

The State Vs. Mohd. Hussain

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Court : Delhi

Decided On : Aug-04-2006

Reported in : 140(2007)DLT428

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : [Explosive Substances Act, 1908](#) - Sections 3,4 and 5; Arms Act - Sections 25; Indian Penal Code (IPC) - Sections 120B, 121, 121A, 302, 307; Code of Criminal Procedure (CrPC) - Sections 313, 366; [Constitution of India](#) - Articles 21 and 22

Appeal No. : Death Reference No. 5/2004 and Criminal Appeal No. 41/2005

Appellant : The State;mohd. Hussain @ Julfikar Ali

Respondent : Mohd. Hussain;The State

Advocate for Def. : Sidharth Luthra and ; Mobin Akhtar, Advs. for Death Reference No. 5/2004 and ;

Advocate for Pet/Ap. : Ravinder Chadha, APP for Death Reference No. 5/2004 and; Mohd. Mobin Akhtar, Adv. for Criminal Appeal N

Judgement :

P.K. Bhasin, J.

1. Conviction of one Md. Hussain @ Julfikar Ali @ Abdul Rauf s/o Nazir Ahmed for the offences under Sections 302/307 IPC and Section 3 of the [Explosive Substances Act, 1908](#) vide judgment dated 26-10-04 and imposition of death sentence upon him vide order dated 3-11-2004 passed by the Additional Sessions Judge, Delhi in sessions case No. 122/98 has led to the making of a reference to this Court by the trial court for confirmation of the sentence of death and filing of an appeal by the above named convicted accused.

2. The case of the prosecution as culled out from the trial court record is as follows:

On 30-12-1997 at about 6.20 p.m. one blue line bus No. DL-1P-3088 carrying passengers on its route to Nangloi from Ajmeri Gate stopped at the Ram Pura bus stand on Rohtak Road for passengers to get down. The moment that bus stopped there an explosion took place inside the bus because of which its floor got ripped apart. Four passengers of that bus, namely, Ms. Tapoti, Taj Mohd., Narain Jha and Rajiv Verma died and twenty four passengers including the conductor of that bus were injured due to that explosion. Two policemen (PWs 41 & 52) were on checking duty at that bus stop at the time of blast. On their informing the local police station police team reached the spot. Crime team and bomb disposal squad were also called and the damaged bus was inspected and from the spot debris etc. were lifted and sealed.

3. On the basis of the statement of Head Constable Suresh(PW-41), who was one of the two policemen on duty at the bus stop of Rampura, a case under Section 307 IPC and Sections 3, 4 and 5 of the Explosive Substances Act was registered at Punjabi Bagh police station. Investigation commenced immediately. With the death of some of the injured persons on the day of the incident itself Section 302 IPC was also added. Hunt for the culprits responsible for that macabre incident also started. However, for over two months nobody could be nabbed.

4. It appears that as a result of different incidents of bomb blasts in Delhi including the present one the intelligence agencies became more active and started gathering information about the incidents of bomb blasts in the city. It came to light that some persons belonging to terrorist organizations were actively operating in

the city of Delhi for causing terror by killing innocent people and causing damage to public property by exploding bombs. On the basis of secret information the police raided some houses in different parts of Delhi on 27-02-98 and from those houses hand grenades and material used for making bombs was recovered in large quantity. The Chemicals recovered were sent to CFSL which confirmed that the same were potassium chlorate and sulphuric acid and were opined to be constituents of low explosives. Some persons were arrested also and during interrogation they had disclosed to the police that they were members of a terrorist organization and their aim was to create terror and panic in different parts of the country by exploding bombs to take revenge for the killings of innocent muslims in India and further that they had come to India for Jihad. On 27-02-98 itself the police had registered a case vide FIR No. 49 of 1998 under Sections 121/121A IPC and Sections 3, 4 & 5 of the Explosive Substances Act as well as under Section 25 of the Arms Act at Main Delhi Railway Station. On the basis of information provided by the apprehended terrorists the police made more arrests including that of one Mohd. Hussain (who now is the appellant before us in CrI. A. No. 41 of 2005 and reference to him will now onwards be made as 'the appellant'). The appellant was apprehended when his house in Lajpat Nagar was raided pursuant to the information given by other apprehended terrorists. As per the prosecution case the appellant himself had opened the door on being knocked by the police and on seeing the police party he had tried to fire at the policemen from the pistol which he was having in his hand at that time but could not succeed and was apprehended. His pistol was seized. It appears that during the interrogation by the police the appellant and three more persons, namely, Abdul Rehman, Mohd. Ezaz Ahmed and Mohd. Maqsood confessed about their involvement in the present incident of bomb blast in the bus on 30.12.1997. That information was then passed over to Punjabi Bagh police station on 18.3.1998 by the Crime Branch and accordingly all these four persons were formally arrested for the present case also on 21.3.1998 for which date the investigating officer of the preset case had sought their production in court by getting issued production warrants from the court seized of the above referred case of FIR No. 49/1998. The investigating officer moved an application before the concerned court on the same day for holding of Test Identification Parade (TIP) in respect of the appellant in

view of the suspicion expressed by PW-1 Darshan Kumar, the conductor of the bus involved in the blast regarding one passenger who had boarded his bus from Paharganj bus stop along with a rexine bag for going to Nangloi but instead of going up to Nangloi he had got down from the bus at Karol Bagh leaving his rexine bag underneath the seat which he had taken and which was near the seat of the conductor. The conductor had given the description of that passenger. As per the prosecution case the explosion had taken place below that seat which that passenger had occupied and underneath which he had kept his rexine bag. Although on 21-03-98 the appellant did not object to holding of identification parade but he refused to join test identification parade which was fixed for 23-03-98 stating that police had taken his photographs.

5. During the investigation of the present case the debris collected from the place of bomb blast and some damaged pieces of the bus etc. were sent to Central Forensic Scientific Laboratory(CFSL) and after examination it was revealed that in the seized material contained explosive mixture of chlorate, Nitrate, Sulphate and sugar were detected. Mixture of these Chemicals, as per CFSL report Ex. PW-34/A, is used for making explosives/bombs and the mixture could have been initiated by the action of sulphuric acid and the mixture was 'explosive substance'.

6. On completion of investigation of the present case the police filed a charge-sheet in Court against four accused persons for the commission of offences under Sections 302/307/120-B IPC and Sections 3 and 4 of the Explosive Substances Act. In due course the four accused persons were committed to Sessions Court. The learned Additional Sessions Judge vide order dated 18.2.1999 discharged three accused persons namely, Abdul Rehman, Mohd. Maqsood and Ezaz Ahmed while against fourth accused Mohd. Hussain @ Julfikar (the appellant herein) charges under Sections 302/307 IPC and Section 3 and in the alternative Under Section 4(b) of the Explosive Substances Act were framed. The appellant had pleaded not guilty to the charges framed against him and claimed to be tried.

7. To prove its case the prosecution examined as many as 65 witnesses which included the persons who had received injuries in the bomb blast and fortunately had survived, police officials who had taken some part or the other during the

investigation of the present case as well as the one pertaining to FIR No. 49/1998 and the doctors who had treated the injured persons and had conducted post mortem examination.

8. On the conclusion of prosecution evidence statement of the appellant was recorded by the trial court as required under Section 313 Cr.P.C. The appellant denied the prosecution allegations against him and pleaded false implication. He also pleaded that he was a Pak national and had come to India in September, 1997 for sight seeing and his passport had been taken by the police. The appellant chose not to lead any evidence in defense.

9. After hearing the additional public prosecutor for the State and the amicus curiae provided to the accused(the appellant) and considering the evidence adduced by the prosecution the learned Additional Sessions Judge vide his judgment dated 26th October, 2004 convicted the appellant Mohd. Hussain for the commission of the offences under Sections 302 & 307 IPC and also under Section 3 of the Explosive Substances Act. Vide order dated 3rd November, 2004 the trial Court awarded death sentence to the appellant for his conviction under Section 302 IPC for having caused the death of four persons. The appellant was ordered to be hanged by the neck till he is dead. Fine of Rs. 5000/- was also imposed and in default of payment one year's rigorous imprisonment was ordered. For the conviction under Section 307 IPC the appellant was awarded life imprisonment and a fine of Rs. 5000/-, in default of payment one year's rigorous imprisonment. Life imprisonment was also awarded for the conviction under Section 3 of the Explosive Substances Act. Substantive sentences of imprisonment were ordered to run concurrently. As required under Section 366 of the Code of Criminal Procedure the trial Court ordered the records of the case to be forwarded to the High Court for confirmation of the death sentence awarded to the convicted accused. That has been done and the reference made to this Court was registered as Death Reference No. 5 of 2004.

10. The convicted accused filed from jail an appeal against the impugned judgment of conviction and order of sentence passed by the trial Court.

11. The Death Reference and the appeal were taken up together for hearing and after hearing Mr. Ravinder Chadha, additional public prosecutor for the State and Shri Sidharth Luthra, counsel for the appellant, both are now being disposed of by this common judgment.

12. In order to appreciate the arguments advanced by the learned Counsel for the appellant and the learned State counsel, it is necessary to notice at the outset the main evidence relied upon by the prosecution and accepted by the learned trial court for convicting the appellant. Then we would ourselves analyze and assess the worth of that evidence for satisfying ourselves whether the prosecution has been able to prove its case beyond reasonable doubt or not since it was held by the Hon'ble Supreme Court in *State of Tamil Nadu v. Rajendran* : 1999 CriLJ4552 that when a Death Reference is made by a court to High Court for confirmation the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for imposition of the extreme penalty of death and for that the proceedings require a re-appraisal and reassessment of the entire facts and law so as to arrive at its independent conclusion. So, now we proceed to consider the prosecution evidence.

13. PW-1 Darshan Kumar is the conductor of the bus in which the bomb had exploded on 30-12-97. He is the star prosecution witness. He has deposed that he was working as conductor in blue line bus no DL-1P-3088 which used to ply from Nangloi to Ajmeri Gate. On 30-12-97 he was discharging his duties as conductor in the said bus and at about 5.30p.m. said bus started from Ajmeri Gate for Nangloi and at about 5.40 p.m. when the bus reached Pahar Ganj flyover and stopped at the bus stand one young boy aged about 22 years having a rexine bag in his hand boarded the bus from there. He further deposed that that boy purchased a ticket for going to Nangloi giving Rs. 50/- to him and after taking the ticket he took the seat ahead of him(PW-1) and kept the rexine bag beneath his seat. When at about 6 p.m. the bus stopped at Karol Bagh that boy wanted to alight there and on enquiry by him(PW-1) as to why he was getting down there when he had purchased the ticket for Nangloi he replied that he had remembered an urgent work and so he was alighting at Karol Bagh and when got down from the rear gate of the bus. PW-1 further deposed that he had given the description of the

said boy to the police as being of whitish complexion and of the age of 20/25 years and was wearing spectacles. He also deposed that the accused present in the court was that person who had boarded the bus at Pahar Ganj and got down at Karol Bagh leaving behind the rexine bag. He also deposed that at about 6.20 p.m. when the bus reached Ram Pura bus stand there was a bomb explosion in the bus from the seat where the accused was sitting and from same rexine bag which he (the accused) had left in the bus and further that as a result of that explosion many passengers including himself had sustained injuries. He then deposed that he was taken to DDU Hospital by the police. He further deposed that on 23-3-98 he went to Central Jail, Tihar to identify the accused in TIP but there he was informed by the IO (investigating officer) that the accused had refused to take part in TIP. On 25-3-98 he went to police station Punjabi Bagh where he identified the accused as the same person who had left the rexine bag containing some explosives which exploded.

14. In cross-examination PW-1 stated that the accused had got down from the rear gate after jostling through the passengers. He denied the suggestion that he had identified the accused on the asking of the police or that he did not see the accused in his bus. The last suggestion put to PW-1 was replied by him like that 'It is wrong that accused did not leave his rexine bag in the bus.'

15. PW-2 Vijay Kumar was the driver of the bus on duty on 30-12-97 at the time of explosion. He deposed that when the bus reached Rampura at about 6.20 p.m. there was an explosion in the bus at one seat ahead of the conductor's seat due to which many persons including the conductor sustained injuries.

This witness was not cross-examined at all.

16. PW-8 Smt. Chhaiya Deshpandy is one of the injured passengers. She has deposed that on 30-12-97 at about 5.45 p.m. she had boarded a bus from Pahar Ganj where she was teaching in a school, for going to Pashchim Vihar (where she was living) and that she had occupied ladies' seat. She further deposed that when the bus reached Rampura bus stand at about 6.20 p.m. there was a bomb blast behind her seat as a result of which she sustained injuries on her legs and she remained admitted in Maharaja Gurshera Hospital for about 1-2 months. Many

other persons also had sustained injuries.

This witness was also not cross-examined on behalf of the appellant-accused.

17. PW-9 Rajesh is another injured witness. He deposed that on 30-12-97 he had boarded bus No. DL-LP-3088 from Ajmere Gate for going to Nangloi (where he was living) and he had taken the seat near conductor's seat. At about 5.30 p.m. the bus had stopped at Pahar Ganj from where some people had boarded that bus. He also deposed that when that bus reached Rampura at about 6.20 p.m. there was a sudden bomb blast behind the ladies' seat. He sustained injuries due to the bomb blast and he remained hospitalized for about 1 1/2 months.

There was no cross-examination of this witness also.

18. PW-10 Sunita is also one of the injured. She has deposed that in the year 1997 she was staying with her uncle at Uttam Nagar and was doing service in Madona A-1, Standard Lady's Dev Nagar, near Khalsa College as receptionist. On 30-12-97 at about 6 p.m. she had boarded bus No. DL-1P-3088 from Dev Nagar for going to Piragarhi and from there she had to board a bus for going to Uttam Nagar. She further deposed that she was sitting on the ladies' seat and at about 6.20 p.m. when the said bus reached Ram Pura bus stand on Rohtak Road there was a bomb blast in the bus because of which her left foot was amputated and many other passengers also sustained injuries. She also deposed that she was taken to Maharaja Aggrasen Hospital where she was medically examined and remained there for about 28 days. She while showing her ignorance about the person who kept the bomb underneath the seat deposed that the accused was sitting in the same bus on her back seat and had offered his seat to some lady who boarded the bus but she was unable to say at what time accused alighted from the bus.

In the cross-examination she stated that she did not know whether the accused was having any luggage with him or not.

19. PW-17 Raja Ram Sharma, resident of Nangloi, is also an injured witness. He deposed that on 30-12-97 he had boarded the bus from Rampura for going to

Nangloi and he was just near the seat of the conductor when all of a sudden there was a bomb blast just two seat away from the seat of the conductor and due to that he received injuries on his leg.

20. PW-22 Surjit Singh has deposed that he was running a grocery shop at 1467, Gali Chulhe Wali, Sadar Bazar, Delhi and was dealing in sale of Suphuric acid. He also deposed that the accused had purchased Sulphuric acid from him.

This witness was not cross-examined on behalf of the accused.

21. PW-27 SI Om Prakash, who was the initial investigating officer, has deposed that on 30-12-97 he was posted at Punjabi Bagh police station and on that day DD No. 11A recorded by the duty officer regarding bomb blast at Ram Pura was assigned to him for enquiry and investigation on which he along with his staff reached the spot where he found HC Suresh already present. He then deposed that bus No. DL-1P-3088 was standing there in a damaged condition due to bomb blast and injured persons had already been removed to Maharaja Aggrasen and ESI Hospital. He further deposed that he inspected the spot and recorded the statement Ex. PW-27/A of HC Suresh Kumar and sent the same to police station through Ct. Chhotu Ram for registration of the case Under Section 307 IPC and Under Section 3/4/5 of Explosive Substances Act. He thereafter deposed that he made a request to the duty officer to convey message to crime team, photographer, bomb squad, dog squad to reach the spot and he prepared the site plan Ex. PW-27/D. He also deposed that he inspected the spot and lifted from the spot two wooden pieces which had come down after bomb blast from the bus, explosive material with the help of cotton swab, explosive debris, broken pieces of silver, broken pieces of iron chadar on the bus, foam of the seat, mix churas, one pair of shoes, one hanky, pieces of wood and glasses and also seized the bus No. DL-1P-3088. PW-27 further deposed that he sent the dead bodies of deceased Tapoti and Naaz Mohd. for post-mortem besides recording the statements of Moin Khan and Imtiaz Khan regarding identification of dead bodies.

22. PW-28 is J.S.Panwar. He had carried out mechanical inspection of the bus involved in the blast after the incident. He has deposed that on 03-01-98 on the summoning of the police of police station Punjabi Bagh he reached there and on

the request of SI Rajpal Singh he inspected the bus No. DL-1P-3088 which was already parked in the premises of police station and found the following damages in the bus:

1. He found the dismantled /damage aluminum sheet underneath seat No. 6 and second seat to the seat of the conductor. This aluminum sheet was working as the floor of the bus.
2. The aluminum sheet/iron sheet working as mudguard was having a hole of 2 x 4feet.
3. All window glasses of both the sides were found broken.
4. Both rear big wind screen were also found broken.
5. Body panel No. 1 and 2 from rear view of left side were found broken.
6. Both the sheets over and the side of the mudguard of left view were also found damaged.
7. Roof over seats No. 5,6,7 and conductor seat as well as of the rear gate were also found damaged.
8. Right side sheet of seat No. 5,6,7 and left side sheet of seat No. 6 were found missing from its position.
9. Seats No. 5,6,7 were also found damaged.
10. All the lights of bus were either found failed or damaged.

He proved his report as Ex. PW-28/B.

23. PW-34 is Shri A. Dey, who was the senior Scientific Officer-cum-Assistant Chemical Examiner of CFSL. He has deposed that on 13-01-98 he received two sealed parcels with the seals of OPR out of which parcel No. 1 contained two broken wooden and two small cloth pieces while parcel No. 2 contained cotton swab, black cloth piece, broken wooden piece and small shattered metallic pieces and on their examination presence of explosive mixture based on Chlorate, Nitrate

and Sugar was confirmed in the contents of parcel No. 2. He also deposed that the explosive mixture could have been initiated by the action of Sulphuric acid and so the mixture was 'Explosive Substance' as defined in the [Explosive Substances Act, 1908](#). He proved his proved as Ex. PW-34/A.

24. PW-41 is HC Suresh(on whose statement FIR was registered). He has deposed that on 30-12-97 he was posted as Head Constable of police station Punjabi Bagh and on that day he was on duty with Ct. Sanjay at Rampura bus stand for checking of buses from 6 p.m. to 10 p.m. He then deposed that at about 6.20 pm. a bus No. DL-1P-3088, which was coming from the side of Ajmeri Gate and going to Nangloi, reached near Rampura bus stand suddenly a bomb blast had taken place in that bus because of which there was a chaos and cries of the passengers and many passengers started coming rapidly from that bus as there was thick smoke in the bus. He further deposed that in the meanwhile a PCR van reached there and he with the help of Sanjay lifted the injured from the bus and sent them to hospital in the PCR van as well as on private vehicle. He also deposed that many passengers had sustained injuries on account of bomb blast. He thereafter deposed that SI Om Prakash, who recorded his statement Ex. PW-27/A, had inspected the spot and the bus and also summoned the photographer, crime team, bomb squad and dog squad. PW-41 then deposed that the photographer had taken the photographs of the spot and he himself had lifted the pieces of silver, iron chaddar, foam pieces of seat, mix chura, two pair of shoes, one handkerchief, pieces of wood and glass vide memo Ex. PW-27/F. He also seized from the spot two pieces of wood, explosive material, explosive debris vide memo Ex. PW-27/E. Bus No. DL-1P-3088 was also seized by him vide memo Ex. PW-27/G. He further deposed that on 6-4-98 on his pointing out draughtsman prepared a sealed site plan.

25. PW-52 is Ct. Sanjay. He has deposed that on 30-12-97 he was posted in police station Punjabi Bagh and on that day he was on duty with HC Suresh at Rampura, Rohtak Road bus stand for checking the buses and at about 6.20 p.m. a blue line bus DL-1P-3088 came from the side of Ajmeri Gate and was proceeding to Nangloi and it stopped at Rampura bus stand for boarding and alighting the passengers. He then deposed that he along with HC Suresh proceeded ahead to

check the said bus but there was a sudden bomb blast in the said bus because of which thick smoke came out of the bus and passengers started crying and he with the help of HC Suresh helped the passengers and got them from the said bus. He further deposed that the remaining passengers were seriously injured and the bus was damaged. He thereafter deposed that HC Suresh informed the PCR and may private vehicle also reached there to help the passengers and took them to the hospital but he could not count the injured persons as they were in large numbers. He also deposed that some pieces of flesh and the blood scattered in the bus. He further deposed that he and HC Suresh made enquiry from the passengers as to who had placed said bomb in the bus but none could disclose the person who had placed the bomb.

26. PW-65 Inspector Satya Prakash is also the investigating officer of this case. He has deposed that on 3-1-98 he was posted as Additional SHO, P.S. Punjabi Bagh and on that day investigation of the present case was assigned to him by SI Om Prakash and during investigation he got sent some exhibits to CFSL, applied for production warrant of the accused before learned Ilaka Magistrate as the accused was arrested in the case of FIR No. 49/98 and later on arrested him on 21-3-98 when he was produced in the court and he also collected disclosure statements of accused recorded in that case. PW-65 further deposed that on 21-03-98 itself he produced accused Mohd. Hussain(appellant herein) in muffled face before the court and applied for his TIP which was fixed for 23-03-98. However, the accused refused to participate in the TIP on 23-03-98. He further deposed that pursuant to the disclosures made by Mohd. Hussain he prepared pointing out memos of the places from where this accused had purchased battery, watch, sulphuric acid and the house also No. 130/1A in Garhi, Lajpat Nagar where the bomb was manufactured. He also deposed that he got the sanction order on 15-6-98 under the Explosive Substances Act. He also proved pointing out memos Ex. PW-21/A, Ex. PW-22/A and Ex. PW-24/A & B. Same day this accused pointed out the place from where he had boarded the bus on 30-12-97 at Pahar Ganj and also the place in Karol Bagh where he had got down. Pointing out memos in that regard are Ex. PW-56/A & B. He also stated that on 25-03-98 the conductor of the bus Darshan Kumar came to the police station and immediately identified the accused(Mohd. Hussain).

27. PW-56 HC Kalyan Singh deposed that on 21-3-98 he was posted at police station Punjabi Bagh and on that day three accused Abdul Rehman, Mohd. Maqsood, Azaz Ahmed(who, as noticed already, were discharged by the trial Court) were taken on police remand from the court of Shri S.K.Jain, MM and were taken to DDU Hospital for medical examination from where they all were brought to police station and their disclosure statements were recorded. He then deposed that when accused Mohd. Hussain was being taken to hospital for medical examination and reached the flyover of Pahar Ganj he disclosed that he had boarded a bus from there and also pointed out the place at Karol Bagh where he had got down from the bus. He also deposed that the accused also pointed out the places in Lajpat Rai Market from where he had purchased battery, conductor and time piece and he also pointed out shop No. 1468 in Gali Chulhe Wali from where he had purchased Sulphuric acid. PW-56 proved pointing out memos in this regard as Ex. PW-56/A, Ex. PW-56/B, Ex. PW-21/A, Ex. PW-22/A, Ex. PW-23/A and Ex. PW-24/A.

28. PW-53 Inspector Data Ram deposed that in the year 1998 he was posted in crime branch SIT section and he joined the investigation in case FIR No. 49/98(reference to which case has already been made). He then deposed that on 8-3-98 at about 8.40 p.m. they reached the house of one Abdula at Govind Puri and laid ambush near his house and at about 9 p.m. one person aged 40 having a plastic bag in his hand came there and on seeing the house of Abdula locked started going back. He further deposed that that person was apprehended and on enquiry his name was found to be Abdul Rehman(the discharged accused). He thereafter deposed that on checking his thaila it was found to contain Chemical powder weighing 4kg. 700 gms., one old brand bottle containing acid and one pocket diary which were seized. PW-53 also deposed that Abdul Rehman made disclosure statement disclosing about the accused(Mohd. Hussain) and pointed out his(Mohd. Hussain's) house in Lajpat Nagar. PW-53 then deposed that when they knocked at the door of the house of accused Mohd. Hussain he came out having a pistol in his hand and tried to fire upon the police party but he could not do so and was apprehended and his pistol which was having six rounds in the magazine and one in its chamber was seized by the IO. He then deposed that accused Mohd. Hussain made a disclosure statement and that during the search

of his house one attachee containing potassium fluoride weighing about 4kg. 750 gms. was found and in one plastic jar Chemical weighing 900 gms. was also found, one steel dibba containing 8 kg. 200 gms. Chemical powder and in another plastic jar 1 kg. 250 gms. of some Chemical was found. In one glass bottle 750 gms. nails were recovered and all these articles were taken into possession. This witness further deposed that accused Mohd. Hussain also pointed out shop No. 507 of Chopra Electricals in Old Lajpat Nagar Market from where he had purchased 12 batteries of 9 Volts and battery connector. He also pointed out shop No. 223, New Lajpat Rai Market from where he had purchased eight table clocks (quartz) and shop No. 1468, gali Chuley Wali, Sadar Bazar owned by one Surjit Singh from where he had purchased Sulpheric Acid which he had used for manufacturing of bomb.

29. PW-53 also deposed that the accused(Mohd. Hussain) was a close associate of Amir Khan and other persons who had came to Delhi with a view to plant bombs at various places to create havoc and terror in the mind of Delhi residents. This witness was also not cross-examined by the accused.

30. PW-63 Dr. Sanjana Sharma is an expert in explosives and while employer in CFSL at Chandigarh had after examining the material seized during the raids of different places on 8-3-98 in case FIR No. 49/98 of police station Railway Station(main) given her reports Ex. PW-63/A, Ex. PW-63/B and Ex. PW-63/C to the effect that material examined by her was potassium chlorate, sulpheric acid, which as per her report are the constituents of a bomb. During her cross-examination she denied the suggestion that her reports are fabricated ones at the instance of police.

31. PWs 15, 29 and 31 are the doctors who conducted post-mortem examination on the dead bodies of those persons who had died due to the injuries sustained by them because of the bomb blast in the ill fated bus on 30-12-97. They have proved post-mortem reports as Ex. PW-15/A, Ex. PW-29/A and Ex. PW-31/B respectively.

32. PWs 30,33,35,46, 57 and 58 are the doctors who had examined some of the injured bus passengers. They have deposed about the injuries noted by them on the person of those injured. They proved their MLCs as Ex. PW-33/A to I, Ex. PW-

35/A to E and Ex. PW-57/A.

33. PW-60 Shri Vipin Kumar Gupta is the Magistrate who was to conduct the test identification parade for the appellant Mohd. Hussain. He has deposed that on 21-03-98 he was working as Link MM of Shri S.K.Jain and on that day Inspector Satya Prakash had moved an application for conducting of TIP of Mohd. Hussain @ Abdul Hussain and the said application along with the accused was referred to him. He then deposed that he had fixed the TIP for the accused for 23-03-98 at 2 p.m. in Central Jail, Tihar and also recorded that the accused was produced in custody in muffled face by Inspector Satya Prakash, Additional SHO, Punjabi Bagh. He also deposed that on 23-03-98 he went to Central Jail, Tihar where accused duly identified by Shri S.S. Dahiya, Assistant Superintendent Jail was produced before him in unruffled face and refused to join TIP despite being warned, on the ground that his photographs were taken by the police at the time of arrest and might have been shown to the witness. He further deposed that he had recorded the TIP proceedings and had given the certificate that the proceedings were correctly recorded. He also proved the TIP proceedings as Ex. PW-60/C.

34. In cross-examination by the counsel for the appellant this witness confirmed that on 21-03-98 the accused was produced before him in muffled face. He was also asked if he had enquired from the accused on 21-03-98 (when application for TIP was moved by the investigating officer) if he wanted to participate in TIP. The answer of the Magistrate was that he had enquired from the accused and he had replied in the affirmative and then he (PW-60) had fixed the TIP for 23-03-98.

35. PWs 5 to 8, 11, 12, 13, 14, 17, 19 and 37 are all injured witnesses. They have deposed about their having sustained serious injuries due to bomb blast in the bus on 30-12-97 in which they all were traveling. PW-16 Paras Nat Yadav is also a witness of the bomb blast although he was not a passenger of the bus. When the bus was standing at the Rampura bus stop he was on his scooter and standing on the back side of the bus when the blast took place. He has claimed that at that time he had felt pain in his leg and had become unconscious.

36. PWs 3,4,18,20,54 and 55 are the relatives of the deceased bus passengers. They have deposed about their having identified the dead bodies of their relatives

who had died in the bomb blast. PW-64 Shri R.C.Meena proved the sanction for the prosecution of the accused under Section 7 of the [Explosive Substances Act, 1908](#).

37. This much is the main evidence of the prosecution relied upon by the prosecution. Other witnesses examined were of formal nature and their evidence was not even referred to from either side during the hearing before this Court. From the fore-going narration of prosecution witnesses it stands established beyond any shadow of doubt that on 30-12-97 there was a bomb blast in blue line bus No. DL-1P-3088 at Rampura bus stand at Rohtak Road, New Delhi and also that due to that bomb blast four passengers of that ill fated bus had died and many passengers had sustained serious injuries but were fortunate to survive. All this was not disputed by Mr. Sidhartha Luthra, learned Counsel for the appellant before us. He also did not dispute that with the death of four persons due to the bomb blast offence of murder stood committed and the offence of attempted murder also stood committed because of the injuries sustained by the surviving injured persons. Even otherwise the intention of the culprit to cause death of innocent people by planting a bomb in the bus is quite apparent. The post-mortem reports in respect of the four deceased persons show that their death was due to the injuries sustained by them in the explosion in the bus. Some of the passengers survived despite having suffered injuries in the blast but God only had saved them even though the culprit while planting the bomb in the bus had done that intentionally and knowingly that due to the bomb blast everyone in the bus could be killed. So, the prosecution evidence fully establishes the commission of the offences as found by the learned trial Court.

38. Now, as far as the involvement of the appellant Mohd. Hussain in the bomb blast in the bus is concerned it was contended by the learned Counsel for the appellant that the evidence of various bus passengers examined by the prosecution and also that of the bus conductor would at the most establish that the appellant was traveling in the bus on 30-12-97, although evidence is not satisfactory even to establish that fact alone it cannot be concluded that it was the appellant who had planted the bomb in the bus. It was also contended by Mr. Luthra that there is no eye witness of the plantation of the bomb in the bus and

none of the witnesses examined by the prosecution including the injured witnesses has claimed that it was the appellant Mohd. Hussain whom they had seen keeping the bomb in the bus and in the absence of evidence to that effect the appellant could not have been held guilty of the offences for the commission of which he has been found guilty by the learned Additional Sessions Judge. There is no doubt that there is no witness examined by the prosecution who might have seen the appellant keeping the bomb in the bus. However, it is now well settled that examination of eye witnesses is not the only way by which a crime can be established by the prosecution in a criminal trial. The guilt of an accused can be established by circumstantial evidence also. In this regard reference can be usefully made to the observations of the Hon'ble Supreme Court which have to be kept in view while deciding a case based on circumstantial evidence. In *Ajit Savant Majagvai v. State of Karnataka* : 1997 CriLJ3964 , the Hon'ble Supreme Court had held as under:

18. Before taking up this task, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or 'factum probandum' may be proved indirectly by means of certain inferences drawn from 'factum probans', that is. The evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

19. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

20. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be

closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* it was laid down that where the case depends upon the conclusions drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

21. In *Padala Veera Reddy v. State of A.P.* it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of Explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

39. In the present case the prosecution has strongly relied upon the evidence of the conductor of the ill-fated bus who has been examined as PW-1. His evidence we have already narrated. The learned trial Court has placed strong reliance on his evidence while arriving at the conclusion that it was the appellant Mohd. Hussain who was responsible for the bomb blast in the bus. This witness has clearly deposed that the appellant Mohd. Hussain had boarded the bus from Pahar Ganj and at that time he was holding a rexine bag in his hand and after taking a seat which was ahead of his(PW-1's) seat had kept the rexine bag underneath that seat and while getting down from that bus at Karol Bagh, even though he had purchased the ticket for going to Nangloi, he had left behind the rexine bag. This witness in his cross-examination had also stated that the accused had got down

from the bus after jostling through the passengers. That shows that he was in a hurry to get down from the bus before the explosion of the bomb. He also deposed that when the bus reached Rampura bus stand there was an explosion from underneath the seat where the accused had sat and further that that explosion was from the same rexine bag which he had left behind in the bus. In the cross-examination of the conductor on behalf of the accused his testimony to the afore-said effect could not be discredited. It was not even suggested to this witness that the accused was not traveling in that bus. In fact, the suggestion put to this witness in the cross-examination was that the accused had not left his rexine bag in the bus. That suggestion clearly shows that the accused admits that he was traveling in that bus along with a rexine bag. The driver of the bus PW-2 Vijay Kumar has also deposed that the explosion had taken place one seat ahead of the conductor's seat. PW-8 Smt. Chhaya Deshpandey has also claimed that she had occupied ladies' seat and the blast had taken place behind her seat. She was not cross-examined by the accused. PW-9 Rajesh has also claimed that the blast had taken place behind the ladies' seat in the bus. PW-10 Ms. Sunita also claims to have seen the accused sitting in the bus and no suggestion was put to her in cross-examination that the accused was not traveling in the bus as claimed by her. The accused also did not challenge the statements made by these witnesses that there was a bomb blast in the bus at Rampura bus stand.

40. Regarding the identification of the appellant in Court by the conductor of the bus and some of the passengers learned Counsel for the appellant had submitted that that identification was of no worth since the police had taken his photos after his arrest and for that reason the appellant had refused to participate in the test identification parade also. The refusal was justified and for this contention support was sought to be drawn from a judgment of the Hon'ble Supreme Court in *Laxmipat Chorasias v. State of Maharashtra* 0065/1967 : 1968 CriLJ1124 , wherein it was held that identification of a suspect by a witness in the identification parade after his photos had been shown to the witness makes the identification worthless. This argument is, however, liable to be repelled for more than one reason. Firstly, because it was not suggested to any of the identifying witnesses that they had been shown the photos of the appellant. Even to the investigating officer(PW-65 Insp. Satya Prakash) it was not so suggested. Second reason is that the

Metropolitan Magistrate(PW-60) who had to conduct the identification parade was specifically asked in cross-examination if accused was asked by him on 21-03-98 whether he wanted to join the identification parade to which the reply of the Magistrate was that yes, he had asked the accused and he(accused) had replied in the affirmative. Thereafter, no suggestion was put to the Magistrate that the accused had not agreed to participate in the identification parade. So, it is clear that at the first available opportunity the appellant had not taken any such plea that police had taken his photographs and for that reason he was not willing to participate in the identification parade. If he had said so on 21st March, 1998 when the investigating officer had moved the application before the Magistrate(PW-60) in Court for holding the identification parade the Magistrate would not have fixed the parade in jail for 23rd March. So, appellant's refusal to join the identification parade on 23rd March on the ground that his photos had been taken by the police cannot be said to be justified. It was not his plea that between 21st March and 23rd March his photos had been taken. Nor was it suggested to any of the police witnesses.

41. It was also submitted by Mr. Luthra that the conductor of the bus cannot be said to be trustworthy since he had not come forward immediately after the incident to say that he had seen a passenger in the bus who had got down from the bus before his destination leaving his rexine bag in the bus. In this regard our attention was drawn to the evidence of PW-52, Ct. Sanjay who was one of the two policemen who were on checking duty at the Rampura bus stop when the bomb blast took place. In his chief-examination itself this witness had stated that he and Head Constable Suresh,PW-41(on whose statement FIR was registered in this case) had made enquiry from the passengers as to who had placed bomb in the bus but none could disclose about that person. PW-27 SI Om Prakash's evidence was also referred to by Mr. Luthra. He is the initial investigating officer. He also claimed that during the interrogation of the injured none of them could give description of the person who had planted the bomb. Referring to these statements of the two police witnesses Mr. Luthra contended that PWs 1 and 10 have been tutored later on by the police to identify the appellant. In our view, this argument also has no force. Nobody has claimed that he or she had seen anyone planting bomb in the bus. At the time of blast the injured persons must have been

traumatized due to massive explosion in the bus. At that time every injured person would have been under a great shock and wanting to be rushed to hospital. In any case, the conductor of the bus has categorically claimed that he had given the description of the boy(appellant). It should have been elicited from him as to when he had given the description of the suspected passenger. No such cross-examination was done of this witness. Nor PW-10 Sunita was cross-examined in this regard.

42. In our view in these kind of cases of bomb blasts it is almost impossible to find out a witness who can claim to have actually seen a bomb being planted somewhere by some terrorist. We are also of the view that there cannot be a better witness than the one we have in the present case, namely, the conductor of the ill-fated bus in which bomb blast took place. In this regard we may usefully refer to a decision of the Hon'ble Supreme Court in Ravinder Singh v. State of Maharashtra : 2002 CriLJ2957 which was a case of a bomb blast in a train. In that case the prosecution had examined one lady passenger traveling in that train when the bomb blast took place and she had expressed her suspicion regarding one passenger. That passenger witness had herself received serious injury in the bomb blast and her husband had lost his life in the same incident. She had identified the accused as the person who was sitting in front of her and was inserting his hand in a cloth bag which was under his seat. In that case also that man had left the train leaving behind the cloth bag and then blast took place after some time. That lady witness was examined as PW-3 in that case and dealing with her evidence and the criticism on behalf of the convicted accused the Hon'ble Supreme Court had observed in para nos. 21 and 22 of the judgment as under:

21. Let us now revert to Deepali Chauhan(PW-3) who lost her leg below the knee in the bomb blast in the train and also her husband who was killed as a result thereof. She has given a detailed version of the manner in which the appellant was inserting his hand in the cloth bag which had in it the bomb with a view to fix the wire. She also identified the appellant in the test identification parade held on 6-9-1992 as being the person who was sitting in the train opposite her. The appellant was arrested on 5-7-1992. Delay of two months in conducting test identification parade has been satisfactorily explained. Though some confusion seems to have

erupted on account of a person sitting in the train being 'Sardarji' as distinguished from 'Punjabi' having the hair cut and a slightly grown beard but the same is of no consequence in the facts and circumstances of the present case particularly when the conviction is not based on the sole testimony of PW 3. The version given by the appellant in his confessional statement finds sufficient corroboration from the testimony of PW 3.

22. It is true that PW 3 must have seen the appellant as deposed by her only when he was sitting in the train opposite her but what is to be kept in mind is that the memory and power to recapitulate differs from person to person as also from situation to situation. Here the situation is that after she noticed the manner of handling the bag by the appellant and leaving the bag behind while getting down from the train, the blast taking place soon thereafter wherein she suffered the injuries as above and lost her husband. Under these circumstances, the criticism to her identification of the appellant is without any substance so also the criticism to her testimony on the basis of minor contradictions. The identification made by PW 3, on the facts and circumstances of the case, cannot be faulted on the ground of delay of a few months. Further, as noticed earlier as well, even if corroboration was to be required, though not necessary in the present case in view of the confessional statement of the accused, then too, it would be sufficient if there is a general corroboration of the important incidents and not that the corroborative evidence itself should be sufficient for conviction.

43. In the present case also a wholly insignificant contradiction in the evidence of the conductor is sought to be brought into the attack for rejecting his evidence. At one time he had claimed that the appellant had given him a note of Rs. 50/- after boarding the bus for purchasing ticket of Rs. 5/- and later on he claimed that note of Rs. 5/- was given to him by the appellant. This fact, in our view, hardly makes the testimony of PW-1 Darshan Kumar unreliable. His evidence can be said to be wholly reliable, sufficient enough to be acted upon without any corroboration even though there is enough corroborative evidence also adduced by the prosecution. In our view, from the evidence of the conductor(PW-1) of the ill fated bus and the injured passenger witnesses(PWs 8,9,10 and 17) it stands established that the bomb had exploded underneath the seat which had been occupied by the

appellant Mohd. Hussain. It was he who had kept a rexine bag below his seat. He left that bag in the bus while getting down before the arrival of his destination point for which he had purchased the ticket. All these circumstances clearly establish that the rexine bag which the accused was carrying with him and which he had kept below his seat in the bus contained bomb which after some time exploded causing death of four and injuries to many passengers in the bus.

44. We are also of the view that the prosecution in the present case has been able to show that the appellant is not that simple a person as he wants us to believe. As noticed already, in his statement under Section 313 Cr.P.C. he had claimed that he was a Pakistani national and had come to India for sight seeing in 1997. He had also claimed that his passport and visa etc. had been taken away from him by the police. This plea of the appellant that he come to India legally has not even been probalised from any circumstance during the trial. The prosecution has examined PW-53 Inspector Data Ram. His evidence has already been narrated by us. He had clearly deposed that when the police had raided the house of appellant Mohd. Hussain in Lajpat Nagar on 08-03-98 pursuant to the information given by Abdul Rehman (discharged accused of this case) the appellant on seeing the police had tried to fire on them. He had also deposed that during the search of his house the police had recovered Potassium Fluoride and Mercury and some other Chemicals besides 750 gms. of nails. Those Chemicals were seized and were sent for Chemical analysis to Central Forensic Scientific Laboratory(CFSL) and on examination there those Chemicals were found to be the constituents of explosives. The CFSL reports to that effect are Ex. PW-63/A&B.; Inspector Data Ram had also deposed that this accused had come to Delhi with a view to plant bombs at various places to create terror in the minds of the residents of Delhi. This testimony of Inspector Data Ram was not demolished. The appellant has failed to explain the recovery of Chemicals used for making explosives from his house and that is yet another strong circumstance which lends credence and corroboration to the prosecution case in general and the evidence of the bus conductor in particular.

45. Faced with this situation Mr.Luthra came out with an argument that this case, in fact, needs to be remanded back to the trial back for a fresh trial because the

trial court record would reveal that the accused did not have a fair trial inasmuch as on most of the hearings when material witnesses were examined he was unrepresented and the trial court did not bother to provide him legal aid at State expense and by not doing that the Trial Court, in fact, failed to discharge its pious duty of ensuring that the accused was defended properly and effectively at all stages of the trial either by his private counsel or in the absence of private counsel by an experienced and responsible amicus curiae. Mr. Luthra also submitted that, in fact the learned Additional Sessions Judge himself should have taken active part at the time of recording of evidence of prosecution witnesses by putting questions to the witnesses who had been examined in the absence of counsel for the accused. It was contended that the right of the accused ensured to him under Articles 21 and 22 of the [Constitution of India](#) for a fair trial has been, thus, violated. In support of this argument which, in fact, appears to us to be the sheet anchor for the appellant, Mr. Siddharth Luthra cited some judgments also of the Hon'ble Supreme Court which are reported as : 1997 CriLJ1529 , : 1986 CriLJ1084 and : 1983 CriLJ1052 . One judgment of Gauhati High Court reported as 1987 (1) Crimes 133, Arjun Karmakar v. State of Assam was also relied upon by Mr. Luthra.

46. There can be no dispute about the legal proposition put forward by the learned Counsel for the appellant that it is the duty of the Court to see and ensure that an accused in a criminal trial is represented with diligence by a defense counsel and in case an accused during the trial remains unrepresented because of poverty etc. it becomes the duty of the Court to provide him legal aid at State expense. We find from the judgment of the trial Court that this point was raised on behalf of the accused during the trial also by the amicus curiae provided to the accused when his private counsel stopped appearing for him. The learned trial Court dealt with this argument in para No. 101 of the judgment which is as under:

It is next submitted that material witnesses have not been cross-examined by the accused and as such, their testimony cannot be read against him. I may add that from the very beginning of the trial, the accused has been represented by a counsel Sh. Riaz Mohd. and he had cross-examined some of the witnesses. Later on, when Sh. Riaz Mohd. did not appear in the court on some dates, Mrs. Sadhna

Bhatia was appointed as amicus Curiae to defend the accused at State expenses. If the accused did not choose to cross-examine some witnesses, he cannot be forced to do so. Moreover, later on accused prayed for cross-examination of PW-1 Sh. Darshan Kumar, which was allowed though it was filed at a belated stage after a long period of time. The accused did not desire any other witness to be cross-examined. Not only this, statement of PW-1 Sh. Darshan Kumar was recorded on 18-05-1999 and he was also present on 3-6-1999 and 13-08-1999, but on all three dates, the cross-examination of this witness was deferred at the request of the accused, who was ultimately discharged with nil cross-examination. This shows that accused himself was not interested in cross-examining the witnesses. As such, this submission is also without merit.

47. We have ourselves also perused the trial court record and we are convinced that it is not a case where it can be said that the accused did not have a fair trial or that he had been denied legal aid. We are in full agreement with the above quoted views of the learned Additional Sessions Judge on this objection of the accused and we refuse to accept the plea of the appellant that this case should be remanded back for a re-trial.

48. The upshot of the fore-going discussion is that it can be concluded without any hesitation that the prosecution has been able to establish its case beyond any shadow of doubt and the learned trial Court has rightly convicted the appellant Mohd. Hussain for the different offences. The guilt of the appellant stands established from the circumstances starting from his illegal entry into this country a couple of months before the incident of bomb blast in the bus, recovery of explosive material from his house on 08-03-98, his boarding the ill fated bus on 30-12-97 along with a rexine bag, his purchasing a ticket for going to Nangloi but getting down much before that at Karol Bagh and that too leaving his rexine bag underneath the seat which he had occupied after boarding the bus. He had got down from the bus jostling through the passengers. Soon after he got down from that bus there was an explosion from underneath the seat which he had occupied up to Karol Bagh and under which he had left behind his rexine bag. When he was asked to join test identification parade he refused to participate in that on a false plea that his photos had been taken. All these circumstances, taken cumulatively,

form a chain so complete that there is no escape from the conclusion that the same are consistent only with the guilt of the appellant and totally inconsistent with his innocence. So the challenge of the appellant against his conviction fails.

49. After an accused is found guilty of serious offences like that of murder the Court is faced with a difficult task of deciding as to what should be the appropriate punishment to be awarded to the convicted accused. For the offence of murder punishable under Section 302 IPC the Legislature has provided only two kinds of punishments, namely, life imprisonment and the extreme penalty of death. In the present case the learned trial Court has in his order on sentence after making reference to the various judgments of the Hon'ble Supreme Court which are reported as Ramji Rai and Ors. v. State of Bihar : 2000 CriLJ19 ; Mohan and Ors. v. State of Tamil Nadu Cri.L.J. 3276; Devender Pal Singh v. State of NCT of Delhi and Anr. 2002 III AD (SC) 245; Bachan Singh v. State of Punjab : 1980 CriLJ636 and Machhi Singh and Ors. v. State of Punjab : 1983 CriLJ1457 had decided to impose the extreme penalty of death upon the convicted accused Mohd. Hussain. Learned trial Judge has observed in para nos. 11 to 13 of his order on sentence as follows:

11. In these circumstances it is clear that the accused entered India with an evil design to carry out bomb blasts. Systematic planning and execution thereof is writ large on the face of records

12. As such, it is apparent that bomb blast was executed by the accused in extremely cruel, diabolic and dastardly manner without regard to the lives of innocent persons traveling in the bus. His intentions were extremely horrific and grotesque as the bomb was placed in an overcrowded bus. The explosion was aimed at creating widespread sense of fear, insecurity and helplessness in the city. It is the worst example of terrorism committed by a hostile alien in the heart of capital.

13. All these facts go to constitute the instant case as rarest of the rare type of case and the convict needs to be punished with extreme penalty of death to serve the triple principle of deterrence, punishment and safety, as the alternative punishment of life imprisonment appears to be grossly inadequate in the facts and

circumstances referred to above. If left alive he would be a menace to society. He must cease to exist in the interest of society.

50. After giving our thoughtful consideration to the entire aspect of the matter and the facts and circumstances leading to the death of four innocent persons and injuries to many because of the heinous act committed by the appellant Mohd. Hussain we fully subscribe to the above quoted observations of the learned Trial Court while awarding the death sentence to the appellant. Our country has been a victim of many such incidents of bomb blasts for some years now at the hands of terrorists and hundreds of innocent lives have been lost in those incidents. Those incidents of bomb blasts have shaken the entire nation. Conscience of the society will be satisfied only if capital punishment is awarded to the perpetrators of these kind of crimes. People like the appellant herein are definitely a menace to the society and do not deserve to exist on this earth. There is no mitigating circumstance in favor of the appellant for leaving him alive. The plea of his counsel for mercy is unjustified. Showing any mercy to the people like the appellant herein would be a mockery of justice. Whenever some person is found guilty of this kind of gruesome acts and ghastly murders the penalty of death sentence is the only appropriate punishment and there is no other alternative to that. We find this to be a rarest of rare cases where the death penalty should be imposed on the appellant. In this regard we may also refer to the following views of the Hon'ble Supreme Court expressed in Mahesh v. State of M.P. : 1987 CriLJ1073 :

6. We share the concern of the High Court. We also feel that it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon. When we say this, we do not ignore the need for a reformatory approach in the sentencing process. But here, we have no alternative but to confirm the death sentence. Accordingly, we dismiss the appeal.

We accordingly confirm the death sentence imposed on the appellant Mohd. Hussain under Section 302 IPC. The sentences imposed on him for his conviction under other offences of IPC and the Explosive Substances Act are also maintained.

51. In the result, we dispose of the murder reference by confirming the death sentence imposed on the appellant Mohd. Hussain and the appeal filed by him for setting aside his conviction under Sections 302/307 IPC and also under Section 3 of the Explosive Substances Act and the sentences imposed upon him vide judgment dated 26-10-04 and order on sentence dated 03-11-04 in Sessions Case No. 122/98 stands dismissed.

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