2022 INSC 664

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURSIDICTION

CRIMINAL APPEAL NOS.201-202 OF 2018

MOHAMMAD IRFAN **..APPELLANT**

VERSUS

STATE OF KARNATAKA **..RESPONDENT**

WITH
CRIMINAL APPEAL NOS.203-204 OF 2018

AND

CRIMINAL APPEAL NOS.205-207 OF 2018

AND

CRIMINAL APPEAL NOS.208-209 OF 2018

J U D G M E N T

Uday Umesh Lalit, J.

1. Criminal Appeal Nos.201-202 of 2018 (arising out of SLP (Crl.) Nos.7347-7348 of 2016); Criminal Appeal Nos.203-204 of 2018 (arising out of SLP (Crl) Nos.8246-8247 of 2016); Criminal Appeal Nos.205-207 of 2018 (arising out of SLP (Crl) Nos.8243-8245 of 2016) and Criminal Appeal Nos.208-209 of 2018 (arising out of SLP (Crl) No.138-139 of 2017) are filed by original Accused

Nos.5, 6, 1 and 4 respectively, against the common judgment and final order dated 10.05.2016 passed by the High Court[1] in Criminal Appeal Nos.220 of 2012, 530 of 2012, 531 of 2012 and 1123 of 2013.

2. In the instant case, eight persons were arrayed as Accused in the chargesheet but A-8 was shown to be absconding. A-1 to A-7, namely, Mohamed Razhur Rehman @ Abdul Rehman, Afsar Pasha @ Basheeruddin, Mehboob Ibrahim Sab Chopdar, Noorullah Khan @ Noorullah, Mohammad Irfan, Nazmuddin @ Munna, Chand Basha and Ahmed Basha respectively, were tried in Sessions Case No.539 of 2006 arising out of crime registered pursuant to FIR No.3/2006. By its judgment dated 17.12.2011 the Trial Court[2] acquitted A-7 but found A-1 to A-6 guilty and passed order of sentence dated 19.12.2011, the features of which can be tabulated as under: -

	Indian Penal Code, 1860[3]			**Explosive Substances Act, 1908[4]**		**Arms Act, 1959[5]**		**Unlawful Activities (Prevention) Act, 1967[6]**	
	Section 120B	**Section 121A**	**Section 121**	**Section 5**	**Section 6**	**Section 25**	**Section 26**	**Section 10**	**Section 13**
A-1	Life	7+1	Life		7+1				
A-2	Life	7+1	Life	7+1		5+1	3		
A-3	Life	7+1	Life	7+1		5+1	3		
A-4	Life	7+1	Life	7+1		5+1	3		
A-5	Life	7+1	Life		7+1				
A-6	Life	7+1	Life	7+1		5+1	3		
A-7	Acquitted of all the charges								

1 The High Court of Judicature of Karnataka at Bangalore.
2 The Court of the City Fast Track (Sessions) Judge, Bangalore City (FTC II).
3 IPC, for short.
4 1908 Act, for short.
5 1959 Act, for short.
6 1967 Act, for short.

3. Following four appeals were thereafter filed in the High Court.

Criminal Appeal No. 220 of 2012 was filed by five Accused *i.e.* A-1, A-2, A-4, A-5 and A-6. Criminal Appeal No.1123 of 2013 was preferred by A-3. Criminal Appeal Nos.530-531 of 2012 were preferred by the State against acquittal of the Accused including A-7 under certain provisions and also against award of lesser sentence in respect of offences where the conviction was recorded.

4. Said four appeals were heard together by the High Court. By its judgment and order presently under challenge, the High Court modified the conviction and sentence of the Accused as under: -

	IPC			**1908 Act**		**1959 Act**		**1967 Act**	
	Section 120B	**Section 121A**	**Section 121**	**Section 5**	**Section 6**	**Section 25**	**Section 26**	**Section 10**	**Section 13**
A-1		Life							
A-2		Life		7+1					
A-3				7+1					
A-4		Life		7+1					
A-5		Life							
A-6		Life		7+1		5+1	3		
A-7	Order of acquittal passed by the Trial Court was affirmed.								

5. Being aggrieved, the instant four appeals before this Court are by A-5, 6, 1 and 4. The State has not preferred any appeal either against the acquittal of A-7 in respect of all charges or against the other Accused who were acquitted of some of the charges. Further, no appeals have been preferred by A-2 and 3.

6. While investigating into Crime No.110 of 2005 relating to an incident of shootout at Indian Institute of Science, Bangalore, PW-68 Sri V.S.D. Souza came to know about a larger conspiracy concerning Lasker-e-Toiba (LeT), a banned organization in India, which led to registration of FIR No.3 of 2006 on 14.01.2006. The allegations in said FIR No.3 of 2006 were as under:

> "1. I was directed by the Commissioner of Police, Bangalore City vide Memo No.CRM/4/186/2006 dated 29.12.2005 to investigate the case in Cr.No.110/2005 registered in Sadashivanagar Police Station. I took up further investigation of the case in Cr.No.110/2005 U/s 307 Indian Penal Code, 18060 & 25, 27, 28 of Arms Act & 4 & 5 of Explosive Substance Act, 1908 of Sadashivanagar Police Station, Bangalore City from T. Ajjappa, ACP, Seshadripuram Sub-Division, Bangalore on 31.12.2005.
>
> 2. As per my instructions on 02.01.2006 at 6.30 am Sri Subbanna, Police Inspector and his team produced the Accused Mohammed Razur Rehman @ Abdul Rehaman @ Umesh S/o Samsuddin, aged 35 years, R/o No.5-10-82, BTS, Naigonda, Andhra Pradesh, before me along with his report seizer mehazar, a pocket diary containing telephone numbers which were seized during the course of investigation of the above case.
>
> 3. While investigation, the above case I have come to be aware of the following credible information. That Lasker-e-Toiba (LeT) which is banned organisation in India is active and trying to spread its terrorist activities in India and elsewhere.
>
> 4. The main aim of LeT is to destabilize India by way of terrorist activities like attacking vital sensitive installations, assassinating important public personalities, causing bomb explosions in public places and carrying shootouts, disrupting *****[7] peace and tranquillity, causing communal disharmony *****[7] economic interests thereby disturbing public order etc.

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7 ***** - Illegible.

5. Abu Mohamed @ Mohamed Irshad is the chief of LeT in Saudi Arabia. Abu Mohamed is a Pakistani national. Abu-Abdulla, Abdul Manner and Zakria all Pakistani nationals used to assist Abu Mohammed @ Mohammed Irshad in LeT activities.

6. Abdul Rehman, a native of Nalgonda, Andhra Pradesh, a dropout in Diploma, ventured into different professions, but failed. In 1993 he procured passport at Hyderabad and in 1994 his brother Habeer-Ur-Rehman helped him in getting a Saudi Visa and Abdul Rehman went to Saudi Arabia and worked as driver, as a salesman in a vegetable shop, in laundry, driver of water supply van and at present he is working as sales representative at Onaiza Under a cosmetics dealer.

7. He came in contact with Sheik Mehboob Ahamed Moulana an LeT leader in a Sanaga Masjid.

8. Sheikh Mehboob motivated Abdul Rehman to join LeT in 1998. The said Abdul Rehman started attending to its religious activities of LeT an started regularly attending to its religious activities conducted by LeT which were basically motivating people for Jehadi activities. Abu-Hanza, Abu-Ummer, Abu-Nidal, Abu-Bukka, Abdul Rehman Makki, Hafizullah who are senior LeT leaders used to take active participation and were motivating the people for Jehadi activities by their provocative speeches during 1999. Abu Rehman got married and returned to Saudi Arabia.

9. In 2000 Afsar of Bangalore and Mehboob Ibraim of Bagalkot District during one of its seminar in Islamic Centre of Onaiza (Saudi Arabia) came in contact with Abdul Rehman and they became friends and prominent persons in the cadre of LeT.

10. Under the patronage of Abdul Rehman, Afsar Pasha of Bangalore wanted to go to Pakistan for training in explosives and arms for Jehadi and terrorist activities. However, the plan did not materialize.

11. In the year, 2001, Faisal, Abu Haza, Sherif, Altaf, Anwar, Zakaria, Abdul Rehman and others who are all Indian nationals and working in Saudi Arabia decided to collect funds and revenue for Jehadi activities in India.

12. Vali-Ur-|Rehman, resident of Bangladesh, who is chief of Jamat-ul-Mudauddin (JMU in Bangladesh) arranged the visit of Afsar Pasha to Bangladesh.

13. Afsar Pasha of Bangalore, went to Bangladesh in the early of 2002 where he stayed there for 8 months and also underwent training in handling weapons and explosives and manufacture of bombs, etc. Later he entered India illegally via West Bengal. Abdul Rehman during this period had sent money to Afsar Pasha towards the purchase of weapons and training expenses.

14. In the year 2002. Irfan Umri of Chennai was made Masood of Al-Ghasi and Abdul Rehman as his deputy. Both of them have conducted various religious programme to attract Muslims to the cadre of LeT.

15. During 2003, Zakaria returned back to India and he was arrested by Tamil Nadu Police for conspiracy of carrying out sabotage activities in Chennai. Later Abdul Rehman was made Masood in place of Irfan Umri in Saudi Arabia.

16. Abdul Rehman was visiting Nalagonda, Andhra Pradesh, frequently on the pretext of spending holidays, but was contacting Mehboob Ibrahim and Afsar Pasha and discussing about carrying out Jehadi and terrorist activities in Karnataka. Abdul Rehman appointed Mehboob Ibrahim of Bagalkot District for carrying out terrorist activities in Northern Karnataka and Afsar Pasha of Bangalore for Southern Karnataka.

17. During such visits in November 2003, Abdul Rehman visited Chintamani and met his associate Afsar Pasha and decided about setting up a Mosque of Ahle-Hadis at Chintakani and also promised for financial assets ****. Afsar Pasha and Afbdul Rehman also decided to ****** of LeT in Karnataka by recruiting youth from their community. Afsar Pasha introduced Noor, Irfan, Munna and others Abdul Rehman, Abdul Rehman as a chief of LeT South India. ***** all of them to engage themselves in Jehadi and terrorist activities.

18. Abdul Rehman went to Chennai and met Irfan and decided to set up a trust “Al-Fetah” for LeT activities and promised funds for the same.

19. During 2004, Abdul Rehman sent money to Afsar Pasha of Bangalore and Mehboob Ibrahim of Bagalkot through hawala transaction through one Chand Pasha of Bangalore.

20. The said Afsar Pasha of Bangalore and Mehboob Ibrahim of Bagalkot District were in constant touch with Abdul Rehman who was based in Saudi Arabia and vice-versa and further was reporting to him about the progress of the LeT activities.

21. Abdul Rehman instructed Afsar Pasha and Mehboob Ibrahim to undertake Jehadi and terrorists activities through sabotage in Karnataka. Abdul Rehman came to Nalagonda during October 2005 and instructed Afsar Pasha and Ibrahim to cause blast and damage to vital installations, Multi-national companies, etc. in Bangalore and other places of Karnataka.

22. Between 2003 to 2005 December, Abdul Rehman has recruited Afsar Pasha of Bangalore and Mehboob Ibrahim of Bagalkot into LeT cadre. Afsar Pasha was made incharge of LeT to look after South Karnataka and Ibrahim of Bagalkot District was made incharge of LeT to look after North Karnataka for causing sabotage activities. Afsar Pasha has recruited 4-5 persons, trained them in LeT activities and also taught them about the concept of Jehad, (so called holy war against non-muslims). For this purpose during 2nd and 3rd week of December, 2005 they held secret conspiracy meeting in Tamil Sangam, Cubbon Park and Afsar Pasha’s house in Bangalore and other places in Karnataka and decided to cause bomb blasts in Bangalore. For this purpose they procured explosive materials, bomb, etc. and prepared themselves to use them to terrorize the citizen and create fear psyenosis in the State by their terrorist activities.

23. In view of the above facts, it is evident that the above Accused persons viz. (1) Mohamed Razhur Rehman @ Abdul Rehman (2) Afsar Pasha of Bangalore (3) Ibrahim of Bagalkot District (4) Noor (5) Irfan (6) Munna and others of Karnataka who are the active members of banned militant organization LeT entered into a criminal conspiracy to cause large scale destruction of public property, multi-national companies etc. by causing bomb explosions, attacks on innocent people,

large scale destruction of places of worships and promote enmity between different groups on the grounds of religion, race and perpetrated acts, prejudicial to the maintenance of communal harmony besides causing disaffection with overall object of attempt to being hatred, contempt and incite disaffection towards the Government by law established by desertion of places of worship, knowingly that such acts will result in breakdown of public order and the Accused have reported to have acquired and collected explosive substances and other necessary arms and ammunitions and conspired to wage war against the Union Government of India.

24. The information received by me constitutes cognizable offence U/s 120(b), 121, 121(A),1 122, 124(A), 153(a) and (b) of Indian Penal Code, 1860 and Section 5 and 6 of Explosive Substance Act, 1908 and Sections 25, 26 and 28 of Arms Act, 1959 and Sections 10, 11, 13, 16, 18, 19, 20 and 23 of Unlawful Activities Prevention Act, 1967."

7. The investigation into the crime was conducted by the team headed by PW72 (Pradeep Singh, Asstt. Commissioner of Police) and the salient features of the matter including the steps undertaken during investigation can be tabulated as follows:

Sl.No.	Date and Time	Facts
1	28.12.2005	An incident of shoot-out occurred at the JN Tata Auditorium of Indian Institute of Science, Bangalore which led to registration of Crime No.110/2005 u/s. 307 IPC with Sadashivnagar Police Station, Bangalore. On receipt of information that Mohammed Rezhur Rehman @ Abdul Rehman (A1) who was suspected to be involved in said crime was in Nalgonda, (PW50) Police Inspector Subanna was instructed to arrest said A1.
2	01.01.2006 5:30am to 6:00am	PW50 and his team arrested A1 in front of a Masjid in Nalgonda. PW50 immediately conducted a body search on A1 and recovered a Pocket Notebook (MO1). Panchnama at Ex. P32 was drawn with PW14 (Surya Prakash) as the pancha witness.
3	02.01.2006	A1 was produced before PW68 (V.S. D'souza, the

		IO in Crime No. 110/2005) and a voluntary statement of A1 was recorded. The statement indicated a conspiracy to carry out terrorist attacks in India.
4	05.01.2006	Based on said voluntary statement of A1, PW68, went to Nalgonda. A Mobile (MO10), one passport (Ex. P40), six slips (Ex.P41-46), and three passport size photos (Ex. P47-49) were recovered from A1's bedroom. Panchnama at Ex. P39 was drawn with PW18 (S. Mothilal) and PW57 (R. Vijay Pal) as the pancha witnesses.
5	14.01.2006 3:30pm	PW68 filed a complaint in relation to the conspiracy to carry out terrorist attacks. Resultantly, FIR being Crime No.3/2006 was registered u/s. 120B, 121, 122, 124A, 153A and 153B of the IPC; s. 5 and 6 of the 1908 Act; s.25, 26 and 28 of the 1959 Act and s. 10, 11, 13, 16, 18, 19, 20 and 23 of the 1967 Act.
6	14.01.2006	PW35 (Chalapathy) arrested Mehaboob Ibrahim Sab Chopdar (A3) from Guledagudda.
7	15.01.2006	Based on the voluntary statement of A3 (Ex.P-272), a pocket telephone diary, 3 telephone chits, 10 gelatin sticks and 02 detonators were recovered under a mahzar Ex.P-50. In the presence of Panchas, A3 also took out 4 books (Ex.P-64 to Ex.P-67).
8	19.01.2006	Afsar Pasha @ Basheeruddin (A2) and Mohammad Irfan (A5) were arrested by PW41 (Srinivas Murthy) and PW52 (A.G. Kaisar) near Punganur. PW52 immediately conducted a body search and found (i) a mobile (MO17), two currency notes of Rs.50/- (MO18), motorbike (MO19), diary (Ex. P13), Driving Licence (Ex. P131), STD slip (Ex. P132), visiting card (Ex. P133), and one estimation letter (Ex. P134) from A2; and (ii) one mobile (MO20), and one diary (Ex. P135) from A5. Panchnama at Ex. P129 was drawn with PW30 (K.M. Vijaya Kumar) and PW35 as the pancha witnesses. A2 and A5 were produced before PW72 at 8:30am. Based on the voluntary statement of A2, 17 detonators, 20 gelatin sticks, 114 iron pellets, 3 hand granades were recovered pursuant to Panchanama Ex.P-138.
9	20.01.2006	Based on the voluntary statement given by A5, recovery of two Urdu books (Ex. P76-77) and two

		letterheads (Ex. P78-79) was made. Panchanama at Ex. P75 was drawn with PW22 (Shakthi) and PW24 (Prakash) as the pancha witnesses.
10	22.01.2006 8:30pm	Pursuant to voluntary statement of A2, certain books and pamphlets (Ex.P-81 to Ex.P-92) and six video cassettes (MO-15) and other articles being Ex.P-93 to Ex.P-104 were seized vide panchanama Ex.P-105. Norrullah Khan @ Noorullah (A4) and Nazmuddin @ Munna (A6) were arrested by PW54 (Babu Narohna) and PW61 (Venkataswamy) at Hesaraghatta Bus Stop. Upon body search, PW54 found (i) a notebook (Ex. P113), one chit (Ex. P114), visiting cards (Ex. P115), a leather purse (Ex. P116) from A4; and (ii) one small diary (Ex. P116) from A6. Panchnama at Ex. P112 was drawn with PW32 (Ejaz) as the pancha witness.
11	23.01.2006	Voluntary statements of A4 and A6 were recorded by PW72, at Ex. P276-277.
12	24.01.2006	Based on their voluntary statements, A4 and A6 led PW72 along with a team and pancha witnesses to Neelagiri Plantation and Central Poultry Farm resulting in recovery of (i) a tin-type bomb, two wires and two capes at the instance of A4; and (ii) a tiffin-carrier bomb, a tin-type bomb, a fuse wire, two electric detonators, a revolver (MO23) and five cartidges (MO24-25) at the instance of A6. Panchnamas at Ex. P169-170 was drawn with PW40 (G.S. Ravikumar) and PW45 (H.K. Paramesh) as the pancha witness.
13	28.01.2006	Chand Pasha (A7) was arrested.
14	30.01.2006	PW72 made more recoveries at the instance of A4 and A6, *i.e.* some books (Ex. P155-156), one Urdu book (Ex. P167) and some documents (Ex. P157-165). Panchnamas at Ex. P134 and Ex. P152 were drawn with PW39 (S. Rajendra) as the pancha witness.
15	12.04.2006	IO submitted the charge sheet in the instant case i.e. crime pursuant to FIR No.3/2006.
16	14.02.2007	A supplementary charge sheet was submitted.

8. During trial, the Prosecution examined 73 witnesses and relied upon 278 exhibits and 38 material objects in support of its case. Exhibits D1 to D7 were also marked at the instance of the Accused in the cross examination of the Prosecution witnesses. The evidence led by the Prosecution could be categorised under three segments as noted by the High Court[8]:

> "(1) The recovery of incriminating articles at the instance of the accused persons;
>
> (2) Connectivity of those articles to the conspiracy between the accused persons;
>
> (3) The conduct of the accused persons with reference to such conspiracy to constitute the offence alleged against them."

9. In the first segment, the important recoveries from the Accused, which were relied upon by the Prosecution, were as under:

(a) From A-1: A pocket notebook, some paper chits containing phone numbers, passport and passport sized photos.

(b) From A-2: 17 Detonators, 20 Gelatine sticks, 114 Iron pallets, 3 Hand grenades, certain inflammatory literature, minutes of meeting of a trust created under the tutelage of A-1 (Ex.P.92) and some video cassettes.

(c) From A-3: Passports, Telephone diary, Telephone chits, Photographs, 10 Gelatine sticks, 2 Detonators and inflammatory literature.

(d) From A-4: Tin type bomb in a box, wires and tapes; documents and books.

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8 Paragraph 44 of the judgment under appeal

(e) From A-5: Letterheads and inflammatory literature.

(f) From A-6: Tin type bomb in a box, wires and tapes; Revolver and live ammunition.

(g) From A-7: Mobile phone, slip with phone number, visiting card, diary and a note book.

10. Certain explosive substances, arms and ammunition which were recovered pursuant to statements made by A-2, A-3, A-4 and A-6 as dealt with at serial numbers 7, 8 and 12 of the chart in paragraph 7 hereinabove, were also relied upon.

11. The Prosecution examined PWs 1 to 8 and 13, who according to the Prosecution, were sought to be drawn and indoctrinated into the design and scheme of the Accused. All these witnesses did not support the Prosecution and were declared hostile. However, according to the Prosecution, their testimonies could still be relied upon to establish the fact that all the Accused were working together with a sense of purpose and had been in touch with the witnesses. By way of example, the following portions from the depositions of PWs 1 and 4 may be noted:-

(A) <u>PW-1 (Javeel Raza)</u>

> "I am acquainted with, Accused-2, Afzal Pasha and Accused-6 Nazamuddin. Both of them are present in this court on this day. Witness identified the Accused-2 and 6 who are sitting at the 4th and 6th position respectively.

> One day when I was there in my shop along with Parveed, 4 years ago, Accused-2 and 6 came to my shop and said that they have come from Kolar, presuming that they might be friends of my friend Mukthiyar who lives Kolar, I called Mukthiyar over phone. The said Mukthiyar is originally from Kolar and was residing in Bangalore. I had called his Bangalore number. Mukthiyar came to my shop. Accused-2 and 6 told us about Islam religion, told us to do Namaz and told us to help the poor people. Told us to establish one Madarasa. We offered both of them cup of tea and sent them off.
>
> After six-seven days, both of them came to my shop once again. Me, Parveez, Mukthiyar and Zaheed were there in the shop. They told us, we will not talk in shop, lets go to park and talk. All four of us went to park along with them. Both of them told about Quran and said that, we have to establish an organisation of people, and told us that it is not possible for the people to go to the mosques or Dargah and pray, hence they are to be demolished. For this work, 15-20 persons are to be organised and the expenses for the same shall be borne by the same organisation. As the matters that they were saying were not appropriate, I told them that I am getting a phone call and I returned to the shop. Behind me, my friends also came back. Accused-2 and 6 went back from the park only. All four of us had talk amongst ourselves, and we decided that the conduct of Accused-2 and 6 are not good, if they come back again, we will not entertain them. After few days, Javid had received a call from the said persons, Javid informed that he has told them not to come and we will not be available.

After the witness was declared hostile, he was cross examined by the Special Public Prosecutor, when the witness stated:-

> It is correct if stated that, in my statement I had stated that the accused persons had informed me that Madarasas are to be opened, Muslims are to be trained, for that finance needs to be arranged. It is not correct if stated that, I had stated that Jihad to be declared against the killings of Muslims by Hindus in Gujarat. The said statement was flagged as EP-1. It is correct if stated that, they had told me that, people are to be stopped from going to Dargahs and we should make Dargahs non-existent. It is not correct if stated that, by making Dargahs impure, communal harmony to be disturbed and law and order situation should be created and government should be weakened, they had informed. The said statement was flagged as EP-2. It is not correct if stated that, the accused Afzal Pasha was trained in Dhaka regarding Jihad and acquainted with the Chief of Lashkar-e-Toiba of Saudi Arabia, Abu Hamja, Wali Ur Rahman and Abdul Rahman of Nelagonda, that he

needs to establish Lashkar-e-Toiba in Karnataka secretly, and had stated that, you all have to co-operate. The said statement was flagged as EP-3.

Accordingly, it is not correct if stated that, I had stated while we were sitting in the park, the said accused said that, we will all together, we will organise LeT in Bangalore, Hindus are killing Muslims in Kashmir and at all parts of India, we will declare Jihad as said in Quran, we will destroy India through revolution, we will collect money for LeT, we will bring the interested persons for training, all the expenses will be borne by Abdul Rahman, I will also train the joining persons temporarily. The said portion of the statement was flagged as EP-4."

PW-4 (Firoz @ Firoz Pasha)

Accused-6, Munna was introduced to me by Chintamani watch shop, Abdul Rahman. The said Munna is present in the court today and he was identified. I used to go to tea stall to read news paper. Then, I got acquainted with the Accused-4, Noorulla. He is also sitting in the Court today. When I went to Mulabagilu for Islam religious canvassing, I got acquainted with Accused – 5, Irfan. He is sitting in the court today and the witness have identified him. I know the Accused-2, he is also present in the court today.

… …In Chintamani there are two Masjids, in those Masjids when we went for Namaz, the management there threw us out saying that, there is a different custom in those Masjids. Therefore, we took a room and we used to Namaz there only. We made a trust and had purchased land for the trust. Abdul Rehman was the Chairman for that trust, 2nd Accused Afzal Pasha was the Vice-Chairman, Accused-6 Munna was the Secretary for that trust, Accused-4 Noorulla was the Joint Secretary, I was treasurer for the trust. Accused Abdul Pasha had a fracture of bone of hand, then Accused-1 Razu Rahman came to see him, then Abdul Pasha introduced him to me that he was his friend in Saudi.

Abdul Rehman had organised a tea party in our house, one day. On that day, Accused-1 Rahman told us that we all should be united and should be co-operative with our neighbours. … …

….. Evening at 7 pm he left after the Namaz. After that, I had dropped Abdul Rahman to the Bangarpet Railway Station on my Bike."

After the witness was declared hostile, in response to the questions put by the Special Public Prosecutor, the witness stated:-

> "It is not correct if stated that, in the statement that I had given to the police, I had stated that, the Accused Afzal Pasha is the major man in Lashkar-e-Toiba, he speaks about Jihad, he had informed me that we will conduct a meeting at 5 PM in our house and as per his request when we gathered in my home, after introducing that Afzal Pasha is the commander of Lashkar-e-Toiba of South India, after that Abdul Rahman spoke and said that, the country of India should be made into pieces, we will conduct a training about Jihad, I will supply the gun, bomb and other required items, you all organise yourselves declare Jihad and said that demolish Dargahs create communal clashes and create instability of government. Listening to all this matter, we said it is not possible to do all that here, we did not cooperate. Me, Jameer and Ameer came back from the meeting without signing, and I had stated that, we were present at the meeting, Munna, Noorulla Khan and Abdul Pasha signed. The said statement was flagged as EP-11."

The witness was recalled and cross examined further by the Special Public Prosecutor when the witness stated:-

> "The trust that we have registered is Masjid O Mohammed Ya Ahle Adees Trust. It is correct that the PW-5 Jameer, PW-6 Ameer and CW-11 Miyammed were also the members of the trust. When the assused-1 came to my house, Afzal Pasha, Noorulla Khan, Munna, Jameer and Ameer had come there. I did not question that, why he is saying like that, when the Accused-1 told us that we all should be united. Afzal Pasha is my childhood friend.
>
> I do not know about, the accused-1 is the South India Commander of Lashkar-e-Toiba and has come to preach us. On that day, the accused-1 was there at my home for about one and half hour, he had only told that we all should be united. It is false if stated that, Abdul Rahman in his speech told that, in India atrocity is happening on Muslims, we all should declare Jihad unitedly, I will provide necessary training and required weapons and all. It is not correct if stated that, Abdul Rahman had said like this, we did not agree to this. Abdul Rahman was staying in Woodland Hotel. Afzal Pasha is my relative."

12. The Trust referred to in the deposition of PW4 was constituted pursuant to execution of Trust Deed (Ex-P27) on 10.12.2003, in terms of which the Trustees were:-

> "(i) Abdul Rehaman s/o Watch Maker Mohan Road;

(ii) Afsar Pasha s/o Noor Ahmed;

(iii) Nijamuddin s/o Tajuddin;

(iv) Noorulla s/o Mehaboob Khan;

(v) C.M. Firroz Pasha;

(vi) Ammer Khan s/o Carpenter Vali Khan;

(vii) Roshan Zameer s/o Syed Noorullah;

(viii) Syed Nayamat s/o Syed Amanulla; and

(ix) Tajuddin s/o late Abdul Razak"

Thus, Accused Nos. 2, 4 and 6 as well as PWs 4, 5, 6, 7 and 8 were Trustees of said Trust.

13. It is accepted that Ex. P-92 is the Minute Book of said Ex. P-27 Trust. Apart from the recovered arms and ammunition and explosive materials, minutes of meetings as recorded in Ex.P.92 recovered from A-2 are of some significance. The contents of Ex. P.92 show that the meetings were attended by some of the accused who signed the minutes. The details in that behalf were captured in Paragraph 70 of the judgment of the Trial Court, which Paragraph, for facility is extracted hereunder: -

> "70. I have perused Ex.P92 and the relevant page of the first meeting is marked as Ex.P92 (c) and (d). The said meeting was held on 10.12.2003 in the house of Fairoz at Chintamani, which was attended by Accused Nos.1, 2, 4 and 6 along with some other members. As per its recitals, it goes to show that the Jihad meeting was held at 5:00 P.M. and in the said meeting Accused No.1 was introduced to all others. Further, it goes to show that Accused No.1 addressed the meeting saying that in India muslims are treated badly, Babri Masjid is demolished, muslims were killed in Gujarat and we all should be prepared to fight against it. Further, it goes to show that Accused No.1 assured that he will supply guns, bombs and also financial assistance, etc., for preparation of Jihad training. Further, it goes to show that the members who attended the meeting, namely Fairoz, Zameer and Ameer, dissented with the Accused No.1 because if they do so, it will

cause harm to the muslims and by saying so they walked out from the meeting. The said meeting also discloses that other members agreed with the Accused No.1 and meeting was concluded at 8:00 P.M. Ex.P92(d) goes to show that Accused Nos.1, 2, 4 and 6 have signed the minutes book. At Ex.P92 (d) after the signatures of Accused No.2, there is a gap and it appears that something has been erased. The learned Special Public Prosecutor has argued that one member who attended the meeting might signed after Accused No.2, but as he came to know about the consequences, he might have erased his signature. He further argued that the persons who attended the meeting being descended with the decision of the accused the I.O. has cited them as witnesses. I find considerable force in his arguments as because Ex.P92 (c) and (d) goes to show that the witnesses, namely Fairoz, Zameer and Ameer, dissented with the views of Accused No.1. Ex.P92 (f) goes to show that second meeting was held in the house of Accused No.6 from 19.08.2006 and it was attended by Accused Nos.2, 4, 5 and 6. Ex.P92 (f) goes to show that in the said meeting a society was formed in the name of Jamath-ul-Mujahiddin and it was agreed in the meeting to cooperate the Jidhad training. Ex.P92(a) and (h) goes to show that third meeting was held on 18.12.2005 in the house of Accused No.2 at Lakkasandra, Bangalore, and Accused Nos.2, 4, and 6 attended the same. Ex.P92(g) and (h) also goes to show that Accused No.5 addressed the meeting by saying that Islam was sent in the hands of Paigambar to be superior to the other religion and Jihad has to be declared if anybody causes damage to Islam. Ex.P92 (g) and (h) also goes to show that Accused No.4 has addressed the meeting by saying the Jihad has to be started by offering lunch (Davath) and if anybody opposed Jihad has to be declared at any time. Ex.P92 (g) and (h) also goes to show that the Accused No.2 has addressed the meeting saying that Jihad has to be declared in the name of God, in case killed he will be ‘Shahid’ and in case of survival he would become ‘Bahaddur’. Further, it goes to show that Accused No.2 addressed to the effect that Kuwath means ‘power’ and by referring the handwritings of the book given by Tariq Sahni of Bangladesh he told that the power is in bombs, bandook and AK-47. Ex.P92 (g) and (h) also goes to show that Accused No.2 instructed to the Accused No.4 and Accused No.6 to identify the Dargah and other important places, for that they agreed. Ex.P92 (g) and (h) also goes to show that next meeting was fixed on 31.12.2005 and the third meeting was concluded at 8:00 P.M. The advocate for the accused argued that there are overwriting at Ex.P92. It is true that at some places we can see the overwriting. At Ex.P92 (c) at the top in date there is overwriting of day, but not about the month and year. Similarly, at Ex.P92 (g) also there is a overwriting of date. But, at the end of third meeting date of next meeting has been specifically mentioned without there being any overwriting. Similarly, in the recitals also some words are striked out, but it will take away the meaning of the sentence. Therefore, I am of the opinion that the overwritings are natural.”

14. PW25 – Anil Kumar Dubey, an independent panch witness, stated *inter alia* about the recovery of Diary Exh.P-92. He deposed that on 22.01.2006 he had accompanied the police and A-2; that when they reached the house of A-2 the door was opened by his wife; that A-2 took the police to a room and opened a suitcase which was lying below the cot in the bedroom using the key that was with him, whereafter, articles Exh.P-81, P-92, six video cassettes (M-15) and other articles Exh.P-93 to P-104 were seized vide Panchnama Exh.P-105. The witness stated that after the seizure was done in his presence, Panchnama, Exh.P-105 was drawn and signed by him. He also stated that the police had called a Moulvi from a Masjid in the neighbourhood, who read the names and some of the contents of the written material and books. The cross-examination of the witness did not draw anything substantial to dispel the credibility of the assertions made in the examination-in-chief.

PW29 Shahnawaz Ahmed deposed that he was called by the police to translate the Urdu books and other material but denied that Panchnama was drawn in his presence. According to the witness, his signatures at four places on Panchnama Exh.P-105 were taken later and the contents of said Panchnama Exh. P-105 were not read out to him. The witness was declared hostile and was cross examined by the prosecution in which he accepted that he had never signed any document without knowing the contents thereof.

15. Exh. P-92, among other documents, was made over to PW-67, Syed Asgar Imam, Hand Writing Expert, along with sample signatures of the Accused. According to this witness, signatures on the sheets of Exh. P-92 were marked as Q39 to Q44 and when said Expert compared the sample signatures of the Accused with Q39 to Q44, the result showed:-

(a) Q39 and Q40 matched with the sample signature of A-2.
(b) Q41 matched with the sample signature of A-5.
(c) Q42 matched with the sample signature of A-6.
(d) Q43 matched with the sample signature of A-4.
(e) Q44 matched with the sample signature of A-1.

The relevant portion from the testimony of PW-67, Syed Asgar Imam was as under:-

> "Since 1981, I am working as handwriting and document experts in FSL, Bengaluru. I am science graduate and I have also got special diploma course in handwriting and document examination, from institute of criminology and Forensic Science, Ministry of Home Affairs, Government of India, New Delhi.
>
> In my tenure I have examined number of questioned documents and I have given my opinion.
>
> On 14/3/2006, I have received following documents from A.C.P. Yeshawanthapura Sub-Divn. Bengaluru City, for my examination and my opinion in Cr. No.3/06 of Sadashivnagar P.S.
>
> 1. One small pocket diary containing questioned writings, marked as Q1 to Q24 by the I.O. Now I see that said pocket diary already marked as Ex.P.54. It bears my signature.
> 2. Three loose chits containing questioned writing, marked as Q25 to Q30 by the I.O. Now I see the said three chits, already marked as Ex.P.51 to 53. It bears my signature.
> 3. One small pocket note book (New) containing questioned writing marked as Q31 to Q38 by the I.O. Now I see the said one small pocket notebook already marked as Ex.P130. It bears my signature.
> 4. One 2003-diary containing questioned writing and signature in six sheets marked as [Q39 to Q44] by the I.O. Now I see the said one 2003 diary already marked as Ex.P.92. Its relevant sheets of

questioned writing is now marked as Ex.P.92 (c) to (h). it bears my signature.

5. One small telephone pocket diary (new) Q45 to Q50 by the I.O. Now I see the said one telephone pocket diary already marked as Ex.P.135. It bears my signature.
6. One small pocket book containing questioned writing marked as Q51 to Q55 by the I.O. Now I see the same already marked as Ex.P. 113. It bears my signature.
7. One loose page of a note book containing questioned writing, marked as Q56, Q57 by the I.O. Now I see the same already marked as Ex.P.114. It bears my signature.
8. One small pocket note book containing questioned writing marked as Q58 to Q60 by the I.O. Now I see the same already marked as Ex.P.116. It bears my signature.
9. One small pocket book containing questioned writing marked as Q61 to Q79 by the I.O. Now I see the same already marked as Ex.P.148. It bears my signature.
10. Eight chits containing questioned writing marked as Q80 to Q91 by the I.O. Now I see the same already already marked as Ex.P.149, 150, 151, 138, 141, 139, 140 and 142. It bears my signature.
11. Specimen writing said to be of Mehboob Ibrahim on six sheets, marked as EW1, EW2, SW1 to SW4 by the I.O. Now I see the same already marked as Ex.P.190 to Ex.P.195. It bears my signature.
12. Specimen writing and signature to be of Afsar Pasha on ten sheets, marked as EW3, EW4, SW5 and SW8, S1 and S4 by the I.O. Now I see the same already marked as Ex.P. 196 to 205. It bears my signature.
13. Specimen writing and signature said to be of Mohammed Irfan on six sheets marked as EW5, EW6, SW9, SW10, S5 and S6 by the I.O. Now I see the same already marked as Ex.P.206 to Ex.P.211. It bears my signature.
14. Specimen writing and signature said to be of Noorull Khan on four sheets marked as EW7, EW8, S7, S8 by the I.O. Now I see the same already marked as Ex.P.181 to 184. It bears my signature.
15. Specimen writing and signature said to be Najmuddin on four sheets, marked as of Najmuddin on four sheets, marked as EW9, EW10, S9 and S10 by the I.O. Now I see the same already marked as Ex.P.185 to 188. It bears my signature.
16. Specimen writing and signature said to be of Chandpasha on six sheets marked as EW11, EW12, SW11 and SW12, S11 and S12 by the I.O. Now I see the same marked as Ex.P.227 to Ex.P.232. It bears my signature.
17. Specimen signature said to be of Mohammd Razhur Rehman on two sheets, marked as S13 and S14 by the I.O. Now I see the same marked as Ex.P.223 and Ex.P.234. It bears my signature.

After thorough and scientific examination of the above question and specimen writings and signatures I came to the following opinion:-

1. The specimen writing marked as EW1, EW2, SW1 to SW4 and questioned writings marked as Q2, Q3, Q4 are written by one and the same person.
2. The specimen writings marked as SW7, SW8, EW3, EW4, S1, S2 and questioned writing marked as Q31 to Q40 Re-examination written by one and the same person.
3. The specimen writings and signatures marked as EW5, EW6, SW9, SW10 and S5, S6 and questioned writings and signatures marked as Q47 to Q50 and Q41 are written by one and the same person.
4. The specimen writings and signatures marked as EW7, EW8, S7 and S8 and questioned writings and signatures marked as Q53, Q54 and Q43 are written by one and same person.
5. The specimen writings and signature marked as EW9, EW10 and S9 and S10 and questioned writings and signature marked as Q56 to Q60 and Q42 are written by one and the same person.
6. The specimen writings marked as EW11, EW12, SW11, SW12 and questioned writings marked as Q86 are written by one and the same person.
7. The specimen signatures marked as S13, S14 and questioned signature marked as Q44 are written by one and the same person.
8. It has not been possible to express the opinion questioned writings marked as Q1, Q5 to Q30, Q45, Q46, Q51, Q52, Q55, Q61 to Q85, Q87 to Q91 on the basis of specimen writings on hand.

Accordingly, I have issued the certificate in this regard now. I see the same marked as Ex.P.235 and my signatures are marked as Ex.P.235(a) to (c). The said certificate is counter signed by the Assistant Director, FSL and forwarded to the I.O. by the director."

Nothing substantial came out in the cross-examination conducted on behalf of the Accused with respect to Exh. P-92. The signatures of A-1, A-2, A-4, A-5 and A-6 on some of the minutes, according to the Prosecution, were thus proved beyond any doubt.

16. The recovery of books and literature recovered from the Accused, which according to the Prosecution was inflammatory material, may now be dealt with:-

(A) On 22.01.2016, A-2 took PW72 to his house leading to the recovery of certain literature and books which according to the Prosecution were

inflammatory. The literature comprised of a book named as '*Taqbeer'* (Exh.P-81), a book called '*Jihad'* containing 66 pages (Exh.P-82), literature under caption '*Jamaat-e-Mujahiddin'* (Exh.P83), a book named '*Hazarath Mohammed Kajikar'* (Exh.P-84), a book by name '*Warning'* (Exh.P85), a book named '*Albalaaq'* (Exh.P-87 and Exh.P-88), a book named '*Yehoodiyonki Tarahim'* (Exh.P-90) and collection of 40 Pamphlets (Exh.P-91), apart from the aforesaid Diary (Exh.P-92).

(B) Pursuant to the voluntary statement made by A-3, four books namely; *Jadul Mujahiddin, Albalaq, Taqbeer* and *Biddat*, Exhs.P-64 to P-67 respectively were recovered as per Panchnama Exh. P-68.

(C) The voluntary statement of A-5 led to the recovery of books named *Dastani Mujahid* and *Jihad* (Exhibits P-76 and P-77) and some letterheads.

17. The Prosecution also relied upon the confessional statements of Accused Nos. 4, 6 and 7 which were recorded by the 9th Additional Chief Metropolitan Magistrate, Bangalore City and marked as Exhibits P-268, P-269 and P-270 respectively.

18. After considering the material on record, the Trial Court in its judgment dated 17.12.2011, took the view that the sanction accorded by the Under Secretary in respect of the offences punishable under the provisions of Sections 10 and 13 of the 1967 Act was defective.

19. The documents, books and literature referred to above were dealt with by the Trial Court in Paragraphs 53-56 of its judgment as under: -

> "**53.** At the earlier stage I have made a note that all the Urdu Books seized by the I.O. from each accused will be considered together. I have observed about the seizure of the books and other documents from Accused No.2 by the I.O. under Ex.P105. The books and documents seized from Accused No.2 are marked as Ex.P81 to 90. The Book namely Taqbir is marked as Ex.P81. The book 'Jihad' is marked as Ex.P82. The Book 'Jamal-e Mujahiddin' is marked as Ex.P83. The Book 'Hazarath Mohammed Zakikar' is marked as Ex.P84. The Book 'Warning' is marked as Ex.P86. The weekly magazine 'Albalaaq' is marked as Ex.P87 to 88.
>
> One book is written by Raithullah Faruqui is marked as Ex.P89 and 40 pamphlets are marked as Ex.P90. PW-72 in his evidence has stated that, he has secured the neighbouring witness Shahnawaz Ahmed, who knows Urdu as pancha to know the contents of the said book. The said witness is examined as PW-29. This witness turned hostile and not supported the prosecution case. To some extent he has stated that one Mohammed Anwar and Lakkasandra, landlord, called him to translate the Urdu Books. Further, PW-29 has stated that he went to the house and the police were present in the house of Anwar. He has also stated that the police told him to translate Urdu Book and he translated the books given to him. Though this witness has turned hostile about conducting of the panchanam i.e. Ex.P105, to some extent we can gather that he has translated Urdu Books to the police. PW-72 has stated that on the books i.e. Ex.P81(Taqbir) there is a symbol of crossed Rifle and Sword. PW-72 has stated that the witness, namely Shahnawaz Ahmed has verified the book and told that in the 9 Chapter there is a phrase as "Bharath mit janewala hai", in the 10 Chapter as "Haath me gun utao", and in the 14th Chapter "Lashkar -e-Taiba", PW72 has stated that, the relevant chapters were marked in red ink and PW-29 has explained the meaning of the relevant chapters. PW-72 has further stated that said Shahnawaz told that those articles are anti-national and provocative. PW-72 has also stated that the said witness Shahnawaz explained the meaning of the other books also. PW-72 also further stated that the witness Shahnawaaz told that in the book 'Warning' it is written about the demolition of Babri Masjid and also about the wrong Act by the order communities on Dargas.
>
> **54.** As I discussed at earlier stage about the seizure of books Ex.P64 to 67 from Accused No.3 Ex.P64 is 'Jadul Majahiddin', Ex.P65 is 'Albalaaq', Ex.P66 is 'Taqbir' and Ex.P67 is 'Biddath'. PW-50 is the Police Official, who seized the Ex.P64 from Accused No.3. PW-50 in his evidence has stated that, the contents of the said books were explained by Rukman Ahmed, who knows Urdu. The said witness examined as PW-27. He turned hostile and not supported the prosecution case. But, this witness by seeing

Ex.P66 i.e. ‘Taqbir’ explained the ‘Taqbir’ means ‘Voice of Allah’. This witness has also stated that in one Part at page No.166 it is mentioned that ‘India will destroy’ and also it is written that, ‘to hold the gun’ and the said book is printed at Pakistan. He has also stated that, at Page No.64 there is a recital about glorifying of injured persons in Jihad. PW-50 also in his evidence stated that, PW-27 has examined the book ‘Taqbir’ and informed that in the 9th Chapter it is written as ‘Bharath mit janewala hai’ and in the said book at 10 chapter it is written as ‘Haath me Gun utao’. PW-50 further stated that, the witness i.e. PW-27 has examined the contents of the books seized by him. The advocate for Accused No.2 and 3 vehemently argued that it is practically impossible to know the contents of all the books within a short period and to translate it. They have also argued that by picking up some sentences, the meaning of the book cannot be gathered and only after reading the entire book only the real meaning of the book can be extracted. On perusal of the evidence of PW-50 and PW-72 it appears that some important chapters were only got explained by them. It is an admitted fact that the true translation of entire book are not furnished. The I.O. has referred all the books to the Chairman, Urdu Academy, for its translation. The then Chairman of Urdu Academy, namely M. Nooruddin is examined as PW-65. He has stated that during the year 2006 he was working as Chairman at Urdu Academy and also he has stated that he has obtained M.A., Ph.D., in Urdu language. He has also stated that in the month of July or August 2006 A.C.P., Yashwanthpura Sub-Division, has sent some Arabic and Urdu Books for their translation to English. He has also stated that about 15 books were handed over to him, namely Sunflower notebook, ‘Alballaq’ Weekly Magazines, ‘Biddat’, ‘Jadul Mujahiddin’, ‘Tagbir’, ‘Jamale-Mujahiddin’, ‘Warning’, ‘Kya Aurath Masjid ya Edga nahi ja sakthi’, two weekly magazines of ‘Albalaaq ke Jerayum’, 40 Pamphlets of ‘Jadul Mujahiddin’ and ‘Vedon ki duniyan me’. PW-65 has further stated that because of shortage of time he took the assistance of his colleague. During the cross-examination he has admitted that all the 15 books were read by his friend. He has also admitted that, his friend has underlined some portion which were only read by him. As argued by the advocate for the accused without reading the entire text, the real meaning cannot be extracted. It is true that PW-62 has stated that, he has read the portion which were underlined by his colleague. Here I am to observe that as Stated by PW-65 in the Chief Examination itself stated that because of shortage of time he took the assistance of colleague, who well-versed in Urdu and Arabian language. The person who assisted him is none other than the colleagues of PW-65. PW-65 has stated that he has given the gist of all books given to him in his report as per Ex.P225. He has stated that the gist of Ex.P76 is that “democracy is not suitable to establish Islam religion and it is inevitable to kill to secure power”. He has also stated that, in Page No.16 of Ex.P76 it is written that the muslim community is suppressed by majority communities and the aim is not to awoke muslim community and the muslim should not prepare with arms’, As such, the meaning is majority

communities attacking on the muslims. Further PW-65 has stated that in the said book it is also written that ‘as muslims are minority community, in a democratic system they cannot secure power’. He has also stated that in the book ‘Taqbir’ i.e. Ex.P81, it is written that ‘India will destroy’ and also written that ‘to take gun in the hands’. It is also written that ‘Lashkar-e-Toiba’ destroy the kaphirs and Lashkar-e-Toiba is fighting for good things. Further, PW-65 has stated that he has given the gist of Ex.P64 i.e. Jadul Mujahid book and its gist is that ‘Prophet has told to attack on India’. PW-65 has stated that, in fact the prophet has not told so, PW-65 has specifically stated that this book is provocative and most dangerous. He has also stated that, the book Ex.P89 ‘Mujahid-ke-Azad’ is also provocative and anti-India. Relating to Ex.P81 the Special Public Prosecutor has argued that, Kaphirs are those ‘who deviate from the Islam path’. As Per Ex.P81 it is a war against non-muslims. Much has been argued on both sides about the meaning of Jihad. He has referred the book Islam, sex and violence, written by Anwar Sheikh. In the 7th Chapter, the Author has examined Jihad as

> “Jihad is an Arabic word, which literally means ‘endeavour’ but as an Islamic doctrine, it implies fighting in the way of Allah (the Arabic God) to establish his supremacy over unbelievers until they relinquish their faith to become muslims or acknowledge their subordination by paying a humiliation-tax called ‘JAZYIA’.”

55. The advocate for the Accused No.3 referred website copy Wikipedia, wherein Jihad is described as follows:

> “According to the authoritative Dictionary of Islam jihad is defined as: “A religious war with those who are unbelievers in the mission of Muhammad enjoined especially for the purpose of advancing Islam and repelling evil from Muslims.” “

56. By referring terrorist organizations, the Special Public Prosecutor argued that, in the name of Jihad these organizations are engaged in destructive activities. As an example he has referred terrorist attacks on World Trade Organisation, attack on Parliament of India and on Hotel Taj of Bombay. In this case we are not concerned about the other incidents and we have to see the materials placed in the present case. If we fall back to the evidence PW-65 we can see that he has categorically stated that some of books which were seized in this case are provocative, dangerous and also anti-India. PW-65 is a responsible person. Therefore, though he has not furnished the entire translation the gist of the book which he has furnished has to be accepted.”

20. Considering the recovered articles and their connection sought to be established through the other material on record and the inference that could be drawn from such aspects, the Trial Court concluded:-

> "In the foregoing paras I have also discussed about the seizure of provocative articles from Accused Nos.2 and 3 which are dangerous and anti -national. I have also discussed in the foregoing paras about the seizure of explosive substance, arms and ammunitions by the Investigating Officer from Accused Nos.2, 3, 4 and 6 at different places. It is true that when the Accused No.3 was arrested, the Investigating Officer has seized some explosive substance. But, with respect to Accused Nos.2, 4 and 6 based on their voluntary statement explosive substance, and arms and ammunitions were seized. As held in the decision reported in 2007 Crl. L.J. 1386 which I have mentioned above, in the present case also presumption under Section 111A of Indian Evidence Act cannot be drawn. But, in the said case – law it is also held that it is incumbent on the prosecution to prove that the collection of men, arms and ammunitions was for no other purpose, but to prepare to wage war against the Government of India to establish the offence under Section 122 of Indian Penal Code and it is necessary for the prosecution to establish that the fire power or the potential devastation which could be caused by the arms and ammunitions recovered from the accused was such that it would point to the design to prepare to wage a war against Government of India. As I mentioned above the I.O. has seized explosive substance from Accused No.6. Ballistic expert opinion and F.S.L Report of explosive substance are in favour of the prosecution. It is true that the documents seized from Accused No.1,5 and 7 does not amount to incriminating. I have also observed that confession statement of the accused does not help the prosecution case. But, as I discussed above Ex.P92 clearly goes to show their active involvement in Jihad activities. Merely because there is a reference of word 'Jihad\ that alone does not constitute waging war, but at Ex.P92 there is a reference to such an extent that the Accused No.1 assured to supply gun, bomb, etc. for Jihad, Ex.P92 (h) further goes to show that in Jihad meeting Accused No.4 and Accused No.6 were entrusted to identify the important place and Dargas, which goes to show that the accused had intention to commit the terrorist activities, such as, blasting of important places including Dargas. The circumstances which I discussed above goes to show that Accused No.1 to 6 conspired and abetted to wage war against the Government of India and they have made the preparation in this regard, so also with a common intention they have kept explosive substance, arms and ammunitions in the secret place. No materials were placed about the involvement of Accused No.7. As the activities of Accused Nos.1 to 6 at the preparation stage I am of the opinion that Section 153-A and 153-B of Indian Penal code does not attract. With these observations I answers these points partly in affirmative and partly in negative."

21. After placing reliance on the decisions of this Court in ***Kehar Singh and ors. vs. State (Delhi Admn.)***[9] and ***Nazir Khan and others v. State of Delhi***[10], on the aspect of conspiracy entered into by the Accused and the nature of offences committed by them, the Trial Court observed: -

> "**73**. In the above said decision their Lordships have also observed 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 pursuant of agreement, but the very agreement is an offence and is punishable. Reference to Section 120-A, 120-B of Indian Penal Code would make these aspects clear beyond doubts. 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 conspiracy."

22. In light of the discussion as aforesaid, the Trial Court by its judgment dated 17.12.2011 acquitted the Accused of charges under the provisions of the 1967 Act for want of requisite sanction. Further, it acquitted A-7 of all the charges but found A-1 to A-6 guilty as under:-

> "Acting under Section 235(2) of Criminal Code of Procedure accused No.1 to 6 are convicted for the offences punishable under Sections 120-B, 121-A, 121 of the Indian Penal Code, Sections 5 and 6 of the Explosive Substances Act and Section 25 and 26 of the Arms Act.
>
> Acting under Section 235(1) of Criminal Code of Procedure the accused No. 7 is acquitted for the offences punishable under Sections 10, 13 of the Unlawful Activities (Prevention) Act, Section 120-B, 121-A, 121, 153-A, 153-B of the Indian Penal Code and Sections 5 and 6 of the Explosive Substance Act and Sections 25 and 26 of the Arms Act.
>
> Acting under Section 235(1) of Criminal Code of Procedure accused Nos. 1 to 6 are acquitted for the offences punishable under Sections 10 and 13 of the Unlawful Activities (Prevention) Act and Sections 153-A, 153-B of Indian Penal Code."

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9 AIR 1988 SC 1883: 1988 SCR Suppl(2) 24

10 AIR 2003 SC 4427: (2003) 8 SCC 461

By its Order of Sentence dated 19.12.2011, the Trial Court imposed substantive sentences, as tabulated in paragraph 2 hereinabove.

23. Four appeals, as detailed in paragraph 3 hereinabove, arising from the judgment and order passed by the Trial Court, were dealt with and disposed of by the High Court vide its judgment and order presently under challenge.

A) On the issue of sanctions accorded in respect of various offences, the High Court found: -

> "**34.** As per Section 45 of Unlawful Activities (Prevention) Act, 1967, the Central Government has named the Secretary of the State Government, Home Department to be the competent authority to issue sanction order. In this case, PW-73 Bipin Gopala Krishna, Additional DGP has perused the entire materials on record and recommended for grant of sanction order to the State Government, Home Minister and the Chief Minister and after it came back to him, he in fact, found sufficient materials and prima facie case to grant approval, that means he has taken the decision to accord sanction as under the provisions of IPC, the Government is the sanctioning authority. Perhaps that may be reason, he has sent the papers to the Government, but actually it is shown that he has taken the decision on finding prima facie material that it is a fit case to grant sanction order and in fact, while file came back from the Chief Minister and the Home Minister's office, consenting to accord sanction, he sent the same to the Under Secretary to communicate the decision taken by him and the Government order to the police that, it is a fit case to prosecute the accused. The Government and PW-73 have rightly accorded sanction under Section 196 of Cr.P.C. and section 45 of the Unlawful Activities (Prevention) Act.
>
> **35.** What is to be looked into from the evidence of these witnesses is that PW-73 Bipin Gopala Krishna, Addl. D.G.P., Internal Security, has deposed that while he was working as a Secretary, P.C.A.S., Home Department, Bengaluru, on 1.4.2006 he received a request from the Commissioner of Police, Bangalore City, seeking sanction for prosecution from the Government and he is the competent authority to issue sanction order. The entire materials passed through him has been examined by him and decided to accord sanction and thereafter he obtained the ratification from the Government and then ordered to issue sanction order through the Under Secretary. We can understand if PW-73, who was the then Secretary to the Home Department has not at all come to the conclusion that it is a fit case to accord sanction, the things would have been different, but he has rightly applied his mind and taken a decision. The Under Secretary of the Home

> Department has only communicated the sanction order on behalf of the Government.
>
> **36**. As could be seen from the entire records, we would say that it is the decision taken by PW-73 on behalf of the Government. Therefore, in our opinion, the sanction accorded to prosecute the case u/s.120- B, 121, 121-A, 122, 124-A, 153-A and 153 and as well under the Unlawful Activities (Prevention) Act, 1967 are valid and correct. The trial Court has persuaded itself that it is only the Under Secretary who has taken the decision, and wrongly rejected the sanction order so far as it relates to the offence u/s.10 and 13 of the Unlawful Activities (Prevention) Act, 1967. In our opinion, the said stand taken by the learned Trial Judge is not correct. The trial Court ought to have held that even the sanction accorded to prosecute the accused for the offence punishable under Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 is also valid. We accordingly hold that the trial Court has committed a serious error in doing so. We hold that the prosecution has also proved that the sanction accorded by PW-73 though it is ratified by the Government or approved by the Government, it is virtually the decision taken by PW-73 is evident. Therefore, the sanction order so far it relates to Section 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 is also valid and correct.
>
> **37**. So far as it relates to sanction under the Explosive Substances Act and u/s.39 of the Arms Act, PW-70 Ajay Kumar Singh, the Commissioner of Police has accorded sanction, while he was working as Commissioner of Police, at Bengaluru. He has categorically stated in his evidence that he has issued the sanction order as per Ex.P-266. He has deposed that, on 1.4.2006, he has received a report from the Deputy Commissioner of Police, Central Division along with the report of the ACP, Yeshwanthpur and also the documents like FIR, FSL report etc., and after studying the report and the documents he has accorded sanction as per Ex.P-266 and he has stated that he has also issued sanction u/s.7 of the Explosive Substances Act after going through the entire materials on record. Therefore, the Commissioner of Police, city of Bangalore has issued sanction order under Ex.P-266 and P-267 for the offence punishable under Arms Act and Explosive Substances Act."

B) While affirming the acquittal of A-7, the recoveries from A-1 to A-6 and the material on record were considered from the standpoint as to whether conspiracy as alleged was proved or not. The questions were posed as under:-

> "**78**. In this background, Court has to consider whether any materials are available to show the conspiracy between accused Nos.1 to 6 who are convicted by the trial Court and find out whether the recovery of the incriminating articles at the instance of accused Nos.2 to 7, whether it establishes the conspiracy being held between accused nos.1 to 6 and that

> conspiracy is with regard to destabilize the Government of India and also create any communal dis-harmony amongst the people of India and whether they are anti social elements and also their conduct coupled with recovery amounts to any offence committed by them as invoked by the police."

C) While dealing with the effect of Exhibits P-27 and P-92 in light of the evidence on record, the High Court stated:-

> "**87**. PW4-Firoz @ Firoz Pasha has admitted that A-2, A-4, A-5 and A-6 including A-1 were all known to him and he knew A4 since childhood. He further deposed that there were two Masjids and this witness was also attending Masjid to offer Namaz. In fact, the accused Nos.2 to 6 were ousted from Masjid as their Namaz procedures were different. He has also stated admitting that A-1 came to Chinthamani and A-2 has introduced A-1 to him on the ground that A-1 and A-2 had become friends at Saudi Arabia. Though, he denied that, in the said meeting they met each other at Chinthamani, A-1 has given a provocative speech to other accused persons that the Muslims have to declare Jihad and he would supply money, Bomb and also give training to destroy India. However, it clearly goes to show that A-1 to A-6 were known to each other and A-1 came to Chinthamani and he met all the other accused persons and had talk with them. In this background, one has to understand the contents of Ex.P-92."

D) The contents of Exhibit 92 were then considered as follows:-

> "**94**. The sum and substance of the recitals in Ex P 92 (c) and (d) disclose that 'Jihad' meeting was held between the accused persons and other so called trustees under the guise of a religious meeting. Abdul Rehaman (A-1) was introduced to the others by Afsar Pasha (A-2). A-1 addressed the meeting saying that in India Muslims are treated very badly (terribly/dreadfully) and Babri Masjid has been demolished. Muslims were killed in Gujarat and all the Muslims have to fight against this. A-1 would supply money, guns, bombs and explosives etc., In the same meeting, it is also narrated that the other trustees Firoz, Jameer and Ameer who have not supported the speech of A-1, they were reluctant to participate by saying that if they do such illegal acts as preached by A-1, that, it would cause inconvenience to the Muslim community, in India and therefore, they all went away from the meeting. But other persons A-2 A-4 and A-6 who have accepted the speech of A-1 subscribe their signatures to the said meeting including A-1 who has put his signature and the meeting was concluded at 8.00 p.m.
>
> **95**. Of course, there is some over-writing with regard to the date, which appears to have been overwritten as 10 instead of 12 and there is over-writing with regard to the name of Firoz at item No.7. But the evidence of

the above said witnesses as already noted, it is their case that they are conducting meetings together for the benefit of the Trust and that they admitted that Ex.P-92 is their meeting book. It is the responsibility of the accused to explain if there is any over-writing or any mistake in the said document, because even the signatures of A-1, A-2, A-4 and A-6 have also been sent to experts and the experts have also given opinion that it is the signature of A-1, A-2, A-4 and A-6.

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100. The sum and substance of the Kannada version goes to show that A-5 addressed the said meeting by saying that Islam was sent in the hands of Paigambar, which is superior to all the other religions. The 'Jihad' has to be declared if anybody causes damage to it. A-6 also addressed the said meeting by saying that 'Jihad' has to be started by offering lunch (Davat) and if anybody opposes, 'Jihad' is to be declared at any time. Afsar Pasha (A-2) also addressed the said meeting saying 'Jihad' has to be declared in the name of God in case anybody is killed they will become ‘Shahid’. A-2 also further addressed explaining what is meant by Kuwath, that “Kuwath” means “Power” and referring to the hand-writings of the book given by Tariqsahni and Bangladesh. A-2 told that the power is in Bombs, Bandooks and AK-47. A-2 instructed A-4 and A-6 to identify the Dargas and other important places for that they all agreed. Ex.P92(g) also goes to show that the next meeting was fixed on 31.12.2016 by saying so the 3rd meeting was concluded at 8.00 p.m.

101. Looking to the above said Ex.P-92(c) to (h), it discloses and at any stretch of imagination, it cannot be said that they are all religious meetings pertaining to the Trust, that they have categorically admitted that this Ex.P-92 is the minutes book pertaining to the Trust, there is not even a mention of any objectives of the Trust and the policies. On the other hand, the entire meetings were held for the purpose of taking action of revenge, for demolishing of Babri Masjid and killing of Muslims in Gujarat and for that purpose they are taking training and collecting guns, bombs etc., In this background, the court has to understand the purpose of meeting of minds of A-1, A-2, A4 to A-6 who have actually participated in these meetings particularly A-1, A-2, A-4 and A-6 in the first meeting and A-2, A-4 to A-6 in other meetings. Of course, conspicuously A-3 has not been participated in any of these three meetings.”

E) Other material on record was considered thus:

“**116**. Apart from giving the above said report, in fact, some of the seized books have been shown to him. After seeing Ex.P-76, which is named “Sunflower note book” as true, hand written by one Shaik Abdul, belonging to Soudi Arabia which was published in Bangladesh. The contents of the said document spoken to by PW-65 is that-

> *"Democracy is not suitable to establish Islam religion and it is inevitable to kill to secure power'.*
>
> He has also written in the said book at page 16, that "the Muslim community is suppressed by majority communities and the aim is not to awoke Muslim community and the Muslim should not prepare with arms." The meaning is majority communities are attacking on the Muslims. PW65 has further deposed that in the said book, it is also written that in a democratic system, the Muslims cannot secure power. The witness has also deposed by looking into Ex.P-81, the book 'Taqbir' which contain the quotations like "India will destroy", to take gun in the hands and LeT destroy the Kaphirs and 'Lashkar-e-Taiba' is fighting for good things. PW-65 on seeing Ex.P-64 a book by name 'Jadul Mujahid' book and its gist is 'Prophet has told to attack on India. Further, PW-65 has clarified that at no point of time, Prophet Mohammad has stated so. However, he states that the narration of the fact in such a manner in Ex.P-64 is provoking and it is very dangerous. He has stated that the book Ex.P-89 'Mujahid-ke-Azad' is also provocative and anti national. He has also admitted that the Kaphirs are those who deviate from the Islam path' and Ex.P-81 also says that 'waging war' against non Muslims. It is admitted that some of the books contain about 'Jihad'. This witness has also stated that after looking into the books he has given such information he has also admitted that he has not read the entire books, but whatever the contents shown to him, he has actually disclosed the same to the court. On looking into the above said evidence of PWs.50, 72, 65 and 29 coupled with Ex.P92 as referred to above, we can safely hold that the accused persons 1, 2, 4 to 6 have indulged in provocative and dangerous activities against India, though their acts have not been implemented, nevertheless, their mind set has been made very much clear. PW-65 is a responsible person has categorically stated that the books which were recovered at the instance of A-2, A-3 and A-5 have clearly discloses that they contain very dangerous articles and anti India recitals particularly those books provoked for destruction of the Indian country."

F) The recoveries made from the individual Accused as well as the impact thereof was then considered as under: -

> "**120**. We have already extensively discussed about recovery of some articles at the instance of the accused persons. Of course, there is no incriminating articles recovered at the instance of Accused No.1. Though voluntary statement of Accused No.1 was recorded as per Ex.P.262 and under Exs.P32 and P39 (mahazars), the police have recovered 1 pocket diary (MO.1), one mobile phone (MO.10), 1 passport (Ex.P40), 6 chits containing phone numbers (Exs.P41 to P46) and 4 passport size photographs (Exs.P47 to P49). In fact these articles are not incriminating, as the prosecution has not able to establish any connectivity of these materials with Accused No.1 with

other accused persons, though these materials recovered includes the mobile phone of Accused No.1.

121. It is evident from the records that from A-2, under Exs.P.129 and P.69, the police have recovered 1 mobile phone (MO.17), Re Book (MO.18), a small diary (Ex.P130), DL (Ex.P131), STD Bill (Ex.P.132), Visiting Card (Ex.P133) and a bill with phone Nos. (Ex.P134) and also one letter head (Ex.P70), 1 postal cover (Ex.P71), letter (Ex.P72), 1 passport from (Ex.P.73), 1 Affidavit (Ex.P74). According to the Investigating Officer, he has not collected any material to connect the accused with these articles in the crime, therefore, they are also not relevant to be discussed. However, voluntary statement of A-2 was recorded under ExP.273 and on 21.02.2016 Mos.2 to 9 were recovered at the instance of A-2, which are very much important. In fact, these articles are incriminating and in fact they are dangerous articles i.e. Electrical detonators, Gelatin Sticks, 114 metal pellets and 3 hand grenade and other articles. Though under Ex.P.105, some books have been recovered, we have discussed the connectivity of those books with the crime already in the aforenoted paragraph.

122. From A-3, on the basis of his voluntary statement (Ex.P.272) under a mahazar (Ex.P.15), some chits containing phone numbers, small telephone diary, courier receipts, small chit of accounts, three photographs were recovered, which are marked at Exs.P.51 to P.59). These are also not incriminating and no connectivity is established from these articles. However, as we have mentioned, the police have also recovered 10 Gelatin sticks and detonators from these accused, which are incriminating and it gone without any explanation. Under Ex.P62, one passport was also recovered as per Ex.P63; fromA-3 some books have also recovered under Ex.P68, which we have already discussed.

123. From A-4, under Ex.P112, the Police Officer has recovered one reliance note book, paper with phone numbers, visiting card and a leather purse, which are marked as Exs.P113 to P.116 under MO.56. According to the Investigating Officer, these things are also not incriminating materials and no connectivity has been established. However, under Ex.P169, on the basis of voluntary statement (Ex.P.275), the Investigating Officer has recovered one Tin Bomb from this accused and also recovered under Ex.P.152 some books which are incriminating and also recovered from A-4 and A-6 a book regarding ‘Jihad’ at Ex.P167, which we have already discussed.

124. From A-5, as we have already discussed in detail, on the basis of his voluntary statement (Ex.274), the police have recovered one note book (Ex.P76) and other books, and also a small diary (Ex.116), in respect of which no connectivity is established. Therefore, from A-5 no incriminating materials have been recovered except one note book (Ex.P276) under mahazar (Ex.P75).

125. From A-6, a small diary was recovered and under Ex.160 (mahazar) some incriminating materials have been recovered i.e. 1 small tin bomb, 1 tiffin box bomb with wires, 2 electrical detonators, 2 wires and country made revolvers marked at MO.23 and live bullets (MOs.24 & 25) are also recovered under mahazars, which are marked at Ex.P56 to P166. Except the bombs, the connectivity of Electrical Detonators, the other materials recovered with the crime are not established.

126. From A-7, the police have recovered under Ex.P.137 one purse (MOs.21); Nokia mobile (MOs.22), telephone number slips, visiting cards and STD booth bills marked as Exs.P.138 to P.142 and also recovered one passport (Ex.P.146), one book in Urdu with picture of crossed guns (Ex.P.147) and a small diary (Ex.P.148) and 07 paper pieces marked at Exs.P.149 to P.151).

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130. On careful perusal of the statement of these accused persons recorded under Section 313 of Cr.PC., there is no sufficient acceptable explanation by them as to why they were possessing these contraband articles, which are sufficient to cause damage to life and property of the public at large, if they explode. It is also not explained as to the reason for them to keep all these articles. According to the learned counsel for the accused, the accused persons are law-abiding citizens. If they are really law-abiding citizens, why they have to keep such dangerous articles with them. When there is no reason or explanation by the accused persons for possessing the said incriminating articles with them, then it can be safely inferred that, the said articles were kept by them for the purpose of doing some illegal acts in furtherance of their conspiracy, as detailed *supra*.

131. Recovery of the above said articles have to be tested with other materials on record. As we have already discussed, these articles have some connection with the conspiracy that has been occurred between some of these accused persons. Of course, there is no material to show that A-3 and A-7 in any manner participated in the conspiracy, as we have already discussed. At the cost of repetition, we may say that in Ex.P92 dated 10.12.2003, 19.08.2005 and 18.12.2005, the accused persons, who have participated in these meetings, have taken oath to take revenge for the demolition of Babri Masjid and killing of Mohhammadans at Gujarath. They have decided to join their hands for ‘Jihad’ by taking training. That means, they have to possess bombs, guns and other things and use them whenever instructed by their superiors. Particularly in the meeting held on 18.12.2005, the accused persons had also discussed with regard to declaration of ‘Jihad’ against the persons, who have no belief in Islam and they have also decided to possess bombs, rifles, AK-47 etc.”

G) The material on record was then looked into to consider as to what offences were established. The relevant discussion was:-

> "**141**. Applying the materials available on record sofar as these offences are concerned, admittedly the Investigating Officer in his evidence has admitted during the course of the cross-examination that, except the voluntary statement of accused persons stating that they are working for an Association which is declared as ULF i.e., *LeT* and that A-1 is working as leader for South India pertaining to the said ULF Association. He also admitted that, there is no other material before the court and he has not collected any materials to show that any of the accused persons are either members or taken any part in meeting of such Association or contributed or received any contribution for the purpose of such association or assisted the said association in any manner. He has also stated that he has received some factual information from his informants that the accused persons are connected to LeT, which is an unlawful banned Association. Admittedly, the voluntary statement of the accused persons cannot be relied upon by the court which incriminates the accused, as the same is hit by Section 25 of the Indian Evidence Act. The prosecution has to prove the said allegations independently. None of the witnesses have deposed anything about any of the accused persons taking part or committing, advocating, abetting and instigating the commission of any unlawful activities as per the provisions under Sections 10 & 13 of the Unlawful Activities (Prevention) Act. Though we came to the conclusion that sanction accorded by the competent authority to prosecute the accused persons for the offences under Sections 10 & 13 of the said Act, but the evidence placed before the court does not establish any of the said offences either under Sections 10 & 13 of the Act. Therefore, we do not find any strong reasons to interfere with the judgment of the trial court in sofar as acquitting the accused for the offences under Sections - 10, 11 & 13 of the said Act. Hence, there is no need for this Court to discuss the decisions cited by either of the parties to the proceedings.
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> *** *** ***
>
> **145**. On perusal of the evidence adduced before the court, the prosecution has relied upon the evidence of PWs. 1 to 8 and 13 so far as to prove the said provisions that these accused persons particularly A-2 and A-6 in furtherance of their conspiracy, wanted to induct PWs. 1 to 8 & 3 to join their hands for the purpose of destroying peace and create unlawful disharmony in the society etc. But, as we have discussed, the above witnesses have turned totally hostile to the case of the prosecution and they never stated anything about the conspiracy hatched between the accused, nor they have stated that A-2 and A-6 have provoked them in

such a manner which amounts to any prejudicial to national integrity or attempt to promoting enmity between different caste, creed, religions, races, place of birth, residence, etc. In this manner also we have absolutely no difference of opinion to that of the opinion of the learned Sessions Judge. We affirm the judgment by saying that the prosecution has also failed to prove the ingredients of Sections- 153-A and 153-B of IPC in order to establish the link between the accused and the offices alleged. Hence, acquittal of the accused persons for the said offences under Sections- 153-A and 153-B of IPC also does not deserve to be interfered with by this court.

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148. As could be seen from the above said provisions, under Section 121-A, conspiracy to commit offence punishable under Section 121 itself is punishable even for any activity in pursuance or in consonance with such conspiracy. Therefore, Section 121 need not be fully established that the accused persons have waged war against the Government or attempted to wage war against the Government or attempted to wage war or abetted to wage war. Even mere conspiracy to wage war or attempt wage war or abet to wage war, is punishable under Section 121 and if the conspiracy is to overawe the Government, by means of criminal force or the showing of criminal force shall be punished with imprisonment for life or with imprisonment which may extend to 10 years and fine.

149. Section 120-B says that, when two or more persons agree to do any illegal act or an act which is not by illegal means, such an agreement is designated a criminal conspiracy and if any such conspiracy to commit an offence is punishable with death or imprisonment for life. Then such persons are liable to punishment for a term of two years or more.

150. So, in order to attract Section 120-B, it is clear from the above said provision that, the prosecution has to establish that the accused persons are more than two in number and they have entered into an agreement and that agreement is designed for the purpose of commission of an illegal act or doing an act by illegal means and such illegal acts amounts to commission of offences under the provisions of IPC and other laws. So far as Section 121 of IPC is concerned, the prosecution has to prove that the accused persons have actually waged war against the Government or attempted to wage war against the Government.

151. From the above provisions, it is abundantly clear that if the conspiracy relied upon by the prosecution is with reference to Section 121 of IPC, then the said conspiracy is exclusively and specifically punishable under Section 121-A. Under such circumstances Section 120-A and 120-B of IPC cannot be invoked. If it is done, the same amounts to imposing double punishment. Hence, we are of the opinion that the conviction and sentence under Section 120B is not sustainable.

> **152**. It is abundantly clear that, if the conspiracy relied upon by the prosecution is with reference to Section 121 of IPC, the said conspiracy is exclusively and specifically punishable under Section 121 of IPC, the said conspiracy is exclusively and specifically punishable under Section 121-A, but under such circumstances, Sections 120-A and 120-B cannot be invoked."

H) After considering the decisions of this Court in ***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru***[11] and ***Nazir Khan & Ors.***[10], the High Court concluded that the ingredients of Section 121 of the IPC were absent in the instant case but the provisions of Section 121-A of the IPC were attracted. It was observed:

> "**159**. The accused persons have also discussed with regard to the funding for 'Jihad' by means of an association and also they have taken a decision to prepare themselves with the weapons in order to fight against such activities. These activities of the accused clearly disclose that, they wanted to take action against the Government etc.
>
> **160**. As we have also observed that some of the books which were seized from the custody of the accused persons, it also discloses that those books must have been persuaded the accused persons to pass such resolution under Ex.P92. Those books contained anti-national recitals which says that India will be destroyed and Mohammadans should take guns and fight against India, etc. So the court has to couple the entire material on record to draw an inference as to what exactly the intention of the accused persons in holding such meetings. Though we are of the opinion that no damage has been done, no activities have been taken place in consonance with their conspiracy and there is no heavy magnitude of any damage or loss to the country, nevertheless their prime intention is to cause heavy damage to the people and the country. We are able to understand this intention and mind set of the accused coupled with they joining together and conspire to execute such an intention. In our opinion, their intention and mindset are sufficient to attract the provision under Section 121. A though not under section 121 of IPC.
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> **161**. We would also like to mention here that some of the accused persons noted above have gone further and have collected Electrical Detonators, Gelatin sticks and bombs. This Conduct shows that they have decided to implement the decision taken by them, slowly and

11 (2005) 11 SCC 600.

gradually and for that purpose only started collecting the materials of such magnitude sufficient to destroy India. But they were caught at the initial stage of conspiracy while planning as to how to execute their decision. It is not necessary for the courts to wait for till such time, allowing the accused persons to collect so much of materials and only after causing damage to the country, countrymen and the property of the country men, and then take action. In our sincere and honest opinion, such activities even at the stage of conspiracy itself should be nipped at the bud. Otherwise, it may end up in causing irreversible damage. Therefore, we are of the considered opinion that the trial court has not committed any mistake in convicting the accused persons and sentencing them for life. However, the trial Court instead of sentencing the accused under section 121-A for life, inadvertently by mistaken notion invoked Section 120-B of I.P.C., which needs to be corrected."

I) Finally, the operative order passed by the High Court was:-

"The appeal filed by A1, A2, and A4 to A6 in Crl.A.No 220/2012 and the Appeal filed by the State in Crl.A.No 530/2012 and the Appeal filed by Accused No.3, in Crl.A.No.1123/2013 are hereby partly allowed. The Appeal filed by the State in Crl.A.No.531/2012 is hereby dismissed. The Judgment of conviction and sentence passed by the trial Court is modified. Consequently,

(i) A-1, A-2 & A-4 to A-6 are hereby convicted for the offence under Section 121-A of IPC. Sentence passed by the trial Court is enhanced, the Accused shall undergo rigorous imprisonment for life for the offence under Section 121-A of IPC and to pay fine of Rs.5,000/- and in default, to undergo S.I. for a period of one year. (Impugned judgment of conviction is confirmed to that extent and sentence is enhanced). However ,A1 to A6 are acquitted of the charge under Section 121 and 120B of IPC. Accused No 3 is acquitted also of the charges under section 121 A of I.P.C. (to that extent conviction and sentence is set aside).

(ii) A2, A3, A4 and A6 are hereby sentenced to undergo S.I. for 7 years and shall pay fine of Rs.5,000/-and in default to undergo S.I. for 1 year for the offences under section 5 of the Explosive Substances Act 1908. (to that extent impugned judgment is confirmed). However, Accused No.1 and 5 are acquitted of the Charges under section 6 of the said Act. (to that extent the impugned conviction and sentence is set aside).

(iii) Accused No.6 is convicted for the offence under sections 25 and 26 of the Arms Act and sentenced to undergo S.I. for a period of 5 years and shall pay a fine of Rs.5000/- in default to

> undergo S.I. for one year for the offence under section 25 of the Arms Act. He is also sentenced to undergo S.I. for 3 years for the offence under section 26 of the Act. (to that extent, impugned conviction and sentence is confirmed). However A2, 3 and 4 are acquitted for the offence under section 25 and 26 of the Arms Act. (to that extent judgment of conviction and sentence is set - aside).
>
> (iv) The judgment of Acquittal passed by the Trial Court so far it relates to Accused No 7 is not disturbed (confirmed).
>
> v) Sentences of imprisonment shall run concurrently. Set off for the period of imprisonment already undergone by the Accused persons shall be given under section 428 of Criminal Procedure Code.
>
> vi) As we found that A3 has already undergone the period of imprisonment imposed upon him, he shall be released forthwith, if he is not required in any other case.
>
> (vii) Registry is hereby directed to communicate the operative portion of the judgment to the concerned Jail authorities for appropriate action."

24. Being aggrieved by the decision of the High Court, instant appeals by special leave have been preferred by Accused Nos. 5, 6, 1 and 4. As stated hereinabove, neither any appeal has been filed by A-2 and A-3 challenging their conviction nor any challenge is raised by the State against dismissal of its appeals.

The scope of these appeals is thus confined to the challenge raised by Accused Nos. 5, 6, 1 and 4

25. Special Leave Petitions preferred by A-5, A-6 and A-1, from which their appeals arise, came up on 21.10.2016, when notice was issued by this Court restricted to the question of sentence to be imposed on them. An affidavit sworn

by A-1 on 28.11.2016, was thereafter filed submitting *inter alia* that he was 21 years of age when the offence was committed and if let out of jail on sentence undergone, he would support his family by earning an honest living, without causing any harm to fellow countrymen. Similar affidavits were filed by the other Accused. Later, the Special Leave Petitions of all the four accused came up on 28.04.2017, when the Court called for a report from the National Investigation Agency. Thereafter, by order dated 31.1.2018, Special Leave to Appeal was granted by this Court, leading to registration of these appeals.

26. We heard Mr. Siddhartha Dave, Ms. Nitya Ramakrishnan and Mr. Ratnakar Dash, learned Senior Advocates for A-6, A-1 and A-4 respectively, Mr. Farukh Rashid, learned Advocate for A-5 and Mr. Nikhil Goel, learned Additional Advocate General for State of Karnataka.

The role of the National Investigation Agency in these appeals was only pursuant to the order dated 28.4.2017. Since the submissions were advanced on merits, there was no occasion for hearing the National Investigation Agency.

27. At the outset, the preliminary submission advanced on behalf of the State must be dealt with. It was submitted that the order dated 21.10.2016 having restricted the scope of the matters to the issue of sentence to be imposed on the accused, the submissions regarding conviction need not be entertained. Relying on the affidavits filed by the Accused which led to the passing of the order dated 28.04.2017, it was submitted that even the Accused also understood the scope of

the matter being restricted to the quantum of sentence. In response, reliance was placed by the learned counsel for the Accused on the decision of this Court reported in ***Yomeshbhai Pranshankar Bhatt*** v. ***State of Gujarat***[12] to submit that it would be entirely up to this Court to consider the matter on merits and not restrict the submissions in any manner. Paragraphs 4 and 8 of said decision are:-

> "4. The learned counsel for the appellant urged that though at the time of issuing notice, this Court limited its rights to raise points only within the confines of Section 304 of the Penal Code, the Court is not bound at the time of final hearing with that direction given while issuing notice and the appellant is entitled to urge all the questions including his right to urge that he should have been acquitted in the facts and circumstances of the case.
>
> 8. The provisions of Article 142 of the Constitution have been construed by this Court in several judgments. However, one thing is clear that under Article 142 of the Constitution, this Court in exercise of its jurisdiction may pass such decrees and may make such orders as is necessary for doing complete justice in any case or matters pending before it. It is, therefore, clear that the Court while hearing the matter finally and considering the justice of the case may pass such orders which the justice of the case demands and in doing so, no fetter is imposed on the Court's jurisdiction except of course any express provision of the law to the contrary, and normally this Court cannot ignore the same while exercising its power under Article 142. An order which was passed by the Court at the time of admitting a petition does not have the status of an express provision of law. Any observation which is made by the Court at the time of entertaining a petition by way of issuing notice are tentative observations. Those observations or orders cannot limit this Court's jurisdiction under Article 142."

Considering the facts and circumstances on record including the fact that while granting Special Leave to Appeal, the matter was not restricted with regard to the question of sentence, we proceed to consider the submissions advanced on

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12 (2011) 6 SCC 312

behalf of the appellants on merits rather than restrict the scope of the matter to the issue of sentence.

28. It was submitted on behalf of the appellants:-

a) The Prosecution witnesses namely PWs 1 to 8 having failed to support the case of Prosecution, there was no substantial evidence on the basis of which it could be said that the allegations against the accused collectively or individually were substantiated. Further, the confessions of all the concerned Accused were also not accepted by the Courts below.

b) The basic charges namely one under Sections 121, 153A and 153B of the IPC having not been established, the only subsisting charge was one under Section 121A of the IPC, which was also devoid of any substance.

c) The recovery of explosive substances, Diary Exh.P-92 and other material, by themselves were insufficient to sustain the charge under Section 121A of the IPC.

d) Reading the provisions of Section 120B(1) and Section 115 of the IPC, where the basic offence under Section 121 was not committed, the sentence could not be greater than seven years.

e) In any event of the matter, the trial court having awarded substantive sentence of imprisonment for seven years under Section 121A of the IPC, there was no reason for enhancing the quantum of punishment to life imprisonment. The facts on record did not justify such exercise;

f) The only involvement of A-1 was the fact that he had attended the first meeting of the Trust, which would at best get substantiated through the evidence of handwriting expert. However, viewed in light of the admission given by the Investigating Officer that A-1 did not understand Kannada language, signature below the text in Kannada would not make A-1 liable in any manner in the absence of any other substantial evidence or material.

g) None of the witnesses had identified A-1 in court and neither the text of Exh - P92(c) nor the case of the Prosecution that A-1 signed the same, was put to him in his examination under Section 313 of the Code[13].

h) Apart from the solitary material of the first meeting of the Trust, there was nothing against A-1, not even a suggestion of any other meeting or contacts with the rest of the Accused.

13 Code of Criminal Procedure, 1973

i) In any case, the first meeting was said to have been held in the year 2003, whereas the recoveries in the instant case are of the year 2006.

j) In terms of Section 196 of the Code, sanction to prosecute the Accused for having committed offence punishable *inter alia* under Chapter VI of the IPC was mandatory and the sanction placed on record did not satisfy the requirements.

29. It was submitted on behalf of the State Government:

a) The material on record, especially huge quantities of explosive substances as well as the literature and books recovered at the instance of the concerned accused put the matter beyond any doubt.

b) The Diary Exh.P-92 very clearly established the intent of the Accused who had assembled, who held meetings and had appended their signatures below the concerned resolutions.

c) The signatures were identified by handwriting expert, who, duly supported his conclusions with reasons.

d) The movements of A-1, who was not a local person in the town around the time when the meetings had taken place,

further lent corroboration and support to the evidence concerning his involvement.

e) Considering the large quantity of recovered explosive substances and the other material including books, literature and Diary Exh.P-92, case was certainly made out for enhancement of punishment.

f) The sanction accorded under Section 196 of the Code was rightly held to be valid and there was no infirmity on any count.

30. At the outset, the submissions regarding the correctness and validity of the sanction accorded under Section 196 of the Code must be considered. The facts on record as set out in Paragraphs 34 and 35 of the decision of the High Court disclose, that the matter was considered by the Office of the Home Minister and the Chief Minister and consent was accorded to the proposal put up in usual course of business, whereafter, the communication was addressed by the Under Secretary. In the face of these facts, the submission that the sanction was not accorded by the competent authorities must be rejected. Consistent with the findings rendered by the Courts below, we hold that the sanction in terms of Section 196 of the Code was valid and proper.

The matter regarding sanction accorded in respect of offences punishable under the Explosives Substances Act and the Arms Act was also dealt with by the

High Court in extenso and the conclusion arrived at in Paragraph 37 of its decision does not call for any interference.

31. Turning to the merits of the matter, the evidence on record can be classified mainly in following segments:

a) Oral testimony of Prosecution witness Nos. 1 to 8 and 13.

b) Evidence regarding recoveries

i) It is true that Prosecution witness Nos. 1 to 8 and 13 turned hostile and did not support the case of Prosecution fully. However, it emerges from their testimony that some of them were trustees of the Trust, minutes book of which was produced on record as Exh.P-92. The witnesses accepted the fact that the meetings of the Trust had taken place and that some of the Accused did attend the meetings. PW4-Firoz gave details about the presence and participation in the meetings by various Accused including A-1 and deposed to the fact that said witness had dropped A-1 at the railway station on his bike.

It is thus clear that though these witnesses did not support the Prosecution case fully, some of the features of the Prosecution case were substantiated through the testimony of these witnesses. The law on the point is clear that even if a witness is declared hostile, the evidence of such witness cannot be rejected in toto but the correct approach is to accept it to

the extent his version is found to be dependable on a careful scrutiny thereof[14].

ii) The recoveries of books and literature were completely supported by the concerned Panch witnesses and the Panchanamas on record. The books and literature did carry inflammatory content and messages. The translations of the original versions in Urdu were placed on record by the Prosecution. The voluntary statements which led to such recoveries and the recoveries themselves were also proved by the Prosecution.

One important piece of material recovered from A-2 was Diary Exh.P-92. The tenor and text of the contents were captured quite correctly by the trial court in its judgment as referred to hereinabove. The signatures of the concerned accused were proved beyond any doubt through the evidence of PW67, handwriting expert.

It thus stood established that the Accused had assembled together with the intent as disclosed from the minutes of the meetings of the Trust.

The explosive substances, details of which are given hereinabove were recovered from A-2, A-3, A-4 and A-6. Voluntary statements of said Accused and consequential recoveries effected through Panchas were also duly proved by the Prosecution.

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14 C. Muniappan & Ors. Vs. State of Tamil Nadu – (2010) 9 SCC 567;
Radha Mohan Singh & Ors. Vs. State of U.P. – (2006) 2 SCC 450.

32. Before we turn to the question whether the deduction or conclusion, on the basis of the material on record, as stated above, was rightly arrived at by the Courts below, some of the observations made by this Court in ***Lal Singh v. State of Gujarat and Another***[15] in the context of matters involving terrorist activities where arms and ammunitions were recovered at the instance of or on disclosure by the accused, must be noted. It was observed by this Court:

> **"84.** The learned Senior Counsel Mr Sushil Kumar submitted that prosecution has not proved beyond reasonable doubt all the links relied upon by it. In our view, to say that prosecution has to prove the case with a hundred per cent certainty is a myth. Since last many years the nation is facing great stress and strain because of misguided militants and cooperation to the militancy, which has affected the social security, peace and stability. It is common knowledge that such terrorist activities are carried out with utmost secrecy. Many facts pertaining to such activities remain in personal knowledge of the person concerned. Hence, in case of conspiracy and particularly such activities, better evidence than acts and statements including that of co-conspirators in pursuance of the conspiracy is hardly available. In such cases, when there is confessional statement it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue. For assessing evidence in such cases, this Court in *Collector of Customs* v. *D. Bhoormall* [(1974) 2 SCC 544 : 1974 SCC (Cri) 784] dealing with smuggling activities and the penalty proceedings under Section 167 of the Sea Customs Act, 1878 observed that many facts relating to illicit business remain in the special or peculiar knowledge of the person concerned in it and held thus: (SCC pp. 553-55, paras 30-32 and 37)
>
> > "*30*. … that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and—as Prof. Brett felicitously puts it — 'all exactness is a fake'. El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is

15 (2001) 3 SCC 221

the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered — to use the words of Lord Mansfied in *Blatch* v. *Archar* [(1774) 1 Cowp 63 : 98 ER 969] (Cowp at p. 65) 'according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted'.

* * *

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the persons concerned in it. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden, to discharge which, very slight evidence may suffice.

* * *

37. 'For weighing evidence and drawing inferences from it', said Birch, J. in *R.* v. *Madhub Chander* [(1873) 21 WR Cr 13] (WR Cr at p. 19)'there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited'."

*** *** ***

87. In that case, the Court also referred to the following observations in *Miller* v. *Minister of Pensions* [(1947) 2 All ER 372 : 177 LT 536] by Lord Denning, J.

> "That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt'."

88. It is true that under our existing jurisprudence in criminal matter, we have to proceed with presumption of innocence, but at

> the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land. In such type of terrorist activities if arms and ammunitions are recovered at the instance of or on disclosure by the accused, it can be stated that presumption of innocence would not thereafter exist and it would be for the accused to explain its possession or discovery or recovery and would depend upon facts of each case which are to be appreciated on the scales of common sense of a prudent man possessing capacity to "separate the chaff from grain". In such cases, as stated by Lord Denning, J., law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If it is established on record that A-20 was found in the company of A-1 and A-2 at Aligarh and that at Bombay also he had introduced himself as a friend of A-1 and A-3 to PW 87, who is his childhood friend, then it would be reasonable to infer that he was co-conspirator and assisting A-1 and A-2, as stated in his confessional statement."
>
> (Emphasis supplied)

33. In ***Ajay Aggarwal v. Union of India and Others***[16]**,** the role played by various accused in successive stages of conspiracy and to what extent liability for the acts committed by other members of the conspiracy could be fastened on the co-conspirators was considered by this Court. The following observations are noteworthy:

> **"24.** Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or technics to broach the scope of conspiracy. One such model is that of a chain, where each party

16 1993 (3) SCC 609

performs even without knowledge of the other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country *A* to kill *D* in country *B* with explosive substance. As far as conspiracy is concerned, it is complete in country *A*. One of them pursuant thereto carried the explosive substance and hands it over to third one in the country *B* who implants at a place where *D* frequents and got exploded with remote control. *D* may be killed or escape or may be diffused. The conspiracy continues till it is executed in country *B* or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country *B* though first two are liable to murder with aid of Section 120-B and the last one is liable under Section 302 or 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of *autrefois convict* or *acquit* would extend to such offences. The comity of nations are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud.

> **25.** A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa."
>
> (Emphasis supplied)

34. If the facts on record are considered, it emerges:-

a) On 10.12.2003, when a meeting was organised at the house of Firoz at Chintamani, it was attended by A-1, A-2, A-4 and A-6 along with other members including some of the Prosecution witnesses.

b) The minutes of the meeting, as set out in paragraph 17 of the decision of the Trial Court, disclosed the intent and the objective with which the materials, such as guns and bombs were to be procured or collected.

c) The signatures appended below the minutes were proved by PW-67, Syed Asgar Imam, Hand Writing Expert.

d) The presence of A-1 in Chintamani on the day in question was completely established. His presence assumes significance as he was not a local person.

e) The presence of A-1 on the day in question was adverted to by some of the Prosecution witnesses. It is true that apart from these pieces of

evidence, nothing substantial could be pointed against A-1 but his involvement in the scheme as one of the driving forces for the entire design, was quite evident.

f) The intent and objective disclosed from the minutes of the meeting was carried forward in the subsequent meetings.

g) The recoveries made from and at the instance of the other accused show that the very intent and object as discussed in the first meeting was being carried forward by these accused with the acquisition and possession of the arms and ammunition.

h) The kind of material recovered from them by itself shows the potential danger. Nothing was brought on record to show the reason or the purpose for acquisition and possession of such potentially dangerous material.

These facts not only show that the basic elements of the conspiracy stood well established but also proved the involvement of A-1. Going by the law laid down by this Court, A-1 cannot escape the liability only on the ground that no arms and ammunition or any inflammatory material or literature were actually recovered from him.

35. We must, at this stage, deal with three submissions advanced on behalf of A-1.

A) The minutes of the first meeting dated 10.12.2003 were written in Kannada language, at the end of which the signatures were appended by all the concerned including A-1. As admitted by the Investigating Officer, A-1 did not understand Kannada language. A serious objection was, therefore, raised about reliability of said document to fasten the liability on A-1.

As discussed above, the presence of A-1 in Chintamani Town on the relevant day stood well established. The fact that all the concerned Accused got together on that day in the house of PW-4 also stood established. The tenor of the discussion in the meeting and the fact that it was not found appropriate by some of the witnesses also found mention in the testimony of the witnesses. The handwriting expert found the signature to be that of A-1. In the premises, a mere submission that the signatures of the Accused were obtained subsequently, without any foundation, cannot be entertained. The signatures were definitely made in the circumstances suggested by the Prosecution.

The submission is, therefore, rejected.

B) The next submission was with regard to the gap between the first meeting and the recovery of arms and explosives from some of the Accused. It was highlighted that there was about three years' gap between

these two circumstances and it was stressed that there was nothing on record that during this interregnum, A-1 was in touch with any of the Accused or had any role in procuring the arms and explosives, which were eventually recovered pursuant to disclosures made by the concerned Accused.

The conspiracy, the basic features of which were structured in the first meeting of 2003, was a continuing one; which is evident from the minutes of the subsequent meetings and translation of the intent into procurement of arms and explosives. It can neither be stated that the thread which was running through subsequent events and circumstances was broken or that the link between the first meeting and the subsequent stages was in any way snapped.

The submission, therefore, calls for rejection.

C) It was further submitted that the case of the Prosecution that A-1 had signed the minutes of the first meeting was not put to said Accused during his examination under Section 313 of the Code.

The record shows that questions about the report of PW-67, the handwriting expert, at Exh.P-239 (page 194 of the convenience compilation) and about the meeting at Chintamani and that A-1 had gone to Chintamani (Page 197 of the convenience compilation) were put to the Accused in his examination under Section 313 of the Code. These

questions definitely invited the attention of A-1 to the circumstances against him. The substantive evidence about the opinion of the handwriting expert which had found the signature of A-1 below the minutes of the first meeting and the circumstances about the meeting at Chintamani and that A-1 had gone to Chintamani were thus put to the Accused. The instant submission, therefore, does not merit acceptance.

36. The next question to be considered in light of the facts established on record is about the nature of offence committed by the Accused.

Relying on the decision of the Division Bench of the High Court of Patna in ***Mir Hasan Khan vs. State***[17], which was noted by a Bench of two Judges of this Court in ***Navjot Sandhu***[11]**,** it was submitted on behalf of the Accused that the material on record did not fulfil the requirement of what would constitute "waging of war" and consequently there could be no conviction uner Section 121-A of the IPC.

The relevant portion from the decision in ***Navjot Sandhu***[11] is:-

> **269.** The decision of a Division Bench of the Patna High Court in *Mir Hasan Khan* v. *State*[20] is illustrative of what acts do not constitute waging of war. That was a case in which there was a mutiny among certain sections of the police forces on account of the indignation aroused by the punishment given to one of their colleagues. The conviction under Section 121 IPC was mainly

17 *AIR 1951 Patna 60 = 1951 Cr.L.J. 462.

* The decision in AIR 1951 Patna 60 = 1951 Cr.L.J.462 is reported as *Mir Hasan Khan v. State*. The same decision is reported in 1951 Cr.LJ 462 as *Ramanand v. State*. In some of the subsequent judgments it is either referred to as *Mir Hasan Khan v. State* or as *Ramanand v. State.*

based on the fact that the accused were among those who took possession of the armoury and also took part in the resistance which was put up to the troops. The conviction was set aside and the following pertinent observations were made by Shearer, J.: (AIR p. 63)

> "The expression 'waging war' means and can, I think, only mean 'waging war in the manner usual in war'. In other words, in order to support a conviction on such a charge, it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the King's troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the King was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining possession of the machinery of Government or until those in possession of it yielded to the demands of their leaders."

270. Support was drawn from the *Digest of Criminal Law* by Sir James Stephens. In the *Digest*, one of the meanings given to the expression to levy war is: "Attacking in the manner usual in war (by *sic*) the King himself or his military forces, acting as such by his orders, in the execution of their duty." It was concluded "it is, I think, quite impossible to say that any of these appellants waged war in the sense in which that expression, as it occurs in Section 121, Penal Code, was used". "The appellants or some of them were in possession of the armoury at Gaya for several days and it is perfectly clear that they never intended to use it as a base for further operations."

271. The next question is whether the daredevil and horrendous acts perpetrated by the slain terrorists pursuant to the conspiracy, amount to waging or attempting to wage war punishable under Section 121 IPC and whether the conspirators are liable to be punished under Section 121 or 121-A or both.

272. Sections 121 and 121-A occur in the chapter "Offences against the State". The public peace is disturbed and the normal channels of the Government are disrupted by such offences which are aimed at subverting the authority of the Government or paralysing the constitutional machinery. The expression "war" preceded by the verb "wages" admits of many shades of meaning and defies a definition with exactitude though it appeared to be an unambiguous

phraseology to the Indian Law Commissioners who examined the draft Penal Code in 1847. The Law Commissioners observed:

> "We conceive the term 'wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous."

273. The expression "Government of India" was substituted for the expression "Queen" by the Adaptation of Laws Order of 1950. Section 121 now reads—

> "121. Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine."

274. The conspiracy to commit offences punishable under Section 121 attracts punishment under Section 121-A and the maximum sentence could be imprisonment for life. The other limb of Section 121-A is the conspiracy to overawe by means of criminal force or the show of criminal force, the Central Government or any State Government. The Explanation to Section 121-A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence.

275. War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war embedded in Section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the Illustration to Section 121 itself makes it clear that "war" contemplated by Section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war. "Insurrection" as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. "Rebellion, revolution and civil war" are progressive stages in the development of civil unrest the most rudimentary form of which is "insurrection"

— vide *Pan American World Air Inc.* v. *Aetna Cas & Sur Co.*[18] (FR 2d at p. 1017). An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression "war" and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or the Government.

276. It has been aptly said by Sir J.F. Stephen:

> "Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquillity of a civilised society is, in each of the cases mentioned, disturbed either by actual force or at least by the show and threat of it."

277. To this list has to be added "terrorist acts" which are so conspicuous now-a-days. Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.

278. It is seen that the first limb of Section 3(1) of POTA—

> "with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever"

and the acts of waging war have overlapping features. However, the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war. Yet, the demarcating line is by no means clear, much less transparent. It is often a difference in degree. The distinction gets thinner if a

18 505 FR 2D 989 (2ND Cir, 1974)

comparison is made of terrorist acts with the acts aimed at overawing the Government by means of criminal force. Conspiracy to commit the latter offence is covered by Section 121-A.

279. It needs to be noticed that even in the international law sphere, there is no standard definition of war. Prof. L. Oppenheim in his well-known treatise on international law has given a definition marked by brevity and choice of words. The learned author said: "War is a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases." Yoram Dinstein, an expert in international law field analysed the said definition in the following words:

> "There are four major constituent elements in Oppenheim's view of war: (*i*) there has to be a contention between at least two States, (*ii*) the use of the armed forces of those States is required, (*iii*) the purpose must be overpowering the enemy (as well as the imposition of peace on the victor's terms); and it may be implied, particularly from the words 'each other', and (*iv*) both parties are expected to have symmetrical, although diametrically opposed, goals."

The learned author commented that Oppenheim was entirely right in excluding civil wars from his definition. Mr Dinstein attempted the definition of "war" in the following terms:

> "War is a hostile interaction between two or more States, either in a technical or in a material sense. War in the technical sense is a formal status produced by a declaration of war. War in the material sense is generated by actual use of armed force, which must be comprehensive on the part of at least one party to the conflict."

280. In international law, we have the allied concepts of undeclared war, limited war, warlike situation — the nuances of which it is not necessary to unravel.

281. There is no doubt that the offence of waging war was inserted in the Penal Code to accord with the concept of levying war in the English Statutes of treason, the first of which dates back to 1351 AD. It has been said so in almost all the Indian High Courts' decisions of the pre-independence days starting with *Aung Hla* v. *Emperor*[19]. In *Nazir Khan case*[10] this Court said so in specific terms in para 35 and extensively quoted from the passages in old English

19 AIR 1931 Rang 235: ILR 9 Rang 404 (SB)

cases. Sir Michael Foster's discourses on treason and the passages from the decisions of the High Courts referred to therein are also found in *Ratanlal's Law of Crimes*. We should, therefore, understand the expression "wages war" occurring in Section 121 *broadly* in the same sense in which it was understood in England while dealing with the corresponding expression in the Treason Statute. However, we have to view the expression with the eyes of the people of free India and we must modulate and restrict the scope of observations too broadly made in the vintage decisions so as to be in keeping with the democratic spirit and the contemporary conditions associated with the working of our democracy. The oft-repeated phrase "to attain the object of general public nature" coined by Mansfield, L.C.J. and reiterated in various English and Indian decisions should not be unduly elongated in the present day context.

282. On the analysis of the various passages found in the cases and commentaries referred to above, what are the highlights we come across? The most important is the intention or purpose behind the defiance or rising against the Government. As said by Foster, "The true criterion is *quo animo* did the parties assemble?" In other words the intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of government troops or armed personnel deployed to maintain public tranquillity. Though the *modus operandi* of preparing for the offensive act against the Government may be quite akin to the preparation in a regular war, it is often said that the number of force, the manner in which they are arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

283. While these are the acceptable criteria of waging war, we must dissociate ourselves from the old English and Indian authorities to the extent that they lay down a too general test of attainment of an object of general public nature or a political object. We have

already expressed reservations in adopting this test in its literal sense and construing it in a manner out of tune with the present day. The court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war. We doubt whether such construction is in tune with the modern day perspectives and standards. Another aspect on which a clarification is called for is in regard to the observation made in the old decisions that "neither the number engaged, nor the force employed, nor the species of weapons with which they may be armed" is really material to prove the offence of levying/waging war. This was said by Lord President Hope in *R.* v. *Hardie*[20] in 1820 and the same statement finds its echo in many other English cases and in the case of *Maganlal Radhakishan* v. *Emperor*[21] (AIR at p. 185). But, in our view, these are not irrelevant factors. They will certainly help the court in forming an idea whether the intention and design to wage war against the established Government exists or the offence falls short of it. For instance, the firepower or the devastating potential of the arms and explosives that may be carried by a group of persons — may be large or small, as in the present case, and the scale of violence that follows may at times become useful indicators of the nature and dimension of the action resorted to. These, coupled with the other factors, may give rise to an inference of waging war.

284. The single most important factor which impels us to think that this is a case of waging or attempting to wage war against the Government of India is the target of attack chosen by the slain terrorists and conspirators and the immediate objective sought to be achieved thereby. The battlefront selected was the Parliament House complex. The target chosen was Parliament — a symbol of the sovereignty of the Indian republic. Comprised of peoples'

20 (1820) 1 State Tr NS 609, 610
21 AIR 1946 Nag 173: 47 Cri LJ 851

representatives, this supreme law-making body steers the destinies of a vast multitude of Indian people. It is a constitutional repository of sovereign power that collectively belongs to the people of India. The executive Government through the Council of Ministers is accountable to Parliament. Parliamentary democracy is a basic and inalienable feature of the Constitution. Entering Parliament House with sophisticated arms and powerful explosives with a view to lay a siege to that building at a time when members of Parliament, members of the Council of Ministers, high officials and dignitaries of the Government of India gathered to transact parliamentary business, with the obvious idea of imperilling their safety and destabilising the functioning of the Government and in that process, venturing to engage the security forces guarding Parliament in armed combat, amounts by all reasonable perceptions of law and common sense, to waging war against the Government. The whole of this well-planned operation is to strike directly at the sovereign authority and integrity of our Republic of which the Government of India is an integral component. The attempted attack on Parliament is an undoubted invasion of the sovereign attribute of the State including the Government of India which is its *alter ego*. An attack of this nature cannot be viewed on the same footing as a terrorist attack on some public office building or an incident resulting in the breach of public tranquillity. The deceased terrorists were roused and impelled to action by a strong anti-Indian feeling as the writings on the fake Home Ministry sticker found on the car (Ext. PW-1/8) reveals. The huge and powerful explosives, sophisticated arms and ammunition carried by the slain terrorists who were to indulge in “fidayeen” operations with a definite purpose in view, is a clear indicator of the grave danger in store for the inmates of the House. The planned operations if executed, would have spelt disaster for the whole nation. A warlike situation lingering for days or weeks would have prevailed. Such offensive acts of unimaginable description and devastation would have posed a challenge to the Government and the democratic institutions for the protection of which the Government of the day stands. To underestimate it as a mere desperate act of a small group of persons who were sure to meet death, is to ignore the obvious realities and to stultify the wider connotation of the “expression of war” chosen by the drafters of IPC. The target, the obvious objective which has political and public dimensions and the *modus operandi* adopted by the hard core “fidayeens” are all demonstrative of the intention of launching a war against the Government of India. We need not assess the chances of success of such an operation to judge the nature of criminality. We are not impressed by the argument that the five slain terrorists ought not to be “exalted” to the status of warriors participating in a war. Nor do we endorse the argument of the learned Senior Counsel Mr Sushil Kumar that in order to give rise to the offence of waging war, the avowed purpose and design of the offence should be to substitute another authority for the Government of India. According to the learned counsel, the

> deprivation of sovereignty should be the pervading aim of the accused in order to bring the offence under Section 121 and that is lacking in the present case. We find no force in this contention. The undoubted objective and determination of the deceased terrorists was to impinge on the sovereign authority of the nation and its Government. Even if the conspired purpose and objective falls short of installing some other authority or entity in the place of an established Government, it does not in our view detract from the offence of waging war. There is no warrant for such truncated interpretation.

37. Before we deal with the submission, we may extract the relevant provisions. Sections 121 and 121-A of the IPC are as under:-

> **"121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.**—Whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.
>
> Illustration: A joins an insurrection against the Government of India. A has committed the offence defined in this section.
>
> **121A. Conspiracy to commit offences punishable by section 121.**—Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.
>
> Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

38. What constitutes an offence under Section 121 of the IPC is the waging of war or attempt to wage war or abetting of waging of such war against the Government of India. The expression "waging of war" was considered by this Court in ***Navjot Sandhu***[11]. Paragraph 34 of the decision of this Court in ***Nazir Khan***[10] was also to the same effect. Said paragraph reads as under:-

> **"34.** The expression "waging war" means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of government or until those in possession of it yielded to the demands of their leaders."

39. Section 121-A of the IPC, however, deals with conspiracy to commit offences punishable under Section 121 of the IPC as well as conspiracy to overawe by force, the Central Government or any State Government. In terms of its application, the width of Section 121-A is thus not confined to conspiracy to commit offences punishable under Section 121 of the IPC alone.

In ***Mir Hasan Khan v. State* (or *Ramanand v. State*)**[17], the Division Bench of the Patna High Court brought out the distinction between both the limbs of conspiracies dealt with in Section 121A, as under:

> "The marginal note to section 121A is "conspiracy to commit offences punishable by section 121". This was a strictly accurate description of the section which it was proposed to enact in the Bill originally introduced in the Legislative Council. It is quite clear that the conspiracies aimed at in the Bill were conspiracies either to wage war against the King in the manner in which it is usual to wage war or conspiracies to raise an insurrection with the object of subverting the constitution. The section, however, as finally enacted brought within its scope other conspiracies also and the marginal note is not a strictly accurate description of what is contained in it. The words "conspires to overawe by means of criminal force or the show of criminal force the Central Government or any Provincial Government" clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any Provincial Government by the organization of a serious riot or a large

and tumultuous unlawful assembly. Possibly, in modifying the section as it stood in the Bill, the Legislative Council had in mind the case of Lord George Gordon[22]. Lord George Gordon put himself at the head of a large mob which proceeded to the Houses of Parliament in order to protest against the enactment of certain legislation. After having made it protest, the mob dispersed, but certain members of it proceeded to perpetrate outrages in different parts of the city of London. Lord George Gordon was tried on a charge of high treason, and was acquitted the reason apparently being that, while he had intended to make a demonstration outside the House of Parliament, he had not been a party to the disorders which resulted from it. Section 121A occurs in a chapter of the Penal Code which is headed "Offences against the State" whereas the offence of conspiracy is contained in the preceding chapter, Chapter VA which is headed "Criminal Conspiracy". The legislature in enacting section 121A clearly had in mind the English Treason Felony Act of 1848 and I am very much inclined to think that, in enacting it, it did not aim at conspiracies other than conspiracies which had a political object, that is, conspiracies to overthrow the existing constitution or conspiracies to prevent the enactment of legislation which was considered to be obnoxious or to compel the resignation of a member or member of the Government who had become unpopular. As the section stands, however, I am not prepared to say that in certain circumstances persons who organize a strike among police men or certain other public or municipal employees might not render themselves liable to prosecution under it. Clearly, however, persons do not commit this crime unless it was part and parcel of their plans to overawe the Central or the Provincial Government by criminal force or show of criminal force. The word "overawe" does not appear anywhere else in the Penal Code except in this section and in another section in the same chapter (section 124). In the Treason Felony Act,1848 which the authors of section 121A appear to have had in mind, the words used are:

> "intimidate or overawe both Houses or either House of Parliament"

and the words there must be read in conjunction with the words immediately preceding them, which are

> "in order by force or constraint to compel His Majesty to change his measures or counsels".

The word "overawe" clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears to me to connote the creation of a situation in which the members of the Central or the Provincial Government feel themselves compelled to

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> choose between wielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public.

40. As the text of the relevant Section shows, persons who plan to overawe the Central or the State Government by criminal force or show of criminal force would be guilty of offence of entering into conspiracy in terms of Section 121A of the IPC. The dictionary meaning of the expression "overawe" is to subdue or inhibit with a sense of awe[23]. The expression "overawe" would thus imply creation of apprehension or situation of alarm and as rightly held by the Division Bench, it would not be necessary that the danger should be one of assassination of or of bodily injury to the members of the machinery or apparatus of the Government but the danger might as well be to public property or to the safety of members of the general public.

41. The conspiracy in the instant case, the intent of which was clear from the minutes of the meetings and the consequential acquisition of arms and explosives to effectuate the purpose and intent of said conspiracy, would thus come well within the latter part of the conspiracy dealt with in Section 121A of the IPC. As the explanation to Section 121A of the IPC discloses, for an offence of conspiracy, it would not be necessary that any act or illegal omission must take place in pursuance thereof. Thus, even though no untoward incident had actually

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23 The Concise Oxford English Dictionary.

happened as a result of the conspiracy, the matter would still come within the four corners of Section 121A of the IPC.

The conviction recorded against the accused under Section 121A of the IPC does not therefore call for any interference.

42. We may now turn to the submission based on Section 120-B read with Section 116 of the IPC. Section 120-B of the IPC would apply only when "no express provision is made in this regard for the punishment of such a conspiracy". Since an express provision for particular kind of conspiracy is dealt with specifically in Section 121A of the IPC, the provision contained in Section 120-B of the IPC would have no application. The submission, therefore, merits rejection.

43. The last submission was that there was no occasion for the High Court to enhance the quantum of punishment from seven years which was awarded by the Trial Court to that of life imprisonment for the offence punishable under Section 121-A of the IPC.

We have given serious consideration to this submission. The conspiracy as disclosed in the instant matter, if it had been carried out, would have resulted in great damage and prejudice to the life and well-being of the members of the general public as well as loss to the public property. Such conspiracies to cause danger to public property or to the safety of the members of the general public ought to be dealt with strictly. Considering the acquisition of substantial quantity

of arms and explosives as well as the intent disclosed by diary Exh. P-92, and other materials on record, the High Court was right in enhancing the sentence after accepting the appeal preferred by the State in that behalf.

44. In the circumstances, we do not find any merit in the appeals preferred by the Accused and as such all the appeals are dismissed.

…….J.
(UDAY UMESH LALIT)

…….J.
(HEMANT GUPTA)

…….J.
(S. RAVINDRA BHAT)

New Delhi,
July 11, 2022.