

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.10 of 2021

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

The State of Bihar

... .. Petitioner/s

Versus

1. Imteyaz Alam @ Ansari S/o Kamaluddin Ansari R/o Sithiyo, P.S. - Dhurwa, District - Ranchi (Jharkhand).
2. Haider Ali S/o Md. Alam Ansari R/o Line Mohalla, Doranda, P.S. - Doranda, District - Ranchi (Jharkhand).
3. Numan Ansari S/o Sultan Ansari R/o Niche Mohalla, Sithiyo, P.S. - Dhurwa, Ranchi (Jharkhand).
4. Md. Mujibullah Ansari S/o Md. Zabir Ansari R/o Chakla, P.S. - Ormanjhi, District - Ranchi (Jharkhand).

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 757 of 2021

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Azharuddin Qureshi S/o- Shakeeruddin Qureshi R/o Nai Basti, Raja Talab, P.S.- Civil Line, District- Raipur (Chhattisgarh).

... .. Appellant/s

Versus

The Union of India (N.I.A.) New Delhi

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 769 of 2021



Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Numan Ansari S/o Sultan Ansari R/o Niche Mohalla, Sithiyao, P.S.- Dhurwa,
Ranchi (Jharkhand)

... .. Appellant/s

Versus

The Union of India (N.I.A.) New Delhi

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 18 of 2022

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Imteyaz Alam @ Ansari S/o Kamaluddin Ansari R/o Sithiyo, P.S.- Dhurwa,
District- Ranchi (Jharkhand)

... .. Appellant/s

Versus

The Union of India New Delhi

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 48 of 2022

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Md. Umer Siddiqui S/o Md. Safi Siddiqui R/o Noorani Chowk, Raja Talab, P.S.
- Civil Line, District - Raipur (Chhaitisgarh).

... .. Appellant/s

Versus



The Union of India (N.I.A.) New Delhi

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 58 of 2022

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Md. Mujibullah Ansari S/o Md. Zabir Ansari @ Md. Jabir R/o- Chakla, P.S. - Ormanjhi, District - Ranchi (Jhakhand).

... .. Appellant/s

Versus

The Union of India (N.I.A.) New Delhi

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 83 of 2022

Arising Out of PS. Case No.-10 Year-2013 Thana- NIA District- Patna

Haider Ali S/o Md. Alam Ansari R/o Line Mohalla, Doranda, P.S. - Doranda, District - Ranchi (Jharkhand).

... .. Appellant/s

Versus

The Union of India (N.I.A.) New Delhi

... .. Respondent/s

Appearance :
(In DEATH REFERENCE No. 10 of 2021)
For the Petitioner/s : Mr. Xxxxx



For the Respondent/s : Mr. Xxxxx

(In CRIMINAL APPEAL (DB) No. 757 of 2021)

For the Appellant/s : Mr. Ansul, Advocate

Mr. Wasif Rahman Khan, Advocate

Mr. Santosh Kumar Yadav, Advocate

Mr. Shahbaj Alam, Advocate

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

Mr. Manoj Kumar Singh, Spl. PP (NIA)

Mr. Pramod Kumar, PP (NIA)

Mr. Shivaditya Dhari Sinha, AC to ASG

Ms. Prakritita Sharma, Advocate

Mr. Sriram Krishna, Advocate

Mr. Abhijeet Gautam, Advocate

Mr. Ankit Kumar Singh, Advocate

Mr. Prabhat Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 769 of 2021)

For the Appellant/s : Mr. Ansul, Advocate

Mr. Wasif Rahman Khan, Advocate

Mr. Santosh Kumar Yadav, Advocate

Mr. Shahbaj Alam, Advocate

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

Mr. Manoj Kumar Singh, Spl. PP (NIA)

Mr. Pramod Kumar, PP (NIA)

Mr. Shivaditya Dhari Sinha, AC to ASG

Ms. Prakritita Sharma, Advocate

Mr. Sriram Krishna, Advocate

Mr. Abhijeet Gautam, Advocate

Mr. Ankit Kumar Singh, Advocate

Mr. Prabhat Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 18 of 2022)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Wasif Rahman Khan, Advocate

Mr. Santosh Kumar Yadav, Advocate

Mr. Shahbaj Alam, Advocate

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

Mr. Manoj Kumar Singh, Spl. PP (NIA)

Mr. Pramod Kumar, PP (NIA)

Mr. Shivaditya Dhari Sinha, AC to ASG



Ms. Prakritita Sharma, Advocate
Mr. Sriram Krishna, Advocate
Mr. Abhijeet Gautam, Advocate
Mr. Ankit Kumar Singh, Advocate
Mr. Prabhat Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 48 of 2022)

For the Appellant/s : Mr. Anshuman Sinha, Advocate
Mr. Prakhar Prakash, Advocate
Mr. Wasif Rahman Khan, Advocate
Mr. Santosh Kumar Yadav, Advocate
For the Respondent/s : Dr. Krishna Nandan Singh, ASG
Mr. Manoj Kumar Singh, Spl. PP (NIA)
Mr. Pramod Kumar, PP (NIA)
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Mr. Wasif Rahman Khan, Advocate
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Mr. Shahbaj Alam, Advocate



For the Respondent/s : Dr. Krishna Nandan Singh, ASG
Mr. Manoj Kumar Singh, Spl. PP (NIA)
Mr. Pramod Kumar, PP (NIA)
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Mr. Sriram Krishna, Advocate
Mr. Abhijeet Gautam, Advocate
Mr. Ankit Kumar Singh, Advocate
Mr. Prabhat Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-09-2024.

1. We have heard the afore-noted appeals as also the Death Reference No. 10/2021 together, which are being disposed of by this common judgment.
2. Out of ten accused persons (who would be referred to in the judgment by their serial number before the Trial Court) put on Trial in Special Case No. 05 of 2013 (arising out of R.C. Case No. 10/2013)/CIS No. 5600/2014, the learned Special Judge NIA, Patna has convicted nine of them and has acquitted one, viz., Fakhruddin Ansari (A-8).
3. Imteyaz Alam @ Ansari (A1) [Cr. APP. (DB) No. 18 of 2022] has been held guilty for the offences under Sections 4 and 5 of Explosive Substances Act, 1908; 120B read with 302, 121, 121A of the IPC; 16, 18 and 20 of Unlawful Activities (Prevention) Act,



1967 and under Section 151 of the Railways Act, 1989.

4. Haider Ali (A2) [Cr. APP. (DB) No. 83 of 2022], Numan Ansari (A3)[Cr. APP. (DB) No. 769 of 2021] and Md. Mujibullah Ansari (A4) [Cr. APP. (DB) No. 58 of 2022] have been found guilty under Sections 3 and 5 of Explosive Substances Act, 1908; Sections 121, 121A, 120B read with Section 302, 302 read with Section 34 and Section 307 read with Section 34 of the IPC; and Sections 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967.
5. Md. Umer Siddiqui (A5) [Cr. APP. (DB) No. 48 of 2022] and Azharuddin Qureshi (A6) [Cr. APP. (DB) No. 757 of 2021] have been held guilty under Sections 121, 121A, 120B read with Section 302 of the IPC and Sections 18, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967.
6. By order dated 1st of Nov. 2021, Imteyaz Ansari (A1) has been sentenced to death for the offences under Sections 120B read with 302 IPC; Section 121 of IPC and Section 16 (a) of the Unlawful Activities (Prevention) Act, 1967. Under each of the three counts, he has been saddled with a fine of Rs. 10,000/- and in default, simple imprisonment for one month. For the offence under Section 121A of the IPC; 4(ii) and 5(b) of the Explosive Substances Act, 1908; Section 18 of the Unlawful Activities (Prevention) Act,



1967 and Section 20 of the Unlawful Activities (Prevention) Act, 1967, he has been sentenced to undergo R.I. for life to pay a fine of Rs. 10,000/- for each count and in default of payment of fine, to further suffer simple imprisonment for one month. He has further been sentenced to undergo simple imprisonment for five years for the offence under Section 151 of Railways Act, 1989.

7. Similarly, Haider Ali (A2), Numan Ansari (A3) and Mujibullah Ansari (A4) also have been sentenced to death for the offences under Sections 120B read with 302; 121 ; 121A ; 302 read with 34 of the IPC; Section 3(b) of the of the Explosive Substances Act, 1908; and Section 16 (a) of the Unlawful Activities (Prevention) Act, 1967 along with a fine of Rs. 10,000/- each under each counts and in default, to suffer simple imprisonment for one month. For the offence under Section 307 read with 34 of the IPC; Section 5(b) of the Explosive Substances Act, 1908; Section 18 of the Unlawful Activities (Prevention) Act, 1967 and Section 20 of the Unlawful Activities (Prevention) Act, 1967, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000 and in default thereof, to further suffer simple imprisonment for one month.
8. Md. Umer Siddiqui (A5) and Azharuddin Qureshi (A6) have been sentenced to undergo imprisonment for life



for the offence under Sections 120B read with Section 302 IPC and imprisonment for life for the offence under Section 121 IPC along with a fine of Rs. 10,000/- each under each count and in default of payment of fine, to further suffer simple imprisonment for one month. They have further been sentenced to undergo R.I. for ten years for the offences under Sections 121A IPC; imprisonment for ten years under Section 18 of the Unlawful Activities (Prevention) Act, 1967; imprisonment for ten years for the offence under Section 19 of the Unlawful Activities (Prevention) Act, 1967 and; imprisonment for ten years for the offence under Section 20 of the Unlawful Activities (Prevention) Act, 1967 along with a fine of Rs. 10,000/- each under each count and in default, to further suffer simple imprisonment for one month under each count.

9. Only the afore-noted six persons have preferred separate appeals.
10. For compensation to the families of the victims (deceased), the issue was referred to District Legal Services Authority to decide the quantum of compensation of law according to law, keeping in mind the previous compensation given, if any.
11. Six persons died and 89 were injured in a macabre incident of serial bomb blasts which had taken place at Platform No. 10 of the Patna Junction



Railway Station and Gandhi Maidan, Patna respectively
on 17.10.2013

12. A brief recapitulation of the incidents would be necessary for a proper understanding of the facts of the case.
13. On 27.10.2013, a "Hunkar Rally" was organized by Bharatiya Janata Party at Gandhi Maidan, Patna in which Shri Narendra Modi, the then Chief Minister of Gujarat had to address the gathering. At about 9.30 A.M., there was an incident of bomb explosion at Sulabh Sauchalaya, a public facility adjoining platform no. 10 of Patna Junction Railway Station. After about two hours at 11.40 A.M., another blast was reported at Gandhi Maidan, Patna at the rally venue. This was shortly followed by five more blasts successively.
14. For the incident at Patna Junction Railway Station, a case vide Patna G.R.P. Case No. 361 of 2013 was registered for investigation by Rampukar Singh (PW1)/Inspector of Police, Patna G.R.P.
15. For the blasts at rally venue, Gandhi Maidan P.S. Case No. 451/2013 was also registered for offences under Sections 324, 326, 307, 302, 120B, 121 and 121A of the IPC; 3, 4 and 5 of the Explosive Substances Act, 1908; Section 18 of the Unlawful Activities (Prevention) Act, 1967 and Section 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and Section 17 of the Criminal Law Amendment



Act by Shri Raj Bindu Prasad (PW2)/Inspector cum SHO of Gandhi Maidan P.S. against six accused persons, namely, (i) Monu @ Tahseen @ Meman; (ii) Haider Ali @ Black Beauty ;(iii) Tareeq; (iv) Taufique; (v) Imteyaz Alam @ Ansari ; and (vi) Numan Ansari. Out of these, Tarique had become a victim of his own doing and had died because of bomb injuries while under treatment at Indira Gandhi Institute of Medical Science (IGIMS). Haider, Imteyaz and Numan, out of the named accused, persons faced trial and were sentenced to death.

16. The afore-noted accused persons were also named in the G.R.P. Case No. 361/2013.

17. Imteyaz Alam @ Ansari was apprehended at Platform No. 10 of Patna Junction Railway Station, who was interrogated. He revealed that along with other accused persons, he had come from Ranchi to Patna for effecting bomb blasts at the rally at Gandhi Maidan. The other associate of his was Tarique who had received bomb injuries at Sulabh Sauchalaya. Both of them belonged to village – Sithio in Ranchi.

18. On the information provided by Imteyaz Alam @ Ansari, his residential premises at Ranchi was searched and from there, one a pressure cooker bomb, glass bombs, table clocks of lotus company, explosives and some incriminating documents were recovered and seized. Within a short span of time, because of the



disclosures made by him and the search at his village home at Ranchi, the perpetrators and conspirators of the crime were located.

19. The first lead to the police, therefore, was based on the disclosures of Imteyaz Alam @ Ansari.

20. Mujibullah Ansari was found to be staying as a tenant in one of the rooms in Eram lodge at Ranchi. That room was also raided by the Ranchi Police on 04.11.2013 in presence of the caretaker and one of the uncles of Mujibullah Ansari, namely, Md. Altaf, when nine live bombs attached with lotus company clocks, 25 pieces of gelatin rods wrapped in plastic sheets, 14 pieces of detonators with red colour wire, 4 pieces of lotus clock timer clocks, a polythene bag containing approximately 2kgs of iron nails, electric wires, a political map of India with the sketch of Gandhi Maidan drawn by pencil on its reverse, photocopy of Voter ID cards of Mujibullah Ansari and Salim Ansari and other documents were recovered and seized.

21. Based on such search and seizure, Ranchi Police also registered a case vide FIR No. 985/2013 at Hindpidhi (Kotwali) Police Station under Sections 120B, 121, 121A/34 IPC, Section 3 and 4 of the Explosive Substances Act, 1908; Section 18 of the Unlawful Activities (Prevention) Act, 1967 and Section 16, 18, 20 and 23 of the Unlawful Activities



(Prevention) Act, 1967 and Section 17 of the CLA Act, 1908.

22. All the three of F.I.Rs were transferred to NIA sometimes in the month of December, 2020.

23. The raids at Ranchi and the investigations pursuant to F.I.R. No. 985/2013 revealed that Haider Ali had taken a room in Eram Lodge on rent on a fake Voter ID in the name of Salim Ansari, on which the photograph of Haider was pasted. Mujibullah Ansari had offered his own Voter ID card with his name and photograph. It was found during the investigations that Imteyaz, Tarique (deceased), Haider, Numan, Taufique and Mujibullah had conspired to target the election rallies of Shri Narendra Modi. In furtherance of that conspiracy, the appellants had made reconnaissance at various places in the country and had also collected explosives from Ranchi, Mirzapur, Allahabad and Raipur. They had fabricated improvised explosives at Sithio village and at Eram lodge at Ranchi. Those bombs/IEDs were used in the Patna serial blasts on 27.10.2013. The reason for the investigators to say so was on the basis of forensic examination of those bombs by Central Forensic Science Laboratory, Kolkata, which had reported that the explosive recovered at Sithio village and at Eram Lodge and the spent over bombs at Gandhi Maidan and Patna Railway Station contained ammonium



nitrate, improvised gun powder and aluminium chloride.

24. Umer Siddiqui, a resident of Raipur was found to be an active member of SIMI, a banned organization and had provided shelter to terrorists. It was also found out that with respect to Umer having given shelter to the terrorists, a case vide Raipur Civil Lines P.S. Case No. 740 of 2013 dated 14.11.2013 was registered at Raipur. He was subsequently arrested in that case. During the interrogation, he had made a very clear disclosure that along with the cadre of SIMI, he had, in the past organized terrorist camps and imparted training to the sleeper cells. According to his version, Haider, Numan, Taufique and Mujibullah had stayed at Raipur after the bomb blasts at Patna. He was assisted by Azharuddin Qureshi. He knew about the conspiracy for effecting blasts at Patna as he was part of the planning team. The reason for selecting Patna as the target place was the perception that Mr. Modi was responsible for post Godhra riots in Gujarat and that riots at Muazaffarnagar were orchestrated at the behest of BJP. Because of all this, Haider Ali had gone to many of the election rallies of Mr. Modi and finding the security arrangements to be very tight at all such places, a decision was taken to target not Mr. Modi in particular but his election rallies so that a bomb blast at a site where many people would



converge, a stampede would take place and then it would be easy to target one particular person. With this idea in mind, the rally at Gandhi Maidan, Patna was found to be the most suitable occasion for the accused persons to carry out their agenda. Before the blasts, Imteyaz and Mujibullah had come to Gandhi Maidan, Patna sometimes before 20th of October 2013. Numan, Tarique (deceased) and Taufique had also come to Patna earlier. At Patna, Haider had met others, namely, Tarique, Numan and Taufique at Jama Masjid near Patna Railway Station. Thereafter, they had all gone to Gandhi Maidan to see the exit and entry points.

25. During the long drawn investigations, it was also found that the Umer had been associated with Student Islamic Organization in his youth and had become a regular member of SIMI in 1997. When SIMI was banned in 2001, he, after joining Safdar Nagori Camp continued with his agenda of organizing monthly and weekly meetings of the cadre. It was only in 2010 that Haider Ali was introduced to Umer Siddiqui by one of the members of the SIMI cadre. A one day programme in the house of one of the members of the cadre was organized by Umer Siddique in which Haider Ali had spoken about the life of Prophet Mohammad and the justification for violent Jihads. In these speeches, frequent references were made about the incident at



World Trade Centre, New York, USA and the involvement of Al-Qaida in that attack where many persons had lost their lives. Haider Ali had given money to Umer Siddiqui also for helping out members of the SIMI cadre who were incarcerated and were facing trial.

26. Azharuddin, another resident of Raipur had been closely associated with Umer Siddiqui and Haider Ali. The trio regularly delivered *takreers* with copious references to the utility of violent Jihad. They also trained the members of the cadre in assembling bombs. Azharuddin even harboured the idea of escaping to Afghanistan after carrying out bomb blasts in India.
27. Startling revelations were made during the investigations that serial blasts at Bodh Gaya sometimes in the recent past i.e. on 27.07.2013 was also carried out by Haider, Imteyaz and others. After the Bodh Gaya serial bomb blasts, Haider had gone to Raipur and had met Umer Siddiqui at his residence.
28. The plan for carrying out serial blasts at Patna was made by Haider Ali and Umer Siddiqui. The initial plan was to commission a suicide bomber, who was selected also but then he developed cold feet. Thereafter, the plans were changed, pursuant to which, reconnaissance was made at some of the election rallies.



29. Azharuddin Qureshi and one more person was given the task of targeting Shri Modi. Haider Ali had also prepared a suicide jacket with explosives but the same was not found to be suitable for the purpose. There were definite indications of Umer Siddique having prior knowledge of Patna blasts as he was involved in its planning and execution.
30. Both Umer and Azharuddin gave their statements under Section 164 Cr.P.C in Bodh Gaya blast case. After the Patna serial bomb blasts, Mujibullah visited Umer on 29th of October 2013. Later, Haider and Taufique also joined them. All of them were provided accommodation at different places at Raipur. On 10th of November 2013, Haider Ali, Numan, Taufique and Mujibullah took a house on rent which belonged to one of the uncles of Azharuddin Qureshi. After the arrest of Umer Siddiqui, Azharuddin Qureshi cautioned Haider Ali and his associates, who thereafter came to Raipur bus stand and proceeded for Ambikapur.
31. Haider Ali too was arrested on 21.05.2014 at the Bus Stand at Ranchi. He was found to be in possession of two Voter ID cards and in the names of Vivek Sinha and Alik Tirke and on both the ID cards, Haider's photograph was pasted. He also disclosed that he was a member of SIMI and after Bodh Gaya and Patna serial blasts, he kept changing his location along



with his associates. After the blasts at Patna, the unused bombs and its peripherals were handed over to one Ejaz Hashmi who was occupying a room in Idris Medical College/lodge at Ranchi. With this disclosure, the room of Dr. Ejaz Hashmi was searched where one Samsung Laptop, batteries and other peripherals were recovered. The Laptop and Pen-drive which were seized were sent to CERT- IN at Delhi for its opinion. The extracted data from the Laptop revealed that there were various rich text files (RTF) regarding the rallies of Mr. Modi and his participation in various religious congregations. In the extracted data, there was a copy of a magazine called "Inspire" where the process of making elbow bombs was described. "Inspire" incidentally is an on-line magazine of "Al-Qaida".

32. Numan and Taufique were arrested from Daltonganj in the district of Palamu (Jharkhand). From their possession also, several incriminating documents like literature about violent Jihad and a list of political leaders of BJP, Vishwa Hindu Parishad and Bajrag Dal were found. Perhaps, they were on the hit list of the accused persons.

33. Further leads in the investigations led to the discovery that raw materials for making IEDs were procured by Haider Ali with the help of Ahmad and Fakhruddin. For that purpose, they had visited



Allahabad and had made the purchases from Johnson Ganj area. The materials so purchased were kept at the house of Ahmad where also an attempt was made to manufacture elbow bombs.

34. Haider was in constant contact with Ahmad (co-convict), which fact was discovered in the CDR.
35. The appellants were in touch with each other which fact also could be established with the CDR of their telephone numbers.
36. With respect to the modus of causing the blasts, the investigations revealed that Haider, Imteyaz, Tarique (deceased), Numan, Taufique and Mujibullah proceeded from Ranch on 26.10.2013 by Aditya Vijay Bus Service and reached Patna in the early hours of 27.10.2013. They disembarked from the bus near Patna By-pass road and from there went to Jama Masjid located near Patna Railway Station. Two groups were formed. Imteyaz and Tarique took up the responsibility of planting bombs somewhere near the Railway Station whereas the others straightaway proceeded to Gandhi Maidan via Exhibition Road. Haider and Taufique planted IEDs inside the toilet complex near Gandhi Maidan and also at the venue of the rally, somewhere near the dias which was to be adorned by Mr. Modi for addressing the crowd.
37. Numan and Mujibullah activated the IEDs inside the toilet campus.



38. With respect to Firoz (a co-convict), it was found that he was distantly related to Haider and was also in contact with Mujibullah. They often met at a mosque at Ranchi. Firoz helped Haider in disposing off gold ornaments, stolen by Abu Faizal and his associates from various places at Madhya Pradesh. Firoz melted those gold jewellery and sold it in the local market. That is how the terrorist activities were funded. During the investigation, Firoz had disclosed such things before independent persons and had also pointed out the places where he had exchanged the gold. Firoz was also found to have removed some of the explosives from room no. 8 of Eram lodge sometimes in the first week of November, 2013. Some of it were kept in the shop of one Md. Ikram. On his disclosure, detonators, batteries, electrical testers and mechanical devices with clock mechanism, pencil batteries etc., were recovered from the shop of Md. Ikram.
39. Md. Ikram gave his statement before the Judicial Magistrate, Ranchi under Section 164 Cr.P.C. affirming all the above developments.
40. After the closure of the investigation, two chargesheets were submitted by the NIA. The first of the chargesheets (1/2014) dated 24.04.2014 in R.C. No. 10 and 11 of 2013 under various sections of IPC, Explosive Substances Act and UAP, Act, Railways Act and Criminal Law Amendment Act was filed against



Imteyaz. Since Traique had died in the occurrence; therefore his name was not there in the chargesheet. Tarique had died during treatment at IGIMS on 01.11.2013. The second chargesheet 1(A)/2014 dated 22.08.2014 under the same sections was filed in R.C. 12/2013/NIA/DNI under the same sections against Haider, Numan, Taufique, Mujibullah, Umer, Azharuddin, Ahmad Hussain, Fakruddin, Firoz and Md. Iftekhar Alam.

41. As noted, one of the accused persons, namely, Tarique had died and the other, namely, Taufique Ansari was found to be a juvenile and, therefore, his trial was separated and sent to Juvenile Justice Board, Patna.
42. The NIA had taken up the composite investigation for the reason that all the three F.I.Rs: at Patna Railway Station; Gandhi Maidan; and Ranchi related to the same conspiracy.
43. The Special Court, after having examined 187 witnesses on behalf of the prosecution, but no one on behalf of the defence, convicted and sentenced the appellants as aforesaid.
44. Out of the afore-noted witnesses, three were examined as protected witnesses for ensuring their safety by keeping their identity and address secret in view of Section 17 of the NIA Act, 2008 and Section 44 of UAPA, 1967.



45. Approximately, 205 exhibits were also brought forth as evidence.
46. Delving further, it would be necessary to first discuss the evidence of the three informants of this case, namely, Rampukar Singh (PW1), the informant in RC No. 10/2013 (G.R.P. Case No 361 of 2013), Raj Bindu Prasad, the informant (PW2) in RC Case No. 11/2013 (Gandhi Maidan Police Station Case No. 451/2013) and Bashistha Narayan Singh (PW3)/ the informant of RC Case No. 12/2013 [FIR No. 985/2013 at Hindpidhi (Kotwali) Police Station].
47. PW1 supported the prosecution case in its entirety till the time accused Inteyaz was arrested and Tarique who had been left injured was sent to IGIMS for treatment. He was posted in G.R.P. at Patna Railway Station on 27.10.2013. On that day, a rally was organized by BJP in which many participants were expected to come by Railways to attend the rally. At about 9.30 in the morning, while he was on the foot overbridge of Patna Junction, he heard a sound of explosion from the southern direction. He along with his associates rushed to the place which was somewhere near Sulabh Sauchalaya located at Platform No. 10. He entered the toilet and found it to be full of smoke. There was damage all around. One Md. Ejaz (PW 4), constable in the G.R.P. was standing there. Ajaz had held back a person carrying a black



bag. PW1 saw an injured person lying on the floor of the toilet. Beneath him lay two live bombs fixed to a wathc, which were seized. The injured was immediately sent to Railway Hospital for treatment. The person who was apprehended by Ejaz, was found to have come along with the person who was injured in the occurrence. On questioning him, he disclosed his name as Imteyaz and the one who had been injured as Tarique. He also disclosed before PW1 that both he and Tarique had come to explode bombs at Gandhi Maidan, Patna. Tarique had entered the toilet for installing the batteries in the bombs; in which process one of the bombs exploded, severely injuring Tarique. Imteyaz had told him that he had concealed a bomb in flush of the toilet. That was also recovered. It was Imteyaz who gave information to PW1 that many of his associates had already proceeded to Gandhi Maidan for planting bombs for disrupting the rally. Imteyaz had disclosed before him about the conspiracy hatched at Ranchi. The seizure list of afore-noted seized items (Ext.1) was identified by him. The arrest was made in presence of Gautam Kumar, A.S.I. (arrest memo is Ext. 2). Based on the disclosure made by Imteyaz, PW1 promptly informed the Ranchi Police about it and requested to inform the relatives of Tarique (deceased) about his having been injured at Patna Junction Railway Station. It was at platform no. 10



only at 11.25 A.M. that he recorded his self statement, on the basis of which, the GRP Case No. 361/2013 was registered. He also identified Imteyaz in the dock. The Ranchi police was informed about the arrest of Imteyaz on the same day by fax (Ext. 6). He also identified the black bag which was being carried by Imteyaz (Ext. A/96 and other seized items (Ext. A/38, A/97, A/100, A/101, A/102, A/103, A/104, A/108, A/110, A/133, A/136, A/137, A/175, A/177, A/178 and A/179).

48. He had taken the photograph of the P.O. had and identified that also (Ext. A/181). However, he admitted in the cross-examination that there was no CCTV Camera installed outside the toilet.

49. Similarly, Raj Bindu Prasad (PW2) in R.C. Case No. 11/2013 (Gandhi Maidan Police Station Case No. 451/2013) told the Trial Court/Special Court that as ordered by the Administration on 25.10.2013, a number of police personnel were deployed at Gandhi Maidan for the Rally as participants in lakhs were expected to arrive. At about 11.40 A.M., the first of the explosions took place in front of Udyog Bhavan. He went there and saw two persons lying injured near Mona Cinema. A pandemonium had broken loose. The injured persons were sent to PMCH for treatment. Another explosion thereafter took place at 12.05 noon and thereafter there were four other explosions within



five minutes of each blasts. At all places of explosion, many persons were injured who were immediately forwarded to the PMCH for treatment. He had gone to PMCH and had learnt that six injured persons had died. Out of whom, four, namely, Gauri Shankar Singh, Vikash Kumar, Bharat Rajak and Munna Srivastava could be identified whereas the identity of a middle aged and a young deceased person could not be established. From the list of injured persons provided by PMCH, he learnt that they were 89 in all. It was only then that he learnt that a explosion had taken place at the Karbigahia side of Patna Railway Station at 9.30 A.M. only in which one person, namely, Imteyaz was apprehended. He had also given his self statement at 9.00 P.M. on 27.10.2013 and after returning to the police station, had registered the F.I.R. vide Gandhi Maidan P.S. Case No. 451 of 2013 and had handed over the investigation to the Dy. Superintendent of Police (City) Patna, namely, Manoj Kumar Tiwary.

50. The third of the Investigating Officers, viz., Bashishth Narain Singh (PW-39), the informant in RC 12 of 2013 (Ranchi) has deposed before the Trial Court that on 27.10.2013 only, he had received information that at Patna Junction and Gandhi Maidan, serial blasts had taken place and one Imteyaz, resident of village Sithio under the territorial jurisdiction of



Dhurva Police Station (Ranchi) had been arrested. He was asked to conduct search of the house of Imteyaz as also to verify his name and address. After entering such information in the Station Diary (Station Diary No. 763 dated 27.10.2013), he proceeded to village Sithio and came to the house of Imteyaz. In presence of the father and elder brother of Imteyaz, his room was searched from where three CDs, mobile phone of Reliance Company, 370 pieces of glass balls, a hammer, a pressure horn, many pieces of plastic, many fibre type covers, a small cooker and brown coloured gun powder, weighing approximately 250 gms, which was attached to the fuse, were recovered. 60 pieces of posters in Urdu, syringes, blades etc. were also found. He identified the seizure-list which was counter-signed by father and brother of Imteyaz. Thereafter, he returned to the police station. Since he had also been informed and requested to inform the relatives to Md. Tarique @ Ainul, son of Ataullah of village Sithio that he had been injured while planting a bomb on platform No. 10 of Patna Railway Station and who was under treatment, he did so. He gave information to the relatives of Tarique about his death on 01.11.2013. The information was signed by the brother of Tarique, viz., Tauhir Alam and an Up-Mukhiya by the name of Sajid Ansari.



51. He has further deposed before the Trial Court that a team was constituted by the then ADG, Special Branch comprising him as well for conducting search in the house of Mujibullah in village Chakla, P.S. Manjhi in the district of Ranchi.

52. During investigations, he further revealed, it was learnt that Mujibullah resided in a lodge at Hindpidhi. Along with his team and police officers of the concerned police station he came to Eram Lodge where he met the uncle of Mujibullah. He was informed that Mujibullah resided in room No. 8 which was found to be locked since 24.10.2013. He broke open the lock of room No. 8 and found three cartons covered with paper containing live elbow bombs which were connected with Lotus watches. He immediately sent information to the Head Office for sending bomb disposal squad. The bombs were then deactivated. From that room, several explosives were recovered. A map of India, on the reverse of which there was a sketch of Gandhi Maidan was also found. Newspapers of earlier days, which had reported about serial blasts at Bodh Gaya were also found stacked in the room. There was evidence of the occupant of the room being involved with the activities of SIMI.

53. Based on the aforementioned information collected during the search and seizure at Eram Lodge, a self



statement was lodged by him which formed the basis for the registration of Hindpidhi P.S. Case No. 985 of 2013 dated 04.11.2013. The seized articles from the house of Imteyaz were handed over to the Dy.S.P. of the NIA on 20.11.2013.

54. Thus, from the depositions of PWs. 1, 2 and 39, it has clearly been proved that immediately after the bomb blasts at Patna Railway Station, Imteyaz was arrested and Tarique (deceased) was found to be injured, who was sent first to Railway hospital and then to IGIMS for treatment, who died while undergoing treatment. Bombs were recovered at Patna Junction. Two hours later, there were series of blasts at Gandhi Maidan, leaving six dead and 89 injured and that those injured persons were sent to PMCH for treatment.

55. On the basis of disclosure of Imteyaz at Patna Junction Railway Station, the appellants were named in Gandhi Maidan police case also. Simultaneously, Hindpidhi (Kotwali) Police Station case at Ranchi also was lodged. All these facts stand completely proved with Imteyaz as the main person giving all the leads for the police to act upon in one go.

56. PWs. 11 to 24, 43, 53 to 57, 71, 73, 74, 77, 78, 80, 118, 119, 124, 125, 126, 128 and 130 are



the persons who were injured in the occurrence. They have deposed about their having received splinter injuries. They are either pedestrians or persons who had come to attend the rally.

57. Dr. Arun Kumar Singh (PW 34) an Associate Professor at PMCH in the Department of FM & T has proved that he had conducted the postmortem examination on the bodies of Rajesh Kumar, Bindeshwari Choudhary, Bharat Ranjan, Munna Srivastava, Raj Narayan Singh and Guddu Kumar Singh @ Vikash Kumar Singh. All of them had received bomb injuries which proved fatal. The deaths were between 12 to 24 hours approximately of the postmortem examination. The postmortem examinations were held on 28.10.2013 at 11:45 AM. He had also conducted the postmortem examination of Tarique, the accused who had received splinter injuries while fixing a bomb at Patna Junction Railway Station. PW-34 was one of the members of the Medical Board comprising Dr. Satendra Narain Singh and Dr. B.N. Prasad. Tarique's postmortem was done on 1st of November 2013. It was found by the Board that the deceased had burnt scalp hairs, beard, eyes, neck and several parts of the body. Burning and blackening were found on the entire body. There was a massive bruise on the upper and lower parts of the body. A



small metallic ball (splinter) was taken out from below the right knee which was preserved, labelled, sealed and handed over to the police officials. The cause of death was the injuries received in a close range bomb blast. On further cross-examination, PW-34 has proved that such kind of injuries would take place if the deceased carried the explosives himself.

58. The injured persons were examined by Dr. Ranjit Kumar (PW-26) who has deposed that the injuries on all the injured persons were caused by the splinters in bomb blasts.

59. The postmortem and injury reports as also the depositions of the doctors fully confirm and establish that it was the blast at Patna Junction Railway Station and Gandhi Maidan that six persons had died and 89 were injured, who all had received splinter injuries because of the bomb blasts.

60. The other set of witnesses relied upon by the prosecution to prove its case against the appellants are the police officials other than the officers of NIA.

61. Shyam Sundar Kumar (PW-3), a Sub-Inspector posted at Patna Junction on 27.10.2013, confirms of his being a witness to PW-1 interrogating Imteyez at the Railway Station. He has also identified his signature on the seizure-list (Exhibit-1/1).



62. Md. Ejaj Hussain (PW-4), the constable who had held back Imteyaz, confirmed that Imteyaz and Tarique had come together and Imteyaz had made attempts to run away from the place after the accidental blasts.

63. Similar supporting statements have been made by Navin Kumar Sah (PW-5), America Ram (PW-28), Vinay Kumar Rai (PW-32), Rakesh Kumar Chauhan (PW-41), Sunil Kumar (PW-52), Manoj Kumar Tiwary (PW-81), Pramod Kumar Singh (PW-83), Rajesh Kumar (PW-84), Devesh Kumar Sathpati (PW-93), Deepak Kumar Ambastha (PW-98), Nilesh Kumar (PW-108), Ram Lalan Kumar (PW-154), Sanjay Dinkar Deosthale (PW-162) and Rakesh Bhatt (PW-166).

64. That accidental blast had taken place at 9:30 AM on the day of the occurrence in Sulabh Sauchalayay has further been proved by Subodh Jha (PW-23) and Birendra Ram (PW-25), the independent witnesses.

65. Manzar Alam @ Manzar Imam (PW-29) has proved the fact of Mujibullah residing in Eram Lodge.

66. Two of the three protected witnesses, viz., PWs. 45 and 46 have also supported the prosecution case.

67. PW-45, the owner of a watch shop at Ranchi,



deposed that in October 2013, one Mujibullah was brought to his shop by the NIA. He identified him (Mujibullah) having come to his shop along with another person in the month of July 2013. Mujibullah, according to him, had purchased around 12 to 15 watches from his shop which were of Lotus Company. He had also questioned Mujibullah about his procuring so many watches at a time, to which he had replied that he would gift it to the farmers. He had identified Mujibullah in the dock. It may be noted that the IEDs used in the blasts were all connected with watches of Lotus brand.

68. PW-46 certified that he had met Haider in the year 2005-06 at Ansar Nagar mosque in Ranchi, who was introduced to him by one Tabish. Haider had once taken him to a programme where the participants had discussed about their bad experience in jails. It was at that time that PW-46 had learnt that the programme was conducted under the aegis of SIMI. He has also deposed that Haider gave *Takreers* (speeches) which were volatile in nature. On one occasion, at the behest of Haider, he had met Imteyaz, Naushad and Numan. Haider instigated all of them for *Jihad*. He had also given bait to him to get trained in Naxal arms training camp which was promptly refused by him.

69. Md. Adil (PW-60), a lathe technician, has



deposed that sometimes in June 2013, Ayub Ansari had come to him with GI elbow pipes and had asked him to make holes in those pipes. Ayub had masqueraded himself as a plumber. Md. Sakil (PW-61), brother of Adil, has confirmed that Adil has a lathe machine shop at Ranchi where Ayub Ansari had come with GI pipes and wanted Adil to drill holes in those pipes. Faiaz Ahmad (PW-63), nephew of accused/Numan Ansari, has further confirmed that Numan had come to his house on 27.10.2013 at around 10:00 PM with a black coloured bag which he left behind. Later, after about 7 to 8 months, when confronted by NIA, he handed over that black bag to the NIA police.

70. Md. Gyas (PW-64) has confirmed that Numan Ansari, who is his brother-in-law, stayed overnight in his house on 27.10.2013. He had come with a bag and then left for some unknown destination. Similar supporting statements have been made by Md. Ikram (PW-65), Vikash Sharma (PW-86), Ashraf Alam (PW-88), Durga Sharan (PW-90), Md. Chand Ansari (PW-96), Md. Sakil (PW-97), Irshad Bari (PW-100), Satpal Singh (PW-105), Naveen Khowal (PW-106), Satendra Budhaiya (PW-107), Sayeed Ejaj Hashmi (PW-109) and Ved Prakash Singh (PW-121).

71. With respect to the prosecution version of



purchasing of explosives from Mirjapur and the appellants converging at Raipur, post the occurrence, the prosecution has relied upon eight witnesses.

72. Sheikh Khurshid (PW-47) has deposed before the Trial Court that he runs an NGO dealing with social services. It has an email called islamicresearch01@yahoo.com. He was called to Katra Police Station along with his brother where he was interrogated by NIA. He had told the NIA that Abdul Shakur (Haider was known as Abdul Shakur at Mirjapur) had come to him to purchase a CD for recording *Takrirs*. Abdul Shakur had come to him later also with his laptop and he was told about *Jihad*.
73. Sheikh Amjad (PW-48) identified the photographs shown to him in February 2014 by NIA to be of Abdul Shakur. However, he could not identify Haider in the dock; rather he pointed at Numan Ansari.
74. Shankar Lal Vishkarma (PW-49) had drilled holes in elbow pipes brought by some person, on cost being paid to him.
75. Faizan Latif (PW-37) claims to have been taken to the *Takrir* at the house of Umer by his senior in school viz. Azharuddin. He heard the participants there talking about making of bombs. Abdullah, Haider and Umer Siddiqui had demonstrated before the



participants how to make bombs. They had also played videos of bomb making to the curious ones.

76. The last of the protected witnesses, viz., PW-44, an auto driver at Raipur, claims to have met Umer at the shop of his friend Raju Mistri. Umer had invited him too in one of such meetings at his house. This witness started attending those meetings and in one of such gatherings, he had met Azharuddin. There, video clips and pictures on laptop were shown outlining the necessity of *Jihad*. When specifically asked as to his understanding of the word *Jehad*, PW-44 clarified that it means taking revenge for the killings of the muslims of Gujarat. He also identified Umer and Abdullah in the dock.

The forensics

77. Ashu Kumar Jha (PW-38), who was posted as Senior Scientific Officer at FSL, Patna, has deposed that on the orders of his Director, he had gone to Sulabh Shauchalaya at Platform No. 10 of Patna Junction as also the public facility at Gandhi Maidan and had collected samples of different objects marked as A, B, C and D which was handed over to the I.O. (Exhibits 21 and 21/1).

78. Argha Bandhopadhyaya (PW-66), who had been working as Scientist B as an explosive expert at



Kolkata, claims to have received on 4th of July 2013 a forwarding letter sent by Special Judge, NIA along with a sealed box through a Sub-Inspector of NIA for examination and forensic analysis as well as the expert opinion. The box contained 11 packets (Exhibits- A/58 to A/95). He certified that the materials analysed were similar to the materials collected in connection with RC No. 12 of 2013 and both the samples tested positive for the explosive. Similar report was given by K.P.S. Kartha (PW-67) who was posted as Deputy Director, Explosives at CFSL, Kolkata.

79. The entire process of investigation by the NIA was also sought to be proved through Rafi Ahmad Siddiqui (PW-99), Sushil Kumar Upadhaya (PW-101), Dinesh Pratap Singh (PW-102), Md. Salim Khan (PW-103), Raj Kumar Singh (PW-104), Arpan Saha (PW-142), Prabhat Kumar Awasthi (PW-146), Ram Lalan Kumar (PW-154), Ram Gopal Sharma (PW-155), Bishwas Kumar Singh (PW-157), Jasveer Singh (PW-159), Praveen Kushwaha (PW-168), Prabhat Kumar Bajpai (PW-170), Chandrakant Chaturbedi (PW-171), Kanchan Mitra (PW-172), Vishal Garg (PW-174), Braj Bhushan Pathak (PW-175), Rakesh Bakshi (PW-176), Sanjay Kumar Malviya (PW-177), Rajesh Sahni (PW-179), Ashok Kumar (PW-180), Jalaj Srivastava (PW-181), Anurag Kumar (PW-182) and Santosh Kumar



Singh (PW-183).

80. Thus, it appears from the evidence on record that appellants/ Imteyaz Alam, Haider Ali, Numan Ansari, Mujibullah Ansari, Umer Siddiqui and Azharuddin Qureshi had conspired and had caused the bomb blasts at Patna Railway Station and Gandhi Maidan, leaving many dead and several injured.

81. It would be only in the fitness of things that the law with respect to confessions, conspiracy and Section 10 of the Indian Evidence Act be discussed in order to meet the arguments of the appellants that the whole case is based on confessions, though never sought to be retracted and that wrongly confession leading to recovery of a co-accused has been used against others and that the roping in of the appellants is by virtue of evidence which is inadmissible under Section 10 of the IEA.

82. There is a statutory embargo on confession made to a police officer being proved against an accused. Confession is one of the species of admission as defined under Section 17 of the Indian Evidence Act. An admission is a statement, oral or documentary, which enables the Court to draw an inference as to any fact in issue or relevant fact. Every confession must necessarily be an admission but every admission



would not necessarily amount to a confession. Sections 17 to 23 of the Indian Evidence Act deal with admissions and the law as to confessions is codified in Sections 24 to 30 of the IEA. Section 25 bars the proof of a confession made to a police officer. Section 26, a step further, prohibits proof of confession made by any person while in custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the trite rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding.

83. Such inducement, threat or promise need not be proved to the hilt.
84. Section 24 of the Indian Evidence Act reads as hereunder :-

"24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

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



underlined)

85. The expression 'appears' in Section 24 connotes that the Court need not go to the extent of holding that threat etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the Court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer.
86. Confessions leading to recovery of a fact (Section 27) is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer.
87. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. According to Taylor's treatise on the law of evidence, "confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth". Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law. However, before acting upon a confession, the Court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage,



reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of the confession. The confession should have been made with full knowledge of the nature and consequences of confession. If any reasonable doubt is entertained by the Court that these ingredients are not satisfied, the Court would not consider them.

88. Section 30 of the Indian Evidence Act reads as follows :-

"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

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

89. The plain reading of the Section implies that confession of a co-accused cannot automatically be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. This is made clear by use of the expression "the Court may take into consideration such confession".

90. Section 164 Cr.P.C. is a salutary provision which



lays down certain precautionary rules to be followed by the Magistrate recording a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police.

91. In ***Bhuboni Sahu vs. The King (AIR 1949 PC 257)***, it has been held that the confession of a co-accused is only one element in the consideration of all the facts proved in the case and it can be put into the scale and weighed with other evidence.

92. A Constitution Bench of the Supreme Court in ***Haricharan Kurmi vs. State of Bihar (1964) 6 SCR 623*** has clarified the legal position that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person. It must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

93. The question which has cropped up is whether confession of an accused which cannot be proved



against a co-accused under Section 30 of the Evidence Act, would be relevant evidence against co-accused involved in the conspiracy by reason of Section 10 of the Indian Evidence Act.

94. For the sake of completeness, Section 10 of the Indian Evidence Act is extracted below :-

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

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

95. Section 10 of the Indian Evidence Act is based on the principle of agency operating between the parties to the conspiracy inter se and is an exception to the rule against hearsay testimony. If the conditions laid down therein are satisfied, the act done or statement made by one is admissible against the co-conspirators.

96. In ***State (NCT of Delhi) vs. Navjot Sandhu***



@ Afsan Guru (2005) 11 SCC 600, a question arose whether the statement of one of the conspirators who had made the confession, throwing light on the common intention of all the accused, could be used in evidence against the co-conspirators or the co-accused irrespective of the fact that such statements were made after the conclusion of the conspiracy and after the accused were arrested.

97. The Supreme Court noted that the Privy Council in **Mirza Akbar vs. King Emperor (AIR 1940 PC 176)** had held that there is a distinction between communications amongst the conspirators while the conspiracy was going on with reference to the carrying out of conspiracy vis-a-vis the statements made after arrest or after the conspiracy had ended, by way of description of events then past, which is not admissible under Section 10 of the Indian Evidence Act.
98. This enunciation by Privy Council was approved by a three Judges Bench of the Supreme Court in **Sardul Singh Kaveeshar vs. State of Bombay (AIR 1957 SC 747)** wherein it was held that "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 IEA".



99. The law is thus well-settled that the statements made by the conspirators after they are arrested cannot be brought within the ambit of Section 10 of the IEA, because by that time the conspiracy would have ended.

100. In ***Mohd. Khalid vs. State of West Bengal (2002) 7 SCC 334***, three judge Bench held as follows:-

"We cannot overlook that the basic principle which underlies Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under Section 10."

101. Now since conspiracy is one of the primary charges against at-least six of the appellants, we must survey the law of conspiracy, its definition, essential features and proof.

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



"120A. Definition of criminal conspiracy.-- When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

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

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

103. Section 120-B prescribes the punishment to be imposed on a party to a criminal conspiracy.

104. Justice Subbarao in **Major E.G. Barsay vs. State of Bombay (AIR 1961 SC 1762)** has explained that the gist of the offence of conspiracy is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done, has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act, it may comprise the commission of a number of acts.

105. In **Yash Pal Mittal Vs. State of Punjab (1977) 4 SCC 540**, the Supreme Court has very aptly observed that there must be unity of object or purpose but there may be plurality of means, sometimes even unknown to one another amongst the



conspirators.

106. Mostly conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually, both, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.

107. However, as pointed out by the Supreme Court in ***V.C. Shukla vs. State (Delhi Administration) (1980); 2 SCC 665***, in most cases, it would be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence.

108. In this context, the observations in ***Noor Mohammad Mohd. Yusuf Momin vs. State of Maharashtra (1970) 1 SCC 696*** is very relevant.

"In most cases, proof of conspiracy is



largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."

109. The circumstances before, during and after the occurrence can be proved to decide about the complicity of the accused.

110. The Trial Court has very aptly extracted the summation on the law of conspiracy in ***State vs. Nalini (Rajiv Gandhi assassination case) (1999) 5 SCC 253***. We, too, deem it appropriate to extract it for a holistic reading with our own parenthesis :-

"1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some



of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be



members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. *When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.*

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. *What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has



to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be



formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up



a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime".

111. However, in **State (NCT of Delhi) vs. Navjot Sandhu** (supra), the Supreme Court was of the view that the theory of agency cannot be extended thus far. That is to say, to find all the conspirators guilty of the actual offences committed in execution of the common design even if such offences were ultimately committed by some of them without the participation of others.

112. The Supreme Court in this instance was of the view that those who committed conspiracy by indulging in various overt acts will be individually liable for those offences in addition of being liable for criminal conspiracy; but the known participant conspirators cannot be found guilty of the offence or offences committed by other conspirators. There is hardly any scope for the application of the principle of agency in



order to find the conspirators guilty of a substantive offence not committed by them. Criminal offences and punishments, therefore, are governed by the statute. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability for an offence cannot be fastened by way of analogy or by extension of a common law principle.

113. Per force, we also need to analyse the provision contained in Section 27 of the IEA for the reason of certain pointings by the accused persons and recoveries made pursuant to the confessions having been used as evidence by the prosecution.

114. It is very instructive to go through the exposition of law on the subject by the Supreme Court in ***State (NCT of Dehli) Vs. Navjot Sandhu @ Afsan Guru*** (supra).

115. The issues which had come up for discussion in ***Navjot Sandhu*** (supra) were :-

- (i) *Whether the discovery of fact referred to in Section 27 of the Evidence Act should be confined only to the discovery of a material object and the knowledge of the accused in relation thereto or the discovery could be in respect of his mental state or knowledge in relation to certain things- concrete or non-concrete; and*
- (ii) *Whether it is necessary that the discovery*



of fact should be by the person making the disclosure or directly at his instance. The subsequent event of discovery by the police with the aid of information furnished by the accused- whether could be put against him under Section 27 of the Indian Evidence Act.

116. One strand of argument was that the expression "*discovery of fact*" ought to be read with the definition of "*fact*" as contained in Section 3 of the Evidence Act. This definition comprehends both physical things as well as mental facts.

117. A sequel to the afore-noted argument was that the application of Section 27 is not contingent on the recovery of a physical object. Section 27 embodies the doctrine of confirmation by subsequent events. The fact investigated and found by the police consequent to the information disclosed by the accused amounts to confirmation of that piece of information. Only that piece of information, which is distinctly supported by confirmation, is rendered relevant and admissible under Section 27 of the Indian Evidence Act.

118. Similarly, a physical object may be recovered but the Investigating Agencies may not have any clue as to the "*state of things*" that surrounded the physical object. In that case, if such "*state of things*" or "*facts*" are disclosed which are in relation to the physical object discovered, then that also would amount to



discovery of fact within the meaning of Section 27 of the Act.

119. For this proposition, reliance was placed on the judgment of the Privi Council in ***Pulukuri Kottaya vs. King Emperor, AIR 1947 PC 67*** and by the Supreme Court in ***Mohmed Inayatullah vs The State Of Maharashtra, 1976 (1) SCC 828; State Of Maharashtra vs Damu S/O Gopinath Shinde And Others, 2000 (6) SCC 269.***

120. The opposite proposition, more favourable to the defence, was that the scope of Section 27 of the Evidence Act ought not to be unduly stretched by importing the definition of “fact” in Section 3 of the Indian Evidence Act. Thus, the contention was that the fact discovered must basically be a concrete or material fact but not a mental fact.

121. Section 27 of the Evidence Act is extracted herein for the sake of completeness:-

"27. How much of information received from accused may be proved.

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

122. ***Pulukuri Kottaya vs. King Emperor, AIR 1947 PC 67*** is by far the accepted authority for the proposition that “discovery of fact” cannot be equated



to only the objects produced or found; it is more than that. The "*discovery of fact*" arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

123. What does the clause "*as relates distinctly to the fact thereby discovered*" mean? The interpretation of this clause is also well settled. However, the elucidation by the Supreme Court in ***Mohmed Inayatullah*** (supra) appears to us to be most succinct. It has been clarified that the rest of the information, which does not relate distinctly to the fact discovered has to be excluded. The word "*distinctly*" means "*directly*", "*indubitably*", "*strictly*" or "*unmistakably*". There could be no guarantee or assurance about the statement which may be indirectly or remotely related to the fact discovered.

124. In this legal background, we have examined the individual cases of the appellant.

125. We have found that the evidence of Ram Pukar Singh (PW-1), Md. Ejaj Hussain (PW-4), Shyam Sundar Kumar (PW-3), Navin Kumar Sah (PW-5), Bashisth Narain Singh (PW-39) and the evidence of independent witnesses clearly confirm that Imteyaz was one of the main conspirators and was part of the team which executed the bomb blasts.



126. Against Haider Ali, the evidence starting pouring in only after Imteyaz had made his disclosure at Patna Junction Railway Station. This led to the major leads in investigation. Braj Bhushan Pathak (PW-175) has deposed before the Trial Court that on 03.06.2014, Haider had made a disclosure and had pointed out many places especially the bypass road near Patna Central School where he along with his companions alighted from Aditya bus and travelled to Jama Masjid near Patna Junction. The further disclosure also stood proved that Imteyaz and Tarique went to railway station whereas Haider and others proceeded for Gandhi Maidan where blasts were made. His conspiracy has been proved by the evidence of Jalaj Srivastava (PW-181) who has deposed that while Haider was on police remand, he had pointed out the shops from where he along with Mujibullah had purchased raw-materials for making bombs (Exhibit-73/4) and evidence of Mumtaz Ahmad (PW-134), owner of Classic Electronics at Ranchi from where batteries were purchased by him. Md. Shamim (PW-135), owner of Nice Electronic at Ranchi confirmed that Haider and Mujibullah had purchased seized articles from his shop. Similar statements were made by Ashim Kumar Modi (PW-138), Rajesh Poddar (PW-147) and Ashok Kumar Fogla (PW-149) as also the evidence of Pramod Kumar Singh (PW-83), the SHO



of Hindpidhi Police Station who had made search at room No. 8 of Eram lodge and had recovered incriminating articles. Exhibit-40/14, which is the DNA profiling report of CDFD Hyderabad proved that Haider and Mujibullah were the occupants of room No. 8 of Eram Lodge.

127. The aforementioned evidence was accepted by the Trial Court in view of the fact that evidence of DNA expert is admissible in evidence as it is a perfect science.

128. Section 43E of the Unlawful Activities (Prevention) Act, 1967 reads as hereunder :-

43E. Presumption as to offence under section 15.— *In a prosecution for an offence under section 15, if it is proved—(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or (b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Court shall presume, unless the contrary is shown, that the accused has committed such offence.*

129. We also deem it necessary to extract Section 15



of the UAPA Act :-

"15. Terrorist act.-- [(1)] *Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security ⁴[, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--*

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government



of a foreign country or ⁵[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act."

130. Keeping the aforementioned provisions of UAPA in mind, we have examined Exhibits 40/9 and 40/10, viz., the CFSL reports of Kolkata which proved that Lotus quartz watches, splinters and debris of explosion at all places are similar. We have also referred to the evidence of Dr. P. Paul Ramesh (PW-68) in this context.

131. Prabhat Kumar Awasthi (PW-146) had interrogated Haider Ali after his arrest on 21.05.2014 who had disclosed that after the bomb blasts at Patna, he had kept the unused materials like control circuit, laptop, batteries, digital multi-meters etc. with Dr. Ejaj Hashmi at Edris Medical Hostel, Ranchi. On his disclosure and pointing out, a Samsung Laptop, ten pieces of 9 volt batteries, one controlled route auto circuit and a pen drive were recovered from Edris Medical Hostel. The recovery is duly corroborated by the testimonies of Vikas Kumar (PW-58) and Dr. Sayeed Ejaj Hashmi (PW-109). The inflammatory passages which were recovered from the laptop were translated by Dr. Suhel Ahmad Farooqui (PW-161) on the request of Anurag Kumar (PW-182) which clearly proves the close association of Haider with SIMI. The contents of the *Takrirs* were also proved by the report



of cert-in (Exhibit-40/17).

132. Kanchan Mitra (PW-172) has deposed that on 09.06.2014, Haider had made disclosure that he had conducted test blasts of the elbow bombs and had also tested a jacket especially made for *fidayeen* attack on Mr. Narendra Modi somewhere near the railway line crossing Sithio village. All those places were pointed out by Haider. The remnants of the test blasts were recovered. The process of recovery was photographed which finds its corroboration in the evidence of Dhananjay Gupta (PW-33), an independent witness. The recovery memo is Exhibit-73/6. All these statements are either admissible under Section 6 or 8 or Section 27 of the IEA.

133. What could be more strong evidence than these to prove that Haider was in conspiracy with Imteyaz, Numan, Mujibullah, Umer and Azharuddin regarding the blasts at Patna.

134. The conspiracy was hatched at Ranchi and Raipur.

135. Speaking about Md. Mujibullah Ansari (A4), Bashishtha Narayan Singh (PW-39) who was part of the team which was especially constituted by A.D.G. Special Branch, Ranchi, had gone to the house of Md. Mujibullah Ansari on 04.11.2013. It was there that



PW-39 learnt from the uncle of Mujibullah, viz., Altaf Hussain that Mujibullah stays at a lodge in Hindpidhi area. He (PW-39) along with his team went to Eram lodge on the pointing of Altaf Hussain. The owner and care taker of the lodge pointed towards room No. 8 where Mujibullah and Haider Ali were residing. The owner of the lodge provided the team with the photo IDs of both Mujibullah and Haider. From room No. 8, nine live elbow-bombs along with other incendiary articles were also recovered.

136. Similar statement has been made, corroborating the prosecution case by Pramod Kumar Singh (PW-83). The seizure-list of the articles from room No. 8 was identified by both PWs. 39 and 83. The other members of the team, viz., PWs. 29, 84, 98 and 153 also have supported the prosecution case.

137. Sanjay Kumar Malviya (PW-177) confirmed that Mujibullah along with Haider had made a disclosure on 26.10.2023 that they had booked the tickets in bus from Ranchi to Patna for six persons. The staff of the bus service proved that tickets were in fact booked on that day and six passengers travelled from Ranchi to Patna.

138. Md. Chand Ansari (PW-96) has proved that those tickets were booked in the name of one Sonu.

139. Bishwas Kumar Singh (PW-157), Ram Gopal



Sharma (PW-155) and Anurag Kumar (PW-182) have proved that Mujibullah pointed out all the places where he along with his associates had travelled, especially between Ranchi and Patna and the places where they met and gave effect to the conspiracy as also the admission of Mujibullah that he could make IEDs, if raw materials are given to him. Evidences are replete that Mujibullah was in contact throughout with Imteyaz Alam.

140. With respect to Md. Umer Siddiqui and Azharuddin Qureshi, the Trial Court has noted and rightly so that it stood as a proved fact that two successive serial bomb blasts took place in the State of Bihar, firstly, at Gaya and secondly at Patna Junction and Gandhi Maidan. The cases were being investigated locally but only later, NIA pitched in under the orders of the Central Government.

141. Both Md. Umer Siddiqui and Azharuddin Qureshi were taken into custody. During their period of custody they were produced before the Special Judge, NIA on 21.12.2013 and on recording, to the satisfaction of the Special Judge about the willingness of Umer and Azharuddin in making statements under Section 164 of the Cr.P.C., both were sent before Mr. Jyoti Prakash, Judicial Magistrate (PW-184) for recording their statements in R.C. No. 7 of 2013 (Special Case



No. 1 of 2013).

142. A question had arisen before the Trial Court during the course of argument, *viz.*, whether a confession recorded in one case could be legally used as evidence in another case.

143. The Trial Court has rightly relied upon the observation of the Supreme Court in ***State of Gujarat vs. Mohammed Atik and others; 1998 (4) SCC 351***, though in a case involving Section 15 of the TADA, that if the confessions are recorded in accordance with law, then they can be admissible in evidence, regardless of the fact that such confession was recorded in a different case.

144. The 164 Statements of Umer and Azharuddin have been brought on record as Exhibits-97 and 97/1. Umer admitted of being an active member of SIMI and that Haider had purchased the raw materials for making bombs and along with Tarique, Mujibullah, Numan and Imteyaz, had made 30 IEDs at the house of Imteyaz. Out of those 30 IEDs, Umer had disclosed, 18 bombs were kept apart for being used at Patna. Azharuddin had also disclosed in his statement under Section 164 of the Cr.P.C. that Umer and Haider were the heads of the local chapters of SIMI and that he had also joined the group. He was trained by Haider in making bombs with ammonium nitrate, potassium



nitrate, sodium chloride, gunpowder, elbow pipes, detonator and lotus watch as a timer. He also admitted of actively participating in the bomb blasts at Patna and later in providing shelter to some his associates at Raipur.

145. In order to test whether the requirements preceding the recording of 164 statements were fulfilled, we have referred to the deposition of Jyoti Prakash (PW-184), before whom the statements were recorded. He has deposed that he had ensured that Umer and Azharuddin were desirous of making voluntary disclosure. He also found out that they were produced before him, not from police custody but from judicial custody. The statements were recorded in the absence of any policemen in the line of vision. He had also explained to Umer and Azharuddin that any statement made by them could be used against them and, therefore, they could reconsider their decision of making disclosures without any fear. He has identified Exhibits- 97 and 97/1.

146. Rajesh Sahni (PW-179) has disclosed before the Trial court that Umer and Azharuddin had made disclosures before him that they were part of the Patna bomb blast conspiracy and that they gave shelter to Haider, Numan, Taufique and Mujibullah at Raipur.



147. Numan Ansari's name also came for the first time in the disclosure of Imteyaz at Patna Railway Junction. Umer and Azharuddin were arrested before Numan and in their confession (Exhibits- 97 and 97/1) Numan was named as an active participant. Evidence are too many with respect to Numan having come to the house of his uncle at 10 O'clock in the night on 27.10.2013 i.e. after the blasts and leaving behind a black bag. This has been proved by Faiaz Ahmad (PW-63). The bag was seized after some months. This fact has been proved by Md. Gyas (PW-64), who is none else but the husband of the sister of Numan.

148. We would again refer to the evidence of Argha Bandopadhyaya (PW-66), an expert witness, who deposed before the Court that on the forensic examination of the bag, it was found to be positive for the presence of potassium nitrate, nitrite ions and metallic aluminum. This is further proof of the fact that the leftover explosives were transported by Numan to his uncle's house. After comparing the explosives found in the bag and the ones found at Patna Junction, Eram lodge at Ranchi and Gandhi Maidan, it was found that same type of explosives were used at all places.

149. Firoz Aslam (A9), who has only been found guilty under Section 40 of the UAPA, had collected one bag from his relative/Md. Ayub containing books,



wires, atlas, map, decoration lights etc. and had kept it at the shop of Md. Ikram on 06.11.2013 (Exhibit- 71/1).

150. This was confirmed by Anurag Kumar, CIO (PW-182), who had taken over the charge of investigation from Rajesh Sahni. He has confirmed that Firoz had made a disclosure before him admitting that he had kept the incendiary items in the shop of Md. Ikram.

151. The shop was pointed by Firoz from where the bag, referred to above, was recovered. It was opened by NIA team in presence of witnesses and was found to be containing six detonators, nine old batteries and 100 gms of explosive powder etc. (Exhibit- 67/1). These facts have also been corroborated by Arpan Saha and Mukesh Kumar Sinha (PWs. 142 and 59 respectively).

152. Apart from this, we have noticed that Arpan Saha, Inspector of NIA (PW-142) has deposed before the Court that on 09.06.2014, Firoz had disclosed before him that between 2010 to 2012 Haider gave him gold ornaments for selling in the market after melting those. He had started selling gold at different shops at Ranchi. A total of around two and half kilograms of gold was given to him by Haider, the estimated cost of which would be around thirty lakhs. He had also pointed out before the NIA team the



ornament shops where he sold the gold and the prosecution also got him identified by those shop keepers.

153. Thus, evidence is complete with respect to A1 to A4 that they were part of the conspiracy and were the actual participants in the bomb blasts at Patna Railway Station and Gandhi Maidan respectively. A-5 and A-6 had conspired about the entire attack and, therefore, they were also responsible for the killings.

With respect to conviction under Sections 121 and 121A of the IPC.

154. Sections 121 and 121A occur in Chapter-VI (Offences against the State). The public peace is disturbed and the normal channels of the Government are disrupted by such offences which are aimed at subverting the authority of the government or paralyzing the constitutional machinery.

155. In ***State (N.C.T of Delhi) vs. Navjot Sandhu @ Afsan Guru*** (supra), the Supreme Court, after navigating through the English and Indian laws on the subject found that the expression 'war' in Sections 121 and 121A is preceded by the verb 'wages', which admits of many shades of meaning and defies a definition with exactitude.

156. War, terrorism and violent acts to overawe the established government have many things in common.



It is not too easy to distinguish them. However, one thing is certain that the general concept of war need not be imported in Section 121 as if there is an inter-country war involving military operations between two hostile nations. War contemplated by Section 121 is not conventional warfare between two nations. It is also not only rebellion to the government.

157. The Supreme Court in ***Navjot*** (supra) was conscious of the fact that the acceptable criteria of “*waging war*” in the old English and Indian authorities are way too general tests of attainment of an object of general public nature or a political object. The expression ‘waging war’ should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude or repercussions could be reckoned as acts of waging war against the government. A balanced and realistic approach is called for in construing the expression ‘waging war’, irrespective of how it was viewed in the long past.

158. An organized movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were in the past viewed as acts of treason in the form of levying war.



159. The Supreme Court, however, was doubtful of such construction in the modern day perspective and standards.

160. In this case, the appellants were roused and were impelled to action because of strong anti-Indian feeling.

161. Selecting a crowded place at an election rally to blast bombs is definitely with a motive to overawe the administration of the State. This created a war like situation where so many persons were injured and eight persons were killed.

162. The damage and devastation could have been unimaginable. This definitely is an evidence to suggest that the act was to impinge on the sovereign authority of the Nation and its government. The target was Mr. Modi, the Chief Minister of Gujrat at that time and BJP Prime Ministerial candidate.

163. Even if the conspired purpose and objective fell short of installing some other government or entity in place of an established government, it would not detract from the offence of waging war.

164. The Evidence on record therefore justifies the conviction of the A-1 to A-6, namely, Imteyaz Alam @ Ansari, Haider Ali, Numan Ansari, Md. Mujibullah Ansari, Md. Umer Siddiqui and Azharuddin Qureshi



under Sections 121 and 121A of IPC.

165. The common thread in the arguments on behalf of all the appellants is that the conviction is based solely on confessions. The discovery consequent upon confession of one has been used against other. The tenor of evidence, it has been argued, reflects that sporadic events/incidents have been adroitly woven into the narrative of the prosecution. The confession before the Magistrate also do not reflect that the necessary requirements ensuring fairness in trial, have been fulfilled. The search and seizure are defective. The connection of the appellants with Eram Lodge is doubtful. The DNA reports ought not to have been relied upon to prove the identity. DNA report, it has been argued, could be more useful for the purposes of investigation but not for raising any presumption of identity in a Court of Law. Non-admissible evidence have been relied upon to connect the appellants to the bomb-blasts at Patna. At the places of seizure, the scene was compromised. Irrelevant statements of protected witnesses have unnecessarily been given undue weightage. The CCTV footage of shops at Raipur are not admissible piece of evidence.

166. As noted and explained above, the afore-noted arguments are not sustainable and therefore are rejected.



167. However, a plain and co-referential reading of the evidence makes it very clear that appellants A-1 to A-6, viz., Imteyaz Alam @ Ansari, Haider Ali, Numan Ansari, Md. Mujibullah, Md. Umer Siddiqui and Azharuddin Qureshi are guilty of offences under Sections 302 of the IPC; Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and Sections 3, 4 and 5 of the Explosive Substances Act.

168. Appellant/Haider has additionally been convicted under Section 307 of the IPC. Imteyaz has also been convicted for the offence under Section 151 of the Railways Act.

Now, to the sentence

169. Since four of the appellants, who have been sentenced for death, to which we are not readily agreeable, we deem it necessary to state the reasons which have weighed with us in our conclusion that the sentences of A-1 to A-4 are not appropriate.

170. Capital punishment is prescribed in numerous penal offences including murder, kidnapping for ransom, rape, waging war against the Government etc.

171. The issue with respect to the constitutionality of death penalty was considered in ***Bachan Singh v. State of Punjab; (1980) 2 SCC 684.***

172. Drawing strength from the 35th report of the Law Commission of India (1967) and the Judgment of the Supreme Court in ***Jagmohan Singh v. State of***



Uttar Pradesh; (1973) 1 SCC 20, in which also, the 35th report was noticed, the death penalty was held to be constitutionally valid and recognized as an alternative deterrent punishment.

173. Initially, there was a requirement under law for written reasons for not imposing death penalty, which was removed in 1955. In 1973, through insertion of Section 354 (3) in the Cr.P.C, life imprisonment became the norm and the imposition of death penalty required special reasons.

174. Under Section 253 (2) Cr.P.C., sentencing requires separate consideration by the Courts from the question of conviction. Nonetheless, as noted above, the death penalty was upheld to be constitutional.

175. Later, the judgements of Supreme Court in ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498*** and ***Shankar Kissanrao Khade v. State of Maharashtra; (2013) 6 SCC 546*** paved way for 262nd Law Commission Report on death penalty (2015).

176. Finding indicators of changed circumstances and new dialectics on the issue, the 262nd report presented a shift in the approach towards the death penalty in India and even recommended for abolition of death penalty in all offences, except those relating to terrorism.

177. The basis for the Law Commission to come to



such a finding was that the Court's discretion and judicial reasoning in sentencing was not always cogent and consistent. There was an arbitrary application of ***Bachan Singh*** principles and the sentencing in fact having become judge-centric, based on personal predilections of the judges.

178. In ***Bachan Singh (supra)***, the Supreme Court was clear that death sentence should be invoked only in the rarest of the rare cases. In ***Machhi Singh vs. State of Punjab 1983 (3) SCC 470***, the Supreme Court, going further ahead, said that a balance-sheet of aggravating and mitigating circumstances should be drawn and full weightage be given to mitigating circumstances. A balance would be required to be struck between both sides. A two-pronged approach was suggested viz.

(a) is there something uncommon about the crime, which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) are the circumstances of the crime such, that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

179. In ***Santosh Kumar Satishbhushan Bariyar (supra)***, the Supreme Court had again laid down a "two step" process to decide whether a convict deserved the death sentence. If the case fell in the



category of "*rarest of the rare*" type and the option of life imprisonment was inadequate, then only imposing death sentence should be thought of.

180. The second step, referred to above, would also include the consideration whether there is or there isn't any chance of reformation of the accused, for which also, it would be the obligation of the State to provide materials.

181. In ***Shankar Kishanrao Khade (supra)*** again, the theory of R & R (rarest of the rare) test and the dichotomy between the crime and the criminal was emphasized. It was found by the Supreme Court in that instance that there was no serious consideration about the materials on the possibility of reformation of the convict.

182. In ***Rajesh Kumar vs. State (2011) 13 SCC 706***, the Supreme Court was of the view that brutality in itself is not enough to impose death sentence. In that case, the accused was convicted for murder of two children without any provocation. Still the Court was of the view that due consideration had to be given to the mitigating circumstances which would include a consideration whether he was beyond reform or rehabilitation. If that conclusion is not drawn then that itself would be a mitigating circumstance. No doubt, the Supreme Court in this case was of the view that merely recording that a person is a first time offender



and has a family to take care of, would not be a mitigating circumstance.

183. Thus, a need was felt for an individualized and principled sentencing, based on the crime and the criminal approach as also the consideration regarding achievability of reform or rehabilitation.

184. In the case of ***Swamy Shraddananda vs. State of Karnataka (2008) 13 SCC 767***, the Supreme Court was beset with the task of deciding the appropriate sentence to be imposed on the accused. There was some difference of opinion amongst members of the Bench with respect to giving the accused death sentence.

185. Looking at the relevant case laws, the Supreme Court observed that in many a cases, life imprisonment with remissions would not be adequate and therefore the possibility of substituting the death penalty by punishment of imprisonment for remainder of the life or imprisonment for a term in excess of 14 years and to put that category beyond the application of remission, termed as special of fixed term sentence, was explored.

186. This proposition was further tested in ***Union of India vs. Sriharan @ Murugan (2016) 7 SCC 1***. The Supreme Court approved the alternative third sentencing option, (fixed term sentence) in case where the accused would be convicted of serious and grave



crime in which there is an option for capital sentence.

187. However, the Supreme Court was clear in its declaration that such a third option of a fixed term sentencing, unless specifically provided in the statute, is limited to the Constitutional Courts only viz. the Supreme Court and the High Courts but not the Trial Courts.

188. It would also be necessary for us now to refer to the judgment of the Supreme Court in ***Manoj & Ors. vs. State of Madhya Pradesh (2023) 2 SCC 353***, wherein after consideration of the judgments in ***Rajendra Pralhadrao Wasnik vs. State of Maharashtra (2019) 12 SCC 460***; ***Chhanu Lal Verma vs. State of Chhattisgarh (2019) 12 SCC 438***; ***Anil @ Anthony Arikswamy Joseph vs. State of Maharashtra (2014) 4 SCC 69*** and several other decisions as also the Law Commission's Reports, it was held that it is imperative to conduct evaluation of mitigating circumstances at the Trial stage only to avoid the Court falling backwards into a retributive response to the brutality of the crime.

189. We are extracting five paragraphs from the aforementioned judgment which serves as guidelines for proper considerations while sentencing in individual cases:

"247. *The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this Court's*



jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy-making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this Court deems it necessary to frame practical guidelines for the Courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances.

Practical guidelines to collect mitigating circumstances

248. *There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.*

249. *To do this, the trial court must elicit information from the accused and the State, both. The State, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the*



Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the State - conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

251. *Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be - a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness, if any.*

252. *It is pertinent to point out that this Court, in Anil v. State of Maharashtra has in fact directed criminal courts, to call for*



additional material :

"33. ...Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."

(emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

190. The Trial Court, on the basis of the evidence, assessed that the offence had not been committed under any pressure; rather it was a well planned act. Before the actual blasts, test blasts also had been conducted. Thus, lot of planning had gone into the execution of the crime. The Trial Court also found that all the appellants were of the age group of 30-40



years and, therefore, no leniency was required to be shown to them. Since some of the appellants were also responsible for Bodh Gaya blasts, it was evident that they did not have any remorse and, therefore, they repeated such act with vengeance. This was read by the Trial Court as an evidence good enough to demonstrate that A-1 to A-4 were beyond reformation, entitling the Trial Court to award death sentence to them.

191. For appellants/Umer Siddiqui (A-5) and Azharuddin Qureshi (A-6), the fact that they had confessed before the Magistrate under Section 164 of the Cr.P.C. weighed heavily with the Trial Court to come to the conclusion that they had some remorse in their hearts for them to have made voluntary disclosures. This was indicative of their conscience having been stricken.

192. For the aforementioned reasons, A-1 to A-4, viz., Imteyaz Alam @ Ansari, Haider Ali, Numan Ansari, and Md. Mujibullah Ansari have been sentenced to death whereas A-5 and A-6 have been sentenced for imprisonment of life.

193. We do not agree with the aforementioned assessment of the Trial Court regarding A-1 to A-4 who have been awarded death sentence.

194. The materials before the Trial Court were insufficient for him to come to a definite conclusion



that they were beyond reformation. All the four appellants are persons of young age with no established trans-border contacts. Their conduct in jail has also not been brought on record. While they were in custody, nothing has come to light which would indicate that they had made it difficult for the investigators to perform with ease. There was no attempt by the appellants at provoking their kindred to take any retaliatory action.

195. For the aforementioned reasons, differing with the assessment of the Trial Court, we find that a sentence of fixed term of 30 years would suffice and would meet the ends of justice for A-1 to A-4 for all the offences in which death sentence has been imposed upon them.

196. With respect to the sentence under other heads, we do not wish to make any interference.

197. So far as the sentences of A-5 and A-6 viz. Md. Umer Siddiqui and Azharuddin Qureshi are concerned, we find that the sentences are condign.

198. Thus, all the six appeals are dismissed with modification in the death sentence of A-1 to A-4.

199. On the same set of grounds, the reference is disposed off by converting the Death Sentence of A-1 to A-4 (Imteyaz Alam @ Ansari; Haider Ali; Numan Ansari and Md. Mujibullah Ansari) to one for a fixed term of 30 years.



200. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for record and compliance.

201. The records of these appeals be also returned to the concerned Trial Court.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sunilkumar/-

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