

(2013) 12 BOM CK 0093

In the Bombay High Court

Case No : Criminal Appeal Nos. 488, 520 and 778 of 2006

Shaikh Iliyas Shaikh Yousuf and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-12-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 409

Hon'ble Judges : M.T. Joshi, J;K.U. Chandiwal, J

Bench : Division Bench

Judgement

M.T. Joshi, J.—Heard learned counsel for both sides. All the present six appellants four (in Criminal Appeal No. 488/2006 and two in Criminal Appeal No. 520/2006) were convicted while two of the respondents (in Criminal Appeal No. 778/2006, filed by the State) were acquitted by the learned 2nd Ad hoc Additional Sessions Judge, Jalgaon in Sessions Case No. 126 of 2002, vide judgment and order dated 12th May, 2008. Therefore, the present respective appeals are filed.

2. These appellants (in Criminal Appeal No. 488/2006 and Criminal Appeal No. 520/2006) and the respondents (in Criminal Appeal No. 778/2006) alongwith two other accused were tried for the offences punishable u/s 153-A, 120-B, 121, 121-A, 122, 123, 201, 506-B read with section 34 of the Indian Penal Code and also u/s 4(a), 4(b) and 5 of the Explosive Substances Act, 1908 (for short, "the E.S. Act").

3. The State of Maharashtra filed appeal against the acquittal of original accused No. 6 Sk. Siddik Sk. Ajij and accused No. 7 Khalid Asadkhan Ajamalkhan but did not file appeal against accused No. 4 Sharifkhan Sarfaraj khan and accused No. 10 Sayyad Shah Hasib Raja @ Tasib Raja @ Hasibbhai @ Hasif Raja s/o Firdosh Rajah.

4. In Criminal Appeal No. 488/2006, we have the original accused Nos. 1, 3, 5 and 9 while in Criminal Appeal No. 520/2006, the appellants are original accused Nos. 2 and 8. For the sake of convenience, the appellants/accused in two of the

criminal appeals and the respondents/accused in the State Appeal would be termed as "accused" by their serial numbers as arrayed before the learned Sessions Court.

5. Accused No. 1 Shaikh Ilias Shaikh Yusuf was convicted for the offences punishable u/s 120-B of the I.P. Code and u/s 4(b) and 5 of the E.S. Act. He was sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for one year, for the offence punishable u/s 4(b) of the E.S. Act, and for the offence punishable u/s 5 of the E.S. Act, he was sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to undergo rigorous imprisonment for one year.

Accused No. 2 Sk. Shakil Ahmad Abdul Annan was convicted for the offences punishable u/s 153-A and 506-B of the I.P. Code. He was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3000/-, in default to undergo rigorous imprisonment for one month for the offence punishable u/s 153-A of the I.P. Code. He was sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 3000/-, in default to undergo rigorous imprisonment for one month, for the offence punishable u/s 506-B of the I.P. Code.

Accused No. 3 Sk. Irfan Abdul Rauf was convicted for the offences punishable u/s 4(b) and 5 of the E.S. Act and u/s 120-B of the I.P. Code. On each count, he was sentenced to suffer rigorous imprisonment for ten years. So far as his conviction for the offence punishable u/s 4(b) of the E.S. Act is concerned, he was directed to pay a fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for one year.

Accused No. 5 Sk. Rijwan Sk. Rashid was convicted for the offence punishable u/s 4(b) and 5 of the E.S. Act and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for one year. He was further convicted for the offence punishable u/s 120-B of the I.P. Code and sentenced to suffer rigorous imprisonment for ten years.

Accused No. 8 Wakarul Hussen Mujaffar Hussen was convicted for the offence punishable u/s 506-B of the I.P. Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 3000/-, in default to undergo rigorous imprisonment for one year.

Accused No. 9 Guljar Ahmad Gulam Mohammad was convicted for the offence punishable u/s 4(b) and 5 of the E.S. Act and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for one year. He was further convicted for the offence punishable u/s 120-B of the I.P. Code and sentenced to suffer rigorous imprisonment for ten years. He was also convicted for the offence punishable u/s 5 of the E.S. Act and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for

one year.

6. So far as the accused who were convicted for the offences punishable u/s 4(b) and 5 of the E.S. Act, the sentences, as awarded by the learned Sessions Judge, on account of the said offences were directed to run consecutively.

7. The prosecution, in short, has alleged that for a period of about 4/5 years preceding to 25th July, 2001, all the present accused, alongwith the acquitted accused and some other absconding accused, being active members of Students Islamic Movement of India (for short, hereinafter called as "SIMI"), which is later on declared as unlawful organization, started promoting feeling of enmity and hatred between Hindu and Muslim communities, either by participating in meetings with provoking speeches, publishing posters and attending weekly meetings. As a part of the said strategy, some of these accused had arranged for explosive substances from Kashmir, liaisoning with certain terrorist organizations, sending personnel for training for abetting war against the Indian Army in Doda and Kashmir and attempted to cause bomb-blasts at Nagpur on 20.05.2001. These activities were carried to overawe the State by means of criminal force. Specifically, accused No. 1 Shaikh Ilias Sk. Yusuf, accused No. 3 Sk. Irfan Abdul Rauf, accused No. 5 Sk. Rijwan Sk. Rashid, accused No. 7 Khalid Asadkhan Ajamalkhan and together conspired, prepared, used and concealed the explosive substances used for facilitating the waging of the war. They by concealing the explosive substances, concealed the evidence.

Further, some of the youths from Jalgaon were sent for training purposes in Pakistan. Probably some of them have died in encounters and when their guardians made enquiries with accused No. 2 Sk. Shakil, accused No. 8 Wakaraul Hussen, they gave criminal intimidation by threats to their life or their family members with intention to cause alarm. Further by procuring explosive substances and concealing them, the respective accused have committed the offences punishable u/s 4(a), 4(b) and 5 of the E.S. Act.

The allegations in nutshell are that all the present accused alongwith acquitted accused and absconding six accused being office bearers or active members of SIMI, the general line that emerges in the investigation as per the prosecution would show that accused No. 3 Sk. Irfan, accused No. 7 Khalid Asadkhan, accused No. 5 Sk. Rijwan alias Mustak had prepared a pipe bomb on 18.05.2001 in the house of one Jainoddin. While explosives were secured from Jammu and Kashmir with the aid of accused No. 9 Guljar Ahmad, other material like iron pipe, iron balls, 9 volt batteries were secured from the various shops of Jalgaon. The pipe was welded at a shop of one of the acquaintance and the pipe bomb was prepared. Further, by going to Nagpur, in the month of May, 2001, one of the bombs was planted at Nagpur near R.S.S. headquarters. However, the said bomb was recovered before it could be exploded. In that view of the matter, the police action started and therefore, all these accused persons had conspired to hide the remaining explosive substances alongwith iron balls, etc. Accused No. 1 Shaikh Ilias accordingly hid those articles in polythene bags under one tree in a field of

Meherun village nearby Jalgaon and in an abandoned well.

Besides this, during the house-search of these accused, incriminating literature like posters, diaries, magazine, wire, diagram circuit, passport, etc. were found. The diagram was prepared by accused No. 9 Guljar Ahmad. Further, it was found that some of the accused had visited Nagpur and Patna by reserving seats in railway in pseudo names.

8. Before the trial Court, in all 48 witnesses were examined. Bulk of the witnesses were the panch witnesses in whose presence house-search of the respective accused was taken, the statements of some of them u/s 27 of the Evidence Act leading to recovery were recorded and seizure of railway reservation slips, etc. was done. As certain written documents like the preparation of diagram, literature, etc. were found, the documents were sent to the handwriting expert alongwith the specimen signatures and the said handwriting expert was examined. Since the posters and magazines seized during the search were in Urdu script, the translator PW-47 was examined.

9. On the other hand, from the side of accused No. 1 Shaikh Ilias, accused No. 2 Sk. Shakil Ahmad, accused No. 3 Sk. Irfan, accused No. 5 Sk. Rijwan and accused No. 8 Wakarul Hussen, eight witnesses were examined. They were mostly relating to the education and financial conditions of the relevant accused.

10. The learned Sessions Judge considered the cases qua each of the accused independently to find out the material against them.

11. The defence of the accused is that of total denial. According to them, they were falsely roped in a false case.

12. Mrs. A.N. Ansari, learned counsel, advanced the argument on behalf of the appellants in Criminal Appeal No. 488/2006 i.e. accused Nos. 1, 3, 5 and 9. All these accused, except accused No. 9 Guljar Ahmad, are released on bail upon remaining in custody for a period of about six years. Accused No. 9 was also ordered to be released on bail but since he could not arrange for surety, he continued to remain in jail.

13. Mr. Joydeep Chatterji, learned counsel, made submissions on behalf of the appellants in Criminal Appeal No. 520/2006 i.e. accused No. 2 Sk. Shakil and accused No. 8 Wakarul Hussen. These accused have already undergone imprisonment for a period of six years.

14. Mr. K.G. Patil, learned A.P.P., made submissions on behalf of the State in all the three appeals, including the State appeal bearing Criminal Appeal No. 778/2006.

15. Considering the volume of the evidence and the line of the organization of the matter made by the learned Sessions Judge and arguments advanced on similar line, we also propose to deal with the case by considering the material regarding each of the accused and then find out as to whether the case of

conspiracy is made out against the relevant accused.

ACCUSED No. 1 - SHAIKH ILIAS SK. YUSUF

16. This accused No. 1 is convicted for the offence punishable u/s 120-B of the I.P. Code and u/s 4(a), 4(b) and 5 of the Explosive Substances Act, 1908. The first of the witness to name this accused is PW 8 Vijay Shamrao Shinde.

PW 8 Vijay Shinde deposed that on 28.07.2001, he stood a panch for the house-search of accused No. 1 Shaikh Ilias in Aksanagar locality of Jalgaon. From the cupboard of the house, his passport at Article was seized.

17. Next of the witness to name accused No. 1 Shaikh Ilias is PW 9 Sanjay Raghunath Patil. According to this witness, accused No. 1 made a statement that remaining explosives and related articles were concealed in a well in the field situated at Mehrun in the outskirts of Jalgaon. Thereafter, according to the witness, the accused led the panchas and police to the well from which the explosive substances kept in one plastic carry-bag was fished out. The accused has also pointed out a tree, popularly called as kasat, in the field and by digging a pit under the same, he recovered a polythene bag in which three detonators, one remote control and one battery was found. The panchanamas of all these exercises were proved by this witness at Exhibit 126.

18. The evidence of the panch witnesses was criticized by the learned counsel for the appellants/accused. It was submitted that while PW 8 Vijay was a panch witness in the present crime for three times regarding three different events, his cross-examination would show that as a auto-rickshaw driver, he was picked up to become a panch witness. Further, there were lacunae regarding obtaining the signatures of the owner of a house from which search was made of the another accused.

19. As regards PW 9 Sanjay, it was submitted that on some of the pages of panchanama, date is not mentioned. Further, below the signatures also, date is not given. It was further pointed out that according to this witness, copies of the panchanamas were not supplied to the accused. It was vehemently argued that name of the owner of the field is no-where disclosed and the field naturally is a open place accessible to anybody. The witness was excused for some time from the witness box to answer nature's call. Thereafter, his cross-examination was resumed. He then deposed that accused never stated about detonators, remote control or battery in a pit under the tree.

It is to be noted that the lacunae, as detailed below, are not material. The witness has deposed regarding the finding of the polythene bags and naturally, he is not expert in explosives so that he would name the items as detonators, remote control, etc. Therefore, the argument cannot be accepted.

The evidence of the Investigating Officer would show that when three detonators were sent to the Forensic Laboratory, those were returned with a direction that first the detonators should be got exploded and thereafter the pieces thereof be

sent as sample to the Laboratory. The evidence of PW 42 Police Naik Ashok Tathe from Explosives Destruction Squad, Aurangabad would show that on 25.09.2001, on the directions of superiors, he went to Jalgaon and exploded the detonators in presence of panch witnesses, including PW 29 Pradeep Patil and the pieces were collected in a sealed packet for scientific analysis thereof.

The pieces of three detonators, remote control device, 9 volt batteries, round moist ball (of white colour wet powder), the plastic bags, were sent by the Investigating Officer initially to Chief Controller of Explosives, Nagpur vide Exh. 460, as according to the prosecution, earlier, some of the present accused were instrumental in planting pipe bomb at Nagpur. The Chief Controller of the Explosives, however, returned the same vide letter Exhibit-470 on the ground that the Department was not associated with the examination of the bombs and other explosive devices. Similar is the case regarding the other materials like ABCD timer device, 9 volt battery, ABCD timer chart, sent to the Chief Controller of Armament, Khadki, Pune. Thereafter, the Investigating Officer has tried with other Government agencies at Hyderabad, etc.

Ultimately, the Regional Forensic Science Laboratory at Aurangabad, vide Exhibit-478, communicated the analysis of the above stated articles. It was communicated that the white Lump in a polythene bag (the moist ball) contained potassium chlorate and sodium while moist earth in polythene bag contained nitrobenzene. The nylon bag (polythene bag) had residues of calcium carbonate. Vide Exhibit-479, the same Laboratory, vide its letter dated 19.10.2001, upon analysis of the articles, communicated that the electric wires are detected with lead azide and it was further explained as per the literature that this chemical lead azide is used as primary/initiating high explosive used in detonators.

At Exhibit-480, we have the report of Central Forensic Science Laboratory, New Delhi, dated 24.01.2002. Upon examination, it has reported that the remote control device could form a component of improvised explosive device and is, therefore, explosive substance as defined in the Explosive Substances Act, 1908. As regards 9 volt battery, it was certified that it can initiate a normal electric detonator.

Section 4 and 5 of the Explosive Substances Act, 1908 read 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 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.

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.

20. The evidence thus collected would show that though there is definite evidence regarding the possession of the explosive substances or the related articles, there is no evidence to show that the explosive substances were of the nature which would "endanger life or to cause serious injury to property". The conviction for the offence punishable u/s 4 of the Explosive Substances Act, therefore, cannot be maintained. However, in view of the possession of the Explosive Substances Act, the conviction of this accused and the other relevant accused u/s 5 of the Explosive Substances Act, as would be detailed later on, will have to be maintained.

ACCUSED NO. 2 SK. SHAKIL AHMAD ABDULANNAN

21. According to PW 1 Ashok Ladwanjari, in his presence and in presence of the accused, the Investigating Officer has searched the house of this accused on 26.07.2001. In a show-case, three articles were found. Those were (i) five copies of paper posters which were headlined as "Ilihi Bhej De Mohammad Koi" (ii) a colour poster of Students Islamic Movement of India, which was titled "Bus Bode Na Bano, Aur Sulah Ki Darkhast Na Karo Tum Hi Galib Rahoge" and (iii) twenty copies of posters titled "Aasan Nahi Mitana Namonishan Hamara". One Police Head Constable Rashid Kureshi has translated the above Urdu scripts on the spot

and thereupon these articles were seized. The panchanama to that effect is at Exhibit-98.

22. We have the evidence of PW 12 Iqbal Shaikh Rasool i.e. father of one of the missing youth Khalid Shaikh Iqbal. PW 12 Iqbal Shaikh deposed that his son was jobless after obtaining Diploma in Engineering. He used to carry work of SIMI alongwith his 3 to 4 friends. On one occasion, his son had been to Delhi alongwith 4 to 5 other unknown youths. He returned to Jalgaon after 15 days and again went to Pune, but thereafter he went missing. Thereafter on 04.10.2000, he received a phone call on a phone which was in the house of his neighbor (P.W. No. 15 Shaikh Hanif). The person who made the phone call told that his son would return within 3 to 4 days and cut off the same. Thereafter again on 06.10.2000, he received a message from the same telephone from the anonymous caller that the son would never return and the phone was cut off. Since the missing boy used to be in the company of the present accused No. 2 Sk. Shaikil the witness, therefore, went to him and made query about his son. On that, the accused No. 2 replied that father should keep silence otherwise his son would never return to home. The witness also deposed about other accused i.e. accused No. 8 Wakarul Hussen to whom he visited on 07.10.2000, whereat the similar incident occurred of which reference would be made later on.

PW 15 Shaikh Hanif corroborates the version of this witness regarding phone-calls.

23. PW 14 Sk. Supdu Sk. Shabu is the father of Sk. Asif, who is the absconding accused in the present case. The said accused was studying in IInd Year of Engineering when he went missing. Earlier, he was always seen in the company of accused No. 5 - Sk. Rijwan. According to this witness, his son i.e. absconding accused took an amount of Rs. 10,000/- from him on 27.08.2000 on the pretext of paying college fees and went missing. However, he did not receive any answer. As accused No. 2 Sk. Shakil is the known worker of SIMI, the witness visited him whereupon the said accused initially told that he did not know anything about the son of the witness. Upon further questioning when the accused did not tell anything, the witness said that he would lodge a report to Police Station. Thereupon, the accused told the witness that he should not lodge the report else he would be in trouble. When another accused No. 7 Khalid Siddik ultimately on certain visit told that son of the witness had been to Kashmir, the witness asked him to bring his son whereupon said Khalid told that he will not go there. Thereafter, in the month of October, 2000, the witness received a phone call from his son that he would return within a short period. However, he did not return.

24. PW 18 Sk. Farooq Abdulla was the Secretary of of Aksa Masjid Trust, Jalgaon in the year 2001. He deposed that at that time, he was also Incharge President of the said Trust upon death of the President. According to him, accused No. 2 Sk. Shakil and accused No. 8 Wakarul Hussen, in the capacity of President of Jalgaon unit of SIMI, used to give application for holding Istema in the Masjid of the Trust. In all 10 applications were made and the permission was granted. He

also deposed about accused No. 5 Sk. Rijwan as one of the members of SIMI, who used to accompany accused No. 2. The witness further deposed that the programmes of organization of SIMI Used to take place in Jalgaon city. The applications made by the present accused were pointed by the witness at Articles 1 to 10 bearing endorsement on some of them i.e. some of the Articles at Exhibit-147 to Exhibit-165.

In cross-examination, witness PW 18 Sk. Farooq admitted that after the organization was declared as unlawful, none of the accused moved application to him for organizing any function. Previous to that, many functions on large scale were organized by the organization. In the cross-examination, the witness admitted that the invitees to the function held in the city were from all communities, including Hindus. He further clarified that Istema (a meeting) means congregation for giving religious message. He further admitted that though the applications were made in the name of the present accused, the applications were not prepared in his presence and the applicant was mentioned in the application.

25. Next of the witness is PW 47 Mohammed Samiulla Md. Sadulla, who has translated some of the papers from Urdu script, which is as per the version given by the above witness i.e. PW 18 Sk. Farooq Abdulla.

26. Mr. Joydeep Chatterji, learned counsel for the appellants/accused, submitted that while the seizure of the posters from the house of the accused is flawed for many reasons like suspicion regarding collection of the panch witnesses, absence of the date below the signatures on the labels under which the articles were seized, absence of crime number in the panchanama, admission of the panch witness that he was a member of Bhartiya Janata Party for some period and admittedly a believer in Hindutwa, above all the posters would not indicate that the recitals therein were aimed at disturbing the harmony between the two communities. He further submits that testimony of PW 12 Iqbal Shaikh Rasool, the father of one of the missing accused does not show that any criminal intimidations i.e. "injury to the life" were given to this witness. According to this witness, merely it was stated that if the witness files a report, then the witness would be in trouble and this reply was sought to have been given by the present accused.

27. As regards the translation of the posters, PW 47 Mohammed Samiulla Md. Sadulla, the Translator is a Committee member in Amravati University in faculty of Arts. He has obtained Ph.D. in Urdu and a graduate in Marathi literature. The tone and tenor of the posters would show that invocation of the Allah and religious feeling were there. In one of the posters, invocation was to the Allah to send a "Mohd. Gaznavi". Further a palm is inscribed on the posters wherein besides the religious word, term "Tyrant", "propaganda against the Islam" and "nude culture" etc. are inscribed.

28. Though the religious inscriptions cannot be termed as an attempt to disturb

the harmony between the communities, the rest of the phrases as detailed supra cannot be termed on similar line. A reference to send "Mohd. Gaznavi" in context to "nude culture of the tyrant" would definitely points towards the said attempt.

29. As regards the testimony of PW 12 Iqbal, in the background of the clear facts that youths were sent to Kashmir who vanished in the thin air, a retort "if you lodge a complaint, you would be in trouble", will have to be appreciated. Though the provisions of section 506-B of the I.P. Code are to the effect that criminal intimidation should be with injury to the life, it is not necessary that the said words actually should be used.

In that view of the matter, no fault can be found with the reasoning forwarded by the learned Sessions Judge while convicting the accused No. 2 - Sk. Shakil Ahmad Abdul Annan, on both counts.

ACCUSED NO. 3 - SK. IRFAN ABDUL RAUF

30. This accused Sk. Irfan Abdul Rauf was convicted for the offences punishable u/s 4(b) and 5 of the Explosive Substances Act and u/s 120-B of the I.P. Code.

This accused was arrested on 31.07.2001. The allegations against him are that he traveled from Bhusawal to Durg and Bhusawal to Gondiya by using pseudo names as K.A. Deshmukh and R.R. Deshmukh. The railway reservation slips in that regard were seized from the railway personnel. His specimen handwritings were obtained in presence of the panch witness. During his house-search, one register is seized in order to obtain natural handwriting to tally it with the handwriting in the two railway reservation slips. The conclusion of the investigation was that this accused alongwith accused No. 5 Sk. Rajwan went to Nagpur on 20.05.2001 to place a pipe bomb there, at R.S.S. Headquarters, which was prepared at Jalgaon.

According to PW 8 Vijay, on 09.08.2009, present accused No. 3 Sk. Irfan while in the custody of the police, initially made a statement and thereafter showed a shop named as Vijay Times at Jalgaon from where three batteries at the rate of Rs. 20/- per battery were purchased by him. Panchanama to that effect is at Exhibit-122. It is the prosecution case that three batteries of 9 volt were purchased for the purpose of preparation of bombs. According to the prosecution, those batteries were used in a bomb that was planted at Nagpur in third week of 2001.

31. PW 5 Janardhan Eknath Atarde was examined regarding seizure of a diary under panchanama at Exhibit 109 from the house of this accused No. 3 Sk. Irfan on 30.07.2001. The diary is pointed by him at Article-H.

The learned trial Court held that the seizure of the diary is innocuous and it leads the prosecution case no-where.

32. PW 6 Raju Puna Koli has deposed that railway reservation slips in the name of K.A. Deshmukh and R.R. Deshmukh were seized in his presence from the

Superintendent of Railway Station, Bhusawal under the seizure panchanama at Exhibit-113 on 02.08.2001. Those slips were of date 20.04.2001 for journey on 20.05.2001 from Bhusawal to Durg. The slips as well as the reservation chart at Article 11 to 13 were seized in his presence.

During his cross-examination, various lacunae, like non-enquiry regarding the cancellation or otherwise of the same, the improbability of the panch witness being near the police club when he was called while his residential place is a transport nagar locality i.e. at a distance of 3 kms., were pointed out. It was also revealed that the panch witness is a truck driver. He, however, denied that being a truck driver, he has always worked with the police and therefore, at the relevant time, he was deposing falsely.

33. PW 10 Dinesh Narayan Sonar has deposed that he is serving with a factory of manufacturing Steel Almirah of one Anil Rana, about 3 to 4 years of entering the witness box (date of deposition is 19.10.2004). The present accused No. 3 Sk. Irfan Abdul Rauf alongwith accused No. 5 Sk. Rijwan had come to the factory with 2/3 iron pipes. At that time, accused No. 3 Sk. Irfan had drilled one hole in each pipe and closed one another hole of each pipe. During cross-examination, it was brought on record that the witness was not called to test identification parade to identify any of these accused. Further, he was taken to the Court of learned Judicial Magistrate, First Class by the police in order to record his statement u/s 164 of the Code of Criminal Procedure and the police were present when the learned Judicial Magistrate, First Class recorded the statement. He also admitted that one Sk. Anis Sk. Akbar i.e. uncle of accused No. 3 works in the very same factory. Further, the witness admitted that he was deposing before the Court as per the say of the police.

On the basis of above admissions, it was argued that the testimony should not be believed. However, on the other hand these admissions does not affect the core of his substantive evidence and lends credence being an honest witness.

34. PW 11 Ishwar Kashinath Mali deposed that accused No. 3 Sk. Irfan, in his presence, made a statement about his readiness to show a shop. It is a prosecution case that the bombs taken to Nagpur were kept earlier in the said shop. Naturally, therefore, except pointing the shop, no further recovery is made. The witness is panch to the another disclosure of the same day i.e. 01.08.2001 of the same accused. According to this witness, the accused disclosed the place where one iron pipe was concealed by him i.e. Shaheen Metals in MIDC area and accordingly said factory was shown by him.

35. PW 30 Jawaharlal Gulabchand Sanghvi is the owner of a shop named and styled as "Sanghavi Pipes". According to him, in May, 2001, at about 4 to 5 p.m., one person named as Sk. Irfan came to the shop. On his demand, the witness supplied one G.I. pipe in the diameter of 2? inches length of 1? feet with one cap. The witness identified the accused in the Court hall.

During cross-examination, it was brought on record that the witness owns two

shops wherefrom many transactions in a day took place. His account book, or bill-book was not checked or produced to show the transaction. Besides, there are number of sales made in the shop and it was, therefore, submitted that there is nothing particular in this case that this shop owner would attend the accused and would recall the purchase of such a small quantity by the accused. Further no test identification parade was held.

The learned trial Court, however, did not accept the evidence regarding the hiding of the bomb in Shalimar Traders as the raw material was hidden in a secluded place like Mehrun shivar. Therefore, the case that this accused had indulged in arranging the raw material was not accepted. The reasoning will have to be accepted for the same reasons.

36. PW 31 Deelip Panditrao Galphade is a salesman in Vijay Times, who has spoken about selling of three batteries of 9 volts to this accused, which were later on recovered by accused No. 1, as detailed earlier. Admittedly, no receipt was passed for purchase of the three batteries. The learned trial Court accepted the version of this witness in view of the disclosure of batteries, as detailed supra. In the circumstances, the trial Court held that there is sufficient evidence to show the participation of the present accused in preparation of the explosive substances and hence, the conviction u/s 4(a) and 5 of the E.S. Act was recorded against him. For the same reasons, the evidence is accepted as trustworthy.

ACCUSED NO. 5 SK. RIJWAN SK. RASHID

37. This accused is convicted for the offences punishable u/s 120-B of the I.P. Code and u/s 4, 4(b) and 5 of the Explosive Substances Act.

PW 4 Popat Mohan Dhobale has deposed that on 26.7.2001, he accompanied the police and present accused No. 5 Sk. Rijwan to the house of this accused, situated in Haji Ahamad Nagar. The accused himself knocked the door by calling somebody as "Dada Dada". The said person was his (Sk. Rijwan's) grandfather, who opened the house and gave no objection for search of the house. The grandfather of the accused opened a cupboard with a locker. Upon opening of the locker, 25 articles kept in a plastic bag were recovered. Over three of the papers, certain eight addresses were written. On two papers, diagrams of some circuit were drawn. Besides, a passbook and three stickers in Urdu language were written. One card of SIMI worker was there. One chart of timer, one telephone diary, one round copper wire, one soldering gun and some other articles were found. He proved the panchanama at Exhibit 107 to this effect.

As already pointed out, the railway reservation slips, under which allegedly the present accused had also undertaken journey to Nagpur, were seized. The learned Sessions Court, however, has already disbelieved the case regarding taking away the explosives to Nagpur.

During cross-examination of PW 4 Popat Dhobale, it was brought on record that like other panch witnesses, he was also a rickshaw driver. The learned Sessions

Court, however, believed his testimony by appreciating the entire evidence on record. The accused Sk. Rijwan, while recording his statement u/s 313 of the Criminal Procedure Code, produced one book regarding the diagrams titled "Linear Integrated Circuits" recommended for third year students of Diploma and Engineering Courses. The learned Sessions Court, however, pointed out that none of the alleged diagrams were sent to PW 47 Mohammed Samiulla, the translator. Further, the articles were not decoded by the investigating agency. In the circumstances, the trial Court held only soldering gun and soldering wire as incriminating articles. In our view also, in the context of finding explosives and evidence of conspiracy to be appreciated at proper place, the articles are incriminating.

38. PW 24 Pankaj Bhimrao Patil is the panch witness, in presence of whom inter alia the specimen handwritings of this accused Sk. Rijwan were obtained in Urdu, Hindi and English languages. Besides this, a sample handwriting of this accused was obtained. Those were identified by him at Article V1, V2 and V3.

39. PW 46 Parushram Rajaram Dhotre is the handwriting expert. His deposition would show that railway reservation slip of Sevagram Express at Article P-1 was supplied to him alongwith specimen signatures and handwriting of accused No. 5 Sk. Rijwan. In P. 2, he has given his finding after elaborating procedure adopted by him that the handwritings of Q4 to Q7 and Q7 to Q29 are made by the same writer (accused No. 5 Sk. Rijwan).

40. PW 39 Sandeep Raghunath Chaudhari was the operator of the STD booth during the relevant period. According to him, this accused Sk. Rijwan as well as accused No. 7 Khalid Asadkhan Ajamalkhan (acquitted accused) has attempted to make phone calls in January, 2001 from his STD booth on Call bearing No. 09810007633. As they were unsuccessful, on their behalf a call was booked on the above number. According to this witness, when he made a query about the said number, they replied that it was a number of Jammu and Kashmir State. He further deposed that he has handed over the register of six months i.e. from 1.1.2001 to 30.6.2001 to the police and identified the same as Article "AA" in the Court. It, however, appears that no further enquiry appears to have been made by the Investigating Officer in this regard. The evidence in this regard is, therefore, inconsequential.

So far as other evidence, as is detailed supra, is concerned, it has been definitely proved that from the house of the accused, the articles as detailed above were found. The finding of diagram alongwith soldering gun in the light of the evidence that the present accused was a member of SIMI (though at the relevant time was not declared as unlawful organization), would show that incriminating articles were found in his possession. The general criticism as regards the panch witnesses has been dealt with elsewhere. In the circumstances, the conviction of the present accused will have to be maintained.

ACCUSED NO. 9 GULJAR AHMAD GULAM MOHAMMAD

41. According to PW 48 I.O. Subhash Patel, he had sent P.I. Meghrajani on 09.09.2001 from Jalgaon to Delhi to arrest the present accused as during interrogation of the other accused, involvement of this accused Guljar Ahmad was found out. During interrogation of this accused, it was revealed that the present accused had prepared ABCD timer chart used for explosion of bomb, seized during house search of accused No. 5 Sk. Rijwan. In the circumstances, in presence of PW 25 Jaideep Bhavsar and another panch, the specimen handwriting alongwith specimen chart was obtained from the present accused in six copies. Those were identified by him as Article-W. Panchanama to that effect is at Exhibit-187. The timer chart at Article-16 to Article-18 with English handwriting marked as Article-91 to Article-92 were seized.

According to the handwriting expert PW 46 Parshuram Dhotre, the writer of Article-16 to Article-18 is the same. The specimen copies of the timer chart is at Article-W, marked by him as Q26 and Q30 to Q32.

The learned trial Court has observed that testimony of PW 48 i.e. the Investigating Officer remained unchallenged as regards the collection of specimen copies of the timer chart as well as handwriting at Article-YI.

42. According to PW 48 Investigating Officer, other relevant materials were sent to C.F.S. Laboratory, Aurangabad. At Exhibit-480, the report of C.F.S. Laboratory is pointed which would show that such type of charts are generally associated with the ABCD timer chart.

In the circumstances, the learned trial Court held that there was nexus between accused No. 5 Sk. Rijwan and accused No. 9 Guljar Ahmad, though accused No. 9 Guljar admittedly resides in District Baramulla (Jammu and Kashmir), while accused No. 5 is resident of Jalgaon. In the circumstances, taking into consideration the other articles like soldering gun, soldering wire, which were found from the house of accused No. 5, the learned trial Court believed the prosecution case that accused No. 5 Sk. Rijwan and accused No. 9 Guljar Ahmad are involved in procurement, possession and preparation of explosive substances.

Except minor lacuna as highlighted during arguments, nothing substantive is found to disbelieve any of the evidence produced against the accused.

ACCUSED No. 8 WAKARUL HUSSEN MUJAFFAR HUSSEN

43. This accused was convicted for the offence punishable u/s 506-B of the I.P. Code by the learned trial Court and was sentenced to suffer rigorous imprisonment for seven years alongwith fine, as detailed earlier.

We have already considered the deposition of PW 18 Sk. Farooq Abdulla, the Secretary of Aksa Masjid Trust and PW 33 Shaikh Ismail Sk. Ibrahim as regards accused No. 2 Sk. Shakil Ahmad for the similar charges. PW 33 Shaikh Ismail has deposed that when he first tried to make enquiry with accused No. 2 Sk. Shakil, he was not found and therefore, he met present accused No. 8 Wakarul Hussien and at that time, the accused informed him that he need not worry and

his son would return within few days.

44. Besides this witness, PW 12 Iqbal Shaikh Rasool has deposed that his son Khalid earlier had been to Delhi alongwith 4/5 others. However, since the year 2000, he went missing by telling that he would go to Pune. Certain telephone calls were received by him that his son would not come. When he made enquiry with accused No. 2 Sk. Shakil Ahmad Abdul Annan, he asked him to keep silence. Thereafter on 07.10.2000, accused No. 2 Sk. Shakil and the present accused No. 8 Wakarul Hussien alongwith one Asifkhan came to his house. During that meeting, when the witness told these three persons that he would approach the Police Station, they replied that the witness should remain silent. They further stated that they were already facing 50 criminal proceedings and if the witness goes to the police, it would be merely 51st case against them. They further stated that they had a widespread network and everything in his house and family would be ruined.

During his cross-examination, certain facts that when the son of the witness got admission in the college, he did not ask for any funds to the witness, were brought on record. According to the witness, his son was not a religious fanatic. He also admitted that till the police called him in the present case for recording statement, he earlier did not file any complaint on his own though his son went missing for a long period. Certain improvements made by this witness in the witness box from his statement recorded u/s 164 of the Criminal Procedure Code were brought on record. However, the reading of the statement would show that certain minor omissions were brought on record. The learned trial Court has considered all the evidence on record. We do not find anything suspicious to disbelieve the said witness.

CRIMINAL APPEAL NO. 778/2006 (FILED BY THE STATE OF MAHARASHTRA AGAINST ACCUSED NO. 6 SK. SIDDIK SK. AJIJ AND ACCUSED NO. 7 KHALID ASADKHAN AJAMALKHAN)

ACCUSED NO. 6 SK. SIDDIK SK. AJIJ

45. This accused was arrested on 26.07.2001. PW 2 Kamlakar Ghate is the panch witness relating to the house-search of this accused on the same day. According to this witness, in presence of the accused, police searched the house situated in Aksanagar locality of Jalgaon. Therein, in a wooden box under a cot, six books written in Urdu were found. Those were identified by him in the Court as Articles D1 to D6. The panchanama is pointed by him at Exhibit-100.

Besides this witness, PW 3 Yogesh Thakur as a panch witness claims that at the house of the uncle of the present accused at Aurangabad where the accused used to stay for education purposes, during search, two diaries and one note-book were found. Those were identified by this witness as Articles E1, E2 and E3 in the Court. Panchanama is pointed out at Exhibit-104. Besides this, his specimen signatures were obtained in presence of PW 26 Manoj Devidas Deore, vide panchanama Exhibit-191. The witness has identified the specimens at

Exhibit-X3, X4 and X5.

46. The learned Sessions Judge disbelieved the prosecution case as the timing in the panchanama regarding the search at Jalgaon and Aurangabad did not match. Further, PW 3 Yogesh Thakur admitted that before proceeding to Aurangabad, police did not search the house of father of the accused at Jalgaon. Besides, the diaries and note-book were not forwarded by the Investigating Officer to the handwriting expert. For all these reasons, the accused No. 6 Sk. Siddik was acquitted.

47. The learned A.P.P. for the appellant/State submits that a definite evidence on record was there. Only because earlier the house of the accused at Jalgaon was not searched, that cannot be a ground for raising a doubt. He further submits that in a case of criminal conspiracy, the provisions of section 10 of the Indian Evidence Act would come into picture, which run as under:

10. Things said or done by conspirator in reference to common design.-

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

The learned A.P.P., therefore, submits that while the term "in reference to their common intention" is wide enough than the usual term "in furtherance of their common intention", as is found in English law. In the circumstances, if the intention is first ascertained by one of the conspirator, same is relevant as against each of the persons (present acquitted accused) believed to be conspiring. The learned A.P.P. relies on the ratio in the case of Sardar Sardul Singh Caveeshar Vs. State of Maharashtra, .

48. It is to be noted that the time period of recording of the panchanama and the contradictory statements of the panch witnesses as to whether first the house of the accused at Jalgaon was searched, is enough to raise a reasonable suspicion about the finding of the incriminating articles in any of the houses of the accused. Besides, the incriminating articles were also not sent for translation though the other articles were sent. In the circumstances, when the learned trial Court has taken a reasonable and probable view in the present case in respect of this accused, there is no need to interfere in the same. The ratio laid down in "Bhagwan Swarup Lal Bishan Lal and others Vs. The State of Maharashtra", (cited supra), relied upon by the learned A.P.P., therefore, is not applicable in the facts of the present case.

ACCUSED NO. 7 KHALID ASADKHAN AJAMALKHAN

49. PW 4 Popat Dhobale deposed that he stood panch to the search of the house

of this accused No. 7 Khalid at Jalgaon on 26.07.2001. In the house-search, railway ticket at Article F1, one receipt of Rs. 1000/- paid to certain computer institute, at Article F2 and empty red colour bag at Article F3 were found.

PW 39 Sandeep Choudhary is the another witness concerning the present accused No. 7 Khalid. We have already noted his evidence while appreciating the case of accused No. 5 Sk. Rijwan. This witness is a STD booth owner at Jalgaon. According to him, in the month of January, 2001, these two accused visited his STD booth for making a phone-call at a specific mobile number and they told that the phone is of Jammu and Kashmir.

50. In the house-search, nothing incriminating was found, as detailed supra while the statement of the STD booth owner would not take us to anywhere. It is an admitted fact that the Investigating Officer did not make further investigation regarding the mobile number.

The railway ticket is said to have connection with the Delhi trip of the present accused in the name of K.A. Shah on 31.07.2001. We have the evidence regarding the reservation of the same. From the mouth of various witnesses like the railway official, panch witnesses, police officer, etc., what this evidence, however, shows is that railway ticket in the name of K.A. Shah was found in the house of the present accused and nothing further. There is no witness or evidence to show that the present accused has traveled on that day on the said berth. The writing in the reservation slip coupled with the specimen signatures of the present accused were pressed into service as, according to the handwriting expert PW 46 Purushottam Dhotre, those tally with each other. However, that itself was not held as sufficient evidence by the learned trial Court to connect the present accused to the entire case of criminal conspiracy waging war against the State.

51. The learned A.P.P., however, submits that when it was proved that the reservation slip under which the seat/berth was reserved in a fake name, was prepared by this accused, relying on the ratio laid down in the case *Sardar Sardul Singh Caveeshar Vs. State of Maharashtra*, he submitted that this accused No. 7 Khalid be convicted.

52. In our view, there is very scant evidence as detailed supra as regards this accused. The only thing that is proved against him is that he has prepared the reservation slip in the name of K.A. Shah and the railway ticket obtained was found in his house. Therefore, for the reasons already forwarded while confirming the order of the learned trial Court as regards accused No. 6 Sk. Siddik, the present State appeal as against the present accused No. 7 Khalid also cannot be allowed.

53. The general submissions of Mrs. A.N. Ansari and Mr. Joydeep Chatterji, learned counsel for the appellants in respective appeals, were to the effect that the substantial evidence in the case is in the nature of the evidence of panch witnesses. From their cross-examination, it has been proved that all of them are

from weaker section of the society like auto-rickshaw drivers, etc., who usually remain under the control of the police. Therefore, by manipulating these witnesses, the false evidence is created, which is the foundation of the present case. It was further submitted that the ingredients of section 4 of the Explosive Substances Act, 1908 are absent in the present case as there is no evidence to show that the explosives, if any found in the possession or under the control of any of the accused is sufficient "to endanger life or cause serious injury to property" and therefore, the conviction u/s 4 of the Explosive Substances Act recorded against the relevant accused would not sustain. The learned counsel further submitted that even for an offence like u/s 506-B of the I.P. Code, a substantive sentence to suffer rigorous imprisonment for seven years and to pay fine was awarded by the learned trial Court. Further, there was no reason to direct that the sentence of rigorous imprisonment recorded for the offences punishable under the provisions of Sections 4 and 5 of the Explosive Substances Act shall run consecutively.

54. Learned counsel for the appellants submitted that the learned Sessions Judge while passing the conviction order in clause No. 15 has not taken into consideration the provisions of Section 31(2) Proviso of Criminal Procedure Code. As per clause No. 15 of the order the sentences u/s 4(b) and 5 of the Explosive Substances Act are to run consecutively. All the appellants in the present appeals are ordered to suffer rigorous imprisonment for ten years for the offence punishable u/s 4(b) and they are also ordered to suffer rigorous imprisonment for ten years for the offence punishable u/s 5 of the Explosive Substances Act. Learned counsel submitted that as per the said order of the learned trial Court, the appellants are required to undergo 20 years imprisonment, first to suffer punishment for offence punishable u/s 4(b) and thereafter punishment imposed for the offence punishable u/s 5 of the Explosive Substances Act will start, if the sentences are allowed to run consecutively.

55. Learned counsel for the appellants further submitted that as per provisions of section 31, the Court is permitted to order to run the sentence consecutively however the same is restricted by Proviso to sub-section 2 of Section 31. Learned counsel submitted that Proviso A provides that (a) in no case shall such person be sentenced to imprisonment for a longer period than 14 years. The bare reading of proviso makes it clear that order of running sentences consecutively is not legal and sustainable and the same is required to be converted into concurrently instead of consecutively if at all the conviction order is to be confirmed.

56. It is, no doubt, true that many of the panch witnesses are from the weaker section of the society. It does not, however, mean that they are not reputed persons in the society there is nothing on record to show that the evidence of the panch witnesses in general was any way manipulated evidence. The evidence on record thus would show that the relevant accused, as detailed supra, have managed to get control of the explosives as detailed supra, made arrangement

for preparation of pipe bomb and hid the explosive raw material when the police investigation was started regarding the planting of pipe bomb near R.S.S. headquarters at Nagpur.

57. The evidence on record further clearly shows that the fathers of the respective absconding accused were intimidated by using different terminology, as detailed supra. The applicability of the provisions of section 506-B of the I.P. Code i.e. threats to cause death or to cause grievous hurt will have to be taken into consideration in the context of a case. It is definitely proved that the relevant accused were active members of SIMI, which was in the near future declared as unlawful organization. The unemployed youths i.e. members of the organization were sent to unknown places with no trace of them. Therefore, the use of the words "we have already 50 cases against us, if you would lodge a report, that would be merely 51st case" or "if you would lodge a report, your entire family would be ruined" (vernacular version would be extinguished), would show that the threat was of death or grievous hurt.

58. Having considered all this material on record, the conviction of the relevant accused would be required to be maintained except the conviction for the offences punishable u/s 4(a) or 4(b) of the Explosive Substances Act, 1908 as there is no material on record to show that the incriminating articles or explosive substances recovered were capable of causing "explosion of nature likely to endanger life or to cause serious injury to property".

59. The offence punishable u/s 5 of the Explosive Substances Act, 1908, however, is made out as, for the reasons already forwarded, it has been proved beyond reasonable doubt that the relevant accused have possessed the explosive substances in criminal conspiracy with each other i.e. an offence punishable u/s 120-B of the I.P. Code, which provides as under:

120-B.(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.

60. It would thus be seen that a person party to a criminal conspiracy to commit the offences described in the provision would be liable for the punishment of such a conspiracy in the same manner as if he had abetted the offences for which he was party to the criminal conspiracy. The provisions of section 5 of the Explosive Substances Act, as detailed supra, would show that the imprisonment for the offence can be for a term which may extend to ten years with fine.

In the circumstances, we shall have to ponder over quantum of punishment in this case.

61. The evidence on record brought by the prosecution itself would show that the present accused persons alongwith the absconding/missing accused are from poor strata of the society. The evidence of the fathers of the missing accused would show that those accused though had secured education like Diploma in Engineering were jobless and therefore, this force of unemployed hands with empty minds was an easy prey for the proverbial devil to engage in his workshop. In the circumstances, in our considered view, there is no need to direct the sentences to run consecutively and further, the accused (except accused No. 9 Guljar Ahmad) need not undergo further imprisonment as they were released on bail after their undergoing imprisonment for about six years, as detailed below.

Accused No. 9 Guljar Ahmad could not furnish bail/surety though ordered to be released on bail and hence, he remained in jail till this date.

In the circumstances, the following order:

ORDER

I] The conviction of accused No. 1 Shaikh Ilias Sk. Yusuf, for the offence punishable u/s 4(b) of the Explosive Substances Act, 1908 is hereby set aside. He is acquitted of the said offence. His appeal to that extent is allowed.

The conviction of accused No. 1 Shaikh Ilias Sk. Yusuf for the offence punishable u/s 5 of the Explosive Substances Act, 1908 is hereby maintained. However, he is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year. His appeal, to that extent, is partly allowed accordingly.

The conviction of accused No. 1 Shaikh Ilias Sk. Yusuf for the offence punishable u/s 120-B of the LP. Code is maintained. He is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him. His appeal, to that extent, is partly allowed accordingly.

All the sentences recorded against accused No. 1 Shaikh Ilias Sk. Yusuf, as directed above, shall run concurrently.

II] The conviction of accused No. 2 Sk. Shakil Ahmad Abdul Annan, for the offences punishable u/s 153-A and 506-B of the I.P. Code, is hereby maintained. The appeal of this accused No. 2, to that extent, is dismissed.

However, as regards the sentence, the accused No. 2 Sk. Shakil Ahmad Abdul Annan is directed to suffer rigorous imprisonment for three years and to pay fine of Rs. 3000/-, in default of payment of fine, to undergo rigorous imprisonment for one month, for the offence punishable u/s 153-A of the I.P. Code.

The accused No. 2 Sk. Shakil Ahmad Abdul Annan is further directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 3000/-, in default of payment of fine, to undergo further rigorous imprisonment for one month. The appeal to that extent is partly allowed.

All the sentences recorded against accused No. 2 Sk. Shakil Ahmad Abdul Annan, as directed above, shall run concurrently.

III] The conviction of accused No. 3 Sk. Irfan Abdul Rauf for the offence punishable u/s 4(b) of the Explosive Substances Act and consequential sentence awarded by the learned trial Court for the said offence, is hereby set aside. His appeal to that extent is allowed.

The conviction of accused No. 3 Sk. Irfan Abdul Rauf for the offence punishable u/s 5 of the Explosive Substances Act, 1908 is hereby maintained. However, he is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year. His appeal, to that extent, is partly allowed accordingly.

The conviction of accused No. 3 Sk. Irfan Abdul Rauf for the offence punishable u/s 120-B of the I.P. Code is maintained. He is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year. His appeal, to that extent, is partly allowed accordingly.

All the sentences recorded against accused No. 3 Sk. Irfan Abdul Rauf, as directed above, shall run concurrently.

IV] The conviction of accused No. 5 Sk. Rijwan Sk. Rashid, for the offence punishable u/s 4(b) of the Explosive Substances Act and consequential sentence awarded by the learned trial Court for the said offence, is hereby set aside. His appeal to that extent is allowed.

The conviction of accused No. 5 Sk. Rijwan Sk. Rashid for the offence punishable u/s 5 of the Explosive Substances Act, 1908 is hereby maintained. However, he is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year. His appeal, to that extent, is partly allowed accordingly.

The conviction of accused No. 5 Sk. Rijwan Sk. Rashid, for the offence punishable u/s 120-B of the I.P. Code is, however, maintained. He is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for one year. His appeal, to that extent, is partly allowed accordingly.

All the sentences recorded against accused No. 5 Sk. Rijwan Sk. Rashid, as directed above, shall run concurrently.

V] The conviction of accused No. 8 Wakarul Hussen Mujaffar Hussen, for the offence punishable u/s 506-B of the I.P. Code is hereby maintained. However, he is directed to suffer rigorous imprisonment for the period of imprisonment already undergone by him and to pay fine of Rs. 3000/-, in default of payment of fine to undergo rigorous imprisonment for one month. His appeal, to that extent, stands partly allowed.

VI] The conviction of accused No. 9 Guljar Ahmad Gulam Mohammad, for the offence punishable u/s 4(b) of the Explosive Substances Act and consequential sentence awarded by the learned trial Court for the said offence, is hereby set aside. His appeal to that extent is allowed.

The conviction of accused No. 9 Guljar Ahmad Gulam Mohammad, for the offences punishable u/s 120-B of the I.P. Code and u/s 5 of the Explosive Substances Act, 1908 is hereby maintained. The sentences to suffer rigorous imprisonment for a period of ten years and to pay fine of Rs. 10,000/-, in default of payment of fine to undergo rigorous imprisonment for one year, on each count, however, is maintained. The order of the learned trial Court that the sentences to run consecutively, is hereby set aside. Instead, it is hereby directed that the sentences awarded to this accused No. 9 Guljar Ahmad Gulam Mohammad, shall run concurrently. His appeal, to that extent, stands partly allowed accordingly.

VII] Criminal Appeal No. 778/2006, filed by the State of Maharashtra as against accused No. 6 Sk. Siddik Sk. Ajij and accused No. 7 Khalid Asadkhan Ajamalkhan, is hereby dismissed.