Supreme Court of India
Chandra Prakash vs State Of Rajasthan on 9 May, 1947
Author: D Misra
Bench: K.S. Radhakrishnan, Dipak Misra

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1155 OF 2014
(Arising out of S.L.P. (Crl.) 4419 of 2009)

Chandra Prakash … Appellant

Versus

State of Rajasthan …Respondent

WITH

CRIMINAL APPEAL NOS.1156-1157 OF 2014
(Arising out of S.L.P. (Crl.) 3524-3525 of 2010)

Abdul Hamid and another … Appellants

Versus

State of Rajasthan …Respondent

With

CRIMINAL APPEAL NO. 1160 OF 2014
(Arising out of S.L.P. (Crl.) Nos. 4105 of 2014
CRLMP 22781/2012)

Abdul Mateen … Appellant

Versus

State of Rajasthan …Respondent

J U D G M E N T

Dipak Misra, J.

On 26th January, 1996, a day of celebration and conscientious remembrance of the "Red Letter Day" in the history of India because 26th January is the date in 1950, when our organic, inclusive, humane and compassionate Constitution came into existence being given by the people of this country to themselves and the nation has been obliged to jubilate remembering the said important day in our national history, for it chartered the path of many an emancipation and conferred on the people the highly cherished fundamental rights; about 8.30 a.m., there was a blast of explosive substances between Gate No.12 and Gate No. 13, towards the southern and eastern side of Sawai Man Singh Stadium Jaipur, where the State level function on Republic Day was going to be celebrated. Soon after the blast, Prahlad Singh, the Station House Officer, Police Station lodged an FIR about 9.30 a.m. which was registered as FIR No. 39/1996. As per the FIR, when the blast took place, the people who had assembled were asked to leave the stadium so that there could be a check. During the check, it was found that due to the blast, a big size crater had come into existence at the scene of explosion. That apart, by the said explosion, the sand hopped upward and fell on the places meant for sitting in the stadium and also on the roof. The glasses of the windows of the pavilion near the explosion had broken into pieces. At the time when the explosion had occurred, only police personnel but no civilians were present in that part of the stadium. The public at large, which was present inside the Stadium, was informed to leave the Stadium so that the check and security could be carried out. Due to the sound caused by the explosion, one Ramgopal Choudhary, an employee of the Public Works Department, who was passing nearby, had met with an injury on his ear for which he was immediately sent to the hospital. On the basis of the FIR, offences under Section 120-B read with Sections 307 and 427 IPC, under Section 3 of the Prevention of Damage to Public Property Act, 1984 and under Section 3 of the Explosive Substances Act, 1908 (for short "the 1908 Act") and also under Section 9B of the Explosive Act, 1884 (for brevity "the 1884 Act") were registered and the investigation commenced. Later on, the investigation of the case was transferred to C.I.D(C.B.).

2. During the investigation, an anonymous letter in Urdu language dated 1st June, 1997 was sent to the Superintendent of Police, wherein some information was given which was alleged to have been gathered by the senders who described themselves as well wishers while they were in custody in the Central Jail, Jaipur, in respect of the bomb-blast that took place on 26th January, 1996 at the SMS Stadium, Jaipur. In that letter, the names of some persons, i.e., Raies Beg of Agra, Dr. Abdul Hamid of Firozabad and Pappu Puncturewala were mentioned. It was also mentioned that the ISI of Pakistan was behind the bomb-blast. On the basis of the said information, the investigating officer arrested five persons, namely, Abdul Hamid, Raies Beg, Abdul Mateen, Pappu @ Saleem and Chandra Prakash on various dates.

3. During the investigation, the investigating agency recovered a live time bomb from SMS Stadium and explosive items were recovered from Roopwas, District Bharatpur. In the course of the investigation, accused Pappu @ Saleem filed an application under Section 306 of the Code of Criminal Procedure (for brevity "the Code") before the Chief Judicial Magistrate on 14.8.1997 who, by order dated 30.8.1997, authorized the Additional Chief Judicial Magistrate No. 6 to record the statement of the said accused under Section 164 of the Code and thereafter, the Chief Judicial Magistrate, by a reasoned order dated 20.9.1997, allowed the application. After carrying out the

detailed investigation, the police laid the charge- sheet against the arrested accused persons, namely, Chandra Prakash, Abdul Mateen, Raies Beg and Abdul Hamid.

4. All the accused persons abjured guilt, pleaded false implication and, accordingly, faced trial.

5. The learned trial Judge framed different charges against the four accused persons and we think that it would be apt to refer to the charges framed against each of them. As far as Chandra Prakash is concerned, the charges that were framed against him were under Section 9B of the 1884 Act and under Sections 3, 4, 5 read with Section 6 of the 1908 Act. As far as Abdul Mateen is concerned, he was charged with the offences under Section 14 of the Foreigners Act, 1946, under Sections 3, 4 and 5 of the 1908 Act, under Section 9B of the 1884 Act, under Section 3 of the Prevention of Damages to Public Properties Act and under Sections 307, 118, 435 and 456 IPC. As far as Raies Beg and Abdul Hamid are concerned, they were faced with similar charges, namely, under Section 9B of the 1884 Act, under Sections 3, 4 and 5 read with Section 6 of the 1908 Act and under Sections 307/120B, 118/120B and 435/120B IPC.

6. To bring home the charges against the accused persons, the prosecution examined as many as 78 witnesses and brought on record exhibits P-1 to P-296. In defence, no witness was examined on behalf of any of the accused persons. However, documentary evidence was produced by them, i.e., exhibits D-1 to D-5. We shall refer to the relevant parts of the testimonies of the vital witnesses and advert to the documents which have been stressed and emphasized upon by the prosecution at a later stage.

7. The accused persons in their statements under Section 313 of the Code took separate plea and hence, it is obligatory on our part to record their pleas individually. Abdul Mateen admitted that he is a Pakistani and he had remained as a Pakistani always; that he had never come to India before his arrest; that he did not know any person in India; that he never visited the places, namely, Jaipur, Farah, Roopwas, Agra Firozabad or any other city; and that he had never given any information to the police and no recovery was made by the police at his instance and he had never identified any place. The plea of Abdul Hamid was that he never gave any information to the police during the investigation of the case and he did not furnish any information about the shop of Mohit Jain, PW-30, situated at Delhi and he had been falsely implicated. Raies Beg took the plea that due to communal riots he had been falsely booked in the crime. Accused Chandra Prakash, apart from false implication, denied any relationship with Pappu @ Saleem, PW-1, and further stated that no key was recovered from him and he did not open any godown and room with his keys. He also took the stand that he had not taken any room on rent in Krishi Upaz Mandi or any shop near the power house on rent and disputed the recovery from any shop. The trial court, appreciating the oral and documentary evidence on record, by its judgment and order dated 22.04.2000 in Sessions Case no. 8/98, convicted all the accused and sentenced all of them individually in respect of all the specific charges framed against them. The offence for which each of them had faced trial has been already mentioned hereinabove. All the accused had been sentenced separately by the learned trial Judge.

8. Accused Abdul Mateen was sentenced to undergo five years rigorous imprisonment and a fine of Rs.10,000/-, in default of payment of fine to further undergo one year's simple imprisonment under

Section 14 of the Foreigners Act; ten years rigorous imprisonment and a fine of Rs.20,000, in default to further undergo two years' simple imprisonment under Section 4 of the Prevention of Damages to Public Property Act; three years rigorous imprisonment and a fine of Rs.3,000/-, in default to further undergo six months' simple imprisonment under Section 456 IPC; to undergo ten years rigorous imprisonment and a fine of Rs.10,000/-, in default to further undergo two years' simple imprisonment under Section 307 read with Section 120B IPC; seven years rigorous imprisonment and a fine of Rs.7,000/-, in default to further undergo one and half years' simple imprisonment under Section 435 read with Section 120B IPC; five years rigorous imprisonment and a fine of Rs.5,000/-, in default to further undergo one year's simple imprisonment under Section 118 read with Section 120B IPC; two years rigorous imprisonment and a fine of Rs.2,000/-, in default to further undergo three months' simple imprisonment under Section 9B of the 1884 Act; imprisonment for life and a fine of Rs.20,000/- in default to further undergo three years' simple imprisonment under Section 3 of the 1908 Act; seven years rigorous imprisonment and a fine of Rs.7,000/-, in default to further undergo one and half years' simple imprisonment under Section 4 of the 1908 Act; and five years rigorous imprisonment and a fine of Rs.5,000/-, in default to further undergo one year's simple imprisonment under Section 5 of the 1908 Act.

9. Accused Chandra Prakash was sentenced to undergo two years rigorous imprisonment and a fine of Rs.2,000/-, in default to further undergo three months' simple imprisonment under Section 9B of the 1884 Act; ten years rigorous imprisonment and a fine of Rs.10,000/- , in default to further undergo two years' simple imprisonment under Section 3 read with Section 6 of the 1908 Act; seven years rigorous imprisonment and a fine of Rs.7,000/-, in default to further undergo one and half years' simple imprisonment under Section 4 read with Section 6 of the 1908 Act; and five years rigorous imprisonment and a fine of Rs.5,000/-, in default to further undergo one year's simple imprisonment under Section 5 read with Section 6 of the 1908 Act.

10. Accused Abdul Hamid and Raies Beg were sentenced to undergo two years rigorous imprisonment and a fine of Rs.2,000/-, in default to further undergo three months' simple imprisonment; ten years rigorous imprisonment and a fine of Rs.10,000/-, in default to further undergo two years simple imprisonment under Section 307 read with Section 120B IPC; seven years rigorous imprisonment and a fine of Rs.7,000/-, in default to further undergo one and half years' simple imprisonment under Section 435 read with Section 120B IPC; five years rigorous imprisonment and a fine of Rs.5,000/-, in default to further undergo one year's simple imprisonment under Section 118 read with Section 120B IPC; ten years rigorous imprisonment and a fine of Rs.10,000/-, in default to further undergo two years' simple imprisonment under Section 3 read with Section 6 of the 1908 Act; seven years rigorous imprisonment and a fine of Rs.7,000/-, in default to further undergo one and half years' simple imprisonment under Section 4 read with Section 6 of the 1908 Act; and five years rigorous imprisonment and a fine of Rs.5,000/-, in default to further undergo one year's simple imprisonment under Section 5 read with Section 6 of the 1908 Act.

11. At this juncture, we think it appropriate to state the findings recorded by the learned trial Judge against each of the accused. As far as Abdul Mateen is concerned, the trial court held that it was clear from the evidence of GPS Wirk, PW-69, Assistant Commander, BSF, that Mhd. Ashlam Baba

was the financial head of a terrorist organization by the name of "Harkat-ul-Ansar", and during the course of investigation, the accused Abdul Mateen was arrested from Srinagar and no passport or visa was found in his possession. The offence punishable under Section 14 of the Foreigners Act which had been levelled against him was established beyond reasonable doubt. The live time bomb was duly recovered and accused Abdul Mateen had exclusive knowledge and it was he who planted the time bomb at that place and it was proven from the testimonies of the witnesses. From the evidence of the approver, Pappu, and the information under Section 27 of the Evidence Act, it could be concluded that prior to 26.1.1996, two time bombs were implanted by accused Abdul Mateen. It was clear from the testimonies of Jai Narayan, PW-6, and Gopal Saini, PW-7, that Abdul Mateen had led to the recovery of the bomb and the charge of crime punishable under Section 9B of the Explosive Act levelled against the accused Abdul Mateen has been proved beyond reasonable doubt.

12. In respect of Raies Beg and Abdul Hamid, the trial court held that Abdul Hamid had been visiting accused Chandra Prakash at Roopbas quite frequently and both the accused persons had helped accused Abdul Mateen in the commission of the offence. They used to meet at the Madarsa of village Farah and the conspiracy was hatched. The learned trial Judge came to hold that the involvement of the said accused persons in the commission of the crime was reflectible from the evidence of number of witnesses and the prosecution had established their role beyond any shadow of doubt.

13. Pertaining to Chandra Prakash, the Court held that explosive substances including gelatin and dynamite in huge quantity were recovered from his possession on 1.8.1997. Scanning the evidence, it recorded that the dynamite was used in both the bombs. He further opined that Pappu @ Saleem, PW-1, was an associate and colleague of accused Abdul Mateen and prior to the incident, the explosive substance was brought from Chandra Prakash in village Farah, where Pappu @ Saleem used to live with him. That apart, Chandra Prakash was identified by Pappu and the key of the godown was with the accused and he opened the lock of the said godown from which 28 kattas of ammonium nitrate were recovered. It was also clear from the evidence of Chetandass Rawatani, PW-34, that the goods which were recovered from the accused were utilized for the preparation of the explosive substance.

14. On the basis of the aforesaid findings and conclusions, the learned trial Judge convicted the accused persons and sentenced them as has been stated hereinbefore.

15. Being grieved by the aforesaid conviction and sentence, the accused persons preferred separate appeals before the High Court being D.B. Criminal (Jail) Appeal No. 318 of 2000, D.B. Criminal Appeal Nos. 189 of 2000, 258 of 2000 and 369 of 2000. The State filed application for grant of leave (D.B. Criminal Leave to Appeal No. 26 of 2008) with an application for condonation of delay of seven years and nine months which was taken up along with the appeals preferred by the accused persons and the said appeal was dismissed on the ground of delay. However, it may be stated here that the High Court also addressed to the merits of the case of the State which pertained to enhancement of sentence and did not find any substance in the same. As regards the appeals preferred by the accused persons, the appellate court did not perceive any merit and, resultantly, dismissed the same by way of judgment and order dated 3.2.2009. Hence, the assail is to the

judgment of conviction and order of sentence by the applications of special leave petitions.

16. Leave granted in all the special leave petitions.

17. As all the appeals relate to defensibility of common judgment passed by the High Court in respect of all the accused-appellants, they are disposed of by a singular judgment.

18. Mr. Sushil K. Jain, learned senior counsel for the appellants, criticizing the judgment of the trial court and that of the High Court, has raised the following contentions: -

a) The learned trial Judge as well as the High Court committed grave error by coming to hold that sanction given under Section 7 of the 1908 Act cannot be found fault with, though the District Magistrate, Jaipur was not examined as a witness to prove the order of sanction.

b) The recovery made from the appellant, Chandra Prakash, at the instance of information given by Pappu would not be admissible in evidence because at the time of giving information, Pappu was an accused and had not been treated as an approver which was done later on by virtue of the order of the Court. The testimony of the approver is not creditworthy since he has deposed that he was not aware about the contents of the box that he was asked to carry by the other accused persons.

c) The alleged recovery of ammonium nitrate from the custody of accused, Chandra Prakash, either at the instance of Pappu @ Saleem, PW-1, or by the accused-appellant cannot be accepted because Pappu @ Saleem, PW-1 is an accomplice and in absence of any corroboration, his evidence has to be thrown overboard and further the case of prosecution that at the instance of the accused articles were discovered is to be rejected inasmuch as Section 27 of the Evidence Act, 1872 could not have been made applicable to the facts of the present case, for Chandra Prakash had not been arrested by the time the alleged discovery took place.

d) Assuming the ammonium nitrate was recovered from the custody of Chandra Prakash, the same would not make out any offence punishable under any of the provisions of the 1908 Act or the 1884 Act, for the simple reason that it does not come under the statutory definition. Even if the language of Sections 2 and 3 of the 1908 Act as well as Section 9B of the 1884 Act are stretched, it would not bring in its sweep the simple act of sale by Chandra Prakash without any intention or knowledge about its use.

e) No independent charges were framed against the accused-appellant under Sections 3, 4 and 5 of the 1908 Act but along with Section 6 of the 1908 Act and, therefore, conviction under the said provision is absolutely fallacious.

19. Mr. Balaji Srinivasan, learned counsel appearing for the appellants, Abdul Hamid and Raies Beg, submitted as under:- (A) The prosecution has failed to prove the nexus of the accused-

> appellants with the co-accused Abdul Mateen in the crime and nothing has been brought on record to establish the allegations. The only evidence that has been

recorded is that Abdul Hamid used to meet Abdul Mateen frequently at village Farah.

B) There is no recovery of explosive substance or any incriminating materials from the appellant's house and in the absence of any recovery, the appellant cannot be roped in the crime. C) The allegation of the prosecution with regard to the relation of the appellant with Abdul Mateen does not have any substance and, in any case, there is no proof to establish the same. D) The bomb blast at SMS Stadium, Jaipur took place on 26.01.1996 and the accused was arrested on 8.06.1997 and identification parade was conducted on 25.06.1997 about one and half years after the incident. This aspect vitiates the identification parade and creates a dent in the case of the prosecution for which the appellants should be given the benefit of doubt.

20. Mr. Atul Kumar, learned counsel appearing for the appellant Abdul Mateen, in addition to the contentions raised by Mr. Jain and Mr. Balaji, has contended that no consent has been taken under Section 7 of the 1908 Act from the Central Government and hence, the entire trial is vitiated.

21. Dr. Manish Singhvi, learned Additional Advocate General appearing for the State of Rajasthan, supporting the judgment of the High Court, has submitted as follows: -

i) The sanction given by the District Magistrate, on a perusal, would show application of mind and, by no stretch of imagination, it can be regarded as invalid in law.

ii) The recovery at the instance of an accused under Section 27 of the Indian Evidence Act is admissible in evidence and the information given by Pappu, PW-1, which led to the recovery of huge quantity of explosives would per se be admissible in evidence and this evidence is not to be treated as inadmissible merely because the accused at the relevant point of time had subsequently become the approver.

iii) The recovery of explosives by the accused, Chandra Prakash, by opening the keys of the godown would be a relevant fact and admissible under Section 8 of the Evidence Act, irrespective of the fact that the conduct falls within the purview of Section 27 of the Evidence Act.

iv) The recovery of the explosive substance has been made by the police vide memo Ex. P-42 during the search and seizure operations. Chetan Das Rawatani, PW-34, Explosive Expert, has stated that the articles recovered in Ex. P-42 were explosive articles and the same has also been proved by the FSL Report, Ex. P-234.

v) The evidence of the approver Pappu, PW-1, is admissible as substantive evidence u/s 133 of the Evidence Act. In the evidence of the approver, it has been mentioned that the accused, Chandra Prakash, was engaged in the supply of materials for solicitation of money for the commission of offence under the 1908 Act. Possession of huge quantity of ammonium nitrate without any plausible explanation by the accused, Chandra Prakash, corroborates the evidence of the approver.

22. First, we shall deal with the issue of sanction. Section 7 of the 1908 Act reads as follows: -

"7. Restriction on trial of offences. – No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate."

23. The learned counsel for Abdul Mateen has submitted that no consent has been granted by the Central Government. In this context, we may refer to the decision in State of M.P. v. Bhupendra Singh[1]. In the said case, the consent for the prosecution was granted by the Additional District Magistrate by notification dated 24.4.1995 issued by the State Government. The High Court has quashed the proceeding as there was no sanction. This Court concurred with the said view on the ground that it was within the domain of the Central Government to delegate the authority and, in fact, the Central Government vide notification dated 2.12.1978 has entrusted to the District Magistrates in the State of Madhya Pradesh its consent under Section 7 of the 1908 Act. Thus, there could be delegation by the Central Government to the District Magistrates.

24. It is relevant to note here that the consent was given by the concerned District Magistrate as Ext. P-277/278. His authority was not questioned. What was urged before the Court was that there had been no application of mind inasmuch as the relevant materials were not placed before him while according sanction. When such a point was not raised, the consequences have to be different. In this regard, reference to a two-Judge Bench decision in Erram Santosh Reddy and others v. State of Andhra Pradesh[2] would be appropriate. In the said case, the Court has observed as follows:

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"7. The last submission is that no sanction was obtained from the Central Government as laid down under Section 7 of the Explosive Substances Act for prosecuting the appellants for the offences under the Explosive Substances Act. From the judgment we do not find that any such objection was taken. In any event from the record we find that the Collector granted permission and this must be pursuant to the delegation of powers as contemplated under Section 18(2) of the 'TADA'."

25. From the aforesaid, we come to the conclusion that the District Magistrate had the authority to give consent for the prosecution.

26. The next facet of the challenge pertaining to sanction is that the sanctioning authority had not perused the relevant materials. The learned trial Judge, upon scrutiny of Ext. P-277/278, has expressed the opinion that the approval had been granted after perusal of the materials on record. The High Court has observed that the consent/sanction order is a self-speaking and detailed one. It has also been held that all the facts have been taken into consideration by the District Magistrate and the entire police diary was made available to him at the time of grant of sanction/approval. With regard to the authority of consent as postulated in the 1908 Act, reference to certain authorities would be fruitful. In State of Tamil Nadu v. Sivarasan alias Raghu alias Sivarasa and others[3], the Court, while dealing with the effect of Section 7 of the 1908 Act, has observed as follows: - "Section 7 does not require a sanction but only consent for prosecuting a person for an offence under the Explosive Substances Act. The object of using the word "consent" instead of "sanction" in Section 7 is to have a purely subjective appreciation of the matter before giving the necessary consent."

27. Thereafter, the Court proceeded to state as follows: -

> "We do not think that for obtaining consent of the Collector for prosecuting the accused for the offence punishable under the Explosive Substances Act it was necessary for the investigating officer to submit the statements of witnesses also, who had deposed about the movements of the accused and their activity of manufacturing bombs and grenades. We, therefore, hold that the consent given by the Collector was quite legal and valid."

28. In view of the aforesaid, the approval/consent granted by the District Magistrate in the obtaining factual matrix cannot be treated as vitiated.

29. The third aspect of challenge to the sanction is that the District Magistrate has not been examined as a witness to prove the order of sanction. On a perusal of the document, we find that the same has been proven by the competent person and the document has been marked as Ext. P-277/278. We are of the considered opinion that the examination of the District Magistrate to prove his consent is really not necessary.

30. In view of the aforesaid analysis, the submission relating to the invalidity of the consent, as stipulated in Section 7 of the 1908 Act, does not commend us and, accordingly, the same stands rejected.

31. The next issue, to which we should advert to, pertains to the delay in holding the test identification parade. The submission of Mr. Balaji Srinivasan, learned counsel appearing for accused Abdul Hamid and Raies Beg, is that there has been enormous delay in conducting the test identification parade in respect of accused Abdul Hamid and Raies Beg. There is no dispute that both of them were arrested on 8.6.1997 and the test identification parade was held on 25.6.1997. Thus, it is evident that they were arrested long after the occurrence but the test identification parade was held within a period of three weeks from the date of arrest. As the analysis of the trial court shows, they could not have been arrested as the materials could not be collected against them and things got changed at a later stage. In this regard, we may refer with profit to the decision in Ramanand Ramnath v. State of M.P.[4], wherein identification parade was held within a period of one month from the date of arrest. This Court observed that there was no unusual delay in holding the test identification parade.

32. That apart, the witnesses, namely Prem Prakash Gupta, PW-78, and Mohit Jain, PW-30, have identified them in the Court. In State of Maharashtra v. Suresh[5], it has been held as follows: -

"We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence."

33. The said legal position has been reiterated in Anil Kumar v. State of U.P.[6] Recently, in Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh[7], a two-Judge Bench has observed thus: - “66. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature. No other infirmity has been pointed out by the learned counsel appearing for the appellant, in the holding of the identification parade. The identification parade was held in accordance with law and the witnesses had identified the accused from amongst a number of persons who had joined the identification parade.”

34. In view of the aforesaid, the submission that there has been delay in holding the test identification parade does not really affect the case of the prosecution. It is also noteworthy that the witnesses had identified the accused persons in court and nothing has been elicited in the cross-examination even to create a doubt. Thus, we repel the submission advanced by the learned counsel for accused Abdul Hamid and Raies Beg.

35. The next facet to be addressed is whether the evidentiary value of the testimony of approver Pappu, PW-1, is required to be considered. Learned counsel for the State has drawn our attention to Section 133 and illustration (b) to Section 114 of the Indian Evidence Act, 1872. They read as under: -

“133. Accomplice .- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

Illustration (b) to Section 114 “(b) The Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.”

36. The aforesaid two provisions came to be considered in Bhiva Doulu Patil v. State of Maharashtra[8] wherein the Court held as follows:

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“The combined effect of Sections 133 and Illustration (b) to Section 114, may be stated as follows:

According to the former, which is a Rule of law, an accomplice is competent to give evidence and according to the latter, which is a Rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

37. In Mohd. Husain Umar Kochra etc. v. K.S. Dalipsinghji and another etc.[9], the Court observed thus: -

"... The combined effect of Sections 133 and 114, Illustration

(b) is that though a conviction based upon accomplice evidence is legal, the Court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another."

38. Having stated the legal position with regard to the statutory provisions, presently we shall proceed to consider the requisite tests to be applied to accept the credibility of the testimony of the approver. At this juncture, we may sit in a time machine and quote a passage from Sarwan Singh S/o Rattan Singh v. State of Punjab[10] wherein it has been held as follows: -

"...An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.

8...Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal courts".

39. In Ravinder Singh v. State of Haryana[11], this Court has observed that: -

"An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. ... Secondly, once that hurdle is crossed, the story given by an approver so far

as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt."

40. Similar principles have been reiterated in Mrinal Das and Ors. v. State of Tripura[12].

41. In A. Devendran v. State of T.N.[13], the Court has registered the view that there cannot be any dispute with regard to the proposition that ordinarily an approver's statement has to be corroborated in material particulars. Certain clinching features of involvement disclosed directly to an accused by an approver must be tested qua each accused from independent credible evidence and on being satisfied, the evidence of an approver can be accepted. The Court further observed that the extent of corroboration that is required before the acceptance of the evidence of the approver would depend upon the facts and circumstances of the case, however, the corroboration required must be in material particulars connecting each of the accused with the offence, or in other words, the evidence of the approver implicating several accused persons in the commission of the offence must not only be corroborated generally but also qua each accused but that does not mean that there should be independent corroboration of every particular circumstance from an independent source. The court proceeded to state that all that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and the corroboration could be both by direct or circumstantial evidence. Be it noted, the said principle was stated on the basis of pronouncements in Ramanlal Mohanlal Pandya v. State of Bombay[14], Tribhuvan Nath v. State of Maharashtra[15], Sarwan Singh v. State of Punjab (supra), Ram Narain v. State of Rajasthan[16] and Balwant Kaur v. Union Territory of Chandigarh[17].

42. In Chandan and another v. State of Rajasthan[18], the Court held that so far as the question about the conviction based on the testimony of the accomplice is concerned, the law is settled and it is established as a rule of prudence that the conviction could only be based on the testimony of the accomplice if it is thought reliable as a whole and if it is corroborated by independent evidence either direct or circumstantial, connecting the accused with the crime.

43. In Haroon Haji Abdulla v. State of Maharashtra[19], the view in this regard was expressed in the following terms: - "An accomplice is a competent witness and his evidence could be accepted and a conviction based on it if there is nothing significant to reject it as false. But the rule of prudence, ingrained in the consideration of accomplice evidence, requires independent corroborative evidence first of the offence and next connecting the accused, against whom the accomplice evidence is used, with the crime."

44. In Major E.G. Barsay v. State of Bombay[20], it has been observed that this Court had never intended to lay down that the evidence of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say, the court shall first have to consider the evidence of the approver dehors the corroborated pieces of evidence and reject it if it comes to the conclusion that his evidence is unreliable; but if it comes to the conclusion that it is reliable, then it will have to consider whether that evidence is corroborated by any other evidence.

45. In Renuka Bai alias Rinku alias Ratan and another v. State of Maharashtra[21], the Court held that the evidence of the approver is always to be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts.

46. In Ranjeet Singh and another v. State of Rajasthan[22], the Court observed that while looking for corroboration, one must first look at the broad spectrum of the approver's version and then find out whether there is other evidence to lend assurance to that version. The nature and extent of the corroboration may depend upon the facts of each case and the corroboration need not be of any direct evidence that the accused committed the crime. The corroboration even by circumstantial evidence may be sufficient.

47. Keeping in view the aforesaid principles which relate to the acceptance of the evidence of an approver, we have bestowed our anxious consideration and carefully perused the judgment of the trial court and that of the High Court. Learned counsel for the parties have taken us through the evidence of Pappu @ Saleem, PW-1. He has clearly deposed that Abdul Mateen who is also known as Iqbal, used to visit the Madarsa at village Farah. Abdul Hameed and Abdul Mateen were seen at village Farah many times without any reason before the incicent. As far as Abdul Hameed and Raies Beg are concerned, he has deposed that both the accused used to go to the house of Chandra Prakash in Roopwas to collect the "masala" in a cover box. Both of them used to meet Abdul Mateen in the Madarsa at village Farah on a number of occasions. He used to contact Abdul Mateen from Firozabad many times and the watches fixed with bombs as timers were given at Farah by Abdul Hameed to make the bomb. It has also come out in his evidence that Pappu along with Accused Raies Beg @ Raies Ahmad and other accused persons used to visit the Madarsa at village Farah. His evidence also shows that Raies Beg and Pappu used to bring explosive from Roopwas to village Farah and he has mentioned that Raies Beg had brought five boxes of "masala" for Rs.10,000/- from the house of Chandra Prakash and those boxes were unloaded at the Madarsa in Farah. Pappu was asked to carry the boxes along with Raies Beg and Abdul Hameed. He has clearly deposed about the conspiracy that was told to him by accused Abdul Mateen. As far as Chandra Prakash is concerned, it had come in the evidence that though Pappu used to visit his house at Roopwas along with other accused persons, yet he used to stay outside the house of Chandra Prakash and the others used to go to bring "masala" from the house of Chandra Prakash. The alleged "masala" used to be brought in boxes from time to time to the associates of Raies Beg and Abdul Hameed who used to come to Madarsa at Farah.

48. From the analysis of the aforesaid evidence, it is clear that Pappu as approver has implicated himself in the crime. He has not made any effort to give any statement which is exculpatory. He has spoken quite graphically about the involvement of all the accused persons. Mr. Jain, learned senior counsel appearing for the appellant, would contend that he has used the word "masala" but not ammonium nitrate, but Pappu has clarified that though he was not aware what was contained in the boxes, yet he was told by the other accused persons later on that it contained certain explosive substances. The said aspect has been corroborated from other ocular evidence as well as the seizure.

49. Presently, we shall advert to the various facets of corroboration in evidence against the accused persons. As far as Chandra Prakash is concerned, on the basis of the approver Chandra Prakash was

arrested on 1.8.1997 vide Ext.P-37. On the basis of the information of the accused, Chandra Prakash, the Investigating Officer searched his house and godown and recovered 28 boxes of ammonium nitrate. It has come out in the evidence that Chandra Prakash opened the lock of the godown the key of which was in his possession. Bhup Singh, PW-32, eye witness to the seizure of articles from the godown of Chandra Prakash, has categorically stated that the accused Chandra Prakash led to the recovery of red and blue coloured bundles from the godown of the building. The office of PW-32 was also in the said building. From the godown, fuse wires and five kilograms of grey coloured material was also recovered. The Investigating Officer, M.M. Atray, PW-71, has also proven the factum of recovery. Shivnath Kuriya, PW-22, who had accompanied the investigating team, has deposed that the explosive which was used in the live bomb had ammonium nitrate/gelaltine. Chetan Das Rawatani, PW-34, who is an expert witness in respect of explosives, approved his report Ext. P-49 and has deposed that the ammonium nitrate that was seized from the godown of Chandra Prakash was in such a condition that it could be used to prepare a bomb.

50. Mr. Jain, as has been stated earlier, has seriously criticized about the recovery from Chandra Prakash on the ground that when he led to the discovery of the articles seized, he was not arrested. In this context, we refer with profit to the decision in Mohd. Arif alias Ashfaq v. State (NCT of Delhi)[23] wherein the Court opined thus: -

“The essence of the proof of a discovery under Section 27 of the Evidence Act is only that it should be credibly proved that the discovery made was a relevant and material discovery which proceeded in pursuance of the information supplied by the accused in the custody. How the prosecution proved it, is to be judged by the court but if the court finds the fact of such information having been given by the accused in custody is credible and acceptable even in the absence of the recorded statement and in pursuance of that information some material discovery has been effected then the aspect of discovery will not suffer from any vice and can be acted upon.”

51. In this context, we may refer to the authority in Vikram Singh and others v. State of Punjab[24], wherein while interpreting Section 27 of the Evidence Act, the Court opined that a bare reading of the provision would reveal that a “person must be accused of any offence” and that he must be “in the custody of a police officer” and it is not essential that such an accused must be under formal arrest.

52. In this regard, a passage from the Constitution Bench decision in State of Uttar Pradesh v. Deoman Upadhyaya[25] is reproduced below:

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“The expression, "accused of any offence" in s. 27, as in s. 25, is also descriptive of the person concerned, i.e., against a person who is accused of an offence, s. 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be

untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered. Even though s. 27 is in the form of a proviso to s. 26, the two sections do not necessarily deal with the evidence of the same character. The ban imposed by s. 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By s. 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered."

53. In Anter Singh v. State of Rajasthan[26], after referring to the decisions in Madan Singh v. State of Rajasthan[27], Mohd. Aslam v. State of Maharashtra[28], Pulukuri Kottaya v. Emperor[29], Prabhoo v. State of U.P.[30] and Mohd. Inayatullah v. State of Maharashtra[31], this Court summed up the following principles:- "16. The various requirements of the section can be summed up as follows:

1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

2) The fact must have been discovered.

3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

4) The person giving the information must be accused of any offence.

5) He must be in the custody of a police officer.

6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

54. In this context, it would be fruitful to refer to the ruling in State of Maharashtra v. Damu[32] wherein it has been observed that:

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> "35. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non- inculpatory in nature,

> but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum."

55. In Aftab Ahmad Anasari v. State of Uttaranchal[33], after referring to earlier decisions, a two-Judge Bench, appreciating the material brought on record, came to hold that when the accused was ready to show the place where he had concealed the clothes of the deceased, the same was clearly admissible under Section 27 of the Evidence Act because the same related distinctly to the discovery of the clothes of the deceased from that very place.

56. In Bhagwan Dass v. State (NCT of Delhi)[34], relying on the decisions in Aftab Ahmad Anasari (supra) and Manu Sharma v. State (NCT of Delhi)[35], the Court opined that when the accused had given a statement that related to the discovery of an electric wire by which the crime was committed, the said disclosure statement was admissible as evidence.

57. As the material brought on record would show, the accused was in the custody of the investigating agency and the fact whether he was formally arrested or not will not vitiate the factum of leading to discovery. However, it may be stated that the accused was also arrested on that day. We have dealt with the issue that formal arrest is not necessary as Mr. Jain has seriously contended that the arrest was done after the recovery. As we have clarified the position in law, the same would not make any difference.

58. As regards recovery from accused Abdul Mateen is concerned, it is borne out from the record that after his arrest on 28.6.1997, he gave information at 6.00 a.m. as contained in Ext. P-255, about another bomb and on the basis of the said information the Investigating Officer, PW-71, visited the spot along with the accused and at his instance a live bomb was recovered which was underneath the earth. In the said information the accused had stated that the two bombs were inside the SMS Stadium and he could verify the places by going inside the stadium. In the evidence of Jai Narain, PW-6, Gopal Singh, PW-7 and Shivnath, PW-22, it has come on record that the bombs were recovered at the instance of accused Abdul Mateen on 28.6.1998. This fact has been corroborated by Vinod Sharma, PW-16 and Gordhan, PW-10 who also accompanied the investigating team. Shivnath, PW-22, had clearly stated that the bomb recovered was high explosive time bomb and the battery was inside the timer and the same was switched on and he further confirmed that electric detonator was used in the bomb. Vinod Kumar, PW-16, also stated that the electric detonator was found in the bomb and the same was neutralized. Suresh Kumar Saini, PW-67, in his deposition, gave description of loss caused due to the explosion of the time bomb. He had further deposed that lid of stainless steel of casio watch had been recovered from the scene of crime.

59. On appreciating the aforesaid material, it is clear as crystal that the said accused has stated about the fact of planting of bomb at a particular site in the stadium and led to the said place from which the bomb was recovered. The submission of Mr. Jain is that such material cannot be put against the accused being inadmissible in evidence. In this context, we may refer to a two-Judge Bench decision in Prakash Chand v. State (Delhi Administration)[36] wherein the Court, after referring to the decision in Himachal Pradesh Administration v. Om Prakash[37], opined thus: -

"There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence, relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

60. The said principle has been reiterated in A.N. Venkatesh and another v. State of Karnataka[38].

61. Tested on the touchstone of the aforesaid enunciation of law, the submission of Mr. Jain leaves us unimpressed and we are inclined to hold that the said fact is a relevant fact which is admissible in evidence.

62. The next aspect that is to be adverted to is that ammonium nitrate not being an explosive substance, mere possession cannot bring the accused Chandra Prakash within the ambit of any offence. In this regard, we may refer to Section 4(d) of the 1884 Act. It reads as follows: -

"(d) "explosive" means gunpowder, nitroglycerine, nitroglycol, guncotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di- nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;"

63. Section 2 of the 1908 Act, which deals with definitions, reads as follows: -

"2. Definitions. - In this Act--

(a) the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

(b) the expression "special category explosive substance"

shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate (PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixlure of high melting explosive and tri nitro toluene), plastic explosive kirkee-1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify tor the purposes of this Act."

64. Keeping in view the broad definitions of both the Acts, we are required to see what has been seized from the accused Chandra Prakash. What is evincible from the seizure report, Ext. P-42, apart from ammonium nitrate, fuse wire and empty boxes were also seized. That apart, 17 packs containing blue coloured fuse wire kept in plastic (polythene) bags and four boxes containing blue coloured fuse wire, "Sun brand safety fuse" numbered as 40208, 40158, 39937, 40203 respectively, one carton of explosives detonating fuse measuring 1500 meters in length and 38 kg in weight, containing four wooden logs of red colour, 375 meter wire in each Gattha and black coloured cap fitted on the tip of the wire, three cartons of explosive Belgelative 90 (Gulla Dynamite) net weight of each being 25 Kg. with "Division I Class II safety distance category ZZ Bharat Explosive Ltd. 9 KM Lalitpur (U.P.) Date of manufacturing 4.6.97 batch No. 2" written on each box, four packets of O.D. Detonator containing 1600 detonators, a substance of light yellow colour kept inside a carton of paer in a plastic bag weighing nearly 5 kg and 16 empty cartons, one of gulla and 15 of fuse wire, were seized.

65. Section 2 of the 1908 Act has a deeming provision which states that explosive substance would include any materials for making any explosive substance. Similarly, Section 4(d) of the 1884 Act has a broader spectrum which includes coloured fires or any other substances, whether single chemical compound or a mixture of substances. That apart, as we find, apart from ammonium nitrate other articles had been seized. The combination of the same, as per the evidence of the expert witness, was sufficient to prepare a bomb for the purpose of explosion. In addition to the same, huge quantity of ammonium nitrate was seized and it was seized along with other items. The cumulative effect is that the possession of these articles in such a large quantity by the accused gives credence to the prosecution version that the possession was conscious and it was intended to be used for the purpose of the blast.

66. The next aspect which needs to be adverted to is non-framing of specific charge. On a perusal of the record, we find that the learned trial Judge has framed the charges specifically by putting the charges to the accused. The purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail. In this context, we may refer to decision in Santosh Kumari v. State of Jammu and Kashmir and others[39], wherein it has been held as follows: -

"17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five- Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P.[40] SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable."

67. In K. Prema S. Rao v. Yadla Srinivasa Rao[41], the Court opined that though the charge specifically under Section 306 IPC was not framed, yet all the ingredients constituting the offence were mentioned in the statement of charges. In that context, a three- Judge Bench of this Court ruled that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The said principle has been reiterated in Dalbir Singh v. State of U.P.[42], State of U.P. v. Paras Nath Singh[43] and Annareddy Sambasiva Reddy v. State of A.P.[44].

68. In the case at hand, as has been stated earlier, the charges have been framed and we do not find any vagueness. That apart, neither any prejudice has been caused nor has there been any failure of justice. Thus, the submission of Mr. Jain in this regard leaves us unimpressed.

69. The next facet which deserves to be addressed pertains to the criminal conspiracy. The submission of the learned counsel for the appellants is that the learned trial Judge has inappositely drawn certain inferences to show that there was a criminal conspiracy and the High Court has, without delving deep into the matter, concurred with the same. As per the evidence brought on record, it is clear as crystal that accused Abdul Mateen, Abdul Hamid and Raies Beg used to meet quite frequently at the Madarsa at village Farah. It is also evident from the deposition of Kanchan Singh, PW-11, Shri Chand, PW-12, Murari Lal Sharma, PW-13, and Ashok Kumar, PW-17, that the accused Abdul Mateen, Raies Beg and Abdul Hamid used to meet at the Madarsa at village Farah. That apart, Pappu had also deposed implicating himself that when there used to be discussion at madarsa in the village Farah about the suitable place for planting the bomb, the timer of the bomb was supplied by Dr. Abdul Hamid. The chain of events and the participation of the accused persons which had the genesis in the discussion and the meetings, the purchase of ammonium nitrate and other items, carrying of the boxes to the Madarsa and all other factors cumulatively show that there was conspiracy.

70. While dealing with the facet of criminal conspiracy, it has to be kept in mind that in case of a conspiracy, there cannot be any direct evidence. Express agreement between the parties cannot be proved. Circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Such a conspiracy is never hatched in open and, therefore, evaluation of proved circumstances play a vital role in establishing the criminal conspiracy. In this context, we may refer with profit to a passage from Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra[45]: -

"20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi v. State of Maharashtra[46] a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible."

71. The same principles have been stated in Pratapbhai Hamirbhai Solanki v. State of Gujarat and another[47].

72. In Yakub Abdul Razak Menon v. The State of Maharashtra, through CBI, Bombay[48], analyzing various pronouncements, this Court opined thus: -

"68. For an offence Under Section 120B Indian Penal Code, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. It is not necessary that each member of the conspiracy must know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission committed by the conspirators in pursuance of a common design. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continuing to be the parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain the sanction of the Central Government. All of them need not be present in India nor continue to remain in India. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. (Vide: R.K. Dalmia v. Delhi Administration[49], Lennart Schussler and Anr. v. Director of Enforcement and Anr.[50], Shivanarayan Laxminarayan Joshi v. State of Maharashtra and Mohammad Usman Mohammad Hussain Maniyar and Anr. v. State of Maharashtra[51])."

73. Testing the present factual matrix on the anvil of the aforesaid enunciation of law, we are of the considered view that the opinion expressed by the learned trial Judge as well as by the High Court that there has been conspiracy between the parties to commit the blast on a particular day cannot be found fault with.

74. Presently, we shall engage ourselves to deal with the conviction of accused Abdul Mateen for the offence under Section 14 of the Foreigners Act, 1946. The said provision reads as under: - "14. Penalty for contravention of provisions of the Act, etc. - whoever –

a) Remains in any area in India for a period exceeding the period for which the visa was issued to him;

b) does any act in violation of the conditions of the valid visa issued to him from his entry and stay in India or any part thereunder;

c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.

Explanation. – For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920)."

75. The learned trial Judge, analyzing the material on record, has come to hold that the said Abdul Mateen is a resident of Pakistan and he had no valid document to be in India. In his statement under Section 313 of the Code, he had not disputed that he was not having passport or visa and he is of Pakistan nationality. Thus, the offence under the said Act has been held to be proved. The High Court has concurred with the said view. In our considered opinion, the offence under the said Act has been proved beyond reasonable doubt.

76. In view of the aforesaid analysis, we conclude and hold that the grounds assailing the judgment of conviction and the order of sentence have no legal substantiality and, accordingly, they are rejected.

77. The factual scenario of the instant case compels us to state that these kinds of activities by anyone breeds lawlessness, fear and affects the fundamental unity of our great country. A nation with a desire to prosper is required to maintain high degree of law and order situation apart from respecting "imperatives of internationalism". Certain individuals harbouring unacceptable notions and inexcusable philosophy and, on certain occasions, because of enormous avarice, try to jeopardize the cohesive and collegial fabric of the State. This leads to national decay and gives rise to incomprehensible anarchy. It reflects non-reverence for humanity. Be it categorically stated, every citizen of this country is required to remember that national patriotism is founded on the philosophy of public good. Love for one's country and humanity at large are eternally cherished values. The infamous acts of the appellants are really condemnable not only because of the dent they intended to create in the social peace and sovereignty of the nation, but also from the humane point of view as they are founded on greed, envy, baseless anger, pride, prejudice and perverse feelings

towards mankind.

78. We have, in agony and anguish, have expressed thus because when a devastating activity like the present one occurs on the Republic Day of our country Bharat, it injures the nationality, disturbs the equilibrium of each individual citizen, creates a concavity in the equanimity of the peace of the State, generates a stir in the sanctity and divinity of law and order situation which is paramount in any civilized State, attempts to endanger the economic growth of a country and, in the ultimate eventuate, destroys the conceptual normalcy of any habitat. Law cannot remain silent to this because it is the duty of law to resist such attacks on peace. It is manifest that the accused-appellants had conspired to send a savage stir among the citizenry of this country on the Republic Day. The great country like ours cannot succumb to this kind of terrorist activity as it is nationally as well as internationally obnoxious. Such tolerance would tantamount to acceptance of defeat. The iron hands of law has to fall and in the obtaining facts and circumstances, as the charges have been proved beyond reasonable doubt, the law has rightly visited the appellants and, accordingly, we concur with the same.

79. Consequently, all the appeals, being bereft of merit, stand dismissed.

.....J.

[K.S. Radhakrishnan] .....J.

[Dipak Misra] New Delhi;

May 9, 2014.

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[1] (2000) 1 SCC 555
[2] (1991) 3 SCC 206
[3] (1997) 1 SCC 682
[4] (1996) 8 SCC 514
[5] (2000) 1 SCC 471
[6] (2003) 3 SCC 569
[7] (2012) 6 SCC 174
[8] AIR 1963 SC 599
[9] (1969) 3 SCC 429
[10] AIR 1957 SC 637
[11] (1975) 3 SCC 742
[12] AIR 2011 SC 3753
[13] (1997) 11 SCC 720
[14] AIR 1960 SC 961
[15] (1972) 3 SCC 511
[16] (1973) 3 SCC 805
[17] (1988) 1 SCC 1
[18] (1988) 1 SCC 696
[19] AIR 1968 SC 832
[20] AIR 1961 SC 1762

[21] (2006) 7 SCC 442
[22] (1988) 1 SCC 633
[23] (2011) 13 SCC 621
[24] (2010) 3 SCC 56
[25] AIR 1960 SC 1125
[26] (2004) 10 SCC 657
[27] (1978) 4 SCC 435
[28] (2001) 9 SCC 362
[29] AIR 1947 PC 67
[30] AIR 1963 SC 1113
[31] (1976) 1 SCC 828
[32] (2000) 6 SCC 269
[33] (2010) 2 SCC 583
[34] (2011) 6 SCC 396
[35] (2010) 6 SCC 1
[36] (1979) 3 SCC 90
[37] (1972) 1 SCC 249
[38] (2005) 7 SCC 714
[39] (2011) 9 SCC 234
[40] AIR 1956 SC 116
[41] (2003) 1 SCC 217
[42] (2004) 5 SCC 334
[43] (2009) 6 SCC 372
[44] (2009) 12 SCC 546
[45] (2008) 10 SCC 394
[46] (1980) 2 SCC 465
[47] (2013) 1 SCC 613
[48] 2013 (3) SCALE 565
[49] AIR 1962 SC 1821
[50] (1970) 1 SCC 152
[51] AIR 1981 SC 1062