Supreme Court of India
Mohd Naushad vs State Of (Govt. Nct, Delhi) on 6 July, 2023
Author: B.R. Gavai
Bench: B.R. Gavai, Vikram Nath, Sanjay Karol

2023INSC605

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1269 OF 2013

MOHD. NAUSHAD …

VERSUS

STATE (GOVT. OF NCT OF DELHI) …

WITH

CRIMINAL APPEAL NOS.1270-1271 OF 2013
AND
CRIMINAL APPEAL NOS.
@ SLP (CRL.) NOS.6447–6451 OF 2013

JUDGMENT

SANJAY KAROL J.

Leave granted.

2. In connection with FIR No.517 of 1996 dated 21.05.1996 registered at Police Station Lajpat Nagar/Special Cell, the prosecution presented a challan in respect of a crime committed for destabilising the country by having a series of bomb blasts. As per the charge-sheet 17 persons (A1 to A17) conspired and actually conducted one blast on 21.05.1996, at a crowded central market, Lajpat Nagar, New Delhi.

3. In connection with another FIR No.286/1996 dated 18.05.1996 another challan was presented before the Trial Court for theft in connection with a main crime, against the very same four, out of seventeen, accused persons.

4. It is a matter of record that out of seventeen accused persons one, i.e., A13 expired and seven, i.e., A11 to A17 were declared as proclaimed offenders and never faced any trial. The remaining nine accused persons facing trial were charged for having committed several offences under different penal provisions of the law of the land. The particulars of all the accused and the offence for which they were charged, if any, are furnished hereunder in a tabular form:

Sr. No.	Name	Accused No.	Charges
1.	Farooq Ahmed Khan @ Anwar Sadat	A1	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B Explosive Substances Act :- Section 4 r/w Section 5 Arms Act :-Section 25
2.	Farida Dar @ Bahanji	A2	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B Explosive Substances Act :- Section 4 r/w Section 5
3.	Mohd. Naushad	A3	IPC :- 120B, 124-A, 302, 307, 411 and 436 r/w Section 120B Explosive Substances Act :- Section 4 r/w Section 5
4.	Mirza Iftqar Hussain @ Saba	A4	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B
5.	Mirza Nissar Hussain @ Naza	A5	IPC :- 120B, 124-A, 302, 307, 411 and 436 r/w Section 120B
6.	Mohd. Ali Bhatt @ Killey	A6	Explosive Substances Act :- Section 4 r/w Section 5
7.	Latif Ahmed Waza	A7	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B

			Explosive Substances Act :- Section 4 r/w Section 5
8.	Syed Maqbool Shah	A8	IPC :- 120B, 124-A, 302, 307, 411 and 436 r/w Section 120B IPC :- 212
9.	Javed Ahmed Khan @ Javed Junior @ Chhota Javed	A9	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B
10.	Abdul Gani @ Assadullah @ Nikka	A10	
11.	Bilal Ahmed Beg	A11	
12.	Juber @ Mehrazuddin	A12	Declared Proclaimed Offender(s)
13.	Riyaz Ahmed Sheikh @ Riyaz @ Mulla	A13	Expired during trial
14.	Mohd. Ashraf Bhatta	A14	
15.	Javed Kariwar @ Javed Ahmed Goojri	A15	Declared Proclaimed Offender(s)
16.	Ibrahim Abdul Razak Menan @ Muslaq	A16	
17.	Daud Hassan Sheikh Kaskar @ Daud	A-17	

5. The Trial Court vide common judgment dated 08.04.2010 convicted/acquitted the accused facing trial in relation to each one of the offences as also awarded requisite punishment, which also is indicated in a tabular form:

Sr. No.	Name	Conviction/ Acquittal	In relation to crime under	Punishment Awarded
1.	A1 – Farooq Ahmed	Convicted	Explosive Substances Act :-Section 4 r/w Section 5	R.I. for 5 Years
			Arms Act :- Section 25	R.I. for 7 years
		Acquitted	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B	NA
2.	A2 – Farida Dar	Convicted	Explosive Substances Act :- Section 4 r/w Section 5	Imprisonment for period already undergone
		Acquitted	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B	NA
3.	A3 – Mohd Naushad	Convicted	IPC :- Section 302, 307, 436, 411 and 120B	Death Sentence
			Explosive Substances Act :- Section 4 r/w Section 5	
4.	A4 - Mirza Iftqar Hussain @ Saba	Acquitted	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B	NA
5.	A5 – Mirza Nissar Hussain @ Naza	Convicted	IPC :-Section 302, 307, 436, 411 and 120B	Death Sentence
		Acquitted	Explosive Substances Act :- Section 4 r/w Section 5	NA
6.	A6 – Mohd. Ali Bhatt @ Killey	Convicted	IPC :-Section 302, 307, 436, 411 and 120B	Death Sentence
		Acquitted	Explosive Substances Act :- Section 4 r/w Section 5	NA
7.	A7 - Latif Ahmed Waza	Acquitted	IPC :-Section 302, 307, 436, 411 and 120B	NA
		Acquitted	Explosive Substances Act :- Section 4 r/w Section 5	NA

8.	A8 - Syed Maqbool Shah	Acquitted	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B	NA
		Acquitted	IPC :- 212	NA
9.	A9 – Javed Ahmed Khan	Convicted	IPC :- 302, 307, 436 and 120B	Life Imprisonment
10.	A10 - Abdul Gani @ Assadullah @ Nikka	Acquitted	IPC :- 120B, 124-A, 302, 307 and 436 r/w Section 120B	NA

6. It is a matter of record that neither the Accused nor the State preferred any appeal against the judgment of acquittal and/or conviction and corresponding sentence in relation to A1 to A2. Equally, no appeal was preferred against the judgment of acquittal of A4, A7, A8 and A10 on all counts. As also judgment of acquittal of some of the accused in relation to some of the charged offences.

7. Only the accused A3, A5, A6 and A9 preferred separate appeals assailing the judgment of their conviction and sentence rendered by the Trial Court. The death sentence awarded against three of the accused was referred for confirmation to the jurisdictional High Court which was registered as Death Sentence Reference No.2 of 2010 and the appeals preferred by the accused were registered as Criminal Appeal Nos.948, 949, 950 and 951 of 2010 which stand decided vide common judgment dated 22.11.2012 rendered by the High Court of Delhi at New Delhi, in terms whereof, the accused were either acquitted and/or their conviction affirmed only in relation to certain offences.

8. The final picture, thus emerging, as on date, is indicated in the following tabular form:

Sr. No.	Name	Conviction/ Acquittal	In relation to crime under	Punishment Awarded
1.	A3 – Mohd Naushad	Conviction Upheld	IPC :- Section 302, 307, 436, and 120B	Life Imprisonment (Death Sentence Commuted)
			Explosive Substances Act :- Section 5	
		Acquittal against conviction	IPC :- Section 411	NA
2.	A5 – Mirza	Acquittal	IPC :-Section 302,	NA

	Nissar Hussain @ Naza		307, 436, 411 and 120B	
3.	A6 – Mohd. Ali Bhatt @ Killey	Acquittal	IPC :-Section 302, 307, 436, 411 and 120B	NA
4.	A9 – Javed Ahmed Khan	Conviction Upheld	IPC :- 302, 307, 436 and 120B	Life Imprison-ment

9. The said judgment dated 22.11.2012 is under consideration in the instant appeals. Whereas A3 and A9 seek complete acquittal, the prosecution seeks complete reversal of the judgment rendered by the High Court, both on the question of conviction and sentence as awarded by the Trial Court.
Prosecution Case

10. The prosecution case emerging from the record, also as set out by the Courts below, is as under:

10.1 On 21.05.1996, a bomb blast took place in the Central Market, Lajpat Nagar, New Delhi, at 6.30 PM. This incident resulted in 13 deaths and 38 injuries, besides extensive loss to properties, both moveable and immoveable. PW-21 was the first one to inform the police about the incident; he witnessed the incident and reported to the concerned Police Station on the basis of which the FIR was lodged. The same evening there were media reports that Jammu Kashmir Islamic Front (JKIF, in short) had claimed responsibility for the horrific event. Investigation started and the police traced the calls received by TV Channels - Zee News etc. and found them to have emanated from two different telephone numbers in the Kashmir Valley. The Jammu Kashmir Police was intimated about these facts; and the police were provided with the two telephone numbers; the first was registered in the name of A1's (Farooq Ahmed Khan's) father and the second was installed in the house of A2 (Farida Dar). Those two accused were arrested on 24.05.1996 by the J&K Police. Subsequently, PW-49 Jasbir Malik formally arrested them on 25.05.1996 on behalf of the Delhi Police and after bringing them from Srinagar, produced them before the Metropolitan Magistrate, Patiala House, Delhi on 26.05.1996 and obtained their remand.

10.2 The prosecution claimed that the Police obtained a break-

> through with the arrest of A9 - Javed on 01.06.1996 at Ahmedabad by the Gujrat Police, and his making a disclosure statement Ex.PW-99/B revealing the details of the various stages in which the explosives were brought into India and also revealing the names of the master mind behind the bomb blast, which included Bilal Ahmed Beg (A11), Juber @ Mehrazuddin (A12), Mohd. Ashraf Bhatt (A14), Javed Kariwar @ Javed Ahmed Goojri (A15), Ibrahim Abdul Razak Menan @ Muslaq @ Tiger Menon (A16) and Daud Hassan Sheikh (A17). On the basis of the information disclosed by A9 Javed, the police claimed to have verified certain facts from PW-13 Wazid Kasai and

his sister Pappi (PW-14). In the statements recorded under Section 161 Cr.P.C, these two witnesses partially lent corroboration to disclosure statement of A9 vis-a-vis handing over of explosive materials to other conspirators which were ultimately used in the bombing incident of 21.05.1996.

During the course of investigation, A-3's name cropped up as one of the key figures instrumental in the bomb blast.

Several unsuccessful attempts were made to nab him and ultimately on 14.06.1996, upon the receipt of a tipoff, the police arrested him (A3) along with Mirza Iftekar (A4) from the New Delhi Railway Station at 7:40 PM while trying to board a train Vaishali Express to Gorakhpur. On the basis of disclosure statements made by A3, several vital incriminating materials in the form of explosives (2 slabs of RDX, 1 timer, 1 iron solder, 1 wire cutter, 2 araldite tubes, 1 gas cylinder and 1 detonator) were seized. Similarly, recoveries of incriminating material were allegedly made at the behest of A4. Both these recoveries were effected on 15.06.1996.

10.3 Also, the police obtained information regarding the whereabouts of other two accused, i.e., A5 - Mirza Nissar Hussain @Naza and A6 - Mohd. Ali Bhatt @Killey. The police party apparently went along with A3 & A4 to Gorakhpur and on 16.06.1996 arrested Killey (A6) and Latif Ahmed (A7). The police, on the basis of disclosure statement made by Latif Ahmed (A7) recovered a torn half of a two rupee note, which was a key to obtain funds for Naushad (A3), through a hawala transaction from one Mangal Chand in Delhi. On the basis of further information received on 17.06.1996, the police party arrested A5 Naza from Mussoorie.

10.4 On the basis of disclosure statements recorded by A6 and A7, a police party went to Shalimar Bagh, Delhi on 17.06.1996; the place was identified by the accused A7, from where thereafter a torn half two rupee note was given to Mangal Chand, who in turn handed over Rupees one lakh in cash to A4 to be given to A3 (Naushad). The Seizure Memo in respect of the said money was prepared. The prosecution sent another party to Gorakhpur on 18.06.1996 to seize relevant extracts of the guest house records as well as the railway reservation chart dated 27.05.1996 (pertaining to Shaheed Express) to prove that Naushad had travelled from Gorakhpur to Delhi on that day. 10.5 In the meanwhile, Javed (A9) and Asadullah (A10) along with two others were detained in Ahmedabad. Both A9 and A10 were transferred to Jaipur where they were required in connection with another pending case involving trial for the offence punishable under Section 307 IPC. The prosecution case is that there was another bomb blast at Dausa, Rajasthan, in connection with which on 19.07.1996 the concerned Additional Chief Judicial Magistrate, Jaipur, namely, Bhagwan Das (PW-100) recorded a judicial confession of A9 - Javed (Ex.PW-100/A) wherein he narrated the sequence of events which he was aware of, implicating various accused as well as identifying their roles in connection with the bomb blast at Delhi. Apparently, A9 and A10 were kept in custody and eventually formally arrested by the Delhi Police on 26.07.1996.

10.6 Elaborating further, the case was registered on the basis of statement of Subhash Chand Katar, a shopkeeper of Pushpa Market as FIR No.517/96 (Ex. PW-5/A). He stated that at 6:30 PM, a loud

blast took place in a Maruti Car standing at around 10ft from his shop. Complainant was not aware of the registration number of the car. He did not know as to who had parked the said car in front of his shop. During further investigation, it transpired that this car was stolen on the intervening night of 17-18.05.96 from Nizamuddin East, for which the owner, PW8 - Atul Nath, had registered a complaint vide FIR No.286/96. The accused, by procuring different materials from different places, prepared and made an unsuccessful attempt of bomb blast on 19.05.1996 and eventually succeeded on 21.05.1996.

10.7 The investigation was taken over by the Crime Branch, Delhi. It is the prosecution's case that A1 confessed that he had taken responsibility of Lajpat Nagar bomb blast by making phone calls to the media and A2 also confessed her involvement. In pursuance of disclosure statements of A1 and A2, ammunition and explosives were recovered from their residence.

10.8 As stated earlier, on 01.06.1996, A9 - Javed Ahmed Khan and A10 - Abdul Gani Asadullah were arrested by the Gujarat Police in a different case. On 02.06.1996, Gujarat Police informed Delhi Police about arrest of A9 and A10 at Ahmedabad and their involvement in the Lajpat Nagar bomb blast. A9 in his disclosure statement to the Police revealed conspiracy which was masterminded by A11 – A17 (Declared as 'Proclaimed Offenders') to cause and carry out acts of terrorism and disruptive activities in India. During this interrogation, Delhi Police was informed about the involvement of PW13, who then informed the police about the involvement of A3.

10.9 On 15.06.1996, A3 in his disclosure statement revealed how and under what circumstances, the bomb blast was caused. In pursuance of this statement, incriminating materials in the form of explosives were recovered from his residence. 10.10 On 18.06.1996 and 19.06.1996, A3, A5 and A6 accompanied the police party and in furtherance of their disclosure statements, the discovery of following facts took place, which the prosecution has termed as "Pointing Out": A) By A3, A5 and A6 on 18.06.1996 :-

> (i) Place where fake number plates for use of the stolen Maruti Car were made; (ii) Dulhan Dupatta Shop where the car was parked on the day of the unsuccessful blast;
>
> (iii) House No. 134, Gali No. 21, Zakir Nagar where the stolen Maruti Car was parked before the blast; and (iv) Place where the duplicate key of the car was thrown, near Nizammudin.

B) By A3 and A5 on 18.06.1996 :-

> (i) Deluxe Store, where araldite tube used for making a bomb, was purchased; and (ii) Vakeel Cable Store, where 2 mtr. wire used for making a bomb, was purchased.

C) By A3 on 18.06.1996:-

(i) The shop from where drill machine for making the bomb was procured.

D) By A5 and A6 on 18.06.1996:-

(i) The Place of occurrence of the bomb blast. E) By A3 and A5 on 19.06.1996:-

> (i) Unique Agencies, the shop from where the Gas Cylinder for preparing the bomb was procured; (ii) Spot from where the Duplicate Key of the car was made; and
>
> (iii) Imperial Sound, the shop from where soldering iron and solder for making the bomb was purchased.

F) By A5 and A6 on 19.06.1996

(i) Ganesh Electronics, the shop from where 9V battery for making the bomb was purchased; (ii) Vijay Electronics, the shop from where soldering of battery for making part of the bomb was carried out; and (iii) Imperial Gramaphone, the shop from where Jayco wall clock for using its part to make the bomb was purchased. 10.11 The prosecution, on completion of investigation, after obtaining opinion of various experts including explosives experts and collecting all other materials, filed the charge sheet for trial. All appearing accused claimed not guilty. The prosecution relied on the testimonies of 107 witnesses and also several material exhibits which included seizure memo, pointing out memos (Discovery of fact), disclosure statements, confessional statements of A9 (Ex. 100/A). After the statement on behalf of accused under Section 313 of Code of Criminal Procedure ('Cr.P.C.') was recorded, A3 - Naushad chose to lead evidence in defence and relied upon the testimonies of the two witnesses : DW-1 - Shri Mukesh, a Section Officer, National Human Rights Commission (NHRC) and DW2 - Shri Arun Kumar Sharma, Public Relation Inspector. High Court and Trial Court Findings

11. As already observed, the Trial Court proceeded to convict A3, A5, A6 and A9 and acquitted A4, A7, A8 and A10. However, the High Court as the Appellate Court acquitted A5 and A6 on all charges and convicted A3 of certain offences. Both judgments running into almost 1000 pages deal with the prosecution case. The findings of the Trial Court and the High Court on each of the circumstances brought out by the prosecution as culled out by the Trial Court, are summarised as follows:

Circumstance Circumstance Trial Court Finding HC Finding No.

Arrest of A1 and 4 Not Proved Not Discussed A2 Recovery of Arms 5 Proved Not Discussed from A1 Recovery of Arms 6 Proved Not Discussed from A2 Articles recovered 7 Proved Not Discussed in the personal search of A1 and A2 Calls made by A1 8 Not Proved Not Discussed Arrest of A3 and 9 Proved Proved PW16, PW39, PW101 Testimonies of A4 have corroborated the PW16, PW39, and version of each other PW101 are in entirety. A3 and A4 substantially failed to explain the consistent. @para purpose of their visit 152 to Gorakhpur.

@para179 The role of A9 was to deliver

Recovery of money and explosives and the train tickets from the necessary link to accused was proved. that effect stood established by the fact that A9 gave explosives to PW-

13, who in turn knew A3 and the information about A3 was gathered by the Police on the statement of PW13 u/s 161 and therefore non-mentioning of A9 as regards A3 was of no consequence.

@para 153 As far as the telegram to NHRC for the arrest of A3 is concerned it had not been proved who sent the telegram.

@para153

Recovery of Explosives at the residence of A3	10	Proved Testimonies of PW31, PW41, and PW101	Proved A3's disclosure statement u/s	

corroborate each other. 161 led to the @para193 discovery of explosives hidden in his house.

		Recovery of articles including explosives is proved. @para193 PW92 admitted his signature on the recovery memo including that of RDX. @para 185-187 No one was found at the residence at the time of search/recovery. @para184	Thus the connection between A3 and A9 is established as A9 delivered the RDX to PW13 & PW14 and the same was in turn delivered to A3. @para155 The recovery memo along with the recovery of RDX and other items were held to be proved. @Para Although PW92 has not supported the prosecution case but he did not deny his signature on recovery memo. @para157	
Arrest of A6	12	Not Proved Not incriminating. @ Para 205-207	Not Proved Not incriminating. At best it is a neutral circumstance.	

				@para 207-208
Stay of A3 at Gorakhpur	13	Proved PW40 (S.I.) obtained photocopy of the Reservation chart of train showing the name of A-3 as a waitlisted passenger. @para213 PW82 (Hotel Owner) and PW83 (Hotel Manager) were examined. @para210 PW66 visited Gupta Hotel and seized the visitor's book. visitors register	Not Proved Railway reservation chart cannot be relied upon. Moreover, railway official was not examined. Original chart was not produced. @para164, 165 PW82 was only witness to the seizure of a photocopy of the Handwriting	

wherein the entry of A- analysis of the 3 as guest staying in handwriting of A-

the Hotel was 3 did not recorded. @para 211- establish that he 212 was the author of the entry made in Stay at Hotel was not the visitor's book.

				challenged by A3. @para 162
				Police came to know about this fact only through A3's disclosure statement alleged PW83(Hotel Manager) was the eye

but for which this fact witness who had would not have been seen A3 at the discovered. @para 215 Hotel but PW83 was not at any A3 has not disputed point shown the his name in the accused to be railway reservation identified by him.

				chart. @para 216
				@para165 The trial court has inferred the guilt of the accused on the basis of his silence at the time of cross-examination of the prosecution witnesses. @para 166-168

Arrest of A5 at Mussoorie	14	Not Proved Prosecution failed to establish the date, time and place for the apprehension of A5. @Para 217-223	Not Discussed
Recovery of Stepney of Maruti Car from A8	15	Not Proved Inclusive but held not proved. The prosecution failed to prove that stepney was recovered by A3, A5 and A6 from the from the residence	Not believed PW8 identified that the stepney was recovered at the instance of A3, A5 and A6

residence of A8. @Para of A8. Also denied 224-230 that the said accused persons led the police party to A8's residence along with him or that he identified the car stepney. @ Para 124-126 Recovery of 16 Not Proved Not Discussed Articles of A1 from house of A8 Recovery of Rs. 1 17 Proved – Not Lakh from A4 Incriminating against Incriminating A3 & A4 The conclusion of A-4 led the police to Trial Court is Hawala Dealer and based on only handed over a note of hearsay evidence.

		Rs. 2 which was handed over to him by PW-101. @para243	HC questioned the testimony of independent witness. @para186
		PW-35 voluntarily joined the above proceedings as a decoy customer of a Hawala dealer and participated in the transaction of two-rupee note being exchanged with Rs. 1 lakh in the above manner. @para245	A3 was not identified either by Mangal Chand or PW35. @para187
		Police witnesses, PW-101 and PW17 corroborated the narrative of PW35. @para249 - 251	Prosecution did not produce Mangal Chand. His absence is a vital omission. @para184
		An independent investigation under FERA was launched	The sequence of events is not coherent, particularly regarding the

against Mangal Chand non-discussion as as deposed by PW101. to how the @para249 discovery of Rs. 1 lakh from Mangal Chand (at the instance of A4), after showing a two rupee note (recovered from A7) when A4 & A7 were acquit-ted by the Trial court could have been held as an incriminating circumstance.

@para188 Pointing out of 18 Not Proved Not believed shop where Failed to prove beyond No independent duplicate reasonable doubt. @ witness from the number plate Para252-256 adjoining shop at was prepared the time of No documentary proof preparation of the of the alleged number identification plates. @para256 memo Owner of shop was Ex.PW31/R was never produced for examined.

		examination. No number plate allegedly recovered during investigation was shown to any witness. @para256	@para116	
Pointing out shop where Araldite Tube was purchased	19	Not Proved Evidence produced is highly scanty to prove this circumstance. @ para261 Araldite tubes recovered from the residence of A3 was not shown to PW52 to ascertain as to whether it was the same araldite which was purchased from PW 52's shop. @para260	Not believed PW 52 denied the contents of statements of Ex.PW52/A and also denied that A3 & A5 went to his shop with the Police. @para127	
Pointing out of shop where wire was purchased	20	Not Proved Prosecution failed to prove that the wire was purchased by A3 & A5 from the shop of PW 32. @para269	Not Proved Findings of trial court upheld. @para128	
		No oral or		

		documentary evidence has come on record. @para269		
Drill Machine-Pointing Out	21	Proved	Not Proved	
from where it was taken		Material discrepancies in the testimonies of PW 101 & PW 31. @para272	PW33 denied that A3 had visited the shop and brought the drilling machine. @Para132	
		Mere recovery of drill machine without any specific mark of	No difference in quality of witnesses compared to other circumstances,	

identification from the where the failure shop of PW33 is not of independent an incriminating piece witnesses to of circumstance. support the @para273 prosecution case was fatal. @Para Prosecution failed to 132 prove that the drill machine was ever used by the A3 for making any hole in the cylinder. However, A3 led the police party at the shop of PW 33 and the police was not aware of it prior to that. @para274 Pointing Out of 22 Not Proved Not Proved House where the Pointing out memo Ex. Finding of Trial vehicle was PW31/S is not an Court upheld.

parked for days before the bomb blast		incriminating piece of evidence against the accused persons. No independent witness had joined at the time of alleged recovery. There is no mention in the said memo as to who had parked the said car at that place & on which date. @para278	@para118	
Pointing out Dulhan Dupatta Shop by A3, A5 and A6	23	Proved Testimony of PW31 and PW39 corroborate the circumstance and	Not Proved beyond reasonable doubt PW61 could not	

their testimony remain be relied upon unchallenged. The since the pointing pointing out memo Ex. out memo was not PW-31/R was proved. proved and @para 280-281 therefore all consequential aspects which PW61 turned hostile flow from the yet he admitted his pointing out signature on pointing memo would out memo of the shop.

Ex. PW31/R. @para	sweep away rest of the evidentiary value of his statement. @para143
PW-61 identified A-3 and A-5 in the court. @para283	This was the case where TIP should have been done. The shop was already in the public view and being conspicuously located, there was nothing to be discovered by the Police.
	No site plan was prepared at the behest of A3, A5 & A6 for the purposes of identification of the shop. @para 142-143
	Law on identification of accused was not followed. Identification of PW61 and the circumstances of A3, A5 & A6 trying to park the stolen car a day before explosion

			and their pointing out to Police the spot at which they were in Lajpat Nagar market not proved. @para 144-156
Recovery of Front and Rear Number Plates through A3, A5 and A6	Numbered as 25 [24 skipped]	Not Proved Number plates were allegedly recovered from an open place accessible to the public. No independent witness has joined at the time of alleged recovery thus, it is not an incriminating circumstance to connect the accused with the commission of the offence. @Para 286-290	Not Proved Finding of the Trial Court upheld. @ Para 117&206
Recovery of Duplicate Key through A3, A5 and A6	26	Not Proved The key was recovered from an open space after about 1 month of the incident which creates doubt on the prosecution case. PW64 (key maker) did not support the prosecution case. @para294 - 295	Not Proved Trial Court reasoning upheld @para177-179
Pointing out place of incident through A5 and A6	26 [Repeated]	Not incriminating @Para 296-298	Not Proved The alleged pointing out is an extremely weak and tenuous circumstance and cannot be held to have been proved beyond reasonable doubt. @ Para 133-142
Pointing out shop from where 9 Volt battery	27 supported	Proved PW31 & PW39 the PW 60 could not	Not Proved

was purchased through A5 and A6		prosecution case. @para 299-308	clearly identify A5 & A6 and therefore his deposition has been dis-believed. @Para 193	
		A5 & A6 have pointed out the shop from where 9V battery used in blast was purchased. PW60(shop owner) identified A5 in court but not A6 and was declared hostile. @para 304 The place, shop and purchase of battery was confirmed. Signatures of PW60 on pointing out memo Ex. PW31/L was proved. @para307		
Circumstances of getting soldering of the battery by A5 and A6	28	Proved Incriminating against A5 and A6 @Para 309-316, 577-580	Not Proved HC reversed the finding on the ground that PW38 stated in his cross	

Testimony of PW-31 & examination that PW-39 supported the he had signed on prosecution case. blank papers and @para310 and 315 pointing out memo was prepared A5 & A6 have pointed somewhere else.

		out the shop from where 9V battery used in blast was purchased. @para312 PW38 identified both accused in court and proved the pointing out memo Ex. PW31/N. @para312	Absence of any date approximate period further injects vagueness into the evidence. @Para 174-176, 192, 197-198	

			The place and shop and affixing wires on terminals on 9V battery was confirmed. @para314	
			No explanation offered by accused as regards purpose of having the wires fixed on terminals of 9V battery. @para314	
			PW 60 have already proved the purchase of 9V battery and PW 38 corroborated the version and establishes identity of both the accused persons. @para314	
Pointing out shop from where Jayco Wall Clock was purchased A5 and A6	29	Proved PW31 & PW39 have supported the prosecution case. @para319, 320 A5 & A6 pointed out the shop from where Jayco wall clock was purchased. @Para319,320 PW 50 deposed that accused has purchased wall clock from his shop. @para321 The pointing out memo Ex.PW 31/H was proved and his signatures were identified. @para321	Not Proved When PW50 & PW48 failed to identify the accused and PW 48 identified someone else, no interference can be drawn or fact be established merely by proving the pointing out memo or signatures on the same. Failure to identify the accused is fatal blow to the case of prosecution. @Para 312-319	

		Bill book contained his signature. PW50 described their appearance but could not identify as it was a matter of many years. @Para321 PW50 expressed his in ability to admit or deny if A5 or A6 were the boys who had led the team to his shop. @ Para 322 Existence of shop was not disputed. Shop was discovered on the basis of disclosure statement. @Para 324, Testimony of PW48 established that wall clock was purchased from the shop and A5&A6 led the police team to the shop from where they have purchased the wall clock. @Para 329		
Pointing out shop of Unique Agencies by A3 & A5	30	Proved Testimony of PW31, PW36 and PW39 remain unchallenged. The pointing out memo Ex. PW-31/M proved. @para 331-333 A3 & A5 led the police party to the shop of PW54 and offered no explanation for visiting the shop for purchasing gas	Not Proved HC reversed the finding on the ground that PW54 did not identify the accused. He also denied that A3 had gone to his shop. The gas cylinder recovered from A3’s residence was not shown to PW54. No TIP was conducted. @para	

		PW54 deposed that A3 and A5 had purchased the cylinder form him. However, he could identify the accused in the Court and was declared hostile.		
		@para334 PW54 admitted that his statement was recorded by Police and admitted his signatures on pointing out memo. @para336 Testimony of PW54 remains unrebutted. @para 337		
Pointing out of shop by A3 & A5 from where duplicate key was got prepared	31	Proved PW31 & PW39 remains unchallenged. The pointing out memo Ex. PW-31/J proved. @para339-340 Testimony of PW64 who admitted having prepared the duplicate key. @ para 341	Not believed Trial Court had earlier rejected the recovery of the key and with respect to PW64's statement, it had said that the key was not shown to him. Therefore, holding	

PW64 declared hostile in one part of the and he admitted his judgment that the signatures on the prosecution had pointing out memo. @ not proved its para 342 allegation, and concluding to the Both A3 & A5 led the contrary while Police team to the summing-up the shop of PW64. Only in incriminating pursuance of their evidence against disclosure statements, the accused, is the fact of presence of not supportable.

		PW64 at a footpath was discovered. @ Para 178-180,		
Pointing out shop where solder was purchased by A3 & A5	32	Proved Testimony of PW31 and PW39 remained unchallenged. @para 344-345 The pointing out memo Ex. PW-31/K	Not Proved HC reversed the findings on the ground that PW58 could not identify the accused and further that he could not identify any special	

		was proved. @para 344-345	feature/make of the soldering iron recovered from

PW-58 turned hostile. residence of A3.

PW58 identifies A3 but @para 176 could not identify A5.

		@para346, 347 Accused could not explain how and for what purpose they happened to purchase soldering iron and solder from the shop. @para350 It was A-3 or A-5 who led the police party to this shop. The existence of the shop has not been controverted. @para351	
House Search of A9, A14 and A15	33	Not Proved & Not incriminating	Not Discussed
Confessional Statement of A9 before PW100, CJM Jaipur	34	Proved A9 carried RDX and delivered at PW13's residence 14.05.1996. @para360 A9 stayed at Satyam Hotel. He named A5, A6, A11 and A15 in A9 never retracted @para360 He further stated that A5 travelled to Delhi from Kathmandu for making arrangements for bomb blast. @para360 He also informed about the failed attempt on	Proved A9 was given time to think and onthereafter his statement was recorded on 19.07.1996. confession. A9 provided a detail account of the role played by other accused persons. A9's confession also corroborated by his stay at Satyam Hotel. @Para 226

19.05.1996.Thereafter, Although PW 13 & the glitch was rectified PW14 turned and blast executed on hostile, 21.05.1996. @para360 nonetheless the place where PW 13 lived is a PW 100 (ACJM Jaipur) established fact made sure that A9 is since this fact was giving statement not known to the voluntarily. @para359 Police before the confession. @ Notwithstanding that Para 223 PW13 & PW14 turned hostile, they being found at the address disclosed by A9 and thereafter their 161 statements having led to A3 completes the chain to link A-9 and A-3. @Para 364 Stay of A-9 at 35 Proved Proved Satyam Hotel, PW 46 deposed that PW 46 identified New Delhi A9 stayed at the Hotel. A9 and that he @ Para 369 had stayed at the hotel on 14.05.

1996. @ Para223

A5’s Travel from Kathmandu to Delhi	36	Proved PW 101 proved recording of disclosure statement of A-5(Ex. PW 23/B) in which A-5 informed about his travel to Kathmandu for procuring articles for bomb blast and had met A-3. @Para 249 Also relied on testimony of PW 67 (employee of Royal Nepal Airline) to prove this fact. @Para 380 A-5 failed to explain the purpose of his visit to Delhi, duration of stay and place of staying. @para381	Proved HC confirmed the finding. @Para 204 Proved by testimony of PW 67 and passenger list dt. 10.05.1996. @Para202 Name of A5 mentioned in statement of A9 u/s 164 which gives details of A5’s travel from Kathmandu to Delhi on 10.05.1996. @para 203
CFSL Reports	37	Proved CFSL confirmed that the explosives recovered from A-3’s house and that used in car bomb blast was RDX. @para400	Not Discussed
Handwriting Report	38	Not Proved No permission was taken from concerned Magistrate to seek specimen handwriting of A1 & A3. No handwriting & signatures were obtained by I.O.	Not Discussed

		@para406	
Use of Car in Blast	39	Proved PW8 deposed that car belonged to him and it was stolen in the intervening night of 17/18.05.1996 & stepney was also identified by him. @Para 407-414	Not Proved HC set aside conviction u/s 411 IPC @para272
Arrest of A9	40	Proved Sufficient evidence of arrest on 01.06.1996 found. @Para 416 Unexplained stay of A-9 and his associates at Ahmedabad from 24.05.1996 to 01.06.1996. @Para 416	Proved Testimonies of PW 98 and PW 99 confirming the arrest of A-9 and A10 on 01.06.1996. @para 216 A-9 disclosure statement on same day of arrest. (Ex. PW99/B) @ para Allegations of illegal confinement has no force. @ para
Arrest of A10	41	Nothing incriminating against A10 @para433	Not Discussed
Sanction	42	Proved	Not Discussed
Recoveries at the Instance of A5, A6 & A7 at Srinagar	43	Not Proved	Not Discussed
Telephone Calls from A5 to A7	44	Not Proved Failed to prove beyond reasonable doubt. @para456-457	Not Discussed

12. On the basis of the above circumstances, the conclusion qua each of the accused with which we are concerned, can be summarised as under :

Trial Court Accused No.3, Mohd. Naushad: [Para 643] On analysis of circumstance numbers 9, 10, 23, 26, 30, 31, 32 and 46 and in the absence of any evidence to the contrary, the prosecution has proved beyond reasonable doubt that A3, along with his associates, not only hatched a criminal conspiracy to cause bomb blast at Lajpat Nagar but also actively participated in procurement of materials to execute the plan. In his statement under Section 313 Cr.P.C, he failed to justify the incriminating circumstances appearing against him. He failed to show, much less prove, that he was lifted from his house on the intervening night of 28/29.05.96 and falsely implicated in this case on 14.06.96. Thus, prosecution established commission of offence under Section 302, 307, 436, 411 and 120B of the IPC and Section 5 of Explosives Act.

Accused No. 5, Mirza Nissar Hussain @ Naza: [Para 652] Confessional statement of A9, lead to the discovery of fact of this accused travelling to Delhi from Kathmandu; and his further disclosure statement lead to a discovery of fact pointing out the shop for purchase of wall clock; pointing out of 'Dulhan Dupatta' shop, where the vehicle was parked on the day of unsuccessful attempt; pointing out the shop from where battery was purchased; identification of shop from where solder was purchased; and identification of shop from where wire got soldered, proved the active role played by A5 in the incident. Significantly, he did not adduce any evidence to falsify the incriminating circumstances against him and failed to explain as to how A9, his associate, revealed his role in the incident. Thus, prosecution fully established commission of offence under Section 302, 307, 436, 411 and 120B of the IPC. Accused No. 6, Mohd. Ali Bhatt @ Killey: [Para 583] The role of A6 is akin to most of the circumstances to that of A5. Circumstances proved on record by the prosecution establish his involvement in the criminal conspiracy and his active participation in the commission of the incident. He travelled from Nepal to Delhi for the execution of the plan. His name finds mention in the confessional statement of A9. He also procured articles for preparation of the explosives along with A3 and A5. He made elaborate arrangements to procure the articles and took various steps for execution of the plan. He could not explain the incriminating circumstances appearing against him in his statement recorded under Section 313 Cr.P.C. Thus, prosecution fully established commission of offence under Section 302, 307, 436, 411 and 120B of the IPC. Accused No. 9, Javed Ahmed Khan: [Para 660] A9 failed to prove that confessional statement Ex.PW100/A was not made by him or that it was retracted at any stage. He also failed to explain his presence in Delhi where he stayed at Satyam Hotel. He was a party to the conspiracy. Thus, prosecution fully established against him the commission of offence under Section 302, 307, 436 and 120B of the IPC.

High Court

13. Vide judgment and order dated 22.11.2012, the High Court upheld convictions of A3 & A9. However, conviction of A3 under Section 411 Indian Penal Code ('IPC) was set aside. The conviction of A5 and A6 was set aside on all counts. Accused No. 3: Out of the ten circumstances alleged against A3, his arrest from New Delhi Railway Station and recovery of explosives from his residence stands proved. [Para 253] These circumstances, in the opinion of the Court, are sufficient to uphold the conviction under Section 5 of the Explosive Substances Act.

Though, there is no direct evidence forthcoming about A3's role in the blast, yet the circumstances proven are sufficient to establish that he was a conspirator, who intended to aid the charged

offence(s). The recovery of lethal explosives from his residence, similar to the kind which resulted in the explosion at Lajpat Nagar, was not explained by him. [Para 266] Accused No. 5: The only circumstance held to have been proved was his travel from Kathmandu to Delhi, is in no manner advancing the case of the prosecution. None of the other circumstances stand proven.

Accused No.6: None of the circumstances alleged against A6 have been held to be proved against him. [Para 253] Accused No. 9: Confessional Statement of A9, his stay at Satyam Hotel and his arrest, are found to be proved, hence his conviction is sustainable.

Issue of Sentence: [Para 272] Accused No. 3: The case would not fall in the category of rarest of rare cases and the award of extreme penalty of sentence to death cannot be confirmed. A3 is thus sentenced to undergo imprisonment for life for the offence punishable under Section 120B read with Section 302 IPC. Sentences under other offences (except under Section 411 for which he has been acquitted) are upheld. Accused No.9: The conviction and sentences as against A9 are sustained.

Submissions of Counsels Submissions on behalf of A3 - Mohd. Naushad

14. Mr. Siddharth Dave, Senior Advocate appearing on behalf of A3, placed the following submissions before this Court: 14.1 Starting point of the Prosecution case:

> The prosecution's version of Police obtaining a breakthrough with the arrest of A9, on 01.06.1996, at Ahmedabad, in another case being FIR No.12/1996 is incorrect. From the deposition of PW101, Inspector Paras Nath, it is evident that the starting point of the investigation was the arrest of A1 and A2 on 24.05.1996 by the Jammu and Kashmir Police as A1 in his disclosure statement had taken responsibility of the Lajpat Nagar bomb blast.

14.2 A conviction based on circumstantial evidence, required each and every link of the chain to be clearly established by reliable and clinching evidence: The link between A9 and the alleged crime is the alleged statement of PW13, of being handed over RDX. Even though PW13 ought to have been arrayed as an accused, being an accomplice, yet he and his sister PW14 did not support the prosecution during trial.

Therefore, the prosecution has failed to establish the basic and primary facts as to show how A3 was one of the conspirators of the crime.

14.3 Confession of A9 cannot be used against himself :

> The confession of A9, Ex.PW100/A recorded before Additional Chief Judicial Magistrate, Jaipur (PW100), in another criminal case registered and tried in Jaipur has no connection with the blast at Lajpat Nagar, New Delhi, and cannot be relied upon as an incriminating circumstance in view of the Constitution Bench judgment in Hari Charan Kurmi & Jogia Hjam v. State of Bihar 1964 (6) SCR 623.

> Furthermore, A9 neither names A3 nor attributes any role towards him in the commission of the offence. Hence, the confession of a co-accused can only be used in support of other evidence and cannot be made the foundation of a conviction.

14.4 All the links of the chain were not established by the Prosecution thus further snapping the chain of circumstantial evidence:

It is submitted that against A3, 20 circumstances were laid by the prosecution before the Trial Court, out of which only 10 were proved. Further, in appeal the High Court held only 2 circumstances to be proved: (1) Arrest of A3 on 14.06.1996 from New Delhi Railway Station; and (2) Recovery of Explosives from his residence. Thus, not only has the chain of circumstances snapped but there is no basis for maintaining conviction, as arrest cannot be used as an incriminating circumstance and mere recovery without any evidence linking the same to the crime, cannot be a circumstance to convict an accused.

Reliance is placed on Ram Singh v. Sonia & Ors, (2007) 3 SCC 1; Dharam Das Wadhwani v. State of Uttar Pradesh, (1974) 3 SCR 607 and Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. 14.5 Prosecution has failed to prove the arrest of A3:

It is submitted that the first circumstance in the chain qua A3 is his arrest along with Accused No.4 on 14.06.1996 from Platform No.4, New Delhi Railway Station. This circumstance is not proved, as the secret informer who passed an information of this travel to PW101 - Paras Nath, was not examined by the prosecution and PW16 has not supported the prosecution on this issue.

It is further submitted that, in fact, A3 was arrested on the intervening night of 28 th/29th May at 3:30AM from his residence. His neighbours PW12 - Ikram and PW92 – Abdul Samad prove such fact. Also DW1- Mukesh, Section Officer, NHRC, and DW2 - Arun Kumar have established that on 03.06.1996 father of A3 had lodged a complaint with various authorities including the NHRC pertaining to the illegal detention of his son, which fact stands ignored by the courts below. There is no independent witness to corroborate the alleged arrest of A3, despite the place being a crowded railway platform where independent witnesses were readily available.

A4 - Mirza Iftqar Hussain alias Saba, who was allegedly arrested along with A3 on 14.06.1996 and at whose behest certain recoveries were made, stands acquitted by the Trial Court. Since such an acquittal remains unchallenged and the role of both of them being at par, A3 also ought to be acquitted.

14.6 Recovery of explosives from the residence of A3 cannot be the sole basis of conviction:

It is submitted that PW92, who is the sole independent witness to the recovery of the explosives on 15.06.1996 from the residence of A3, has not supported the prosecution case. Furthermore, as per the prosecution case, if A9 had made a disclosure statement on 02.06.1996, which was followed by the subsequent statement of PW13, the Police has not explained the unexplained delay in conducting a raid for seizing any incriminating article.

Reliance is placed on the judgment of this Court in Abdulwahab Abdulmajid Balochi v. State of Gujarat, (2009) 11 SC 625 to state that the recovery of explosives from A3's residence by itself cannot be the sole premises on which a judgment of conviction under Section 302 IPC could be recorded.

14.7 Circumstance of pointing out (Discovery of fact) is inadmissible under Section 27 of the Indian Evidence Act:

It has been submitted that before the arrest of A3 on 14.06.1996, the investigating agency was already aware of the place where the bomb was planted and where the blast had taken place. In such a situation, the pointing out (Discovery of fact) of several shops by A3 from where he had allegedly purchased a drill machine, gas cylinders, soldering iron, araldite tubes, wires and duplicate car keys is not a special knowledge acquired by the Police by the factum of pointing out.

Furthermore, the information furnished by A3 does not fall within the meaning of Section 27, since it does not constitute information through which discovery was made, especially when independent witnesses to the pointing out memo(s) (PW33 - Mohd. Aslam, PW61 - Sumit Kumar, PW54

- Mehmood Kamal, PW64 - Mohd. Rizwan and PW58 - Jitendra Pal Singh) have not supported the prosecution case. Hence, such an evidence cannot be relied upon for conviction [Himachal Pradesh Administration v. Shri Om Prakash, (1972) 1 SCC 249].

14.8 Disclosure statement of A3 is inadmissible under Section 27 of the Indian Evidence Act:

It has been submitted that the information with respect to the facts discovered were already within the knowledge of the Police, thus, it cannot be held that the information supplied by A3 is the direct and immediate cause of the discovery. Reference is made to the judgment of this Court in Pulukuri Kotayya & Others v. King-Emperor (1946) SCC Online PC 47.

In any event, alleged disclosure statement (Exh.PW31/B) is an extract of A3's statement recorded by the Police under Section 161 Cr.P.C. and not an evidence of the prosecution. Reference is made to judgment of this Court in Venkatesh Alias Chandra & Anr. v. State of Karnataka, 2022 SCC Online SC 765.

14.9 There is no direct evidence forthcoming about A3's role in the alleged bomb blast incident:

The case of prosecution is that the Maruti Car belonging to PW8 - Atul Nath was stolen and used in the bomb blast at Lajpat Nagar. However, this circumstance, particularly pointing out the place near House No. 134, Gali No. 21, Zakir Nagar, Delhi, where the said car was allegedly parked by A3, A5 and A6, has been disbelieved by the Trial Court. PW8 has also not supported the case of the prosecution. Pertinently, the High Court has set aside the conviction of A3 under Section 411 IPC and thereby disbelieved the prosecution case of A3 being in receipt of the stolen property. Therefore, there is no evidence to link A3 to the alleged offence.

14.10 Caution while dealing with a case based on circumstantial evidence:

Learned Senior Counsel seeks reliance on the following extracted portion of the judgment in Hanumant v. State of M.P., (1952) SCR 1091 (2-Judge Bench) :

> "In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said:-
>
> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole;
>
> and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete. ....." and in Hari Charan Kurmi v. State of Bihar, (1964) 6 SCR 623 :
>
> "As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals." 14.11 The present case does not fall in the category of the rarest of rare cases to warrant the death penalty:
>
> The Appellant has undergone 27 years of imprisonment out of the sentence awarded to him. The occurrence of the incident took place on 21.05.1996, that is about 27 years ago. Therefore, in view of the reasons abovementioned, death sentence cannot be imposed particularly in view that the High Court while commuting the death sentence awarded to A3 by the Trial Court has duly held that the present case would not fall in the category of rarest of rare cases.

Submissions on behalf of A9 - Javed Ahmed Khan

15. Ms. Kamini Jaiswal, Advocate, appearing on behalf of A9 has placed the following submissions before this Court: 15.1 It is submitted that the case of the prosecution is that on 02.06.1996, ATS Ahmedabad, Gujarat, informed Delhi Police about their apprehension of A9 and the possibility of his involvement in the Lajpat Nagar blast case. Thereafter, Inspector Ram Chander (PW91) along with his staff reached Ahmedabad on 03.06.1996. Contrary to this, PW91 in his statements states that they reached Ahmedabad on 04.06.1996.

15.2 On 15.06.1996, Rajasthan Police arrested A9 in connection with FIR No.148/1996 registered under Sections 302, 307, 427, 120B of IPC; Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 4, 5 of Explosive Substances Act, 1908. This FIR was in connection with an incident of blast, which took place in Rajasthan Roadways Bus while it was on the way from Mahwa towards Dausa, wherein 14 people died and 37 were injured. It is in this case that the alleged confessional statement, which the prosecution herein seeks to rely upon, was recorded. A9 could not have been convicted in the instant trial as he stood acquitted on all counts in the case in which such a statement was made.

15.3 Further, there has been no confession of A9 in the Lajpat Nagar bomb blast case.

Submissions on behalf of A5 and A6

16. Ms. Kamini Jaiswal, Advocate, also appearing on behalf of A5 and A6 submits that the High Court rightly acquitted both the accused of all the charges, for none of the circumstances alleged by the prosecution are proven against them beyond reasonable doubt by leading cogent evidence, ocular or documentary.

16.1 Reliance is placed on the judgment of this Court in Mousam Singha Roy v. State of West Bengal, (2003) 12 SCC 377 (2-Judge Bench) wherein it was observed that it is a settled principle of criminal jurisprudence that more serious the offence, stricter the degree of proof, since a higher degree of assurance is required to convict the accused.

16.2 Further reliance is placed on the judgment of this Court in Subramanya v. State of Karnataka, 2022 SCC Online SC 1400 (2-Judge Bench) on the point that in case of acquittal there is double presumption in favour of the accused and that the judgment of acquittal can only be set aside if it is perverse in the eyes on the appellate court.

Submission on behalf of the State (NCT of Delhi)

17. On the other hand, relying upon the testimonies of the prosecution witnesses, pointing out to the serious infirmities and contradictions emanating from the opinion rendered by the courts below, Mr. Sanjay Jain, learned Additional Solicitor General, vehemently argues that it is a fit case for intervention by this Court, since substantial errors of law and substantial errors in appreciation of evidence are discernible from the record which has resulted into grave miscarriage of justice. The acquittal of A5 and A6, more so in the light of conviction of A9, ex facie is erroneous and contradictory if not perverse. In a case of this nature, when an endeavour was made to destabilise

the country, the Court ought to have exercised its power with due care and caution and considered the material in its entirety, rather than deciding the issues in a perfunctory manner. Simply that some of the independent prosecution witnesses have not supported the prosecution, be it for whatever reason, cannot be a ground for rejecting the otherwise inspiring testimonies of the police officers who had no personal interest in falsely implicating the accused in the crime in question. Painstakingly, he took us through voluminous record and handed over different notes termed as "Handouts" (meticulously prepared by his team of young advocates) pointing out how the prosecution was able to establish the guilt of each one of the appellants beyond reasonable doubt. The chain of events, to prove the guilt of the accused through prosecution witnesses, as submitted by the learned Additional Solicitor General, is referred in such Handouts. Prosecution Witnesses

18. For establishing its case, the prosecution examined 107 witnesses, which are categorised for ease as follows:

1) Testimonies of witnesses who have deposed about the occurrence of the blast on 21.6.1996:

PW1 Om Prakash Tawar; PW2 Rajender Kumar; PW3 Sushil Kr. Madan; PW20 Saran Prabhakhar and PW73 Vishiv Kumar.

2) Testimonies of witnesses who have deposed on homicidal deaths and injuries suffered due to the blast : PW10 Rakesh Kumar; PW15 Gajencer; PW29 Bhim Sen Sethi; PW30 Naresh Kumar; PW37 Dr. Bajrang Lal Bansal; PW47 Dr. Sanjeev Lalwani; PW51 Dr. Sunil Kumar Sharma; PW53 Dr. Sudhir Gupta; PW55 R. S. Kheda; PW56 Dr. Naresh Sood; PW57 Dr. R. Ali; PW62 Yashpal Sethi; PW65 Anil Sood; PW69 Medical Technician Shankar Prasad; PW70 Dr. Alexander Khakha; PW71 Dr. Chanderekan; PW72 Dinesh Kumar; PW75 Jai Prakash (Record Clerk); PW81 Ashwani Kumar and PW89 Ram Charan.

3) Testimonies of witnesses who have deposed on the loss of property as a result of the blast :

PW4 N.P. Chauhan; PW7 Upesh Aggarwal; PW21 Subhash Chand; PW72 Dinesh Kumar and PW84 Sandeep Arora.

4) Testimonies of witnesses who allegedly received phone calls from persons claiming responsibility for the blast : PW68 Zee News Editor, PW74 Amitabh Rai Chaudary and PW90 Suparna Singh from NDTV.

5) Testimonies of police officers proving several facts : PW5 HC Hari Ram (Recorded FIR); PW9 Inspector Rajender Prasad; PW16 Inspector Rajender Gautam; PW17 Sub Inspector Sanjay Kumar; PW18 Inspector Pawan Kumar; PW19 Inspector Prem Bhallah Dhayani; PW23 Inspector Puran Singh, PW24 Sub-Inspector Hari Singh; PW25 S.I. Vijay Singh; PW26 Inspector Kulbir Singh; PW28 S.I. Rajbeer Singh; PW31 Inspector Surinder; PW34 S.I. Harender Singh; PW36 Inspector Rajeshwar Kumar; PW 39 Inspector Hari Ram Malik; PW40 Sub-Inspector Baljeet Singh; PW41 Inspector Suresh Chander; PW42 SI Banwari Lal; PW43 Inspector Virender Singh; PW49 Inspector Jasvir Malik; PW63 Ct. Anil Kumar; PW66 Ct. Surinder; PW78 Farooq Khan; PW91 Inspector Ram

Chander; PW95 DSP Shiv Kumar; PW98 DSP B.R. Patil; PW99 Inspector B.M. Rajvanshi; PW101 Inspector Paras Nath and PW105 ACP P.P. Singh.

6) Testimonies of CFSL/Balistic Examiners : PW44 N.B. Verdhan; PW86 Rup Singh and PW93 HC Umrav Singh.

7) Testimonies of hotel owners where accused persons had allegedly stayed :

PW46 Rajan Arora; PW82 Daya Shanker Lal Gupta and PW83 Vijay Kumar Gupta.

8) Testimonies of witnesses proving the recording of disclosure of statements of accused A9 :

PW31 Inspector Surinder Kumar; PW100 Bhagwan Das Addl. CJM Jaipur and PW101 Inspector Paras Nath.

9) Testimonies of witnesses relating to pointing out (Discovery of fact) on 17.06.1996 :

PW8 Atul Nath; PW17 SI Sanjay Kumar; PW31 Inspector Surinder Kumar; PW35 Raj Kumar and PW101 Inspector Paras Nath.

10) Testimonies of witnesses relating to pointing out (Discovery of fact) on 18.06.1996 :

PW11 Nafiz, PW31 Inspector Surinder Kumar; PW32 Mohd. Naseem; PW33 Mohd. Aslam; PW39 Inspector Hari Ram Malik; PW52 Mohd. Alam; PW61 Sumit Kumar and PW101 Inspector Paras Nath.

11) Testimonies of witnesses relating to pointing out (Discovery of fact) on 19.06.1996 :

PW31 Inspector Surinder Kumar; PW36 Inspector Rajeshwar Kumar; PW39 Inspector Hari Ram Malik; PW48 Parmod Kumar; PW50 Yogesh Kumar Gupta; PW52 Mohd. Alam; PW54 Mahmood Karnul; PW58 Jitendra Pal Singh; PW60 Rajesh Kumar and PW64 Mohd. Rizwan.

12) Testimonies of witnesses relating to pertinent circumstances surrounding the accused persons : PW 11 Nafiz (Neighbour of A3); PW 12 Ikram (Neighbour of A3); PW13 Wajid; PW14 Pappi; PW76 Bishan Kumar (Cleaner of PW8) and PW92 Abdul Samad.

Undisputed Facts

19. There are certain undisputed facts in the case at hand.

20. On 21.05.1996, at 6:30 PM, there was a bomb blast at Central Market, Lajpat Nagar, New Delhi. PW1, PW2, PW3, PW20 and PW73 are shopkeepers in Lajpat Nagar, who all have deposed of hearing a loud blast at around 6:30 PM; rushing to the spot of the blast, observing shops on fire; and people having sustained injuries.

21. This blast resulted in the death of 13 persons and 38 persons suffered injuries. PW30, PW62, PW65, PW72, and PW81 identified dead bodies of their family members who lost their lives in the said bomb blast at Lajpat Nagar. PW37, PW47, PW51, PW53, PW56, PW57, PW70 and PW71 are doctors who conducted/verified the post-mortem reports of the deceased persons. PW10, PW15 and PW29 deposed that they were working in Lajpat Nagar at the time of the incident and suffered injuries. PW69, PW75 and PW89 are persons who were employed in AIIMS Hospital and assisted the above doctors.

22. This incident on 21.05.1996 also resulted in loss of property to the public. PW4, PW7, PW21, PW72 and PW84 verified the widespread burning of shops and vehicles in Lajpat Nagar, due to the blast.

23. Another proven fact is the confessional statement of A9

-Javed Ahmed Khan in another case i.e. FIR No.39/1996 P.S. Gandhi Nagar, for the commission of offence under Sections 307, 427, 120B IPC; Section 3 of Explosive Substances Act and Section 3 of Prevention of Damage to Public Property Act. This confessional statement was recorded under Section 164 Cr.P.C. by an Additional Chief Judicial Magistrate, Jaipur, namely Bhagwan Das (PW100) and has been verified in his deposition before the Trial Court.

Brief Narration of Important Witnesses

24. We may now proceed to examine the testimonies of the remaining 33 prosecution witnesses (30 out of 107 have been discussed above), relevant to discuss the circumstances surrounding the present four appellants. 24.1 PW8 – Atul Nath deposed that he is the registered owner of Maruti Car No.DL-2CF-5854. PW76 - Bishan, who used to clean the same, informed the car was missing, as such he filed a written Ex.PW8/A with the police. Even though he states that nothing was recovered in his presence from any person but when cross-examined, he categorically admits recovery of the stepney (tyre) of his car vide memo Ex.PW8/4 bearing his signature.

24.2 PW11 - Nafiz in his deposition admits to have known A3, as he was running a shop adjacent to his shop and denies having any knowledge about the case or having made any statement to the police and also having seen A3 on 14.05.1996 getting a hole drilled in a gas cylinder. Hence, he deposed the police having brought A3 near his shop. 24.3 PW13 Mohd. Wajid, is the person in whose house A9 had delivered the bag full of RDX. In Court, the witness denies having known anyone of the accused, be it A3, A5, A6 or A9. He denies having known A4 and A5 for the last 5-6 years or having met anyone of the accused persons in connection with the sale of shawls. He denies having any relationship, be that of landlord-tenant or social/ matrimonial, with them. He denies anyone of the accused having stayed in his house in connection with the crime. Unrefutedly, he was confronted with his prior statement made to the police, stating the aforesaid facts, which was marked as Mark A in deposition. Also significantly, his denial stands belied by the deposition of PW101, who admits to have recorded the statement as made by this witness and as put to him in his examination-in-chief, marked as Ex.Mark A2. Here only we may record the witness not to have deposed the truth for the circumstances of the witness staying at Turkman Gate was accepted by the

courts below.

24.4 The deposition of PW14 - Pappi is to similar effect and lines as that of PW13.

24.5 PW16 - Inspector Rajender Gautam in his deposition states that on 14.06.1996, he joined the investigation with Inspector Paras Nath, Inspector Suresh Chander and SI Surender Verma. At around 6:30 PM, Inspector Paras Nath received secret information that A3, involved in the commission of this case, along with a Kashmiri youth, would be going to Gorakhpur via Vaishali Express. The police party reached New Delhi Railway Station where they were joined by ACP P.P. Singh. At 7:30 PM, after pointing out by an informer at Platform No. 4, A3 and A4 were arrested. Hence, in Court the witness was able to correctly identify both of them.

Further, during interrogation A4 and A3 made disclosure statements admitting their guilt marked as Ex.PW16/C and Ex.PW16/D respectively, which bear his signature. A3 and A4 also disclosed the names of their associates including A5 - Naza, A9 - Javed and Riaz Mulla. Even though, the witness was declared hostile but in his cross-examination part, he admits that on 16.06.1996, A6 and A7 were arrested, and searched vide search memos vide Ex.PW16/D and Ex.PW16/E which bear his signatures. He further states that a Rs.2 note was recovered from A7, to be used for collecting Rs.1 Lakh from one Mangal Chand from Shalimar Bagh. A6 and A7 made disclosure statements bearing his signatures vide Ex. PW16/H and Ex.PW16/I. Accused A5 pointed out the shop bearing No.3/32 Bhogal vide memo Ex.PW16/K to the effect that after the unsuccessful bomb blast the said accused had telephonically informed A7 at Kathmandu about the unsuccessful bomb blast. Also A6 pointed out shop No. C- 1/59, Lajpat Nagar vide Ex.PW16/B which bears his signature.

In his cross examination by the accused, he has deposed of the circumstances pertaining to the arrest of A3. Categorically he states that Inspector Paras Nath had requested about 7/8 persons to join the investigation, but none volunteered. He denies the factum of A3 being picked up from his house by the police on the intervening night of 28/29.05.1996.

24.6 PW17 - Sub Inspector Sanjay Kumar in his deposition states that on 17.06.1996 he joined investigation of this case along with Inspector Paras Nath by then A3, A5 and A6 were already in the police custody. The said accused accompanied the police party and pointed out (Discovery of fact) the house belonging to A8 at Jangpura from where stepney (tyre) of the car was recovered vide Ex.PW8/B bearing his signature. This stepney (tyre) was identified by PW8 and the Investigating Officer ('IO') prepared an identification memo Ex.PW8/C, which also bears his signature. Also a bag containing some documents and clothes was recovered vide memo Ex.PW17/A.

After the investigation was finished at Jangpura, Bhogal, they proceeded to Shalimar Bagh, where Raj Kumar (independent witness) was added to the raiding party. The police party along with A4 proceeded to the place of Mangal Chand where with the handing over currency note of Rs.2, Rs.1 lakh wrapped in a polythene was given, which he referred to as the hawala money. The currency notes were seized vide memo Ex.PW17/C, which bears his signature.

Further on 27.06.1996 he, along with Inspector Jagmal Singh, recovered explosives weighing 500gms, two detonators and some other articles from the house of A6 vide Ex.PW/17F, which bears his signature. Also recovered two IEDs from the house of A7 vide Ex.PW17G, bearing his signature. From the residence of A5, they recovered a hand grenade vide Ex.PW17/H, which also bears his signature. He identified the accused in Court. 24.7 PW23 - Inspector Puran Singh deposed that on 17.06.1996 he had gone to Mussoorie, where he arrested A5 from Minerva Hotel and brought him to Delhi where, under interrogation, he made a disclosure statement vide Ex.PW23/B, which was also signed by him. Significantly the witness denies having picked up the said accused from Sanoli Borders at Nepal.

24.8 PW31 Inspector Surinder Kumar has deposed that on 15.06.1996 he joined the investigation, and A3 took the police party to his residence at Turkman Gate from where two RDX slabs weighing 1kg 150gms; Jayco alarm time piece with two wires coming out of it; one detonator with wire; one iron solder; one screwdriver; two araldite tubes; one gas cylinder and certain other articles were recovered vide memo Ex.PW31/A, bearing his signature and also of independent witness PW92 - Abdul Samad. Disclosure statement of A3 recorded vide memo Ex.PW31/B also bears his signatures. On 17.06.1996, A3 pointed out the place from where he had purchased the gas cylinder; on 18.06.1996, A3, A5 and A6 took the police party to Raja Number Plate, (maker of the duplicate number plate) at Connaught Place; Deluxe Store in Meena Bazar from where araldite tube was purchased; A cable shop named Unistar Cable; and got recovered a drill machine from a fan shop seized vide Ex. PW31/C, bearing his signature. After pointing out memos were prepared, A3, A5 and A6 took the police party to Nizamuddin, where one stepney (tyre) was recovered from the residence of A8 as identified by the owner of the car, PW8 - Atul. A8 was also arrested at the time of this recovery. On 18.06.1996, the accused got recovered the original front number plate of the stated vehicle from a place known as Mehal Khander vide Ex.PW31/D and the rear original number plate recovered from the place opposite to Oberoi hotel vide Ex.PW31/E, bearing his signatures.

On 18.06.1996, the accused also pointed out (got identified): (i) the location where the stolen car was parked at Zakir Nagar; (ii) the Dulhan Rangrej Shop where on 19.05.1996, they parked the car loaded with RDX but did not explode due to weak battery; and (iii) the location where they parked the car on the day of the blast.

On 19.06.1996, A5 and A6 pointed out (got identified):

(i) Ganesh Electronics where the 9 volt battery to be used in the blast was purchased. The owner of this shop also identified the accused persons; (ii) Vijay Electronics from where the wires to fix the battery was purchased; (iii) Imperial Gramaphone Company where Jayco alarm piece was bought vide Bill Ex.PW31/G; (iv) Unique Agency where the gas cylinder was purchased; and (v) The shop from where duplicate key was got made (at Jama Masjid).

Pointing out memos, Ex.PW31/J, K, L, M, N, O, P, Q, R, S, T and U of the above locations were recorded separately with each one bearing his signatures. In court, he identified each one of the seized articles as also its respective place of recovery.

24.9 PW32 - Mohd. Naseem [owner of shop where A3 and A5 allegedly purchased wire] who turned hostile denies that A3 and A5 purchased a wire from his shop on 13.05.1996 and stated that police obtained his thumb impression on a piece of paper but he is not aware of its contents. (pg.1019)
24.10 PW33 - Mohd. Aslam [shop owner from where allegedly drill machine was purchased] is the owner of Unistar Fans at Meena Bazar and admits to have known A3 as his neighbour. Though, he denies A3 having made any purchases from him, or the police recovered any bill book, but admits recovery of a drilling machine. Though, he denies having signed any recovery memo Ex.PW31/C but does not specifically state, as the accused wants the Court to believe, of the same being prepared as the paper allegedly signed blank by him.

24.11 PW39 - Inspector Hari Ram Malik was posted in the Operation Cell, Lodi Colony, when A1 and A2 made their disclosure statements, also bearing his signatures. He joined the investigation on various dates including 14.06.1996 along with Inspector Suresh Chander, Inspector Rajinder Gautam, SI Surinder Verma, SI Virender Singh, SI Arvind Verma and Omkar Singh. Effectively, rather he corroborates PW31 that he has witnessed the arrest of A3 and A4 from New Delhi Railway Station on 14.06.1996. Such version is on similar lines as deposed by PW16. He also corroborates the factum of A3 and A4 admitting their involvement in this case.

He corroborates the version of PW31 on pointing out (Discovery of fact) of several locations by A3, A4 and A5 on 18.06.1996 & 19.06.1996.

He admits that no witness from the neighbouring shops was joined during the pointing out proceedings, nor was site plan prepared. Also no public witness was joined at the time of the recovery of the number plates. However, in view of his unrebutted testimony fully inspiring confidence, such a fact would not render the investigation to be flawed or in any manner weaken the prosecution case.

24.12 PW40 - Sub Inspector Baljit Singh stated that he travelled to Gorakhpur on 18.06.1996. He obtained photocopy of reservation chart of Saheed Express from Gorakhpur to New Delhi dated 27.05.1996 (Ex.PW40/A), bearing A3's name. He then visited Gupta Hotel and obtained photocopy of the visitors' book (Ex.PW40/C). On 28.06.1996 he again visited Gorakhpur for recovery of visitors' register from Gupta Hotel (Ex.PW40/E) and Budha Hotel (Ex.PW40/F), where A3 had stayed. In his cross-examination he stated that he had not obtained any evidence to show that Naushad got reserved the ticket from Gorakhpur to New Delhi. He further stated that he does not remember the DD numbers of his visits to Gorakhpur. But then this fact would not render the veracity of his statement to be in any manner doubtful.

24.13 PW41 Suresh Chander has deposed that on 15.06.1996, A3 took the police party to his residence. In terms of disclosure statement Ex.PW31/B made by A3, certain facts were discovered at his residence in terms of recovery of incriminating material, i.e., (i) One bag containing two RDX bricks, which, when weighed, were of 1 kg 150 gms. The same were sealed with the seal 'PP' and the packet (Pulanda) given No.1; (ii) One casio quartz watch (Japan), which also was sealed and the packet (Pulanda) marked as No.2; (iii) One bag containing iron solder; wires of two colours; araldite tubes; screwdriver and black colour wire; which was sealed and the packet given No.3; (iv) One

illumination detonator having two wires which was sealed and the packet given No.4; and (v) one green colour gas cylinder which also was sealed. The recoveries were effected vide memo Ex.PW31/A. He testified the signatures put both on the disclosure statement as also on the memo of recoveries. The sealed articles were opened and resealed in the Court. The articles opened were testified to be the very same which were sealed. Significantly, save and except for the accused-A8, none had cross-examined the witness on any issue. When we perused the cross-examination part of the testimony of this witness, as conducted on behalf of A8, we find the endeavour to impeach the credibility of the witness was primarily on the ground of non-association of independent witnesses. However, despite extensive cross- examination running into four pages, we find the witness to have stuck to the original version and that being: different places where the search was conducted; the factum of disclosure statement made by the accused;

> places where search was conducted as a result thereof, including Flat No.P-7, DDA Flats, Turkman Gate, Delhi; on the asking of this accused and recovery of the incriminating articles referred to in the earlier part of testimonies. No doubt the witness admits not to have associated any person from the neighbourhood but then a reasonable explanation thereto is given by him that save and except for one witness, namely, Abdul Samad (PW 92) also a resident of Turkman Gate, none else volunteered to join the investigation.

24.14 PW43 - Inspector Virender Singh has deposed of his visit to Satyam Hotel, Paharganj on 07.06.1996. However effective his deposition is, as the factum of his visit to Mussoorie along with PW23 when A5 was arrested and brought to Delhi where his disclosure statement vide Ex.PW23/B was recorded bearing his signatures. 24.15 PW46 - Rajan Arora, the owner of Satyam Hotel, Paharganj, categorically identified A9, who had stayed in his hotel on 14.05.1996 along with one Nepalese boy for one day in either room No.104 or 106.

24.16 PW48 - Pramod Kumar was working as an employee at the Imperial Gramophone Company in Chandni Chawk. He admits to have sold one Jayco alarm wall clock for a sum of Rs.182. This was approximately 8-9 years prior to his deposition which was on 21.05.2004. He admits to have issued receipt Ex.PW 48/A bearing his signatures. No doubt this witness has not supported the prosecution on the aspect of identification of anyone of the accused, i.e., A5 and A6, who had allegedly purchased the said clock but however, on the material aspect of the sale of the clock he fully supports the prosecution, which version of his stands fully corroborated with material fact by his employer, namely, PW50 - Yogesh Kumar who identifies the purchases of clock to be made by A5 and A6. 24.17 PW50 - Yogesh Kumar Gupta, owner of Imperial Gramophone Company has deposed that on 04.05.1996, the Kashmiri looking boys had purchased Jayco wall clock from his sales man Pramod. After a period of 20-22 days, police had got identified such persons. In Court he admits pointing memo, i.e., discovery of fact to have been signed by him. His explanation in clearly not identifying A5 and A6 is quite plausible for as explained by him, such transaction took place several years prior to his deposition. However, there is no categorical denial of these persons having visited the shop for purchasing the articles or having identified the place and the shop where the police visited.

24.18 PW52 - Mohd. Alam is the owner of Deluxe Store, Jama Masjid and not supported the prosecution. He states that 8-9 years ago, when some persons had enquired about purchase of araldite, he answered that he does not remember any specific instances as several customers come to his shop. He further states that his statement may have been recorded. In this cross- examination by the public prosecution, he denies making a statement to police which was read over to him marked as Ex.PW52/A. He further denies pointing out of his shop by A3 and A5 on 18.06.1996. He further denies that it is not the case that he is unable to identify the accused due to lapse of time.

24.19 PW54 - Mahmood Karnul was running a gas agency, namely, Unique Agencies. In his deposition he stated that in 05.1996, two persons had come to his shop to purchase gas cylinder from whom he took deposit of Rs.290 and asked them to collect the cylinder the next day. He further states that on 19.06.1996, police officials came and took him to their office at Lodhi Colony. He denies the accused to have purchased the same but admits his signatures on the pointing out memo Ex.31/M. 24.20 PW58 - Mr. Jitendra Pal Singh is the owner of Imperial Sound and Services. He has deposed that two persons had purchased one soldering iron and solder for a sum of Rs.35. On 19.6.1996, the police visited his shop along with two persons whose faces were muffled. The shop was identified by them by way of pointing out memo Ex.PW31/K which bears his signatures. Also, he identified the articles sold by him. However, with regard to the identification of the accused he categorically does not deny that the two persons brought by the police were the persons who had purchased the articles but in fact states that “may be one of them” was A3.

24.21 PW - 60 Rajesh Kumar is the owner of M/s. Ganesh Electricals. In his deposition he categorically states that on 29.05.1996 two persons had purchased 9 volt battery make of ‘Entiser’ for a sum of Rs.95/-. On 19.06.1996 two persons accompanied by the police party, identified his shop and the place from where they had purchased the battery. Ex.PW31/L is such identification memo which bears his signatures. On account of passage of time, as his deposition was recorded on 05.10.2004, he could not specifically deny the two persons brought by the police to be the one who had not purchased the batteries but in fact admits having informed the police of one of them being A5.

24.22 PW - 61 Sumit Kumar is the owner of the shop named as “Dulhan Dupatta” situated at Lajpat Nagar, Delhi in the premises at D2D-35, Lajpat Nagar, Delhi. He admits that one Saturday, in the afternoon, when 3-4 persons had parked a white Maruti 800 car in front of his shop, he objected and as such the vehicle was removed and parked in front of the doctor’s shop. He remembered the registration number of car to be 1895. Two days thereafter he learnt that the bomb blast had taken place in the said car. While he was away, the police party visited his shop and made enquiry from his brother. Even though the witness turned hostile and cross-examined by the public prosecutor, however, from the cross-examination part of his testimony it is evident that the accused accompanying the police had identified his shop, being the place where they had parked the vehicle, vide pointing out memo Ex.PW31/R, which bears his signatures. He admits to have correctly identified A3 with certainty and A5 with a degree of little doubt; categorically he denies the identity of third accused i.e. A6. Be that as it may, it is evident from his testimony that he has raised objection for the parking of the vehicle and the accused had quarrelled with him. He further admits which version of his is unrefuted that on 20.05.1996, the vehicle was found not parked at the place

where it was so done by the accused. 24.23 PW64 - Mohd. Rizwan admits that few persons had come to him for getting a car key made which he did. He does not remember the exact date nor identify the said persons on account of passage of time but on cross- examination by the Public Prosecutor, he identifies his signature on the pointing out memo Ex.PW31/J. 24.24 PW - 67 Keshar Singh is an employee of Royal Nepal Air Lines. He has categorically proved document Ex.PW67/A, the passenger manifest indicating the name of A5 who travelled from Kathmandu to Delhi on 10.05.1996.

24.25 PW - 76 Bishan Kumar, was engaged by PW8 for cleaning the car used in the bomb blast. He fully corroborated the version of the car being stolen and on 17.05.1996 having noticed “the door” (cap) of the petrol tank of the car missing.

24.26 PW82 - Daya Shanker Lal Gupta is the owner of Hotel where prior to his arrest A3 had stayed at Gorakhpur. He deposed that on 18.06.1996, two police officers had taken photocopies of his visitors’ book vide Ex.PW40/D bearing his signatures. He testified that there is entry by the name of A3 who had stayed in his hotel on 27.05.1996. (pg.2093) 24.27 PW83 - Vijay Kumar Manager of Gupta Hotel has testified that A3 stayed at the hotel in Room No.14 on 27.05.1996.

24.28 PW91 - Inspector Ram Chander in his deposition stated that on 02.06.1996, information was received through a TPT message (Ex.PW 91/A and 91/B) from ATS Ahmedabad disclosing that some terrorists involved in the bomb blast at Lajpat Nagar have been arrested at Ahmedabad. He was sent to Ahmedabad for conducting interrogation. He correctly identifies A9 and A10 in Court on the date of his deposition. He further states that in his interrogation A9 stated that he was given a military colour bag containing RDX and detonators by A7 - Latif, which he was asked to hand over to A5 - Naza at the residence of PW13 at Turkman Gate, Delhi.

24.29 PW - 92 Abdul Samad was examined by the prosecution to prove recovery memo Ex.PW31/A recovered from the residence of A3. However, in Court while not supporting the prosecution on all counts he comes out with a different version of the said accused being picked up by the police in the intervening night of 28/29.05.1996. He comes out with a new version of the recovery not being effected in his presence and “3-4 days later” he was called to the police station Lodhi Road and made to sign document Ex.PW31/A, which was partly written, but contents thereof, not read out to him, as he is not literate. Significantly, perhaps the finding that the witness not to have deposed truthfully for helping his neighbour, the Public Prosecutor extensively cross- examined him. All the circumstances relating to the event of search, seizure and recovery of the incriminating material including RDX was put to the witness to which he denied. Having perused the record, it is our view that the apprehension of the learned Public Prosecutor is fortified from the record itself for the document memo Ex.PW31/A is signed and not thumb impressed and that too in English language. Thus, his version that he is illiterate is, ex-facie, false. That apart as already noticed earlier, the witness who is examined in Court on 08.02.2005 remained silent for a period of 9 years. His version of A3 being picked up as he wants the Court to believe, is nowhere supported by anyone of the witnesses. Equally, he did not take any steps informing any person of such fact, thus rendering his own version to this effect to be unbelievable.

24.30 PW98 - B.R. Patil, DSP ATS Ahmedabad has deposed that on suspicion he interrogated four persons who disclosed their name as Asdullah, Rashid Ahmad, Javed Khan and Juber Bhatt. Whereafter, he lodged report, for he had knowledge that at least two persons, namely, Asdullah and Rashid Ahmad, had come from Nepal to Ahmedabad for causing bomb explosions. On arrest, he recovered certain incriminating material from Asdullah which was seized. The witness categorically identifies A9 and A10 to be amongst those whom he had interrogated and arrested.

24.31 PW99 - Inspector B.M. Rajvanshi deposed that he was posted in Anti-Terrorist Squad at Ahmedabad, Gujarat. On 23.05.1996, he was ordered by DGP to enquire into information received, of A10 and Rashid having entered India from Kathmandu to perform blasts in Ahmedabad. On 25.06.1996, SI Waghela and the police party were in search for the above-mentioned persons and found one relevant entry in the register of Anukul Guest House. They left the hotel on 25.06.1996 and continued the search. The police party found 4 suspicious persons near Rupali Season and after enquiry they were brought to the ATS Office, Ahmedabad. He conducted personal search and received digital diary, suspicious literature etc, which were seized by him on 01.06.1996.

During further investigation, A10 disclosed that under the guise of Jammu and Kashmir Islamic Front, it was planned in March/April 1996 to sabotage India and A10 would supervise the same. Thereafter, A10 sent A9 with 8/9kgs of explosives to Delhi, who gave the same to the sister of Wajid Kasai (PW13). A5 came from Nepal and with his colleagues he committed one bomb blast in Lajpat Nagar Market on 21.05.1996. PW99 further stated that A10 and A9 both disclosed that they were involved in the Lajpat Nagar blast case. Disclosure Statement of A9 is marked as Ex.PW99/B and A10 is marked is Ex.PW99/A.

24.32 PW101 - Inspector Paras Nath is the main officer who conducted the investigation. He was posted as an Inspector in the Special Cell of the Delhi Police. In Court he states that under the orders of the Commissioner of Delhi Police the case was transferred from South District to Special Cell, whereafter he took over the investigation. Then custody of accused Farida Dar and Farooq Ahmed was entrusted to him. On 2.6.1996, he was informed that accused A9 - Javed Ahmed Khan and A10 - Abdul Gani had made a disclosure statement and revealed certain information to the police at Ahmedabad of having delivered 8 kgs of RDX at the residence of one Wajid Kasai, a resident of Turkman Gate, whereafter on making inquiries he was able to trace the place where the RDX was delivered. Soon in the presence of ACP, Wajid Kasai was interrogated who informed that he knew A9 through A3. Since the room of A3 was locked, the place was kept under surveillance, waiting for the occupant to return. On 14.6.1996, the police party arrested A3 from New Delhi Railway Station, for, as per information, the said accused was to board the train from New Delhi to Gorakhpur. Under interrogation A3 made a disclosure statement of having kept certain incriminating material at his house which led to discovery of fact, i.e., identification of the house, the place where A3 had kept the said material and the recovery of the leftover articles for preparing bomb. The articles were recovered vide memo Ex.PW31/A pursuant to the disclosure statement PW16/C/B. Pursuant to the information received, he deputed two police parties - one to visit Gorakhpur and another to visit Mussoorie for nabbing A6 and A7 from Gorakhpur and A5 at the respective places. The said accused persons were arrested and brought to Delhi, whereafter all the accused made disclosure statements narrating as to how they had planned and executed the blast

which had taken place at the Central Market Lajpat Nagar on 21.5.1996. By that time police got aware that RDX was carried for blast in Delhi by A9 from Kathmandu to Delhi and all the accused persons had conspired to carry out such blast. The preparation for the blast and carrying out the same was brought to knowledge of the police through the recovery and pointing out in the following chain of circumstances :-

(i) Recovery of the stepney of the vehicle stolen by the accused In pursuance of the separate disclosure statements made by A3, A5 and A6, the police party was led to premises No.4/11, Second Floor, Double Storey, Jangpura, from where one stepney of Maruti car came to be recovered vide memo Ex.PW 8/B and Ex.PW 8/C and the owner of the car PW8 was called and his signatures were taken at point A of seizure memo. This house was residence of A8. A8 also came to be arrested and made his disclosure statement Ex.PW 17/I where he stated that stepney was given by A5 and that the said stepney belonged to the car in which bomb blast was carried out at Lajpat Nagar.

ii) Recovery of one lakh rupees from Mangal Chand When A6 and A7 were arrested by Inspector Rajeshwar, Rs.2 note was recovered from the possession of A7 and on showing the said note, a sum of Rs.1 lakh had to be delivered.

iii)Pointing out proceedings on 18 and 19.06.1996 by A3, A5 and A6

a) Place where number plates were made, i.e., Raja Car Number Plate situated at Yusuf Sarai Market, New Delhi, vide identification memo Ex.PW 31/R.

b) Pointing out Deluxe Store, Jama Masjid, Delhi from where purchase of araldite tubes had taken place, vide identification memo Ex.PW 31/Q.

c) Vakil Cable Store situated at New Meena Bazar, Jama Masjid, from where they had purchased two metre yellow colour wire which was used for connecting timer and detonator with battery, vide pointing out memo Ex. PW 31/O.

d) A3 pointed out Unistar Fans and Refrigerator Shop at Meena Bazar, Jama Masjid from where he had taken drill machine to make holes in the cylinder, vide pointing out memo Ex.PW 31/P. This drill machine was seized vide seizure memo Ex.PW 31/C.

e) All accused pointed out road opposite A-51, East Nizamuddin, New Delhi, stating that on 15.06.1996 they had stolen a petrol tank cap of Maruti car No. DL 2CF 5854 for getting the duplicate key made and further on 17-18.05.1996 they had stolen the above Maruti car with the help of the said key, vide pointing out memo Ex. PW 31/U.

f) All accused pointed out house No.134, Gali No.21, Zakir Nagar, New Delhi stating that they had parked the above-mentioned car at this place for several days for the blast, vide pointing out memo Ex.PW 31/S.

g) All accused persons then pointed out Shop Dulhan Dupatta at Central Market, Lajpat Nagar and stated that they had parked the car with cylinder bomb at the shop on 19.5.1996 but the bomb did not blast due to weak battery, vide pointing out memo Ex.PW 31/R.

h) All accused persons pointed out the place near Lal Mahal Khandar as the place where they had thrown the actual front number plate of the vehicle. The same was recovered bearing registration no. DL 2CF 5854 vide pointing out-cum-recovery memo Ex.PW31/D.

i) All accused persons then pointed out a place under Lodhi flyover from where the rear original number plate of the Maruti car was recovered vide pointing out-cum-recovery memo Ex. PW31/E.

j) All accused persons pointed out the place where duplicate key was thrown after the successful blast, i.e. behind bus stop Nizamuddin ITI. This key was recovered and sealed vide pointing out-cum-recovery memo Ex. PW31/F.

k) A5 and A6 pointed out the place of occurrence i.e. Pushpa Market Lajpat Nagar near Fountain Park Car Parking vide pointing out memo Ex.PW31/T. On 26.06.1996, Inspector Jagmal Singh along with his team took A5, A6 and A7 to Srinagar for further recovery and returned on 30.06.1996. On 26.07.1996, A9 and A10 were brought to Delhi and their disclosure statements were recorded separately vide Ex.PW18/F and Ex.PW101/A. On 04.08.1996, A9 pointed out the Hotel where he along with his associate stayed on 14.05.1996 vide pointing out memo Ex.PW24/B.

A5 pointed out Shop No.3/32 situated at Bhogal, Delhi and informed the police party that he had made a telephonic call to A7 at Kathmandu on 19.5.1996 vide pointing out memo Ex.PW 16/A. The witnesses had identified the articles recovered by the police and proven on record, more specifically recovered vide various memos. The witness stood extensively cross-examined, however, the endeavour was to impeach his credit, more so with respect to A1 and A2, which is evident from the first four pages of the cross-examination part of his testimony. Significantly, on the issue of A3 being taken into custody prior to 14.6.1996, the witness has withstood the test of scrutiny, being cross-examined very extensively, for it not to be so. Further, his credit is sought to be impeached by inquiring questions as to why Mangal Chand and PW-13 were not arrayed as accused to which his response is cogent and clear for him to have passed on the information to the appropriate authorities dealing with the relevant laws. No doubt the witness attempts not to have obtained the opinion of the experts as to whether the cylinder would have been drilled or not but then this fact alone would not negate the prosecution case for it is not a suggested case of the accused that the blast carried out was not with the use of RDX, which was not readily available in the market and which was, in fact, used, as has come out in the testimony of the other witnesses for making the bomb, if on the issue of the material collected against the accused, pertaining to their State and travelled at different places, stands duly proven by this witness. Also, scientific evidence does establish party of cylinder collected from the site to have traces of RDX. 24.33 PW105 - ACP P.P. Singh was the in-charge of the operation in Special Cell of Delhi Police at the relevant point of time. As per his version, the investigation was transferred to the Special Cell on 26.5.1996 and it is he who entrusted the same to Paras Nath PW101. 24.34 At this juncture, we may only reiterate that post-

recording of 313 statement of the accused, only A3 examined two witnesses, i.e, DW-1, namely, Mukesh, the Section Officer of the Human Rights Commission, New Delhi (pg.4015) and DW 2, namely, Arun Kumar Sharma, Public Relation Officer, GPO, New Delhi.

The witnesses have deposed nothing save and except for complaint purportedly written by the father of A3 sent through an ordinary post to the Human Rights Commission. Here only we may add that the witnesses, in any manner, falsify the stand of the prosecution for neither the father nor any other independent witnesses stand examined proving the alleged letter purportedly written by the father or the factum of the accused having been illegally detained or arrested prior to 14.6.1996.

25. We must now examine the circumstances which the prosecution seeks to rely on, to establish the guilt of the Appellants herein.

Opinion of this Court

26. We now proceed to examine the various charges as enumerated above faced by the accused person, namely Mohd. Naushad (A3), Mirza Nissar Ahmed @Naza (A5), Mohd. Ali Bhatt @ Killey (A6) and Javed Ahmed Khan (A9).

27. It is incumbent upon the prosecution to establish that the accused persons agreed to do an illegal act or an act by illegal means as part of the conspiracy and thereby caused the death or attempted to cause the death of persons. Also, if the accused person received or retained a stolen property, in this case, the Maruti car; or if intentionally or knowingly caused wrongful loss or damage to the public or any person by use of fire or explosive substance.

28. The present case is based on circumstantial evidence.

29. Firstly, we proceed to examine the law on the issue of Circumstantial Evidence.

30. A Constitution Bench of this Court in M.G. Agarwal v.

State of Maharashtra (1963) 2 SCR 405 (5-Judge Bench) has observed as under:

"...It is a well-established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there

is no scope for the application of the doctrine of benefit of doubt. The court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. It is in the light of this legal position that the evidence in the present case has to be appreciated."

31. Further, on the point of as to whether the accused persons can be convicted or not on the basis of circumstantial evidence is now evidently clear and we need not dilate on the issue any further, save and except refer to the five golden principles curled out by this Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 (3-Judge Bench) which must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused." [See also: Major Puran v. The State of Punjab AIR 1953 SC 459 (2 -Judge bench); Deonandan v. State of Bihar, AIR 1955 SC 801 (3-Judge bench); E.G. Barsay v. State of Bombay AIR 1961 SC 1762 (2-Judge Bench); Bhagwan Swarup v. State of Maharashtra AIR 1965 SC 652 (3-Judge Bench); Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540 (3-Judge Bench); Firozuddin Basheeruddin & Ors. v. State of Kerala, (2001) 7 SCC 596 (2-Judge Bench); Ram Singh (supra)].

32. On this point, the judgment of this Court in Mohd. Arif v. State (NCT of Delhi), (2011) 13 SCC 621, (2-Judge Bench), is also of relevance, wherein it has been observed:

> "190. There can be no dispute that in a case entirely dependent on the circumstantial evidence, the responsibility of the prosecution is more as compared to the case where the ocular testimony or the direct evidence, as the case may be, is available. The Court, before relying on the circumstantial evidence and convicting the accused thereby has to satisfy itself completely that there is no other inference consistent with the innocence of the accused possible nor is there any plausible explanation. The Court must, therefore, make up its mind about the inferences to be drawn from each proved circumstance and should also consider the cumulative effect thereof. In doing this, the Court has to satisfy its conscience that it is not proceeding on the imaginary inferences or its prejudices and that there could be no other inference possible excepting the guilt on the part of the accused.

> 191. .... At times, there may be only a few circumstances available to reach a conclusion of the guilt on the part of the accused and at times, even if there are large numbers of circumstances proved, they may not be enough to reach the conclusion of guilt on the part of the accused. It is the quality of each individual circumstance that is material and that would essentially depend upon the quality of evidence. Fanciful imagination in such cases has no place. Clear and irrefutable logic would be an essential factor in arriving at the verdict of guilt on the basis of the proven circumstances." (emphasis supplied)

33. Since the prosecution case rests on discovery of facts, we deem it appropriate to discuss the legal position.

34. What is the meaning of the expression 'fact discovered' under Section 27 of the Indian Evidence Act has been settled by the Privy Council in Kottaya v. Emperor AIR 1947 PC 67 (5- Judge Bench), way back in the year 1947:

> "The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as release distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. ....

... fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to the past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant." (Emphasis supplied) [See also: M.S. Commercial and Others v. Calicut Engineering Works Ltd. (2004) 10 SCC 657 (2-Judge Bench); Mohmed Inayatullah v. State of Maharashtra, AIR 1976 S.C. 483) (2-Judge Bench); K Chinnaswamy Reddy v. State of Andhra Pradesh and Anr., AIR 1962 SC 1788, (3- Judge Bench)]

35. Conspiracy being a major charge, we take note of the legal position on the point of conspiracy between accused persons, we place reliance on the judgment of this Court in Kehar Singh & Ors. v. State (Delhi Administration), (1988) 3 SCC 609 (3- Judge Bench), wherein this Court observed:

"271. Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Sections 120-A and 120-B of IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. The following passage from Russell on Crime (12th Edn., Vol. I, p. 202) may be usefully noted:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

272. Glanville Williams in the Criminal Law (2nd Edn., p. 382) explains the proposition with an illustration:

> "The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for 'concert of action', no agreement to 'co-operate'."

273. Coleridge, J., while summing up the case to jury in Regina v. Murphy [173 ER 508] (173 Eng. Reports

508) pertinently states:

> "I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means — the design being unlawful?' "

274. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an

agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299] "Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'."

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

277. It is suggested that in view of Section 10 of the Evidence Act, the relevancy of evidence in proof of conspiracy in India is wider in scope than that in English law. Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co- conspirators. Section 10 reads:

> "10. 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." xxxx

280. The decision of the Privy Council in Mirza Akbar case [AIR 1940 PC 176, 180] has been referred to with approval in Sardul Singh Caveeshar v. State of Bombay [(1958) SCR 161, 193] where Jagannadhadas, J., said: (SCR p. 193) "The limits of the admissibility of evidence in conspiracy cases

under Section 10 of the Evidence Act have been authoritatively laid down by the Privy Council in Mirza Akbar v. King Emperor [AIR 1940 PC 176, 180] . In that case, Their Lordships of the Privy Council held that Section 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under Section 10 of the Evidence Act of 'anything said, done, or written, by any one of such persons' (i.e., conspirators) must be 'in reference to their common intention'. But Their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well known principle above enunciated." (Emphasis supplied)

36. Furthermore, in State through Superintendent of Police, CBI/SIT v. Nalini & Ors. (1999) 5 SCC 253 (3-Judge bench), this Court culled out principles governing the law of conspiracy, though exhaustive in nature, and held:

> "581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross- examined in court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 of the Evidence Act, statement of a conspirator is admissible against a co-

conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one 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 of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against a co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark.

582. In Bhagwandas Keshwani v. State of Rajasthan [(1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647] (SCC at p. 613), this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

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 enrols. 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." (Emphasis supplied)

37. Lastly, In Esher Singh v. State of A.P., (2004) 11 SCC 585, (2-Judge Bench), this Court observed:

> "The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.
>
> 39. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference." (Emphasis supplied)

38. The prosecution case, linking the other accused persons before us to the alleged crime begins at A9. Therefore, at the outset, it is imperative for this Court to consider as to whether findings of conviction qua A9 are legally sustainable or not.

Accused No. 9 - Javed Ahmed Khan: Arrest, Confessional Statement & Circumstances

39. It is the prosecution case that accused A9 was arrested at Ahmedabad on 01.06.1996 which fact is seriously sought to be disputed, for, as per the said accused, he was illegally detained at Ahmedabad on 24.05.1996. He sets out yet another version of being arrested not by the police but by CBI officials, who allegedly apprehended him at Ahmedabad. Therefore, the first thing which needs to be examined is as to whether A9 was actually arrested on 01.06.1996 or prior thereto.

40. Independent of the concurrent findings returned by both the courts below, we have, after painstakingly examining the record, arrived at the conclusion of arrest being made only on the date stated by the police and for this, we straightway come to the undisputed portion of the testimonies of PW98 and PW99.

41. PW99 - Superior Officer had authorised PW98 to search for four persons who allegedly had travelled from Nepal to Ahmedabad for carrying out bomb blast. Various places were searched. Information was obtained about the stay of these accused persons from the Anukul Guest House, Ahmedabad. Such ongoing search led the police party to the resultant arrest of four persons on 01.06.1996 including A9 near Rupali Cinema, Ahmedabad. All these facts stand deposed both by PW98 and PW99. The factum of such arrest being made on 01.06.1996 also stands fortified from the conduct of the accused. This we say so for two reasons : (a) at no point in time did he ever protest his illegal detention, if any, w.e.f. 24.05.1996 especially when he was produced before the Magistrate in accordance with the mandatory procedure prescribed in law. The plea of illegal arrest taken belatedly, perhaps as an afterthought, is only to belie the prosecution case. (b) In support of the prosecution case there is yet another clinching circumstance and that being his confessional statement recorded under Section 164 Cr.P.C. recorded by Judicial Magistrate having competent jurisdiction namely Bhagwan Das, PW100 wherein also no such fact was got recorded. (Ex. PW100/A)

42. Having taken into account the above statements, we find ourselves to be in agreement with the reasoning of the Courts below, pertaining to the fact of the arrest of A9. On this issue, the High Court rightly rejected the contention of A9 being arrested much prior to 01.06.1996, on 24.05.1996. The Court rightly observed that the contentions of PW98 and PW99 are consistent, no question was raised to PW99 about this allegation in his cross-examination and that the Ahmedabad Court acquitting A9 and A10 in FIR No. 12/1996 would have no bearing on the present case.

43. Hence, the plea of arrest prior to 01.06.1996 needs to be rejected at the threshold.

44. We next proceed to examine as to whether judicial confession of the said accused was recorded as per the mandate of law or not. On this count, testimony of judicial officer PW100 is evidently clear. Two days' time for such purposes was given to the accused and that too, after apprising him of the consequences of making such statement and only after finding him to have voluntarily chosen to depose, was such a confessional statement recorded. That apart, it is not the case of the said accused that a judicial confession was got extracted under threat, extortion, promise or as a result of blackmail. Hence, the statement is totally voluntary in nature.

45. A confession is an admission made at any time by a person charged with an offence, stating or suggesting the inference that he has committed the offence. In law, such confession can be made before "any" metropolitan magistrate or judicial magistrate, whether or not, he has jurisdiction in the case.

46. A conjoint reading of Section 164 Cr.P.C. and Sections 24 to 30 of the Indian Evidence Act, makes the confession made by A9 to be entirely admissible in evidence and by virtue of Section 10 of the Evidence Act, in a given case also against a co-accused. The Magistrate was duly empowered to record the confession, though, it would not matter whether he had the jurisdiction in the case or not. It was without any inducement, threat or promise and was relevant for adjudication of the issues/subject matter of trial. The same led to a discovery of fact and the disclosure statements of the co-accused also resulted into discovery of fact. The statement was neither retracted nor its

credibility and veracity ever doubted. It is voluntary and to our reading truthful, reliable and beyond reproach and henc, is an efficacious piece of evidence. Establishing the guilt of the accused, we are convinced that the said confession falls squarely within the contours laid down by this Court in Ram Singh v. Central Bureau of Narcotics 2011 (11) SCC 347 (2-Judge bench).

47. One of the first pertinent cases on this aspect is Pakala Narayana Swami v. Emperor, AIR 1939 PC 47 (4-Judge bench), wherein the Privy Council observed:

> " ...Indian Evidence Act, 1872. Sect. 25 provides that no confession made to a police officer shall be proved against an accused. Sect. 26 - No confession made by any person whilst he is in the custody of a police officer shall be proved as against such person. Sect. 27 is a proviso that when any fact is discovered in consequence of information received from a person accused of any offence whilst in the custody of a police officer, so much of such information, whether it amounts to a confession or not, may be proved. It is said that to give s. 162 of the Code the construction contended for would be to repeal s. 27 of the Evidence Act, for a statement giving rise to a discovery could not then be proved. It is obvious that the two sections can in some circumstances stand together. Sect. 162 is confined to statements made to a police officer in course of an investigation. Sect. 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation. Sect. 27 seems to be intended to be a proviso to s. 26 which includes any statement made by a person whilst in custody of the police, and appears to apply to such statements to whomsoever made, e.g., to a fellow prisoner, a doctor, or a visitor. Such statements are not covered by s. 162. Whether to give to s. 162 the plain meaning of the words is to leave the statement still inadmissible, even though a discovery of fact is made such as is contemplated by s. 27, it does not seem necessary to decide."

48. Further, in Kashmira Singh v. The State of Madhya Pradesh, AIR 1952 SC 159 (2-Judge Bench) it was held by this Court:

> " [8] Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused [sic co-accused [As clarified by a later Bench in (2004) 7 SCC 779 in paras 21 to 24 at p. 790]] person can be used against a co-accused [sic accused [As clarified by a later Bench in (2004) 7 SCC 779 in paras 21 to 24 at p. 790]]? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. R. [Bhuboni Sahu v. R., (1948-49) 76 IA 147 at pp. 155-56 : 1949 SCC OnLine PC 12] :
>
> "... It does not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination." Their Lordships also point out that it is :

> "... obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities." They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence". In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

[9] In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty [Emperor v. Lalit Mohan Chuckerbutty, ILR (1911) 38 Cal 559 at p. 588 : 1911 SCC OnLine Cal 74] where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused" or, to put it in another way, as Reilly, J. did in Periyaswami Moopan, In re Periyaswami Moopan, 54 Mad 75 at p. 77 :

> "... the provision goes no further than this—where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence." [10] Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

[11] Then, as regards its use in the corroboration of accomplices and approvers. A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the "evidence" is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accomplice is regarded by the Judge as having no greater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. Two of us had occasion to examine this recently in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan Cri. A. No. 2 of 1951, dated 20-12-1951 : 1951 SCC 1213] . It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for

reasons disclosed. As the Privy Council observe in Bhuboni Sahu v. The King 76 Ind. App. 147 at p. 157 :

> "The tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions, and it is very difficult for the court to guard against the danger. ... The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused." (Emphasis supplied) [See also: Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 (3-Judge Bench); Bishnu Prasad Singh & Anr.

v. State of Assam, (2007) 11 SCC 467 (2-Judge Bench)].

49. Further, this Court in Jaffar Hussain Dastagir v. State of Maharashtra 1969 (2) SCC 872 (3-Judge bench), observed as under:

> "The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled."

50. Having considered the law on the point of confessional statements, we now proceed to examine as to what is that A9 has stated therein. We deem it appropriate to extract the same hereunder:

> "We used to do the business of carpet in Kathmandu. Javed Senior who is elder than me, Latif and myself used to do the business. We used to live at Naya Bazar in Kathmandu. In April, 1996 prior to Eid I saw a bag and an attache (case) containing the articles, in the rooms where we used to live. The bag was containing gun powder (Barud). Attache (case) was containing wireless set, detonator, time pencil and remote control. The Boss of Javed Senior namely Bilal Beg reside in Pakistan and I have not seen him. On 29.4.96, on the day of Eid, Julfikar alias Ayub came from Pakistan to Kathmandu. I and Latif both went to Airport to receive him. Bilal told to Latif that boy has put on a black colour pant and yellow colour shirt. We brought him from Airport. I asked him that does he lives in Pakistan? He replied that he is not a citizen of Pakistan and is a resident of Kashmir and had gone to Pakistan for training. I had showed him the attache (case) and bag and had asked him as to what type of articles were kept therein? He himself had told me that their names were Time pencil, Detonator and Remote control. I had already known about the wireless set. On May, 1996 two more persons also came from Pakistan to our rooms where we used to reside in Kathmandu. Latif did not (?) go there to bring them. Both of them had asked Latif that nobody should visit in their room, therefore, I do not know their names. On 8th May, 1996 Itself, Javed Senior, Mahmood Killey, Naza and Riyaz

> Moula came to Kathmandu. I and Latif used to work with Javed Senior. In the evening of 8th May itself, Javed Senior had asked me to accompany (him) to Delhi alongwith the bag containing gunpowder (barud) and two detonator.
>
> Thereafter, on l0th May Javed Senior had sent Naza to Delhi who had to make a setting for blast in Delhi. In the evening of 11th May, I alongwith Javed Senior, Mohd.

Killey, Riyaz Maula and Javed of' Soparewala left for Delhi from Kathmandu but in the morning of 12" May when we reached at the border, I remained there and all. the rest moved from there. On 13 May, I left for Delhi from the border and reached Delhi in the morning of 14 May. Javed Senior and Naza had asked me to leave the bag at the house of Naza's friend namely Wazid Kasal. When I reached at the house of Wazid Kasal, Wazid and Naza were not present there and women and children were present there. I asked them to give the bag to Naza because it contains the cloth of Naza. I stayed in Delhi on 14th May and on 15th May, I left for Kathmandu and reached Kathmandu on May. Javed Senior, Mahmood Killey and Riyaz Maula had already reached Kathmandu before me. I asked them about their task of Delhi. They replied that Naza had been given after making the same and Riyaz Maula was the mechanic because only he was the trained person. On 19th May, Mahmood and Riyaz Maula went back to Delhi. When I asked Javed Senior as to why did they go back? He replied that the work had been done due to some defect occurred in it. Earlier on 6.5.96 two persons had come from Pakistan, their names were Asadullah and Rashid, which came to know later on and the person namely Julfikar had come on 29.4.96. After that, the aforesaid Julfikar, Asadullah, Rashid and myself had left for Patna in the evening of 20.5.96. On 21st May, I, Asadullah who got his name written as Nuruddin in the ticket , Rashid whose name was got written as Jalaluddin and Julfikar, all left from Patna to Mumbai and reached Mumbai on 23rd May. On reaching Mumbai, Asadullah told (us) that now we have to go to Ahmedabad. In the evening at 8:30 O'clock of that very day, all the four of us left for Ahmedabad and reached Ahmedabad on 24.5.96 at 12 O'clock. Thereafter, we went to the hotel and after bathing there and consuming the meal at the downstairs (?) in the hotel. Asadullah and Rashid both left away while saying that they were going for prayer (Namaz). Julfikar and myself stayed in the hotel. Fifteen minutes thereafter, CBI officials and Manager of the hotel came there and said that they would conduct a search. They conducted the search and sat over there near us. At about 4-5 O'clock, Asadullah and Rashid came over there and CBI officials took all of us to Ahmedabad and interrogated us. I had told that I had to come upto Patna (only) and I did not know anything and I did not have any knowledge of other things. I only brought the bag to Delhi and there Javed Senior informed about the blast. He himself done the work of blast on the basis of planning of Bilal Beg. I do not know anything about any other blast. I do not want to say anything more." (Emphasis supplied) (Persons referred to in the above statement are : - A11 - Bilal Beg, A7 - Latif, A15 - Javed Senior, A6 - Killey, A5 - Naza, A10 - Asadullah and A13 - Riyaz)

51. The accused has given a detailed description of the larger conspiracy of causing bomb blasts at Delhi. Independently, we find the prosecution to have established the case by recording disclosure statement of the concerned accused persons and effecting recoveries of incriminating material.

52. It is not necessary that each and every circumstance mentioned in the confession regarding the complicity of the accused should be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient if the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. [Balbir Singh v. State of Punjab AIR 1957 SC 216 (3-Judge bench); Subramania Goundan v. The State of Madras (1958) SCR 428 (3-Judge bench); Shankaria v. State of Rajasthan (1978) 3 SCC 435 (3-Judge bench)]

53. A9's confession gives rise to the following circumstances as culled out by the Trial Court:

i. Stay of A9 at New Delhi on 14.05.1996 (Circumstance No.

35) ii. Handing over bag containing RDX at the residence of PW13 (Circumstance No. 34 – Pertaining to Confession of A9) iii. Arrest of A9 (Circumstance No. 40) iv. Travel of A5 from Kathmandu to Delhi (Circumstance No.

36)

54. With respect to the stay of A9 at Delhi on 14.05.1996, the testimony of PW46, is of relevance. The Courts below concurrently have held this circumstance to be proved. PW46 is the owner of Satyam Hotel, Paharganj, who deposed that A9 had stayed in his hotel on 14.05.1996 along with one Nepalese boy either in room No.104 or 106. In court, PW46 correctly identified A9. In his cross-examination it is revealed that he saw the accused while he was checking out from the hotel. Therefore, this circumstance is proved and the findings of the Courts below are upheld.

55. The next circumstance is the handing over of bag containing RDX at the residence of PW13. For this, we consider the statements of PW13, PW14, PW91 and PW101. PW13 - Wajid and PW14 - Pappi, both are declared as hostile witnesses. They deny making any earlier statement to the police; the handing over of the bag; and knowing of any of the accused persons. Importantly, PW13 as per his deposition is a resident of Turkman Gate, Delhi.

56. PW91- Inspector Ram Chander in his deposition states that on 02.06.1996, information was received through a TPT message (Ex.PW 91/A and 91/B) from ATS Ahmedabad disclosing that some terrorists involved in the bomb blast at Lajpat Nagar were arrested at Ahmedabad. He was sent to Ahmedabad to conduct interrogations. He further states that in his interrogation A9 stated that he was given a military colour bag containing RDX and detonators by A7 - Latif, which he was asked to hand over to A5 - Naza at the residence of PW13 at Turkman Gate, Delhi. In court, he correctly identifies A9 and A10 on the date of his deposition.

57. PW101 - Inspector Paras Nath (Investigating Officer) not only corroborates such version but adds A9 having made a disclosure of having delivered RDX at the residence of PW13 - Wazid Kasai at Turkman Gate, Delhi, and on further interrogation, revealed that the former knew the latter through Mohd. Naushad i.e. A3, resident of P-7, DDA Flats, Turkman Gate, Delhi.

58. We agree with the reasoning of the Courts below on this circumstance. The High Court upheld the Trial Court finding and stated that even though PW13 and PW14 turned hostile and did not support the prosecution, the address of PW13, residing at Turkman Gate is proved as a fact, which amounts to facts discovered subsequently. The Trial Court held that had there been no mention of PW13 - Wazid in the confessional statement of A9, the residential address of PW13 could not have come to the knowledge of Delhi Police. Hence, the circumstance of handing over of the bag containing RDX to the residence of PW13 stood proved.

59. Further, independent of the reasoning of the Courts below, the circumstance of handing over of the bag containing RDX is verified through the disclosure statements of A3. Such a disclosure statement of A3 was recorded on 15.06.1996 as Ex.PW31/B verified by PW31 - Inspector Surinder who identifies his signatures thereon and PW101 - Inspector Paras Nath. In this disclosure he stated that on 14.05.1996, A5, A6, A15 and Mehmood Riaz came to his house at P-7, DDA Flats and A5 carried a bag from which he retrieved packets containing gunpowder. This led to discovery of fact vide recovery memo Ex. PW31/A whereby RDX was recovered from the residence of A5.

60. Another circumstance from the confession which finds corroboration is the travel of A5 from Kathmandu to Delhi on 10.05.1996, which stands proven on record as held by both the Courts below. In any event, on this issue testimonies of PW67, PW23 and PW101 are relevant. PW67-Keshar Singh deposes as an employee of Royal Nepal Airlines on 9.7.1996, he handed over to the I.O. (PW101) a photocopy of the passenger list for the flight dated 10.5.1996 from Kathmandu to Delhi. The same bears the name of Hussain M.N. (A5 – Mirza Nisar Hussain alias Naza) at Page No. 3 (Ex.PW67-A). This fact finds corroboration in the disclosure statement (Ex.PW23/B) of A5 that on 10.5.1996 he had come to Delhi through AIR Royal Nepal Airlines by the name of Mirza Nisar Hussain for making arrangement of gas cylinder and other articles for making bomb and had also spoken with Naushad. The recording of this disclosure has been proven by PW23 and PW101 in their depositions, as has also been rightly held by the Trial Court.

61. Therefore, the confessional statement of A9 (Ex.PW100/A) finds corroboration through the abovementioned independent circumstances. The circumstances which arise and are corroborated were not in the knowledge of the police, prior to the confessional statement of A9. Thus, the conviction of A9 is upheld and we find no reason to interfere with the findings of the Courts below.

62. On the evidentiary value of this confession against co- accused persons, we make reference to the judgment of this Court in Hari Charan Kurmi & Jogia Hajam v. State of Bihar, 1964 (6) SCR 623 (5-Judge Bench), wherein it was observed that :

> “The question about the part which a confession made by a co-accused person can play in a criminal trial, has to be determined in the light of the provisions of Section 30 of the Act. Section 30 provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is found is that

> if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth.

Normally, if a statement made by an accused person is found to be voluntary and it amounts a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so Section 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When Section 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in Section 30 is not evidence under Section 3 of the Act. Section 3 defines "evidence" as meaning and including— "(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the court; such documents are called documents are called documentary evidence." Technically construed, this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly, a confession made by an accused person is not such a statement; it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so, Section 30 provides that a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the court, it is the duty of the court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the court. But a court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the court in dealing with a confession, because Section 30 merely enables the court to take the confession into account.

...The result, therefore, is 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. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh [(1952) 1 SCC 275 : (1952) SCR 526] where the decision of the Privy Council in Bhuboni Sahu case [(1949) 76 IA 147 at p. 155] has been cited with approval.

In appreciating the full effect of the provisions contained in Section 30, it may be useful to refer to the position of the evidence given by an accomplice under Section 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused person; and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 of the Act brings out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars."

63. Before proceedings with the discussion on the remaining accused persons, from the above discussion on the confessional statement of A9 and other material on record, here only we record that it is evident from the confessional statement of A9 that the blast at hand was not an isolated incident. It was in furtherance and part of an international conspiracy to cause disruptive activities in India which was masterminded by A11, Bilal Ahmed Beg who is a foreign national.

64. We now proceed to examine, whether the conviction of A3, Mohd. Naushad can be upheld or not?; and If so, then on what ground(s)?

Accused No. 3, Mohd. Naushad: Arrest, Recovery & Circumstances Arrest of A3

65. The case of the prosecution is that A3 was arrested along with A4 on 14.06.1996 from Platform No. 4, New Delhi Railway Station. A3 has sought to disprove the prosecution case by stating that he was arrested much prior to 14.06.1996 i.e. the intervening night of 28/29.05.1996.

66. The circumstance surrounding the arrest of A3 (circumstance no. 9) has been concurrently held to be proved by the Courts below.

67. To examine this circumstance, this Court has to consider the statements of PW16, PW39 and PW101. PW16 - Inspector Rajender Gautam stated that he joined the investigation on 14.06.1996 along with PW101 - Inspector Paras Nath, Inspector Suresh Chander and SI Surender Varma. He further states that PW101 received secret information that A3

- Mohd. Naushad, involved in the commission of the instant crime, along with a Kashmiri youth would be travelling to Gorakhpur via Vaishali Express. The police party reached New Delhi Railway Station. At 7:30 PM, A3 and A4 came to be arrested after being pointed out at Platform No.4 by the secret informer. In Court, PW16 was able to correctly identify A3 and A4. This view is fully corroborated by PW39 - Inspector Hari Ram Malik, and PW101 - Inspector Paras Nath who verified

the personal search memo of A3 is Ex.PW16/B, which bears his signature. The statements of PW16, PW39 and PW101 are consistent on the cumulative chain of events leading to A3's arrest.

68. The submission on behalf of A3, that no independent witness was joined at the time of the arrest and therefore, the arrest is not proved, cannot be accepted. We find ourselves to be in agreement with the reasoning of the High Court on this aspect as observed that Courts cannot completely overlook the fact that in matters involving serious offence, members of the public are reluctant to associate with police proceedings either for fear of persecution or for the sheer harassment of having to attend numerous and interminable Court hearings. Courts have on several occasions lamented this phenomenon and at the same time stated that unavailability of public witnesses should not, ipso facto, lead the Court to discard prosecution, or testimonies of police witnesses. Independently, in his cross-examination, PW16 specifically states that PW101 - Inspector Paras Nath had asked 7-8 persons to join the investigation, however they had refused to do so.

69. The kind of apathy adopted by the general public in not coming forward to depose to associate with the prosecution, stands highlighted by this Court in Appabhai v. State of Gujarat, (1988) Supp SCC 241:

> "Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror-stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner." (Emphasis supplied)

70. Further, in Leela Ram (Dead) through Duli Chand v. State of Haryana & Anr. (1999) 9 SCC 525 (2-Judge Bench), also this Court observed:

> "11. The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the

ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same." (Emphasis supplied)

71. Even non-examination of an Investigating Officer, where testimonies of independent witness inspire confidence, would not make the prosecution case to be false. [Birendra Rai & Ors. v. State of Bihar (2005) 9 SCC 719 (2-Judge bench)]

72. The argument that the chain leading the police to A3 is PW13, (who turned hostile), would vitiate the former's involvement, cannot be accepted. We find the reasoning of the High Court on this aspect to be appropriate, which is that:

"The State's inability to prove the clues or sources or even the witness's reluctance to support those factors during the trial or the prosecution's omission to cite any witness would not by itself mean that the entire circumstance has to be disbelieved. It is a fact that in the statement of A-9 made to the Gujarat police as well as in his confessional statement, there is a clear mention of Wajid (PW-13), a resident of Turkman Gate. The prosecution had recorded a statement from Wajid during the course of the investigation which mentioned A-3. PW-13 did not support this and he turned hostile during the trial. That would, in this Court's opinion, itself not give a lie to the entire circumstance leading to the possible role of A-9 which may otherwise be independently proved as also the circumstances of his arrest. In this context, it would be noteworthy to mention that Wajid is in fact a resident of Turkman Gate, and A-3 also lived in the neighbourhood. Therefore, the link in the investigative chain is a matter of inference. In this connection, the Supreme Court has pertinently stated in Pawan Kumar v. State of Haryana, (2001) 3 SCC 628, that:

"Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it it is true that there should be no missing links, in the chain of events, so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.""

> 73. Further, a circumstance can be proved through a truthful witness with his testimony fully inspiring confidence.

Quality and not quantity of the witness is what matters with overwhelming evidence available on record. [Referance: Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors. (2001) 6 SCC 145) (3-Judge Bench)]

74. The submission that A3 was actually arrested on the intervening night of 28/29.05.1996, needs to be repelled for the reason that - (a) the author of the complaint sought to be proved through testimony of DW-2 and DW-1 alleging such fact, was never examined in Court. In any event, DW-2 only verifies receipt of Rs.20 for transmission of hybrid mail service, of the letter alleging such fact; (b) Abdul Samad witnessed recovery of the RDX from the house of A3, being his neighbour. The version of this witness that he had seen A3, and his brother being arrested from their house on such date is also not inspiring any confidence for, neither he nor any one lodged any report and nor has the accused examined his brother in Court to establish such facts; and (c) the stay of the accused at Gorakhpur on 27.05.1996 (discussed below), since, at the relevant point of time, Gorakhpur was not well connected with Delhi so as to enable any person to travel in less than 24 hours. Hence on this circumstance, we see no reason to differ with the concurrent findings rendered by the courts below.

75. After his arrest, A3 made a disclosure statement (Ex.PW31/B), which led to recovery, pointing out and discovery of facts as well as incriminating material. The prosecution has pressed the following 15 circumstances to prove the involvement of A3 in the blast: (i) Stay of A3 at Gupta Hotel, Gorakhpur (Circumstance No.13); (ii) Recovery from the house of A3 (Circumstance No.10); (iii) Recovery of Rs. 1 lakh from A4 (Circumstance No.17); (iv) Recovery of front and rear number plates (Circumstance No.25); (v) Recovery of duplicate key from Nizamuddin (Circumstance No.26); (vi) Pointing out of shop where duplicate key was prepared (Circumstance No.31); (vii) Pointing out of shop where fake number plates were prepared (Circumstance No.18); (viii) Pointing out of place where Maruti Car was parked for days before the blast (Circumstance No.22); (ix) Pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996 (Circumstance No.23); (x) Pointing out residence of A8 from where stepney of stolen Maruti car was recovered (Circumstance No.15); (xi) Pointing out of shop from where soldering iron and solder was purchased (Circumstance No.32); (xii) Pointing out of shop from where gas cylinder was purchased (Circumstance No.30); (xiii) Pointing out of shop from where drill machine was procured (Circumstance No.21); (xiv) Pointing out of shop from where wire was purchased (Circumstance No.20); (xv) Pointing out shop from where araldite tube was purchased (Circumstance No.19), which we shall now discuss elaborately.

76. We deem it appropriate to state at the threshold, the evidence of partisan witness need not necessarily be discarded as has been held by this Court in Muthu Naicker & Ors. Etc. v. State of Tamil Nadu, 1978 (4) SCC 385 (2-Judge Bench). I. Stay of A3 at Gupta Hotel, Gorakhpur

77. In pursuance of the disclosure statement of A3, it is the case of the prosecution that A3 had stayed at Gorakhpur on 27.05.1996. The Trial Court held this circumstance (Circumstance No.13) to be proved. The Court held that the stay at Gupta Hotel was not challenged by A3 and the police only

came to know about this fact through the disclosure statement but for which, such fact would not have been proven. Furthermore, A3 has not disputed his name in the railway reservation chart. However, the High Court reversed this finding on the ground that there were no departure or arrival memos prepared by the IOs who visited Gorakhpur and pertinently, PW83 who was an alleged eyewitness to A3 residing in their hotel, was not shown the accused during trial to verify his identity.

78. In our view, testimonies of PW40, PW66, PW82 and PW83 have to be considered for this circumstance. PW66 and PW40 both testify about the visit of A3 to Gorakhpur on 27.05.1996 through the railway reservation chart dated 27.05.1996 and his stay which appears through the hotel's visitor book of dates 18.02.1996 to 29.06.1996. PW82, the owner of the hotel, also verifies the entries in the name of A3 in his hotel on 27.05.1996. PW83, manager of the hotel, testifies on similar lines and has deposed that A3 stayed at their hotel in Room No.14 on 27.05.1996. Pertinently, even this witness is not cross-examined. Therefore, the testimonies of these witnesses remain unblemished and linkage of him being in Gorakhpur, after the incident, undoubtedly stands proven, for which the said accused has not furnished any explanation in his questioning under Section 313 Cr.P.C.

79. In Joseph s/o Kooveli Poulo v. State of Kerala, (2000) 5 SCC 197 (3-Judge Bench) it was observed that during the time of questioning under Section 313 Cr.P.C., the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. In fact, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. [See also: State of Maharashtra v. Suresh (2000) 1 SCC 471 (2-Judge Bench)]

80. It was observed in Musheer Khan v. State of M.P., (2010) 2 SCC 748 (2-Judge bench) that it is obligatory on the part of the accused while being examined under Section 313 Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete. [See also Phula Singh v. State of Himachal Pradesh, (2014) 4 SCC 9 (2-Judge bench)]

81. On a perusal of the above witness statements, we cannot but agree with the finding of the Trial Court and disagree with the reasoning adopted by the High Court. We find that the fact of A3's stay at Gorakhpur was discovered by the police in pursuance of the disclosure statement and further leading to the discovery of fact, the same stands proved through the testimonies of prosecution witnesses.

II. Recovery from the residence of A3

82. On the circumstance pertaining to recovery from A3's residence (Circumstance No.10) on 15.06.1996, both the Courts below have held this circumstance to be proved. The testimonies of PW31, PW41 and PW101 are relevant for this recovery. It has been the case of the prosecution that pursuant to the disclosure statement of A3 (Ex.PW31/B), he took the police party to his residence at P7, DDA Flats, Turkman Gate, Delhi leading to the recovery of incriminating articles including the RDX; Jayco alarm piece; detonator; iron solder; araldite tubes etc. Significantly, the accused does not dispute the said place to be in his possession, to which, his neighbour also testifies.

83. PW31 prepared a seizure memo Ex.PW31/A of the aforesaid mentioned articles which bears his signature and the signature of an independent witness, PW92. PW92 who no doubt has turned hostile has a different version of his signature on the recovery memo, which, we, as already observed, have found it to be false. The Trial Court has rightly held that this witness did not have to put signatures on Ex.PW31/A on the mere asking of the police officers and further no allegation was made of forged signatures.

84. In Tahsildar Singh & Anr. v. State of U.P. AIR 1959 SC 1012 (5-Judge Bench), this Court held that the procedure prescribed for contradicting the witness by his previous statement made during investigation, is that, if it is intended to contradict him by the writing, his attention must, before the writing, can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

85. Further, in Hari & Anr. v. The State of U.P., 2021 SCC OnLine SC 1131, (3-Judge Bench) this Court while reiterating the principles in appreciating the testimony of witness who turned hostile observed as under : -

> "It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution choose to treat them as hostile and cross examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. It is for the judge of fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it."

86. In Koli Lakjhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624 (2-Judge Bench), this Court held that it is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony, if corroborated by other reliable evidence. [See also Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, (3-Judge Bench) and Sat Paul v. Delhi Administration, (1976) 1 SCC 727

(2-Judge Bench)]

87. In any event the version of PW31 is corroborated and strengthened through the testimony of both PW41 and PW101. Their testimonies give us the chain of events in which the discovery of articles from the residence of A3 was made. From the perusal of the testimonies of prosecution witnesses, the prosecution version about this circumstance stands proved and the findings of the Court below are upheld.

88. Pertinently, CFSL Report Ex.PW101/G pertains to the articles recovered from the residence of A3. In this report the following results are arrived at:

88.1.1 Parcel 1 contains two rectangular slabs of black colour putty which is alleged to be explosive substance. 'RDX' based high explosive are detected in the contents of Parcel 1.

88.1.2 Parcel 2 contains one Quartz table clock with two black wires soldered with the body of the clock at its backside. The clock mechanism contained in Parcel 2 can form a component of improvised explosive device.

Another relevant report is CFSL Report, dated 29.08.1996, Ex.PW101/C, which is concerning articles recovered from the spot of the blast. The report examines 17 articles and arrives at the conclusion that 'RDX' based high explosive material has been detected on the contents of all 17 articles.

On a conjoint reading of the above, it is thus proved that the material recovered from the residence of A3 is explosive material in the form of 'RDX', no different than the one used in the blast at Lajpat Nagar. The veracity of these reports has not been questioned by the accused.

89. It was held in Suresh (supra) that false answer by the accused can also be counted as providing a "missing link" for completing the chain of the prosecution case. A false answer offered by the accused when his attention was drawn to the aforesaid circumstance renders that circumstance capable of inculpating him.

III. Recovery of Money by A4/A7, Whether incriminating against A3?

90. It is the prosecution's case that on the personal search of A7 at the time of his arrest, a Rs.2 currency note was found which was allegedly to be used for making payment of Rs.1 lakh to A3 & A4. The testimonies of police witnesses, PW17 and PW101 and independent witness PW35 are relevant. This circumstance (circumstance No.17) has been held to be proved by the Trial Court. However, it has been reversed by the High Court on the reasoning that the conclusion of the Trial Court in this regard is based entirely on hearsay and the recovery of Rs.1 lakh at the instance of A4 could not be an incriminating circumstance against A3 when A4 & A7 stands acquitted by the Trial Court.

91. On a perusal of the witness statements as discussed earlier, they are consistent on the factum of the recovery of Rs.1 Lakh from Mangal Chand at the behest of A4. However, this Court concurs with the view given by the High Court. No direct or circumstantial evidence was brought so as to state that the amount of Rs.1 Lakh which came to be recovered, was to be paid to A3. In absence of any link to A3 on this circumstance, we hold this circumstance to be not proved. IV. Recovery of Number Plates

92. The prosecution case is that in furtherance of the pointing out proceedings on 18.06.1996, the police party was taken by A3, A5 and A6 to the spots where the front and rear number plates of the vehicle were replaced (circumstance No.25).

93. On this circumstance, the testimonies of police witnesses although not corroborated by independent witnesses cannot be outrightly rejected and to support this, we place reliance on Tahir v. State (1996) 3 SCC 338 (2-Judge Bench), wherein this Court observed :

> "Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case." [See also Parasram v. State of Haryana (1992) 4 SCC 662 (2-Judge Bench); Pradeep Narayan Madgaonkar & Ors.

v. State of Maharashtra (1995) 4 SCC 255, (2-Judge Bench); Balbir Singh v. State (1996) 11 SCC 139 (2-Judge Bench); Sama Alana Abdulla v. State of Gujarat (1996) 1 SCC 427 (2-Judge Bench); and Anil alias Andya Sadashiv Nandoskar v. State of Maharashtra AIR 1996 S.C 2943 (2-Judge Bench)]

94. However, with a word of caution, in Anil alias Andya (supra) this Court observed that prudence requires that the evidence of the police officials, who are interested in the outcome of the result of the case, be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

95. Significantly, in Kalpnanth Rai v. State (through CBI) (1997) 8 SCC 732 (2-Judge Bench), it was held that there can be no legal proposition that evidence of police officer, unless supported by independent witnesses is unworthy of acceptance. However, it further observed that non examination of independent witness even presence of such witness during police raid would cast on added duty on the court to adopt greater care by scrutinizing the evidence of police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined.

96. In State (Govt of NCT of Delhi) v. Sunil & Anr. (2001) 1 SCC 652 (2-Judge Bench), this Court observed that the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and

recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police, the Court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

97. In view of the aforesaid, in reference to this circumstance, the testimonies we examine PW31, PW39 and PW101 are material witnesses.

98. PW31 testifies to the recovery of the front number plate from near Lal Mehal Khandar and rear number plate from under Lodhi flyover near a tree through his pointing out-cum- recovery memos Ex.PW31/D and Ex.PW31/E respectively. The same recovery is testified to by PW39 and PW101 as well. PW101 verifies the number on the plate to be DL-2CF-5854. It is pertinent to note that PW8 had categorically stated that the same is the number of his Maruti car.

99. However, the Trial Court and High Court have concurrently rejected this circumstance. In doing so, the Trial Court observed that: (a) No independent witnesses were joined; (b) The recovery took place from a public place, one month after the alleged replacing of the original number plates; (c) There is nothing on record to show that these number plates were lying at a particular place which was only within the special knowledge of these accused persons; and (d) These number plates Ex.P4 and Ex.P5 were not shown to PW8, the owner of the car, at any point during the trial.

100. We are unable to agree with the reasoning of the Courts below since: (a) independent witnesses not being present or examined does not vitiate the testimonies of the police witnesses; (b) the number on the plates so recovered, matches with the original number of the car; (c) the pointing out memos Ex.PW31/D and Ex.PW31/E have been proved and nothing has been brought about in the cross- examination of the above-witnesses so as to cast doubt on their testimonies for this circumstance; (d) the front and rear number plates are recovered separately from different places which further strengthens the prosecution case that this fact was not within the knowledge of police party prior to the disclosure statement of accused persons and it is only after their statements that they could discover the fact of original number plates being at different places.

101. Therefore, in view of the above, we hold this circumstance to be proved.

V. Recovery of Duplicate Key

102. It is the case of the prosecution that on 18.06.1996, A3, A5 and A6, in pursuance of their disclosure statements, got the duplicate keys recovered that were used to operate the Maruti Car, which eventually came to be used in the bomb blast.

103. This circumstance has been rejected by both the Courts below (circumstance No.26). The Trial Court has stated that the key was recovered from an open space after about one month of the incident which creates doubt on the prosecution case. Further, PW64 (key maker) did not support the prosecution case.

104. We straightaway come to the testimony of PW39, who deposed about a key of car being recovered vide pointing out memo Ex.PW31/F and he correctly identified it in Court.

105. In our view, the circumstances surrounding the recovery of the number plates (circumstance No.25) and the present circumstance (circumstance No.26) stand on a similar footing and therefore, considering the testimonies of prosecution witnesses, this circumstance is held to be proved. The presence of a duplicate key at a particular place, even if that place is accessible to all, could only be in the special knowledge of only those persons who threw it there, therefore the discovery of the duplicate key cannot be repelled merely because it is recovered from an open public place. Also, the discovery after a month further corroborates the fact that only after the accused persons were arrested, did the police come to discover this fact. PW64 is examined for pointing out proceedings of where the key was made, which is the next circumstance at hand.

VI. Pointing out of shop where duplicate key was prepared

106. It is the case of the prosecution that A3, A5 and A6 led the police to the shop from where they got the duplicate key made for stealing the Maruti car to use it in the said blast (circumstance No.31). We now make reference to the material witnesses on this circumstance. PW39 categorically states that A3, A5 and A6 pointed out a place where one PW64 - Mohd. Rizwan was found preparing keys on the footpath vide Ex.PW31/J. PW31 corroborates this pointing out and verifies his signature on identification memo Ex.PW31/J. Although PW64 could not identify the accused persons but non-identification on account of the passage of time is not fatal to the prosecution case when he himself has identified his signature on the identification memo.

107. The Trial Court held that the testimonies of PW31 and PW39, remain unchallenged. PW64, admits to having prepared a duplicate key and despite turning hostile, his signatures are admitted on the pointing out memo. The Court, therefore, concluded that both A3 & A5 led the Police team to the shop of PW64 and only in pursuance of their disclosure statements, the fact of presence of PW64 on a footpath was discovered. The High Court reversed the finding of the Court below with the reasoning that on circumstance No.26, pertaining to recovery of the key, the Trial Court has held PW64, to not support the prosecution case, therefore, on a similar circumstance, concerning the same witness, a contradictory finding cannot be given.

108. We are of the opinion that when the pointing out memos are proved, not only through the testimonies of prosecution witnesses but also through the signature of PW64 then the High Court committed an error in dealing with this circumstance at the same level in which it dealt with circumstance No.26. That circumstance dealt with the recovery of a key, but this circumstance particularly deals with the shop where the accused persons got the duplicate key prepared. We fail to understand how these two circumstances are related when a factum of stolen car being used in the

blast is proved.

109. Irrespective of the findings on circumstance No.26, we find this circumstance to be proven through the testimony of police witnesses and admission of PW64.

VII. Pointing out of shop where fake number plates were prepared

110. The prosecution submitsthat on 18.06.1996, the accused persons pointed out the shop from which duplicate number plates, which were installed onto the stolen Maruti Car, were made (circumstance No.18).

111. PW31 deposed that A3, A5 and A6, pointed out a shop from where they got prepared two number plates of No.DL-4C- 1895. The pointing out memo Ex.PW31/R was prepared bearing his signature. PW39 and PW101 corroborated his testimony.

112. Both Courts below have disbelieved this circumstance. The Trial Court held that the owner of the shop was never produced for examination and no number plate allegedly recovered during the investigation was shown to any witness. The High Court upheld the finding of the Trial Court and held that no independent witness from the adjoining shop at the time of preparation of the identification memo Ex.PW31/R was examined.

113. On this circumstance, we do not find ourselves agreeing with the reasoning of the Courts below. The testimonies of the police witnesses, as well as the pointing out memo, does not stand vitiated due to absence of independent witnesses. Non-examination of the owner does not take away the fact that the above-mentioned shop was pointed out by the accused persons and the knowledge of such shop was not available to the police, prior to such pointing out. We find this circumstance proved against accused persons. VIII. Pointing out of place where Maruti Car was parked for days before the blast

114. It is the case of the prosecution that the accused persons led the police party to the house where the accused persons pointed out the spot where the car was parked for a few days before the blast at Lajpat Nagar (circumstance No.22).

115. PW39 categorically states that A3, A5 and A6 pointed out Gali No.21, opposite house No.134, Zakir Nagar, New Delhi, vide pointing out memo Ex.PW31/S, on 18.06.1996. The same is corroborated by PW31 and PW101.

116. This pointing out has been held to be not proved by both the Courts below. The Trial Court held that pointing out memo Ex. PW31/S is not an incriminating piece of evidence against the accused persons. No independent witness had joined at the time of alleged recovery. There is no mention in the said memo as to who had parked the said car at that place and on which date. Further, no complaint was received by the police that the said Maruti car was parked for a number of days at that place.

117. However, on the last point, we do not agree with the reasoning as the car stood there merely for one/two days which does not create suspicion of the degree that a person approaches the police. Independently, the owner had also lodged a complaint with the police vide FIR No.286/1996 for theft of the vehicle used in the incident. Furthermore, the testimonies of the prosecution witnesses are consistent on this aspect and nothing material has been brought about in the cross-examination to render their testimonies untrustworthy. The knowledge of the place where the car was parked prior to the blast, was in the exclusive knowledge of the accused persons and only was brought to the police after their pointing out.

IX. Pointing Out of Dulhan Dupatta Shop

118. It is the case of the prosecution that on 18.06.1996, A3, A5 and A6, pointed out the place/shop which is allegedly the shop where these accused persons had parked the car on the day of the unsuccessful blast, i.e., 19.05.1996 (circumstance No.23). This circumstance is testified by PW31 through the pointing out memo Ex.PW31/R and corroborated by the testimony of PW39 and PW61.

119. The Trial Court held this circumstance to be proved on the basis of the testimonies of PW31 and PW39, which remained unchallenged in cross-examination and the pointing out memo Ex.PW-31/R, being proven. Further, PW61 despite turning hostile, has admitted his signature on the pointing out memo of the shop. The High Court reversed this finding and held that PW61 could not be relied upon since the pointing out memo was not proved and further held that this was the case where Test Identification Parade should have been done; the shop was already in the public view and being conspicuously located, there was nothing to be discovered by the police and that no site plan was prepared at the behest of the accused persons.

120. In the considered view of this Court, the testimony of the witnesses PW31, PW39 and PW61 remain unblemished in their examinations. We cannot agree with the reasoning of the High Court on this circumstance. The place where the car was parked on the day of the failed blast is a discovery which was not in the knowledge of the police, prior to the disclosure and pointing out by the accused persons.

121. The fact that the car was parked at a particular place on the day of failed attempt is the ‘fact discovered’ pursuant to the disclosure statements of the accused persons namely A3, A5 and A6, thus the finding of the High Court that the shop was already in the public view, being conspicuously located, hence there was nothing to be discovered by the police is an unsustainable reasoning. Further, Lajpat Nagar is a densely crowded market, famous for garments, especially ladies’ clothes and the Dulhan Dupatta is not a famous registered trademark or copyright, which anyone and everyone would be aware of. Even though the shop is in public view, the particular fact that the car in question was parked there for the purpose of causing a blast and had there been no defect in the battery that place would have exploded that day, is the fact discovered pursuant to the statements of the accused persons. The testimony of PW61 cannot be overlooked when he identifies the accused persons although with different degrees of certainty. The High Court totally lost sight of such facts.

122. On the aspect on no test identification being conducted, as observed by the High Court, it is our view that it is neither application in law nor a right of the accused to claim a Test Identification Parade. Mere absence of the same would not, ipso facto, render the prosecution case to be false or unsustainable in law. [Simon & Ors. v. State of Karnataka (2004) 2 SCC 694 (2-Judge Bench)]dana ya

123. Even if the test identification parade is not held and witnesses identify the accused for the first time before Court, evidence regarding identification does not become inadmissible and cannot be discarded on the ground of not being proceeded by test identification parade, when Court finds the same trustworthy. However, such evidence of identification of accused before Court should not ordinarily form the basis of conviction unless corroborated by any other evidence. [Dana Yadav @ Dahu & Ors. v. State of Bihar (2002) 7 SCC 295 (2-Judge Bench)]

124. In view of the above, this circumstance is held to be proved against the accused persons.

X. Recovery of Stepney by A3, A5 and A6 from the residence of A8

125. The next circumstance that needs to be dealt with is the recovery of the stepney from the residence of A8 (circumstance No.15), in pursuance of the disclosure statements made on 17.06.1996. For this circumstance, we have to consider the statements of PW8, PW17, PW31 and PW101.

126. PW17 in his deposition states that accused persons, namely A3 A5 and A6, got a car stepney recovered from A8's residence vide recovery memo Ex.PW/8 which bears his signature. He further states that the same stepney was identified by the owner of the car and the identification memo was prepared. PW31 and PW101 corroborate the deposition of PW17. PW8 denies identifying the stepney at the time of recovery. However, he identifies his signature on Ex.PW8/C which is the memo regarding the identification of the stepney, prepared at the time of the recovery, as deposed by PW101. He further identifies the recovered stepney after verifying the number mentioned on the tyre.

127. The Trial Court findings on this circumstance were that the testimonies of PW17, PW31 and PW101 establish that these accused persons had led the police team to the residence of A8 on the day, prior to which the police were not aware of the factum of his residence. The prosecution has however failed to establish beyond doubt that Stepney was recovered from the house of A8 in the manner described by them. Contradictory versions have been given by the witnesses regarding the presence of PW8 at the residence of A8, from where the stepney of the car is stated to be recovered. This finding is affirmed by the High Court.

128. We do not agree with the conclusions arrived at by the Courts below, based on complete ignorance of the material on record. In our view, from a perusal of the testimonies of PW8, PW17, PW31 and PW101, it is clear that: (a) the police party was led by the accused persons to the residence of A8 for the purpose of the recovery of the stepney on 17.06.1996; and (b) despite turning hostile in his deposition, the signature of PW8 on the memo regarding identification of the stepney

(Ex.PW8/C) remains unblemished and he further identifies the stepney of his car which has been so recovered. We make reference of the reasoning of the Delhi High Court while considering the testimony of PW13, placing reliance upon Pawan Kumar (supra) wherein it was held that in a case concerning circumstantial evidence it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.

129. The credit of the witness can be said to be impeached in terms of the prescriptions laid down under Section 155 of the Evidence Act. In Rammi alias Rameshwar v. State of M.P. (1999) 8 SCC 649 (2-Judge Bench), the Court while construing the provisions of Section 145 to 162 of the Evidence Act has clearly held that minor variation with the former statements would not amount to contradictions, thus rendering the testimony of the witness to be unworthy of credit. There is difference between contradictions, inconsistencies, exaggerations and embellishments. A degree of which would vary from person to person in case to case. [See also Leela Ram (Dead) through Duli Chand (supra); Calicut Engineering Works Ltd. (supra).

130. What would construe material discrepancies in the testimony of witnesses stands explained by this Court to be discrepancies which are “not normal, and not expected of a normal person”. [Reference: State of Rajasthan v. Smt Kalki & Anr. (1981) 2 SCC 752 (3-Judge Bench)]

131. We further place reliance on the judgment of this Court in Joseph s/o Kooveli Poulo (supra), wherein it was held that it is not that every discrepancy or contradiction matters much in the matter of assessing the reliability and credibility of a witness or the truthfulness of his version. Unless the discrepancy and contradiction are so material and substantial and that too are in respect of vitally relevant aspects of the facts deposed, the witness cannot be straightway condemned and their evidence discarded in its entirety.

132. Therefore, in view of the above, this circumstance stands proved.

XI. Pointing out of shop from where soldering iron and solder was purchased

133. The case of the prosecution is that on 19.06.1996, A3 and A5 accompanied the police party and pointed out the shop from where soldering iron and solder for the preparation of the bomb was made. PW31, PW39 and PW58 are the relevant witnesses to be considered for this circumstance (circumstance No. 32).

134. The Trial Court had held that the testimony of PW31 and PW39 remain unchallenged and the pointing out memo Ex.PW 31/K was proved. The High Court reversed the finding of the Trial Court with the reasoning that PW58 was not able to identify either of the accused persons.

135. PW39 & PW31 deposed that A3 & A5 pointed out the shop. On a perusal of the testimony of PW58, this Court finds that he categorically stated that two persons had purchased one soldering iron and one solder for a sum of Rs.35. He identifies his signature on the pointing out memo Ex.PW31/K and also identifies the said articles to have been sold by him. However, with regard to

the identification of the accused, he does not deny the two persons brought by the police to be the ones who came to his shop for the purchase. Therefore, in a considered view of this Court, this circumstance stands proved. We set aside the reasoning of the High Court and the findings of the Trial Court are affirmed.

XII. Pointing out of Shop of Unique Agencies, where gas cylinder was purchased

136. It is the prosecution case that on 19.06.1996, A3 and A5 pointed out the shop from where the gas cylinder, used in the bomb blast at hand was purchased by the accused persons. The circumstance (circumstance No.30) was held to be proved by the Trial Court, however, the High Court reversed the findings in the appeal.

137. The testimonies of PW31, PW36, PW39 and PW54 have to be considered. PW39 stated that A3 and A5 pointed out a shop vide pointing out memo (Ex.PW31/M). PW31 and 36 have deposed to similar effect. PW36 categorically states that A3 & A5 led the police party to Unique Agencies whose owner PW54 was sitting at the counter. Pertinently, the police witnesses are not cross-examined on the pointing out of this shop. PW54 admitted in his testimony that two persons had come to his shop in May 1996. In his cross examination, he admits his signatures on the pointing out memo Ex.PW31/M. There is no evidence on record to suggest that such an independent witness was forced or coerced to sign the pointing out memo.

138. The Trial Court held this circumstance to be proved and held that the names of A3 and A5 were mentioned in the pointing out memo Ex.PW31/M which contains the signature of the independent witness, PW54. The testimony of the police officers has been consistent on this circumstance. It, however, stands established that, both A-3 and A-5 in pursuance of their disclosure statements led the police team to the shop of PW54, which was not known to the police prior to the disclosure statements. The High Court reversed the finding of the Trial Court on this circumstance with the reasoning that PW54 was not able to identify the accused in Court and the prosecution made a pertinent omission in not showing the cylinder which was recovered from the residence of A3 to the shopkeeper (PW54).

139. It is our view that such omission does not make the pointing out memo which has been proven and the testimonies of the police witnesses wholly unreliable. Therefore, this circumstance is held to be proved against the accused persons.

XIII. Pointing out of shop from where drill machine was procured

140. It is the prosecution case that A3 led the police party on 18.06.1996 to the shop from where he had taken one drill machine to make a hole in the cylinder vide pointing out memo Ex.PW31/P (circumstance No.21).

141. This circumstance has been held to be proved by the Trial Court holding that mere recovery of drill machine without any specific mark of identification from the shop of PW33 is not an incriminating circumstance. The Trial Court further held that however, A3 led the police party to the

shop of PW33 and the police were not aware of it prior to that. The High Court reversed this finding on the ground that PW33 denied that A3 had visited the shop and brought the drilling machine.

142. In our view, PW101 has deposed that shop owner PW33 was identified by A3. A3 further informed the police party that he took one drill machine to make holes in the cylinder vide Ex.PW31/P. Further the said drill machine was produced by PW33 and came to be seized vide seizure memo Ex.PW31/C. PW31 verifies the preparation of the pointing out memo Ex.PW31/P. Even though PW33 does not support the prosecution case, he admits in his cross-examination his signature on Ex.PW31/C. In view of the above, we agree with the reasoning of the Trial Court on this circumstance that pointing out of this shop, which was not in the knowledge of the police, has not come to be disputed through the testimonies of the prosecution witnesses. We cannot agree with the High Court reasoning on this circumstance. In our view, PW33 stating that A3 has not bought a drill machine would vitiate the pointing out and seizure memos as well as the testimonies of the police officers on this circumstance. XIV. Pointing out of shop from where wire was purchased

143. The next circumstance of the prosecution case is that A3 and A5 led the police party to a shop from where they had purchased two meter yellow colour wire (Circumstance No.

20). This fact was testified by PW101 as corroborated by PW31 and pointing out memo Ex.PW31/O. Both the Courts below have not accepted the prosecution version on this circumstance.

144. The Trial Court held that this circumstance has not been proved beyond reasonable doubt. No oral or documentary evidence has come on record about purchase of two meter wire from the shop of PW32. PW32 denied the version of prosecution. He states that the police had visited him and asked whether a person sitting in the vehicle had visited his shop, which he had denied and stated that police obtained his thumb impression on a piece of paper but he is not aware of its contents.

145. In the considered view of the Court, the non-identification by the independent witness does not vitiate the pointing out proceedings and memo itself. In his testimony, PW32 does admit the police visiting his shop on 13.05.1996 along with the accused persons and the knowledge of his shop was not available to the police officers, prior to the disclosure statements of the accused.

XV. Pointing out shop from where araldite tube was purchased

146. It is the case of the prosecution that on 18.06.1996, A3 and A5 also led the police party to the shop from where araldite tube was purchased (circumstance No.19).

147. Both the Courts below have not accepted the prosecution version on this circumstance. The Trial Court held that the evidence is highly scanty to prove this circumstance. Araldite tubes recovered from the residence of A3 were not shown to PW52 to ascertain whether it was the same araldite which was purchased from PW52's shop. The High Court upheld the finding of the Trial Court on this circumstance, on the reasoning that PW52, who is the owner of this shop, has denied the prosecution version.

148. For this circumstance, reference has to be made to the testimonies of PW31, PW101 and PW52. PW101 and PW31 both have deposed that this shop was pointed out by A3 and A5 on 18.06.1996 in the presence of PW52 - Mohd. Alam.

149. PW52 states that he does not remember any specific instance as many customers used to come to his shop and make purchases. In his cross-examination, he denies the pointing out proceedings and further having signed the disclosure memos, Ex.PW31/Q and Ex.PW31/P and further clarifies that his inability to identify the accused is not due to lapse of time.

150. In view of the above, this circumstance on behalf of the prosecution, cannot be held to be proved beyond reasonable doubt.

151. Therefore, considering our view on the circumstances above mentioned, the following are held to be proved against A3: i. Arrest of A3 on 14.06.1996 (Circumstance no.9) ii. Stay of A3 at Gupta Hotel, Gorakhpur (Circumstance No.

13) iii. Recovery from the house of A3 (Circumstance No. 10) iv. Recovery of front and rear number plates (Circumstance No. 25) v. Recovery of duplicate key from Nizamuddin (Circumstance No. 26) vi. Pointing out of shop from where Duplicate Key was prepared (Circumstance No. 31) vii. Pointing out of shop where fake number plates were prepared (Circumstance No. 18) viii. Pointing out of place where Maruti Car was parked for days before the blast (Circumstance No. 22) ix. Pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996 (Circumstance No.23) x. Pointing out residence of A8 from where stepney of stolen Maruti car was recovered (Circumstance No. 15) xi. Pointing out of shop from where soldering iron and solder was purchased (Circumstance No. 32) xii. Pointing out of shop from where gas cylinder was purchased (Circumstance No.30) xiii. Pointing out of shop from where wire was purchased (Circumstance No.20) xiv. Pointing out of shop from where drill machine was procured (Circumstance No.21)

152. The argument and case laws on behalf of A3, that the disclosure statement of A3 is in the nature of Section 161 Cr.P.C. and therefore, is not admissible, is not of relevance. The circumstances being dealt with by this Court are in the nature of pointing out proceedings and recoveries so affected by the accused. Further, failure of the prosecution not to array PW13 and Mangal Chand as accused, being a glaring omission, would not render any impact on the case as against the present accused persons.

153. The cumulative effect of these circumstances so established, in the considered view of the Court, brings out the endeavour and active role of A3 in carrying out the blast at Lajpat Nagar, New Delhi. RDX came to be recovered from his residence, for which no explanation has been furnished, and various articles came to be procured by him with the purpose of carrying out the blast at New Delhi to destabilise the nation. Therefore, the conviction of A3 by the High Court is upheld and the question framed by us, is answered in the affirmative. However, on the issue of sentence we shall deal herein later.

154. We now proceed to examine, whether the acquittal of A5 and A6, is correct in the facts and circumstances of the present case?

155. Before proceeding to our discussion, we trace the law on interference against acquittal by High Courts. In Major Puran v. The State of Punjab, AIR 1953 SC 459 (2-Judge Bench), this Court observed:

> "Though the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial court, the findings of that court can be reversed only for very substantial and compelling reasons. In exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should, and will, always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

156. Mere fact that the co-accused stand acquitted through the evidence against all of them would not be a ground to acquit all as held in Gurcharan Singh & Anr. v. State of Punjab, AIR 1956 SC 460 (3-Judge Bench).

157. Further, the circumstances under which the Court can interfere against the judgment of acquittal is also now well- settled. It is not enough for the Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong in appreciating the evidence. [Reference: Aher Raja Khima (supra)]

158. Pertinently, this Court has clarified that expression "substantial and compelling reasons" and "sufficient reasons" or "strong reasons" are just to provide certain guidelines and there cannot be any rigid or inflexible rule governing the decision making power of the appellate court and it cannot be construed as a formula which has to be rigidly applied in every case. It is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. [Reference: M.G. Agarwal (supra)]

159. The interference in an appeal against acquittal by special leave under Article 136, this Court has undoubted power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction, though in the case of acquittal it will not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court "acts perversely or otherwise improperly". [Reference: Shri Om Prakash (supra) and Chandrappa & Ors. v. State of Karnataka (2007) 4 SCC 415 (2-Judge Bench)].

160. Lastly, in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 (2-Judge Bench), this Court observed:

> "5. .....a concurrent finding of fact cannot be reopened in a n appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from the vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded."

161. Undoubtedly presumption of innocence of the accused strengthened by their acquittal against the conviction and as said ordinarily, this Court under Article 136 is slow to interfere but where the approach adopted by the High Court has resulted into gross miscarriage of justice and the reasoning of the High Court is wholly against the weight of the evidence, making the findings impossible of being approved, the Court is duty bound to interfere, as is so warranted under law. [Reference: State of U.P. v. Ashok Kumar Srivastava, (1992) 2 SCC 86 (2-Judge Bench)]

162. Where the findings of fact returned by the courts below are bordering on perversity and result in miscarriage of justice, the Supreme Court under Article 136 would intervene to prevent such miscarriage of justice. [Reference: Kalki (supra)]

163. Merely because another view is possible, court would not interfere. [Reference : Kallu @ Masih & Ors. v. The State of Madhya Pradesh, (2006) 10 SCC 313 (2-Judge Bench). Accused No. 5, Mirza Nissar Ahmed @ Naza: Arrest & Circumstances:

164. Accused No. 5 - Naza has been acquitted by the High Court. Thus, in view of the law discussed above, a detailed analysis is required for all the incriminating circumstances against him. The prosecution seeks to prove the following circumstances to bring home the guilt of the accused: I. Arrest of A5 from Mussoorie

165. This circumstance (circumstance No.34) has been held to be not proved by the Trial Court and the High Court without any discussion, does not interfere with such finding.

166. The relevant prosecution witnesses for proving this circumstance are PW23 and PW43.

167. PW23 states that on 17.06.1996 he along with his staff had gone to Mussoorie from Delhi and arrested A-5 from Minerva Hotel at Mussoorie and conducted his personal search vide memo Ex. PW23/A. Consequently, A5 was brought to Delhi and when interrogated, he had made his disclosure statement vide memo Ex.PW23/B. The Trial Court did not find these testimonies sufficient for proving the arrest of A-5 due to lack of documentary evidence. The Trial Court held that the prosecution witnesses have given different versions regarding their departure from Delhi to Mussoorie and also about the time when they reached Mussoorie. Thus, it was held that the prosecution failed to establish the date, time and place of the apprehension of A5.

168. We cannot agree with the reasoning of the Trial Court on this circumstance. It is evident from the testimony of PW23 that on arriving at Mussoorie, he made entries at PS Mussoorie on the intervening night of 16/17.06.1996 at about 01.00 AM, which we find to be corroborated by PW43, who stated that they departed from New Delhi at noon on 16.06.1996 and arrived at Mussoorie in the early hours of the morning. In our view, PW43 not stating the exact time, does not have the effect of making the prosecution case unbelievable. These witnesses have remained unblemished in their cross examinations and pertinently PW23 categorically denied that the said accused was brought from Nepal.

169. Therefore, the question of arrest of A5 from Mussoorie on 17.06.1996 stands proven.

II. Travel of A5 from Kathmandu to Delhi

170. The most relevant circumstance that led the prosecution to A5 is circumstance No. 34, that is, the confessional statement of A9, which we have earlier discussed and held to be proved beyond reasonable doubt. A9 in his confessional statement (Ex.PW100/A) clearly stated that A5 was sent to Delhi on 10.05.1996 to make a setting for the blast in Delhi. We have earlier considered and upheld this circumstance. Therefore on the basis of this confession and testimony of PW67 we find this circumstance incriminating against A5.

171. Now we will proceed to examine the circumstances pertaining to discoveries made regarding allegedly preparation/making of the bomb. Following are the circumstances relevant for this purpose:

(i) Pointing out shop, where 9V battery used in the blast was purchased (Circumstance no. 27).

(ii) Pointing out shop on 19.06.1996, where soldering of battery terminals is done (Circumstance no. 28).

(iii) Pointing out shop on 19.06.1996, where Jayco wall clock is purchased (Circumstance no. 29) and others as discussed hereunder:

Pointing out shop, where 9V battery used in the blast was purchased on 21.05.1996 (Circumstance No. 27)

172. It is the case of the prosecution that A5 and A6 led the police party to the shop of PW60, Ganesh Electronics, the shop from where they purchased 9V battery to be used in the bomb blast at Lajpat Nagar. This circumstance has been held to be proved by the Trial Court but came to be reversed by the High Court holding that the failure of the primary fact of identification by PW60 of the accused persons, undermines the prosecution case. Contrarily, the Trial Court placed reliance on the pointing out memo Ex.PW31/L, which admittedly bears the signature of the accused persons and PW60. The Trial Court had thus held this circumstance to be established.

173. For this circumstance, we place reliance on the testimony of PW31, PW39 and PW60.

174. PW31 testifies that on 19.06.1996, A5 and A6 were taken to Ganesh Electronics from where they bought the 9 volt battery used in the bomb blast. This is corroborated by PW39 who deposed that A5 & A6 pointed out Ganesh Electronics vide pointing memo Ex. PW31/L. This statement of the witnesses remains unrebutted during their cross examination.

175. Perusal of the testimony of PW60 makes it is clear that he does not deny that the accused persons were the ones who had not purchased the battery from his shop and volunteers to add the suggestion of the prosecution that perhaps they were the ones who had purchased the battery. Further, it was not possible for him to remember by face each and every customer. We find this reasoning to be acceptable. He further admits his signature on the pointing out memo and does not deny the fact that A5 might have purchased the battery from him. Hence, we find the pointing out memo Ex.PW31/L to be proved beyond reasonable doubt. We uphold the reasoning given by the Trial Court in this circumstance. A5 & A6 have pointed out the shop from where the battery used in the bomb blast was purchased and the police did not have knowledge of the same, prior to the disclosure and pointing out by A5.

Pointing out shop on 19.06.1996, where soldering of battery terminals is done by A5 &A6 (Circumstance No.28)

176. It is the case of the prosecution that A5 and A6 led the police party to the shop of PW38, Vijay Electronics, where soldering of the terminals of the battery was done. The Trial Court held this circumstance to be proved beyond reasonable doubt, which finding was reversed by the High Court. The High Court held that PW38's admission that the pointing-out memo was prepared somewhere else and that he signed on blank papers is not contradicted. He did not provide any date or approximate period which injects vagueness and weakens the prosecution case.

177. The relevant witnesses are PW31, PW38 and PW39.

178. PW38 clearly identifies A5 as also deposes that in 1996 two persons including A5 came to his shop for fixing the wires by soldering and he got it done through his employee. Further, he states that about a month later they came with the Police, pointed out his shop and memo Ex.PW31/N was prepared.

179. The testimony of PW31 and PW39 records that on 19.06.1996 both A5 & A6 took them to Vijay Electronic where they had got the wires fixed on the battery used in the blast. The place and shop and affixing wires on the terminals of 9V battery were confirmed. No explanation was offered by the accused persons for having the wires fixed on the terminal of the 9V battery. Thus, it is our view that the High Court erred in reversing the findings as this circumstance was proved when the pointing out memo stood proved based on the discovery made upon the disclosure statement of A5. A5 was unable to give justification as to purchase of battery and soldering of wires on the same day when the bomb blast took place. Further the police was not aware of this shop, prior to the disclosure and pointing out by the accused persons. Pointing out shop on 19.06.1996, where Jayco wall clock is purchased (Circumstance No. 29)

180. The prosecution has sought to prove that A5 and A6 pointed out a shop namely, Imperial Gramophone Company, Chandni Chowk, as the shop from where they had purchased Jayco clock for use in the blast at Lajpat Nagar.

181. This circumstance was held to be proved by the Trial Court by placing reliance on the documentary evidence of bill receipts and the testimonies of PW48 and PW50. The High Court reversed this finding and held that neither PW50 nor PW48 corroborated A5 & A6's visit to their shop. Both of them were unable to identify the accused persons. Moreover, PW48 not only did not identify the accused person but instead positively identified another person.

182. We make reference to the testimonies of PW48 and PW50.

183. PW48 in our view, supports the prosecution on the material aspect of the sale of the clock and admits his signature on Ex.PW48/A, a receipt. PW50, the owner, admits pointing out memo Ex.PW31/H to have been signed by him. His explanation in clearly not identifying A5 and A6 is quite plausible as explained by him, such a transaction took place several years prior to his deposition. The testimonies of the police officers are consistent on this circumstance. PW31 states that on 19.06.1996, the accused persons pointed out Imperial Gramophone Company where Jayco alarm piece was bought vide bill which was recovered through recovery memo Ex.PW31/G. The pointing out memo Ex.PW31/H bears his signature. PW39 fully corroborates this chain of events. Therefore, in view of the above, we are unable to agree with the reasoning of the High Court. The factum of pointing out and purchase of the Jayco stands proved and this fact was not known to the police, prior to the pointing out by the accused persons. This circumstance is held to be proved against the accused persons.

Pointing out of place where bomb blast took place

184. It is the case of the prosecution that A5 and A6 pointed out the place of occurrence i.e. Pushpa Market Lajpat Nagar near Fountain Park Car Parking vide pointing out memo Ex.PW31/T, where the accused persons had parked the car fitted with the cylinder bomb on 21.05.1996 at 6:15PM.

185. Both the Courts below have rejected this circumstance. The Trial Court held that this pointing out cannot be held to be an incriminating circumstance against A5 and A6 since this spot was known to the police from 21.05.1996, the day of the incident. The High Court has held this circumstance to be a weak and tenuous circumstance.

186. We are in agreement with the Courts below that since the police was already aware of this spot, prior to the pointing out by accused persons, it cannot be held to be an incriminating circumstance against them. Common Circumstances with A3, as discussed above.

187. In addition to the circumstances discussed above, the circumstances which are already proved against A3 are also alleged against A5 and therefore, the same reasoning would apply and be proved against A5. Such circumstances are listed below:

i. Recovery of front and rear number plates (Circumstance No. 25) ii. Recovery of duplicate key from Nizamuddin (Circumstance No. 26) iii. Pointing out of shop from where Duplicate Key was prepared (Circumstance No. 31) iv. Pointing out of shop where fake number plates were prepared (Circumstance No. 18) v. Pointing out of place where Maruti Car was parked for days before the blast (Circumstance No. 22) vi. Pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996 (Circumstance No.23) vii. Recovery of stepney from the house of A8 at the behest of A3, A5 and A6 (Circumstance No. 15) viii. Pointing out of shop where soldering iron and solder were purchased (Circumstance No. 32) ix. Pointing out of shop where Gas Cylinder was purchased (Circumstance No. 30) x. Pointing out of shop from where wire was purchased (Circumstance No. 20)

188. Therefore, in total 15 circumstances stand proved as against A5 - Naza. The cumulative effect of the circumstances held to be proved against A5 is that he, being a part of the larger conspiracy to destabilise the nation, participated in the planning and carrying out of the bomb blast at Lajpat Nagar. His role in the conspiracy is also highlighted by the proven confession of A9, wherein he categorically stated that A15 - Javed Senior, had sent A5 - Naza to Delhi to prepare for the same. No explanation is furnished by him as to the knowledge of shops from where different incriminating material is purchased; recovery of the stepney of the vehicle used in the blast; having knowledge of the failed bomb blast attempt, which pertinently the police could not have known, if the accused persons did not point out the same.

189. In view of the above, the question framed by us, stands answered in the negative and the acquittal of A5 is set aside.

190. We now proceed to examine, whether the acquittal of A6, is correct in the facts and circumstances of the present case? Accused No. 6, Mohd. Ali Bhatt @ Killey: Arrest, Recovery & Circumstances

191. Accused No. 6, Killey has been acquitted by the High Court. At first, we examine the independent circumstance against A6, i.e., arrest of A6 from Gorakhpur on 16.06.1996. The prosecution case is that A6 was arrested from Gorakhpur on 16.06.1996 at the instance of A3 & A4.

192. The Trial Court in this regard has observed that it makes no serious effect if he was not arrested in the manner claimed by the prosecution or that the prosecution failed to prove the exact time or place from where he was apprehended.

193. The relevant testimony to prove his arrest is that of PW24 who went to Gorakhpur from where A6 was arrested. He deposes that A6 made a disclosure statement marked as Ex.PW16/I. DD No.28A made by IO at PS Gorakhpur shows visit of Delhi Police to Gorakhpur and apprehension of A6 along with A7 can't be ruled out. However, the Court further held that since nothing incriminating was recovered at the time of apprehension of A6, his arrest is not an incriminating circumstance against him. Similarly, the High Court also observed that the arrest of A6 is not an incriminating circumstance against him and it is at best a neutral circumstance.

194. We are in agreement with the reasoning of the Courts below to the limited extent that the factum of arrest through the testimony of PW24 stand proved.

195. In view of our discussion in terms of A3 and A5, the following proved circumstances have been alleged against A6 on an equal footing and, therefore, the same reasoning would apply and be proved against A6:

i. Recovery of front and rear number plates (Circumstance No. 25) ii. Recovery of duplicate key from Nizamuddin (Circumstance No.26);

iii. Pointing out of shop from where Duplicate Key was prepared (Circumstance No.31) iv. Pointing out of shop where fake number plates were prepared (Circumstance No.18);

v. Pointing out of place where Maruti Car was parked for days before the blast (Circumstance No.22) vi. Pointing out of Dulhan Dupatta shop where the car was parked on 19.05.1996 (Circumstance No.23) vii. Pointing out of shop 'Dulhan Dupatta' where the stolen car was parked on 19.05.1996 (Circumstance No.23) viii. Recovery of stepney from the house of A8 at the behest of A3, A5 and A6 (Circumstance No.15) The circumstances proved only against A5 & A6 are enumerated below :

ix. Pointing out shop, where 9V battery used in the blast was purchased (Circumstance No.27).

x. Pointing out shop on 19.06.1996, where soldering of battery terminals is done (Circumstance No.28). xi. Pointing out shop on 19.06.1996, where Jayco wall clock is purchased (Circumstance No.29).

196. Thus, in view of the 11 circumstances mentioned above being proved, we are convinced about the active role played by A6 is as one of the conspirators. Though not proved by direct evidence, his role is quite evident through the various circumstances which show that he has been the part of a conspiracy. His role can be seen from the preparation of the bomb till its execution. We find his involvement from the stage of planning yet the circumstances that stood proved showed his greater role in all the events that took place after 19.05.1996, i.e., the day of the failed attempt of the bomb. We cannot ignore that it is his contribution in rectifying the defects along with other co-accused persons as is proved through the confessional statement of A9 that actually culminated in a ghastly occurrence where people lost their lives. It is further evident from the confession of A9, that A6 was moving along him and other accused, namely A15 and A13, throughout for the planning and execution of the bomb blast.

197. In view of the above, the question framed by us, stands answered in the negative and the acquittal of A6 is set aside.

198. We now proceed to the question as to whether A3, A5 and A6 are liable to be convicted under Section 411 IPC for stealing the Maruti car for use in the blast.

199. The fact that a bomb blast took place in the car is not disputed and is believed by both the courts below. On a conjoint reading of the testimonies of PW8 (owner of the vehicle) and PW76 (cleaner of the vehicle) have established that a Maruti car bearing No.DL-2CF-5854 belonging to PW8 was stolen on the intervening night of 17/18.05.1996 and its report vide FIR No. 286/1996 was lodged by PW8 on 18.05.1996. The circumstance of A3, A5 and A6 stealing the said vehicle has been held to be proved by the Trial Court.

200. The involvement of A3, A5 and A6 comes to be proved through the following circumstances: (a) The original number plates bearing No.DL 2CF 5854 came to be recovered at the instance of the accused persons and the said circumstance has been held to be proved (circumstance No.25); (b) The stepney of the Maruti car belonging to PW8 came to be recovered by the accused persons from the residence of A8 and has been held to be proved, the same being identified by PW8 (circumstance No.15); and (c) The accused persons have pointed out the shop where they got the duplicate key prepared for stealing the vehicle and duplicate number plates for the same which have been held to be proved (circumstance Nos.18 and 31).

201. Therefore, in view of the above circumstances being proved, it is evident that the accused persons stole the car through the duplicate key, it was in their possession and was finally used in the commission of the crime. The acts of the accused persons A3, A5 and A6, as proved by the above-mentioned circumstances, warrant conviction under Section 411 IPC, as held by the Trial Court.

Conclusion

202. Having considered the circumstances alleged by the prosecution against the accused persons, A3, A5, A6 and A9, it is clear that the prosecution has proved the guilt of the abovementioned accused in the commission of the crime. The last question which arises before us is - whether all these accused persons were part of a conspiracy as under Section 120B IPC? We find this question to be answered in the affirmative.

203. The blast was planned at the behest of other accused persons, namely, A15, who was working under the instructions of A11 to A1, who never faced trial. From an evaluation of the evidence on record including the judicial confession of A9, it is evident that all these accused persons were known to each other and were participating with the common objective to carry out the blast in Delhi in furtherance of an international conspiracy to cause disruptive activities in India. All the proven circumstances taken together form a chain of events that implicates the accused persons.

204. A9 specifically names A5 - Naza and A6 - Killey. A5 in furtherance of this object arrived in Delhi on 10.05.1996 from Kathmandu, which stands proved. A9 carrying the RDX to Delhi and A6's arrival has already been proved. A3, A5 and A6 proceeded to prepare the bomb in Delhi for which they procured various articles including battery, gas cylinder, duplicate key, fake number plates etc.; stole a car and made two attempts for the blast, out of which the second one came to be successful. This preparation has come to the knowledge of the police through pointing out proceedings carried out at the instance of these accused persons, which has been earlier discussed. Pertinently, the

material which came to be recovered from the residence of A3 in the form of RDX is the same explosive material used in the Lajpat Nagar bomb blast, as has come through the CFSL Reports, Ex.PW101/C and Ex.PW101/G. Importantly, the factum of the failed attempt is only brought about by the joint pointing out proceedings by these accused persons.

205. Therefore, in view of the above, it is evident that A3, A5, A6 and A9 were part of a criminal conspiracy to cause the blast in the capital city, New Delhi.

206. We also note that the accused persons who have not faced trial or those against whom the State has not preferred an appeal, prima facie, seem to be a part of this conspiracy. However, since they are not before us, we refrain from delving into evidence against those persons.

Sentence of A3, A5, A6 and A9

207. This brings us to the issue of sentence, since the Trial Court had imposed Death Sentence on A3, A5 and A6 and the High Court acquitted A5 and A6, while the death sentence awarded to A3 was commuted to life imprisonment. A9 has been awarded life imprisonment concurrently by the High Court and the Trial Court. On this point, we make reference to the judgment of this Court in Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641 (2-Judge Bench), wherein it was held that in terms of rule of prudence and from the point of view of principle, a Court may choose to give primacy to life imprisonment over death penalty in cases which are solely based on circumstantial evidence or where the High Court has given a life imprisonment or acquittal.

208. Considering the facts at hand and evidence on record, this Court has to be conscious of the fact that the bomb blast caused at the behest of the accused persons resulted in the death of 13 persons and 38 persons suffered injuries. There was further damage caused to the livelihood of the shopkeepers, whose shops were burnt down due to the said bomb blast. In view of the recovery from the residence of A3 and the confessional statement of A9, it is evident that these accused persons were part of the plan for future blasts in the nation as well. The incident took place on 21.05.1996, i.e., approximately 27 years ago; the Trial Court awarded the sentence of death on 22.04.2010, i.e., more than 13 years ago; and the present accused acting at the behest of the principal conspirators; are all mitigating circumstances in not awarding the sentence of death even though it falls within the category of rarest of rare cases.

209. The law laid down in Swamy Shraddhanand v. State of Karnataka (2008) 13 SCC 767 (3-Judge Bench) was affirmed by a Constitution Bench of this Court in Union of India v. V. Sriharan & Ors; (2016) 7 SCC 1 (5-Judge Bench) wherein it was observed that:

> “51. The truth of the matter is that the question of death penalty is not free from the subjective element and the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the Judges constituting the Bench.

> 52. The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court in giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal justice system. Thus the overall larger picture gets asymmetric and lopsided and presents a poor reflection of the system of criminal administration of justice. This situation is a matter of concern for this Court and needs to be remedied.
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> 53. These are some of the larger issues that make us feel reluctant in confirming the death sentence of the appellant.
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> 93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases.

94. In the light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be." [See also: Sundar v. State through Insp. of Police, 2023 SCC OnLine 310 (3-Judge Bench); B.A. Umesh v. Union of India & Ors., 2022 SCC Online SC 1528(3-Judge Bench); & Manoj Pratap Singh v. State of Rajasthan, (2022) 9 SCC 81 (3- Judge Bench).] In view of the conspiracy, as discussed above, and the facts at hand, including mitigating circumstances as against the punishment of death penalty, we consider it a fit case to award life imprisonment without remission, extending to natural life of A3, A5, A6 and A9.

210. The record reveals it is only on the prodding on the part of the judiciary that the trial could be completed after more than a decade. The delay, be it for whatever reason, attributable to the judge incharge or the prosecution, has certainly compromised national interest. Expeditious trial of such cases is the need of the hour, especially when it concerns national security and the common man. Regrettably, enough vigilance was not displayed by the investigating as well as the judicial authorities. A prominent market in the heart of the capital city is attacked and we may point out that it has not been dealt with the required degree of promptitude and attention. To our great dismay, we are forced to observe that this may be due to the involvement of influential persons which is evident from the fact that out of several accused persons, only few have been put to trial. In our considered view, the matter ought to have been handled with urgency and sensitivity at all levels.

211. In view of our discussion above, the common judgment dated 22.11.2012 rendered by the High Court of Delhi in Death Sentence Reference No.2 of 2010 and Criminal Appeal Nos.948, 949, 950 and 951 of 2010 is set aside. The appeals preferred by accused Mohd. Naushad, Criminal Appeal No. 1269/2013 and Javed Ahmed Khan, Criminal Appeal Nos. 1270-1271 of 2013 are dismissed.

212. The appeal preferred by the State (Govt. NCT of Delhi), Crl.A....@ SLP (Crl.) Nos.6447-6451 of 2013 are allowed with the result that : A3 - Mohd. Naushad stands convicted under Sections 302, 307, 411, 436 and 120B IPC as well as Section 5 of Explosive Substances Act; A5 - Mirza Nissar Hussain @ Naza and A6 - Mohd. Ali Bhatt @ Killey stand convicted under Sections 302, 307, 436, 411 and 120B IPC and A9 - Javed Ahmed Khan stands convicted under Sections 302, 307, 436 and 120B IPC.

213. In view of the severity of the offence resulting in deaths of innocent persons and the role played by each accused person, all these accused persons are sentenced to imprisonment for life, without remission, extending to natural life. Accused, if on bail, are directed to immediately surrender before the Court concerned and their bail bonds stand cancelled. A5 - Mirza Nissar Hussain @ Naza and A6 - Mohd. Ali Bhatt @ Killey are directed to surrender forthwith.

Pending application(s), if any, shall stand disposed of accordingly.

214. We appreciate the efforts of all the counsels, namely Mr. Siddharth Dave, Senior Advocate; Ms. Kamini Jaiswal, Advocate-on-Record; Mr. Sanjay Jain, Additional Solicitor General of India and their teams, namely, Mr. Farrukh Rasheed, Advocate-on-Record; and Advocates Ms. Jamtiben Ao; Ms. Vidhi Thakkar; Mr. Prastut Dalvi; Ms. Arushi Singh; Mr. Abu Bakr Sabbaq, Mr. Ashish Sharma; Ms. Rani Mishra; Mr. Abhimanue Shreshtha; Mr. Rishi Raj Sharma; Mr. Satyam Chaturvedi; Ms. Ashima Gupta; Ms. Shruti Agrawal; Mr. Nishank Tripathi; Mr. Shreekant Neelappa Terdal (Advocate- on-Record); Ms. Sonia Mathur; Ms. Seema Bengani; Mr. Padmesh Mishra; Mr. Yuvraj Sharma; Mr. Udai Khanna and Dr. N. Visakamurthy, for painstakingly taking us through the voluminous evidence and providing us with detailed handouts on the case file, which are purely a substance of their hard work.

.....J.

(B.R. GAVAI) .....J.

(VIKRAM NATH) .....J.

(SANJAY KAROL) Date: 06 July, 2023;

Place: New Delhi.