

**(1986) 04 PAT CK 0015**

**In the Patna High Court**

**Case No :** Death Ref. No. 3 of 1984 and Cr. Appeals No's. 627, 647 and 676 of 1984

State of Bihar

APPELLANT

Vs

Paramhans Yadav and Others

RESPONDENT

**Date of Decision :** 04-04-1986

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 366  
Evidence Act, 1872 — Section 10, 24, 47, 54, 6  
Explosive Substances Act, 1908 — Section 3  
Penal Code, 1860 (IPC) — Section 120A, 120B, 121, 302, 399

**Citation :** (1987) 35 BLJR 127 : (1986) PLJR 688

**Hon'ble Judges :** Prem Shanker Sahay, J; Munishwar Prasad Varma, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Prem Shanker Sahay, J.—The appeals and the Death Reference have been heard together and will be governed by this common judgment.

2. This is rather an unfortunate case in which the District Magistrate, who is the head of the District administration, was killed in his own office by a Bomb. Two appeals have been preferred by Paramhans Yadav; Criminal Appeal No. 676 of 1984 from Jail and Criminal Appeal No. 647 of 1984 through counsel in this Court. Criminal Appeal No. 627 of 1984 has been filed by another appellant, Sadanand Tripathi @ Sant Gayaneshwar. Both of them have been convicted u/s 302 read with Section 120-B of the Indian Penal Code (hereinafter referred to as the Code) and have been sentenced to death. Paramhans Yadav has further been convicted u/s 302 of the Code and sentenced to death. He has also been convicted u/s 3 of the Explosive Substance Act and sentenced to ten years" rigorous imprisonment. They have been ordered to be hanged by their necks till they are dead. It may also be mentioned that two persons were also put on trial, namely, Sadique Sain and Sairuddin Sain but they have been acquitted by the trial Court. For the sake of brevity Paramhans Yadav will be mentioned

hereinafter as Yadav and Sadanand Tripathi as Tripathi.

3. The prosecution story, in brief, was that on 11th of April, 1983, the Courts were held in the morning and the Collector of Gopalganj, late Sri Maheshwar Prasad Narain Sharma had finished his work in his office. His brother, Paresh Prasad Singh, PW 62, was also sitting in his Chamber. The deceased Collector along with his brother left his office which is on the upper floor of Gopalganj Collectorate and he was coming down to go to his residence and his Car was parked in the portico. The late Collector was descending the stair case followed by his Orderly, Hari Shanker Ram, PW 19, and appellant Yadav was also descending after him. PW 62, brother of the deceased, who was also coming down, was just behind appellant Yadav. The deceased Collector came on the landing ground and after that he came down two or three steps and suddenly appellant Yadav, who had a Jhola in his hand, took out a bomb and threw it on the Collector which hit him and the bomb exploded with loud noise, with the result that the Collector fell rolling on the ground floor and part of his body was blown off. It is stated that appellant Yadav, after throwing his Jhola, jumped off from the stairs through the side railing of the stairs but he was chased by PW 62 and Ors. He came out of the Collectorate compound through the eastern gate but no sooner he reached in front of the District Board Office, he was apprehended near a fruit stall. He immediately confessed his guilt before those present here and stated that he had killed the Collector at the instance of his Guru Sant Gyaneshwar (meaning thereby appellant Tripathi) as the Collector had done great harm to his Guru and had also demolished his Ashram. He also said that the bomb was supplied by accused Sadique through his relation. There was injury on his head and blood was oozing and he was brought near the portico where the Collector was lying dead. Hearing the explosion Ram Chandrika Sharma, Inspector of Police, PW 14, rushed to the place of occurrence and he immediately recorded the Fardbeyan of PW 62, the brother of the deceased, which has been: marked as Exhibit-3. While the Fardbeyan was being recorded PW 6, the Deputy Superintendent of Police, Gopalganj, also arrived there and he took up the investigation from PW 14. On the direction of the Deputy Inspector General of Police, Criminal Investigation Department, the investigation of the case was handed over to Bhola Prasad, PW 65, who took charge on 13-4-1983. He was assisted by a number of Police Officers in course of investigation and they are PWs 18, 49, 58, 59 and 64.

4. After recording the Fardbeyan, PW 14 arrested appellant Yadav and sent him to the Gopalganj Police Station. Under the orders of PW 66 he held the inquest over the dead body of the Collector in presence of witnesses. The inquest report is Exhibit-4. He prepared the injury report of appellant Yadav also which is Exhibit-5. The wearing apparel of Hari Shanker Ram, the Orderly Peon of the Collector, PW 19, was also seized by him and the seizure list is Exhibit-6/1. He found him injured and prepared his injury report, Exhibit-5/1, On 20-4-1983 he along with appellant Yadav went to the hotel of Binda Sah, PW 5, and recovered an underwear of appellant Yadav and prepared a seizure list, Exhibit-7, and the

underwear has been marked as material Exhibit-I. PW 66 after taking charge of the investigation from PW 14 immediately cordoned the area and persons who were on the first floor of the Collectorate building were not permitted to come down and all of them were interrogated or searched. He inspected the place of occurrence and it will be relevant to give here the details of the same. The map prepared by him is Exhibit-40.

5. The Collectorate building is a double storied building and faces south. There is a portico in the front and just in front of the portico is the stair case for going to first floor. There is a landing space in the middle of the stair case which is shown as "C" in the map and here the Jhola of appellant Yadav was found. The place "B" in the stair case hall is the place where the District Magistrate was hit by bomb and had fallen at the place "A" and one of his Chappal was found which is "D/1". The other Chappal was on the fifth stairs from the bottom at the place "D". Blood stains were found on the stairs and has been shown E, E/1, E/2 and E/3. Some blood marks were also found near the dead body which is E/4. Splinters of the exploded bomb and human flesh were also found on the wall which has been shown as "H", H/1; Prasad and Sindur were found at the place T. On the first floor there are four rooms. On the western side just by the side of the stair case is the Chamber of the P. A. to the D. M. which is room No. 9 and room No. 8 is the Chamber of the District Magistrate. East of the stair case rooms No. 10 is the Chamber of K. P. Chaudhary, No. 11 is of D.K. Jha, No. 12 is the Legal Department and No. 13 is Excise Office. Similarly, on the ground floor on the eastern side there are four rooms and rooms No. 10 is the Office of the Superintendent, No. 11 is the Office of D. D. A., PW 39, No. 12 is the election office and No. 13 is the Chamber of Executive Magistrate. On the western side there are four rooms and rooms No. 6 is Treasury Office, No. 7 is Nezarat Office, No. 8 is the Office of the Deputy Development Commissioner and No. 9 is the Office of Mr. J. Siugh. There is a boundary wall with two gates in front of the portico; one gate is on the western side and the other gate is on the eastern side. According to the prosecution case Yadav, after jumping from the stair case, came out from the Collectorate building through the eastern gate and was caught in front of the Distict Board Office at the place shown as "L" in the map. PW 66 examined the place of occurrence and also found plastic Chappals, material Exhibit-IX and IX/I, near the dead-body and also the Sindur and Elaichi Danas, Exhibit-VII, and the Jhola, material Exhibit-IV, in which a bomb and a Chader, Exhibit-VIII, and a read colour underwear, Exhibit-I/1, were found. He prepared the seizure list of all the articles which were found in the stair case or near the portico, Exhibit-6/4. The place where appellant Yadav was apprehended is at a distance of about three hundred feet south-east of the eastern gate of the Collectorate. A Police dog was also requisitioned and the trekking was done under the direction of PW 41, Exhibit-5/2, He examined a number of witnesses on that date and they are PWs 2, 3, 11, 15, 16, 17, 19 and 40. He directed PW 60 to get appellant Yadav medically examined. Ho also tried to ascertain the criminal history of Sadique Mian and found that he was accused in a number of

cases and was lodged in Gopalganj jail. On 12-4-1983 he forwarded appellant Yadav to the court of the Chief Judicial Magistrate for recording his confession and it was recorded by Magistrate, PW 48, on 13-4-1983 at 7.30 p. m. and it is Exhibit-44. The bomb, which was found in the Jhola, was sent to the expert on requisition, Exhibit-5/7, and report was received after deactivation which is Exhibit-42. Some bombs were also recovered in Bhagwat Parsa Ashram of appellant Tripathi for which a criminal case was registered and the bomb of that case was also deactivated on requisition, Exhibit-5/18, and the report is Exhibit-42/1. He deputed officers to different places in connection with the investigation of the case and supplementary diaries were also submitted by them. On 13-4-1983 he examined PWs 22, 36, 39 and 63 and he made over the charge of this case to PW 65, who is the main Investigating Officer in this case. He visited the place of occurrence at 6.30 p. m. and recorded the statement of PWs 14, 18 and 60 and also the statement of appellant Yadav. On 14-4-1983 he prayed for the recording of statement u/s 164 of the Code of Criminal Procedure of PWs 19, 22 and 40. He examined PWs 44, 50, 51 and 63 and examined records of Crime Control Case pending against appellant Tripathi. On 15-4-1983 he further examined PW 62 and who gave him a letter addressed to the Anchal Adhikari, Gopalganj, Photostat copy of which is Exhibit-37/1, He examined PWs 5, 6 and 20 on 16-4-1980 and received supplementary case diary from PW 59 who had made investigation at Varanasi. He received Exhibit-9 from PW 14 and seized the same. PW 61 was directed to obtain the list of prisoners released from 11-4-1983 to 20-4-1983 and to record their statement. He examined PWs 5 and 14. The plastic shoes, Material Exhibits-IX and IX/1, were tried if it fitted in the feet of appellant Yadav, in presence of PW 41.

6. On 23 4-1983 he recorded the statement of Gaya Gond, PWs 4, 26, 42, 45 and 57. The wearing apparels of appellant Yadav, the deceased and PW 12 were sent to the Forensic Science Laboratory, Patna, for examination. Supplementary diaries were also submitted by different officers, who had worked under his direction. He examined PWs 7, 8, and 9 on 3-5-1983. A letter, Exhibit-5/12, was sent to the Forensic Science Laboratory on 7-5-1983 requesting them to examine the bomb which was recovered from the Ashram of appellant Tripathi and to ascertain whether it was of similar make and manufacture to the bomb which was recovered from the Jhola of appellant Yadav. Further direction was also given to examine the plastic shoes which were recovered at the place of occurrence by Exhibit-5/13. On his prayer sanction to prosecute appellant Yadav under the Explosive Substance Act was accorded by the District Magistrate vide Exhibit-34. Request was also made to the Doctor who had examined appellant Yadav to give his opinion whether those injuries were possible by bomb splinters vide Exhibit-5/14. He also examined the Superintendent of Police, PWs 25, 31, 46, wife of the deceased, 47 and 52. The post-mortem examination of deceased Collector was held by PW 53, Dr. Vijoy Kumar Bhatt on 11-4-1983 at about 4.40. p. m. in presence of Dr. Lakhichand Prasad, PW 54, and Dr. Mundrika Prasad and found the following injuries on his person:

(I) Lacerated wound 18" X 12" x chest and abdominal cavity deep on the right side of back extending from armpit going downwards medially over the right side of chest and back to 2" left to the middle line and 2" above the left Intima chest. The surrounding skin were charred and margins ragged and smell of gun powder was coming out. The whole of soft tissues and the underlying ribs were blown off. The lower part of right lung, the diaphragm, the liver, the right kidney and a portion under the wound were extensively lacerated.

(II) Lacerated wound over an area 9" X 4" X bone deep over the outer and back part of right arms, the right elbow and upper part of right fore-arm with comminuted fracture at the lower third of right humerus at the level of injury No. 1. The soft tissue were blown off with charred and ragged margins of the wound. It was emitting the smell of gun powder. The cloths over the area of the wounds were blown off.

In his opinion, death was due to haemorrhage and shock due to above mentioned injuries caused by bomb and were also sufficient, in the ordinary course of nature, to cause death. He has also stated that bomb was thrown from behind and death was caused within six hours.

7. Dr. Lakhichand Prasad, PW 54, examined appellant Yadav, on the same day at 9.00 p. m. and found the following injuries on his person:

- (1) Incised wound 1/4" x 1/6" x W on the "left side eye-lid near eye-brow.
- (2) Abrasion 1/2" x 1/4" on the left side of forehead near eye-brow.
- (3) Abrasion 1/4" x 1/4" on the left side of fore-head.
- (4) Abraison 1/2" x 1/4" on the left knee.
- (5) Swelling over right eye-lid.
- (6) Diffused swelling over left elbow.
- (7) Partial burning of hairs of scalp and moustache.

Injury no (1) was caused by sharp cutting substance and injury No. (V) by bomb due to blast and the rest by hard blunt substance. All the injuries were simple except No. (6) for which the opinion was reserved after X-ray. On requisition from the Investigating Officer he has submitted a report regarding the specific case of injury Nos. (1) and (6) and according to him injury No. (1) was possible by sharp edge of splinter of a bomb and injury No. (7) by bomb blast. He has proved the supplementary report, Exhibit-33/1.

8. PW 55, Dr. Jagar Nath Sahai, examined PW 19, Hari Shanker Ram, and found the following injuries on his person:

- (1) Lacerated wound on outer side of the right side 1/2" x 1/4" X 1/4" at three places. Margins of the wound were blackened.

(2) Redish colouration of left eye.

The two injuries were simple in nature and injury No. (1) was caused by blunt edge of splinter of a bomb and injury No. (2) was caused due to smoke by the bomb blast. He has proved the injury report, Exhibit-33/2.

9. On receipt of the aforesaid reports and also on receipt of the report of the Director, Forensic Science Laboratory, and after perusing the supplementary case diaries, filed by the different Police Officers connected with the investigation of the case, chargeheet was submitted against seven persons showing Ramji Prasad Verma, Sant Ram Mallah and Hare Ram Chaudhary as absconders; and the appellants, and two others, who were acquitted by the trial Court, were committed to the court of session and put on trial.

10. Seventy five witnesses have been examined by the prosecution and out of them PWs 2, 11, 19, 40 and 62 are the eye-witnesses to the occurrence. It may be mentioned that the names of PWs 2 and 11 do not find place in the first information report. Fourteen witnesses have been tendered and they are PWs. 17, 33, 35, 39, 42, 51, 67, 68, 69, 70, 71, 72, 73 and 74. PWs 1 and 75 are formal witnesses. PW 12 was declared hostile and PWs 14, 65 and 66 are the three Investigating Officers. PWs 53, 54 and 55 are the three Doctors who had held the postmortem examination on the deceased Collector and had examined the two injured persons. PWs 18, 25, 31, 38, 41, 43, 47, 49, 50, 51, 58, 59, 60, 61 and 64 are the Police Officers connected with the investigation and had worked under the direction of the Investigating Officers. PWs 41 and 43 are the two Police Officers who were incharge of the dog-squad and the rest of the witnesses are formal and of Gopalganj Jail and they have proved certain exhibits in this case. A number of documents have been filed on behalf of the prosecution and marked as Exhibits besides material Exhibits.

11. Twenty four witnesses have been examined on behalf of the defence. PW 19 is the solitary witness examined on behalf of appellant Yadav and the rest on behalf of appellant Tripathi. DWs 9 to 12 have deposed to the effect that appellant Yadav was not a disciple of appellant Tripathi. DWs 1, 2, 5, 6, 14, 15, 17, 22 and 23 are formal witnesses. DWs 4 and 7 to 12 are the disciples of appellant Tripathi and have been examined on the point that he was a highly respected person with religious background. DW 19 has been examined to deny the prosecution version that the visitors used to meet Tripathi, by passing the jail rules and illegally in Gopalganj Jail and DWs 16 and 18 have been examined in order to prove that there was litigation between one Pali Ram Agrawal and the State of Bihar and a proceeding under the Crime Control Act was initiated against Agrawal. Besides these witnesses a number of documents have been filed in this case. The defence of appellant Tripathi was that he has been falsely implicated by the Government machineries in this case on a false notion that he was nurturing grudge against the Collector because the deceased Collector had illegally demolished the Ashram causing a total loss of Rs. 29 lacs for which a complaint was filed by the inmates of the Ashram against the Circle Officer, Block

Development Officer, Sub-divisional Officer and other officers of the District of Gopalganj and Exhibit-J is the complaint petition. A plea was also taken on behalf of the appellant Tripathi that the Collector had initiated a number of cases including the proceedings under the Crime Control Order against a number of persons including Pali Ram Agrawal who had brought a title suit against the Collector and, therefore, those aggrieved persons including Pali Ram Agrawal had got the Collector killed. It was also urged on his behalf that there were two political groups in Gopalganj one led by Nagina Rai, the then member of Parliament, on one hand, who was a Bhumiar, and the other led by Kali Pandey, a Brahmin by caste, and the Collector had always been siding his caste man, Nagina Rai, and probably the group of Kali Pandey had got him killed. Another defence was that an employee of Sasa Musa Factory with the Surname of Tiwary was murdered by the son of the owner of the Factory and due to political pressure the son of the Factory owner could not be arrested and, therefore, some interested person got the Collector killed. His further defence was that appellant Yadav had absolutely no connection with him and Yadav was not his trusted lieutenant as alleged by the prosecution. The defence of appellant Yadav was that he was not, in any way, connected with appellant Tripathi and has been falsely implicated in this case by interested persons. It was also submitted on his behalf that he had gone to the Collectorate on the fateful day of the incident and was arrested there on mere suspicion and he did not make any confession and the authorities have manufactured these documents in order to implicate him. Since, two of the appellants have been acquitted, it is not necessary to deal with their case. The two convicted appellants expressed their inability to engage counsel and, therefore, both of them were given counsel of their choice at the expense of the State.

12. The learned Judge, on a consideration of the evidence, both oral and documentary, recorded the following findings:

(I) There was absolutely no delay in recording of the Fardbeyan, Exhibit-3, of the brother of the deceased who was actually present at the time of occurrence.

(II) The aforesaid Fardbeyan was immediately despatched to the Police Station which will be clear from Exhibit-36.

(III) Appellant Yadav was seen with a Jhola in his hand prior to the occurrence in the upper-storey of the office of the Collector and soon thereafter there was the occurrence.

(IV) From the evidence of the eye-witnesses and the other circumstances, it was clear that appellant Yadav had taken out the bomb from his Jhola and threw it on the Collector which hit him. The aforesaid bomb caused the instantaneous death of the Collector.

(V) Immediately thereafter appellant Yadav jumped from the landing ground through the railing and fled towards the northern side when he was apprehended in front of the District Board Office after a chase.

(VI) Injuries were found on the person of appellant Yadav and blood was also coming out from those injuries.

(VII) Smell of explosives was also coming from his clothes which he was wearing.

(VIII) immediately thereafter he made an extra-judicial confession before a number of witnesses that he had killed the Collector at the behest of his Baba meaning thereby appellant Tripathi.

(IX) He also made confession before the Magistrate admitting his guilt which is Exhibit-44 and the aforesaid confession was a voluntary one.

(X) The Jhola, which the appellant Yadav was carrying prior to the occurrence, was actually found on the landing ground and a bomb was also found therein.

(XI) Requisition of Police dog was made and the Police dog, after smelling the articles kept near the deceased, went to the appellant Yadav and caught him.

(XII) The appellant Yadav was apprehended at the spot, there was no question of holding any test identification parade in this case.

(XIII) The investigation was done in a very fair manner and no prejudice has been caused to the appellants.

(XIV) On the question of conspiracy the trial Court held that, appellant Tripathi was no doubt in Jail, a conspiracy was hatched there and appellant Yadav had been meeting him in Jail from time to time and had also met him a few hours before the occurrence.

(XV) From the facts, circumstances and various materials brought on the record it was clear that appellant Tripathi was very much annoyed with the deceased Collector and he conspired with appellant Yadav to kill the Collector and ultimately the plan was accomplished.

13. He, therefore, convicted appellant Yadav Under Sections 302 and 302 read with Section 120-B of the Code and Section 3 of the Explosive Substance Act and appellant Tripathi u/s 302 read with Section 120-B of the Code and sentenced both of them as stated above. Being aggrieved by the aforesaid judgment appeals have been preferred in this Court by the two condemned prisoners and a reference has also been made by the Additional Sessions Judge u/s 366 of the Code of Criminal Procedure for affirming the sentence of death passed against them.

14. Mr. K.P. Verma, learned Counsel appearing on behalf of appellant Yadav and Sri S.B.N. Singh, appearing on behalf of appellant Tripathi, have raised a number of contentions in this case and have submitted that the prosecution has failed to prove the charge of conspiracy and also the fact that it was appellant Yadav who had thrown the bomb which killed the Collector. They have submitted that from the background and history of the case it would appear that the deceased Collector had created a terror in the locality and had antagonised a number of

persons by filing cases against them and also by detaining a number of persons under the Crime Control Order. Thus, he himself had created number of enemies, some of them might have got him killed and these appellants have been falsely implicated in this case.

15. Mr. Prakash Narain Pandey, appearing on behalf of the State, on the other hand, has submitted that there is overwhelming evidence that appellant Tripathi was very much annoyed with the actions of the Collector who had got his Ashram demolished. This had caused him huge monetary loss besides the loss of reputation and he was made accused in a number of cases brought at the instance of the Collector. All these were indicative of the fact that appellant Tripathi wanted to get rid of the Collector and he ultimately succeeded by hatching up conspiracy with appellant Yadav and got him killed. Some of the findings of the Court below were not challenged by the Counsel for the appellants and some of the points, which were raised in the Court below on their behalf, have not been raised in this Court. I shall deal with the submissions separately one by one. But, before I do so, it will be better if I give the history and background of the persons connected with the offence and their previous history which is evident from the evidence of the witnesses, both prosecution and defence, examined in this case and also the documents filed on their behalf.

16. Appellant Tripathi, who came to be known as "Sant Gyaneshwar Paramhans Ji Maharaj" by his disciples, came from a poor family of Pipera-Bhuwal, P.S. Baghauch Ghat, District Deoria in the State of Uttar Pradesh. He had already lost his father and he lost his mother also in 1975. First of all he started his career as a Bus Conductor and later joined Bar and for some time practised in the District Court of Deoria, Thereafter he started preaching religion and gave religious discourse at different places and came in contact with one Anand Mohan Shrivastava, father of Manoj Kumar, PW 30, who was working as Assistant Statistical Officer, Deoria. He had been visiting his family off and on and Anand Mohan Shrivastava was allured by him and ultimately initiated his entire family members, him, his wife Chandramukhi, daughter Mirdula alias Gnndi, and son, Manoj Kumar, PW 30, in the year 1978 as disciples. Satsanghs were also held from time to time and some were held in Bihar and some in Uttar Pradesh and some in Lumby in Nepal. He used to give speeches and openly spoke against religious Saints like Shankaracharya, Karpatri Ji, Rajneesh, Bal Yogeshwar, Deoraha Baba and Ors. At some places his meetings were also disturbed. In the same year 1978 he encroached upon acres of gair mazrua land belonging to the State of Bihar in village Bagra in the district of Gopalganj, An Ashram was built there which is at a distance of seven to eight hundred yards west of Bhatna Bazar Pitcherod, Twenty, four rooms were built which were of brick built with thatch of straws on the roof. It had a garden, dairy and flour mill. The Ashram was popularly known as "Arnarpuri Ashram". It owned a station wagon also. He used to initiate his disciples with the belief that they would be able to see God on the terms and conditions that they would have to listen to religious discourses continuously for seven days and had to surrender completely giving "Tan, Man,

Dhan"" meaning the-by body, mind and wealth. In this way, a number of persons were initiated in the Ashram including females and all of them used to live together. Soon thereafter he became very powerful in that locality and did not tolerate any of his dicciple going against him. For that it is said that he had employed wrestlers like Hare Ram Chandher, Raraji Verma, Sant Ram (absconders in this case) and Ors. who used to kill those persons whom this appellant wanted to get rid off. Chandramukhi, wife of Anand Mohan and mother of PW 30, also became his close associate and was known in the Ashram as Anandeshwari and Mirdula alias Guddi as Mukteshwari and PW 30 became a Treasurer of the Ashram. Appellant Tripathi is said to have foreworded or written some books. Some of them are known as "Mahatraa Jan Taiyar Kiyon Nahi Hote", Exhibit-14/1; "Inhe Mat Dekho", Exhibit-14/3; and some pamphlets, Exhibit-15. The former book was written by PW 33, Ram Shanker Rai, the then Secretary of the Ashram and the latter by Anand Mohan, father of PW 30. Some times in the year 1981 the scandal of the Ashram came to be known to the civil administration and a search was made by the authorities on 10-1982 in which live-bombs were recovered for which Uchkagaon P.S. Case No. 53 of 1982 was registered against appellant Tripathi and his disciples and he was also taken into custody on the same day. The authorities also instituted a case for eviction against appellant Tripathi from the encroached Government land and the Anchal Adhikari decided the matter against him and appellant Tripathi preferred an appeal and the Additional Collector dismissed the same. Thereafter revision was preferred before the Commissioner, Tirhut Division, which was also dismissed, Exhibit-12.

17. In order to appreciate the sequence of evencs relating to this case it is necessary to give few dates.

10-7-1982 Appellant Tripathi arrested in Uchkagaon P.S. Case No. 53 of 1982.  
 11-7-1982 A proposal was made to detain him under the Crime Control Act.  
 12-7-1982 Order of detention was passed by the Collector in Case No. 11 of 1982 vide Exhibit-22. 13-7-1982 A petition was filed before the Collector for per- mission to consult his lawyers for filing his show cause, 14-7-1982 Revision before the Commissioner in the encroach- ment case was dismissed.  
 15-7-1982 The Amerpuri Ashram was demolished and the Collector, Superintendent of Police, S.D.O. and other officers of district were present at that time. There was an obstruction by the inmates of the Ashram and Anr. case being Uchkagaon P.S. Case No. 57 of 1982 under Explosive Substance Act and Arms Act was registered. 19-7-1982 Petition before the Collector to consult his law- yers. 26-7-1982 Similar prayer by appellant Tripathi. 27-7-1982 It was the date fixed in the Crime Control Act case. 16-4-1983 Petition before the C.J.M. alleging high hande- dness on the part of the Magistracy and the Police, Exhibits-7/1, 7/11. 14-8-1982 Similar petition by the Secretary of the Ashram, Exhibits-J and J/a. 15-3-1983 Criminal Writ Application was filed in the High Court against the order initiating the proceeding under the Crime Control Act which was dismissed. 16-3-1983 Show cause in the case was filed by the

appellant Tripathi, Exhibit-2. 22-3-1983 Date fixed in this case, Exhibit-26, but it was adjourned. 3-4-1983 A petition for bail was filed in the Crime Control Act on the ground that appellant Tripathi wanted to attend religious Seminar at Haridwar on 10-4-1983. After hearing the parties the case was adjourned by the Collector to 12-4-1983. 7-4-1983 Cr. W. J. C. No. 119 of 1983 was filed in the High Court for bail on the ground that the appellant had to go to Haridwar on 10-4-1983 and it was ordered to be listed on 11-4-1983. 11-4-1983 High Court directed the Collector to dispose of the bail application without any further delay and the order was communicated through special messenger. The same day Collector was killed in the Collectorate. The case was ultimately adjourned. 27-4-1983 He was ordered to be released on furnishing a bond of Rs. 20,000 Exhibit-22. But in view of the fact that this appellant was also made an accused in the Collector murder case, he was not released from Jail.

These dates will be relevant and I shall consider them in great detail while considering the question of conspiracy in this case.

18. The fact that the deceased, while coming down from his office, was killed by bomb has been amply proved by the evidence of the eyewitnesses examined in this case, the Police Officers and other persons who arrived there soon after the occurrence which is also supported by various circumstances brought on the record by the prosecution. The objective findings of the Investigating Officer fully support the prosecution case that the deceased Collector, after being hit by bomb, fell down from the stair case and died at the spot and part of the body was blown off and some portion of flesh were scattered. This is further supported by the evidence of the Doctor who had held the post-mortem of the deceased, given in detail earlier. Now, the first point for consideration will be whether appellant Yadav was responsible for the same and, in this connection, firstly I will refer to the oral evidence in this case starting from the evidence of the informant, PW 62, who is the brother of the deceased.

19. He has stated that on 7-4-1983 his brother had gone to the village home Gangia in the district of Muzaffarpur to attend some meeting and returned to Gopalganj on 10-4-1983 and he also accompanied his brother on the same vehicle. He had gone to meet his brother in his Chamber on 11-4-1983 because a petition had to be filed before the Circle Officer, Katra, and after signing the petition it was handed over to him by the deceased. That letter was seized in course of investigating and is Exhibit-37. At 1.00 p.m. his brother called his Peon, PW 19, and asked him to get his Car parked because he wanted to go home. Both of them came out from the Chamber. The Collector was going ahead followed by PW 19 and there was one more person behind the Peon and he was just behind him. When he reached the stair case and his brother had descended two or three steps the tall man, who was in between him and the peon, took out something from his Jhola and threw the same on the Collector and there was a loud explosion and his brother, after sustaining injuries, fell down from the stair case. After leaving the Jhola on the landing ground that person jumped out

through the railing and came down and fled away. He chased that man shouting that the person had killed his brother and, therefore, he should be caught and people also started chasing him. The man came out from the Collectorate compound through the eastern gate and was caught near the fruit stall. Persons started assaulting him on which he exclaimed as to why they were assaulting him as he had thrown the bomb on the Collector at the behest of his Guru Sant Gyaneshwar meaning thereby appellant Tripathi. On being questioned from where the bomb could be obtained, he replied that it was obtained through Sadique Mian, who got it through his brother-in-law meaning thereby Sairuddin and he further said that the Collector and Superintendent of Police had illegally demolished the Ashram of his Guru and, therefore, the Collector was killed. That person was brought near the Portico where the Collector was lying dead and PW 62 met a Police Officer, PW 14, who recorded his Fardbeyan, Exhibit-3. He has stated that he had seen the same person with a Jhola in his hand on the Verandah of the first floor of the office of the Collector before the occurrence and he identified that person appellant Yadav in dock. He has been subjected to lengthy cross-examination and defence has tried to show that he was actually not present at the time of occurrence and he came late in the night; but in my opinion the defence has miserably failed to prove the same. DW 19 has been examined to say that he was present in Collector's bungalow at 10.00 p. m. on the date of occurrence and a Jeep came and enquiry was made about Paresh Babu meaning thereby PW 62 and it was told by the person who had come in the Jeep that he was coming in another vehicle. After half an hour another car came in which there were ladies and children and PW 46, wife of the deceased went near the person who got down from the vehicle and that man was crying and saying "Bhaiya Bhaiya" but he could not identify that person. On this solitary evidence it is difficult to hold that the person who had come was actually PW 62. Moreover, DW 19 is an interested witness and cannot be relied upon in view of the overwhelming evidence to the contrary. The presence of this witness has been fully proved by the evidence of number of witnesses and they are PWs 7, Driver of the Collector, PW 9, Body guard of the Collector, PW 15, the Superintendent of Excise, who had met this witness immediately before the occurrence, PW 19, the Peon of the Collector and PW 46, the wife of the deceased.

20. learned Counsel for the appellants has submitted that there is no mention of Exhibit-37 in the first information report and, therefore, it is a got up document in order to prove the presence of the informant at the time of occurrence. There is no substance in this contention because it was not necessary to mention about this petition in the first information report nor anybody would have thought of telling about it. The importance of the petition was realised only after the occurrence and, therefore, even if it was seized two or three days after the occurrence that would not make the document in any way suspicious. This document bears the signature of the deceased with date. learned Counsel has further submitted that it was practically impossible for this witness to have seen

the actual throwing of the bomb because he simply stated that a tall man was between him and the Peon and he never mentioned about Jhola. That may be true but the importance of Jhola was realised only after it was recovered from the landing ground. It is also submitted that he was one of those persons who had chased appellant but he actually did not catch him. It is not necessary that all persons who run to catch a person will actually catch him when others were also running for the same purpose. The fact that he was caught near the fruit stall outside the compound is fully supported by his evidence. It is also contended that after the throwing of the bomb there must have been smoke and, therefore, it was not possible for the witness to identify the appellant at the time of occurrence. But the evidence is that he had actually seen appellant Yadav taking out something from the Jhola and throwing it and, therefore, before the actual throwing this witness had identified him. Some contradictions have been sought to be brought on the record as to what he stated before the Court was not stated before the Investigating Officer. But all of them are of minor nature and not contradictions at all and are omissions which cannot go to the extent of discarding the testimony of the witness. After fully considering his evidence I am of the opinion that he was present at the time of occurrence along with his deceased brother and he has fully supported the occurrence and gave a chase to the appellant Yadav who was actually apprehended outside the Collectorate building.

21. The next witness is PW 19, the peon of the Collector, who was just following him while the Collector was coming out of the office. He has stated that he was on duty with the Collector and one M. L. A. had come to meet him and, thereafter, a Naga Baba had come and had given Prasad to Collector. Some Prasad was given to him by the Collector to be taken home and the rest was to be distributed by the P. A. in his office. He has stated that PW 62 was also sitting in the Chamber of the Collector and then the Collector ordered to get the car because he wanted to go home. He gave a signal down-stairs and the Collector and his brother came out from the chamber. He was going just behind the Collector holding his glasses and the Prasad which was given by the Naga Faba. The Collector had descended a few steps from the landing ground. Then he saw someone throwing something on his Saheb (Collector; from behind and there was a loud explosion due to which the Collector fell down from the stair case. There was a smoke and he also received some injuries in that explosion. The person, who had thrown bomb, fled away after jumping from the railing. PW 62 and Ors. tried to chase him. The person was caught hold of outside the Collectorate compound and he was brought near the Portico and he identified that apprehended person (appellant Yadav). He also stated that the same person had come with a Jhola some time before the occurrence and enquired from him whether the Collector was in Chamber or not to which he replied in the affirmative. He also enquired at what time the Collector used to go home. He has identified that person in the dock who is appellant Yadav. His wearing apparels, full pant, Material Exhibit-II, and Bush Shirt, Material Exhibit-III, were seized in

which there were blood stains. He has identified the Jhola, Material Exhibit-IV, which the appellant Yadav had been carrying. He has proved the spectacle of the Collector which he was carrying, Material Exhibit-V, the cover, Material Exhibit-VI, and the Prasad, Material Exhibit-VII. He has been cross-examined at length and learned Counsel for the appellants have submitted that he had only stated in his evidence that one person had thrown the bomb and had not named the appellant Yadav. But, this witness did not know him from before and, therefore, there was no question of taking his name. He identified appellant Yadav and saw him again only after he was apprehended and then immediately stated that he was the person who was seen with a Jhola prior to the occurrence and was making enquiries about the time of departure of the Collector. It is also submitted that there are contradictions in the evidence of this witness and PW 62 as to how they were descending from the stair case. But, reading their evidence as a whole in my opinion, there is no contradiction at all. From the evidence of this witness and PW 62 it is clear that the Collector was the first man who was getting down followed by this witness, PW 19, and then the stranger and thereafter PW 62 was coming behind them. In his statement u/s 164 of the Code of Criminal Procedure he had stated that one person had fled away by jumping and in Court he stated that he did not remember that. This is not a contradiction at all. Further, he has stated that he did not remember if he stated before the Magistrate or the Police that someone had thrown some articles on the Saheb from behind. He had also not stated that PW 62 along with others were chasing the culprit by raising alarm of "Pakro Pakro" and this is a mere omission. After going through his evidence I am fully convinced that he is a truthful witness and he has given a true version of the occurrence and also had seen the appellant Yadav prior to the occurrence with a Jhola and later he had thrown the bomb and was apprehended just outside the Collectorate gate while he was trying to run away. He has not stated anything about the confession made by the appellant Yadav which has been seriously commented upon by the learned Counsel for the appellants. But, in my opinion, it rather proves that he has stated what he had actually heard or seen and has not tried to exaggerate things in Court or he might not have heard the appellant confessing when a large crowd had collected.

22. The other eye-witness is PW 40 and he was the office Superintendent of Gopalganj Collectorate during relevant time and his office is located in room No. 10 on the ground floor of the Collectorate building. He got information that the Collector was getting down for going home and he was standing near the portico. While he was coming down he saluted him and the Collector smiled and at that very time there was an explosion with a loud report and smoke was coming out. The Collector fell down from the stairs and was thrown on the verandah then he cried saying that the Collector has been hit by a Bomb. At that very time he saw a person scaling over the railing of the stair case and coming down on the ground and started fleeing away and the person had injuries on fore-head. PW 62 and Ors. were running to chase him. He also ran up to the eastern gate and left chasing and came near the place where the Collector was lying dead. One

man was caught after chase and he was brought near the portico and he identified him as the person who had jumped from the railing and he was the man of Baba of Bhagwat Parsa meaning thereby appellant Tripathi. The arrested person was identified by him in the dock. He has also not stated about any confession made by this appellant. He has also been cross-examined by the counsel appearing on behalf of the appellants. But, in my opinion, nothing material has been brought on the record in favour of the appellants. There are minor contradictions and omissions which will not go to the extent of discrediting his testimony rather he is a straight forward witness and has also stated that on the date of occurrence the then Chief Minister of Bihar, Dr. Jagannath Mishra, along with other high officials had visited Gopalganj. learned Counsel has submitted that he has not stated about the throwing of the bomb by the appellant. But, since he was on the ground floor he could not have seen the actual throwing which was done from the landing ground and that shows that he has spoken about the things which he had actually seen with his own eyes. His evidence, therefore, fully supports the prosecution case. 23, Now, I will take up the evidence of PW 2 who is a peon of the Collector. He has stated that on 11-4-1983 at about 1.00 p.m. he got information down stairs that the Collector was coming down in order to go home. There were two cycles in the portico and he got them removed to get the car of the Collector parked there. After some time he saw the Collector coming down followed by his orderly peon, PW 19, and two more persons were behind them. After the Collector had descended two or three steps from the landing ground, one person threw a bomb which hit the Collector with loud explosion due to which he fell down on the ground. He has also stated that the person, who threw the bomb, scaled over the railing and came down and then there was a Hulla of "Pakro-Pakro". Soon thereafter the person, who had thrown bomb, was caught hold of and was brought near the portico and he admitted (hat he had committed the murder at the instance of his Baba. He has also been fully cross-examined by the counsel appearing on behalf of the appellants but he has not been shaken in his statement at all. It has been stated that there is no evidence as to how he got the information as the Collector was getting down and, therefore, his presence near the stair case hall seems highly doubtful. This argument is fit to be rejected because it is well known that when high officer leave his office the menial staff are always present and moreover his office is very close to the stair case hall. learned Counsel has submitted that he has not said anything about the presence of PW 62 but that rather adds to the value of his evidence because he did not know PW 62 from before. It is submitted that he did not chase the assailant of the Collector and, therefore, his presence at that place is doubtful and this argument is wholly without any substance. He very well knew that other persons were chasing and probably he might not have joined in the chase and he preferred to be near the deceased at that time and that there is nothing unusual about it. He did not state before the Police or the Magistrate that he had received information that the Collector was getting down but this is a mere omission and was not necessary to be stated before them. His evidence also fully supports the prosecution case and

he being the most natural and probable witness and his presence there cannot be doubted.

24. PW 11 has stated that he had gone on 11-4-1983 to the Collector's office to meet the Collector but when he reached there the Collector was coming out of the Chamber and he was descending from the stair case. Then he saw a person taking out bomb from the Jhola and threw it on the Collector which hit him with loud explosion and, thereafter, the person, who had thrown bomb, jumped and fled away. There was a Hulla that the person should be caught hold of and he was running away. That person was ultimately apprehended and brought in the Collectorate and he identified him as appellant Yadav. He was assaulted by some members of the public and he exclaimed that he had hit the Collector by bomb at the instance of his Guru meaning thereby the appellant Tripathi. learned Counsel for the appellants have submitted that his presence at that time is highly doubtful and he had come purposely to meet the Collector but he had actually not met him. True that his main object was to meet the Collector but it seems that he had come rather late and by the time when he reached near the chamber of the Collector he had left the place and was coming down. He was examined by the Police the same day and nothing has been brought in the cross-examination to discredit his testimony. A suggestion has been given that he is a man of Nagina Rai, who was in inimical terms with Kali Pandey and he was trying to implicate this appellant at the instance of Nagina Rai to which he has stoutly denied. On a consideration of his evidence his presence in the Collectorate at that time cannot be doubted and, in my opinion, he fully supports the prosecution case.

25. Thus, from the evidence of the eye-witnesses discussed above I am satisfied that they have given out the true version of the occurrence and they had identified appellant Yadav as the person who had thrown the bomb and, thereafter, he ran away from that place and was apprehended. Having considered the evidence of the eye-witnesses, now I propose to consider the other circumstances appearing against this appellant Yadav.

26. On the point of chase, arrest and confession we have the evidence of PWs 3, 5, 6, 10, 14, 15, 16, 57 and 62. PW 3 was a student of M. A. Class during the relevant time and he had gone to the District Board Office when he heard the explosion and saw persons chasing a man. He also chased and actually caught him and he was also assaulted by the members of the public and he immediately made a statement that he had killed the Collector at the instance of his Guru meaning thereby the appellant Tripathi. He further stated that the aforesaid Jhola contained a bomb which was supplied by the brother-in-law of accused Sadique Mian. He was examined by the Investigating Officer the same day and the purpose of coming to the District Board Office was that he had to draw his T. A. because he was a nominated member of the Board. His statement was also recorded u/s 164 of the Code of Criminal Procedure which is Exhibit-45/1. His attention was drawn to the statement before the Police and he had not stated

that the accused, after being apprehended, was brought in the Collectorate. But this is not a contradiction at all because there is overwhelming evidence that the accused, after being apprehended, was actually brought near the portico. Regarding his other statement before the Investigating Officer they are in the nature of omissions and do not show, in any manner, that he is not a truthful witness. In my opinion, he has fully supported the story of chase, arrest and extra-judicial confession made by the appellant Yadav.

27. The next witness is PW 55 who has a hotel close to the place where appellant Yadav was arrested and from the evidence it seems that the appellant Yadav was a regular visitor there. His evidence will be discussed in detail subsequently but he has also stated that the appellant was apprehended by the public and he also identified him because he used to come regularly to his hotel. PW 6 is also another hotel owner and he has also stated the same thing which has been stated by PW 5. PW 10 is a cultivator and he had come to Gopalganj Court because he had a case there and he saw persons were chasing a man. He was apprehended near the fruit stall and he immediately stated that he had killed the Collector at the instance of the Baba and the bomb was also in the Jhola which was obtained from the brother-in-law of Sadique Mian. PW 14 is the Police Officer and his evidence has been discussed in detail earlier. PW 15 was working as Excise Superintendent at that time and he saw from the upper floor of the Collectorate a person under arrest and he identified this appellant but has not stated about any confession made by the appellant. PW 16 had come to the Collectorate in order to meet the Collector in connection with the construction of a Harijan Colony and Botanical Garden. As soon as he entered the Collectorate compound he heard a loud report and he saw a person in injured condition running towards the road and he was being chased and ultimately he was apprehended and he stated that he had killed the Collector at the behest of Baba meaning thereby appellant Tripathi and also stated that the bomb was supplied by brother-in-law of Sadique Mian and one bomb was kept in the Jhola. He had also stated that PWs 3 and 10 and Ors. were there and the Police came thereafter. PW 57 is a today shop owner and he had gone to the Excise Office which is on the upper storey of the Collectorate and then he heard the explosion and saw a person running who was later apprehended. He had earlier seen that very man with a Jhola which has been proved by him, marked Exhibit-IV. The evidence of PW 62 has been discussed in detail earlier and he is the informant and had actually chased the appellant Yadav who was apprehended and himself made a confession and then was brought under arrest near the portico. DW 19 has been examined on behalf of the defence and has stated that appellant Yadav was arrested by Jamuna Ram, I, of Police and one constable. He had gone to the Collectorate in connection with some work in the office of the Distract Superintendent of Education but from his cross-examination it is clear that he was a close associate of appellant Tripathi and he has gone to the extent of saying that appellant Tripathi has been falsely implicated and the Ashram has been illegally demolished. Though he is a School teacher he admitted that he

had gone to the court without taking permission from the office. He is the same witness who was also present at the Collector's bungalow and from all the circumstances, as I have stated earlier, he is an interested witness and, therefore, does not inspire confidence.

28. From the evidence of the witnesses, discussed above, it is clear that after the bomb was thrown, appellant Yadav tried to run away but he was apprehended and soon thereafter he made a confession in which he admitted to have committed the crime at the instance of Baba. It is also clear from the evidence of the eye-witnesses that PW 14 or the other Police Officers had not arrived at that time and they came there subsequently. That confession before the member of the public, in my opinion, was wholly voluntary, not before any person in authority and without any threat promise or undue influence. It was rather spontaneous and it will not be hit by Section 24 of the Evidence Act. What will be the effect of his confession in the case of appellant Tripathi is a different matter altogether but so far this appellant is concerned, is wholly admissible in view of the decision of the Supreme Court in the case of Piara Singh v. State of Punjab, 1977 ACC 374 learned Counsel for the appellants has submitted that the statement was made after assault and, in this connection, the evidence of PW 10 has been relied upon wherein he has stated that the appellant Yadiv used to speak only after the assault. But, that was subsequently; but on the first occasion he himself blurted out and there was no question of assault. Moreover it is matter of common experience that if a person commits a heinous crime like murder or dacoity and is caught red handed then the members of the public always manhandle him, but that does not mean that the assault is made for the purpose of extorting any confession. We also know that thieves, when they are caught red handed, are assaulted and they at times confess to have committed the offence but that will not show that the confession was extracted or was due to assault. The defence has also relied upon a portion of the evidence of PW 62 who has stated that he had seen the Police Officer near the person who was caught hold of. But according to the evidence of PW 14 he came after the man was apprehended and when he had already made the statement and it is the prosecution case 1 hat all the Police Officers arrived after the apprehension of the appellant.

29. Thus, from the facts, mentioned above, I have no hesitation in holding that the extra judicial confession made by this appellant soon after the arrest is admissible in law. So far the confession before the Magistrate, Exhibit-44, is concerned, the trial Court has himself, hesitatingly, accepted the same. From the confession, I find that it was in the nature of the cross-examination which is not permissible under the law and has been deprecated by the Supreme Court and different courts of the country. Mr. Pandey, learned Counsel appearing on behalf of the State, has fairly submitted that Exhibit-44 cannot be used in this case. Therefore it has to be excluded from consideration. The other finding of the learned Judge regarding the trekking of the dog after smelling the Jhola, that also cannot be used against the appellant in this case because whatever material

is collected in such trekking is only for the purpose of investigation and not to be used as legal evidence. I am supported in my views by a decision of the Supreme Court in the case of Abdul Rajak Murtaja Dafedar v. State of Maharashtra. AIR 1969 S.C. 234.

30. Prior to the occurrence the appellant was seen with a Jhola which is supported by the evidence of PWs 19, 57 and 62 and soon after the occurrence a Jhola was found on the landing ground and a bomb was also recovered from the same. It is submitted by the learned Counsel for this appellant that the appellant cannot be connected with the aforesaid Jhola because that Jhola has not been put in the test identification parade. In my opinion this argument has also to be rejected. This was the solitary Jhola found on the landing ground, and soon after his arrest, appellant Yadav had himself stated that a Jhola had been kept on the landing ground which was immediately recovered from that place. It is also in the evidence that the whole area was cordoned off and persons who were on the upper storey were not allowed to come down and similarly persons were not allowed to go up-stairs. In that view of the matter, there was no question of planting any Jhola. Thus, from the evidence it must be held that the Jhola, which was found on the landing ground, actually belonged to the appellant and it was also not necessary to put the same on the test identification parade. Here I may also dispose of another submission of the learned Counsel that the appellant himself was not put on the test identification parade and, therefore, his identification by the witnesses in Court cannot be held to be reliable. There is overwhelming evidence on the record, which have been discussed above, that the appellant was arrested after a chase and most of them had identified him as the person who had either jumped from the landing ground or was seen running from the Collectorate compound and, therefore, it was not necessary to hold test identification parade of this appellant. The test identification parade would have been a farce because admittedly a number of persons had seen him under arrest and if they would have identified him in the parade then the argument would have been that he was seen soon after the arrest and, therefore, the identification was of no value at all. Therefore, the test identification parade of this appellant was not at all necessary.

31. Regarding the throwing of bomb by this appellant we have the evidence of PWs 2, 11, 19, 40 and 62. learned Counsel has submitted that PWs 2 and 11 are not in the first information report but this aspect of the matter has been considered by me earlier and simply because a witness is not in the first information report his evidence cannot be brushed aside and what has to be seen is the intrinsic value of the evidence and I may refer to a case of the Supreme Court in the case of State of Uttar Pradesh Vs. Lalla Singh and Others, No doubt, the court below has held that PWs 19 and 40 visualized the throwing of bomb but what he actually meant that they had not actually seen the entire process. The evidence is that the appellant was between PW 19 and PW 62 and when a bomb was thrown by person from behind naturally the inference will be that the person who was coming from behind had thrown a bomb when there was an explosion.

Similarly, the evidence of PW 40 fully supports the fact of the throwing of the bomb by this appellant. Thus, from the evidence of these witnesses, discussed above, I am satisfied that this appellant Yadav had actually thrown the bomb which hit the Collector.

32. The other circumstance which is against the appellant is that he had sustained bleeding injuries on the head immediately after the occurrence. He was examined by PW 54 and the injuries have been referred to above. A supplementary opinion was given by the doctor which is Exhibit-33/1 that injury No. 1 could be caused by splinter and injury No. 7 by means of blast. It has been submitted that this report was obtained when the Investigating Officer and the Doctor had full knowledge about the allegation that the appellant had thrown the bomb. In his statement u/s 313 of the Code of Criminal Procedure this appellant has completely denied about presence of any injury on his person which is absolutely false in view of the evidence of so many witnesses. It may be mentioned that due to blast some portion of the moustache and hairs of the appellant were partly burnt and the Investigating Officer, after cutting a portion of the same, sent it for chemical examination, Exhibits-Y and Y/5. and the report is that it was due to blast. Similarly the shirt, full pant and the sweater worn by this appellant were seized and sent for examination which are Exhibits-Y/1, Y/2 and Y/3 and the result shows that it was due to some explosive substance and blood was also found there. This clearly shows that this appellant was close to the place of explosion. Regarding injuries it has been submitted that PW 19 was also injured which is clear from the evidence of PW 55 and, therefore, he might have committed the crime. This argument is also without any substance in view of the fact that besides injuries there were number of circumstance against this appellant. The injuries on the person of PW 19 rather supports the prosecution case that he was close to the Collector when the bomb was thrown. The presence of injuries and the smell of explosives on the wearing apparel have all been completely denied by this appellant which is absolutely false and this false statement, in his examination u/s 313 of the Code of Criminal Procedure, will be a chain of circumstance against, him as held in the case of Deonandan Mishra Vs. The State of Bihar,

33. It was then contended by Mr. Verma that according to the prosecution case and according to the so called confession of appellant Yadav bomb was supplied with the aid of Sadique Mian through his brother-in-law, Sairuddin, and, in this connection, our attention has been drawn to the charge framed against all the four accused persons u/s 120-B of the Code in which it is stated as follows:

....

You Sadique Mian procured explosive substance (bomb) through you, Sairuddin Sheikh and you Paramhans Yadav executed the object of conspiracy by throwing the explosive substance (bomb) on the body of the said Collector resulting in instantaneous death, and you thereby committed the criminal conspiracy and offence punishable u/s 120-B of the Indian Penal Code.

It is submitted that the two accused persons, namely, Sadique Mian and Sairuddin have been acquitted in this case and, therefore, it cannot be held that appellant Yadav had thrown the bomb on the Collector because the very story of obtaining bombs through the two acquitted accused persons has not been accepted. In support of his contention reliance has been placed in the case of Sambasivam v. Public Prosecutor, the Federation of Malaya 1950 Appeal Cases 458. In that case some ammunitions were found in possession of the accused persons for which they were acquitted and it was held that the reception of the evidence that he was in possession of the ammunition was not to be allowed in the subsequent trial against the same accused. This is not the position in the instant case. That finding of acquittal of the two accused persons is not being used in a subsequent trial. It is a matter of common knowledge that a number of persons are charged w a case; some are acquitted and some are convicted. That will not necessarily mean that acquittal of some will preclude the court from convicting others because the charges have not been proved against some other accused. By the acquittal of the two accused persons the story of the source of supply or the agency supplying the bombs could not be said to be proved in this case but that does not necessarily mean that appellant Yadav was not in possession of the bomb which he actually threw on the Collector. Therefore, the submission of the learned Counsel for the appellant has to be rejected.

34. From the evidence of eye-witnesses and other materials and circumstance, discussed above, I have come to the conclusion that it was appellant Yadav who had thrown the bomb on the Collector thus causing his instantaneous death at the spot and he has been rightly convicted u/s 302 of the Code and Section 3 of the Explosive Substance Act.

35. Now I enter into the next important part of the prosecution case whether the two appellants had conspired together in order to kill the Collector and in pursuance of the said conspiracy appellant Yadav actually killed the Collector. The trial Court has held that the conspiracy has been well proved and the two appellants have been convicted for the same. In order to prove conspiracy witnesses have been examined and a number of documents have been filed to show that it was appellant Tripathi who was the main brain behind the entire drama and he was instrumental in getting the Collector killed. The charge of conspiracy has been framed against them and I will better quote the same:

That you, on or about in between July, 1982 and 11th April, 1983, agreed among yourself and Ors. to do or cause to be done an illegal act, to wit, to commit the murder of Sri Mahesh Prasad Narain Sharma, the then District Magistrate and Collector, Gopalganj, an offence punishable u/s 302 of the Indian Penal Code and in furtherance of the said agreement one of you, namely, Sadanand Tripathi alias Sant Gyaneshwar directed Paramhans Yadav to commit the murder of the said District Magistrate and Collector, Gopalganj.

Criminal conspiracy has been defined u/s 120-A of the Code which runs as follows:

120-A, 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.

The offence, if committed, is punishable u/s 120-B of the Code in the same manner as if the person had abetted the offence, meaning thereby that he will be also liable for the same sentence which is awarded to the real offence who accomplished the act in pursuance of the conspiracy. It is, no doubt, very difficult to prove conspiracy by oral evidence. It can certainly be proved by circumstances and other materials.

36. The first case of its kind in India is the most classic and memorable judgment of the Calcutta High Court in the case of Barendra Kumar Ghosh v. The King Emperor. XIV C.W.N. 1114 that was a case of waging war against the Queen of the British Empire, who was then ruling the country, and conspiracy was hatched by some young educated patriots including Barendra Kumar Ghosh, brother of well known Saint Sri Aurobindo Ghosh, in order to overthrow the British Government from this country. Bombs were thrown on Government buildings, Treasuries were looted and Europeans were murdered and then the matter came to light and after investigation a number of persons were put on trial, some were sentenced to death, some to transportation for life and some to different terms of imprisonment for waging war against the Queen or for abetting such offence u/s 121 of the Code, which now stands deleted. I may quote some observations of their lordships of the Calcutta High Court which will be useful for the purpose of this case:

Though to establish the charge of conspiracy, there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each others presence, the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Further, it has been held, an agreement implies the concert of at least two persons so that *ex vi termini* there cannot be a conspiracy of one. Further it has been held that from the nature of the case it is to a large extent circumstantial, and in dealing with it the rules specially applicable must be borne in mind. There is always the danger in a case like the present that conjecture or suspicion may take the place of legal proof, and, therefore, it is right to recall the warning addressed by Mr. Barron Alderson to the Jury in *Reg v. Hodges*, where

he said; "the mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form part of one connected whole, and the more ingenious the mind of the individual, the more likely was it, considering such matters, to over-reach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

37. In the case of Mohammad Usman Mohammad Hussain Maniyar and Others Vs. State of Maharashtra, some persons in conspiracy with each other were selling illegal arms and when this matter came to light then, after investigation, they were put on trial. No oral evidence could be possible but still the conspiracy was held to be proved and it has been held by their lordships as follows:

For an offence u/s " 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication.

In that case the fact that the accused persons were possessing and selling explosive substance without a valid licence for a pretty long time lead to the inference that they agreed to do and/or cause to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time. In another old decision of the Bombay High Court in the case of Emperor v. G. E. Reing AIR 1929 Bom. 296. it has been held that evidence taken in conjunction with other evidence may establish the case of conspiracy. Keeping these well known principles in my mind, I now propose to consider the submissions of Mr. S. B. N. Singh, learned Counsel appearing on behalf of appellant Tripathi, Mr. Verma for appellant Yadav and Mr. Pandey, learned Counsel appearing for the State.

38. In this connection it has to be kept in mind that there are three main characters, the two appellants in this case and the Collector, who was killed. I have given some detail about the background of appellant Tripathi and I may state, once again, that this appellant was in Jail during the relevant period. The prosecution has led evidence to show that from 10-7-1982 when appellant Tripathi was in jail there was a regular meeting of the two appellants and there they conspired to kill the Collector; Yadav being the trusted man of Tripathi. I have already given the background of Tripathi who came from a very moderate family having a few Bighas of land and had started his life as a Bus Conductor and later he passed law examination and practised in the district court for some time. This will be clear from the evidence of his own brother, Dayanand, PW 2 and PW 2. According to DW 12, who is the brother-in-law of appellant Tripathi had married with his sister in 1971, he left his home some times in 1974 and for two years till 1976 his whereabouts were not known. In 1976 he became a religious teacher and gave religious discourses at a number of places in Uttar Pradesh and Bihar and came in contact with Anand Mohan Shrivastava, father of Manoj, PW 30. The family was very much impressed by this appellant with the result that not only Anand Mohan Shrivastava but his wife, son, PW 3, and

daughter, Guddi became his disciples. After the establishment of the Ashram at Bhagwat Parsa the entire family of Anand Mohan Shrivastava shifted there and Manoj, PW 30, became the treasurer of the Ashram and continued on that post for four years. It has also come in the evidence that appellant Tripathi, who claimed to be the incarnation of God, initiated a number of persons in the Ashram and gave them the impression that they could see God through him provided they gave their "Tan, Man and Dhan" i.e., body, mind and wealth without any reservation. It was also told by him that Guddi, the daughter of Anand Mohan Shrivastava, will not live long and for that some efforts will have to be made in order to prolong her life. By such tricks he not only allured the family of Anand Mohan but others as well.

39. Rama Shanker Rai, P.W. 33, who was working as Junior Engineer in the Uttar Pradesh Electricity Board, along with P.W. 34 and many others, came in contact with appellant Tripathi some times in October, 1980. They were also initiated by this appellant and, according to them, the appellant addressed a number of "Satsangs" at different places. P.W. 33 left his job and became the Secretary of the Ashram in January, 1982, and continued up to February, 1983 but soon he was disillusioned and came to know about the tricks of this appellant Tripathi and suddenly left the Ashram and thereafter Ram Sahai Singh, D.W. 9, Rama Shanker Rai, P.W. 33 and Ors. filed a petition before the Superintendent of Police, Varanasi, for protection, Exhibit-21, because they apprehended danger to their lives. This apprehension was due to the fact that they had left Ashram and it was thought that they might disclose the secrets of appellants Tripathi's trade and those petitioners also apprehended danger to their lives at the hands of people of appellant Tripathi. P.W. 30 also left the Ashram and his family members were arrested in 1981 at Varanasi and Anand Mohan Shrivastava, father of PW 30, was actually killed in his own office on 13-5-1981 and it was suspected that the rourder-squad of appellant Tripathi had hand in the same. The petition filed by P.W. 33 and Ors. Exhibit-21, was endorsed by the Senior Superintendent of Police, Varanasi, to P.W. 47, who submitted a report, Exhibit-20. "I he Ashram was completely demolished and practically razed to the ground on 15-7-1982 and there was also an obstruction at that time by the inmates of the Ashram for which cases were registered. D.W. 9 was one of those arrested and, according to him, the cash, articles and idols worth about rupees thirty lacs were taken away by the authorities and neither any seizure list was prepared nor any list of articles was given to any inmate of the Ashram. A case was also filed against a number of Government officials. According to the prosecution, the Collector and the Superintendent of Police were also present for some time but this has been completely denied by the defence. J his aspect of the matter will be considered by me separately. After the demolition of the Ashram the lands were distributed among the landless labourers. All these happened while appellant Tripathi was in jail because of the pendency of seven criminal cases against him and he was also detained under the Crime Control Act by the order of the deceased Collector.

40. Now, I shall state the background of appellant Yadav. He, according to the

evidence, had little education and he was appointed in the year, 1977 as semi-skilled Khalasi in North Eastern Railway, which will be clear from the evidence of P.W. 26 and his service record has been proved by him which is Exhibit-13. Some times in the year, 1980 he came in close contact with appellant Tripathi and became his disciple and at his instance he left the service of the Railways. P.W. 27, Ram Prasad Kashyap, was also working in the Railways along with appellant Yadav and after leaving the service he kept his articles at his place and after the occurrence, in course of investigation, those articles were seized from his house and Exhibits 6/2 and 6/3 are the seizure list of articles of daily use and books, Exhibits-14 and 14/1 and the pamphlets, Exhibit-15. In June, 1982, he came to the office and disclosed to his colleagues that the men of appellant Tripathi were in the Jeep and, therefore, he will not stay with them any longer. During his stay there for a short while he gave his experience about the Baba and accepted that he had become his close associate. He had been living regularly in the Ashram along with appellant Tripathi and his father, Chaudhary Yadav, P.W. 28, went to the Ashram and wanted to bring back his son so that he may look after his family and children. Appellant Yadav agreed to the proposal but appellant Tripathi did not agree of his being taken away and rather, according to the evidence of PW 8, he was threatened with dire consequences and was asked to go back. After the demolition of the Ashram and the arrest of inmates of the Ashram, appellant Tripathi was already in jail, this appellant again came to the office some times in October, 1982 to join the service. But, according to evidence of P.W. 26, he could not join because the post had already been filled up. This witness PW 26 was examined by P.W. 64 in course of investigation and all these matters came to light. Thus, from the evidence it is clear that appellant Yadav was very close to appellant Tripathi; he became his disciple and, after leaving his service and his family members, was residing at Bhagwat Parsa in the Ashram. the prosecution has also led evidence that this appellant has been meeting appellant Tripathi from time to time in the jail, After this occurrence P.W. 61 took list of prisoners who were in jail and were released after 1-4-1953 and examined some of them and also recorded their statement. PW 5, Binda Sah, has got his hotel close to the jail compound and has stated that after the occurrence he saw appellant Yadav under arrest and he knew this man from before. He has further stated that from the time of Holi (that will be March, 1983) this appellant used to come to his shop and carry tea and breakfast for his Baba meaning thereby appellant Tripathi and he himself used to take meal in that hotel. On some occasion he wanted to take articles on credit which was refused but this appellant came with a person named as Pathak and paid the amount. The under wear kept by this appellant in his hotel was also recovered from his shop after the occurrence. There is evidence that prior to August, 1982 the interviews were held in regular manner and entries were also made in the Interview Register but subsequently this appellant became well known to the jail people and the meetings were held in irregular manner without any entry in the register, contrary to the rules. The Superintendent of Jail, P.W. 72, has denied of such irregular meetings but his evidence will be discussed later.

41. The next witness on the point is P.W. 44 Jagtanand Kuer, Compounder of the Jail Hospital. He has stated that this appellant used to meet appellant Tripathi regularly and the interviews could be made in an irregular manner on payment of Rs. 2 or 3 only without taking permission from the authorities. P.W. 21 is the Jail Clerk, Ramanuj Singh, and he has also supported the fact that appellant Yadav used to come to the Jail regularly to meet appellant Tripathi and was always bringing tea and breakfast for him from outside the Jail. He has stated that on 9-4-1983 some people had come to meet Baba meaning thereby appellant Tripathi and at Patna he learnt about the murder of the Collector in which Yadav was made an accused. Similar is the evidence of P.W. 13, A.S.I. of Police attached to the Jail, who has testified to the fact that this Yadav regularly visited the Jail and met appellant Tripathi. P.W. 6 is another hotel owner, living close to the hotel of PW 5 and he has also stated that the man who was arrested, meaning thereby appellant Yadav, used to take tea and breakfast for appellant Tripathi from his hotel. P.W. 20 has got a Paan shop near the Jail and has stated that this appellant used to take Paan from his shop for appellant Tripathi. P.W. 72 was working as Superintendent of Jail and he is a charge-sheet witness but was tendered. He has been cross-examined by the defence in order to show that regular procedure had to be followed for meeting prisoners in Jail and it was not possible for any person to meet any prisoner without signing the register. He has also stated that the supply of foodstuff from outside the Jail is completely prohibited and it can be done only with his permission. He has also stated that he had no knowledge that persons were meeting prisoners in Jail without permission and according to the rules a prisoner was allowed interview once a week only. On one hand is his solitary evidence that no interview could be granted without his permission and, on the other, witnesses also of Jail have stated that such meetings were possible and were being done on payment of small sum of Rs. 2 to 3. The trial Court has not accepted the evidence of this witness, P.W. 72, and rather held that there were sufficient materials to show that persons were meeting prisoners in Jail in illegal manner including this appellant Yadav and I am also of the opinion that the finding arrived at by the court below is correct. PW 72, being a responsible officer, will never accept the position that things were done in illegal manner at a place of which he was the Superintendent and, therefore, he asserted that rules were not violated. It is true that on some previous occasion there are entries to show in the Jail register that appellant Yadav was granted interview with appellant Tripathi but according to the evidence when he became familiar with the Jail Staff all these rules and procedures were thrown to wind. These lapses are not to be found only in Gopalganj Jail but in other jails also which will be clear from the decision of the Supreme Court in the case of Sunil Batra v. Delhi Administration 1980 Cr.LJ 1099. The defence has also led evidence to show that appellant Yadav was not close to appellant Tripathi and D.Ws. 9, 10, 11 and 12 have been examined on this point. But, after going through the evidence it is clear that they are highly interested witnesses and cannot be relied upon. There is overwhelming evidence to show that appellant Yadav had been meeting Tripathi in jail. Thus, from the

evidence I am satisfied that this appellant Yadav had been meeting appellant Tripathi regularly in Jail at least from March, 1982 onwards till the date of occurrence.

42. Immediately after his arrest appellant Yadav made a voluntary statement before P.Ws. 3, 6, 10, 11, 16 and 62 that he had killed the Collector at the hehest of his Guru Sant Gyaneshwar (appellant Tripathi) and he further stated that the bomb was supplied by Sadique Mian through his Bahnoi. This is also corroborated by the evidence of P.Ws. 2, 15, 19, 40 and 57. This statement was spontaneous and has been held by me as admissible earlier. Therefore, now it will be relevant to quote Section 6 of the Evidence Act which reads as follows:

6. Relevancy of facts forming part of same transaction. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustration (a) will be also relevant;

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by standers at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

This will be also relevant u/s 10 of the Evidence Act which may be usefully quoted:

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 statements made by appellant Yadav will be relevant because it was made immediately after he was apprehended without any time lag and I may refer to a decision of the Supreme Court in the case of State of Rajasthan v. Sukhpal Singh AIR 1984 SC 207, where it has been held that the various transactions, namely, the lodging of the first information report, the prompt flashing of the wireless message, posting of guards to stop the car and the stopping of the car soon after the signal and emergence of six or seven persons from the car and chase given to them and the fire shots by those persons and their ultimate arrest were all matters which are but links in the same chain of accusation and, therefore, they are parts of one and the same transaction. The case of Sardul Singh Caveeshar Vs. The State of Bombay, , also relates to case of conspiracy and the prosecution relied on a number of circumstances including the statements and the talk which took place between the conspirators.

It has been held by their lordships as follows:

The admission of such evidence, in proof of conspiracy or of the fact that he was conspirator, is, in its essence, admission not as against himself but against the others who are on the trial. To that extent that such an issue, that is of their being a conspiracy and of his being a conspirator is relevant at the trial, it must be proved by evidence u/s 10 of the Evidence Act, which is an exceptional Section limited in its application to conspiracy to commit an offence or to commit an actionable wrong.

This extra-judicial confession will, undoubtedly, be admissible as against the maker but it also provides a strong link in the various chains of circumstances relating to conspiracy, and also against others on trial.

43. Another important link in the chain is the evidence of Gaya Gond, P.W. 4. He was accused in a case Under Sections 399 and 402 of the (Code and he was granted bail after release from Jail went to Assam for service. As he could not appear in the court on the dates fixed, his bail was cancelled and he was informed by his wife and he surrendered on 2-12-1982 and was lodged in Gopalganj Jail. He used to see appellant Tripathi who was lodged in Ward No. I and used to meet him regularly. He has stated that tea, breakfast, Paan, Biri and other articles were regularly supplied to appellant Tripathi through appellant Yadav. On 11-4-1983 his wife had come to meet him and such interview was a regular affair on payment of Rs. 2 to the constable incharge. When he met his wife near the Jail gate at 10,00 a. m. appellant Yadav also came to meet his Baba, appellant Tripathi. Appellant Yadav seeing Tripathi saluted him by lying prostate on the ground and Tripathi enquired from him whether the work for which he had come will be done or not on which appellant Yadav replied that the work will be accomplished within one and half hour. Soon thereafter he heard a bomb blast and learnt about the killing of the Collector. He met the Baba at 3.00 p. m. and told him that his man (meaning thereby appellant Yadav) had been arrested and he was being accused for the offence on which appellant Tripathi replied saying that even if twenty Collectors will be killed no harm will be done to him. He also saw persons rejoicing on hearing the death of the Collector. He was examined by the Magistrate u/s 164 of the Code of Criminal Procedure, Exhibit. The prosecution has laid great emphasis on his evidence to show that immediately before the occurrence appellant Yadav was seen with appellant Tripathi and there was a dialogue and soon thereafter there was a bomb blast and the Collector was killed. This witness has been cross-examined at length and has also stated that appellant Tripathi used to give religious discourses in Jail premises and he was very much annoyed with the Collector because he had demolished his Ashram and also spoiled his garden.

44. learned Counsel for the appellants have seriously commented on the evidence of this witness and have submitted that this witness is a court bird and has been in Jail on a number of occasion and he has been tutored by the Police to state that there was a talk few hours before the occurrence between the two

appellants and soon thereafter he was released from Jail and the case was withdrawn. It has also been submitted on behalf of the appellants that wife of the witness has not been examined and there is nothing to show from the Jail register that the wife of P.W. 4 had been granted interview with P.W. 4. Regarding the interview register it is in the evidence of P.W. 4 himself that the interview was granted on the payment of Rs. 2 which was the usual practice prevailing there according to the evidence of other witnesses discussed above. The examination of the wife was also not at all necessary in this case. The contention of the appellants that he was released from Jail only because he had to depose against this appellant cannot be accepted because according to the learned Counsel for the State, bail was granted on merit and final report was submitted in the case of theft but other cases were not withdrawn. He has also stated that at the time of talk one Rajput Clerk of the Jail was also in the office meaning thereby about P.W. 22 but according to his evidence he was at Patna on that date. It is true that P.W. 22 has stated that he had learnt about the killing of the Collector at Patna, but, in my opinion, some mistake was committed by P.W. 4 in naming this witness. It is, no doubt, true as contended by the learned Counsel for the appellants that from the nature of the talk it did not refer to the killing of the Collector but this much must be accepted that appellant Yadav had met the other appellant in Jail few hours before the occurrence. Thus, in my opinion, the evidence of P.W. 4 cannot be rejected and the two appellants had met on the fateful day.

45. Further, there were some rejoicing in the Jail premises after they learnt about the death of the Collector and P.W. 37 was also in jail and has stated that some disciples of the Baba (appellant Tripathi) had come to meet him on 10-4-1993 Babu Ram Chaudhary, P.W. 45, has also supported P.W. 37 and there was a rumour after this occurrence that appellant Tripathi had also hand in the murder and when enquired about the same appellant Tripathi denied and said that he cannot be involved in the case because he was in Jail. It may be mentioned that P.W. 45 was undergoing treatment for cancer in Nalanda Medical College Hospital and has stated that there was always a talk between appellant Tripathi and his followers that though some cases had ended in his favour still the Collector was putting all obstructions in his way. P.W. 21 was also an under trial prisoner and has stated that appellant Tripathi used to say that Collector was a thorn (Kanta) in his way and that thorn had to be removed. After learning about the news of the killing of the Collector he and his disciples were very much happy. learned Counsel for the appellants have submitted that the witnesses, who were in Jail and have deposed in this case, are Jail birds and were completely under the clutches of the authorities and, therefore, no reliance should be placed on their testimony. I am unable to accept this contention. They have deposed to the fact what happened actually inside the Jail and they were natural and probable witnesses and simply because that they were under-trial prisoners their evidence cannot be thrown out. In the case Rana Partap and Others Vs. State of Haryana, it has been held by their lordships that if a murder is committed in a brothel then

prostitutes and paramours will be only natural witnesses. Similarly, what happened inside the jail could only be testified by the prisoners who were in jail at that time and not outside, and on this ground alone their testimony cannot be disbelieved. These circumstances, though minor in nature, have some bearing on the question of conspiracy and cannot be easily brushed aside.

46. The prosecution has been brought on the record to show that the appellant Tripathi was very much annoyed with the Collector because of the cases brought against him and his followers and he actually arrested him on 10-7-1982 and confined him to jail. Seven criminal cases were pending against him and his detention under the Crime Control Order was also ordered by the Collector and bail was not granted to him. This, according to the prosecution, was strong motive for getting the Collector killed and Tripathi, though in jail, was instrumental in this crime. To recapitulate some dates, the revision filed by him was dismissed by the Commissioner on 14-7-1982, Exhibit-12, without giving any opportunity to move the superior court the Collector and his men completely demolished his Ashram on 15.7.1982 with the result that the entire Ashram was levelled to the ground and property worth lacs were lost and the persons living in the Ashram were thrown on the streets. The defence has tried to show that the Collector was not actually present at the time of demolition and, therefore, there could not be any question of getting the Collector killed.

47. Now, I propose to consider the evidence on this point. After the demolition of the Ashram a joint report was sent by the Collector and the Superintendent of Police to the Inspector General of Police, Home Secretary and other Officers at Patna; Exhibit-11 is the wireless message/ and Exhibit-12 is the report of the Collector and the Superintendent of Police. From these reports it is clear that both these officers were present at the time of demolition. P.W. 25 was working as Superintendent of Police, Gopalganj, and after demolition he went to Hyderabad for training after making over charge to P.W. 66 and there he learnt about the killing of the Collector. On his return from training his statement was recorded by the D. I. G. Crimes. The defence has relied on the tour diaries of the Collector which is Exhibits-31/1 and 31/2 in order to show that the Collector had actually returned by 32.00 Noon. The T. A. bill of the Collector is also Exhibit-43. P.W. 38 is the Officer-in-charge of Uchkagaon Police Station and has stated that the Collector and the Superintendent of Police had come at 10.00 a. m. and had gone back at 4.00 p. m. and the Collector he had come in Ambassador Car whereas P.W. 25 has stated that he had reached the Ashram by Police Jeep and according to the tour diary the Collector had gone by station wagon. There are some discrepancy, no doubt, but from the oral evidence and the wireless, message, Exhibit-11, and the report of the Collector and the Superintendent of Police, Exhibit-12 it is clear that both the officers were actually present at the time demolition of the Ashram and it is also true that the Collector had left the place after some time. It will be also clear from the fact that a case has been lodged by P.W. 9 against the Officers for demolishing the Ashram in illegal manner and for taking away the articles and the name of the Collector and the S.

P. do not figure there. The other circumstance which cannot be lost sight of is that the cases were registered against thirty three persons of the Ashram for obstruction and for keeping illegal arms because bombs were also recovered. Thus, from the evidence it must be held that the Collector was also present at the time of the demolition and the contention of the learned Counsel for the appellants that he was not there cannot be accepted.

48. The other circumstances relevant in this connection is that appellant Tripalhi was detained under the Crime Control Order and on 5-4-1983 a petition for bail was filed on his behalf that he had to attend some religious Seminar at Haridwar on 10-4-1983 and, therefore, he should be enlarged on bail. The Collector passed an order that he will hear the Public Prosecutor on 12-4-1983 though the specific date of the Seminar was given as 10-4-1983. Then appellant Tripathi moved the High Court in Cr. W. J. C. No. 119 of 1983 and an allegation was made that the Collector had deliberately put 12-4-1983 knowing fully well that the bail application will become infructuous because he had to attend Seminar on 10-4-1983. On 11-4-1983 a direction was given by the High Court to consider and dispose of his application at once. But the same day the Collector was killed. All these things must have been in the mind of appellant Tripathi and the fact that he was not released on bail by arbitrary action of the Collector, by adjourning the case to 12-4-1983 are a strong circumstance to show that appellant Tripathi was not very happy with the Collector. According to the evidence of P.W. 46 also, who is the wife of the deceased Collector the Collector was apprehending some trouble at the hands of the men of appellant Tripathi that they may kidnap some child of the family. From the aforesaid facts it can be safely inferred that appellant Tripathy was not happy with the Collector though it may also be said that the Collector had also acted rashly and that was sufficient motive for entering into the conspiracy with appellant Yadav in order to get rid of the Collector.

49. The prosecution has relied on other circumstances as well. A bomb was recovered from the Jhola belonging to appellant Yadav from the landing ground and another bomb was also recovered from the Ashram for which a case was registered which will be clear from the evidence of P.W. 38. Both the bombs were sent to the expert and were de-activated and a report was submitted which is Exhibit-35. It has been submitted by the learned Counsel for the State that the two bombs were similar and that also shows the complicity of the appellants because bomb was the same which was recovered from the Ashram where the two appellants were living. Since, a case has been registered and the matter is pending before a Court, I express no opinion on this point which may prejudice the parties. Therefore, I will keep this circumstance out of consideration in this case.

50. Prosecution has led evidence about the character and antecedent of both the appellants and Section 54 of the Evidence Act prohibits reception of such evidence in a criminal trial. But, a number of witnesses have been examined on

behalf of the defence in order to show that appellant Tripathi was a man with religious background and had given religious discourses at different places and had number of followers to his credit. Even in Jail he used to give religious discourses. According to Mr. Pandey, appearing for the State, evidence has been led to explain the peculiar nature of the Organisation set up by appellant Tripathi. He having a number of followers including appellant Yadav and this, according to him, gives a clue relating to the murder. In the case of Mangal Singh and Others Vs. State of Madhya Bharat, it was held that the evidence disclosed certain unpleasant things about accused and was admitted in order to ascertain the motive of the murder and not for determining bad character of the accused. Similarly, in the case of Lakshmandas Chaganlal Bhatia v. State 1968 Cr.LJ 1584 it was held that Section 54 of the Evidence Act could not have any over riding effect but could be used for limited purpose in order to meet the contention of the defence and in this case it was for the purpose to explain and introduce the peculiar Organisation set up by appellant Tripathi. In my opinion, the parties having led evidence on this point no question of prejudice arises. Moreover, there are other materials and even if this evidence is completely excluded that will not in any way weaken the prosecution case.

51. Now, I come to another aspect of the prosecution case regarding the petition said to have been typed and corrected by appellant Tripathi. In course of investigation P.W. 65 examined P.W. 36 and he produced the records of the detention case started against appellant Tripathi and it was found that the Vakalatnama, Exhibit-23, executed by appellant Tripathi of 5-4-1983 was scribed by P.W. 23, Advocate's Clerk. A bail application was also filed in that case on the same day which is Exhibit-26. The Investigating Officer then examined PW 23, the Advocate's Clerk, who stated that the bail petition was typed by Typist, P.W. 24, and appellant Yadav was present at that time. Thereafter P.W. M was examined. A requisition was made by the Investigating Officer to seize the petition, Exhibit-9, and it was actually produced by P.W. 24 and the production list is Exhibit-31 prepared by P.W. 49. Exhibit-9 is the original and Exhibit-10 series are copies thereof. P.W. 24 has stated that on 5-4-1983 the Advocate's Clerk, P.W. 23, had come with one person for getting Exhibit-26 typed. Again that person came along with that petition on 6-4-1983 and it was typed by him, Exhibit-9, and that petition was taken by that man on 6-4 1983. On 7-4-1983 that man brought that petition after making some corrections in red ink. According to the prosecution, this correction was made by appellant Tripathi and P.W. 24 was asked to prepare twenty five copies. On 10-4-1983 only ten copies were ready and those were handed over to that very person and later it was found that the man was appellant Yadav, according to P.W. 24, The defence has denied that the corrections on Exhibit-9 were made by appellant Tripathi and according to the prosecution, it was done by appellant Tripathi himself. P.W. 30, who was the Treasurer of the Ashram for about two or three years, has proved the writings as that of appellant Tripathi. According to the learned Counsel for the State, the contents of the petition could be known only to appellant Tripathi

and none-else and, therefore, he was the author of the same. Section 47 of the Evidence Act speaks of the mode of proving of the handwriting and in the commentary of Sircar's Law of Evidence there are eight methods for proving the writings. The first six methods are conventional methods but items No. 7 and 8 speak of unconventional methods also which are as follows:

(1) By internal evidence afforded by the contents of the documents.

(2) Circumstantial evidence which may lead to irresistible conclusion that the person in question has written the same.

52. In the case of Mobarik Ali Ahmed Vs. The State of Bombay, it has been held that a document could be proved by internal evidence afforded by the contents of the documents. This mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonable good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject-matter of the chain of correspondence, to speak to its authorship. It has also been held that the Court itself may judge whether the document constitute a genuine link in the chain of correspondence in order to determine authorship. In the case of Muranlal v. State of M. P. 1980 ACC 11 (Sum) it has been held that it is the duty of the Court to examine the document itself and then, after comparing with the admitted signatures, come to its own independent conclusion. Similar observation has been made in the case of Barendra Kumar Ghosh v. The Emperor (supra), where it has been held that the authorship of letters could be determined by other methods also besides the conventional methods as mentioned under the Evidence Act.

53. After going through the documents, Exhibits 9 and 9/1, and admitted writings of appellant Tripathi, Exhibits-R & R/I, which have been proved by D.W. 5, and after considering the evidence of P.W. 30, who was well acquainted with the writings of appellant Tripathi, he being the Treasurer of the Ashram for two years, I am of the opinion that the corrections made on Exhibit-9 are in the pen of appellant Tripathi. That being so, it also must be held that these petitions were taken to the Jail by no other person but appellant Yadav who got it typed by the Typist and also took them from him and this also is an important link in the chain of circumstances that the two appellants had met just prior to the occurrence.

54. On a careful consideration of the evidence of the witnesses, discussed above, and the various circumstances relied upon by the prosecution and the documents filed in this case, I have no hesitation in holding that after appellant Tripathi was lodged in Jail and appellant Yadav had been meeting him quite frequently and foods and other articles were supplied to him in Jail from outside. Appellant Tripathi had reached some height acquiring prestige and position in the arena of

religion and in the eyes of his devotees and within a short period he had a number of followers to his credit and a well equipped Ashram with all the amenities of life, but he soon lost his position and the encroachment case was decided against him by the Commissioner and the very next day the Ashram was demolished. Obstructions were also put forward by the inmates of the Ashram for which criminal cases were registered and thirty three persons were arrested. According to the defence properties worth lacs were taken away without giving any receipt or seizure list and cases were also lodged against some of the Government Officers who were connected with the demolition. The deceased Collector was also present in order to supervise the demolition but after some time he left the place. On the report of the Collector appellant Tripathi was detained under the Crime Control Order and bail was not granted to him though the specific prayer was made that he had to attend a Seminar at Haridwar and ultimately appellant Tripathi moved the High Court and got a direction but in the mean time the Collector was killed. All these facts coupled with the background and the facts, mentioned above, clearly indicate that the Collector had become an eye-sore to appellant Tripathi and he, therefore, decided to kill the Collector and a conspiracy was hatched between the two appellants. All these circumstances taken together lead to the irresistible conclusion that the Collector was killed in pursuance of the conspiracy by appellant Yadav. I am tempted to quote a line from Shakespeare which he has written in his famous drama "Julius Caesar":

To mask the monstrous visage seek none, conspiracy hide it in smiles and affability.

This fully applies to the instant case. The circumstances, mentioned above, have been put to the two appellants u/s 313 of the Code of Criminal Procedure and have been denied by them but the charges u/s 120-B of the Code stands fully proved in this case and the two appellants have been rightly convicted for the same.

55. learned Counsel for the two appellants have lastly submitted that it is not a fit case in which death sentence should have been awarded by the trial Court. learned Counsel appearing on behalf of the State, on other hand, has submitted that in view of the fact that it was a pre-planned murder and the manner in which it was done, sentence of death is the proper punishment in this case and reliance has been placed in the case of Rajendra Prasad Vs. State of Uttar Pradesh, and the guidelines for awarding death sentence have been given in paragraph 82 of the judgment. In sub-paragraph (7) it has been held by their lordships as follows:

The survival of an orderly society without which the extinction of human rights is a probability compels the higher protection of the law to those officers who are charged with the fearless and risky discharge of hazardous duties in strategic situations. Those officers of law, like policemen on duty or soldiers and the like have to perform their functions even in the face of threat of violence sometimes

in conditions of great handicap. If they are killed by designers of murder and the law does not express its strong condemnation in extreme penalisation, justice to those called upon to defend justice may fail. This fact of social justice also may in certain circumstances and at certain stages of societal life demand death sentence.

In sub-paragraph (9) it has been held that special reasons necessary for imposing death penalty must relate not to the crime as such but to the criminal. If officers, enjoined to defend the peace, are treacherously killed to facilitate perpetuation of murderous and often plunderous crimes, social justice steps in to demand death penalty dependant on the totality of circumstances. Reliance has also been placed on behalf of the State in the case of Machhi Singh and Ors. v. State of Punjab (20) 1983 ACC 321 where a similar question arose for consideration and their lordships, on a consideration of number of authorities including the case of Bachan Singh v. State of Punjab (17) 1980 ACC 4 (Sum) wherein the "rarest of rare cases" formula for imposing death sentence for a murder case had been evolved, and it has been held by their lordships that where a collective conscience is so shocked then death penalty should be imposed. In paragraph 32 of the judgment a number of guidelines have been given and after going through the same, in my opinion, death sentence will be proper sentence in this case. It has to be borne in mind that the head of the district administration, who had to deal with the case of appellant Tripathi, was killed in his own office in a most treacherous manner, thus, shocking the conscience of the community as a whole. If proper sentence is not passed in this case then we shall be also failing in our duty and it may encourage anti-social elements to indulge in such crimes openly and publicly in order to demoralise persons in authority. Such tendencies have rather become common these days and must be nipped in the bud and it can only be done by awarding appropriate sentence to the offenders.

56. Counsel for both the appellants have also submitted that the occurrence took place about three years ago and the sentence of death has been passed in the year 1984 and it has hung over the head of the two appellants for a long time, it should be committed to the imprisonment for life. Mr. Verrna has placed reliance on the observation of their lordships in the case of Ediga Anamma Vs. State of Andhra Pradesh, that if the accused has acted suddenly under others instigation without premeditation the court may humanely opt for life. But, it cannot be said that appellant Yadav killed the Collector without premeditation when it has been held that both the appellants had conspired to commit the offence. No doubt, soon after his arrest appellant Yadav blurted out that he had killed the Collector at the behest of his Guru, which he might have confessed to show his devotion and his duty towards Guru, that will not be a mitigating circumstance in his favour considering the nature of the offence and the circumstances in which it was committed in broad day light. The intention of appellant Yadav was to kill the Collector only but the way the bomb was thrown it could have killed others also and it is just a chance that they escaped. This also indicates that this appellant

was a man of desperate character and no respect for life and property. In my opinion, therefore, it is not a case in which there can be any interference on the question of sentence. The trial Court has given good reasons and on the basis of the authorities, mentioned above, I also confirm the reasonings and the findings of the trial Court.

57. Now to conclude, from the findings recorded above, it is clear that the appellant Tripathi came from a poor family and started his career as a Bus Conductor. He also passed law examination and practised in Mufassil courts in Uttar Pradesh for some time. Thereafter he started giving religious discourses and exclaimed himself as "Sant Gyaneshwar Maharaj". He soon got blind followers who wanted to see God through him and the condition was that they had to surrender their body, mind and wealth (Tan-Man-Dhan). Some of disciples were educated persons holding Government posts and some were also illiterates like appellant Yadav and the three absconders in this case. There was also a murder squad consisting of wrestlers and undesirable persons who committed crimes including murder of some of the followers of appellant Tripathi. The Ashram was built on an encroached piece of land belonging to the State and all modern amenities were provided for and, thus, within a short time appellant Tripathi got fame, power and position and all comforts of life but this was transitory and his followers came to know about his tricks and also started deserting him. Some of them filed petition for protection before the authorities. The Ashram became a den of the criminals and this matter came to the knowledge of the authorities and Ashram was also raided and bombs were recovered and a number of persons, including appellant Tripathi, were arrested and lodged in Jail on 10-7-1982. The deceased Collector also initiated a proceeding under the Crime Control Order against Tripathi and inspite of his best efforts bail was not granted to him. He lost his revision before the Commissioner in the encroachment case and the very next day the Ashram was completely demolished and razed to the ground. It is the case of the defence that property worth lacs were lost. A case was also filed against the officers connected with the demolition by an inmate of the Ashram. All these were at the instance of the deceased Collector and from the facts and circumstances it is clear that appellant Tripathi had acquired positive animus against the deceased. While in Jail he had been meeting appellant Yadav regularly and both of them conspired to kill the Collector and in pursuance of conspiratorial plan the Collector was killed in his own office. Some of the actions of the Collector were rather rash and hasty but even then no person can be allowed to take law in his own hand and to take revenge in the manner which the appellant did in this case. Court of law cannot but take serious view of such a lawless act and such lawless activities, if not punished, will not only completely demoralise the law enforcement agencies but will also take us back to the age of barbarism. The growing trend of lawlessness and wanton disregard of law must be curbed by all means and one of the most effective methods is to ensure that adequate and proper punishment, which is sentence of death in this case, is awarded then only the enforcement of rule of

law can be ensured by deterring those who may think of indulging in such acts and by raising the morale of the Officers entrusted with the difficult and onerous responsibility of maintaining law and order. It goes without saying that the crime committed by the appellants has shocked the conscience of the community as a whole.

58. Before I part with this case I must say that rules and procedures were not followed in Gopalganj Jail and due to the laxity of the jail authorities the nefarious plan could be achieved. The State Government should take serious view of this matter and there should be a regular inspection by the jail authorities so that the rules and procedures are followed. The investigation in this case has been done in a very efficient and fair manner. I place on the record my sense of appreciation for the assistance given by the learned Counsel for the parties, specially by the learned Counsel for the State Sri P.N. Pandey, who has ably and fairly placed all materials before us.

59. All the appeals are, accordingly, dismissed and the conviction and sentence imposed upon the appellants are hereby affirmed. The reference made by the Additional District and Sessions Judge is also accepted.