

Mohd. Akbar Butt Vs. State

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Court : Delhi

Decided On : Sep-05-2006

Reported in : 138(2007)DLT43; 2006(91)DRJ242

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

Acts : [Explosive Substances Act, 1908](#) - Sections 3, 4, 5 and 6; Indian Penal Code (IPC) - Sections 120B, 121, 121A, 122, 123 and 124A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl.A. 303/2004

Appellant : Mohd. Akbar Butt

Respondent : State

Advocate for Def. : Ravinder Chadha, APP

Advocate for Pet/Ap. : Azhar Qayum, Adv. for Crl.A.303/2004 and; O.P. Malviya, Adv. for Crl. A. No. 552/200

Disposition : Appeal allowed

Judgement :

P.K. Bhasin, J.

1. These two appeals have been preferred against the judgment of conviction dated 03-06-2003 passed by the Additional Sessions Judge, Delhi whereby the three appellants have been convicted under Section 6 of the Explosive Substances Act, 1908 and appellant Mohd. Akbar Butt has also been convicted under Section 4 read with Section 5 of the said Act of 1908 (hereinafter referred to as 'the Act of 1908') and the order dated 07-07-2003 whereby life imprisonment has been imposed upon the appellant Mohd. Akbar Butt besides fine of Rs. 25,000/-, in default three years RI for his conviction under Section 4 read with Section 5 and 10 years rigorous imprisonment has been awarded to all the three appellants and fine of Rs. 20,000/- each, in default two years 'RI for their conviction under Section 6. Since both the appeals arise out of the same judgment and were heard also analogously the same are being disposed of by this common judgment.

2. The case of the prosecution is as follows:

On 30-8-99 a secret information was received by the Operation Cell, Special Branch of Delhi Police at Lodhi Colony that some Kashmiri militants were staying in a Guest House in Jama Masjid area with explosive material and that they were making plan to cause explosions during the elections in Delhi. On receipt of that information, which was recorded as DD No. 4 in the roznamcha, SI Brahmjeet (PW-8) was deputed to verify that information. He found out that at about 6 p.m. one Kashmiri militant would deliver some explosive substance to someone near the board of National Zoological Park, Mathura Road, New Delhi. As per further prosecution case a police party headed by Inspector Tej Singh Verma (PW-12) along with the secret informer reached near Zoological Park at about 5.45 p.m. and asked some passers-by to join the proceedings but none agreed. At about 6.15 p.m. one person (appellant Mohd. Akbar Butt) was seen coming from the side of Pragati Maidan carrying a blue bag. The secret informer told the police that he was the person who would be carrying explosive material. Accused' appellant Mohd. Akbar Butt stood on the pavement near the board of National Zoological Park and started waiting for someone. However, when nobody came till 7 p.m. he started moving and at that time the police overpowered him and on enquiry his name came to be known as Mohd. Akbar Butt @ Gazali s/o Jorawar

Butt. His bag on checking was found to contain ten packets of RDX (a special category of explosive substance) weighing 10.650 kgs. along with two timer pencils. That bag also contained a wireless set made in Japan of ICOM make and some nails weighing 1kg. Out of that recovered RDX 200 gms. was taken out separately as a sample and sealed with the seal of 'TSV'. The bag and other articles found therein including remaining quantity of RDX were also separately sealed. CFSL form was filled up by Inspector Tej Singh(PW-12) at the spot itself. On enquiry Mohd. Akbar Butt disclosed that he was the District Commander of terrorist outfit Harkat-ul-Ansar and he had brought explosive material to Delhi at the instance of ISI agency of Pakistan to create disturbances in the election in order to dethrone the Indian Government. Then Inspector Tej Singh sent a rukka(Ex.PW-9/A) to the police station for registration of a case on the basis of which an FIR under Section 3/4/5 of the Act of 1908 and also under Sections 120-B/121/121-A/122/123/124-A IPC was registered at police station Hazrat Nizamuddin on the same day at 10.15 p.m.

3. Further investigation was entrusted to Sub-Inspector Brahmjit(PW-8) who also reached the National Zoological Park and there he formally arrested accused 'appellant Mohd. Akbar Butt. During the personal search of this accused his identity card (Ex.PW-5/PB) which was in the name of Mohd. Latif was found. Some slips of a PCO booth showing the calls made to Pakistan and a bus ticket(Ex.PW- 6PA) for two showing that two persons came to Delhi from Jammu on bus No. DL-1P- 3193 were also recovered from the possession of Mohd. Akbar Butt. Pursuant to the information given by Mohd. Akbar Butt regarding the presence of his associate Shahnawaj Latif(appellant No. 1 in CrI. A.No. 552/03) in a Guest House in Jama Masjid and Rs. two lacs the police party along with Mohd. Akbar Butt went to Asian Guest House in Jama Masjid in room No. 6 on the first floor accused-appellant Shahnawaz Latif was found. A polythene bag containing Rs. 2 lakhs was recovered from under the mattress and pillow lying on a bed in that room. Investigating officer initialled the recovered currency notes and sealed the same. He also seized extracts from the hotel register showing the stay of these two accused there. The same are Ex. PW-2/A and 2/B. Accused Shahnawaz Latif was arrested.

4. Thereafter at the instance of and pursuant to another disclosure statement made by accused Mohd. Akbar Butt the police arrested accused-appellant Shahid Latif(appellant No. 2 in CrI. A. No. 552/03) from Jammu on 02-09-1999. Shahid Latif and Shahnawaj Latif are stated to be brothers. As per the prosecution case when the police was going to apprehend Shahid Latif on the pointing out of Mohd. Akbar Butt he had tried to run away but could not succeed and was apprehended after running up to some distance. During interrogation in police custody accused Shahid Latif made a disclosure statement and pursuant to that he got recovered two stamps(Ex.PW-8/1and2) used for making the forged identity card of Mohd. Akbar Butt in the name of Abdul Latif Mir from his house in Jogi Gate Mohalla, Jammu. One stamp was of Executive Magistrate of Bhadarwa and the other was of Tehsildar-Executive Magistrate, Bhadarwa. These two stamps/seals were on enquiry from the concerned Executive Magistrates found to be fake.

5. On the completion of investigation the above named three accused persons, who are now the appellants before us, were charge-sheeted by the police for the commission of offences punishable under Sections 3/4/5 of the Act of 1908 and also under Sections 120-B/121/121(A)/122/123/124(A) IPC. After supply of necessary documents to the accused persons the case was committed to the Court of Sessions. Learned Additional Sessions Judge framed a charge for the offence punishable under Section 6 of the Explosive Substances Act against all the three accused. A separate charge under Section 4 read with Section 5 of the Act of 1908 was also framed against accused Mohd. Akbar Butt for his having been found in possession of RDX along with two timers.

6. To prove its case prosecution examined 13 witnesses in all. Two experts in explosive substances from CFSL, New Delhi, namely, Dr. A.Dey and Shri N.B.Vardhan were examined as court witnesses vide order dated 16-08-2002 of the learned Additional Sessions Judge whereby the entire material alleged to be RDX recovered from accused Mohd. Akbar Butt was ordered to be got examined from CFSL to have confirmed as to whether the entire recovery consisted of RDX. (The entire material was on examination found to be RDX). After recording the prosecution evidence incriminating material brought on record by the prosecution was put to all the three accused persons as required under Section 313 Cr.P.C. All

of them denied the prosecution allegation in toto and pleaded false implication. Accused Mohd. Akbar Butt claimed in his statement that he was picked up by the police from Asian Guest House on 24th August, 1999 at 7 p.m. by Inspector T.S.Verma and his team and kept them (he and co-accused Shahnawaz Latif) in confinement and later on framed in this false and fabricated case. He was innocent and nothing was recovered from him and the documents were false and fabricated. Similarly accused Shahnawaz Latif claimed that he was picked up along with Mohd. Akbar Butt from Asian Guest House on 24th August, 1999 at 7 p.m. by Inspector Verma and his team and later on documents were fabricated. No evidence was adduced in defense by any of the three accused persons.

7. After examining the evidence adduced by the prosecution the learned Additional Sessions Judge vide his judgment dated 03-06-2003 and order dated 07-07-2003 convicted and sentenced all the three accused-appellants in the manner stated already.

8. Appellants Shahnawaz Latif and Shahid Latif filed a common appeal (being criminal appeal No. 552 of 2003) and accused Mohd. Akbar Butt filed his separate appeal (being criminal appeal No. 303 of 2004) against the afore-said judgment of conviction dated 03-06-2003 and the order on sentence dated 07-07-2003 of the trial Court.

9. We have heard the learned Counsel for the appellants and the Additional Public Prosecutor for the State and with their assistance have also gone through the evidence adduced by the prosecution, oral as well as documentary.

10. The prosecution case rests primarily on the evidence of police officials only since as per the prosecution no public person came forward to be a witness to the arrests of the militants and recoveries from them. PW-1 ASI Hari Ram deposed that on 30-8-1999 he was present in his office at Lodhi Colony and on that day at about 9 a.m. an informer came to the office and informed Inspector T.S. Verma that some Kashmiri militants were staying in the area of Jama Masjid having explosive substance in their possession to create panic in capital. He then deposed that informer again came to the office at Lodhi Colony at about 5 p.m. and informed Inspector T.S.Verma that some Kashmiri militants would supply

explosive substance to a person near the board of Zoological Park, Zoo on Mathura Road at about 6 p.m. on which Inspector T.S.Verma organized a raiding party consisting of himself, PW-1, HC Rajender, HC Dharam Vir, Ct. Jitender and Ct. Joginder Singh. He further deposed that the raiding party started from the office at about 5.15 p.m. and at about 5.45 p.m. they reached at Zoological Park at Mathura Road where the members of raiding party were positioned at different points along with the informer. At about 6.45 p.m. one person came from the side of Pragati Maidan and the informer told that he would make a delivery of the explosive substance. That person having a bag on his right came near board of Zoological Park and stood there for about 10/15 minutes but nobody approached that person. PW-1 then deposed that Inspector with the help of other members then overpowered that person who on enquiry initially disclosed his name as Abdul Latif but after some time disclosed his real name as Mohd. Akbar Butt. It was further deposed by PW-1 that on checking the bag of accused Mohd. Akbar Butt a yellow coloured polythene containing ten packets containing 10.650 kg. RDX was recovered from the bag besides one wireless set make IKON, one pink coloured thaili having one kilo nails and two timers were in a thermostat box. PW-1 then deposed about sealing of the RDX etc. at the spot and preparation of CFSL form. PW-1 also deposed that accused Mohd. Akbar Butt made a disclosure statement that he could get recovered Rs. two lacs kept in Asian Guest House in Jama Masjid which he had received for delivering RDX to some person. He then led the police party to Asian Guest House, Jama Masjid where in room No. 6 accused Shahnawaz Latif was present and accused Akbar Butt got recovered a sum of rupees two lacs from that room No. 6 of Asian Guest House kept in a polythene bag under the mattress of the bed.

11. PW-2 Mohd. Jamir has deposed that he was working as Manager at Asian Guest House, Mattia Mahal, Jama Masjid and on 30/31-08-1999 at night police brought accused Mohd. Akbar Butt to his guest house and enquired from him whether Mohd. Akbar Butt was staying in their guest house on which he told him that accused Mohd. Akbar Butt was staying in room No. 6 of the guest house. He then deposed that thereafter police opened the room No. 6 and accused took out an envelop containing two bundles of currency notes of Rs. 500/- each and 10 bundles of currency notes of Rs. 100/- each which were lying under the pillow on

the bed and the total amount on counting was found to be rupees two lacs which were seized by the police vide memo Ex. PW-1/C. He also deposed that accused Mohd. Akbar was staying in the guest house along with other person Mohd. Attif and also that the accused persons had checked in on 21-08-1999 at 12.15 p.m. and checked out on 24-08-1999 at 7 p.m.

12. PW-4 HC Dharamveer Singh was also from 30-08-99 onwards associated in the investigation. He has deposed about the arrest of accused Mohd. Akbar Butt and recovery of RDX from him on 30-08-99 as was also deposed by PW-1. PW-4 has corroborated PW-1 on all material points.

13. PW-5 Baij Nath Thakur, Tehsildar-cum-Executive Magistrate proved his report Ex. PW-5/A which was given by him on the basis of the record furnished by judicial clerk. He deposed that as per record no identity card in the name of Abdul Latif Mir was issued from his office on 05-03-1997 and the seals on the card Ex. Pw-5/PB(which is the identity card recovered from accused Mohd. Akbar Butt in the name of Abdul Latif Mir but having his own photo) were not of his office.

14. PW-6 Surinder Kumar deposed that he was running a travel agency in the name and style of Hari Tourist Service on B.C.Road, Jammu opposite Mukha Singh petrol pump and used to issue bus tickets for the passengers going to Chandigarh, Amritsar and Delhi. He then deposed that on 04-09-1999 on the request of the police he handed over a duplicate ticket bearing Seriall No. 2613 along with a duplicate booklet containing Seriall No. 2600-2700. He further deposed that the ticket No. 2613(Ex. PW-6/A which was also recovered from the possession of accused Mohd. Akbar Butt) was issued on 20-08-1999 in the name of Shanbod pertaining to bus No. DL-1P-393 for two passengers bearing seat numbers 3 and 4 for going from Jammu to Delhi.

15. PW-8 Inspector Brahmjit Singh deposed that on 30-08-1999 an information was received in the office at about 9 a.m. by ACP L.N.Rao that a Kashmiri militant was staying in the area of Jama Masjid along with some explosive substance to cause some subversive activities during the election period on which he was instructed by ACP to develop the information further. He then deposed that on the same day another information was received at about 5 p.m. through the same

informer that the said person would deliver explosive substance to someone at 6 p.m. near the board of zoological park on the main Mathura Road. Then ACP instructed Inspector T.S.Verma to take appropriate action. He also deposed that Inspector T.S.Verma formed his own team of which he(PW-8) was not a member. He further deposed that while he was in office in the evening time duty officer told him that Inspector T.S.Verma had summoned him at zoological part on Mathura Road where he had apprehended an extremist along with explosive substance on which he reached there at about 10.35 p.m. where Inspector Verma told him that explosive substance weighing about 10.650 Kgs. had been recovered along with one wireless, two timer pencils, one Kg. small nails from accused Mohd. Akbar Butt. He also deposed that he made enquiries from Mohd. Akbar Butt and thereafter arrested him and conducted his personal search vide memo Ex. PW-1/B. PW-8 thereafter deposed that from the personal search of the accused Akbar Butt one I-card in the name of Abdul Latif Mir having photo of Mohd. Akbar Butt, three copies of FAX in Urdu language, some slips issued by PCO/STD/ISD booth regarding calls made to Pakistan, one traveling pass of STSI of Jammu, slip with some code language and some currency notes were recovered. He also deposed that accused Akbar Butt made a disclosure statement Ex. PW-4/A and then led the police party to Asian Guest House at about 12.30 a.m. where he(PW-8) contacted the Manager at the reception of the guest house and accused took them to room No. 6 at the first floor and pointed out another person as Shahnawaz Latif and also got recovered a black coloured polythene containing 200 currency notes of Rs. 500 each and 10,000 currency notes of Rs. 100 each totalling two lac rupees lying under the mattress and pillow on the bed. The currency notes were seized vide memo Ex. PW-1/C. He then deposed that he took into possession the extract of the hotel register regarding stay of the accused persons in the guest house, recorded the statement of the witnesses, arrested accused Shahnawaz Latif. He also deposed that on 01-09-1999 during the course of investigation accused Mohd. Akbar Butt made another disclosure statement saying that the I-card recovered from his personal search was prepared by Shahid Latif who had given him RDX also and he was available at Jammu. On 01-09-1999 he along with Inspector Tej Singh Verma, ASI Hari Ram, HC Dharambeer, HC Rajinder along with accused Mohd. Akbar Butt left Delhi for Jammu where they reached in the

night of 01/02-09-99 and on 02-09-1999 they reached at police station Peer Mitha, Jammu and got their arrival recorded there after which one HC Mustaq and one Constable joined them from P.S. Peer Mitha. PW-8 thereafter deposed that they searched accused Shahid Latif and around 4.30 p.m. when they were coming from the side of Peer Meetha Bazar a person wearing kurta payjama came by the side of the market and he was pointed out and identified by Mohd. Akbar Bhatt as Shahid Latif on which they made enquiries from accused Shahid Latif and after satisfying themselves accused Shahid Latif was arrested and his personal search was conducted vide memo Ex. PW-1/J. During interrogation accused Shahnawaj Latif made disclosure statement Ex. PW-1/K stating that the stamps used in the making of the forged identity card for accused Mohd. Akbar Bhatt in the name of Abdul Latif Mir was kept by him in his rented accommodation and can be recovered at his instance. PW-8 thereafter deposed that accused Shahid Latif led the police party to his rented accommodation at Jogi gate mohalla and got recovered two stamps one of which was of round shape in the name of Executive Magistrate, First Class, Bhadarwa and the other was of rectangle shape in the name of Tehsildar, Executive Magistrate, Bhadarwa which were kept in a brief-case lying on a slab in the room. On 4-9-99 accused Mohd. Akbar Butt in pursuance of his disclosure statement led them to a travel agent's office in the name of Hari Tourist Service where Surinder, proprietor of tourist office(PW-6) met them and identified the photocopy of the ticket produced by the police party and that Surinder also produced duplicate of the ticket Ex. PW-6/PA saying that the ticket was of two passengers from Jammu to Delhi on the bus No. DL-1P-3193. He thereafter deposed that on 05-09-1999 he reached at Bhadarwa and met the then Executive Magistrate Baij Nath Thakur who confirmed that I-card was fake and the seals on it were also fake and Jainat Ram, Nambardar of Bhadarwa also confirmed that I-card holder was not a villager nor a resident of his village.

16. PW-10 Mukesh Prakash and PW-11 Satish Kanojia proved the sanction orders Ex. PW-10/A and Ex. PW-11/A granted under Explosive Substances Act by the Lt. Governor of Delhi for the prosecution of accused persons.

17. PW-12 Inspector Tej Singh Verma deposed that on 30-8-99 he was posted in Special Cell, Lodhi Colony and on that day ACP L.N.Rao was having a secret

information that some terrorists staying in a guest house at Jama Masjid were making plan to disturb the election in Delhi for which ACP L.N.Rao deputed SI Brahmjit to develop the information further. He then deposed that on the same day SI Brahmjit and secret informer informed ACP L.N.Rao that at about 5 p.m. near Zoological Park, Mathura Road a person would deliver some explosive substance to some one so ACP L.N.Rao deputed him to take necessary action. He further deposed that he started from his office along with ASI Hari Ram, HC Dharamvir, HC Rajinder Singh and driver of the official gypsy to zoological park and reached there at about 5.45 p.m. where he requested 5-7 persons to join the investigation but none came forward and left the spot without disclosing their identities. He also deposed that at about 6.45 p.m. one person having a bag on his shoulder came from the side of Pragati Maidan bus stop and stood near the board of zoological park but after waiting for some time that man started moving towards the direction from which he had come and then they apprehended that person. On checking his bag of blue colour he found 10 packets containing RDX weighing 10.650 Kgs., from the right pocket of the bag one wireless set made in Japan, make IKON and a pink polythene containing nails weighing about 1 Kg. were also recovered and from the left side pocket of the bag one thermostat and two timer pencils were recovered. He then deposed that accused Mohd. Akbar Butt led the police party to room No. 6 of Asian Guest House at Jama Masjid and the door of the room on being knocked was opened by a person whose identity was disclosed as Shahnawaz. He also deposed that at that time Manager of the hotel Mr. Zamir was also with them. It is further deposed by PW-12 that accused Mohd. Akbar Butt got recovered a black coloured polythene bag lying under the pillow on the bed containing Rs. two lacs in cash which were seized vide memo Ex. PW- 1/K. He further deposed about the arrest of accused Shahid Latif at the instance of accused Mohd. Akbar Butt from the Jammu. He also deposed that during the course of interrogation Shahid Latif made a disclosure statement and at his instance from a room at Jogi gate Jammu two seals out of which one was of round shape and was in the name of Executive Magistrate, 1st class and another was of rectangle shape and was in the name of Tehsildar kept in a brief case lying on the slab in the room were recovered. PW-12 also deposed that on 04-09- 1999 accused Mohd. Akbar Butt led the police party to the office of Hari Tourist Service

and got recovered the counter foil of the ticket on the basis of which accused Mohd. Akbar Butt and Shahnawaz had travelled from Jammu to Delhi.

18. PW-13 Roop Singh from CFSL report deposed that on 14-09-1999 two sealed parcels were received from Inspector Special Cell II, Special Branch, Delhi relating to case FIR No. 465/99, police station Hazrat Nizamuddin, Delhi and parcel No. 1 was containing sample of black coloured pasty material weighing 200 gms. approximately whereas parcel No. 2 was containing one cloth parcel containing two time pencils without detonators and fuse wires kept in a thermocol box. On examination he found that the parcel No. 1 contained RDX based high explosive. The contents of parcel No. 2 were two standard factory made time pencils and were live ones and that the contents of parcel No. 1 and 2 can form components of 'Improvised explosive device/s and were therefore, 'Explosive Substances', as defined in the [Explosive Substances Act, 1908](#).

19. Now we come to the evidence of the two Court witnesses. CW-1 Dr. A.Dey, Sr. Scientific Officer-cum-Assistant Chemical Examiner deposed that as per record Shri Roop Lal, analyst conducted three tests, namely, Thin Layer Chromatography, Spot Test/Chemical test and Instrumental Test (Gas Chromatography) to arrive at a conclusion as to whether the referred substance was RDX and all the three tests gave positive features as that of RDX. He proved the proceedings sheets recorded by the analyst as Ex. CW-1/A.

20. CW-2 N.B.Bardhan, Sr. Scientific Officer, Grade I Ballistic-cum- Assistant Chemical Examiner deposed that on 19-08-2002 one sealed parcel was received in the office in case FIR No. 465/99, P.S. Hazrat Nizamuddin, Delhi forwarded by the Hon'ble Court which contained approximately 10.450 Kgs. of Black putty like material said to explosive material. He stated that on the basis of examination carried out in the laboratory with scientific aids he came to the conclusion that the physical-Chemical examination of the black putty-like material confirmed the presence of 'RDX' based 'High Explosive'. He proved his CFSL report as Ex. CW-2/A.

21. Relying on the evidence of these witnesses the learned trial Court has found all the three appellants guilty. learned Counsel for the appellant Mohd. Akbar Butt

Shri Azhar Qayum vehemently submitted that there being no independent public witness to the alleged recovery of RDX from this accused he could not have been convicted merely on the basis of evidence of police witnesses and so the appeal of this accused deserves to be accepted. We, however, are unable to accept this submission. There is no doubt that the prosecution has not examined any public witness to establish the arrest of accused Mohd. Akbar Butt and recovery of RDX from him in the manner claimed by the police witnesses. However, just because no public witness has been examined the evidence of policemen cannot be rejected. The investigating officer Inspector T.S.Verma(PW-12) and PW-1 ASI Hari Ram have clearly deposed that when the police party reached National Zoological Park on 30-08-1999 they had requested public persons to join the investigation but none came forward and left the spot. There is no reason to disbelieve this police officer. The police had gone there to apprehend some terrorists. Public is generally afraid of being associated with anything involving terrorists. In these circumstances the police cannot be blamed. They only then remain to curb the militancy by apprehending the militants and if arrests of militants and recoveries of explosive material from them is doubted only on the ground that there is no witness from the public to support that it would be doing great injustice to the courage shown by the policemen by apprehending the terrorists putting their own lives at danger because the militants can be expected to retaliate in any cruel manner apprehending their apprehension.

22. There is no presumption that the police officials are liars. The evidence of police officials is treated in the same manner as the testimony of other witnesses. Conviction can be recorded on the basis of evidence of police officials.

23. Dealing with the contention regarding non-examination of independent witnesses Hon'ble Supreme Court in : 1988 CriLJ848 , Appabhai and Anr. v. State of Gujarat (para nos. 11 and 12) had held as under:

11. In the light of these principles, we may now consider the first contention urged by the learned Counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true

that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The prosecution case cannot be doubted or discarded for not examining strangers at the bus stand who might have also witnessed the crime. We, therefore, reject the first contention urged for the appellants.

24. We, therefore, refuse to reject the evidence of PW-12 Inspector T.S.Verma, PW-1 ASI Hari Ram and PW-4 HC Dharamveer Singh. They had no reason to falsely implicate accused Mohd. Akbar Butt by showing recovery of RDX from him on 30-08-1999. They could not be discredited in cross-examination. No motive was suggested to them for implicating the accused in this case falsely. All of them have corroborated each other fully on all material aspects of the prosecution case.

25. It was also submitted by the learned Counsel for the accused that accused Mohd. Akbar Butt and Shahnawaj Latif were picked up by FRRO officials from Asian Guest House on 24-08-99 and never let off thereafter and were in fact falsely implicated in this case on 30/31-08-99. In this regard our attention was drawn to the evidence of PW-2 Mohd. Jamir, Manager of Asian Guest House from where the accused Shahnawaj Latif shown to have been apprehended and Rs. 2 lakhs were recovered. He claimed that these two accused had checked in on 21-08-99 and checked out on 24-08-99. In our view this statement of PW-2 does not show that on 30/31-08-99 Mohd. Akbar Butt was not staying there. We have no

reason to disbelieve PW-2, an independent person, when he says that on 31-08-99 police had brought accused Mohd. Akbar Butt to the Asian Guest House and that day accused Mohd. Akbar Butt had got recovered Rs. 2 lakhs from under the mattress on the bed of room No. 6. There is no doubt that in the hotel register of Asian Guest House stay of accused Mohd. Akbar Butt and Shahnawaj Latif is shown from 21-08-99 to 24-08-99. But that does not mean that without further entries in the register presence of accused Mohd. Akbar Butt in that Guest House after 24-08-99 was not possible. It could be elicited from PW-2 only as to how Mohd. Akbar Butt was staying in his Guest House without any entry in the Guest House Register. He was, however, not cross-examined on that aspect. In his statement under Section 313 Cr.P.C. accused Mohd. Akbar Butt had taken a plea that he was picked up from Asian Guest House on 24-08-99 by Inspector T.S.Verma(PW-12) and later on he implicated him in this case. However, when PW-12 Inspector T.S.Verma was examined in Court no such suggestion was given to him in cross-examination so this plea cannot be accepted.

26. As far as nature of the material recovered from Mohd. Akbar Butt is concerned it stands confirmed from the evidence of two experts from CFSL examined as CW-1 and CW-2 whose evidence we have already narrated and CFSL reports Ex. PW-8/E and Ex. CW-2/A that the material recovered from Mohd. Akbar Butt was explosive substance, i.e. RDX. The intention to carry over 10 Kgs. of high explosive substance could only be to endanger lives of innocent people. The findings of the learned trial Court against accused Mohd. Akbar Butt cannot, therefore, be faulted on the grounds it was sought to be done by the learned Counsel for this appellant. No other point was urged. Consequently, we confirm the conviction and sentence of accused-appellant Mohd. Akbar Butt for the offence under Section 4 read with 5 of the Act of 1908. The trial Court has also convicted him under Section 6 of the said Act which provides the punishment for abetment of an offence under this Act. It is not the case of the prosecution that Mohd. Akbar Butt had abetted anybody else to commit any offence under the Act of 1908. On the contrary the prosecution case has been that other two accused, namely, Shahnawaj Latif and Shahid Latif had aided Mohd. Akbar Butt in the commission of the offence of acquiring RDX. Since Mohd. Akbar Butt himself is the principal offender and has been found guilty he cannot be convicted for abetment also. So,

his conviction under Section 6 is set aside.

27. Now, as far as the case against appellants Shahnawaj Latif and Shahid Latif is concerned the allegation against them is that they had aided the commission of the offence of which appellant Mohd. Akbar Butt has been found guilty. They have been along with Mohd. Akbar Butt charged for the commission of the offence punishable under Section 6 of the [Explosive Substances Act, 1908](#). The findings of the trial Court against accused- appellant Shahnawaj Latif and his brother Shahid Latif are contained in para nos. 59 and 61 of the impugned judgment and are to the following effect:

59. The above discussion shows that the prosecution has proved its case beyond any shadow of doubt. The recovery effected from the accused persons clearly shows that they were transmitting explosive substance to cause explosion in Delhi in order to cause terror, disturbance, panic and loss of human life and property. All of them joined hands to achieve this and committed the alleged offences. The defense placed nothing on record dislodging the claim of the prosecution or to establish the innocence of the accused persons.

61. In the present case, the recovery of RDX which amounted to 10.650 kg. was undoubtedly effected from accused Mohd. Akbar Butt. The other co-accused Shahnawaj was waiting in the Asian Guest House and was found along with a cash of Rs. 2 lacs which was given to the accused persons to accomplish the game- plan. The third accused, who was arrested from J and K facilitated the false and forged identity-card using forged official seals of the Magistrate. He equally participated in the commission of the alleged offences. The prosecution has placed on record the best evidence which could be collected under such circumstances. The same cannot be discarded on account of any technical or whimsical ground.

28. Presence of accused Shahnawaj Latif on 31-08-99 in room No. 6 of Asian Guest House from where accused Mohd. Akbar Butt got recovered Rs. two lacs is, however, doubtful since the only independent witness Mohd. Jamir, Manager of that Guest House does not speak about the presence of Shahnawaj Latif in room No. 6 at that time on 31-08-99. The personal search memo of Shahnawaj Latif, Ex.

PW-1/G, also does not bear signature of PW-2 which would have been there if this accused had been arrested in his presence from his Guest House. PW-2 simply says that the accused persons had checked in on 21-08-99 and checked out on 24-08-99. This witness PW-2 has also deposed that when on 31-08-99 police brought accused Mohd. Akbar Butt to the Guest House lock of room No. 6 was got opened from accused Mohd. Akbar Butt. That means the room was locked and its key was with Mohd. Akbar Butt. PW-12 Inspector Verma deposed to the contrary that Shahnawaj Latif had opened the door of the room No. 6. These contradictory statements also make the presence of Shahnawaj Latif in room No. 6 doubtful on 31-08-99. In any case, we are of the view that mere presence of accused Shahnawaj Latif in the Guest House by itself may not be sufficient to make him an abettor of co-accused Mohd. Akbar Butt in the commission of the substantive offence of being in possession of RDX. The police should have collected more solid evidence against Shahnawaj Latif to show that he had the knowledge that Mohd. Akbar Butt had come to Delhi with RDX to be delivered to some militant. There is no such evidence brought on record by the prosecution. We are, therefore, inclined to give benefit of doubt to appellant Shahnawaj Latif.

29. Similarly in our view appellant Shahid Latif is also entitled to get the benefit of doubt. The only piece of evidence against him is recovery of two fake seals of Executive Magistrates with which he prepared fake identity card of Mohd. Akbar Butt in the name of Abdul Latif Mir. That by itself is not sufficient to show that Shahid Latif aided Mohd. Akbar Butt in acquiring RDX. It is not shown as to how the forged identity card recovered from accused Mohd. Akbar Butt and allegedly made by Shahid Latif was instrumental in the commission of any offence under the Act of 1908 by accused Mohd. Akbar Butt.

30. So, appellants Shahnawaj Latif and Shahid Latif are entitled to succeed in their appeals against their conviction under Section 6 of the Act of 1908.

31. In the result, we allow Crl. Appeal No. 303 of 2004 of appellant Mohd. Akbar Butt partly by setting aside his conviction under Section 6 of the [Explosive Substances Act, 1908](#). His conviction and punishment imposed on him under Section 4 read with Section 5 of the said Act, however, stand confirmed. Crl.

Appeal No. 552 of 2003 of appellants Shahnawaj Latif and Shahid Latif are allowed. Their conviction and punishment under Section 6 of the [Explosive Substances Act, 1908](#) are set aside and both of them are ordered to be released from jail forthwith, if not required to be detained in any other case.

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