Rajasthan, 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."

187. The Apex Court in the case of Sarwan Singh Vs. The State of Punjab, 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."

188. 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."

189. In the case of Devender Pal Singh Vs. State, N.C.T. of Delhi and Another, , 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

190. 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".

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?

191. 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."

192. 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."

193. 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."

194. 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 marshall 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."

195. It was contented 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. P245 is not admissible in evidence.

196. As seen from Sec. 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 Sec. 164(4) Cr.P.C. If a confession is recorded without complying with these requirements, it would be inadmissible in evidence.

197. Admittedly, A-7 did not appear before the Magistrate to whom Ex. P. 245 is addressed. Nor did the Magistrate have an occasion to explain to A-7 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. P245 does not contain endorsement as prescribed U/s. 164(4) Cr.P.C. Even according to the prosecution Ex. P245 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. P245 is inadmissible in evidence for non compliance of Sec. 164 Cr.P.C.

198. The next limb of argument of the accused is that a statement addressed to a magistrate but, not coming under the purview of Sec. 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 Sec. 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 extrajudicial 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 extra judicial confession.

199. The prosecution has produced Ex. P245 dated 31.08.2000, certified copy of the confessional letter written by A7 in his own handwriting; Ex. P245 (a) is A-7''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. P245 runs into 42 pages and A-7 has signed at the bottom of all the pages. It also discloses that blank sheets of paper was supplied to A-7 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.

200. According to the prosecution, A-7 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 63, the Chief Superintendent of Central Prison Sri N. Jayaramaiah, in support of this has deposed to the effect that A-7 was allotted UTP No. 2387 and kept in the Cell Yard of Central Prison Bangalore. As Chief 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-7 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-7 by affixing the seal, date, UTP number of A-7 on the left corner of the blank sheets under their signature. A-7 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. P246 dated 07.09.2000 and Ex. P246(a) is his signature.

201. It was argued that A-7 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. P245 was obtained by threat and compulsion during that period; it was manipulated and produced after A-7 was remanded to judicial custody. But PW 63''s evidence that A-7 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. P245 is written with A-7''s UTP No. signature of the officer supplying the papers etc., has not been discredited despite cross-examining him on these aspects extensively.

202. PW 63 was questioned regarding the endorsements made in the covering letter Ex. P246 and if he was satisfied about the correctness of the contents of Ex. P245 before it was forwarded to the concerned Court etc. However nothing is elicited to discredit the testimony of this witness regarding A-7 writing Ex. P245 voluntarily. The suggestions to PW 63 that the accused was compelled to write the letter under threat and compulsion Dy. SP Appanna and PI Nataraj and that Ex. P245 is not in A-7''s handwriting run counter to each other.

203. The records placed before this Court shows that the prosecution through PW 63''s evidence has dispelled the contention of the accused that Ex. P245 was obtained while A-7 was in police custody. The evidence on record makes it clear

that Ex. P245, a 42 page letter in English has been written by A-7 voluntarily while in judicial custody; the III ACMM, Bangalore has received the originals of Ex. P245 and Ex. P246. The trial Court therefore rightly rejected the contentions of the accused in this behalf.

SECONDARY EVIDENCE

204. Ex. P245 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. P245 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."

205. 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-7 was produced and marked as Ex. P260 in S.C. No. 423/2001, its certified copy is produced and marked as Ex. P245 in this case. The same is admissible in evidence and therefore, we find no substance in the contention of the accused.

THREAT

206. 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. P245 is inadmissible. In support of this, he relied upon the judgment of the Apex Court in Navjoth Sandhu''s case cited supra.

207. 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."

208. 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.

209. It is not in dispute that A-7 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. P245 is in English and in A-7''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-7 is an educated person, knows his rights and had the assistance of the 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 termed as an after thought to wriggle out of the situation. In fact, first page of Ex. P245 speaks to the effect that A-7 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.

210. Ex. P245 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. P245 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. P245 cannot be used against the co-accused.

211. 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.

212. Moving onto the question whether Ex. P245 can be used against the co-accused who also faced trial with A-7, 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, .

213. 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."

214. Therefore we are of the view that though Ex. P245 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. 245 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

215. The evidence of PW-54 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 PW 54 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, PW 54''s evidence cannot be relied upon.

216. Per contra, the learned Spl. P.P. contended that PW 54 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. PW 54''s evidence is very much admissible in law.

217. 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.

218. 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.

219. 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.

220. 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".

221. Abbott, L. C.J., 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."

222. 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.

223. 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. Vs. Baskerville (1) 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 Ion (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)".

224. 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.

225. 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 accomplice''s 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.

226. 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.

227. 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.

228. 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.

229. 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.

230. Keeping the above principles of law in mind, when we peruse PW 54''s evidence, it discloses that he is a resident of Solapur for the last 36 years carrying on the business in beatle 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.

231. P.W. 54 also has the knowledge of A-26 and A-27 hailing from Hubli, Ismail Sab from Gadag, A-11 from Bangalore and A-13 from Chikaballapur, A. 6, A. 7, A. 8 attending the Urs at Hyderabad besides one Iqbal and A. 21. He remembers only Khaleed Choudary from Hyderabad amongst those attending the Urs. It is in his evidence that A-1 along with his sons A-2 to A-5 used to come from Mardan in Pakistan to attend the Urs at the Ashram. A-1 visited Bangalore twice or thrice while going Solapur. While at Solapur, A-1 stayed with Ramdas, Sufi, Iqbal and Deshmukh. During that period twice or thrice, A-1 also visited PW 54''s house and took meals.

232. As per PW 54''s evidence, The last occasion PW 54 visited urs was on 7th day of Razab in the year 1999 and all the persons mentioned above had also attended the urs; A-1 to A-5 were accommodated in a room in the Ashram. After the religious ceremony he returned to Sholapur on the same day for a brief staty of 3 to 4 days. Thereafter, Basheer Sab Kokatnur met him at Solapur and

informed that after he left for Sholapur A-1 addressed them. At the Ahram premises in a meeting and informed that it was the time for Zihad; and further instructions in that regard would be issued to A-7, who in return would pass on the same to Basheer Sab and A-25. Others would be instructed by the said Basheer Sab and A-25.

233. PW 54 refers to other meetings that took place in January 2000 and April 2000 and states that A-25 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-1 a resident of Pakistan. A-25 also requested each one of them to pay whatever amount they could. PW 54 gives the number of such meetings attended by brought at four and states that he had heard the discussions in all the four meetings; A-26 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.

234. In December 1999 Basheer sab called PW 54 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-25 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.

235. PW 54''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-6 had given that bomb kept in a square shaped tin box to Akhil with an instruction to give it PW 54 for planting the same in a Church in Sholapur. Then P.W. 54 pleaded his inability to carry out that instruction. Akhil spent that night in a small room in his house with the bag containing the bomb. Next day when PW 54 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 Akhil to explode the bomb in a church but he too refused.

236. Thereafter, Akhil kept the bomb in his room for about three days. On the fourth day, when the bomb blast in Goa and Hubli were telecasted on TV, Akhil 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 Akhil left, P.W. 54''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.

237. Relying on this evidence, it was contended that PW 54 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 Akhil. Therefore he is an accomplice to the conspiracy to the crime and his evidence cannot be relied upon.

238. The question therefore, is whether motive could be attributed to PW 54 merely because he was present in those meetings and whether he can be treated as an accomplice?

239. Though PW 54 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, PW 54 was constrained to attend them until Rs. 30,000/- lent by him was repaid. As PW 54 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.

240. Though PW 54 went to the Magistrate and gave a statement about all what he did know about these meetings, as he was not a party to the crime his statement cannot be constituted as a confessional statement even under Section 164 of Cr.P.C. Pardon pre-supposes commission of a crime. Since PW 54 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 levelled against the accused.

241. PW 54 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 PW 54 were to be treated as an Accomplice, Section 114 illustration (b) of the Evidence Act would be attracted and not otherwise. PW 54 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.

242. 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. However, since PW 54 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 greater care and caution as to material particulars.

Re: POINT No. 7

TEST IDENTIFICATION PARADE

243. P.W. 3 - Mukunda is an eye witness in this case. He has identified A. 10, A. 14 and A. 15. Insofar as A. 10 is concerned, an identification parade was conducted in which P.W. 3 has identified him. It was contended that the said identification parade is vitiated because, even before the identification parade, P.W. 3 was shown the photographs of A. 10 in the albums in the police station and therefore, the identification parade conducted thereafter is vitiated.

244. We are dealing with the bomb blasts that occurred in Bangalore on the day of 09-07-2000. One of these blasts occurred in the premises of St. Peter Paul Church in J.J. Nagar and many disciples had come to the Church for a celebration at that time. PW-3, Mukunda has stated that talking to the owner of the shop he was noticing the people coming from and going into the church. At that time, a blue colour Maruti Van with Goan registration number stopped near the shop, three people got out of it; two of them walked towards the church with a plastic bag in their hand while the third one waited near the van. He and the shop keeper commented on the Goan registration number saying that the disciples of this church came all the way from Goa. In the meanwhile the two persons who had walked towards the church returned without plastic cover saying in Urdu "Chalo Kaam Hogaya", meaning that the work was over. Once those two persons got in, the van moved in the direction of Minerva Mills.

245. The people who PW-3 saw were later identified as A-10, A-14 and A-15. A-14 and A-15 had died during the accidental bomb blast near the Magadi Road. This rendered PW-3 as a witness who could identify the surviving accused; he went twice to the police station to identify the accused and was shown the photographs. Later a test identification parade was conducted. While the learned public prosecutor relies on the evidence as to identification of the accused, the learned Counsel for the accused challenges the same seriously. Thus, the whole procedure of the Test Identification Parade has come under scrutiny.

246. A test identification parade basically consists of a line-up of people who have similar physical appearance for the purpose of identification of the accused by the eye witness within the scope of Section 9 of the Indian Evidence Act.

247. The procedure to be followed in such identification parade is given in the Karnataka Police Manual Volume 2 in ss. 1359 - 1363. It is to be conducted by a Magistrate, as far as possible. If for any substantial reasons to be recorded in the case diary, the services of a competent Magistrate are not available the identification parade may be conducted by independent persons of the locality, not in any way connected with or concerned in the case. After making all arrangements for the parade, the Police Officers should completely efface themselves, leaving it to the Magistrate or the Panchayatdars to conduct the actual identification proceedings.

248. The accused persons should as far as possible be mingled with persons of similar description, status, build and age in the proportion of a minimum of 1:5

and a maximum of 1:10, and they must be made to take their positions along with the persons with whom they are mingled up in a line. They should not be made to stand together. The Magistrate or other persons conducting the parade should satisfy himself or themselves that no Police Officer takes part in the actual identification proceedings and the witnesses are kept out of view from the premises where the parade is taking place and that it is not possible to communicate with them by signals or any other communication. Witnesses should then be called in, one by one, and they should be asked to go round the persons assembled for the parade and point out the accused, if any.

249. If the identification is held by a Magistrate the proceedings should be drawn up and signed by him. If the identification is held by panchayatdars in the absence of a magistrate, the proceedings should be drawn up by one of the Panchayatdars and attested by all of them. Statements made by the identifying witnesses to the panchayatdars at the time of the identification should be recorded in the proceedings. Even if a witness makes a mistake, it should be recorded. In short, the proceedings must contain a complete record of what takes place in the identification parade.

250. After the identification by one witness is over, care should be taken to see that the witness does not mingle or communicate with the other witnesses who are yet to identify the accused and others. In the next round there shall be reshuffling and the accused are made to take different positions. If the accused so desire, they should be allowed to change their dress also. The same procedure will be repeated in the case of other witnesses also. Any well-founded objection raised by the accused during identification parade should be recorded.

PURPOSE OF IDENTIFICATION PARADE

251. The Apex Court in the case of Heera and Another Vs. State of Rajasthan, has observed thus:

"6. As was observed by this Court in Matru alias Girish Chandra Vs. The State of Uttar Pradesh, identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. (See Santokh Singh Vs. Izhar Hussain and Another, . The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. [See Kanta Prashad Vs. Delhi Administration, Vaikuntam Chandrappa and Others Vs. State of Andhra Pradesh, , Budhsen and Another Vs. State of U.P., and Rameshwar Singh Vs. State of Jammu and Kashmir, ."

252. In Ravi Kapur Vs. State of Rajasthan, it is held that:

"The Court identification itself is a good identification in the eyes of law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straightjacket formula can be stated in this regard.

The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

It is equally correct that the Cr.P.C. does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in Court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the Court for the first time. One of the views taken is that identification in Court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions.

58. Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named accused in the case are actually the culprits. The Identification Parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court. Thus, it is only a relevant consideration which may be examined by the Court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case."

253. Further the Supreme Court, in the case of Munna Kumar Upadhyaya @ Munna Upadhyaya Vs. The State of Andhra Pradesh Through Public Prosecutor, Hyderabad, Andhra Pradesh, laid the ground rules for the basic necessity of a test identification parade and it is as below:

"The necessity for holding a test identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of the other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime. The identification proceedings are in the nature of the tests and significantly therefore, there is no provision for it in the Code and the Evidence Act."

254. In the matter of Munshi Singh Gautam (D) and Others Vs. State of M.P., , it was stated as follows:

"It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

255. While referring to Munshi Singh Gautam case supra it is held as below in Sheo Shankar Singh Vs. State of Jharkhand and Another,

"58. Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named accused in the case are actually the culprits. The Identification Parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court. Thus, it is only a relevant consideration which may be examined by the Court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case."

256. In Harbajan Singh Vs. State of Jammu and Kashmir, , though a test identification parade was not held, the Apex Court upheld the conviction on the basis of the identification in the Court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16th December, 1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings

showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances the Court held:-

"In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the Investigating Officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh and Another Vs. The State of U.P., absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

257. In the case of State of Orissa Vs. Chhaganlal Sundarka and Others, it is held that:

"17. .... the law is well settled that the substantive evidence is the statement of a witness in Court and the purpose of T.I. parade is to test that evidence, the safe rule being that the sworn testimony of the witness in Court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding. If there is no substantive evidence about the respondent having been one of the dacoits whom P.W. 10 saw or the night of occurrence, then the T.I. parade as against him cannot be of any assistance to the prosecution.

Identification parades are ordinarily held at the instance of the Investigating Officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been concerned in the offence. Such tests or parades belong to an investigation stage and they serve to provide the Investigating authority with material to assure themselves that the investigation is proceeding on the right lines. It is accordingly desirable that such test parades are held at the earliest possible opportunity. Early opportunity to identify also tends to minimise the chances of the memory of the identifying witnesses fading away by reason of long lapse of time. But much more vital factor in determining the value of such identification parades is the effectiveness of the precautions taken by those responsible for holding them against the identifying witnesses having an opportunity of seeing the persons to be identified by them before they are paraded with other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned. The evidence of identification of an accused for the first time in the dock is inherently weak and more specially so when it is done after a lapse of considerable time. But where a direct witness has consistently identified the accused, both at the test parade and at the trial his identification may safely be accepted, unless there are other circumstances indicating that the witness has probably made a mistake. But when the identification in Court is not supported by an earlier test, it is unsafe to act on that evidence in the absence of exceptional circumstances such as adequate descriptive particulars of the accused given earlier by the witness which corroborate the identification."

258. In the case of Suryamoorthi and Another Vs. Govindaswamy and Others, the Supreme Court observed thus (para 10):

"It is, however, in evidence that before, the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock-up for a few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether. We do not, therefore, attach much importance to the identification made at the identification parades."

259. Nevertheless three of the accused were convicted by the Supreme Court since corroborative evidence was available. The Court adopted a cautious approach and since regarding other accused corroboration was not forthcoming, Supreme Court confirmed their acquittal.

260. From the catena decisions referred above, it can be deduced that when a witness identifies an accused in Court, the Court has to appreciate the evidence in the light of its intrinsic worth, other evidence, circumstances and probabilities. If the witness knew the accused previously it is a matter of recognition; if not, it is a matter of identification. Recognition of a familiar person is certainly more reliable than identification of a stranger. When a stranger witness identifies an accused in Court, the Court, by way of caution or prudence may seek some assurance before accepting the identification as correct. That assurance would be available from the positive result of test identification parade; however absence of test identification parade is not invariably fatal, for assurance may be available from other sources and circumstances.

261. In Chandran and Another Vs. State of Kerala, reported in Chandran and Another Vs. State of Kerala, and Aravindan and Others Vs. State of Kerala, page 2(2)practically all decisions of the Supreme Court on the point have been considered. As observed in this decision, a witness might have had a fair opportunity to see the accused, of noting his appearance and features; there might have been something in the context, manner and circumstance of the meeting which would render it easy for the appearance of the accused to fix itself in the memory of the witness or something might have taken place shortly thereafter which would have enabled the witness to recollect the prior meeting and the person concerned. These and a variety of other circumstances may lend assurance to the mind of the Court in acting on the identification made in Court.

262. Value of test identification parade, as a corroborative piece of evidence,

depends on the safeguards adopted in conducting it. Witness should not get an opportunity to see the accused; there must not be any situation in which witness could be prompted. Suspects must be mixed up among adequate number of non-suspects who are more or less similar in appearance to that of suspects and dressed more or less similarly. It must be arranged at the earliest possible opportunity. As observed in Aravindan and Others Vs. State of Kerala, value of test identification parade is determined by the effectiveness of precautions taken, expedition in conducting it and the attendant circumstances, just as showing an accused to the witness just before the parade may undermine the value of the parade, showing photographs of the accused to the witness just before parade may have the same consequence.

263. The whole idea of holding Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

PHOTOGRAPHS

264. In the present case, the argument of the learned Counsel for the accused rests on the fact that photographs were shown to the witness prior to identification and that this would hinder the actual progress of the T.I. Parade.

265. In the case of Laxmipat Choraria and Others Vs. State of Maharashtra, , a reference was made to the English cases thus:

"that the showing of a large number of photographs to a witness and asking him to pick out that of the suspect is a proper procedure but showing a photograph and asking the witness whether it is of the offender is improper. We need not refer to these cases because we entirely agree with the proposition. There can be no doubt that if the intention is to rely on the identification of the suspect by a witness, his ability to identify should be tested without showing him the suspect or his photograph, or furnishing him the data for identification. Showing a photograph prior to the identification makes the identification worthless."

266. In the present case, it is not clear whether a group of photographs or individual photos were shown to the witness.

267. In the matter of N.J. Suraj Vs. State represented by Inspector of Police, , it was held that if a photograph is shown to a witness prior to the Test Identification Parade then the identification so made becomes meaningless. Furthermore, in the matter of Vijayan @ Rajan Vs. State of Kerala, , not only was the photograph of the accused shown to the witness but it was published in all local newspapers. It was thus held that the test identification parade was thus rightly disbelieved by the trial Judge.

268. In Suryanelli''s case, Justice Chauhan observed that:

"Conducting a test identification parade is meaningless if the witnesses knows the accused, or if they have been shown his photographs, or if he has been exposed by the media to the public."

269. In the case of Appu and Others Vs. The State, , placing reliance on the decision of the Apex Court in the case of Laxmipat Choraria cited supra it was held that:

"There can be no doubt that if the intention is to rely on the identification of the suspect by a witness, his ability to identify should be tested without showing him the suspect or his photograph, or furnishing him the data for identification. Showing a photograph prior to the identification makes the identification worthless."

270. The Apex Court in the case of Surendra Narain alias Munna Pandey Vs. State of U.P., has observed thus:

7. .... In Inre Sangiah 49 Cr.L.J. 89 Rajamannar, J. discussed the matter at length and said thus:

I am unable to find any provision in the Code which entitles an accused to demand that an identification parade should be held at or before the enquiry or the trial. An identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by the witnesses in the Court. The fact that a particular witness identification parade is only a circumstance corroborative of the identification in a Court. If a witness has not identified the accused at the parade or otherwise during the investigation the fact may be relied on by the accused, but I find nothing in the provisions of the Code which confers a right on the accused to demand that the investigation should be conducted in a particular way. As M.W.N. 427 "Identification Parades are held not for the purpose of giving defence Advocates material to work on, but in order to satisfy investigating officers of the bone fine of the prosecution witnesses".

271. Therefore, before the identification parade, if the witness is shown the photographs of the accused to be identified, then the identification so made becomes meaningless, in which event the Court has to look to other corroborative evidence available on record. When a direct witness has consistently identified the accused, both at the test parade and at the trial and before the test parade, his identification may safely be accepted. Merely because the identification parade conducted is defective, the judgment would not get vitiated, when other circumstantial and corroborative evidence is available on record to prove the identity of the accused.

272. We have on record Spot Mahazar, Seizure Mahazar and Inquest Mahazars, which are marked in the case through witnesses. The particulars of the same are

as under:

(a) SPOT MAHAZARS

273. Ex. P2 dated 10.07.2000 and Ex. P3 dated 14.07.2000 are the two spot mahazars in this case. While Ex. P3 is only a spot mahazar, Ex. P2 falls under the category of spot cum seizure mahazar as it not only gives a clear picture of scene of occurrence immediately after the blast, but also the information with regard to seizure of M.O. 1 to M.O. 12 from the spot.

274. Ex. P2 dated 10.07.2000 is drawn between 8:00 and 10:00 a.m. by PW 52, N. Hanumanthappa P.I. of JJ. Nagar PS, Bangalore in the presence of Father Tomayar PW 1 and the two panch witnesses secured for the purpose of conducting mahazar at the blast site i.e., PW 2 B. Jesudas and one Sagainathan. PW 52, PW 1 and PW 2 have consistently spoken about inspection of the blast site by PW 52, noting the damage caused to the church building due to the impact of bomb blast, situation of main gate of the church on southern side etc. and also seizure of M.O.I. to 12 under Ex. P2. Ex. P2(a), Ex. P2(b) and Ex. P2(c) are the signatures of PW 1, PW 2 and PW 52 respectively.

275. Ex. P3 dated 14.07.2000 is drawn by PW 57, V.S. D''Souza after assuming further investigation of the case by visiting the place of occurrence i.e., St. Peter and Paul Church, in the presence of PW 1 and other panch witnesses. The scene of crime as well as existence of 11 shops on J.J. main road and 10 shops on Rayapur main road in the church premises are noted down in this mahazar. Ex. P3(a) and P3(b) are the signatures of PW 1 and PW 57 respectively and these two witnesses have deposed fully supporting the prosecution case.

276. The accused have cross examined PW 1, PW 2 and PW 52 with regard to drawing of mahazar Ex. P2 and seizure of MO 1 to MO 12 there under elaborately. Likewise they have also cross examined PW 1 and PW 57 with regard to Ex. P3. However nothing worthwhile is elicited to disbelieve the prosecution case with regard to drawing up of Ex. P2 and Ex. P3 at the spot and seizure of MO 1 to MO 12 under Ex. P2 in the presence of the witnesses thereto. Therefore no fault can be found with the findings recorded by the trial Court in this behalf.

(b) SEIZURE MAHAZAR

277. There are in all 7 seizures mahazars produced and marked in this case.

The original mahazars relating to seizure of MO 13 to MO 29 from the house of A12; MO 30 to MO 37 from the house of A-13; MO 38 to MO 75 from A-12''s work place and MO 76 to MO 80, the documents in the handwriting of A-11, seized from his workplace by PW 64 M.B. Appanna in the presence of panch witnesses, have been produced in SC 423/2001 pending on the file of the same Court as such they were called for and marked in this case as Ex. P80, Ex. P81, Ex. P82 and Ex. P83 respectively. After obtaining the certified copies of Ex. P80 to Ex. P83, they are marked as Ex. P247, Ex. P248, Ex. P250 and Ex. P251 respectively.

278. PW 64 states that on receipt of credible information, he went to the house of A-12 at 5th Cross, Gundappa Street, R.T. Nagar, Bangalore, along with the staff and panchas on 15.07.2000 and searched the entire house; there he found the passport of Amanat Hussain Mullaha, invitations for the conference, invitation sent to Pope Paul, letter by Deendar Ashram, invitation letter of the Ashram, list of institutions of Bangalore City, photocopy of passport of Sheikh Dawood Abdul Lathief etc. and seized them under the mahazar Ex. P. 80 (Ex. P247) in the presence of panch witnesses. PW 49 a witness to this mahazar has also spoken accordingly and identified MO 13 to 29 as the incriminating articles seized by PW 64 from the house of A-12.

279. PW 64 states that pursuant to the voluntary statement of A-13, he alongwith panch witness and staff went to the house of A-13 at No. 1683/9, Prasahant Nagar, Chickaballapur on 23.07.2000 and A-13 himself produced six English pamphlets of "warning", five urdu pamphlets, book in urdu and photo copy of portions of the Judgment of Dharwad Court, Kannada book of Deendar Channabasaveshwara and some photos in it, letter written by Islami Bithulmal Chikkaballapur, Kannada book "Lingayat" and Sandhyavandam Mahasankalpam etc. He seized them under the mahazar Ex. P81 (Ex. P248) and obtained the signatures of the panch witnesses. PW 50 D.N. Munikrishnappa a panch witness to this mahazar has spoken in support of the prosecution case, identified the articles seized from the house of A-13 at MO 30 to MO 37.

280. PW 64 states that on 29.07.2000 he took A-12 to BEML factory at New Thippasandra, where A-12 was working as lathe machine operator. He secured the Assistant General Manager of the factory, G. Vishwanath and one N. Venkatesha, searched the workplace of A-12 in their presence. By this time having learnt from the media that A-12 was arrested in connection with bomb blast case, the factory authorities had locked and sealed the table drawer of A-12. At the time of search this was opened and MO 38 to MO 75 were seized from there. Ex. P82 (Ex. 250) is drawn evidence in this seizure.

281. Ex. P83 (Ex. P251) dated 03.08.2000 is drawn while seizing MO 76 to MO 80 from the drawer of A-11''s table at BEML factory on 03.08.2000. A-11 was working as clerk in the Administrative Branch of BEML factory. PW 64 states that by the time he took A-11 to BEML factory, A-11''s table was locked and sealed by the factory security on coming to know about the arrest of A-11 and A-12 in connection with these cases. He got opened the same and searched it in the presence of AGM of the factory G. Vishwanath and another panch witness, A. Maria Nesan, an Engineer working in the same factory. MO 76 to MO 80 were found in A-11''s table drawer and the same was seized by drawing mahazar.

282. Except questioning PW 64 as to what prevented him from searching the table drawer of A-11 on 29.07.2000 itself when he had gone to search the workplace of A-12, nothing material is suggested to discredit the witness to Ex. P80 to Ex. P83 or any evidence is elicited from them to disbelieve the prosecution case.

283. The Trial Court while appreciating the evidence of the prosecution with regard to the seizure of material objects has come to the right conclusion that whenever investigation takes place in a case, the IO investigates each accused separately and therefore PW 64 could not search or seize MO 76 to MO 80 from A-11''s table drawer on the day of seizing MO 38 to MO 75 from A-12''s table drawer on 29.07.2000. This reasoning appears sound. Moreover the evidence that MO 76 to MO 80 are all in A-11''s handwriting is not disputed and therefore the contention of the accused that police fabricated them and then placed the same in A-11''s table drawer cannot be accepted. Therefore we find no reason to disturb the findings of the Trial Court with regard to seizure of MO 13 to MO 80 under Ex. P80 to Ex. P83.

284. PW 57 V.S. D''Souza has deposed that A-11 led him his staff and panchas Byrappa and V.S. Venugopal to a room in house bearing No. 12/45, 1st floor, ''C'' Cross, Behind Minerva Mills, Gopalapura, Magadi Road, Bangalore on 20.01.2000, took out a suitcase kept below the cot, opened the same with a key in his pocket and produced incriminating materials at Ex. P129 to Ex. P134 and he seized the same under Ex. P135.

285. On 21.12.2000 according to PW 57, A-28 led him his staff and panchas to the house situated at BTM Layout produced the photograph of absconding A-1 which is marked as Ex. P136 and other incriminating material at Ex. P137 to Ex. P140. He seized them all under the mahazar Ex. P141 in the presence of panchas and affixed signature as per Ex. P141(a). The accused have not seriously cross examined the IO with regard to drawing up of Ex. P135 and Ex. P141 as well as seizure of Ex. P129 to Ex. P134 from the house of A-11 and Ex. P137 to Ex. P140 from the house of A-28 thereunder respectively.

(c) INQUEST MAHAZARS

286. A-10, A-14 and A-15 were transporting bombs in a maruthi van on 09.07.2000. The bomb so transported exploded accidentally at 9.30 p.m. on the same day, in front of Minerva Mills, as a result of which A-14 and A-15, sustained burn injuries and died at the spot. The inquest was conducted on 10.07.2000 at Victoria Hospital, Bangalore.

287. Ex. P161 and Ex. P167 are the inquest mahazars pertaining to A-15 and A-14 respectively. Since the original inquest mahazars are produced in SC 423/2001, the certified copy of the same is produced in this case.

POINT No. 8

MAHAZAR WITNESSES TURNED HOSTILE

288. 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 outsiders. Though these witnesses have spoken about these accused and some of them have admitted that they are the members of Deendar Anjuman Ashram, computers were found in their houses at the time of search and their interrelationships. 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 those mahazars are marked in this case. The signatures are also marked. The question is what is the effect of Mahazar witnesses turning hostile.

289. If 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, 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.

290. 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.

291. In the case of Surendra Narain alias Munna Pandey Vs. State of U.P., it was 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."

292. 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 rte, 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."

293. In this particular decision, their 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.

294. In the case of Vahaji Ravaji Thakore Vs. State of Gujarat, , 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."

295. 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.

296. The Apex Court in the case of Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, 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."

297. 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[8]. 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."

298. In the case of Anil alias Andya Sadashiv Nandoskar Vs. State of Maharashtra, , it is held that:

"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 straight-forward 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."

299. The Apex Court in case of State of Kerala Vs. M.M. Mathew and Another, , 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....."

300. The law on the point 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.

301. In this case, the evidence regarding search and seizure and the. material objects which are seized, which are in the nature of books, literature, which dates back to 1920s is straight forward, consistent and specific. It 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 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 was 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 Judges 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, their evidence regarding search and seizure of the weapons from the accused is straight-forward, consistent and specific. It inspires confidence and learned Counsel for the accused 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 material objects and documents from the conscious possession of the accused has been established by the prosecution beyond any reasonable doubt.

Re: POINT No. 9

SECTION 27 OF THE INDIAN EVIDENCE ACT, 1872

302. 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.

303. 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."

304. 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.

305. The conditions necessary of operation of Section 27 of Evidence Act, are enunciated in State of Kerala Vs. M.M. Mathew and Another, 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."

306. 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.

307. Further in the case of State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, , 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."

308. 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.

309. "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.

310. 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.

311. 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. 10

ADMISSIBILITY OF SECONDARY EVIDENCE

312. 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. 11 APPRECIATION OF EVIDENCE

313. 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.

314. The case of the prosecution is that on 09.07.2000 prayer and lectures were arranged in St. Peter and Paul Church situated at J.J. Nagar Main Road to celebrate the annual festival, procession was taken out in this behalf from CAR quarters at Sirsi Circle to the Church lasted from 6:00 p.m. to 8:30 p.m. Thereafter, there was a mass prayer in the Church and the entire celebration was over by 9.45 p.m.

315. A-10 along with deceased A-14 and A-15, in furtherance of their conspiracy to Islamise India by creating hatredness, communal disturbance and derailment of Indian economy planted powerful bombs in the premises of the above church. In furtherance of their attempt, these accused carried bombs in a blue colour Maruti Van bearing registration No. GA-01/U-2786 belonging to A-10 for planting the same at some other churches in Bangalore. A-10 was driving the said Maruti van at high speed and in a rash and negligent manner when it hit a road hump near Minerva Mills, Bangalore resulting in explosion of bombs. Consequently the van also exploded. As a result of this, not only the parts of the Van but also some letters of threat, pamphlets, documents pertaining to the vehicle and personal documents of A-10 were found scattered all over the place; and some documents, letters of threat etc. were found in the dash board of the Maruti Van.

Due to the impact of explosion, some parts of the van also hit an oncoming Maxicab and thereby damaged the vehicle and injured its driver.

316. In the above incident, A-14 and A-15 who were travelling in A-10''s Maruti Van at that time died at the spot and A-10 who was driving the van also sustained injuries. P.W. 58 drew the Mahazar Ex. P162 on 10.07.2000 at the scene of occurrence between 3.00 p.m. and 5.00 p.m. in the presence of R. Gopal and S. Ramanna and seized the incriminating materials found there, in connection with S.C. 423/2001, which was also tried along with this case. Ex. P161 and Ex. P167 are the inquest Mahazars pertaining to the dead body of A-15 and A-14. Therefore, we have to now consider whether the prosecution has made out the case not only against A-10 but also against A-14 and A-15, as it was a collective overt act.

317. A-10 was aged about 45 years at the time of offence and residing with wife PW 16 Sayeeda Barkath Unnissa in his father-in law PW 14 Sattar Khan''s house. Though worked as an Accounts Manager in Compudyne Infosis Ltd., a Multi-National Company, A-10 projected himself as a Chartered Accountant as he also happened to work in a Chartered Accountant Company called Barkath & Co. A-10 has studied upto B.Com but not completed C.A. and did not hold licence to practice on Income Tax and Sales Tax side, that is what emerges from his statement U/s. 313. Cr.P.C. This is the conduct of A. 10, which is relevant in terms of Section 8 of the Indian Evidence Act.

318. PW 1 lodged first information Ex. P1, after the occurrence and Cr. No. 113/2000 came to be registered on the said basis. The place of occurrence is situated within Jagajeevanram Nagar Police Station limits and P.W. 52, the Police Inspector attached to that station having visited the spot, has given evidence in detail as to how the place of occurrence appeared soon after the blast; how this incident affected the feelings of persons belonging to Christian community, provoked them to indulge in illegal acts of harming life and property of members of Muslim community etc. Ex. P2 is the Panchnama drawn at the spot and M.O. 1 to M.O. 12 were seized thereunder. A rough sketch of the entire locality was prepared as per Ex. P. 84.

319. PW 52 has also deposed to the effect that on coming to know that a van was blasted due to the bomb explosion within Magadi Road Police Station limits and one of the accused i.e., A-10 injured therein was being treated in St. John''s Hospital, he visited the said hospital but A-10 was unconscious. Interestingly, A-10 has not cross examined PW 52 with regard to these aspects except putting a few questions regarding the preparations made in connection with the annual celebration at the Church and other accused have not even cross-examined him.

320. PW 42 and PW 48 have also spoken about the grim situation that existed in that area consequent to the blasting of the church. Cr. No. 114/2000 also came registered for the offence punishable U/Ss. 143, 144, 147, 435, 427 r/w Sec. 149 IPC; additional police force including KSRP and CAR was deployed to bring

the situation under control. On the basis of the report submitted by J.J. Nagar Police, P.W.-55 the then Commissioner of Police, Bangalore had issued prohibitory orders U/s. 144(2) Cr.P.C. as seen from Ex. P89. This amply makes it clear that A-10 and his associates were successful in their efforts to create disharmony among members of different communities and thereby derailed the law and order situation in J.J. Nagar Police station limits to some extent.

321. In order to prove the overt act of A-10, A-14 and A-15 planting bomb in St. Peter and Paul Church, the prosecution has examined PW 3, P.N. Mukunda who worked as a Salesman in stationery shop near the Church. It is in the evidence of this witness that the shop in which he works is open from 6.30 a.m. to 11.00 p.m. on all the seven days in a week and he used to go out only for breakfast and lunch. On 09.07.2000 there was a festival in the Church and at about 8.30 p.m. on when he was talking to the owner outside the shop, a blue colour Maruti van with Goa registration number stopped in front of Medical Store situated adjacent to their shop. Two persons got down from the van and walked towards the church with a plastic cover in their hand while the third person stood near the van at a distance of 5 feet from their shop. Noticing this, the shop owner Nanjundaiah told that the devotees had come from Goa. Sometime later those two persons returned without the plastic bag, saying in urdu "Chalo Kaam Hogaya". The third person standing near the van drove the van with the other two persons towards Minerva Mills.

322. PW 3 further states that at about 9.50 pm or 10.00 p.m. on the night, he heard a huge blast sound from inside the Church and saw people running in all directions. Therefore he locked the shop within five minutes; owner of the shop went towards the Church and he went back home as he was frightened. He was called to the police station twice along with Nanjundaiah, Ravi Prasad and Chinna Dorai. Photos Ex. P4 and P5 were shown to them. Two or three months later he was required by the police to go to Bangalore Central Jail for identifying the accused. When he went there, ten persons were standing in the presence of the Magistrate and he could identify A-10 S.M. Ibrahim as the person driving the blue maruti van with Goa registration number on that fateful night. Ex. P6 is the test identification parade report and Ex. P6(a) is PW 3''s signature. PW 3 is extensively cross-examined with regard to Identification Parade and pleads ignorance about where exactly A-10 was standing among the ten persons or their dress colour, but says that some were wearing lungis and the other persons present there did not resemble A-10.

323. After additional charge was framed, PW 3 was called for further cross-examination. He admitted that earlier to the date of incident, he had not seen A-10, A-14 or A-15 and that his statement was recorded at about 11.30 a.m. after the news of bomb blast in the church was published in the papers. He has deposed that A-14 was the person holding the bag and during test identification parade, he noticed that A-10 had sustained burn injuries on the face and hands and was holding a stick. However this witness has denied the suggestion that he

identified A-10 on the basis of the information published in the newspapers and due to compulsion from the police.

324. P.W. 57 is the Investigating Officer, who arranged for the Test identification parade of A-10 through Tahsildar, Bangalore North Taluka only after obtaining necessary permission from the III ACMM, Bangalore. Accordingly, P.W. 56 conducted the test identification parade in the Central Prison premises. As seen from the evidence PW 56 secured A-10 and six others; they were made to stand in a row. A mahazar was drawn and each witness was called to identify the accused separately and they identified A-10 as per Ex. P99, Ex. P100, Ex. P6, Ex. P101, Ex. P102 and Ex. P103.

325. It was contended that the identification parade is contrary to law and therefore, the identification of A-10 by PW 3 cannot be acted upon. It is true that whenever an identification parade is done after showing the photograph of the accused in the police station, it loses its significance. The Court cannot consider it to be a good piece of supplementary evidence. But it is settled law that the identification parade belongs to the stage of investigation. There is no provision in the Code, which obliges the Investigating agency from holding or conferring a right upon the accused to an Identification parade. The Court identification itself is a good identification in the eyes of law.

326. It is not always necessary that Court identification must be preceded by the Test Identification Parade. This depends upon the facts and circumstances of a given case. When a witness identifies an accused in the Court, the Court has to appreciate the evidence with reference to the law, intrinsic worth of such identification, other evidence on record, circumstances and the probabilities. When a stranger is a witness and identifies an accused in the Court, the Court by way of caution or prudence may seek some assurance before accepting such identification. That assurance would be available from the positive result of the test identification parade. However absence of test identification parade is not invariably fatal, for assurance may be available from other source and circumstance. Showing of a large number of photographs to the witness and then asking him to pick out the photograph of the suspect is also a recognised procedure. The material on record clearly establishes that A. 10 was the owner of the Maruthi Omni Van bearing registration No. GA-01/U-2786. He was driving the vehicle on 09.07.2000 at 9.30 p.m. when it was blasted because of the bombs which were carried in the van. It is also not in dispute that he was seriously injured. Other occupants A. 14 and A. 15 died at the spot. P.W. 5, the father of A. 15 has categorically stated that the said van belongs to him. He was driving the vehicle. P.W. 3 has identified the said vehicle, which was kept in the basement floor of the Prison. The very argument that A. 10 being injured in the bomb blast was walking with the help of a stick and was made to stand with the stick; others made to stand in the line for identification did not look like him fortifies the prosecution theory that A. 10 had sustained injuries in the bomb blast and was struggling to walk; and therefore had a stick in the hand when made to stand for

identification parade. Therefore, in the instant case, even if the identification of A-10 by PW 3 at the time of identification parade is held to be not acceptable, other material on record clearly establishes the complicity of A-10 in the commission of the offence.

327. P.W. 5, the father of A-15 has deposed that A-10 and A-15 were friends. Initially A-10 used to frequent their house on a scooter to meet A-15 and later he used to come in a blue or black colour van. A-15 told that he wanted to learn driving the said van and continued the friendship with A-15. He in fact opposed the said idea and advised his son to learn driving by joining a driving school so that he could get a driving licence. It is also forthcoming from PW 5''s evidence that his son A-15 had studied up to B.Com. On 09.07.2000 at 1.30 a.m. there was a phone call informing about his son''s hospitalization in Victoria due to car accident. He went to Victoria Hospital and was there till 5.00 a.m.; A. 11 had also come to the Hospital. Then, Police from Magadi Police Station came there and took him to the Station for investigation. In the Police Station he came to know that his son died at the spot. Later, from the news papers, he learnt that his son died in a bomb blast and there were three persons in the van at that time. He also came to know that the persons died in the accident are his son, A. 15 and A. 14; the driver of the van, A. 10, was seriously injured. He and A. 10 brought the dead body of his son to his house and 8.30 p.m., in the night and buried the dead body. He has identified A. 10 before the Court. The cross-examination of this witness shows that A-10 sometimes attended Darshe Quran programs held in his house, but would leave immediately thereafter as he was not interested in religious program owing to young age.

328. PW 6, the father-in-law of A-14 too has identified A-10 before the Court stating that the said accused attended the programs at PW 5''s house and also the Urs at Hyderabad but claims to be not aware of A-10, A-14 and A-15 moving about together.

329. PW 16 Sayeeda Barkath Unnissa and PW 17 Gulzaar Begum are sisters. They are the daughters of PW 14 Sattar Khan. PW 16 who is the wife of A-10 has deposed that her husband was working as an Accounts Manager in Compudine Infosystem and has computer knowledge. From these three witnesses the prosecution was only able to elicit as to PW 16 and A-10 are residing in the house belonging to PW 14 at Varthur and it has telephone connection bearing No. 28538537. The prosecution treated them hostile and cross examined at length but the efforts bore no fruits as could be seen from the evidence on record.

330. PW 60, G.A. Bawa, the then ACP of Chickpet Sub-Division conducted further investigation in Cr. No. 290/2000 of Magadi Road Police Station by visiting the house of A-10 on 10.07.2000 and searched the same in the presence of Panchas, recovered 46 incriminating articles including a computer system from there under a Mahazar. Ex. P182 is the certified copy of the said mahazar. According to the said witness on 12.07.2000 when the seized computer system was booted in the presence of panchas, through PC 3028 Laxminarayana who is well versed in

operating the computers, the startup screen displayed the warning "Christians, stop conversion or quit India". Thereafter, he got it packed and sealed with the seal GAB for subjecting the same to further examination by the experts and drew the panchanama, certified copy of which is at Ex. P183.

331. Ex. P184 and P185 are the certified copies of Post-mortem report pertaining to A-15 dated 11.07.2000 and A-14 dated 19.07.2000 respectively received by PW 60 from Victoria Hospital, Bangalore. He has also identified A-10 before the Court. Cross-examination of this witness mostly relates to his computer knowledge and the attempts made to secure information from the computer by employing unqualified persons. His evidence that file pertaining to A-10 in that computer could not be opened for want of pass word has remained unchallenged. Such being the case the contention of A-10 that on the basis of the hand bills found near Minerva Mills and other places, PW 60 got the above materials fed in the computer cannot be believed that too when he clearly admits that he does not even have basic knowledge of the computers. From the above it is clear that the accused do not dispute seizure of computer system from A-10''s house by PW 60 and that its startup screen displayed the warning "Christians stop conversions or quit India" which is found even in the hand bills seized from the blast site near Minerva Mills. Seizure of hand bills nears the place of the blast at Minerva Mills is also not seriously disputed. It is pertinent to note that even PW 14 to PW 16 have admitted seizure of computer from A-10''s residence. Following are the pamphlets seized from the accused.

