

DEATH REFERENCE No.1 of 2024
with
CRIMINAL APPEAL (DB) Nos.1150 of 2019, 1162 of 2019,
1185 of 2019, 1210 of 2019, 1246 of 2019, 1271 of 2019
and 1290 of 2019
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IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.1 of 2024

(Arising out of PS. Case No.-24 Year-2015, Thana- ARA NAGAR, District- Bhojpur)

From Judgment dated 17.08.2019 and order dated 20.08.2019 passed by the 3rd Additional Sessions Judge, Bhojpur, Ara and order dated 05.04.2023 passed by Additional Sessions Judge-VIII, Bhojpur, Ara in Sessions Trial Case No.35 of 2016

The State of Bihar

-versus-

Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma,
son of Samhaut Sharma, Resident of Piro, P.S.-Piro, District-
Bhojpur

.....Condemned Prisoner/Accused

For Condemned Mr. Pratik Mishra
Prisoner/Accused: Advocate (Amicus Curiae)

CRIMINAL APPEAL (DB) No.1150 of 2019

Shyam Vinay Sharma, son of late Awadhesh Rai @ Awadhesh
Sharma, Resident of Village- Chauri, P.S.- Chauri, District-
Bhojpur

..... Appellant

-versus-

The State of Bihar

..... Respondent

For Appellant: Mr. Ajay Kumar Thakur
Advocate
Mr. Prabhat Kumar Singh
Advocate
Mr. Ganesh Prasad Singh
Advocate



Mr. Anirudh Kumar Singh
Advocate

CRIMINAL APPEAL (DB) No.1162 of 2019

Rinku Yadav, son of Lal Babu Yadav, Resident of Village-
Pawarganj Ara, P.S.- Ara Nawada, District- Bhojpur

..... Appellant

-versus-

The State of Bihar Respondent

For Appellant: Mr. Ravindra Kumar
Advocate (Amicus Curiae)

CRIMINAL APPEAL (DB) No.1185 of 2019

Md. Naim Miya @ Naim Miya, son of late Amin Miya, Resident
of Village- Dharhara, Ara, P.S.- Ara (Town), District- Bhojpur

..... Appellant

-versus-

The State of Bihar Respondent

For Appellant: Mr. Binay Kumar
Advocate
Md. Najmul Hodda
Advocate

CRIMINAL APPEAL (DB) No.1210 of 2019

Lambu Sharma @ Munna Sharma @ Sachidanand Sharma,
son of Samhut Sharma, Resident of Village- Gandhi Chowk,
Piro, P.S.-Piro, District- Bhojpur

..... Appellant

-versus-

The State of Bihar Respondent



For Appellant: Mr Ajay Kumar Thakur
Advocate
Mr. Sadanand Roy
Advocate

CRIMINAL APPEAL (DB) No.1246 of 2019

Md. Chand Miya @ Chand Miyan, son of late Amin Miya,
Resident of Village- Dharhara, Ara, P.S.- Ara (Town), District-
Bhojpur

..... Appellant

-versus-

The State of Bihar Respondent

For Appellant: Mr. Ravindra Kumar
Advocate

CRIMINAL APPEAL (DB) No.1271 of 2019

Anshu Kumar, son of Sri Kamleshwar Sharma, Resident of
Village- Karari, Post- Dhobaha Bazar, P.S.- Ara Muffasil,
District- Bhojpur

..... Appellant

-versus-

The State of Bihar Respondent

For Appellant: Mr. Ravindra Kumar
Advocate

CRIMINAL APPEAL (DB) No.1290 of 2019

Akhilesh Upadhyay @ Musa, son of late Gopal Upadhyay,
Resident of Village- Nonar, P.S.- Piro, District- Bhojpur

..... Appellant



-versus-

The State of Bihar

.....

Respondent

For Appellant:

Mr. Ravindra Kumar

Advocate

For State of Bihar:

Ms. Shashi Bala Verma

(in all cases)

Addl. Public Prosecutor

Mr. Ajay Mishra

Addl. Public Prosecutor

CORAM:

HONOURABLE THE CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

Date of Judgment : 26.03.2026

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Backdrop of Death Reference and Criminal Appeals :

Death Reference No.01 of 2024 is the reference under section 366 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.') which corresponds to section 407 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS') submitted to this Court by the learned Additional Sessions Judge-VIII, Bhojpur, Ara in Sessions Trial Case No.35 of 2016 for confirmation of death sentence imposed on Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma (hereafter 'appellant Lamboo Sharma') vide judgment and order dated 05.04.2023 so also the judgment and order dated 17.08.2019 passed by the learned 3rd Additional Sessions Judge, Bhojpur, Ara in



Sessions Trial No.35 of 2016.

2. Criminal Appeal (DB) No.1150 of 2019 has been filed by appellant Shyam Vinay Sharma, Criminal Appeal (DB) No. 1162 of 2019 has been filed by appellant Rinku Yadav, Criminal Appeal (DB) No.1185 of 2019 has been filed by appellant Md. Naim Miya @ Naim Miya, Criminal Appeal (DB) No.1210 of 2019 has been filed by appellant Lamboo Sharma, Criminal Appeal (DB) No.1246 of 2019 has been filed by appellant Md. Chand Miya @ Chand Miyan, Criminal Appeal (DB) No.1271 of 2019 has been filed by appellant Anshu Kumar and Criminal Appeal (DB) No. 1290 of 2019 has been filed by appellant Akhilesh Upadhyay @ Musa challenging the judgment and order dated 17.08.2019 passed by learned 3rd Additional Sessions Judge, Bhojpur, Ara in Sessions Trial No.35 of 2016.

3. The appellants Lamboo Sharma, Shyam Vinay Sharma, Rinku Yadav, Md. Naim Miya @ Naim Miya, Md. Chand Miya @ Chand Miyan, Anshu Kumar and Akhilesh Upadhyay along with Narendra Kumar Pandey @ Sunil Pandey, Vijay Sharma, Sanjay Sonar and Pramod Singh faced trial in the Court of learned 3rd Additional Sessions Judge, Bhojpur, Ara in Sessions Trial Case No.35 of 2016 for offences punishable under sections 302/34, 307/34, 326/34, 353, 115, 120(B) of Indian Penal Code (hereafter 'I.P.C.') and sections 3, 4 and 5 of the Explosive Substances Act, 1908. The appellants Lamboo Sharma and Akhilesh Upadhyay



were additionally charged under section 224 of I.P.C. and appellant Lamboo Sharma was further charged under sections 303 and 216 of I.P.C.

4. The learned trial Court i.e. 3rd Additional Sessions Judge, Bhojpur, Ara vide judgment and order dated 17.08.2019 acquitted the accused persons Vijay Sharma, Sanjay Sonar and Narendra Kumar Pandey @ Sunil Pandey of all the charges, however, found the appellants Lamboo Sharma, Shyam Vinay Sharma, Rinku Yadav, Md. Naim Miya @ Naim Miya, Md. Chand Miya @ Chand Miyan, Anshu Kumar, Akhilesh Upadhyay and accused Pramod Singh guilty under various offences.

5. The appellants Shyam Vinay Sharma, Anshu Kumar, Rinku Yadav, Md. Chand Miya @ Chand Miyan and Md. Naim Miya @ Naim Miya so also accused Pramod Singh were found guilty under sections 302, 307, 326, 353, 115/34 and 120(B) of I.P.C. and sections 3, 4 and 5 of Explosive Substances Act. The appellant Akhilesh Upadhyay was found guilty under sections 302, 307, 326, 353, 115/34, 120(B), 224 of I.P.C. and sections 3, 4 and 5 of Explosive Substances Act. Appellant Lamboo Sharma was found guilty under sections 302, 307, 326, 353, 115, 120(B), 224, 216, 303 of I.P.C. and sections 3, 4 and 5 of Explosive Substances Act. All the convicted persons were sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- (five thousand), in default, to undergo further imprisonment for



one year for the offence under section 307 of I.P.C. and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- (five thousand), in default, to undergo further imprisonment for one year for the offence under section 326 of I.P.C., sentenced to undergo R.I. for 2 years for the offence under section 353 of I.P.C., sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- (five thousand), in default, to undergo further imprisonment for one year for the offence under section 115 of I.P.C., sentenced to undergo R.I. for two years for the offence under section 120(B) of I.P.C., sentenced to undergo R.I. for 7 years for the offence under section 3 of Explosive Substances Act, sentenced to undergo R.I. for 10 years for the offence under section 4 of the Explosive Substances Act and sentenced to undergo R.I. for 3 years for the offence under section 5 of the Explosive Substances Act.

6. The appellants Lamboo Sharma and Akhilesh Upadhyay were sentenced to undergo R.I. for 2 years for the offence under section 224 of I.P.C. and appellant Lamboo Sharma was sentenced to undergo R.I. for 5 years and to pay a fine of Rs.5,000/- (five thousand), in default, to undergo imprisonment for one year for the offence under section 216 of I.P.C.

7. All the convicted appellants and accused Pramod Singh, except appellant Lamboo Sharma, were sentenced to undergo imprisonment for life and to pay a



fine of Rs.25,000/- (twenty-five thousand) each, in default, to undergo further imprisonment for one year each for the offence under section 302 of I.P.C.

8. The appellant Lamboo Sharma was sentenced to death and to pay a fine of Rs.25,000/- (twenty-five thousand), in default, to undergo imprisonment for one year for the offence under section 302 of I.P.C. Since section 303 of I.P.C. was declared unconstitutional by the Hon'ble Supreme Court, no punishment was awarded for such offence.

The sentences awarded to all the appellants and accused Pramod Singh were directed to run concurrently.

9. Though the accused Pramod Singh preferred Criminal Appeal (DB) No.1356 of 2019, but since he died during pendency of the appeal, the appeal stood abated as per the order dated 01.07.2021.

10. So far as the appellant Lamboo Sharma is concerned, Death Reference No.3 of 2019 was registered for confirmation of the death sentence under section 366 of the Cr.P.C. submitted to this Court by the learned trial Court. Vide order dated 23.03.2023, this Court remanded the matter to the learned trial Court on account of non-compliance of the procedures laid down under sections 211(7), 236 and 298 of Cr.P.C. regarding previous convictions with a further direction to the learned trial Court to pass a fresh order regarding the sentence of the



appellant Lamboo Sharma. In the light of such order of this Court, the learned trial Court framed the charge indicating the previous convictions, but the appellant denied such charges and some more documents i.e. warrants of commitment were exhibited as Exts.25 and 26 and the learned trial Court sentenced him to death and to pay a fine of Rs.25,000/- (twenty-five thousand), in default, to undergo imprisonment for one year under section 302 of I.P.C. with a further direction that all the sentences awarded to the appellant shall run concurrently vide order dated 05.04.2023.

Prosecution case as per F.I.R.:

11. The prosecution case, as per the first information report lodged by Sub-Inspector Gauri Shankar Pathak (P.W.33) before the Inspector Satyendra Kumar Shahi (P.W.38), S.H.O., Ara Town Police Station at Civil Court premises, Ara on 23.01.2025 at 1:35 p.m., in short, is that on that day, approximately at about 11:25 a.m., a prisoner van carrying prisoners from the District Jail, Ara, arrived near the Court hazat (lock-up) for their appearance in the Court. After the van stopped, a female prisoner was first disembarked, followed by the other prisoners. A total number of 37 prisoners, including one female prisoner, were in the van. After the female prisoner was taken to the hazat, when three male prisoners were being escorted towards the Court hazat, a woman standing on the road, south to the



prison van, detonated a bomb. The bomb blast caused severe injuries to Constable no.696 Amit Kumar (hereafter 'the deceased') of the armed forces, who was on duty to bring the prisoners from the jail to the Court so also to Havildar Shivji Prasad Singh (P.W.31) and Constable no.84 Dwarika Prasad Pathak (P.W.11), both posted at Sadar Court, Ara and fifteen to sixteen persons present in Court also suffered severe injuries. The woman who detonated the bomb and was approximately 30 years old also suffered severe injuries on her face and the other parts of her body got mutilated. Smoke from the bomb spread everywhere, causing stampede and people started running hither and thither and taking advantage of such chaos, two prisoners i.e. appellant Lamboo Sharma and appellant Akhilesh Upadhyay, who were the two male prisoners amongst the three male prisoners disembarked from the prisoner van, escaped. The unknown woman who detonated the bomb died at the spot and the injured constable no.696 Amit Kumar (deceased) who was sent to Sadar Hospital, Ara for treatment, was also declared dead by the doctor. All the other injured persons were immediately shifted to Sadar Hospital, Ara for treatment. It is further stated in the F.I.R that the name of the woman, who died in the bomb blast, was not known to the informant. The woman used to come to the Court previously when appellants Lamboo Sharma and Akhilesh Upadhyay were coming to the Court for their



Court appearances and she used to meet those two appellants. The informant believed that the said woman carried out the bomb blast to help the appellants Lamboo Sharma and Akhilesh Upadhyay in escaping from the judicial custody, in which she herself was also killed. The bomb blast occurrence was the result of criminal conspiracy carried out by the appellants Lamboo Sharma and Akhilesh Upadhyay and the deceased unknown woman and other unknown accused persons helped the appellants Lamboo Sharma and Akhilesh Upadhyay in escaping from judicial custody. Prior to this bomb blast incident, in the year 2009, appellant Lamboo Sharma with the help of other accused persons, had also detonated a bomb in the Ara Court premises in which one Advocate was killed and many others got injured. In the 2009 bomb blast occurrence committed in the Ara Court premises, appellant Lamboo Sharma was sentenced to life imprisonment by the Court and some other cases were also pending against him for trial before the Court.

Investigation and Chargesheet:

12. After recording the first information report, P.W.38, the S.H.O. sent it to Ara Town Police Station for registration of the formal F.I.R. and he himself took up investigation of the case. After receipt of the F.I.R., Ara Town P.S. Case No.24 dated 23.01.2015 was registered under sections 302, 307, 326, 224, 120(B) of I.P.C. and sections 3,



4 and 5 of the Explosive Substances Act, 1908 against the appellants Lamboo Sharma, Akhilesh Upadhyay and unknown persons.

On 23.01.2025, P.W.38, the I.O. seized articles recovered at the place of occurrence at 14:15 hours in presence of the witnesses, Vijay Kumar Gupta (P.W.29) and Vishwanath Singh (P.W.16) and prepared seizure list. He also seized a Micromax mobile set installed with a sim card of mobile no. 8083172236, the blood of the unknown deceased (female) spilled at the place of occurrence, a white coloured mobile earphone, a torn note of five rupees, a torn note of fifty rupees, two broken pieces of anklet like silver, a rold gold yellow coloured chain worn in the neck of the deceased (female), a broken piece of ear-rings like rold gold and prepared the seizure list.

P.W.38, the I.O. sent a request letter to the Special Intelligence Unit, Office of Superintendent of Police, Bhojpur to find out the IMEI number of the recovered mobile and the C.D.R. of the mobile number and name and address of the holder. He recorded the statement of the informant of the case, inspected the place of occurrence and found the dead body of the deceased (female) on the concrete road twenty meter south from the northern side boundary wall and the head of the body was lying towards west and the legs were lying towards east and the body was lying facing downwards. The dead body was mutilated



and the blood was spilled on the ground and also on her clothes. Holes were found at twelve places on the wall of the Court Hazat caused due to bomb splinter and marks of bomb splinter were also found on the wall by the side of the Court verandah at seven places. A seizure list of the articles recovered at the place of occurrence was prepared by the I.O. The remnants of the bomb blasts were also found at the place of occurrence which were seized by the experts of Forensic Science Laboratory.

P.W.38, the I.O. recorded the statements of some of the witnesses. The seized exhibits from the crime scene were handed over to the I.O. by the team of experts from the Forensic Science Laboratory, Patna and those were marked as A, B, C, D, E, F, G, H, I, and J and a seizure list was prepared. The inquest over the dead body of the unidentified female found at the crime scene was conducted by S.I. of Police Punam Kumari and the inquest report copy was handed over to the I.O. The statements of some more witnesses were recorded by the I.O. and the unidentified female dead body was sent for post-mortem examination to Sadar Hospital, Ara.

P.W.38, the I.O. received an information from the secret source that the name of the unidentified female who was killed in the bomb blast was Nagina Devi, W/o: Hareram God, R/o: Shivpur Diyar, 82 Dera of Bhagi Ray, Kotwali police station, District: Ballia, Uttar Pradesh. S.I. of



police Dil Kumar Bharti was sent with armed force in a police jeep to verify the name and address of the deceased woman and after leaving the place of occurrence, the I.O. reached at Sadar Hospital, Ara and there he recorded the statements of some more witnesses. He came to know from the police officials present at Sadar Hospital, Ara that a total number of 18 persons had sustained injuries during the course of occurrence. Some of the injured persons were referred to P.M.C.H., Patna due to serious injuries and the deceased, who was seriously injured in the incident, died and his inquest report was prepared by S.I. of police Jahangir Ansari.

P.W.38, the I.O. recorded the statements of some injured persons who were admitted in Sadar Hospital, Ara. Thereafter, he left Sadar Hospital, Ara with armed forces at 12:10 a.m. on 24.01.2015 and reached at Piro and conducted a raid against the appellant Lamboo Sharma, but he was found to be absconding from the house. The I.O. also verified the name and address of Lamboo Sharma and obtained information about his family and relatives. He left Piro and reached at village Nonar under Piro Hasan Bazar Outpost and conducted a raid against the appellant Akhilesh Upadhyay, but he was also found to be absconding from the house. Thereafter, he verified his name and address, received information about his relatives, friends and his hiding places and left village Nonar and reached at



Bihari Mill, Ara in the night and conducted raid in the house of a relative of the appellant Lamboo Sharma, but the appellant was not found there.

P.W.38, the I.O. left Bihari Mill and came to Ara Town police station with the armed forces at 03:35 O' clock in the night of 24.01.2015 and when examined the mobile numbers saved in the mobile phone of the deceased recovered at the place of occurrence, it was found that two mobile nos.8292500417 and 8271770107 were saved in the name of Anshu and mobile no.9199282162 was in the name of V.I.J and some mobile numbers were also saved in others' names. He left the police station and reached Sadar Hospital, Ara and sent a request letter to the Deputy Superintendent of Sadar Hospital to preserve the body parts of the deceased for D.N.A. analysis safely for next seventy-two hours.

P.W.38, the I.O. recorded the statements of some injured persons at Sadar Hospital, Ara. He left Sadar Hospital, Ara and reached at Civil Court, Ara, where he recorded the statements of some more witnesses. Then he left the Civil Court and reached at Sadar Hospital, where information was received that the body of the deceased constable was handed over to his family after post-mortem examination for performing the last rites. The name, address and C.D.R. of the holder of the mobile no.8083172236 were obtained which was recovered from



the unknown deceased woman and it was issued in the name of Savitri Devi, W/o: Lalan Paswan, R/o: 38 Chanda, Police Station: Koilwar, District: Bhojpur. On perusal of the C.D.R. of the said mobile, it was found that from 09.12.2014 to 20.01.2015, the said mobile was in the area of Khetari Mohalla which was falling in the tower location of the District Jail, Ara and from 21.01.2015, the said mobile phone was at Nawada Chowk, Ara and Godhna Road, on 23.01.2015 at Godhna Road, Ara and at 10:36 a.m. at Maharaja Hata Katra and at 10:38 a.m., it was in the location of K.G. Road, Ara, which is a tower adjacent to Civil Court, Ara. Conversation took place from the said mobile numbers between 22.01.2015 to 23.01.2015 on mobile nos.7631105971, 7764939558 and mobile no.7654894198 and the C.D.R. was marked as Ext.6.

A request letter was given to the Special Intelligence Unit to get the C.D.R., names and addresses of the holders of the mobile nos.7631105971, 7764939558, and 7654894198 on which conversation had taken place from the mobile phone of the deceased (female). At the same time, the I.O. (P.W.38) received information that after verification of the deceased woman, S.H.O. Dil Kumar Bharti had brought Soni Devi, W/o:- Satyendra Gaud, R/o:- Shivpur Diera, 82 Bhagi Rai's Dera, P.S.:- Kotwali, Balia, U.P.; Meera Devi, W/o:- Shriram Gaud, R/o:- Shivpur Diera, 82 Bhagi Rai's Dera, Kotwali, Balia, U.P.; Munni Devi, W/o:- Sitaram



Gaud, R/o:- Shivpur Diera, 82 Bhagi Rai's Dera, Kotwali, Balia, U.P. and Maksudan Singh, S/o:- Late Kishunji Singh, R/o:- Shivpur Diera, 82 Bhagi Rai's Dera, Kotwali, Balia, U.P. to Sadar Hospital, Ara for identification of the dead body. Thereafter, the I.O. reached at Sadar Hospital, Ara and the identification of the deceased was made as Nagina Devi, W/o:- Hareram Gaud, R/o:- Shivpur Diera, 82 Bhagi Rai's Dera, Kotwali, Balia, U.P. The I.O. recorded the statement of Soni Devi, daughter of the deceased at Sadar Hospital, Ara and thereafter, the dead body of the deceased was handed over to the visiting family members for last rites. The C.D.R. and C.A.F. of mobile nos.7764939558, 7631105971 and 7654894198 were obtained, which were perused and marked in the case diary. On perusal, it was found that the mobile no.7631105971 has been taken in the name of Sanjay Kumar, R/o:- Lakhanpura, Circle:- Dinara, District:- Rohtas and the said mobile phone had been in the location of Tower Jail Road, Ara, which was falling under the mobile tower location of Ara Jail on 22.01.2015 and 23.01.2015. There had been no communication from the said mobile after 11:39 a.m. on 23rd January, 2015. The I.O. also verified and obtained the C.D.R., name and address of the holder and the C.D.R. was marked as Ext.6/1 and it was in four pages. The last tower location time of the said mobile was nearest tower of M.P. Bagh, Ara Civil Court, Ara at 11:39 a.m. and at 11:25 O' clock, the location was near the tower



of Jail road, Ara District Jail.

The C.D.R., name and address of the holder of mobile phone no.7764939558, which was in four pages and marked as Ext.6/2 was perused by the I.O. and it was found that the said mobile had been issued in the name of Musa Nat, S/o:- Jagdish Nat, 19 Maharaj Ganj, Devkali Buxar and on 22nd January 2015, the said mobile phone was near the tower area of Shakuntala Singh Gali, Post:- Nawada, District:- Bhojpur, Mandal Jail, Ara.

The I.O. also perused the mobile phone no.7654894198 and found that the SIM Card of the said mobile phone had been issued in the name of Vijay Prasad, S/o: Kunj Bihari Prasad, House No.107, Anaith Ara, District: Bhojpur. On 21.01.2015, the said mobile phone was near the tower area of Dharman Chowk, Sapna Cinema Road, Shivganj. On 22nd January 2015, the said mobile phone was near the tower area of Shivganj Ara Dharman Chowk. In the C.D.R. received, on 23.01.2015, its tower number was 56976 and the same was marked as Ext.6/3 which was in total eleven pages.

On 24.01.2015, after the death of deceased Nagina Devi, the C.D.R. of the IMEI number was received from her mobile set by the I.O. (P.W.38), perusal of which revealed that another SIM Card of mobile no.8604361464 was used in the said mobile set, apart from the SIM Card recovered along with the mobile phone from the place of



occurrence which was used from 22nd December 2014 to 21st January 2015 in the location of Arjunpur Rajapur, Simri police station, District:- Buxar and passed through the tower location of Shahpur, District:- Buxar, Bihiya, District:- Bhojpur on 21.01.2015 came into the tower location of Sihghasan Market, Ara at 18:52 hours. The C.D.R. was marked as Ext.E.

P.W.38, the I.O. conducted raids in villages Sukhrauli, Khairhi and Nagari to trace out the accused persons. After leaving Nagari, he conducted raid in Kargahar, District: Rohtas, came to Ara and sent S.I. of police Sunil Kant to conduct raid in Bahoranpur. Thereafter, on the basis of secret information, he came to Dharhara, Ara where appellant Vijay Sharma, resident of Gandhi Chowk, Piro who was not named in the F.I.R. was caught and his statement was recorded and he was arrested. The I.O. left Dharhara with the arrested accused and came to the police station and locked the appellant Vijay Sharma in the police station hazat and went to Civil Court, Ara along with S.I. of police Dil Kumar Bharti and lady constable to record the statement of Soni Devi, the daughter of the deceased Nagina Devi under section 164 of Cr.P.C. The appellant Vijay Sharma was produced before the Court under proper escort.

On 26.01.2015, the I.O. left the police station and reached at Civil Court, Ara where he recorded the



statements of witnesses i.e. S.I. of police Bhuneshwar Prasad Sinha, Constable Yamuna Singh, Kameshwar Chaudhary, Constable no.101 Nathuni Singh, Constable no.91 Hiranman Ram, Constable no.72 Dinesh Kumar Singh and Constable no.19 Keshwar Ram. The I.O. then left the Civil Court and reached at D.I.U. office, where he obtained the C.D.R. of the mobile phone no.7654894198 from 23rd January 2015 to 25th January 2015 and perused it. The said mobile number came into the location of Civil Court, Ara passing through Mahavir Tola, Ara on the date and time of occurrence and went into the tower location of east Uttar Pradesh at 23:48 hours after the occurrence. The said mobile phone had been in the tower location of Madhya Pradesh regions on 24.01.2015 and on 25.01.2015 in the tower location of Maharashtra regions. The C.D.R. was marked as 'F'.

P.W.38, the I.O. received the C.D.R. of mobile phone number 7654895198 on 27.01.2015 and perused it and it was marked as 'G'. The said mobile phone had been in the location of Sundarnagar, Chandanmira near Gajraj Talkies, District:- Jalna, Maharashtra on 25.01.2015.

On 30.01.2015, a request letter was sent by the I.O. to the Court to issue warrant of arrest against the F.I.R. named accused-appellants Lamboo Sharma and Akhilesh Upadhyay. On 01.03.2015, the I.O. arrested the F.I.R. named accused-appellant Akhilesh Upadhyay and recorded his



statement at the police station in which he explained in detail about the incident.

The I.O. also verified the names and addresses of Anshu and Rinku Yadav, whose names appeared in the confessional of appellant Akhilesh Upadhyay as Anshu Kumar, S/o:- Kamleshwar Sharma, R/o:- Karari, P.S.:- Mufassil, Dhobaha Outpost, District:- Bhojpur and Rinku Yadav, S/o:- Lal Babu Yadav, R/o:- Powerganj, near Ganesh Rice Mill, P.S.:- Ara Nawada, District:- Bhojpur, who often used to visit the jail to meet appellant Lamboo Sharma and deliver goods to him. Among them, appellant Rinku Yadav was sent to jail along with appellant Lamboo Sharma in the year 2008.

The I.O. took appellant Akhilesh Upadhyay on police remand on 13.03.2015 and after interrogation, his route of escape after the incident was established, in which his journey to Varanasi by taking a train from Suremanpur Railway Station, Ballia District, Uttar Pradesh was verified.

The I.O. sent the exhibits seized from the scene of occurrence to Forensic Science Laboratory in the prescribed format on 20.03.2015 for examination. On 24.03.2015, the appellants Anshu Kumar and Rinku Yadav, who were not named in the F.I.R. as accused were arrested near Park View Hotel, Ara, from whom a Nokia mobile set, having two SIM Cards, in which mobile phone no.8292500417 and mobile phone no.7562995706, one SIM



Card having mobile no.8292704437 and a motorcycle bearing registration no.BR-03C-2908 were recovered. The I.O. also seized the register of Chaurasia Rest House which showed the names of both the appellants.

The I.O. recorded the confessional statement of appellant Anshu Kumar and basing on his statement, he raided the house of appellant Shyam Vinay Sharma and recovered a bullet holder, a rifle and a gun cleaner rod. Basing on the same confessional statement, the I.O. raided a scrap dealer shop (kabadi) in Dhobha Outpost and recorded the statement of shopkeeper Butan Chaudhary.

The I.O. recorded the confessional statement of appellant Rinku Yadav in which he had mentioned the name of appellant Pramod Singh (dead). The statement of appellant Shyam Vinay Sharma was also recorded. A photocopy of appellant Anshu Kumar's identity card issued by the Election Commission of India was recovered from Chaurasia Rest House. The deceased Nagina Devi's name was mentioned as Reena Devi in the register of Chaurasia Rest House.

The I.O. obtained the post-mortem reports of the deceased Nagina Devi and Constable Amit Kumar. He received the C.D.R. of the phone recovered from the appellant Anshu Kumar. Three SIM Cards were recovered from him. He obtained the C.D.Rs. of all the three, which he marked as 'J', 'K', and 'I' and in Court, those were marked



as Exts.11, 12 and 13 respectively.

From the C.D.R. of mobile/SIM Card recovered from the appellant Anshu Kumar, it was revealed that one SIM Card was taken in his father's name, one in his own name and one in the name of Lakhrano Devi. From the location of the SIM Card of his father's name, it was found that at the time of incident, it was near the spot of incident and there was talk to the phone of deceased Nagina Devi, who had two SIM Cards and at that time she had talked on both the SIM Cards. According to the I.O., on the date of occurrence, the appellant Rinku Yadav used mobile phone no.8540022698 through which he contacted appellant Lamboo Sharma.

P.W.38, the I.O. obtained the C.D.R. of the mobile phone no.8862964100 used by appellant Shyam Vinay Sharma, which was issued in his own name. He marked it as 'L' and 'M' in the case diary which were marked as Exts.14 and 15 in Court respectively. From the C.D.R. of this mobile phone number, it was revealed that on the date of occurrence i.e. on 23.01.2015, calls were made to the mobile phone no.8083172236 of deceased Nagina Devi and on 04.09.2014, 07.09.2014 and 23.09.2014, calls were made to the mobile phone no.7654894198 of appellant Lamboo Sharma.

The I.O. submitted charge sheet no.65/15 dated 07.04.2015 under sections 303, 302, 307, 353, 326, 224,



120(B) of I.P.C. and sections 3/4 of the Explosive Substances Act against the appellants Vijay Sharma and Sanjay Sonar. The investigation proceeded against the remaining accused persons i.e. appellants Lamboo Sharma, Akhilesh Upadhyay, Nagina Devi, Rinku Yadav, Anshu Kumar, Chand Miyan, Pramod Singh and Shyam Vinay Sharma.

The register of Chaurasia Guest House which was seized by the I.O. revealed that appellant Anshu Kumar and Reena Devi were staying in that Rest House on 21st January 2015 and left the room at 10:10 a.m. on 23rd January 2015. The register was bearing the thumb prints of appellant Anshu Kumar and Reena Devi @ Nagina Devi, which the I.O. marked as 'A1' and 'B1' respectively and the same was marked as Ext.16 in Court. The C.D.R. of the appellant Lamboo Sharma, which the I.O. marked as 'N', was marked as Ext.17 in Court.

A list of prisoners arriving from the jail on the date of occurrence was obtained by the I.O. which showed that 37 prisoners came from the jail on that day and 35 returned to jail and two prisoners namely, appellants Akhilesh Upadhyay and Lamboo Sharma did not return.

P.W.38, the I.O. arrested appellant Chand Miyan on 17.05.2015, from whom a mobile phone of Jivi Company with SIM Card no.9198593370 and a Samsung mobile phone with SIM Card no.7301204932 were recovered. The



confessional statement of Chand Miyan was recorded. The Samsung and Jivi mobile phones were marked as Material Exts.I and II respectively.

P.W.38, the I.O. recovered a Samsung Grand Prime mobile phone bearing no.9471416384 and SIM Card of 8102932486 and a Samsung mobile set with SIM Card at the time of arrest of appellant Shyam Vinay Sharma on 20.05.2015, which were marked as Material Exts.III and IV. Gun cleaner rod and Rifle cleaner rod recovered from the appellant Shyam Vinay Sharma were marked as Material Exts.V and Ext.VI respectively. The pull through and the machine used for cleaning rifle barrel were marked as Material Exts.VII and VIII respectively.

The mobile phone recovered from appellant Anshu Kumar had two SIM Cards in it and one SIM Card separately was also seized which was marked as Material Ext.IX. The mobile phone set, white earphone, a torn five rupee note, a torn fifty rupee note, a silver anklet, a yellow chain worn around the neck of the deceased and a broken rold gold earring recovered from the spot were collectively marked as Material Ext.X.

The I.O. (P.W.38) sent the specimen signature of appellant Anshu Kumar and the specimen signature on the register recovered from Chaurasia Rest House to the expert for examination.

The splinter recovered by the doctor from the



body of deceased constable Amit Kumar during post-mortem examination was also sent by the I.O for examination.

P.W.38, the I.O. filed supplementary charge sheet No.165/15 under sections 303, 302, 307, 353, 326, 224, 120(B) of I.P.C. and sections 3/4 of the Explosive Substances Act against appellants Akhilesh Upadhyay, Anshu Kumar, Rinku Yadav and Pramod Singh and continued the investigation against appellants Lamboo Sharma @ Munna, Nagina Devi, Chand Miyan, Shyam Vinay Sharma etc. He also obtained Aadhaar Card of the deceased Nagina Devi. The daughter of the deceased Nagina Devi identified the deceased and after identification, her body was cremated.

On 24th June 2015, the Delhi Police Special Cell informed the I.O. that they had arrested appellant Lamboo Sharma. On 25th June 2015, the I.O. received appellant Lamboo Sharma from Delhi Police and presented him in the Court at Ara on 26th June 2015. On 2nd July 2015, the I.O. recorded the confessional statement of Lamboo Sharma and basing on the same, the names of accused persons Sunil Pandey, Brajesh Singh and Chand Miyan's brother Nayeem came to fore.

As per the information given by the appellant Lamboo Sharma, a raid was conducted at his residence in Ludhiana, Punjab and a Samsung mobile phone with SIM



Card no.7084708365 was recovered. A slip of a shop called Bengali Electronics, on the back of which mobile phone no.9179520386 was written, a white colour box over which Gamma Mobile was written and a slip of the carton on which mobile no.9650244189 was written, a black colour LED TV, a home theatre and four speakers were recovered. The articles recovered from the residence of appellant Lamboo Sharma i.e. LED TV and home theatre and speakers were marked as Material Exts.XI and XII.

P.W.38, the I.O. obtained the C.D.R. of appellant Sunil Pandey's mobile no.9431455555, which was earlier marked as 'O' and was marked in Court as Ext.18. He also recovered a note with mobile no.9179520386 written on it from the residence of appellant Lamboo Sharma in Ludhiana. The tower location of this phone was found near Lamboo Sharma's residence in Ludhiana. This mobile phone was used to call appellant Chand Miyan's mobile nos.7301204933 and 7301204932 and appellant Anshu Kumar's mobile number after the incident. This mobile phone's location was also found near the Central Jail, Lucknow where Mukhtar Ansari was in jail. This location was found near Lucknow Jail on three dates i.e. 22.02.2015, 17.03.2015 and 18.03.2015, the dates on which Mukhtar Ansari was in Lucknow Jail, as confirmed by verification from Lucknow Jail.

The C.D.Rs. of mobile nos.7301204933 and



7301204932 of appellant Chand Miyan were obtained, which were earlier marked as 'U' and 'V' respectively and the same were marked in Court as Exts.19 and 20 respectively.

P.W.38, the I.O. submitted charge sheet no.308/15 against the appellants Chand Miyan and Shyam Vinay Sharma under sections 303, 302, 307, 353, 326, 224, 115, 216, 120(B) of I.P.C. and sections 3/4 of the Explosive Substances Act and supplementary investigation continued against Nagina Devi, appellant Narendra Kumar Pandey @ Sunil Pandey, Md. Nayeem Miyan @ Sahatu, Lamboo Sharma @ Munna and Brajesh Singh.

The C.D.R. of mobile phone used by appellant Lamboo Sharma with IMEI no.359375033668750 was obtained from 01.10.2015 to 10.10.2015. The C.D.R. and C.A.F. (Customer Acquisition Form) obtained were jointly marked as 'M 2' and were marked in the Court as Ext.21. The mobile phone used on 06.10.2015 and 07.10.2015 showed the phone no.8507159162. The recovered mobile phone was the same mobile phone used by appellant Lamboo Sharma and was recovered from Praveen Kumar in Chapra, which was marked as Material Ext.XIII.

P.W.38, the I.O. subsequently submitted charge sheet no.362/15 under sections 303, 302, 307, 353, 326, 224, 115, 216, 120(B) of I.P.C. and sections 3/4/5 of the Explosive Substances Act against appellants Narendra



Kumar Pandey @ Sunil Pandey, Nayeem Miyan @ Sahatu, Lamboo Sharma @ Munna Sharma.

The mobile phone recovered from the Ludhiana residence of the appellant Lamboo Sharma was marked as Material Ext.XIV and a number written on a small piece of cardboard was marked as Material Ext.XV. Two receipts which were produced were marked as Exts.XVI and XVI/A. A cardboard box which was recovered which has IMEI number on it was marked as Material Ext.XVII. Sixteen photographs of the scene of occurrence were marked as Exts.X/I to X/XVII for identification and C.D. of the scene of occurrence was marked as Material Ext.XVIII.

Framing of charges:

13. After submission of charge sheet in different phases, the case was committed to the Court of Session also in different phases after complying due procedure. The learned trial Court framed charges against the appellants as well as co-accused persons as aforesaid and since all of them refuted the charges, pleaded not guilty and claimed to be tried, the Sessions trial procedure was resorted to prosecute them and establish their guilt.

Prosecution witnesses, exhibits and material exhibits:

14. In order to prove its case, the prosecution examined thirty-nine witnesses.

P.W.1 Anadi Pingua was the Havildar who



produced the prisoners in the prisoners van from District Jail, Ara in the Court on the date of occurrence and stated that when some male prisoners started to get down from the van, there was very loud sound which occurred on account of bomb blast and smoke spread everywhere and the deceased constable, P.W.11 Dwarika Prasad and P.W.31 Shivji Prasad Singh received injuries and one lady was soaked with blood and her body was mutilated and the injured persons were taken to the hospital and subsequently he came to know about the death of the deceased constable. He further stated that except two persons who had come from jail in van, all others were sent back to jail.

P.W.2 Vinod Kumar was the in-charge Hazat Assistant who stated that on the date of occurrence, when the prisoners van came near gate no.4 of Civil Court, Ara and a woman got down from the van and was taken inside the hazat, a bomb blast occurred and there was smoke all around for which nothing could be visible and when the smoke disappeared, he found that a woman was lying dead on account of bomb blast and two prisoners namely appellants Lamboo Sharma and Akhilesh Upadhyay escaped and the deceased constable received injuries and he was shifted to hospital but died. He further stated that P.W.11 Dwarika Prasad Pathak and P.W.31 Shivji Prasad Singh also sustained injuries on account of bomb blast.



P.W.3 Draupadi Devi was the constable who stated that on the date of occurrence, she was on duty of the hazat of Civil Court and after one female prisoner came inside the hazat from the van the appellants Lamboo Sharma and Akhilesh Upadhyay got down from the van and all of a sudden, there was bomb blast and it became dark for which some sepoy's got injured, one female died and the deceased constable being injured was sent for treatment and he also died. The two appellants escaped during the bomb blast.

P.W.4 HIRAMAN RAM was the constable who was posted at Civil Court, Ara and he stated that on the date of occurrence, he was standing by the side of the prisoner van and a female prisoner got down first and then the other prisoners got down from the vehicle and there was bomb blast and darkness and after the disappearance of the darkness, he found the deceased constable along with P.W.11 DWARIKA PATHAK and P.W.31 SHIVJI PRASAD SINGH had sustained on account of bomb blast and one lady was lying on the floor. He further stated that the two appellants Lamboo Sharma and Akhilesh Upadhyay escaped from the custody.

P.W.5 SURESH KUMAR JHA was the S.I. of police who stated that on the date of occurrence, he was getting the prisoners down from the van at gate no.4 of the Civil Court, Ara and there were thirty-seven prisoners in the van



and after one woman prisoner alighted, the two appellants Lamboo Sharma and Akhilesh Upadhyay and another got down from the prisoners van and suddenly a loud blast occurred and there was smoke and darkness and he found the deceased constable was lying injured so also P.W.11 Dwarika Pathak and P.W.31 Shivji Prasad Singh and a women was also lying there soaked with blood. He further stated that the two appellants Lamboo Sharma and Akhilesh Upadhyay escaped and he brought the deceased constable to the hospital where he came to know about the death of the deceased.

P.W.6 Butan Chaudhary stated that when he was questioned by police regarding selling of the head of the hand-pump, he told to have sold it to Anshu who belonged to village Kadari.

P.W.7 Tetari Devi was the constable who stated that she had taken a lady prisoner from jail and took her to the hazat, when a bomb blast took place and there was darkness and the deceased constable was taken to the hospital and P.W.11 Dwarika Pathak and P.W.31 Shivji Prasad Singh also got injured and one woman was soaked with blood and several persons also sustained injuries.

P.W.8 Dimpal Kumari was the constable who was on duty on the date of occurrence in the hazat of the Court and brought one female prisoner from the van to the hazat. She stated to have heard bomb blast sound and



there was smoke all around and she found one unknown woman lying injured on the floor and the deceased constable, P.W.31 Shivji Prasad Singh and some others received injuries and the unknown woman died at the spot and on account of bomb blast, the appellants Lamboo Sharma and Akhilesh Upadhyay absconded and the deceased constable died in Sadar Hospital.

P.W.9 Bhuwaneshwar Prasad Singh was the S.I. of police who stated that on the date of occurrence from the prisoners van one woman first got down and was taken to the hazat and then three prisoners came down and when one woman moved forward, the constable stopped her and the bomb blasted and there was darkness all around. He found P.W.31 was lying injured on the floor, one woman was lying dead, some others also sustained injuries and two prisoners ran away.

P.W.10 Dinesh Kumar Singh stated that on the date of occurrence when the prisoners started getting down from the prisoners van and the two appellants namely Lamboo Sharma and Akhilesh Upadhyay got down, one woman wanted to give a bag to the two appellants but the constable removed her and then a bomb blast took place and the two appellants managed to escape. He further stated that some other persons received injuries and taken to the hospital and the woman carrying the bag died at the spot.



P.W.11 Dwarika Pathak was the police personnel who was near the hazat on the date of occurrence and he stated about the prisoners van arriving at the northern gate and when the two male prisoners got down from the van there was explosion of bomb for which he sustained injuries and lost consciousness and when he regained consciousness, he found eighteen persons lying on the ground, the deceased constable was lying at the northern gate and the body of a woman was lying mutilated. He further stated that the injured persons were shifted to the hospital and he came to know about the escape of the two appellants Lamboo Sharma and Akhilesh Upadhyay.

P.W.12 Kameshwar Chaudhary was the Havildar, who was on duty on the date of occurrence at the northern gate of the Court and he stated that after a woman got down from the prison van, when some male prisoners got down and moved forward, there was bomb explosion and there was darkness and after some time it was found that the two appellants namely Lamboo Sharma and Akhilesh Upadhyay had escaped.

P.W.13 Priya Shankar Mishra was the S.I. of police who brought the prisoners on the date of occurrence from the jail in the prison van and when the vehicle was parked at northern gate and the prisoners were getting down there was bomb explosion near the hazat for which the area was engulfed in dust and smoke and he secured



the prisoners who had deboarded from the van back to the van and took them to the jail and upon counting it was found that the two appellants Lamboo Sharma and Akhilesh Upadhyay were missing and when he came to the Court, he found one woman lying dead and some constables and members of public were also lying injured.

P.W.14 Keshwar Ram was the constable who was on duty at the northern gate of the Court where the prisoners deboarded from the van and he stated that after the appellants Lamboo Sharma and Akhilesh Upadhyay deboarded, a woman was standing there and a constable started moving her away for which the woman fell down on the ground and simultaneously there was bomb blast for which the said woman died and some constables sustained injuries and during the smoke the appellants Lamboo Sharma and Akhilesh Upadhyay escaped.

P.W.15 Tarkeshwar Ojha was the police personnel who was on duty at hazat on the date of occurrence and he stated that at about 11:30 a.m., when the prisoners van came and the appellants Lamboo Sharma and Akhilesh Upadhyay got down from the van, one woman who was sitting there started to give a bag to appellant Lamboo Sharma but the deceased constable stopped that woman from doing such thing and at that time the bomb explosion took place and there was smoke all around and the two appellants fled away and the deceased constable



sustained injuries and taken to Sadar Hospital where he was declared dead and the woman who had the bomb also died and two to three constables also sustained injuries. He further stated that the woman who died was earlier coming to meet appellant Lamboo Sharma.

P.W.16 Vishwanath Singh was the S.I. of police and was posted at the lock-up of the Civil Court, Ara and he stated that on the date of occurrence when the prisoners van arrived, the constables stood in a line and after one female prisoner was brought from the van, the appellants Lamboo Sharma and Akhilesh Upadhyay got down from the van and started moving towards lock-up. He further stated that one woman tried to go towards the appellants Lamboo Sharma and Akhilesh Upadhyay but she was stopped by the deceased constable and then there was bomb explosion and when the smoke got cleared, the deceased constable was lying injured and the woman whom the deceased constable had stopped, was lying dead and some general public and some constables also received injuries and the appellants Lamboo Sharma and Akhilesh Upadhyay fled away. He further stated about the seizure of some articles at the place of occurrence and preparation of the seizure list in his presence, in which he put his signature marked as Ext.1.

P.W.17 Nathuni Singh was posted at the Civil Court hazat (lock-up) and he stated about getting down of



some prisoners from the police van on the date of occurrence and suddenly there was bomb explosion and the appellants Lamboo Sharma and Akhilesh Upadhyay absconding and the deceased constable along with some others sustained injuries.

P.W.18 Prem Singh, P.W.19 Shashi Kant Ram, P.W.20 Shambhu Ram, P.W.21 Mukesh Rai, P.W.22 Rakesh Rai, P.W.23 Shivjee Rai, P.W.25 Bhikhari Thakur, P.W.29 Vijay Kumar Gupta, P.W.32 Mahendra Prasad, P.W.35 Ajay Kumar Rai and P.W.36 Ramakant Rai did not support the prosecution case for which they were declared hostile.

P.W.24 Sukhu Chaudhary stated that he had been to Court on the date of occurrence in connection with his work and there was noise and it became dark and he sustained injury on his legs and he was shifted to Sadar Hospital in an ambulance.

P.W.26 Dhananjay Kumar Shrivastava was the constable who was posted in the hazat of Civil Court, Ara and he stated that on the date of occurrence when the prisoners van arrived from jail and he was near the van, after lady prisoners got down, the appellants Lamboo Sharma and Akhilesh Upadhyay got down and one woman was trying to enter the police cordon and wanted to give something to appellant Lamboo Sharma but the deceased constable pushed her and there was explosion of bomb for which P.W.11 Dwarika Pathak, P.W.31 Shivji Prasad Singh



and some others got injured and were shifted to the hospital and the woman who was trying to enter the police cordon died at the spot. He stated that the deceased constable also died and the appellants Lamboo Sharma and Akhilesh Upadhyay fled away.

P.W.27 Dr. Kumar Jitendra was the Medical Officer posted in Sadar Hospital, Ara who examined the injured persons and prepared the injury reports which were marked as Ext.2 to 2/17. He stated that the injuries sustained by all the injured were caused due to bomb blast.

P.W.28 Dr. Shashi Shekhar Shashi was the Medical Officer at Sadar Hospital, Ara who conducted post-mortem examination over the dead body of the deceased constable Amit Kumar on 23.01.2025 and noticed injuries on different parts of the body and stated that the cause of death was on account of cardio pulmonary arrest due to blast injury. He also conducted the post-mortem examination over the dead body of the deceased woman on 24.01.2015 and found various injuries on different parts of the body and opined that the cause of death was on account of blast injuries which led to cardio-respiratory failure.

P.W.30 Laxman Prasad Chaurasia was the owner of Chaurasia Rest House who stated that the police seized the Identity Card of one Anshu Kumar who was staying in his Rest House and so also the register of the Rest House



and prepared a seizure list.

P.W.31 Shivji Prasad Singh was the Havildar who was performing his duty in Ara Court hazat on the date of occurrence and he stated that after the prisoners vehicle arrived, they stood in a line forming a circle for security and after a female prisoner got down, three male prisoners also got down and started moving and suddenly there was explosion of bomb and darkness and he came to know about the escaping of appellants Lamboo Sharma and Akhilesh Upadhyay after the smoke got cleared. He further stated about the deceased sustaining injuries due to bomb blast and some public getting injured and being shifted to Sadar Hospital for treatment and the unknown woman died at the spot.

P.W.33 Gauri Shankar Pathak is the informant in the case and he was in-charge of Court hazat on the date of occurrence. He stated about the parking of the prisoners vehicle coming from jail at northern gate of the hazat and prisoners getting down from the van. He also stated about the bomb explosion and one woman lying dead in a mutilated condition and the deceased constable, P.W.11 Dwarika Pathak and P.W.31 Shivji Prasad Singh and some others getting injured on account of bomb blast. He further stated about two prisoners missing from the van when it was counted reaching at the jail. He further stated about the appellants Lamboo Sharma and Akhilesh Upadhyay



escaping during bomb blast. He proved the F.I.R. as Ext.4.

P.W.34 Ranjan Kumar Singh was the constable who stated about the arrest of appellant Anshu Kumar, seizure of SIM Cards and mobile phone from him so also a motorcycle and is a witness to the seizure list and proved his signature on it.

P.W.37 Anil Kumar was posted as Assistant Superintendent in the District Jail, Ara and he stated that on the date of occurrence a total of thirty-seven prisoners were sent from District Jail, Ara to appear before the Sessions and Sadar Court and he prepared the list of the prisoners vide Ext.5. He further stated that the names of appellants Lamboo Sharma and Akhilesh Upadhyay were included in that list.

P.W.38 Satyendra Kumar Shahi was the Police Inspector-cum-S.H.O. at Town Police Station, Ara who not only recorded the first information report on the oral report of P.W.33 Gauri Shankar Pathak and sent it for registration to Ara Town Police Station but also investigated the case and submitted charge sheet.

P.W.39 Noor Sultana was the Magistrate posted at Civil Court, Ara who recorded the statement of one Soni Devi under section 164 of Cr.P.C. and proved the said statement as Ext.23.

The prosecution also exhibited some documents.



Ext.1 is the signature on the seizure list, Exts.2 to 2/12 are the injury reports, Exts. 3 and 3/1 are the post-mortem reports, Exts.1/1, 1/2 and 1/3 are the seizure lists. Ext.4 is the signature on the F.I.R. Exts.1/4 to 1/6 are the seizure lists, Exts.5,5/A are letters, Exts.6 to 6/3 are the C.D.Rs., Exts.7 to 15 are the C.D.Rs, Ext.16 is the Chaurasia Guest House Register Page No.36, Exts.17 to 21 are the C.D.Rs., Exts.22 to 22/3 are the F.S.L. Reports and Ext.23 is the statement of Soni Devi recorded U/s 164 of Cr.P.C.

The prosecution proved some material exhibits. Material Exts.I, II are the two mobile phones of Samsung and JIVI company recovered from appellant Chand Miyan, Material Exts.III to VIII are the rifle, cleaning rod and other items recovered from appellant Shyam Vinay Sharma, Material Ext.IX is the mobile recovered from appellant Anshu Kumar, Material Ext.X is the mobile set, ear phone of white colour, a torn note of Rs.5, Rs.50, silver like anklet, a broken chain (necklace) made up of rold gold worn around the neck of the deceased, Material Exts.X/1 to X/16 are the sixteen photographs taken at the scene of occurrence, Material Ext.XI to XVIII are the L.E.D. T.V., Home Theatre, mobile recovered from the rented house of appellant Lamboo Sharma in Ludhiana and the boxes of mobile used by him, two receipts and C.Ds.

Defence plea and defence witnesses:

15. The defence plea of appellant Lamboo Sharma



was one of denial and it was pleaded that he did not know the deceased woman and that after the bomb blast on the date of occurrence, there was smoke filled in the Court followed by stampede, for which he ran away from the Court to save his life and came to Mumbai to earn his living and that he was caught from Jaunpur and shown to be arrested in Delhi.

The defence plea of the appellant Shyam Vinay Sharma was that nothing was found during the search of his house and the two mobile phones which were recovered from him were not used to communicate with anyone.

The defence plea of appellants Rinku Yadav and Anshu Kumar was one of complete denial.

The defence plea of appellant Md. Naim Miya was one of denial, however he examined two defence witnesses. D.W.1 Wasi Ahmad stated that he was having a garage where the appellant Nayeem Miyan was a mechanic and on the date of occurrence, the appellant Nayeem Miyan had been to mosque to offer Friday prayers and before that he was repairing vehicles in the garage. D.W.2 Mohd. Sahabadullah was an assistant to the appellant Nayeem Miyan in the garage of D.W.1 and he stated that on the date of occurrence, the appellant was working with him in the garage and he had not gone anywhere.

The defence plea of appellant Md. Chand Miyan is that he travelled to Delhi on 19th January 2015 by



Shramik Express and was arrested from Delhi and not from Dharhara.

The defence plea of appellant Akhilesh Upadhyay was one of denial and it was pleaded that after the bomb explosion, no one was seen getting out of the vehicle and that he went to his village Piro.

Trial Court Findings:

16. The learned trial Court after assessing the evidence on record in respect of co-accused Narendra Kumar Pandey @ Sunil Pandey, Vijay Sharma and Sanjay Sonar, has been pleased to acquit them holding as follows:

“58.....As far as the question of involvement of the accused Narendra Kumar Pandey @ Sunil Pandey, Vijay Sharma and Sanjay Sonar in this case is concerned, the name of Sunil Pandey came up in the confessional statement of Lamboo Sharma during investigation by the I.O., in which Lamboo Sharma had said that he had talked from his mobile to Sunil Pandey on mobile no.9431455555 which has been proved by the I.O. with C.D.R. (Ext.18) of both mobiles in which conversation had taken place on 21.12.2014. No other evidence has been produced in support of this statement. In the context of this matter, the accused Sunil Kumar Pandey has said in his statement u/s 313 Cr.P.C. that that mobile



was made available to him by Secretary, Legislative Assembly which is used by his P.A. He is a public representative and the public used to talk to him to address their problems and that he had not talked to Lamboo Sharma. In this regard, it is also noteworthy that Lamboo Sharma has also said in his confessional statement that Sunil Pandey has stated about extending financial help in this plan, but no evidence has been produced by the prosecution that Sunil Pandey provided money to Lamboo Sharma. In such circumstances, this statement of Lamboo Sharma has not been proved and that his confessional statement has got no value in view of section 25 of the Evidence Act. As far as the conversation on mobile is concerned, it is not clear whether there was any conversation took place between Lamboo Sharma and Sunil Pandey. In this way, only on the statement of Lamboo Sharma and on the basis of C.D.R. of his mobile phone, the prosecution has not been able to prove beyond all reasonable doubt that Sunil Pandey was involved in the bomb explosion. Thus, involvement of Sunil Pandey in this crime could not be proved.

59. As far as the question of involvement of Vijay Sharma and Sanjay Sonar in this case is concerned, Vijay Sharma is the sibling brother of Lamboo Sharma who



used to come to meet him during his production in the Court and Sanjay Sonar is the friend of Vijay Sharma who used to come with him some times in the Court and on this basis, he has been arrayed as an accused in the case. No P.Ws. has proved that Vijay Sharma and Sanjay Sharma have helped in this incident. There is no evidence to make clear their involvement in this case on the basis of circumstantial evidence. P.W.38, Inspector Satyendra Kumar Shahi has also not brought any evidence against them in the course of investigation as evidence has been produced regarding the involvement of other accused in this case before the Court. In such circumstances, after making them accused in this case just because Vijay Sharma was the brother of the criminal Lamboo Sharma and Sanjay Sonar was the friend of Vijay Sharma, as no oral or documentary evidence and absence of circumstantial evidence, the prosecution side has not been successful in proving the charges against them. Therefore, there appears to be no basis to hold them guilty in this case.”

The learned trial Court has been pleased to further hold as follows:

“**57.** As far as the question of



involvement of all the accused persons in this case is concerned, it is noteworthy in this regard that the accused Lamboo Sharma and Akhilesh Upadhyay while being under judicial custody, made the plan to flee from judicial custody to commit grievous crimes, for which they thought it proper to create a chaotic situation by exploding the bomb. In this regard, the accused Anshu Kumar and Rinku Yadav were given the responsibility of making the bomb and delivering it within the Court premises as these accused persons have admitted. For making the bomb, they purchased the head of hand pump from the scrap dealer Butan Chaudhary and the explosive material used in the preparation of bomb was procured from Shyam Vinay Sharma through the jailed accused Pramod Singh. The woman Nagina Devi was made ready to deliver the bomb in the Court and she was not told that the object which she was to deliver in the Court was a bomb because had she been told so, she must not have agreed to it. Therefore, the accused persons carefully executed their plan. After the incident, accused Chand Miyan and Nayeem Miyan played important role in the execution of the second plan by the accused Lamboo Sharma and Akhilesh Upadhyay. Chand Miyan arranged for their stay in a temple at Varanasi and also gave twenty thousand rupees to Lamboo



Sharma. In consequence of which, Lamboo Sharma also lived at his brother's place at Jalana, Maharashtra and from there, he came to stay at Ludhiana. Akhilesh Upadhyay without informing him, left him at Ludhiana and returned to Ara, where he was arrested. After the arrest of Lamboo Sharma, as per his statement before police, LED TV, home theatre and its carton were recovered from the house at Ludhiana for perusal as material exhibits.

58. Therefore, the prosecution side on the basis of the evidence of P.Ws. and documents and circumstantial evidence has been fully successful in proving that these eight accused were involved in fleeing of the accused from judicial custody by causing a bomb blast at Civil Court, Ara, in which constable Amit Kumar died, there were life attempts on other constables and common people and disturbance was caused in judicial, administrative and government work.....”

So far as the appellants Lamboo Sharma and Akhilesh Upadhyay are concerned, it has been held as follows:

“60. As far as the question of conviction against the accused Lamboo Sharma and Akhilesh Upadhyay u/s 224 I.P.C. is concerned, in this regard, P.W.33 Gauri



Shankar Pathak, who is the informant of this case and was in-charge of the hazat of Sessions Court has clearly said in his evidence that when inmate van carrying the undertrial prisoners came from District Jail, Ara, at first a female inmate from that van was taken to hazat and thereafter, three inmates followed her towards hazat. Suddenly the bomb blast took place and out of three prisoners, one prisoner came to hazat and the two prisoners fled away from the Court premises. 37 inmates were brought to the Court on that day, from which except four inmates, all other inmates were taken back to District Jail, Ara due to bomb blast. At the Jail, the number of prisoners was verified and two inmates were found missing. The statement of this witness has been proved by the evidence of P.W.37 Anil Kumar, Deputy Superintendent, District Jail, Ara as well as letters Exts.5 and 5/A sent by District Jail, Ara in this regard. From the arrest of the two inmates later, it is clear that at the time of the incident, the two inmates were successful in fleeing from judicial custody as per their plan. In this regard, the prosecution has been able to prove the charges. The submission of the defence side that the two accused had fled away to save their lives from bomb blast does not appear to be true, as had they fled away to save their lives, they should have produced themselves in the District Jail, Ara, but they



did not do so because they intended to commit another crime by fleeing from judicial custody and by hurting the dignity of justice and administration, they had to show that whatever they wanted to do, they could do. Therefore, there is no force in the argument of the defence side and that the prosecution has fully proved the charges against the accused.”

The learned trial Court further discussed the evidence adduced by prosecution regarding recovery of materials and documents on the basis of statements of accused persons and held as follows:

“**56.** On the basis of whatever the accused have stated in their statements recorded u/s 313 Cr.P.C., it is not clear that they did not take part in the incident, because after the arrest of the accused, the I.O. recorded their confessional statements. On the basis of those statements, raids were conducted, in which materials and documents were recovered which is proved by the seizure lists. In this regard, it is noteworthy that the confessional statements of the accused are not admissible in view of section 25 of the Evidence Act, but on the basis of such confession, the materials recovered u/s 27 of the Evidence Act is admissible to that extent.

In this case, the accused have



confirmed in their confessions of having collected the explosive materials for the bomb blast. This has been confirmed by other witnesses apart from their own statements such as that the accused Anshu Kumar and Rinku Yadav had bought the head of hand pump from the scrap dealer Butan Chaudhary which Butan Chaudhary has proved by his evidence as P.W.6 before the Court.

Similarly, it has been proved that the deceased Nagina Devi and Anshu Kumar lived in Chaurasia Rest House from 21.01.2015 to 10:10 a.m. on 23.01.2015. This has been proved by Anshu Kumar in his confessional statement as well as the owner of rest house Laxman Chaurasia who in his evidence has said that the police recovered register from his rest house and he had signed on the seizure list and the photo copy of voter identity card of Anshu Kumar was also recovered from his rest house. On page 36 of that register, the LTI of Anshu Kumar and Rina Devi @ Nagina Devi were also available. Thus, on the basis of recovered materials, the involvement of the accused in the incident is proved.

In this case, the defence has put a lot of emphasis on the fact that none of the witnesses had seen none of the accused throwing the bomb, but there is not much force in their argument because it was a conspiracy in which all the persons had a



defined role and accordingly, each accused had played their part. Thus, the presence of the accused at the time of occurrence is not necessary, because they had already well-planned about committing the crime. Therefore, the accused have played active role in the bomb blast case.”

The learned trial Court disbelieved the defence plea adduced by appellant Naim Miya with following observations:

“**54.** The accused Naim Miya has produced two witnesses Wasi Ahmad and Md. Shahabdullah, who in their examination have said that Naim used to work as garage mechanic in the garage of Wasi Ahmad which is located in Kheta Sarai of Jaunpur district, Uttar Pradesh. On 23.01.2015, he was at the shop. No person of Bihar had come to meet Naim in Kheta Sarai. Md. Shahabdullah, who was assistant of Nayeem has also confirmed this. But during cross-examination by the prosecution, the two witnesses have admitted that Naim Miyan used to work in the garage and they cannot tell who had come to meet him at that time. Thus, Naim Miyan has helped in this crime. This cannot be denied on the basis of the evidence of the defence witnesses.”

The learned trial Court has been further pleased to hold as follows:



“61. As far as the question of conviction of the accused Lamboo Sharma under sections 216 and 303 of I.P.C. is concerned, in this regard, from the evidence of P.Ws., it is clear that after his conviction, while being in judicial custody, as a result of the action taken as per his instructions, the constable Amit Kumar was murdered as well as due to bomb blast caused in court premises in the year 2009, advocates Vinay Tiwari and Yogendra Narayan were murdered, in which he was sentenced to life imprisonment by the competent Court, as a result of which he was undergoing the sentence in jail and while being in jail, to flee away from judicial custody, in criminal conspiracy with other accomplices, he again caused a bomb blast, as a result of which constable Amit Kumar and woman Nagina were murdered. Therefore, the prosecution has been successful in proving charges under these two sections against the accused Lamboo Sharma. The defence side has not been able to produce any such fact which casts doubt relating to their involvement in the offences.”

Though the appellant Lamboo Sharma was sentenced to death by the learned trial Court at the first instance and Death Reference No.3 of 2019 was registered for confirmation of the death sentence under section 366 of Cr.P.C. submitted to this Court by the learned trial Court, but vide order dated 23.03.2023, this Court remanded the



matter to the learned trial Court on account of non-compliance of the procedures laid down under sections 211(7), 236 and 298 of Cr.P.C. regarding previous convictions with a further direction to the learned trial Court to pass a fresh order regarding the sentence of the appellant Lamboo Sharma.

In the light of order dated 23.03.2023 of this Court, the learned trial Court followed the due procedure and vide order dated 05.04.2023, after considering the manner in which the crime had been committed, the motive behind the commission of crime and that the crime committed by the appellant Lamboo Sharma was of socially abhorrent nature, the magnitude of the crime in which two persons were killed and sixteen got injured and that one of the deceased was a police constable deployed on duty in the Court premises and the other was a helpless woman and further taking into account the aggravating circumstances as well as mitigating circumstances, came to hold that the bomb blast was caused in the 'Temple of Justice' challenging the country's judicial system and governance attempting to create an atmosphere of fear in society and that the appellant was already convicted previously in a murder case and sentenced to life imprisonment and further considering the facts and circumstances, came to the conclusion that the case falls in the category of 'rarest of rare' case and that any



punishment other than the death penalty would be inadequate and accordingly, awarded death sentence under section 302 of I.P.C. and a fine of Rs.25,000/- (rupees twenty five thousand), in default of payment of fine, to undergo one year of additional imprisonment. All sentences awarded to the appellant Lamboo Sharma were directed run concurrently with a further direction that the period already spent in prison shall be adjusted.

Submissions on behalf of Appellants:

17. Mr. Pratik Mishra, learned Amicus Curiae appearing on behalf of the condemned prisoner Lamboo Sharma with all the emphasis in his command contended that the evidence adduced by the prosecution regarding the involvement of Lamboo Sharma in the crime is not acceptable. According to the prosecution, on the date of occurrence, the prisoner van came from the jail for production of thirty-seven prisoners and the prisoners started to deboard. Three witnesses i.e. P.W.10, P.W.15 and P.W.26 have stated about a woman trying to give a bag to the appellants Lamboo Sharma and Akhilesh Upadhyay, but their evidence on this score appears to be contradictory and even the story of bag was not there in the first information report. He further argued that there is no evidence that any of these two appellants attempted to take the bag from the hands of the lady. He further argued that incriminating circumstances as deposed to by the



aforesaid three witnesses were not put to the appellant Lamboo Sharma in the accused statement for seeking an explanation and therefore, such circumstances could not have been used against the appellant by the learned trial Court and it should be excluded from consideration. Reliance has been placed in the case of **Sujit Biswas -Vrs.- State of Assam reported in (2013) 12 Supreme Court Cases 406, Indrakunwar -Vrs.- The State of Chhattisgarh reported in 2023 SCC OnLine SC 1364, Anand Ramchandra Chougule -Vrs.- Sidarai Laxman Chougala and others reported in (2019) 8 Supreme Court Cases 50**. He further argued that there are insufficient materials on record after the occurrence to connect the appellant Lamboo Sharma with the crime in question.

According to Mr. Mishra, learned Amicus Curiae, the mobile phone which was seized lying near the deceased by the I.O. at the scene of crime, was found to be intact and the same was registered in the name of one Savitri Devi and thus the link between the deceased woman and the mobile phone could not be established. From the C.D.R. of the mobile phone, it could be ascertained that on the previous day of occurrence as well as on the date of occurrence, calls were made to three mobile phones which stood recorded in the names of one Sanjay Kumar, Musa Nut and Vijay Prasad, however, none of them have been



examined by the prosecution to show that any of them had got any link with the appellant Lamboo Sharma or any other appellants. Even Savitri Devi who was the registered owner of the mobile phone stated to be lying near the deceased was also not examined to establish her link with the deceased. According to the prosecution, from the statement of one Soni Devi, the daughter of the deceased, it could be ascertained that the name of the deceased lying at the spot was Nagina Devi, however, the said Soni Devi was not examined during trial even though her statements were recorded during investigation. According to Mr. Mishra, for the non-examination of vital and independent witnesses, adverse inference should be drawn against the prosecution. Reliance has been placed in the case of **Takhaji Hiraji -Vrs.- Thakore Kubersing Chamansing and others reported in (2001) 6 Supreme Court Cases 145.**

Mr. Mishra, learned Amicus Curiae further argued that electronic evidence in the form of C.D.R. and tower location data of the mobile numbers is not admissible in evidence as it does not bear the signature of any official and no statement of the person from whom the C.D.R. was obtained, was recorded and necessary certificate as required under section 65B(4) of the Evidence Act which is a pre-requisite for admissibility of electronic evidence, has been brought on record. He placed reliance in the case of



Anvar P.V. -Vrs.- P.K. Basheer and others reported in (2014) 10 Supreme Court Cases 473, Arjun Panditrao Khotkar -Vrs.- Kailash Kushanrao Gorantyal and others reported in (2020) 7 Supreme Court Cases 1.

He argued that even if any of the three mobile phones was used from the tower location of Model Jail, Ara, but there is no evidence that it was the appellant Lamboo Sharma who was using the same.

Mr. Mishra further argued that the learned trial court has relied upon the confessional statement of the appellant as well as that of the co-accused persons against him which cannot come within the definition of 'evidence' as per section 3 of the Evidence Act as well as section 30 of the Evidence Act. He placed reliance in the case of **Haricharan Kurmi -Vrs.- State of Bihar reported in A.I.R. 1964 Supreme Court 1184** and **Surinder Kumar Khanna -Vrs.- Intelligence Officer reported in (2018) 8 Supreme Court Cases 271**. He argued that the statement of the accused after arrest, whether confessional or not, cannot fall within the ambit of section 10 of the Evidence Act for the purpose of proving the existence of the conspiracy and for the purpose of showing that he was a party to it. Even if from the house of appellant, some mobile phones were seized which were allegedly used after the occurrence as per the C.D.Rs., but since after the occurrence, the conspiracy got ceased, therefore, the



C.D.Rs. becomes irrelevant. He placed reliance in the case of **State of Gujarat -Vrs.- Mohd. Atik reported in (1998) 4 Supreme Court Cases 351.**

It is further argued by Mr. Mishra, learned Amicus Curiae that there is lack of evidence relating to criminal conspiracy and mobiles seized during investigation of the case no way connect the appellant Lamboo Sharma with the crime in question. Even though the appellant Lamboo Sharma escaped from the Court premises after the bomb blast, but that by itself would not be sufficient to hold him guilty of the offences charged as mere absconding, does not by itself, prove the guilt. He placed reliance in the case of **Matru @ Girish Chandra -Vrs.- The State of U.P. reported in (1971) 2 Supreme Court Cases 75** and **Chetan -Vrs.- State of Karnataka reported in (2025) 9 Supreme Court Cases 31.** It is further argued that since the case against the appellant Lamboo Sharma is based on circumstantial evidence and the circumstances established by the prosecution do not form a complete chain, the conviction of the appellant cannot be sustained. He placed reliance in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in (1984) 4 Supreme Court Cases 116.** He further argued that the seizure lists were not exhibited during the trial but only signatures of the witnesses in the seizure lists were marked as exhibits and therefore, the seizure lists cannot be said to



have been proved and as such its contents cannot be utilized against the appellant and it should be discarded in toto.

According to Mr. Mishra, learned Amicus Curiae, the evidence on record against the appellant might have raised strong suspicion against him, but suspicion, howsoever strong, cannot take the place of proof and therefore, it is a fit case where benefit of doubt should be extended in favour of appellant Lamboo Sharma.

18. Mr. Ajay Kumar Thakur, learned counsel for the appellant Lamboo Sharma appearing in Criminal Appeal (DB) No.1210 of 2019 in his own inimitable elegant style contended that for the purpose of connecting the appellant with the crime, the prosecution has tried to rely mainly on two circumstances i.e. firstly, the appellant was in possession of three mobile phones bearing nos.7631105971, 7764939558 and 7654894198 and with the help of the such phones, he allegedly talked with various other persons including the deceased woman. From the exhibits produced by the prosecution, mobile no.7631105971 was in the name of one Sanjay Kumar, mobile no.7764939558 was in the name of one Musa Nut and mobile no.7654894198 was in the name of one Vijay Prasad. The Customer Acquisition Form (CAF) of the mobile number which was in the name of Sanjay Kumar indicated that on the date of occurrence from the morning, it was not



only found moving outside the jurisdiction of tower location of Ara jail road area, but in other tower location and even at the time of occurrence, its tower location was not at Civil Court, Ara.

Mr. Thakur, learned counsel further argued that the tower location of the other two mobile numbers i.e. 7764939558 and 7654894198 which were registered in the names of Musa Nut and Vijay Prasad respectively on the date of occurrence i.e. 23.01.2025 were not produced by the prosecution and it has been purposefully withheld. The three mobile subscribers were not examined by the prosecution during trial nor they have been arrayed as accused in the case. Moreover, the C.D.Rs. produced by the prosecution would show that the aforesaid three mobiles were at three different places at the same day and time. The prosecution has not examined any person from the service providers of the aforesaid three mobile numbers to explain as to how if the three mobiles were in possession of one person who was inside the jail, then at the same time on the same day, how its tower locations could be found at three different places and different mohalla. He argued that since the tower location of none of the three mobiles on the date and time of occurrence, was found within the tower location of Ara Civil Court premises, the prosecution case that those three mobiles were in possession of appellant Lamboo Sharma and the deceased was contacting the



appellant in the aforesaid three mobile numbers is very difficult to be accepted.

According to Mr. Thakur, learned counsel, when the appellant was inside jail at the relevant point of time, no evidence is forthcoming as to how those mobile phones came into his possession and who gave those mobile phones to him and on what date and the prosecution case is totally silent on this vital aspect. He argued that since none of the three mobile phones were recovered from the possession of Lamboo Sharma, it is very difficult to accept that the deceased woman was in contact with the appellant from her phone in the three mobile phones whose possession were allegedly with the appellant.

Mr. Thakur, learned counsel further argued that the prosecution case that the deceased woman was trying to meet appellant Lamboo Sharma in order to give something to him when he got down from the prisoner van is conspicuously silent in the first information report which was lodged by an eye witness (P.W.33) to the occurrence. Most of the witnesses who had seen the occurrence of bomb explosion have also not stated about the deceased woman trying to meet the appellant in order to give something to him. None of the witnesses examined on behalf of the prosecution has stated to have ever seen the deceased woman in the company of the appellant or talking



with him. It is argued that when the prosecution has not produced any evidence to establish any link between the deceased woman with the appellant Lamboo Sharma save and except the C.D.Rs. which are exhibited by the prosecution but not admissible, the complicity of the appellant cannot be said to have been established by the prosecution beyond all reasonable doubt.

Mr. Thakur, learned counsel further argued that two of the appellants who were stated to have escaped from the Civil Court premises on the date of occurrence were inside jail and there is no evidence that the other appellants or the deceased woman were coming to meet them during their confinement. There is also no evidence that the appellant made any planning either for manufacturing the bomb or asking anyone to send any woman much less the deceased woman to come within Ara Civil Court premises with the bomb and there is also no evidence as to how the bomb was allegedly procured or manufactured and therefore, the appellant should be given benefit of doubt.

19. Mr. Ganesh Prasad Singh, learned counsel appellant Shyam Vinay Sharma adopted the arguments advanced by the learned counsel for other appellants in the connected appeals and contended that the learned trial Court held the appellant guilty mainly on the ground that



the explosive materials used in the bomb was procured from the appellant, but except the confessional statement of the appellant so also confessional statement of appellant Rinku Yadav before the I.O. (P.W.38), there is no other substantive evidence in that respect. He argued that though the I.O. raided the house of the appellant on the basis of the confessional statement of appellant Anshu Kumar and recovered Samsung Grand Prime mobile with mobile no.9471416384 and SIM card of 8102932486 and another Samsung mobile set were recovered from him including a bullet holder, a rifle cleaner rod and a gun cleaner rod, but in absence of any clinching evidence on record, the conviction of the appellant basing on confessional statements before police is not sustainable in the eyes of law and such recoveries alone would not justify the conviction of the appellant and therefore, the appellant should be given benefit of doubt.

20. Mr. Ravindra Kumar, learned Amicus Curiae appearing for the appellant Rinku Yadav argued that even though it is the prosecution case that the appellant used mobile phone number 8540022698 in contacting appellant Lamboo Sharma, but such phone stood recorded in the name of one Vishal Kumar, who is neither an accused nor a witness in the case. Calls were given from the mobile phone of Vishal Kumar to three mobile numbers, but none of those three mobile phones stood recorded in the name of Lamboo



Sharma. It is argued that no question has been put to the appellant Rinku Yadav in his accused statement on this aspect and therefore, it cannot be utilized against the appellant. According to him, since in absence of examination of the real owner of mobile phone, it could not be proved that he had handed over his mobile phone to the appellant Rinku Yadav for his use, it is difficult to accept that there was any contact between the appellant Rinku Yadav and appellant Lamboo Sharma and therefore, benefit of doubt should be extended in his favour.

21. Mr. Binay Kumar, learned counsel appearing for the appellant Md. Naim Miya contended that even though no specific defence plea has been taken by the appellant in his accused statement, however he examined two defence witnesses to prove that he was a mechanic working in the garage of D.W.1 Wasi Ahmad and he had not gone anywhere on the date of occurrence and even though such a plea has been disbelieved by the learned trial Court, but in absence of any clinching evidence on record, merely basing on the confessional statements of the two appellants Lamboo Sharma and Akhilesh Upadhaya before police after arrest, it was erroneously held that the appellant and his brother Naim Miya arranged for the stay and other facilities of those two appellants after their escape from judicial custody and that the charges are



proved against him.

22. Mr. Ravindra Kumar, learned counsel appearing for the appellant Chand Miyan contended that the identification of the lady who died in the bomb blast at the Civil Court premises during the occurrence as Nagina Devi is doubtful. He further argued that neither there is direct or indirect evidence of conspiracy by the appellant with the other co-accused persons and therefore, it cannot be said that the appellant had got any role to play in the escape of two of the appellants from Ara Civil Court premises on the date of occurrence. It is argued that though the learned trial Court has observed that the appellant and his brother Naim Miya arranged for the stay and other facilities of the appellants Lamboo Sharma and Akhilesh Upadhaya after their escape from judicial custody, which seems to be based on confessional statements of those two appellants before police after arrest which is not admissible and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

23. Mr. Ravindra Kumar, learned counsel appearing for the appellant Anshu Kumar argued that the prosecution has produced evidence that the appellant purchased head of handpump from P.W.6, but there is no evidence as to how such purchase, even if accepted for the sake or argument, is relevant for the prosecution case. According to him, the



confessional statement of appellant Akhilesh Upadhyay before police has been utilized by the learned trial Court to come to the conclusion that the appellant Anshu Kumar used to meet appellant Lamboo Sharma in jail and that he had given him the SIM Card which was being used by the deceased woman at the time of occurrence. When the jail visit register has not been verified by the I.O. and the confessional statement of an accused before police is not admissible, according to the learned counsel, the learned trial Court erred in placing reliance on such inadmissible evidence. According to him, even if the prosecution case that on the basis of the confessional statement of the appellant, raid was conducted at the house of one Shyam Vinay Sharma and some articles were seized, but those were in no way connected with the crime in question and moreover, the two witnesses to the seizure i.e. P.W.35 and P.W.36 have not supported the prosecution case relating to such seizure. The learned counsel argued that it is the prosecution case that the appellant stayed with the deceased woman at Chaurasia Guest House but there is no clinching evidence in that respect except some entry made in the register of the Guest House and seizure of Voter I.D. Card of the appellant. He argued that in the register of Chaurasia Guest House, one lady namely Reena Devi was shown to be staying with the appellant from 21.01.2015 till 10:10 a.m. on 23.01.2015, however, it is not established



that the lady who died in the Civil Court premises on account of bomb blast was the same lady who was staying with the appellant at Chaurasia Guest House. He emphatically contended that since the circumstantial evidence appearing on record does not indicate that the appellant hatched criminal conspiracy with the co-accused persons to carry out the bomb blast and that it was done in a pre-planned way, benefit of doubt should be extended in favour of the appellant.

24. Mr. Ravindra Kumar, learned counsel appearing for the appellant Akhilesh Upadhyay argued that there is no evidence that the appellant was in touch with the deceased woman even through mobile phone and no mobile phone has been seized from the appellant. According to him, the escape of the appellant after the bomb blast might be spontaneous reaction, but it cannot establish the ingredients of the offence under section 224 of I.P.C. He further argued that the confessional statement of the appellant recorded by the police is inadmissible and barred under sections 25 and 26 of the Evidence Act. According to the learned counsel, there is absence of any material to show that there was any conspiracy between the appellant Akhilesh Upadhyay with appellant Lamboo Sharma much less any kind of conspiracy with other appellants even though both of them were staying in one jail, came together in prisoner's van and also escaped together and



therefore, benefit of doubt should be extended in favour of the appellant.

Submissions on behalf of State:

25. Ms. Shashi Bala Verma, learned Additional Public Prosecutor being assisted by Mr. Ajay Mishra, learned Additional Public Prosecutor supported the impugned judgment and argued that the mobile phone was found near the unknown dead body of a lady, who was later identified as Nagina Devi and from such mobile phone, it could be ascertained as to how the calls were made to three mobile numbers on the previous day of occurrence as well as on the date of occurrence. The electronic evidence in the form of C.D.R. reveals that the deceased woman had called several times from her mobile no.8083172236 on mobile nos.8292500417 and 8271770107 from 09.12.2014 to 23.01.2025, either the calls were outgoing calls or incoming calls which shows there was contact between the deceased woman and appellant Anshu Kumar. She emphatically contended that on perusal of the entire C.D.R., it appears that the convict appellants were in touch with each other through their mobile phones before the occurrence and after the occurrence and therefore, the criminal conspiracy is proved.

The learned Additional Public Prosecutor Ms. Verma emphatically contended that the three mobile phone



numbers to whom the deceased was making contact was operating within the tower location of jail road area, Ara which is an incriminating material against the appellant Lamboo Sharma who was lodged in Ara jail at the relevant point of time.

The learned counsel argued that it is very difficult to find out direct evidence in a case of criminal conspiracy but the circumstantial evidence on record can be utilized to prove such aspect. She argued that the deceased woman was trying to come closer to hand over something in a bag to the appellant Lamboo Sharma and Akhilesh Upadhyay, however, she could not succeed on account of the intervention of the deceased constable who prevented her and due to pushes, she fell down and there was bomb blast and therefore, the lady had come prepared with bomb in a bag to hand it over to any of the two appellants and the learned trial Court has rightly utilized this vital circumstance against the appellants. She argued that when other prisoners did not escape from the van, but these two appellants got the chance to escape after the bomb blast which shows that at their instance, the bomb blast operation was carried out. The learned counsel argued that number of witnesses present at the scene of occurrence have been examined during trial and they have deposed as to how the bomb blast took place and the two appellants escaped and non-examination of few witnesses



and some discrepancies between the evidence of the witnesses present at the spot cannot be a ground to disbelieve the prosecution case in its entirety and in view of the settled position of law that it is the quality of evidence and not the quantity which is relevant, no interference is called for in the impugned judgment. She further argued that the appellant Lamboo Sharma was a history-sheeter and he has been convicted in two cases under section 302 I.P.C. and one of such case was also bomb blast in which the deceased were the advocates and the jail conduct of the appellant is also not satisfactory and there is no chance of reformation and therefore, the learned trial Court is quite justified in imposing death sentence to him.

Post-mortem reports findings of two deceased and injury reports of seventeen injured persons:

26. Adverting to the contentions raised by the learned counsel for the respective parties, we find that the date, time and place of occurrence is not disputed in this case. The occurrence took place on 23.01.2015 at around 11:30 a.m. in the premises of Civil Court, Ara and on account of bomb blast, several persons got injured, out of which one lady who was later identified to be Nagina Devi died at the spot and C/696 Amit Kumar, who received serious injuries and shifted to the hospital also subsequently died.

P.W.38, the I.O. who was posted as Police



Inspector -cum- S.H.O., Ara Town Police Station, District-Bhojpur took steps for sending the female body for post-mortem examination to Sadar Hospital, Ara after the inquest was held.

P.W.28 Dr. Shashi Shekhar Shashi, the Medical Officer attached to Sadar Hospital, Ara conducted post-mortem examination over the dead body of C/696 Amit Kumar on 23.01.2015 at 02:45 p.m. and noticed injuries on different parts of the body and opined the cause of death to be cardio pulmonary arrest after Hemopneumothorax at left side of the lung due to blast injury and further opined that the time since death was within six hours of the post-mortem examination. The post-mortem report has been marked as Ext.3.

The very same doctor (P.W.28) also conducted post-mortem examination over the dead body of the unknown lady on 24.01.2015 at 08:15 a.m. and noticed serious injuries on different parts of the body and opined the cause of death was on account of blast injuries on multiple organs and due to cardio-respiratory failure and further opined the time since death was within twenty-four hours of the post-mortem examination. The post-mortem report has been marked as Ext.3/1.

P.W.27 Dr. Kumar Jitendra, the Medical Officer in Sadar Hospital, Ara examined the injured persons (i)



Havildar Shivjee Prasad (P.W.31); (ii) Dwarka Pathak (P.W.11); (iii) Mukesh Rai (P.W.21); (iv) Sunil Kumar (v) Bikhari Thakur (P.W.25); (vi) Prem Singh (P.W.18); (vii) Shukhu Choudhary (P.W.24); (viii) Thegu Chaudhary; (ix) Shashikant Ram (P.W.19); (x) Pankaj Kumar; (xi) Lalmani Devi; (xii) Gorakh Singh; (xiii) Samar Sushma; (xiv) Shambhu Ram (P.W.20); (xv) Rakesh Rai (P.W.22); (xvi) Shatrughan Sah; (xvii) Ram Dayal Paswan; (xviii) Poonam Devi and noticed lacerated wounds on different parts of their bodies.

The doctor prepared the injury reports of all the above injured persons and those have been marked serially as Exts.2 to 2/17. He opined that the injuries sustained by the injured persons could be possible at about 11:25 a.m. and the injuries were caused on account of bomb blast. In the cross-examination, he has stated that he gave treatment to the injured persons on the letter issued by the police but not written the police case number in the treatment papers and he submitted the injury reports to the Deputy Superintendent from where the police received it. He denied the suggestion given by the defence of preparing false reports at the behest of the police.

The learned counsel for the appellants and the learned Amicus Curiae have not challenged the evidence of the doctors and their findings in the post-mortem reports vide Exts.3 and 3/1 so also the injury reports vide Exts.2 to



2/17.

Thus, the prosecution has successfully established that during course of occurrence, apart from the two deceased persons, eighteen persons received bomb blast injuries and they were treated at Sadar Hospital, Ara.

Appreciation of circumstantial evidence:

27. Admittedly, there is no direct evidence that the deceased woman caused the bomb blast in connivance with the accused persons and the entire case of the prosecution depends upon circumstantial evidence.

In the case of **Sharad Birdhichand Sarda** (supra), a Bench of three Judges of the Hon'ble Supreme Court, laid down certain cardinal principles for conviction on the basis of circumstantial evidence and held that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible



hypothesis except the one to be proved;
and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

These five golden principles, according to the Hon'ble Supreme Court, constitute the *panchsheel* of the proof of a case based on circumstantial evidence.

In the case of **Kishore Chand -Vrs.- State of Himachal Pradesh reported in (1991) 1 Supreme Court Cases 286**, the Hon'ble Supreme Court held as follows:

"4. The question, therefore, is whether the prosecution proved guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the



offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis."

In the case of **Gambhir -Vrs.- State of Maharashtra reported in (1982) 2 Supreme Court Cases 351**, the Hon'ble Supreme Court held as follows:

"9. It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and



incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

In a case based on circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court has to be watchful and ensure that suspicion howsoever strong should not be allowed to take the place of proof. A moral opinion, howsoever strong or genuine and suspicion, howsoever grave, cannot substitute a legal proof. A very careful, cautious and meticulous appreciation of evidence is necessary when the case is based on circumstantial evidence. The prosecution must elevate its case from the realm of 'may be true' to the plane of 'must be true'.

The core principles which need to be adhered to by the Court, while examining and appreciating circumstantial evidence, have been strenuously discussed by the Hon'ble Supreme Court in the case of **Devi Lal -Vrs.- State of Rajasthan reported in (2019) 19 Supreme Court Cases 447** in the following words:

"17...It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The



underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused."

Keeping in view the ratio laid down in the aforesaid decisions of Supreme Court, the evidence on record needs to be analysed to see how far the prosecution has proved the circumstances as enumerated by the learned trial Court and whether the circumstances taken together form a complete chain to come to the irresistible conclusion that the appellants are the perpetrators of the crime.

Whether evidence relating to the deceased woman trying to give a bag to the appellants is acceptable?:

28. It is the prosecution case that on 23.01.2015, when the prisoner van came from District Jail, Ara carrying thirty-seven prisoners including the appellants Lamboo Sharma and Akhilesh Upadhyay to Ara Court premises for their production in different Courts and the prisoners



started deboarding, a woman tried to proceed towards the two appellants and she was obstructed and then the bomb blast incident took place.

P.W.33, the informant has stated in his evidence that first of all a female constable came out with a female prisoner when the prisoner van was parked at the northern gate of the hazat and then two to three prisoners followed her and a prisoner entered the hazat and in the meantime, the bomb exploded.

In the first information report, which was lodged by an eye witness (P.W.33), there is no mention that the deceased woman either was carrying any bag with her or she tried to proceed to give anything to anyone, even though it is mentioned therein that when three male prisoners got down from the van and proceeded towards hazat, at that time a lady who was standing on the southern side of the road exploded a bomb. Of course, the F.I.R. is not the encyclopaedia or be all and end all of the prosecution case. It is not a verbatim summary of the prosecution case. Whether non-mentioning of some material facts would be fatal or not depend on the facts and circumstances of each case.

Three witnesses who have stated about the conduct of the deceased woman in trying to hand over something which she was carrying to both the appellants are P.W.10 Dinesh Kumar Singh, P.W.15 Tarkeshwar Ojha



and P.W.26 Dhananjay Kumar Srivastav.

P.W.10 has stated that on 23.01.2015 at about 11:25 a.m., while he was in Ara Court hazat, the prisoner van entered in Court and prisoners started to get down from the van. At first, a female prisoner alighted and moved and thereafter, out of the male prisoners, Lamboo Sharma and Upadhyay (appellants) got down. He further stated that a woman tried to give a bag which she was carrying to both the appellants, but the constable removed her and the bomb which was in the bag exploded. He further stated that both the appellants managed to escape when the smoke spread and that some people got injured and were taken to the hospital where one died and the woman carrying the bag also died at the spot.

In the cross-examination, P.W.10 has stated that at the time of incident, he was at the gate of hazat which was surrounded and that they were getting down the prisoners. He further stated that he was outside at the time of blast and hearing the sound, he ran a step away towards west. He further stated that the darkness lasted for ten minutes and in the darkness, it was not visible as to who ran and who did not. He further stated that the deceased constable Amit Kumar was talking and pushing the deceased woman and had forcefully restrained her and the woman fell down on being pushed. He further stated that the van was parked adjacent to the gate and only one



prisoner could come out of the van and the prisoners started getting down after five minutes of the vehicle got parked.

Mr. Pratik Mishra, learned Amicus Curiae appearing on behalf of the condemned prisoner Lamboo Sharma, argued that so far the role of deceased woman is concerned, the evidence adduced by P.W.10, P.W.15 and P.W.26 is not consistent. Though P.W.10 has stated that a woman tried to give the bag that she was carrying to both the appellants Lamboo Sharma and Upadhyay, P.W.15 has stated that when the two appellants Lamboo Sharma, Akhilesh Upadhyay and another got off from prisoners' van, a woman who was sitting there, started giving a bag to Lamboo Sharma, but a constable named Amit (deceased) of Armed Force stopped the woman to do so and the bomb exploded at that time. P.W.26 on the other hand has stated that when the two appellants Lamboo Sharma, Akhilesh Upadhyay and another got down from prisoners' van, a woman was trying to enter the police cardon but the constable Amit (deceased) pushed her and at the same time, the bomb exploded. He further stated that the said woman wanted to give it to appellant Lamboo Sharma. According to Mr. Mishra, the discrepancies go to the root of the matter and fails to establish any kind of link between the appellants Lamboo Sharma and Akhilesh Upadhyay on the one hand and the deceased woman on the other.



Ms. Shashi Bala Verma, learned counsel for the State on the other hand contended that while appreciating the evidence, the Court must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case are to be ignored. The discrepancies which are due to normal errors of perception or observation should not be given any importance. The errors due to lapse of memory may be given due allowance.

In the case of **Bharwada Bhoginbhai Hirjibhai -Vrs.- State of Gujarat reported in (1983) 3 Supreme Court Cases 217**, it is held as follows:

“5.....We do not consider it appropriate or permissible to enter upon a reappraisal or reappraisal of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned Counsel for the Appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(i) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(ii) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The



mental faculties therefore cannot be expected to be attuned to absorb the details.

(iii) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(iv) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(v) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(vi) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(vii) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-



examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

We find that even though other witnesses including the injured persons like P.W.11, P.W.18, P.W.19, P.W.20, P.W.21, P.W.22, P.W.24, P.W.25 and P.W.31 were examined to prove the occurrence, but except P.W.11, P.W.24 and P.W.31, the other injured witnesses have not supported the prosecution case and they were declared hostile by the prosecution. There is nothing in the evidence of these three injured witnesses P.W.11, P.W.24 and P.W.31 that any lady was trying to enter the police cardon and came forward to give any bag to the appellants Lamboo Sharma and Akhilesh Upadhyay and that she was pushed by the constable Amit (deceased) and then the bomb got exploded. There is no evidence that any of these two appellants gave any kind of sign, signal, gesture to the lady or they tried to move towards the lady to receive the said bag. When the two appellants and another got down from



prisoner van and in the police cordon, all of them were proceeding ahead towards Court hazat and there is no evidence of the two appellants passing any sign, signal, gesture or talking to the lady nor they even tried to move towards the lady to receive the said bag and the woman was stopped while trying to enter the police cordon, how then the witnesses P.W.10, P.W.15 and P.W.26 came to know that the deceased woman was trying to give the bag to the appellants Lamboo Sharma and Akhilesh Upadhyay. The possibility of their speculation on this aspect cannot be ruled out and law is well settled that speculation, conjecture, surmises or suspicion by a witness holds no evidentiary value in a Court of law.

The I.O. (P.W.38) stated to have noticed a Micromax mobile set, white colour mobile ear phone, a torn note of five rupees, a torn note of fifty rupees, two broken pieces of anklet like silver, a rold gold yellow colour chain in the neck of the deceased and a broken piece of earring and blood of the deceased woman spilled at the place of occurrence, which were seized by him as per seizure list, but his evidence is silent that he noticed any fragmented, charred or remnants of any bag and even though scientific officials also visited the spot immediately, they have not found any such thing. The story of bag is not there even in the F.I.R. which creates doubt that the bag containing bomb was carried by the deceased woman to the spot.



Thus, we are of the view that there is no cogent evidence on record that on the date of occurrence, in the Ara Court complex, the deceased woman was trying to give any bag containing bomb to the appellants Lamboo Sharma and Akhilesh Upadhyay.

Whether prosecution succeeded in establishing any previous meeting between the deceased woman and appellants?:

29. In the first information report lodged by P.W.33, it is stated that the unknown woman used to come to the Court previously when the appellants Lamboo Sharma and Akhilesh Upadhyay were coming to the Court for their Court appearances and was meeting them. However, while deposing in Court, the evidence of P.W.33 is completely silent in that respect. Therefore, the F.I.R. story that the deceased unknown woman was previously coming to the Court and meeting the two appellants cannot be accepted.

Law is well settled as held in the case of **Utpal Das and others -Vrs.- State of West Bengal reported in (2010) 6 Supreme Court Cases 493** that the first information report does not constitute substantive evidence. It can, however, only be used as a previous statement for the purpose of either corroborating its maker or for contradicting him and in such a case, the previous statement cannot be used unless the attention of the witness has first been drawn to those parts by which it is proposed to contradict the witness.



In the case in hand, the prosecution has not drawn the attention of P.W.33 to the parts of F.I.R. where he had mentioned about the deceased woman coming to the Court previously on the Court appearance days of the two appellants and meeting them. Therefore, the recital made in the F.I.R. cannot be used as substantive evidence. Moreover, none of the witnesses examined on behalf of the prosecution has stated that any such woman was coming to the Court previously and meeting both the appellants on the dates of their production.

Similarly, there is no evidence that the deceased woman was coming to the jail where both the appellants were lodged to meet them. The I.O. (P.W.38) has stated that he has not mentioned in the case diary that he inspected jail register.

Thus, the prosecution has not succeeded by adducing cogent evidence in establishing any previous meeting between the deceased woman and appellants either in jail or in Court complex.

Vital incriminating circumstance not put in accused statement : Effect:

30. The circumstance as deposed to by P.W.10, P.W.15 and P.W.26 that the deceased woman was trying to handover the bag to the appellants Lamboo Sharma or Akhilesh Upadhyay has not been put to any of them in their accused statements recorded under section 313 of Cr.P.C.



In the case of **Sujit Biswas** (supra), it has been held that in a criminal trial, the purpose of examining the accused under section 313 of Cr.P.C., is to meet the requirement of principles of natural justice. The accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him and the Court must take note of such explanation. It is further held that the circumstances which were not put to the accused in his examination under section 313 of Cr.P.C., cannot be used against him and it must be excluded from consideration.

In the case of **Indrakunwar** (supra), it has been held that the object of section 313 of Cr.P.C. is to enable the accused to explain any circumstances appearing in the evidence against him. The intent is to establish a dialogue between the Court and the accused and this process benefits the accused and aids the Court in arriving at the final verdict, which is not a matter of procedural formality but based on cardinal principle of natural justice. It is further held that the circumstances that are not put to the accused while recording the statement under the section 313 of Cr.P.C. are to be excluded from consideration and the Court is obligated to put, in the form the questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. Non-compliance with the section may cause prejudice to the



accused and may impede the process of arriving at a fair decision.

In the case of **Ganesh Gogoi -Vrs.- State of Assam reported in (2009) 7 Supreme Court Cases 404**, relying upon the earlier decision in the case of **Basavaraj R. Patil and Ors. -Vrs.- State of Karnataka reported in (2000) 8 Supreme Court Cases 740**, it was held that the provisions of section 313 of Cr.P.C. are not meant to nail the accused to his disadvantage but are meant for his benefit. The provisions are based on the salutary principles of natural justice and the maxim 'audi alteram partem' has been enshrined in them. Therefore, an examination under section 313 of Cr.P.C. has to be of utmost fairness.

In the case of **Shaikh Maqsood -Vrs.- State of Maharashtra reported in (2009) 6 Supreme Court Cases 583** and **Ranvir Yadav -Vrs.- State of Bihar reported in (2009) 6 Supreme Court Cases 595**, the Hon'ble Supreme Court held that it is the duty of the trial court to indicate incriminating material to the accused. Section 313 of Cr.P.C. is not an empty formality. An improper examination/inadequate questioning under section 313 of Cr.P.C. amounts to a serious lapse on the part of the trial Court and is a ground for interference with the conviction.

We are of the humble view that since the



prosecution is utilizing the evidence of these three witnesses i.e. P.W.10, P.W.15 and P.W.26 regarding the attempt made by the unknown woman to hand over a bag to the appellants Lamboo Sharma and Akhilesh Upadhyay against these two appellants, which is a vital circumstance, the learned trial Court was required to put this circumstance, in the form of questions to these two appellants seeking for their explanation. Since the same has not been done, we are of the view that it has actually and materially prejudiced them and has resulted in the failure of justice as it has deprived them in giving their explanation. Thus, in view of the settled law, we are not able to use such particular circumstance against any of them and it must be excluded from consideration.

Whether prosecution succeeded in establishing mobile phone contact between the deceased woman and appellants?:

31. The I.O. (P.W.38) seized a Micromax mobile set installed with a SIM card of Aircel company i.e. 8083172236 which was lying at a close distance from the deceased but was intact from the spot after the occurrence.

Though the prosecution has tried to connect the Micromax mobile set with the deceased, but the I.O. himself has stated that he verified the mobile number of Micromax mobile set and found it was registered in the name of one Savitri Devi. The I.O. further stated that on perusal of the



C.D.R. of mobile no.8083172236, it transpired that it was in touch/conversing on 22.01.2015 and 23.01.2015 (date of occurrence) on three mobile numbers i.e. 7631105971, 7764939558 and 7654894198 which were in the names of Sanjay Kumar, Musa Nut and Vijay Prasad respectively. The prosecution has neither examined Savitri Devi nor any of the three mobile phone subscribers during trial.

At the spot, on the date of occurrence, nobody had seen the deceased talking to anyone over mobile phone. The daughter of the deceased namely Soni Devi, whose statement was recorded both under sections 161 and 164 of Cr.P.C., who could have thrown light on the use of mobile no.8083172236 by her mother was withheld by the prosecution and not examined in Court. The learned trial Court however utilised the statement of Soni Devi recorded under section 164 of Cr.P.C. marked as Ext.23 by P.W.39, the Judicial Magistrate against the appellants.

Law is well settled that the statement of a witness recorded under section 164 Cr.P.C. is not substantive evidence. Substantive evidence is one which is given by witness in Court on oath in presence of the accused. Statement of a witness under section 164 of the Code is recorded in absence of accused and as such it is not substantive evidence. The statement of a witness under section 164 Cr.P.C. is recorded being sponsored by the investigating agency. During course of trial, if the witness



does not support the prosecution case and declared hostile by the prosecution then the prosecution with the permission of the Court can confront his previous statement made before the Magistrate to him. A statement recorded under section 164 Cr.P.C. can be used either for corroboration of the testimony of a witness under section 157 of the Evidence Act or for contradiction thereof under section 145 of the Evidence Act. In case of **State of Delhi -Vrs.- Shri Ram reported in A.I.R. 1960 S.C. 490**, it is held that the statements recorded under section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under section 164 of the Code and that what he had stated there was true would not make the entire statement admissible, much less could any part of it be used as substantive evidence. In case of **Baij Nath Sah -Vrs.- State of Bihar reported in (2010) 6 Supreme Court Cases 736**, the Hon'ble Supreme Court held that a statement under section 164 of the Code is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-a-vis statements made in Court. In other words, it can be only utilized as a previous statement and nothing more.

The evidence on record clearly indicates that when the bomb blast took place, there was darkness and



nothing was visible in the darkness for about ten to fifteen minutes and the people were running hither and thither to save their lives. In such a scenario, merely because the Micromax mobile phone set was lying nearer to the body of the deceased intact, it is very difficult to accept that the deceased woman was the user of such mobile phone. When material witnesses who could have thrown light that the deceased had got any link with such Micromax mobile have been withheld, adverse inference can be drawn against the prosecution.

In the case of **Takhaji Hiraji** (supra), it has been held that it is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined, it would not have supported the prosecution case. The Court of facts must ask itself as to whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be



examined and yet was being withheld from the Court. If the answer be positive, then only a question of drawing an adverse inference may arise.

There is no evidence on record that Savitri Devi in whose name the mobile number was registered which was lying near the deceased woman or the three mobile subscribers namely Sanjay Kumar, Musa Nut and Vijay Prasad were not available to be examined. Had they been examined, Savitri Devi could have thrown light as to how her mobile phone set was lying nearer to the deceased woman at the spot and whether she had handed over the same for the use of the deceased. Similarly, the three mobile subscribers would have thrown light as to in whose possession mobile SIM cards were there for its use.

We are of the view that an essential part of the prosecution case, which could have been proved by adducing the evidence of the aforesaid four witnesses has not been done. The examination of such witnesses was very crucial to establish the link between the deceased woman and the appellants in the facts and circumstances of the case. Therefore, we are constrained to draw adverse inference against the prosecution for withholding such important witnesses.

Electronic evidence:

32. Mr. Mishra, learned Amicus Curiae argued that the electronic evidence in the form of call detail records



(CDR) and tower location data of the mobile numbers which were produced by the prosecution are not admissible in evidence in absence of requisite certificate under section 65(4) of Evidence Act.

Ms. Shashi Bala Verma, learned counsel for the State on the other hand contended that the learned trial Court has rightly placed reliance on the electronic evidence.

Adverting to the contentions, it is found from the evidence of P.W.38, the I.O. that he sent a request letter to Special Intelligence Unit, Office of Superintendent of Police, Bhojpur to find out IMEI numbers of recovered mobile sets and CDR of mobile numbers and names and addresses of the holders of the mobile phones. He has further stated that the request letter was given to the Special Intelligence Unit to get the CDR and names and addresses of the holders of mobile nos.7631105971, 7764939558 and 7654894198 on which conversation had taken place from the mobile number of the deceased woman. However, the I.O. has stated in the cross-examination that the CDR does not bear the signature of any official and that no statement was recorded from the person from whom the CDR was obtained. Neither any Nodal Officer of the telecom (service provider) nor any person occupying responsible official position in relation to the operation of the relevant device has been examined in



this case. According to the learned Amicus Curiae Mr. Mishra, the certificate under section 65-B(4) of the Evidence Act which is a pre-requisite for admissibility of electronic evidence has not been brought on record and therefore, the electronic documents brought on record by the prosecution by way of exhibits are completely inadmissible.

At this juncture, it is relevant to refer to some of the provisions of the Evidence Act. Section 59 of the Evidence Act states that all facts, except the contents of documents or electronic records, may be proved by oral evidence. As per section 3 of the Evidence Act, the expression 'electronic records' shall have the meaning as assigned in the Information Technology Act, 2000 (hereafter '2000 Act'). Section 2(ta) of 2000 Act defines 'electronic record' which means data, record or data generated, image or sound stored, received or sent in an electronic form or micro form or computer generated micro fiche. Section 61 of the Evidence Act states that the contents of documents may be proved either by primary or by secondary evidence. Section 62 of the Evidence Act defines 'primary evidence' as meaning the documents itself produced for the inspection of the Court. Section 63 of the Evidence Act speaks of the kind or types of 'secondary evidence' by which documents may be proved.

Section 65 of the Evidence Act is very



important and it states that secondary evidence may be given of the existence, condition or contents of a document in certain cases which have been enumerated under clauses (a) to (g) of such section. Whereas 'existence' goes to 'admissibility' of a document, 'contents' of a document are to be proved after a document becomes admissible in evidence. Section 65A of the Evidence Act speaks of 'contents' of electronic records being proved in accordance with the provisions of section 65B. Section 65B of the Evidence Act speaks of 'admissibility' of electronic records which deals with 'existence' and 'contents' of electronic records being proved once admissible into evidence. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, if the conditions mentioned in the section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof of production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that 'document' as defined by section 3 of the Evidence Act does not include 'electronic records'. Section 65B(2) of the Evidence Act refers to the conditions that



must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2) (a) to 65(2)(d) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively.

So far as sub-section (4) of section 65 of the Evidence Act is concerned, the learned Amicus Curiae has relied upon the judgment of the Hon'ble Supreme Court in the case of **Anvar P.V.** (supra) concerning the admissibility of electronic evidence, wherein it is held as follows:

“15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a



person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to section 45-A - opinion of examiner of electronic evidence.”

The learned Amicus Curiae has further placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar** (supra), wherein it is held as follows:



“52. We may hasten to add that section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the Code of Criminal



Procedure.

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54. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the Accused. Section 207 of the Code of Criminal Procedure, which reads as follows, is mandatory. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings therefore, is to supply to the accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement.

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60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in



the 'management of relevant activities' spoken of in sub-section (4) of section 65B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, section 65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief" (Obviously, the word "and" between knowledge and belief in section 65B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time).

61. We may reiterate, therefore, that the certificate required under section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in **Anvar P.V.** (supra), and incorrectly "clarified" in **Shafhi Mohammed** (supra). Oral evidence in the place of such certificate cannot possibly suffice as section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D. 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render section 65B(4) otiose.

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84. But section 65B(1) starts with a non-



obstante clause excluding the application of the other provisions and it makes the certification, a pre-condition for admissibility. While doing so, it does not talk about relevancy. In a way, sections 65A and 65B, if read together, mix-up both proof and admissibility, but not talk about relevancy. Section 65A refers to the procedure prescribed in section 65B, for the purpose of proving the contents of electronic records, but section 65B speaks entirely about the pre-conditions for admissibility. As a result, section 65B places admissibility as the first or the outermost check post, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.”

In the case of **Chandrabhan Sudam Sanap -Vrs.- The State of Maharashtra reported in (2025) 7 Supreme Court Cases 401**, the Hon’ble Supreme Court held as follows:

“55. A two-Judge Bench in a referral order reported in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. : (2020) 3 SCC 216** referred the following question to a larger bench:

“3. We are of the considered opinion that in view of Anvar P.V. : (2014) 10 SCC 473, the pronouncement of this Court in Shafhi Mohammad : (2018) 2 SCC 801 needs reconsideration. With



the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty. We, therefore, consider it appropriate to refer this matter to a larger Bench. Needless to say that there is an element of urgency in the matter.”

56. The reference came to be answered in the judgment in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. : (2020) 7 SCC 1 The relevant portions of which are as under:

45. Thus, it is clear that the major premise of Shafhi Mohammad : (2018) 2 SCC 801 that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under section 65-B(4) in cases in which such person refuses to give it.

46. Resultantly, the judgment dated 3.4.2018 of a Division Bench of this Court reported as Shafhi Mohd. v. State of H.P. : (2018) 5 SCC 311, in following the law incorrectly laid down in Shafhi Mohammad : (2018) 2 SCC 801, must also be, and is hereby, overruled.

47. However, a caveat must be



entered here. The facts of the present case show that despite all efforts made by the respondents, both through the High Court and otherwise, to get the requisite certificate under section 65B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the court for its production under the provisions aforementioned of the Evidence Act, Code of Civil Procedure or Code of Criminal Procedure. Once such application is made to the court, and the court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate.....”

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52. We may hasten to add that section 65-B does not speak of the stage at which such certificate must be



furnished to the Court. In Anvar P.V. : (2014) 10 SCC 473, this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the



Code of Criminal Procedure.

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56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under sections 91 or 311 Code of Criminal Procedure or section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the court in accordance with law.

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61. We may reiterate, therefore, that



the certificate required under section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. : (2014) 10 SCC 473 and incorrectly "clarified" in Shafhi Mohammad : (2018) 2 SCC 801. Oral evidence in the place of such certificate cannot possibly suffice as section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426], which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

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73. The reference is thus answered by stating that:

73.1. Anvar P.V. : (2014) 10 SCC 473, as clarified by us hereinabove, is the law declared by this Court on section 65-B of the Evidence Act. The judgment in Tomaso Bruno v. State of U.P. : (2015) 7 SCC 178, being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad : (2018) 2 SCC 801 and the judgment dated 3.4.2018 reported



as *Shafhi Mohd. v. State of H.P.* : (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the 'computer' happens to be a part of a 'computer system' or 'computer network' and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with section 65B(1), together with the requisite certificate under section 65B(4). The last sentence in para 24 in *Anvar P.V.* : (2014) 10 SCC 473 which reads as "...if an electronic record as such is used as primary evidence under section 62 of the Evidence Act..." is thus clarified; it is to be read without the words '*under section 62 of the Evidence Act*'...". With this



clarification, the law stated in para 24 of Anvar P.V. : (2014) 10 SCC 473 does not need to be revisited.”

57. This judgment has put the matter beyond controversy. In view of the above, there is no manner of doubt that certificate under section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record and further it is clear that the Court has also held Anvar P.V. (supra) to be the correct position of law.”

In the case in hand, even though the prosecution has exhibited Call Detail Record (CDR) of the mobile phones seized during investigation to prove the essential metadata like timestamp, call details which includes duration, type (incoming, outgoing, missed), source/destination numbers and device identifiers but since there is no signature of any official, there is no certificate as required under section 65B(4) of the Evidence Act nor any nodal officer of the service provider or any responsible officer in relation to the operation of the relevant device has been examined in this case, in view of the settled position of law as discussed above, the CDR cannot be legally admissible.

In this case, it is nonetheless the duty of the prosecution, when found that the requisite certificate is missing in the CDR available in the charge sheet, ought to have applied before the Court making a prayer for



summoning a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) referred to in section 65B(4) of the Evidence Act to produce the requisite certificate on CDR and after it is so produced, a copy thereof should have been furnished to the accused persons before commencement of the trial so that there would not have been any kind of prejudice to the accused persons since the certificate under section 65B(4) is a condition precedent to the admissibility of the evidence by way of electronic record.

Accordingly, we accept the contention raised by the learned Amicus Curiae that all the CDRs exhibited by the prosecution are not admissible in evidence.

Criminal Conspiracy:

33. In order to prove criminal conspiracy, the prosecution has relied upon two types of evidence: **(i)** electronic evidence and **(ii)** confessional statements of the appellants before the I.O. (P.W.38) after their arrest.

We have already held that the electronic evidence in the case is not admissible in absence of lack of certificate as required under section 65B(4) of the Evidence Act and absence of any steps taken by the prosecution to summon the person/persons referred to in section 65B(4) of the Evidence Act to produce the requisite certificate on CDR.



Now, it is to be seen whether basing on confessional statements of the appellants before the I.O. (P.W.38) after their arrest, it can be said that the prosecution has proved the criminal conspiracy.

'Criminal conspiracy' has been defined in section 120-A of the Indian Penal Code which states that when two or more persons agree to do or cause to be done,- (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy". It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.



The gist of the offence of conspiracy lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough. The Court must enquire as to whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement.

Section 10 of the Evidence Act reads as follows:

"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."

Section 10 of the Evidence Act, has been



deliberately enacted in order to make such acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of the crime. A conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution more often relies upon circumstantial evidence to prove the same. The prosecution may often rely on evidence of acts of various parties to infer that the things were done in reference to their common intention. Therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common thread linking all of them together. Ordinarily, in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the law has introduced this rule of common responsibility, on the principle that everyone concerned in a conspiracy is acting as the agent of the rest of them. As soon as the Court has reasonable grounds to believe that there is identity of interest or community of purpose between a number of persons, any act done, or any statement or declaration made, by any one of the co-conspirators is, naturally, held to be the act or statement of the other conspirators, if the act or the declaration has any relation to the object of the conspiracy. Otherwise, stray



acts done in darkness in prosecution of an object hatched in secrecy, may not become intelligible without reference to the common purpose running through the chain of acts or illegal omissions attributable to individual members of the conspiracy.

The evidence receivable under section 10 of the Evidence Act of 'anything said, done, or written, by any one of such persons' (i.e. conspirators) must be 'in reference to their common intention'.

In the case of **Mohammed Atik** (supra), it is held as follows:

"14.....It is well-neigh settled that section 10 of the Evidence act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention." In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

15. Privy Council has held so in Mirza Akbar -Vs.- King Emperor : AIR 1940 PC 176. The relevant observations of Lord Wright are



the following:

"This being the principle, their Lordships think the words of Section 10 must be constructed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgement, the words 'common intention' signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. In their



Lordships' judgement Section 10 embodies this principle. That is the construction which has been rightly applied to Section 10 in decisions in India, for instances, in Emperor -Vs.- Ganesh Raghunath Vaishampayan : 55 Bombay 839 and Emperor -Vs.- Abani Bhushan Chuckerbutty : 38 Cal 169 . In these cases, the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past."

(Emphasis supplied)

16. A three-Judge Bench of this Court has also said in Sardul Singh Caveeshar and others -Vs.- The State of Bombay : 1957 CriLJ 1325:

"The principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in Section 10 Evidence Act, confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts



were 'in reference to their common intention' that is to say, 'things said, done or written, while the conspiracy was on foot' and 'in carrying out the conspiracy'. It would seem to follow that where, the charge specified the period of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence."

(Emphasis supplied)

17. Thus, the principle is no longer res integra that any statement made by an accused **after his arrest**, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act..."

The learned trial Court has been pleased to hold that there was a conspiracy in which all the accused persons had a defined role and accordingly, each accused had played their part. It was further held that the presence of the accused at the time of occurrence is not necessary, because they had already well-planned about committing the crime and therefore, the accused have played active role in the bomb blast.

Such a finding by the learned trial Court seems to be based on confessional statements of the accused persons before police after their arrest.

While going through the evidence of the Investigating Officer (P.W.38), we found that he arrested the



appellant Akhilesh Upadhyay, the F.I.R. named accused on 01.03.2015 and recorded his confessional statement and what the said appellant stated, has been mentioned in detail in paragraph nos.21 and 22 of the deposition of the witness. Similarly, P.W.38 also arrested appellants Anshu Kumar and Rinku Yadav on 24.03.2015 near Park View Hotel, Ara and further stated about the recording of confessional statement of appellant Anshu Kumar and what the said appellant stated, has been mentioned in detail in paragraph nos.26 and 27. The I.O. further stated about recording the confessional statements of appellants Rinku Yadav and Shyam Vinay Sharma and what the said appellants stated, has been mentioned in detail in paragraph no.28. Similarly, after receiving information from Delhi Police Special Cell on 24.06.2015 about the *arrest* of appellant Lamboo Sharma, the I.O. received the appellant on 25.06.2015 from Delhi Police and presented him in the trial Court, Ara on 26.06.2015. He recorded the confessional statement of appellant Lamboo Sharma on 02.07.2026 and what the said appellant stated, has been mentioned in detail in paragraph nos.43 and 46 of his evidence. Most peculiarly, the learned trial Court has not only recorded the confessional statements of the aforesaid appellants before police after their arrest in detail in the evidence of P.W.38 but also placed reliance on such confessional statements in arriving at the conclusion that



the prosecution has successfully established the charges against the appellants.

Section 25 of Evidence Act states that confession to Police Officer shall not to be proved as against a person accused of any offence & Section 26 of the Evidence Act states that confession by an accused while in police custody unless it being made in the immediate presence of a Magistrate, shall not be proved against him. The object of making a provision in Section 27 of the Evidence act was to permit certain portion of the statement made by an accused to a Police Officer admissible in evidence whether or not such statement is confessional or non-confessional. That bar against admissibility would stand lifted if the statement distinctly relates to a discovery of fact. Recovery or even production of object by itself need not necessarily result in discovery of a fact. The fact discovered within the meaning of the section is not equivalent to the object recovered but the fact embraces the place from which the object is recovered & the knowledge of the accused as to it.

In the case of **Bheru Singh -Vrs.- State of Rajasthan reported in (1994) 2 Supreme Court Cases 467**, it is held as follows:

“16. A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24



to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence."

In the case of **Indra Dalal -Vrs.- State of Haryana reported in (2015) 11 Supreme Court Cases 31**, while analysing the provisions under sections 25 and 26 of the Evidence Act, it is held that the philosophy behind



the provision is acceptance of a harsh reality that confessions are extorted by the police officers by practicing oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by the Supreme Court as well as the High Courts. It is further held that the word 'confession' has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in



police custody, the confession made by him even to a third person, that is other than a police officer, shall also become inadmissible.

In the impugned judgment, the learned trial Court has utilized the confessional statement of the accused/co-accused as follows:

“.....The deceased woman had come to the Court premises from there (Chaurasia Rest House) at the instance of Lamboo Sharma. This is also proved by the confessional statement of Lamboo Sharma...”(para 52)

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“When explosive was required to make bomb, at the instance of the jailed accused Pramod Singh, Shyam Vinay Sharma made it available which Shyam Vinay Sharma has himself admitted in his confessional statement.”(para 52)

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“That Lamboo Sharma was acquainted with the deceased woman Nagina Devi has been confirmed by Lamboo Sharma in his statement himself.”(para 52)

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“In this case, the accused have confirmed in their confessions of having collected the explosive material for the bomb blast.....It has been confirmed that the deceased Nagina Devi and Anshu Kumar lived in Chaurasia Rest House from 21.01.2015 to 10:10 a.m. on 23.10.2015. This has been



proved by Anshu Kumar in his confessional statement.....”(para 56)

Even if there is no evidence on record, but basing on the confessional statement of accused before police after arrest or confessional statement of co-accused after arrest, the learned trial Court has come to the following finding:

“Since the bomb was hidden with the woman Nagina Devi and she herself switched the bomb on, no people could see that the bomb was thrown upon or how the bomb blasted.”

Since the confessional statement made by the appellants to the I.O. (P.W.38) after their arrest is hit by section 25 of the Evidence Act and not admissible, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act, therefore the learned trial Court erred in placing reliance on the same and utilising it against the appellants.

The learned trial Court should not have also utilized the confessional statement of co-accused against the appellants in view of the ratio laid down in the case of **Haricharan Kurmi** (supra), wherein it has been held as follows:

“11. The question about the part which a confession made by a co-accused person



can play in a criminal trial, has to be determined in the light of the provisions of sec. 30 of the Act. Section 30 provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is found is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, sec. 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When sec. 30 provides that the confession



of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in sec. 30 is not evidence under sec. 3 of the Act. Section 3 defines "evidence" as meaning and including -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

11a. Such documents are called documentary evidence. Technically constructed, this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly, a confession made by an accused person is not such a statement; it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so, section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such



a confession may not be evidence as strictly defined by section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant take like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the Court in dealing with a confession, because section 30 merely enables the Court to take the confession into account....”

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“14. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the Court cannot begin with the examination of the said statements. The stage to consider the said confession statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the Court has to adopt



in dealing with these two types of evidence is thus clear, well-understood and well-established.”

“16.....As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence..”

In the case of **Surinder Kumar Khanna** (supra), it is held as follows:

“13. In the present case, it is accepted that apart from the aforesaid statements of co-accused, there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court.

14. In the absence of any substantive evidence, it would be inappropriate to base the conviction of the appellant purely on



the statements of co-accused.”

In view of the settled position of law, the confession of a co-accused person cannot be treated as substantive evidence against another co-accused and it can only be pressed into service when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.

In the case in hand, since the other evidence i.e. the CDR exhibited by the prosecution are not admissible in evidence as per the reasons given above and thus, the same cannot be taken into account to establish any link between the appellants Lamboo Sharma and Akhilesh Upadhyay with the other appellants so also any link between the deceased woman with any of the appellants and to establish the criminal conspiracy between the appellants to commit the crime.

Thus, we are of the humble view that the prosecution has miserably failed to establish that there was any criminal conspiracy between the accused persons and that the appellants in connivance with each other had set up the deceased woman to commit bomb blast in the Court premises which facilitated the escape of the two appellants from judicial custody.

Escape of appellants Lamboo Sharma and Akhilesh Upadhyay from judicial custody:

34. As per the evidence of P.W.37, Assistant



Superintendent, District Jail, Ara on 23.01.2015, a total of 37 prisoners were sent from District Jail, Ara to appear before the Sessions and Sadar Court and he had prepared the list of prisoners in which he had put his signature which has been marked as Ext.5. In the said list, though the names of both the appellants Lamboo Sharma and Akhilesh Upadhyay were there but they did not return to jail on that day.

Number of witnesses have also stated that after the bomb blast when there was darkness, two of the prisoners namely appellants Lamboo Sharma and Akhilesh Upadhyay escaped.

As per the evidence of the I.O., appellant Akhilesh Upadhyay was arrested on 01.03.2015 whereas appellant Lamboo Sharma was arrested by Delhi Police Special Cell on 24.06.2015 and he received appellant Lamboo Sharma from Delhi Police on 25.06.2015 and presented him in the trial Court in Ara on 26.06.2015.

According to the learned counsel for the appellants Lamboo Sharma and Akhilesh Upadhyay, the conduct of both these appellants in absconding cannot be the sole basis of their conviction under various offences including one under section 302 of the Indian Penal Code. The learned counsel argued that the appellants might have apprehended that the bomb blast was made to eliminate them and therefore, they fled away to save their lives. In



fact, in the accused statement recorded under section 313 of Cr.P.C., the appellant Lamboo Sharma stated that there was smoke filled in the Court, followed by stampede and he ran to save his own life. Similarly, appellant Akhilesh Upadhyay stated that after the explosion, no one was seen getting out of the vehicle and it was dark and he went to his village Piro.

According to the learned counsel, mere absconding does not, by itself, prove the guilt of the appellants. Reliance has been placed in the case of **Matru** (supra), wherein it has been held that mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime. Such is the instinct of self-preservation. The act of absconding is no doubt a relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally, the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused.

In the case of **Chetan** (supra), reliance has



been placed in the case of **Matru** (supra) and it is held that mere absconding by itself does not constitute a guilty mind as even an innocent man may feel panicky and may seek to evade the police when wrongly suspected of being involvement as an instinct of self-preservation.

In the case of **Sk. Yusuf -Vrs.- State of West Bengal reported in (2011) 11 Supreme Court Cases 754**, it is held that in case a person is absconding after commission of offence of which he may not even be the author, such a circumstance alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. It is quite possible that he may be running away merely being suspected, out of fear of police arrest and harassment.

In view of the foregoing discussions, we are of the view that mere absconding of the two appellants from judicial custody may not be alone sufficient to hold that they in connivance with others caused the bomb blast in the Ara Civil Court complex on the date of occurrence, however, we will discuss at the appropriate stage as to what offence such act of escape makes out against each of them.

Whether recovery of articles at the spot and from the appellants linked them with the crime?:

35. At the place of occurrence i.e. Civil Court, Ara premises, where the bomb blast took place, on 23.01.2015



at 02.15 p.m., the I.O. (P.W.38) seized a Micromax mobile set in which a sim card was installed having the mobile phone number 8083172236 (Aircel), a white colour mobile ear phone, a torn note of five rupees, a torn note of fifty rupees, two broken pieces of anklet like silver, a rold gold yellow colour chain in the neck of the deceased and a broken piece of earring and blood of the deceased woman spilled at the place of occurrence as per seizure list.

As already discussed, the prosecution has failed to establish the link between the deceased and the mobile set lying near the deceased and that the deceased was keeping any contact with any of the appellants by using such mobile set.

Though the experts of Forensic Science Laboratory, Patna visited the crime scene on 23.01.2015 at 04:30 p.m. and collected samples of various articles and the exhibit seized materials from the crime scene were handed over by them to the I.O. which were kept in packets marked as A, B, C, D, E, F, G, H, I and J and those were sent to the Forensic Science Laboratory, Patna for examination and opinion and the reports were received, but from the conclusions in the reports, it just came to light that blood could be detected in each of the exhibits marked as A, B and C but not in exhibit marked as D and that from the examination of the articles contained in the polythene packets which were marked as D, E, F, G, H, I and J, it could



be concluded that those were the remnants of exploded country-made bomb, but since bomb blast at the scene of occurrence is not in dispute, the reports of scientific experts no way further help the prosecution in connecting any of the appellants with the crime.

As per the evidence of the I.O. (P.W.38), after the arrest of appellants Anshu Kumar and Rinku Yadav on 24.03.2015, a Nokia mobile set having two SIM cards, a motorcycle was recovered and though the I.O. stated that on the date of occurrence appellant Rinku Yadav used mobile no.8540022698 through which he contacted with appellant Lamboo Sharma but the prosecution has failed to establish which mobile phone was in possession of appellant Lamboo Sharma on the date of occurrence and therefore, no importance can be attached to such evidence of the I.O.

Similarly, after the arrest of appellant Chand Mian on 17.05.2015, one Jivi mobile phone having SIM card no.9198593370 and a Samsung mobile phone with SIM card no. 7301204932 were recovered from him so also after the arrest of appellant Shyam Vinay Sharma on 20.05.2015, Samsung Grand Prime mobile with mobile no.9471416384 and SIM card of 8102932486 and another Samsung mobile set were recovered from him including a bullet holder, a rifle cleaner rod and a gun cleaner rod but the prosecution has failed to establish any link of these articles recovered



with the crime in any manner.

Similarly, on the basis of the information given by appellant Lamboo Sharma after his arrest, on the basis of a raid conducted at his residence in Ludhiana, Punjab, a Samsung mobile phone with SIM card no.7084708365 was recovered, similarly black colour LED T.V., home theatre and four speakers were recovered from the house of appellant Lamboo Sharma, however, the prosecution has not established any link with any of these articles with the crime in question.

Thus, from the articles recovered at the scene of occurrence and from some of the appellants, the link of any of the appellants with the crime in question cannot be said to be established.

Another peculiar feature we noticed that though the signatures of witnesses in the seizure lists have been marked as Exts.1, 1/1, 1/2, 1/3, 1/4, 1/5 and 1/6, but the seizure lists have not been marked as exhibits during the trial even though the author of such seizure lists i.e. the I.O. (P.W.38) has been examined. Section 100 of Cr.P.C. which corresponds to section 103 of BNSS lays down as to how search of a place is to be conducted and seizure list is to be prepared. Section 165 of Cr.P.C. which corresponds to section 185 of BNSS which deals with search by police officer also indicates that the general provisions of as to searches contained in section 100 of Cr.P.C. shall apply to a



search made under this section.

To prove a seizure list in a criminal case, the document must be formally exhibited during the trial through the testimony of its author (usually the Investigating Officer) and the witnesses present during the seizure. The process is critical in establishing the authenticity of the seized materials. Even if the witnesses to the seizure do not support the seizure of articles and only prove their signatures and say that their signatures were taken in blank papers, yet it can be proved by the Investigating Officer or the author of such seizure list. Even though the independent witnesses to the seizure do not support the prosecution case, that cannot be a ground to discard the evidence of the official witnesses including the Investigating Officer relating to search and seizure, if the same is found to be cogent, reliable and trustworthy. The Court will have to appreciate the relevant evidence and determine whether the evidence of the Investigating Officer is believable after taking due care and caution in evaluating the evidence. The I.O. must confirm that the seizure list was prepared by him in course of investigation and he has also to say the details of the seizure list i.e. the date, time, location and description of seized articles and the presence of witnesses. The I.O. shall also confirm the signatures of seizure witnesses and his own signature in the seizure list. During the examination of the I.O. or the author of the



seizure list, it should be marked as an exhibit on behalf of the prosecution.

However, the I.O. (P.W.38) has clearly stated about the seized articles, place of seizure, preparation of seizure list in presence of witnesses and got it signed by the witnesses and that he himself signed the same. It was the duty of the Addl. Public Prosecutor who was conducting the trial to get the seizure list exhibited during the recording of evidence of the I.O. The learned trial Judge should also have displayed vigil and alertness and not remained as a silent spectator or a mute observer. A criminal trial is not to be conducted in a casual manner which would display negligence on the part of the prosecution and the trial Court.

Therefore, in the factual scenario, non-exhibiting the seizure list even though it is otherwise has been proved, cannot be ground to discard the seizure list.

36. After discussing the evidence on record in general against the appellants, we are now to analyse specific evidence against each of the appellants to see whether the charges are proved as has been held by the learned trial Court.

Appellant Lamboo Sharma:

36.1. For the purpose of connecting the appellant in the crime, the prosecution has tried to rely mainly on two circumstances, i.e. the appellant was in possession of three



mobile phones being mobile nos. 7631105971, 7764939558 and 7654894198 and with the help of the such phones, he allegedly talked with deceased woman and various other persons.

As per prosecution case, the appellant Lamboo Sharma was inside the jail and on the date of occurrence, he was produced along with others in a prisoner van from jail in the campus of Civil Court, Ara and after bomb blast, he escaped from judicial custody.

As per the documents exhibited by the prosecution, mobile no.7631105971 was in the name of one Sanjay Kumar, mobile no.7764939558 was in the name of one Musa Nut and mobile no.7654894198 was in the name of one Vijay Prasad.

The customer application form (CAF) of Sanjay Kumar (mobile no.7631105971) would go to show that the said phone was activated on 24th July 2014 and on the date of occurrence i.e. 23rd January 2015 at 07.19.14 hours, its tower location was at Dhanman Chowk, P.S.- Ara Town, District- Bhojpur. Similarly at 11.02.08 hours on that day, its tower location was at Jail road, P.O./P.S./District- Ara and at 11.39.38 hours, its tower location was at Mohalla M.P. Bagh, P.O./P.S.- Ara and thus this phone was not only found moving outside the jurisdiction of tower location of jail road area but in other tower locations also and at the time of occurrence, its tower location was not at Civil Court, Ara.



The customer application form (CAF) of Musa Nut (mobile no. 7764939558) would go to show that the said phone was activated on 28.04.2013 and on 21.01.2015, the tower location of this mobile phone is mentioned at Sandhya Rai, village- Shivganj as well as Sreyansh Chandra Jain at Jail road and on 22.01.2015, the tower location was found within tower location of Sandhya Rai, village- Shivganj, Shreyansh Chandra Jain, Jail Road and in the C.D.R., the tower location on 23.01.2015 was not supplied.

The customer application form (CAF) of Vijay Prasad (mobile no. 7654894198) would go to show that the said phone was activated on 14.02.2012 and on 21.01.2015, the tower location of the said mobile phone was the tower of Shobha Devi of Mohalla Mahajan Toli No.2, Sandhya Rai, Sapna Cinema Road, Shivganj, Khata No.1855, Khesra no.8158 Bhruhipur Thana no.237, Khata no.816, Khesra no. Old 6476, New 617 near Bacha Singh Ka Hat and tower location on 22.01.2015 was tower of Shobha Devi, resident of Mahajan Toli No.2, Mrs. Sandhya Rai, Sapna Cinema Road, Shivganj, Thana no.237 Khata no.816, Khesra no. Old 6476 New 617 near Bacha Singh Ka Hat and tower location on 23.01.2015 was not supplied with only note of N/A.

Though the voter identity card and other details of all the three mobile phone subscribers are part of



exhibits, but none of the three mobile subscribers has been examined by the prosecution during trial nor they have been made accused in the present case.

On 12th, 13th and 15th or even on previous day (as per C.D.R. provided by the prosecution), at the same day and time, the three mobiles were at three different places such as on 22nd January 2015, mobile no. 7631105971 which was of one Sanjay Kumar, its tower location was at Jail road and on 23rd January 2015, its tower location was at Dhanman Chowk at 7.19.14 hours and thereafter again at Jail road tower and at Mohalla M.P. Bagh at 11.39.38 hours. So far as mobile no. 7764939558 which was of one Musa Nut, on 22nd of January 2015, its tower location from 18.30.10 hours as well as at 06.09.11 hours and onwards, the tower location was Sandhya Devi, village-Shivganj, Sreyansh Chandra Jain at Jail road, Sandhya Rai of P.O.- Nawada. Similarly mobile no. 7654894198 which was of one Vijay Prasad, on 22.01.2015, its tower location was Shobha Devi, resident of Mahajan Toli No.2, Mrs. Sandhya Rai, Sapna Cinema road, Shivganj, Sobha Devi, Mahajan Tola No.2, Thana 237, Khata no.816, Khesra no. Old 6476 New 617 and other places and its tower location of 23.01.2015 has not been mentioned.

Thus, it appears that all the three mobiles at the same day and same time were at tower locations of three different places. The prosecution has not produced



any person from service provider of the aforesaid mobiles numbers to explain as to if the three mobiles were in possession of one person (according to prosecution those were with appellant Lamboo Sharma) that too inside the jail, then how its tower locations were found at three different places and different mohallas.

There is no material on record that at time of occurrence, the tower location of any of the three mobile phones in question was found within the tower location of Ara Civil Court premises.

There is also no evidence on record that any of these three mobile phones was in the possession of appellant Lamboo Sharma who was admittedly in jail custody and if so, who gave such mobile phones to him. None of these three mobile phones was recovered from the possession of the appellant and thus, the prosecution case that the aforesaid three mobile phones were in possession of the appellant inside the jail is nothing but based on surmises and speculation without any concrete materials which is being contradicted and falsified from documents proved by the prosecution.

Though the learned trial Court has held that the appellant Lamboo Sharma was acquainted with the deceased woman Nagina Devi and the same has been confirmed by the appellant himself, but we have held such confessional statement made to the I.O. (P.W.38) after



arrest to be inadmissible in view of section 25 of the Evidence Act.

We have already held that there is no cogent evidence on record that the deceased woman had any previous contact with the appellant Lamboo Sharma and that she had previously met him either in jail or in the Court complex on the date of his appearance and that on the date of occurrence, in the Ara Court complex, the deceased woman was trying to give any bag containing bomb to the appellants Lamboo Sharma and Akhilesh Upadhyay. There is also no evidence that any of the accused persons had come to jail prior to the occurrence to meet the appellant Lamboo Sharma.

We have also held that the prosecution has not produced any evidence to connect the deceased woman with the appellant Lamboo Sharma save and except the C.D.Rs. exhibited which are not admissible in evidence. There is no evidence on record that appellant had made any planning either for manufacturing the bomb or asked anyone to send the deceased woman to come to Ara Civil Court premises with bomb.

We have also held that the prosecution has failed to establish the link between the deceased woman and the mobile set lying near her dead body in Ara Civil Court complex and that she was keeping any contact with the appellant Lamboo Sharma by using such mobile set.



We have also held that the prosecution has miserably failed to establish that there was any criminal conspiracy between the accused persons and that the appellant Lamboo Sharma in connivance with others had set up the deceased woman to commit bomb blast in the Court premises.

We have also held that from the articles recovered at the scene of occurrence so also from the residence of the appellant Lamboo Sharma situated in Ludhiana, Punjab on the basis of a raid conducted after his arrest, no link has been established between him with the crime in question.

We have also held that mere absconding of the appellant Lamboo Sharma from judicial custody may not alone be sufficient to hold that he in connivance with others caused the bomb blast in the Ara Civil Court complex on the date of occurrence.

Even though the escape of the appellant Lamboo Sharma from judicial custody in absence of any other cogent evidence, may not be sufficient to hold him guilty under sections 302, 307, 326, 353, 115, 216 and 120(B) of the Indian Penal Code and sections 3, 4 and 5 of Explosive Substances Act and accordingly he is acquitted of such charges, but since he was lawfully detained for commission of various offences and he escaped from judicial custody and section 224 of I.P.C, inter alia, provides



for punishment if a person escapes or attempts to escape from any custody in which he is lawfully detained, therefore, we are of the humble view that the learned trial Court has rightly found him guilty under section 224 of the Indian Penal Code.

Appellant Shyam Vinay Sharma:

36.2. The learned trial Court has held that the explosive material used in the bomb was procured from the appellant Shyam Vinay Sharma and accordingly found him guilty. We find that except the confessional statement of the appellant so also confessional statement of appellant Rinku Yadav before the I.O. (P.W.38) after arrest, there is no other substantive evidence in that respect.

Though the I.O. raided the house of the appellant on the basis of the confessional statement of appellant Anshu Kumar and recovered Samsung Grand Prime mobile with mobile no.9471416384 and SIM card of 8102932486 and another Samsung mobile set were recovered from him including a bullet holder, a rifle cleaner rod and a gun cleaner rod, but in absence of any clinching evidence on record connecting such articles with the crime, the conviction of the appellant basing on his confessional statement before police after arrest, which is not legally admissible as well as that of appellant Rinku Yadav before police after arrest, which is not substantive evidence, is not sustainable in the eyes of law. Such recoveries alone would



not justify the conviction of the appellant and therefore, the appellant is entitled to be given benefit of doubt. Accordingly, the conviction of the appellant is hereby set aside.

Appellant Rinku Yadav:

36.3. The learned trial Court held that the appellants Anshu Kumar and Rinku Yadav were given the responsibility of making the bomb and delivering it within the Court premises as these appellants have admitted.

The learned trial Court further held that for making the bomb, the appellants Anshu Kumar and Rinku Yadav purchased the head of hand pump from the scrap dealer Butan Chaudhary (P.W.6) and the explosive material used in the preparation of bomb was procured from appellant Shyam Vinay Sharma through the jailed accused Pramod Singh.

The learned trial Court further held that the appellants Anshu Kumar and Rinku Yadav have confirmed in their confessions of having collected the explosive materials for the bomb blast. This has been confirmed by other witnesses apart from their own confessional statements such as that the two appellants had bought the head of hand pump from the scrap dealer Butan Chaudhary which Butan Chaudhary has proved by his evidence as P.W.6 before the Court.

P.W.6 Butan Chaudhary in his evidence has



stated that when he was at his home, the Daroga Ji enquired from him to whom he had sold the head of hand pump, to which he replied that he had sold it to Anshu, who belonged to village Karari which came within the jurisdiction of Ara police station. The witness also identified the appellant Anshu in the dock. The said witness has not whispered anything against the appellant Rinku Yadav.

The I.O. arrested the appellants Anshu Kumar and Rinku Yadav on 24.03.2015 near Park View Hotel, Ara, from whom a Nokia mobile set, having two SIM Cards, in which mobile phone no.8292500417 and mobile phone no.7562995706, one SIM Card having mobile no.8292704437 and a motorcycle bearing registration no.BR-03C-2908 were recovered.

Though the I.O. (P.W.38) has stated that on the date of occurrence appellant Rinku Yadav used mobile no.8540022698 through which he contacted with appellant Lamboo Sharma, but we find there is no basis for making such a statement and as we have already held that all the CDRs exhibited by the prosecution are not admissible in evidence and since the prosecution has failed to establish which mobile phone was in possession of appellant Lamboo Sharma on the date of occurrence, therefore, no importance can be attached to such evidence of the I.O.

Thus, the conviction of the appellant Rinku Yadav which is based mainly on his own confessional



statement before police after arrest, which is not legally admissible as well as that of appellant Anshu Kumar before police after arrest, which is not substantive evidence, is not sustainable in the eyes of law. The recoveries alone would not justify the conviction of the appellant and therefore, the appellant is entitled to be given benefit of doubt. Accordingly, the conviction of the appellant is hereby set aside.

Appellant Md. Naim Miya @ Naim Miya:

36.4 Mr. Binay Kumar, learned counsel appearing for appellant Md. Naim Miya contended that even though no specific defence plea has been taken by the appellant in the accused statement of the appellant and that he examined two defence witnesses to prove that he was a mechanic working in the garage of D.W.1 Wasi Ahmad and he had not gone anywhere on the date of occurrence and such a plea has not been accepted by the learned trial Court, but in absence of any clinching evidence on record against the appellant, it was erroneously held that the charges are proved against him. He further argued that on the basis of confessional statements of the two appellants Lamboo Sharma and Akhilesh Upadhaya before police after their arrest and seizure of material exhibits i.e. Ext.XI to XVIII which are the L.E.D. T.V., Home Theatre, mobile recovered from the rented house of appellant Lamboo Sharma in Ludhiana and the boxes of mobile used by him,



two receipts and C.Ds., the learned trial Court erred in holding that the appellant and his brother Chand Miya arranged for the stay and provided other facilities to those two appellants and that the appellant Naim Miya helped in the crime.

The learned trial Court did not accept the defence plea adduced by appellant Naim Miya that on 23.01.2015, he was at the garage of D.W.1 and that no person of Bihar had come to meet him in Kheta Sarai as the both the defence witnesses admitted that the appellant used to work in the garage and that they could not tell who had come to meet him at that time.

In the case of **Shankarlal Gyarsilal Dixit -Vrs.- State of Maharashtra reported in A.I.R. 1981 S.C. 765**, the Hon'ble Supreme Court held that falsity of defence case cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.

In the case of **Anand Ramchandra Chougule** (supra), it is held as follows:

“10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about



the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

11. The fact that a defence may not have been taken by an accused under Section 313 Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In **Sunil Kundu -Vrs.- State of Jharkhand : (2013) 4 SCC 422**, this Court observed:

28....When the prosecution is not able to prove its case beyond reasonable doubt, it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case



beyond reasonable doubt.”

Thus, law is well settled that the prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case against the accused beyond all reasonable doubt. The prosecution has a bounden duty to lead an impenetrable chain of evidence suggesting the guilt of the accused and it must stand on its own leg without borrowing credence from falsity of defence evidence. If the evidence on record fails to point to the guilt of the accused beyond reasonable doubt, it is of no consequence whether or not the defence version is false.

We are of the humble view that in absence of any specific plea being taken in the accused statement by the appellant that he was in the garage of D.W.1 on the date of occurrence and on the basis of nature of evidence adduced by two defence witnesses, even if it cannot be said that the appellant has established such plea by preponderance of probabilities, but we find that the prosecution has failed in its bounden duty to lead any cogent evidence to prove the guilt of the appellant.

The confessional statements of the two appellants Lamboo Sharma and Akhilesh Upadhyay before police after their arrest against the appellant Md. Naim Miya cannot be treated as substantive evidence and can be pressed into service only when we are inclined to accept



other evidence against him and feels the necessity of seeking for an assurance in support of our conclusion deducible from the said evidence in view of the ratio laid down in the cases of **Haricharan Kurmi** (supra) and **Surinder Kumar Khanna** (supra).

The seizure of material exhibits as stated to above recovered from the rented house of appellant Lamboo Sharma, no way links the appellant in the crime.

Therefore, there is no substantive evidence on record that the appellant Md. Naim Miya arranged for the stay and provided other facilities to the appellants Lamboo Sharma and Akhilesh Upadhyay after their escape from judicial custody and helped in the crime as observed by the learned trial Court and since the evidence on record fails to point to the guilt of the appellant beyond reasonable doubt, it would be inappropriate to base the conviction of the appellant. Accordingly, the conviction of the appellant is not sustainable in the eyes of law and hereby set aside.

Appellant Md. Chand Miya @ Chand Miyan:

36.5. The learned trial Court arrived at a finding that after the appellants Lamboo Sharma and Akhilesh Upadhyay escaped from judicial custody, the appellant Chand Miyan played important role in the execution of the second plan by those two appellants and arranged for their stay in a temple at Varanasi and also gave twenty thousand rupees to appellant Lamboo Sharma, in consequence of



which appellant Lamboo Sharma lived at his brother's place at Jalana, Maharashtra and from there, he came to stay at Ludhiana.

Such a finding of the learned trial Court is based on the confessional statement of appellant Md. Chand Miya @ Chand Miyan before police after arrest, which is not legally admissible as well as that of appellants Lamboo Sharma and Akhilesh Upadhyay before police after their arrest, which is not substantive evidence.

P.W.38, the I.O. arrested appellant Chand Miyan on 17.05.2015, from whom a mobile phone of Jivi Company with SIM Card no.9198593370 and a Samsung mobile phone with SIM Card no.7301204932 were recovered. The confessional statement of Chand Miyan was recorded. The Samsung and Jivi mobile phones were marked as Material Exts.I and II respectively.

The I.O. also recovered a note with mobile no.9179520386 written on it from the residence of appellant Lamboo Sharma in Ludhiana. The tower location of this phone was found near Lamboo Sharma's residence in Ludhiana. According to the I.O., this mobile phone was used to call appellant Chand Miyan's mobile nos.7301204933 and 7301204932.

The recoveries of mobile phones as stated above alone would not justify the link between the appellant Chand Miyan and appellant Lamboo Sharma as



we have already held that all the CDRs exhibited by the prosecution are not admissible in evidence.

Accordingly, the appellant is entitled to be given benefit of doubt. The conviction of the appellant is not legally sustainable and therefore, the same is hereby set aside.

Appellant Anshu Kumar:

36.6. The learned trial Court held that the appellants Anshu Kumar and Rinku Yadav were given the responsibility of making the bomb and delivering it within the Court premises as these appellants have admitted. The learned trial Court further held that for making the bomb, the appellants Anshu Kumar and Rinku Yadav purchased the head of hand pump from the scrap dealer Butan Chaudhary (P.W.6) and the explosive materials used in the preparation of bomb was procured from appellant Shyam Vinay Sharma through the jailed accused Pramod Singh.

The learned trial Court further held that the appellants Anshu Kumar and Rinku Yadav have confirmed in their confessions of having collected the explosive materials for the bomb blast. This has been confirmed by other witnesses apart from their own confessional statements such as that the two appellants had bought the head of hand pump from the scrap dealer Butan Chaudhary which Butan Chaudhary has proved by his evidence as



P.W.6 before the Court.

The learned trial Court further held that it has been proved that the deceased Nagina Devi and appellant Anshu Kumar lived in Chaurasia Rest House from 21.01.2015 to 10:10 a.m. on 23.01.2015. This has been proved by appellant Anshu Kumar in his confessional statement as well as the owner of rest house Laxman Prasad Chaurasia (P.W.30), who in his evidence has stated that the police recovered register from his rest house and he had signed on the seizure list. The photo copy of voter identity card of appellant Anshu Kumar was also recovered from the rest house and on page 36 of that register, the LTI of appellant Anshu Kumar and Rina Devi @ Nagina Devi were also available. Accordingly, on the basis of recovered materials, the learned trial Court held the involvement of the appellant in the incident is proved.

The findings of the learned trial Court against the appellant Anshu Kumar which are solely based on the confessional statement of his own before the I.O. (P.W.38) after arrest so also the confessional statements of other appellants before the I.O. (P.W.38) after their arrest are to be excluded from consideration as per the reasons already assigned.

P.W.6 Butan Chaudhary in his evidence has stated that when he was at his home, the Daroga Ji



enquired from him to whom he had sold the head of hand pump, to which he replied that he had sold it to Anshu, who belonged to village Karari which came within the jurisdiction of Ara police station. The witness also identified the appellant Anshu in the dock. In the cross-examination, he has stated that the head of hand pump was in a broken state and there was only one head of a hand pump. He further admitted that he had no license of the shop. There is no evidence as to how such purchase is relevant for the prosecution case and how such hand pump was used by the appellant.

The I.O. arrested the appellants Anshu Kumar and Rinku Yadav on 24.03.2015 near Park View Hotel, Ara, from whom a Nokia mobile set, having two SIM Cards, in which mobile phone no.8292500417 and mobile phone no.7562995706, one SIM Card having mobile no.8292704437 and a motorcycle bearing registration no.BR-03C-2908 were recovered. The I.O. received the C.D.Rs. of the phone recovered from the appellant Anshu Kumar. Three SIM Cards were recovered from him. He obtained the C.D.Rs. of all the three, which he marked as 'J', 'K', and 'I' and in Court, those were marked as Exts.11, 12 and 13 respectively.

The recoveries of mobile phones and SIM Cards as stated above as well as C.D.Rs. alone would not justify the link of the appellant either with the deceased woman or



with any other appellants as we have already held that all the CDRs exhibited by the prosecution are not admissible in evidence.

The prosecution case is that the appellant Anshu Kumar stayed with the deceased woman at Chaurasia Guest House prior to the occurrence and left on the date of occurrence, but there is no clinching evidence in that respect except some entry made in the register of the Guest House and seizure of Voter I.D. Card of the appellant. In the register of Chaurasia Guest House, one lady namely Reena Devi was shown to be staying with the appellant from 21.01.2015 till 10:10 a.m. on 23.01.2015, however, it is not established that the lady who died in the Civil Court premises on account of bomb blast was the same lady who was staying with the appellant at Chaurasia Guest House. P.W.30, the owner of Chaurasia Rest House has stated only about the seizure of register and I-Card of the appellant Anshu Kumar. In the cross-examination, he has stated that he had appointed a manager to look after the management of the hotel and there were two men in the Rest House. The manager and the staff have not been examined. P.W.30 has not identified the appellant Anshu Kumar in the dock. The appellant in his accused statement has denied to be staying in the Rest House. Though the LTI of the person staying in the Rest House were there in the register of Chaurasia Guest House, but it has not been proved to be



the LTI of the appellant by taking the assistance of finger print expert.

Thus, the circumstantial evidence appearing on record against the appellant Anshu Kumar cannot be stated to be fully and cogently established and the facts established cannot be said to be consistent only with the hypothesis of the guilt of the appellant and unerringly pointing towards the guilt of the appellant and it does not conclusively established that the appellant hatched criminal conspiracy with the co-accused persons to carry out the bomb blast and that it was done in a pre-planned way and thus, we are of the view that benefit of doubt should be extended in favour of the appellant.

Accordingly, the conviction of the appellant is not legally sustainable and therefore, the same is hereby set aside.

Appellant Akhilesh Upadhyay:

36.7. As per prosecution case, the appellant Akhilesh Upadhyay was inside the jail and on the date of occurrence, he was produced along with others in a prisoner van from jail in the campus of Civil Court, Ara and after bomb blast, he escaped from judicial custody.

We have already held that there is no cogent evidence on record that the deceased woman had any previous contact with the appellant Akhilesh Upadhyay and



that she had previously met him either in jail or in the Court complex on the date of his appearance and that on the date of occurrence, in the Ara Court complex, the deceased woman was trying to give any bag containing bomb to the appellants Lamboo Sharma and Akhilesh Upadhyay. There is also no evidence that any of the accused persons had come to jail prior to the occurrence to meet the appellant Akhilesh Upadhyay. There is no evidence that the appellant was in touch with the deceased woman even through mobile phone and no mobile phone has been seized from the appellant.

We have also held that the prosecution has miserably failed to establish that there was any criminal conspiracy between the appellant with appellant Lamboo Sharma much less any kind of conspiracy with other appellants even though both of them were staying in one jail, came together in the prisoner van and also escaped together and that the appellant Akhilesh Upadhyay in connivance with others had set up the deceased woman to commit bomb blast in the Court premises.

We have also held that mere absconding of the appellant Akhilesh Upadhyay from judicial custody may not alone be sufficient to hold that he in connivance with others caused the bomb blast in the Ara Civil Court complex on the date of occurrence.

Even though the escape of the appellant



Akhilesh Upadhyay from judicial custody in absence of any other cogent evidence, may not be sufficient to hold him guilty under sections 302, 307, 326, 353, 115/34 and 120(B) of the Indian Penal Code and sections 3, 4 and 5 of Explosive Substances Act and accordingly he is acquitted of such charges, but since he was lawfully detained for commission of various offences and he escaped from custody and section 224 of I.P.C, inter alia, provides for punishment if a person escapes or attempts to escape from any custody in which he is lawfully detained, therefore, we are of the humble view that the learned trial Court has rightly found him guilty under section 224 of the Indian Penal Code.

Conclusion:

37. In view of the foregoing discussions, we are of the view that the prosecution has failed to establish any of the charges against the appellants Shyam Vinay Sharma, Rinku Yadav, Md. Naim Miya @ Naim Miya, Md. Chand Miya @ Chand Miyan and Anshu Kumar. The impugned judgment and order of conviction of these appellants is hereby set aside and they are acquitted of all the charges. They shall be set at liberty forthwith if their detention is not required in any other cases.

The conviction of the appellants Lamboo Sharma and Akhilesh Upadhyay of all the charges except under section 224 of the Indian Penal Code, are hereby set



aside. The sentence imposed by the learned trial Court on these two appellants for the offence under section 224 of the Indian Penal Code is upheld. Since both the appellants are in jail, they are to be set at liberty if they have already undergone the sentence imposed for the offence under section 224 of I.P.C. and their detention is not required in any other cases.

In the result, Criminal Appeal (DB) No.1150 of 2019 filed by appellant Shyam Vinay Sharma, Criminal Appeal (DB) No.1162 of 2019 filed by appellant Rinku Yadav, Criminal Appeal (DB) No.1185 of 2019 filed by appellant Md. Naim Miya @ Naim Miya, Criminal Appeal (DB) No.1246 of 2019 filed by appellant Md. Chand Miya @ Chand Miyan and Criminal Appeal (DB) No.1271 of 2019 filed by appellant Anshu Kumar are allowed.

Criminal Appeal (DB) No.1210 of 2019 filed by appellant Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma and Criminal Appeal (DB) No.1290 of 2019 filed by appellant Akhilesh Upadhyay are allowed in part.

The death sentence reference is answered in negative.

Trial Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

38. Before parting with the case, we would like to



put on record our appreciation to Mr. Pratik Mishra, learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. He prepared the case thoroughly and argued very neatly, diligently and meticulously, point by point, making analytical presentation of the case with reference to various case laws to our satisfaction. We also place on record our appreciation to Mr. Ajay Kumar Thakur, Advocate, Mr. Ganesh Prasad Singh, Advocate, Mr. Binay Kumar, Advocate and Mr. Ravindra Kumar, Advocate. This Court also appreciates the valuable help and assistance provided by Ms. Shashi Bala Verma, learned Additional Public Prosecutor and Mr. Ajay Mishra, learned Additional Public Prosecutor.

The hearing fees is assessed to Rs.30,000/- (rupees thirty thousand) in toto which shall be paid to the learned Amicus Curiae Mr. Pratik Mishra immediately.

(Sangam Kumar Sahoo, CJ)

Per: HON'BLE MR. JUSTICE RAJEEV RANJAN PRASAD

I have the privilege to go through the judgment recorded by Hon'ble the Chief Justice. To me, it is crystal clear that there is a balance of legal proposition, reasoning and articulation of the logical path in the judgment. I join Hon'ble the Chief Justice in his Lordship's well-reasoned



conclusion to reverse the decision of the learned trial court in Cr. Appeal (DB) No. 1150 of 2019 (Shyam Vinay Sharma vs. The State of Bihar), Cr. Appeal (DB) No. 1162 of 2019 (Rinku Yadav vs. The State of Bihar), Cr. Appeal (DB) No. 1185 of 2019 (Md. Naim Miya @ Naim Miya vs. The State of Bihar), Cr. Appeal (DB) No. 1246 of 2019 (Md. Chand Miya @ Chand Miyan vs. The State of Bihar) and Cr. Appeal (DB) No. 1271 of 2019 (Anshu Kumar vs. The State of Bihar).

2. I fully agree with the reasoning and rationale of the judgment recorded by Hon'ble the Chief Justice in Death Reference No. 1 of 2024 (The State of Bihar vs. Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma) and in the connected appeal being Cr. Appeal (DB) No. 1210 of 2019 (Lambu Sharma @ Munna Sharma @ Sachidanand Sharma vs. The State of Bihar). I also endorse the judgment in Cr. Appeal (DB) No. 1290 of 2019 (Akhilesh Upadhyay @ Musa vs. The State of Bihar).

3. I would only add with regard to the procedural integrity which have been followed in course of hearing of these appeals. In fact, it is a learning experience for me as a member of the Hon'ble Division Bench. When the hearing in these appeals and the death reference case started, the learned Registrar General of this Court was instructed to communicate to the Jail Superintendent, Divisional Jail. Jamui and the condemned prisoner, namely, Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma to be



present online/ through virtual mode. Earlier, Mr. Pratik Mishra, learned counsel was engaged as Amicus Curiae in the Death Reference. The condemned prisoner Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma was informed about the engagement of Mr. Pratik Mishra, learned counsel as an Amicus Curiae. He expressed no objection regarding the counsel who had been engaged. On 13.01.2026, an order was passed directing learned Additional Public Prosecutor for the State to ascertain about the jails in which the other appellants were lodged. It was directed to ensure their appearance through virtual mode on the next date of hearing. At the same time, the Secretaries of the respective District Legal Services Authority were directed to depute one counsel from the panel to remain present with the respective appellants to apprise them about the proceedings of that day. On all subsequent dates of hearing, the condemned prisoner Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma and the other appellants remained present through virtual mode and they were being explained the arguments which were going on in this Court, through the respective learned counsels present with them in the jail premises where the appellants were lodged.

4. In order to provide the prisoners a fair opportunity to be heard on the point of sentencing, we recorded in our order dated 16.01.2026 in paragraphs '10',



'11', '12' and '13' as under:-

"10. Law is well settled that hearing on the question of sentence has to be real and effective and not a mere formality; if a meaningful hearing is not taken up by a Court while considering the sentence to be imposed and inflicted upon the convict, it is likely to cause severe prejudice to him. Either there is a need for considering the mitigating circumstances already on record received as evidence during trial or besides such evidence, further opportunity should be provided to a convict to bring on record all such circumstances favourable to him at the time of hearing on sentence. While addressing the apprehensions relating to absence of a framework at the time of considering sentence, the Hon'ble Supreme Court in the case of **Manoj and Others -Vrs.- State of Madhya Pradesh** reported in **(2022) SCC Online SC 677** held the importance of a separate hearing and the necessity of background analysis of the convict with reference to the social milieu, age, educational qualification and whether, he has faced any trauma in life, family circumstances, psychological evaluation and post-conviction conduct being the relevant factors while taking a call, whether, death penalty should be imposed or otherwise.

11. Being satisfied that the learned Trial Court has not acted properly while hearing on the question of sentence with respect



to the appellant in the manner it was expected to and that the law envisages with the aggravating and mitigating circumstances to be either on record or with such further opportunity to furnish the necessary information or data thereon, this Court is of the humble view that in view of the settled position of law discussed herein before, for a purposeful and meaningful hearing on sentence, the appellant should be afforded an opportunity at present inviting from him such data to be furnished in the shape of affidavits and also to direct the Jail Authority to do the needful in that regard. The Court is hence of the view that there is a need for a direction to the Superintendent, District Jail, Jamui to collect all such information on the past life of the convicts, psychological conditions of the appellant and also his conduct post-conviction obtaining reports accordingly by taking service and necessary assistance from the Probation Officer and such other officers including a Psychologist or Jail doctor or any Medical Officer attending the prison. Such an exercise is considered to be absolutely expedient in order to advance the cause of justice, the intent and purpose being to provide a fair amount of opportunity for the appellant to bring on record all such mitigating circumstances to be weighed against the aggravating circumstances



since a balance is to be struck while taking a final decision on sentence in juxtaposition to the sentences imposed by the Trial Court. Hence, it is ordered.

12. The appellant shall submit all such materials on mitigating circumstances by filling affidavits stating therein the particulars for consideration of the Court on or before 27th January, 2026. It is directed that the Superintendent, District Jail, Jamui shall exercise his good office and ensure collection of detailed information with reports on the past life, psychological conditions and post conviction conduct of the appellant and such other matters to be relevant at the final hearing by taking able assistance of the officials concerned. It is further directed that all the materials shall reach this Court on or before 27th January, 2026.

13. At the end, it is clarified that this Court has not expressed anything on merits of the appeal as the appellants should not pre-judge and be on any such apprehension for the above exercise being undertaken, which is in relation to the sentencing aspect to be examined finally, while disposing it off with the death reference.”

5. Pursuant to the aforementioned order, learned APP representing the State obtained instructions and filed affidavit sworn by the Jail Superintendent, Jamui. The same has been recorded in our order dated 02.02.2026 in Death



Reference No. 1 of 2024. We reproduce paragraph '6' of the said order hereunder for a ready reference:-

"6. Ms. Shashi Bala Verma, learned APP has placed before this Court the affidavit sworn by the Jail Superintendent, Jamui. This affidavit has been filed in compliance of our order dated 16.01.2026 and 28.01.2026. The affidavit is taken on the record. While, prima-facie, going through the said affidavit, we have noticed from one of the annexures which is a copy of Letter No. 1214 dated 05.05.2016 written by the Superintendent, Divisional Jail, Ara to the Superintendent Special Central Jail, Bhagalpur that the condemned prisoner Lambu Sharma has got eight criminal antecedents. In two sessions trials i.e. Sessions Trial No. 659 of 2008 and Sessions Trial No. 128 of 2010, he has been convicted by the learned trial court. Out of these two trials in one of the trials against the judgment of conviction and order of sentence, his appeal being Cr. Appeal (DB) No. 502 of 2013 has been allowed while another appeal being Cr. Appeal (DB) No. 659 of 2008 has been dismissed. As regards the other six cases which are mentioned in the communication stated hereinabove, presently there is no information as to their status/stage."

6. In course of hearing of the appeal, it was noticed that learned counsel representing Rinku Yadav in Cr. Appeal (DB) No. 1162 of 2019 was not appearing. In



such circumstance, we interacted with Rinku Yadav who was online and with his consent, we requested Mr. Ravindra Kumar, learned Advocate to appear as Amicus Curiae and represent the case of Rinku Yadav. The learned Advocate was already appearing on behalf of some of the appellants. With the consent of Rinku Yadav, we have heard Mr. Ravindra Kumar, learned Amicus Curiae in Cr. Appeal (DB) No. 1162 of 2019. These are recorded in our order dated 02.02.2026.

7. On 12.02.2026, when the hearing was going to be concluded, we interacted with the condemned prisoner as well as the Jail Superintendent, Jamui and enquired about the nature of the cases in which Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma has been made accused during his incarceration in connection with the present case. The Jail Superintendent, Ara was called upon to make available a copy of the FIR as well as the Chargesheet of these cases after obtaining the same either from the Office of the Superintendent of Police, Bhojpur, Ara or from the concerned Court where the cases are pending. In course of interaction, the condemned prisoner Lamboo Sharma @ Munna Sharma @ Sachidanand Sharma wanted to give something in writing on his behalf. We directed the Jail Superintendent, Jamui to collect the same and send it to the Office of learned Advocate General from where Ms. Shashi Bala Verma, learned Additional Public Prosecutor



shall collect and place before us for our record.

8. The issues with regard to appointment of Amicus Curiae in an appeal pending before the Hon'ble High Court against the judgment of conviction recorded by learned Sessions Court recently came for consideration in the case of **Bhola Mahto vs. The State of Jharkhand** reported in **2026 INSC 257**. In the said case, the appellant challenged the judgment of the Hon'ble Jharkhand High Court on the grounds *inter alia* that the appellant had not been made aware of the absence of learned counsel engaged by him to prosecute the appeal before the Division Bench and that such Bench proceeded to appoint the Amicus Curiae without the appellant's knowledge. The Hon'ble Supreme Court called for a report from the learned Registrar General of the High Court and it was found that no notice was issued to the appellant to the effect that his learned counsel was not appearing to prosecute the appeal and that an *amicus* had been appointed by the Division Bench. In this background, it was vehemently contended on behalf of the appellant that there had been a gross failure of justice, in that the appellant had suffered prejudice by not being meted out fair treatment. The Hon'ble Supreme Court has held in paragraph '14' of it's judgment as under:-

"14. Having held so, we find that the High Court in its anxiety to deliver justice without further delay and to decide the appeal expeditiously upon hearing the



learned *amicus*, had not made an attempt to inform the appellant that his appeal having been listed for final hearing (after two decades) and there being absence of representation from his side, (on the first day) an *amicus* had been appointed to represent him. The High Court was under no obligation to inform the appellant of his counsel's absence; however, it would have been a desirable precaution if the appellant were so informed. This is more so, because, this Court has taken the view that assistance in the form of legal aid should be real and meaningful and not by way of a token gesture or to complete an idle formality. None can possibly doubt the High Court's genuine intention to render legal assistance to a non-appearing convict by appointing an *amicus* on his behalf to assist the court render justice but, perhaps, justice would have been better served if an intimation by way of a notice been sent, bearing in mind that the appeal was listed for the first time for hearing twenty-one years after the appellant was released on bail.”

9. In the case of **Bhola Mahto** (supra), the Hon'ble Supreme Court referred the decision of the Court reported in **Anokhi Lal vs. State of Madhya Pradesh** reported in **(2019) 20 SCC 196** and proceeded to record the additional observations. I reproduce paragraphs '22' and '23' of the judgment in case of **Bhola Mahto** (supra)



as under:-

“**22.** Before parting, we wish to refer to the decision of this Court reported in **Anokhi Lal v. State of Madhya Pradesh, [(2019) 20 SCC 196]**. A three-Judge Bench speaking through Hon'ble U.U. Lalit, J. (as the learned Chief Justice then was) poignantly observed as follows:”

26. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

Thereafter, the Court proceeded to lay down norms to avoid repetition of infirmities noticed in the case under consideration. It was said thus:

31. Before we part, we must lay down



certain norms so that the infirmities that we have noticed in the present matter are not repeated:

31.1. In all cases where there is a possibility of life sentence or death sentence, learned advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

31.2. In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

31.3. Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

31.4. Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in *Imtiyaz Ramzan Khan* [(2018) 9 SCC 160.

23. In continuation of the above and in the



light of what has transpired in course of the present proceedings, we wish to make an additional observation. It is a matter of common knowledge that once a convict obtains an order from the appellate court suspending the sentence of imprisonment and is, consequently, released on bail, more often than not, he neglects and/or fails to cooperate with the court and impedes an expeditious decision on his appeal by staying away from the proceedings with a view to ensure that his liberty is not curtailed, if the appeal were to fail. Drawing from experience, we can record that on many an occasion, such convicts become untraceable. These convicts, enjoying the concession of bail and misusing it, need to be dealt with firm and strong hands by the courts. Having regard to the dictum of the three-Judge Bench in *Anokhi Lal* (supra) and in order to curb the tendency of convicts to raise technical pleas of the nature which were advanced before us, we observe that, henceforth, whenever an appellate court considers it desirable to appoint an *amicus* to represent a convict whose counsel is absent, such Court may also consider the desirability of issuing a notice from the registry to the address of the convict mentioned in the memorandum of appeal, for such notice to be served on him through the jurisdictional police station, with an intimation that the convict may contact the learned *amicus* and provide him necessary



instructions so that his case is argued before the Court effectively and meaningfully. In the event the convict contacts the *amicus* and provides instructions, there would ordinarily be no impediment in proceeding with hearing of the appeal. If, indeed, the convict desires to have his own counsel argue the appeal on his behalf and not the *amicus*, the Court may hear such counsel in addition to the *amicus*. However, if the service report indicates that the convict was not found at the address or that he refused to accept notice despite being present, it would amount to sufficient compliance if the notice is pasted on the outer wall of the premises, address whereof is mentioned in the cause title of the memorandum of appeal. Should the convict still remain dormant, and it is so reported, the High Court may proceed to decide the appeal without waiting for the convict to turn up either in person or through the counsel of his choice engaged by him. This process, in our view, would substantially serve the purpose of eliminating any plea of unfairness being raised before this Court if an appeal is disposed of upon hearing the *amicus* appointed by the court. Additionally, in a case of like nature where the appeal is listed two decades after grant of bail, this process would ensure obtaining of information as to whether the appeal survives for decision or stands abated. In



case of the latter, the courts could avoid spending precious judicial time deciding an appeal which, by operation of law, may not require a decision on merits. Of course, for a convict in custody who has committed an offence punishable with death or life imprisonment, the directions in *Anokhi Lal* (supra) have to be scrupulously followed apart from the relevant rules regulating the business of the courts concerned.”

10. In the present case, the procedural integrity was maintained right from the beginning. The procedure followed in the present appeal is fully in consonance with the judgment of the Hon'ble Supreme Court in the case of **Bhola Mahto** (supra).

11. I believe that the procedure followed in the present case in the matter of appointment of *Amicus Curiae* and securing the presence of the convicts particularly condemned prisoner and giving them an opportunity to interact will set a precedent.

(Rajeev Ranjan Prasad, J)

P.K.P.

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