

Abdul Mateen and Etc. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-03-2009

Reported in : 2009CriLJ2376; RLW2010(1)Raj449

Judge : Narendra Kumar Jain and; Guman Singh, JJ.

Appellant : Abdul Mateen and Etc.

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Narendra Kumar Jain, J.

1. These four criminal appeals, on behalf of accused-appellants, and one criminal leave to appeal, on behalf of the State, are directed against the common judgment and order dated 22nd April, 2000, passed by the Judge, Special Court (Communal Riots/Mansingh Death case), Jaipur, in Sessions Case No. 8/98, therefore, they are being disposed of by this common order.

2. The trial Court, vide its impugned order, has convicted and sentenced the accused-appellants as under:

Accused Under ImprisonmentSection1. Abdul Mateen 14 of the To undergo 5 years RIForeigners and a fine of Rs. 10,000/-;Act, 1946 in default, to

further undergo 1 years' SI4 of PDPP To undergo 10 years RI Act and a fine of Rs. 20,000/-; in default, to further undergo 2 years' SI456 IPC To undergo 3 years RI and a fine of Rs. 3,000/-; in default, to further undergo 6 months' SI307/120B To undergo 10 years' RI IPC and a fine of Rs. 10,000/-; in default, to further undergo 2 years' SI435/120B To undergo 7 years RI IPC and a fine of Rs. 7,000/-; in default, to further undergo 1 1/2 years' SI118/120B To undergo 5 years RI IPC and a fine of Rs. 5,000/-; in default, to further undergo 1 years' SI9B of the To undergo 2 years RI Explosives and a fine of Rs. 2,000/-; Act, 1884 in default, to further undergo 3 months SI3 of the To undergo Imprisonment Explosives for Life and a fine of Substances Rs. 20,000/-; in default Act, 1908 to further undergo 3 years SI4 of the To undergo 7 years RI Explosives and a fine of Rs. 7000/-; Substances Rs. 20,000/-; in default Act, 1908 to further undergo 1 1/2 years' SI5 of the To undergo 5 years RI Explosives and a fine of Rs. 5000/-; Substances in default to further Act, 1908 undergo 1 1/2 years SI All the sentences were ordered to run concurrently 2. Chandra 9B of the To undergo 2 years RI and Prakash Explosives a fine of Rs. 2000/-; in Act, 1884 default, to further undergo 3 months SI3/6 of the To undergo 10 years RI and Explosive a fine of Rs. 10,000/-; in Substances default, to further undergo Act, 1908 2 years' SI4/6 of the To undergo 7 years RI and Explosive a fine of Rs. 7,000/-; in Substances default, to further undergo Act, 1908 1 1/2 years SI5/6 of the To undergo 5 years' RI and Explosive a fine of Rs. 5,000/-; in Substances default, to further undergo Act, 1908 1 year's SI All the sentences were ordered to run concurrently 3. Abdul Hamid 9B of the Each of the accused to and 4. Raies Beg Explosives undergo 2 years' RI and to Act, 1884 pay a fine of Rs. 2000/-; in default, to further undergo 3 months' SI.307/120B Each of the accused to IPC undergo 10 years RI and to pay a fine of Rs. 10,000/-; in default, to further undergo 2 years' SI435/120B Each of the accused to IPC undergo 7 years RI and to pay a fine of Rs. 7,000/-; in default, to further undergo 1 1/2 years SI118/120B Each of the accused to IPC undergo 5 years RI and to pay a fine of Rs. 5,000/-; in default, to further undergo 1 year's SI3/6 of the Each of the accused to Explosive undergo 5 years RI and to Substances pay a fine of Rs. 10,000/-; Act, 1908 in default, to further undergo 2 years SI4/6 of the Each of the accused to Explosive undergo 7 years RI and to Substances pay a fine of Rs. 7,000/-; Act, 1908 in default, to further undergo 1 1/2 year's SI5/6 of the Each of the accused to Explosive undergo

5 years RI and to Substances pay a fine of Rs. 5,000/-; Act, 1908 in default, to further undergo 1 years SI All the sentences were ordered to run concurrently

3. Being aggrieved with the order of conviction and sentence, the four accused-appellants have separately preferred their respective appeals; and the State of Rajasthan has filed criminal leave to appeal against three accused-appellants, namely, Chandra Prakash, Rales Beg and Abdul Hameed, after a delay of 2823 days i.e. about 7 years 9 months, along with an application under Section 5 of the Limitation Act for condonation of delay in filing the leave to appeal, to enhance their sentence of imprisonment under Section 3 of the Explosive Substances Act, 1908, from 10 years R.I. to the imprisonment for life.

4. Briefly stated the facts of the case are that on 26th January, 1996, the Republic Day of India, there was a bomb-blast at about 8.30 to 8.35 in the morning in between the Gate No. 12 and Gate No. 13, towards the southern and eastern side of Sawai Man Singh Stadium, Jaipur, where the State level function on the Republic Day was going to be celebrated; soon after the blast, Shri Prahlad Singh, the Station House Officer, Police Station, Jhotwara, Jaipur, who was on duty at SMS Stadium, lodged a report at Police Station, Gandhi Nagar, Jaipur City, Jaipur, of the incident stating therein that he was on duty in compliance of the order dated 23rd January, 1996, issued by the Superintendent of Police; at about 8.30 a.m. to 8.35 a.m. there was a bomb-blast inside the SMS Stadium in between Gate No. 12 and Gate No. 13; at that time the police officials were on duty and the public, though not present in that portion yet had started coming towards other side of the SMS Stadium. Number of persons were continuously coming in the rest portion of the Stadium. From Gate No. 10 also persons were entering the Stadium; explosive voice of the bomb-blast left effects on the ear of one Ram Gopal Choudhary and he was immediately taken to hospital; he informed his higher officers immediately and, as per their instructions, the public at large, which was present inside the Stadium, was informed to get out of the Stadium in order to carry out the check and security. He further stated that some unknown persons preplanned to damage the public property and public at large including the police officials by explosive articles. Due to this blast, a big size crater came into existence at the scene of explosion.

5. On the basis of the aforesaid information (Exhibit P-1), an FIR No. 39/96 was registered under Section 120B read with Sections 307, 427, IPC, under Section 3 of PDPP Act and Section 3 of the Explosive Substances Act, and also under Section 9B of the Explosive Act, and investigation commenced. The investigation of the case was thereafter transferred to CID (CB).

6. During the investigation, an anonymous letter dated 1st June, 1997 was sent in the name of well-wishers to the Superintendent of Police, wherein some information was given which was alleged to have been gathered by them while they were in custody in the Central Jail, Jaipur, in respect of the bomb-blast took place on 26th January, 1996, at the SMS Stadium Jaipur; in that letter, names of some persons i.e. Raies Beg of Agra, Dr. Abdul Hameed of Firozabad and Pappu Puncturewala were mentioned; name of village Farah in Goverdhan was also mentioned. The letter was written in Urdu language. The Investigating Agency, after making some necessary enquiry, arrested the accused-persons Abdul Hameed and Raies Beg on 8th June, 1997 and they gave further information of the incident. The investigation further commenced and accused Abdul Mateen was also arrested on 27th June, 1997 from Srinagar (J & K). Accused Pappu alias Saleem and Chandra Prakash were also arrested. The accused-persons gave information under Section 27 of the Evidence Act and, in pursuance thereof, a live time-bomb was recovered from SMS Stadium and explosive items were also recovered from Roopbas, District Bharatpur.

7. It is relevant to mention that during investigation of the case, an application was filed under Section 306 of the Code of Criminal Procedure praying for tendering pardon to co-accused Pappu alias Saleem, before the Chief Judicial Magistrate on 14th August, 1997, who vide its order dated 30th August, 1997, authorized the Additional Chief Judicial Magistrate No. 6 to record the statement of accused Pappu alias Saleem under Section 164 of the Code of Criminal Procedure, and ultimately the Chief Judicial Magistrate, by a reasoned order, allowed the application under Section 306, Cr. P.C. vide order dated 20th September, 1997 (Exhibit P-273).

8. After completion of investigation, the police filed a challan against the arrested accused-persons and kept the matter pending for investigation against remaining accused-persons under Section 173(8) of the Code of Criminal Procedure.

9. The learned trial Court framed the charge against the accused-persons for the following offences:

S. Name of Accused	Charges for the	No. against whom	Offence	charge framed
1. Chandra Prakesh	Under Section 9B of the Explosive Act, 1884; Under Sections 3, 4, 5, read with Section 6 of the Explosive Substances Act.			
2. Abdul Mateen	Under Section 14 of the Foreigners Act, 1946; Under Sections 3, 4, 5 of the Explosive Substances Act; Under Section 9B of the Explosive Act; Under Section 4 of the PDPP Act; Under Sections 307, 118, 435 and 456 of the IPC			
3. Raies Beg	Under Section 9B of the Explosive Act; Under Sections 3, 4, 5 read with Section 6 of the Explosive Substances Act, 1908; Under Sections 307/120B, 118/120B and 435/120B of the IPC			
4. Abdul Hameed	Under Section 9B of the Explosive Act; Under Sections 3, 4, 5 read with Section 6 of the Explosive Substances Act, 1908 Under Section 307/120B, 118/120B and 435/120B of the IPC			

10. The accused-persons denied the charges and claimed to be tried.

11. In support of its case, the prosecution examined 78 witnesses, namely, P.W. 1 Pappu alias Saleem, P.W. 2 Ved Prakash, P.W. 3 Prahlad Singh, P.W. 4 Purushottam Singh, P.W. 5 Bheem Singh, P.W. 6 Jai Narain, P.W. 7 Gopal Saini, P.W. 8 Jai Kishan, P.W. 9 Khalil Khan, P.W. 10 Gordhan, P.W. 11 Kanchan Singh, P.W. 12 Shri Chand, P.W. 13 Murari Lal Sharma, P.W. 14 Gyan Chand Jain, P.W. 15 Brijesh Nigam, P.W. 16 Vinod Sharma, P.W. 17 Ashok Kumar, P.W. 18 Mohammad Ziya-ur-Rahim, P.W. 19 Kamal Singh, P.W. 20 Mahesh Sharma, P.W. 21 Rajesh Malik, P.W. 22 Shiv Nath Kuriya, P.W. 23 Krishna Veer, P.W. 24 Ram Narain, P.W. 25 Pyara Singh, P.W. 26 Baney Singh, P.W. 27 Ram Pal, P.W. 28 Ramgopal, P.W. 29 Tiku Ram, P.W. 30 Mohit Jain, P.W. 31 Alisher Khan, P.W. 32 Bhoop Singh, P.W. 33 Ashok Raj Kapoor, P.W. 34 Shri Chetan Das Rawtani, P.W. 35 Brijraj Singh, P.W. 36 Rajesh Kumar, P.W. 37 Rajesh Patel, P.W. 38 Abdul Hameed, P.W. 39 Bajranglal, P.W. 40 Dilip Sharma, P.W. 41 Samrath Singh, P.W. 42 Hetram Vishnoi, P.W. 43 Nemichand Gupta, P.W. 44 Niranjnpal Singh,

P.W. 45 Ramesh Tiwari, P.W. 46 Amar Singh, P.W. 47 Ghanshyam Singh, P.W. 48 Ramesh, P.W. 49 Prakash, P.W. 50 Govindlal Aneja, P.W. 51 Ram Prasad, P.W. 52 Tilak Raj, P.W. 53 Nathulal, P.W. 54 Prahlad Rai, P.W. 55 Himmat Singh, P.W. 56 Ashok Kumar S/o B. M. Kulshresth, P.W. 57 Mohd. Ahateshamuddin, P.W. 58 Sugan Singh, P.W. 59 Rambabu Sharma, P.W. 60 Ashok, P.W. 61 Pooranchand, P.W. 62 Abdul Salam, P.W. 63 Munna Khan, P.W. 64 Mahmood Alam Tariq, P.W. 65 Girraj Prasad, P.W. 66 Raju Arora, P.W. 67 Suresh Kumar Saini, P.W. 68 Dr. Sheetal Jain, P.W. 69 G.P.S. Virk. P.W. 70 S. P. Khandgawat, P.W. 71 M. M. Atray, P.W. 72 Manvendra Singh, P.W. 73 Kalyan Mal Sharma, P.W. 74 Pratap Singh, P.W. 75 Mohd. Irshad, P.W. 76 Bhim Singh, P.W. 77 Dr. P. S. Manocha, P.W. 78 Prem Prakash Gupta; and produced documentary evidence from Exhibit P-1 to Exhibit P-296.

12. Thereafter the statements of accused-persons were recorded under Section 313 of the Code of Criminal Procedure. Accused Abdul Mateen, in his statement, stated that he always resided in Pakistan; he never came to India before his arrest; he does not know any person in India; he never visited the places, namely, Tazpur, Farah, Roopbas, Agra, Firozabad or any other city; he never gave any information to the police nor the police made any recovery at his instance; his photographs were taken; number of persons saw him in the village of Pappu alias Saleem; a written-statement was also given by him. Accused Dr. Abdul Hameed gave his typed statement under Section 313, Cr. P.C. wherein he stated that he is an innocent person; he resides in Firozabad (UP); he never gave any information to police during investigation of the case; he did not give any information about the shop of Mohit Jain (P.W. 30) situated at Delhi; he was taken to Delhi by Investigating Officer Mr. Atray, but he remained at local police station and his signatures were obtained on the papers. A detailed statement was given by him. Accused Raies Beg, in his statement under Section 313, Cr. P.C. stated that he has falsely been implicated in the case. Accused Chandra Prakash, in his statement, stated that witnesses of 'mandi samiti' have given false statement against him under the pressure of the police; Approver Pappu alias Saleem, in order to save himself, also gave false statement against him; he further stated that no key was recovered from him nor he opened any go-down or room with his key; he did not take the house on rent from where the explosive articles were

recovered; his signature were obtained by the police on blank papers in the last, he stated that he has falsely been implicated in the case.

In defence, no witness was examined on behalf of any of the accused-persons; however, documentary evidence was produced by them i.e. Exhibit D-1 to Exhibit D-5.

13. The learned trial Court, after considering the submissions of the learned Counsel for the parties and examining the record of the case, convicted and sentenced the accused-persons, as mentioned above.

14. Shri S.R. Surana, the learned Counsel for the accused Abdul Mateen, contended that the trial Court has committed an illegality in convicting and sentencing the accused-appellant; he pointed out number of exhibits which do not bear the date of their preparation; no charge was framed under Section 120-B, IPC against the accused; the accused never came to Jaipur before the date of incident; the prosecution has failed to place on the record any document whatsoever to prove that accused came to Jaipur before the date of incident; the approver's evidence is a weak type of evidence and cannot be treated to be a substantive evidence so as to convict the accused-persons; he further contended that, in the facts and circumstances of the case, the corroboration of approver's statement i.e. P.W. 1 Pappu alias Saleem, was required and, in absence of it, his testimony is liable to be discarded and the accused-appellant is liable to be acquitted. The learned Counsel for the appellant referred the statements of P.W. 1 Pappu alias Saleem, P.W. 71 M. M. Atray, P.W. 73 Kalyan Mal Sharma, P.W. 64 Mahmood Alam Tariq, P.W. 57 Mohd. Ahateshamuddin, P.W. 8 Jail Kishan, P.W. 6 Jai Narain, P.W. 7 Gopal Saini, P.W. 16 Vinod Sharma, P.W. 10 Gordhan, P.W. 22 Shivnath Singh, P.W. 28 Ramgopal (injured) and P.W. 68 Dr. Sheetal Jain. He also referred the Exhibit P-1 written report, Exhibit P-58 letter of unknown person to the S.P., Exhibit P-163 arrest-memo and personal search of accused Abdul Mateen, Exhibit P-14 memo of taking into custody the Register of Musafirani Jamatkhana Kuraishiyan, Jaipur, Exhibit P-151 memo of identification parade of suspect person Abdul Mateen, Exhibit P-11 memo with map of site of Nehru market, Jaipur, with description at the instance of accused Abdul Mateen, Exhibit

P-12 Memo of site of Nehru market, Jaipur, as per information of accused Abdul Mateen, Exhibit P-13 Cash-memo of Panchasheel Prakashan Jaipur, Exhibit P-7 Memo of recovery of unexploded bomb lying at the site, Exhibit P-9 Recovery memo of residues of inactivated IED bomb at the instance of accused Abdul Mateen, Exhibit P-10 Recovery memo of one video cassette at the instance of accused Abdul Mateen; and contended that from the statements of these prosecution witnesses and the exhibited documents, referred to above, no charge of any offence is proved against the accused-appellant and the trial Court committed an illegality in convicting and sentencing him.

15. In support of his submissions, the learned Counsel for the appellant Abdul Mateen relied upon *Niranjan Singh v. State of Punjab* : 1996 CriLJ2506 . *Haricharan Kurmi v. State of Bihar* : AIR1964 Pat95 , and *Shakoor v. State of Rajasthan* 2003 (4) WLC (Raj) 230, on the point that approver's statement also requires corroboration. On the point of conscious possession, he referred - *Khudeswar Dutta v. State of Assam* : 1998 CriLJ2274 , *Salim Akhtar alias Mota v. State of U.P.* : 2003 CriLJ2302 , *Raosaheb Balu Killedar v. State of Maharashtra* 1995 Cri LJ 2632, and *Aslam Parwez, etc. v. Govt. of NCT of Delhi* : 2003 CriLJ2525 .

16. Shri A.K. Gupta, learned Counsel for accused Chandra Prakash, contended that FIR No. 305/97 has registered at the Police Station Roopbas, District Bharatpur, with regard to the recovery alleged to have been made at the instance of accused Chandra Prakash, therefore, the Court situated at Jaipur had no jurisdiction to try and decide the matter and thus the entire trial against him is vitiated. He further contended that for the purpose of prosecution of any person under the provisions of Explosive Substances Act, a consent or sanction is required to be obtained from the District Magistrate. In the present case, the consent/sanction order dated 29-8-1997 (Exhibit P. 278) has been placed on the record, which is not valid; the said order has been issued without application of mind; sufficient material was not placed on the record before the sanctioning authority. In support of his submissions, he relied upon - *Madan Mohan Singh v. State of Uttar Pradesh* : AIR 1954 SC637 , *Chand Singh v. The State* 1954 Cri LJ 1280 (Pepsu), *State v. Fulchand* , *Anirudhsinhji Karansinhji Jadeja v. State of*

Gujarat : 1995 CriLJ4154 , Mohd. Iqbal Ahmed v. State of Andhra Pradesh : 1979 CriLJ633 and V. Venkata Subbarao v. State represented by Inspector of Police, A.P. 2007 AIR SCW 9.

17. Shri Gupta further contended that Approver P.W. 1 Pappu alias Saleem was not knowing the accused Chandra Prakash therefore his statement cannot be used against him. He contended that at the time of arrest of accused Chandra Prakash, no key was found with him or recovered from his custody. The trial Court has wrongly mentioned that go-down was opened by the accused with the key which was in his possession. He referred the arrest - memo of the accused to show that on search no such key was found in his possession. He also contended that the disputed house and go-down, from where the recovery of explosive items were made at his instance, were not in his exclusive possession and his conscious possession is not proved in the facts and circumstances of the present case. He also contended that the so-called recovered articles were deposited in the 'maalkhana' at Police Station, Roopbas, and there is no evidence available on the record to prove as to when and to whom the said articles were handed over and when they were sent for analysis. All these circumstances cast serious doubt on the prosecution case and the entire prosecution case is liable to be thrown out. On the point of conscious possession, he referred Mohd. Alam Khan v. Narcotics Control Bureau : 1996 CriLJ2001 and further, in respect of circumstantial evidence and handing over of the seal to respectable person, relied upon Mahmood v. State of Uttar Pradesh : 1976 CriLJ10 and Rajaram v. The State of Rajasthan 1985 (1) R Cr C 342.

18. Shri A.N. Khan, the learned Counsel for the accused Raies Beg, contended that the trial Court has wrongly convicted the accused-appellant on the basis of the statement of P.W. 1 Pappu alias Saleem, who was not known to the accused; the approver's evidence is a weak type of evidence and it is not safe to base any conviction on such evidence; the approver P.W. 1 Pappu alias Saleem was not got identified by any of the accused-persons, therefore, it cannot be said that he was also associated with the accused-persons.

19. The learned Counsel for the accused Abdul Hameed, adopted the arguments of the learned Counsel for the accused Raies Beg and further contended that Abdul Hameed never gave any information under Section 27 of the Evidence Act and no recovery was made at his instance; the trial Court has wrongly convicted and sentenced him and, in these circumstances, the impugned order passed by the trial Court is liable to be set aside.

20. The learned Public Prosecutor, on the other hand, supported the impugned judgment passed by the trial Court and contended that there is overwhelming evidence produced in the present case on behalf of the prosecution to connect all the accused-persons with the crime and the trial Court has rightly convicted and sentenced the accused-persons. He contended that the finding of the trial Court is based on cogent and reliable oral and documentary evidence and the learned Counsel for the accused-persons have failed to point out any perversity in it, therefore, no interference in it is called for. He further contended that one of the approver Pappu alias Saleem was tendered pardon by the Chief Judicial Magistrate on the application filed under Section 306 of the Code of Criminal Procedure, vide order dated 20th September, 1997 (Exhibit P.273); he referred the statements of P.W. 1 Pappu alias Saleem and contended that from his statement the involvement and activity of each of the accused-persons is clearly proved. He also referred Section 133 of the Evidence Act, and contended that the statement of P.W. 1 Pappu alias Saleem (the approver) does not require any corroboration; he contended that although the statement of P.W. 1 does not require any corroboration yet the prosecution has proved the charge against the accused-persons from testimony of independent witnesses as well as documentary evidence, in addition to the statement of approver P.W. 1 Pappu alias Saleem; he contended that there is sufficient evidence to prove conspiracy of accused-persons to commit present offence and their identification; there are independent prosecution witnesses also available in the case.

The learned Public Prosecutor contended that there is sufficient evidence on the record against accused Raies Beg and in this regard he referred the evidence of P.W. 1 Pappu alias Saleem (the approver), and other independent witnesses, namely, P.W. 11 Kanchan Singh, P.W. 12 Shrichand, P.W. 13 Murarilal Sharma,

P.W. 17 Ashok Kumar, P.W. 56 another Ashok Kumar (who identified accused-persons, namely, Abdul Hameed, Abdul Mateen and Raies Beg in the Court); he referred the statements of P.W. 71 M.M. Atray (the Investigating Officer of the case, who proved all documentary evidence exhibited in the case), P.W. 78 Prem Prakash Gupta, (the Judicial Magistrate before whom identification-parade was conducted); and two other witnesses relating to identification-parade, namely, P.W. 12 Shrichand and P.W. 17 Ashok Kumar. He also referred - Exhibit P-27 (extract copy of entries from maalkhana register at police station Gandhi Nagar, Jaipur) Exhibit P. 141 (memo of information given Under Section 27 of the Evidence Act by accused Raies Beg about the shop 'Rajkumar Readymade Store'; Subhash Bazaar, Agra), Exhibit P-142 (memo of information given, Under Section 27 of the Evidence Act by accused Raies Beg about residence of Salar), Exhibit P-143 (memo of information Under Section 27 of the Evidence Act given by accused Raies Beg about secret place of Salar where from activities of Harkat-ul-Ansar launched), Exhibit P. 144 (memo of site plan of the 'Madarsa' and its description), Exhibit P. 145 (memo regarding identification of site of 'Madarsa' by accused Raies Beg), Exhibit P. 156 (trace map of village Chandra Bhan, Farah, Mathura) and Exhibit P.281 (memo of site-plan and its description identified by accused Raies Beg), meaning thereby these exhibits are pertaining to the informations given by accused-persons while in custody under Section 27 of the Evidence Act and the recovery made in pursuance thereof and proved by the Investigating Officer as well as other 'motbirs' of memos.

21. The learned Public Prosecutor also referred the evidence available against accused Abdul Hameed i.e. Exhibit P-24 (site plan proved by P.W. 17 Ashok and P.W. 71 M. M. Atray), Exhibit P-34 and Exhibit P-34-A (memo of site plan i.e. Mohit Jain's Shop No. 219 M. S. Times, new Lajpat Rai Market, Delhi and its description, from where the watch was purchased which was used in the Bomb) and the said documents were proved from the statements of P.W. 30 Mohit Jain and P.W. 71 M. M. Atray. He also referred Exhibit P-31 (acknowledgment receipt of S.F.S.L. Jaipur), which was proved from the statement of P.W. 30 Mohit Jain and P.W. 71 M. M. Atray. He contended that the memo of identification parade (Exhibit P. 36) was proved from the statement of P.W. 78 Shri Prem Prakash Gupta, the Judicial Magistrate, and P.W. 30 Mohit Jain. The another site-plan

(Exhibit P. 53) was proved from the statement of P.W. 76 Bhim Singh and the Investigating Officer P.W. 71 M. M. Atray, Exhibit P. 54 (memo regarding identification of site i.e. SMS Stadium by accused Abdul Hameed) was proved from the statements of P.W. 76 Bhim Singh, P.W. 36 Rajesh and the Investigating Officer P.W. 71 M. M. Atray. He also referred Exhibit P-140, Exhibit P-161, Exhibit P-246 to Exhibit P-254, which are various informations given under Section 27 of the Evidence Act and the recovery made in pursuance thereof etc.

22. So far as accused Chandra Prakash is concerned, the learned Public Prosecutor explained as to why the First Information Report was lodged at Police Station, Roopbas, District Bharatpur (Exhibit P. 160), and contended that it was mentioned therein that it is a supplementary investigation and a reference of original FIR No. 39/96 registered at Police Station Gandhi Nagar, Jaipur, was given in it. The explosive articles were bulky and it could not have been brought to Jaipur on that day itself from Roopbas (Bharatpur), therefore, the same were kept in 'maalkhana' at Police Station, Roopbas. The samples were taken of the articles, and the same were sealed and sent to the Forensic Science Laboratory and positive report was received. He contended that the samples, which were taken at Roopbas on 1st August, 1997, were deposited at Jaipur 'maalkhana' vide Serial No. 199 of the Register on 2nd August, 1997 itself without any delay. The samples, which were taken, were sealed and they were marked as A1, A2, A3, B1, C1, C2, C3, D1. The 28 bags of Ammonium Nitrate were seized vide Exhibit P-43 and their samples were marked as 'X1. He referred FSL Report (Exhibit P.50) and another FSL Report (Exhibit P.51). He also referred the information given by accused under Section 27 of the Evidence Act about 28 bags vide Exhibit P. 264 and the statements of P.W. 36 Rajesh and PW. 65 Girraj. He also referred Exhibit P-28 and the statement of P.W. 19 Kamal Singh.

23. Learned Counsel for the State also referred specific evidence available against accused Abdul Mateen including the information given by him after his arrest and recovery of live time-bomb at his instance from the SMS Stadium where incident took place on 26th January, 1996, which was defused.

24. So far as reply to the arguments advanced on behalf of the learned Counsel for the accused-persons are concerned, the learned Counsel for the State contended that the same are not tenable in the eyes of law. From the evidence - oral and documentary, referred by him, it is clear that the trial Court has rightly convicted the accused-persons. He also referred Sections 133 and 114 illustration (b) of the Evidence Act, Section 34 of the Explosive Substances Act, the Explosive Rules of 1983, particularly Schedule I and Form 23 attached therewith, and Sections 462 and 464 of the Code of Criminal Procedure. He also referred *Manoranjan Singh v. State of Delhi* : 1998 CriLJ2062 , to fortify his submission that there is a presumption of conscious possession of the accused if the lock is opened by accused with key in his possession as done by accused Chandra Prakash in the present case. He contended that the citations referred by the learned Counsel for the appellants are distinguishable and are not applicable in the facts and circumstances of the present case. Some of the citations relate to the provisions of NDPS Act, whereas the Hon'ble Supreme Court in *Gurbax Singh v. State of Haryana* : 2001 CriLJ1166 , has held that Sections 52 and 57 of the NDPS Act are only directory and not mandatory in nature. He also referred *Rajesh Jagdamba Avasthi v. State of Goa* : 2004(97)ECC401 , to show that if there is slight discrepancy in seal then it is of no consequence. He also referred *Government of NCT of Delhi v. Jaspal Singh* : (2003)10SCC586 , and contended that confession of co-accused can be reinforced.

25. While arguing the criminal leave to appeal, the learned Public Prosecutor contended that the sentence of imprisonment awarded to accused Abdul Hameed, Raies Beg and Chandra Prakash, may be enhanced to imprisonment for life under Section 3 of the Explosive Substances Act. He contended that although the leave to appeal is barred by 2823 days i.e. about 7 years 9 months, yet he has explained the delay in his application under Section 5 of the Limitation Act, wherein it is contended that the Public Prosecutor appearing on behalf of the State before the trial Court did not inform the State Government and when the case was argued before the High Court then he sent information to the State Government and thereafter he received the instructions to file it. He, therefore, contended that there is sufficient cause to condone the delay of 2823 days in filing the leave to appeal.

26. We have considered the submissions of the learned Counsel for the parties and carefully scanned the impugned judgment as well as the record of the trial Court.

27. Before considering the facts and evidence of the case in the light of submissions of the learned Counsel for the parties, we would like to refer and consider the relevant provisions of law and various citations referred at the Bar, which are:

Relevant Provisions of Law Section 14 of the Foreigners Act, 1946

14. Penalty for contravention of provisions of the Act, etc. whoever:

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

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

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

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

Section 4 of the Prevention of Damage To Public Property Act. 1984

4. Mischief causing damage to public property by fire or explosive substance.- whoever commits an offence under Sub-section (1) or Sub-section (2) of Section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a

term which shall not be less than one year, but which may extend to ten years and with fine:

Provided that the Court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

Section 9-B of the Explosives Act. 1884

9B. Punishment for certain offences.- (1) Whoever, in contravention of Rules made under Section 5 or of the conditions of a license granted under the said rules:

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sales or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) whoever in contravention of a notification issued under Section 6 manufactures, possess or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) whoever,:

(a) manufactures, sales, transports, imports, exports or possess any explosive in contravention of the provisions of clause (a) of Section 6A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of Section 8 fails to give notice of any accident shall be punishable,:

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.]

Sections 3, 4, 5, 6 and 7 of the Explosive Substances Act, 1908

3. Punishment for causing explosion likely to endanger life or property,- Any person who unlawfully and maliciously causes by:

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property,- Any person who unlawfully and maliciously:

(a) does any act with intent to cause by an explosive substance, or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished:

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

5. Punishment for making or possessing explosives under suspicious circumstances.:

Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished.:

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

6. Punishment of abettors.- Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the

offence.

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

Sections 118, 120-B, 307, 435, 456 of the Indian Penal Code

118. Concealing design to commit offence punishable with death or imprisonment for life.- Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life;

Voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

If offence be committed - if offence be not committed.- shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years, and in either case shall also be liable to fine.

120B. Punishment of criminal conspiracy,- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a

term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.- When any person offending under this Section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees,- Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

456. Punishment for lurking house-trespass or house-breaking by night.- Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Sections 462 and 464 of the Code of Criminal Procedure, 1973

462. Proceedings in wrong place.- No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

464. Effect of omission to frame, or absence of, or error in, charge.- (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has

in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may:

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the case, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of fact proved, it shall quash the conviction.

Section 114 Illustration (b) and 133 of the Indian Evidence Act

114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened regard being had to be common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume:

(a) ...

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

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

Case Law Referred by the Parties

28. In *Niranjan Singh v. State of Punjab* : 1996 CriLJ2506 , the Hon'ble Supreme Court, while dealing with the provisions of Section 300 of the IPC, held that only on the omnibus statement by approver that accused assaulted deceased if not corroborate by material particulars then no conviction can be passed. Para 18 of the judgment is reproduced as under:

18. It may also be stated that the evidence of Gurjant Singh (P.W. 3) the approver shows that Amrik Singh, the accused was the Sarpanch of the village and his position as a Sarpanch was likely to come in danger at the instance of Harnek Singh (deceased). Naturally, therefore, Amrik Singh the accused may have an axe to grind against Harnek Singh (deceased) but there is no evidence on the record to indicate that the appellant, Niranjan Singh had any grudge against Harnek Singh. It is true that the appellant, Niranjan Singh was said to be the close associate of Amrik Singh but that by itself would not suggest any motive on the part of the appellant Niranjan Singh to commit the murder of Harnek Singh. After considering the evidence of Gurjant Singh (P.W. 3) the approver we are of the opinion that his evidence relating to the role of the appellant Niranjan Singh has remained uncorroborated in material particulars and in the absence of such corroboration we find it difficult to accept the evidence of the approver in that behalf.

29. In *Haricharan Kurmi v. State of Bihar* : AIR1964 Pat95 , the Hon'ble Supreme Court, while considering the provisions of Sections 30 and 33 of the Evidence Act, in the facts and circumstances of that particular case, held that confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. Para 16 of the judgment is reproduced as under:

16. It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants

may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognized principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.

30. In *Shakoor v. State of Rajasthan* 2003 (4) WLC (Raj) 230, a Division Bench of this Court held that though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. Para 8 of the judgment reads as under:

8. Having analyzed the case law and the relevant statutory provisions we find that the combined effect of Sections 133 and 114 illustration (b) of the Evidence Act is that though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the Courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

31. In *Khudeswar Dutta v. State of Assam* : 1998 CriLJ2274 , the Hon'ble Supreme Court, while dealing with Section 5 of the Terrorist and Disruptive

Activities (Prevention) Act, 1987, considered the point relating to 'conscious' possession and in para 6 of the judgment held as under:

6. We are of the opinion that the Designated Court committed a grave error of law in convicting the appellant on the basis of the answer given by him. It was alleged against the appellant that the said fire arms were recovered from his Engar Khowa house. While replying to that allegation he clearly stated that they were recovered from the house of another person situated at a distance of 1 1/2 to 2 kms. from his house. Though he stated that 'One Shri Atul Nath, President, Achalik Parishad of ULFA, directed to keep that in that house' he did not say that Atul Nath had directed him to keep those fire arms in that house. While admitting that he led the police to that house he denied that he was an extremist and that he was connected with the 'occurrence'. If these statements made by the appellant were considered carefully by the Designated Court it would have realized that they did not constitute an admission of guilt. The only inference that can be drawn from the answer given by the appellant is that he knew that the said two guns and the cartridges were kept at that place but mere knowledge that they were kept at that place cannot amount to conscious possession of those things. It is, therefore, obvious that on the basis of the said answer it was not proper to convict the appellant under Section 5 of the TADA Act.

32. In *Salim Akhtar alias Mota v. State of U.P.* : 2003 CriLJ2302 , in para No. 10 of the judgment, the Hon'ble Apex Court, while considering the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 on the point of 'possession', in the facts and circumstances of that case, held as under:

10. So far as the disclosure statement of the appellant is concerned, the same was admittedly made to police personnel and only that part of the statement would be admissible which is permissible under Section 27 of the Evidence Act. The scope of this provision was explained by the Privy Council in the well-known case of *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67 : 1947 Cri LJ 533, wherein it was held that it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the

information given, must relate distinctly to this fact. Information as to the past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Therefore, what is admissible is the place from where the polythene bag containing pistol and other articles was allegedly recovered. The fact that some terrorist organization had given the pistol and other articles to the appellant or its use would not be admissible.

33. In *Raosaheb Balu Killedar v. State of Maharashtra* 1995 Cri LJ 2632, the Hon'ble Apex Court, while considering the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 in the facts and circumstances of that case on the point of 'conscious possession', in para 4 of the judgment, held as under:

4. We have gone through the judgment of the learned Designated Judge, the evidence of P.W. 1, P.W. 9 and P.W. 12 and the documents Ex. 11 and Ex. 12. The trial Court has extracted the admissible part of the statement of the appellant recorded under Section 27 of the Evidence Act in para 17 of the judgment. That statement as translated by the learned Designated Judge reads:

Revolver is concealed at Dadar. Come on. I will point out the place and revolver. From this statement we are at loss to understand how the trial Judge could have come to the conclusion that the recovery pursuant to it could clothe the appellant with conscious possession of the revolver and the cartridge. The statement extracted above is capable of an interpretation that the appellant had the knowledge about the concealment of the revolver at the particular place from where it was got recovered and not that he had concealed the same. In this view of the matter, it is not possible to say conclusively and beyond a reasonable doubt that the appellant had conscious possession of the revolver and the cartridge. The evidence of P.W. 1, P.W. 9 and P.W. 12, which only relates to the making of the disclosure statement and the recovery of the revolver and the cartridge cannot advance the case of the prosecution to hold that the appellant was in conscious possession of the revolver and the cartridge. The evidence of the Ballistic Expert also pales into insignificance. Since, the prosecution has failed to establish beyond a reasonable doubt that the appellant was in conscious possession of the revolver and the cartridge his conviction for an offence under Section 3 read with Section

25 of the Arms Act, 1959 cannot be sustained. We accordingly accept this appeal and set aside the conviction and sentence of the appellant and acquit him.

34. In *Aslam Parwez, etc. v. Govt. of NCT of Delhi* : 2003 CriLJ2525 , the Hon'ble Apex Court, while considering the facts and circumstances of that particular case in the light of the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 on the point of conscious possession, in paras 12 and 13 of the judgment, held as under:

12. The inference to be drawn where an incriminating article is recovered at the pointing out of an accused from an open place accessible to all was considered by us in *Crl. A. No. 685 of 2001 Salim Akhtar alias Mota v. State of Uttar Pradesh* decided on 9-4-2003, reported in : 2003 CriLJ2302 and it was observed as under:

In *Sanjay Dutt v. State through C.B.I. Bombay* : 1995 CriLJ477 it has been held by a Constitution Bench that with a view to hold an accused guilty of an offence under Section 5 of TADA, the prosecution is required to prove satisfactorily that the accused was in conscious possession, unauthorizedly In a notified area of any arm or ammunition of the specified description. In *Trimbak v. State of M.P.* : AIR 1954 SC39 recovery of certain stolen articles was made at the pointing out of the accused and on that basis he was convicted under Section 411, IPC by the High Court. Reversing the judgment it was held by this Court that when the field from which the ornaments were recovered was an open one and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. It was further held that the fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles. In *Raosaheb Balu Killedar v. State of Maharashtra* 1995 Cri LJ 2632 the accused had made a disclosure statement and had led the police party to a place behind a mill, pointed out the place and himself removed the earth and from a pit about 6 inches deep recovered a revolver loaded with a live cartridge wrapped in a polythene bag. It was held by this Court that the statement made by the accused was capable of an interpretation that the appellant

had the knowledge about the concealment of the revolver at the particular place from where it was got recovered and not that he had concealed the same and therefore it was not possible to say conclusively and beyond a reasonable doubt that the appellant had conscious possession of the revolver and the cartridge. This principle was reiterated in *Khudeswar Dutta v. State of Assam* : 1998 CriLJ2274 and it was held that mere knowledge of the accused that incriminating articles were kept at certain place does not amount to conscious possession and conviction under Section 5 of the TADA was set aside.¹³ In our opinion the principle laid down above is clearly applicable here and accordingly it is not possible to hold that A-4 was in possession of the revolver and cartridges which were recovered on 3-5-1988. His conviction, therefore, deserves to be set aside.

35. In *Madan Mohan Singh v. State of Uttar Pradesh* : AIR 1954 SC637 , the Hon'ble Supreme Court, in the facts and circumstances of that particular case, while considering the provisions of Section 6(1) of the Prevention of Corruption Act, 1947 on the point of validity of sanction for prosecution of accused, in para 8 of the judgment held as under:

8. The other point raised by the learned Counsel for the appellant seems to us however to be of considerable substance. As the Privy Council pointed out in the case of '*Gokul Chand Dwarkadas v. The King*' , the burden of proving that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts might appear on the face of the sanction or might be proved by extraneous evidence. In the present case the facts constituting the offence do not appear on the face of the letter Ex. P. 10. It was consequently incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. This they did not attempt to do.

A question was put to Mr. Dikshit (P.W. 6) who gave evidence on this point as to whether the material facts were brought to the notice of the Excise Commissioner. The reply given by the witness is as follows:

A detail of this case has been sent to the Excise Commissioner. The said details are in the confidential file at my place. I do not want to show these details. We think that the appellant is right in his contention that the prosecution instead of proving what facts were placed before the Commissioner deliberately withheld them from the Court. The sanction must therefore be held to be defective and an invalid sanction could not confer Jurisdiction upon the Court to try the case. The appeal is entitled to succeed on this point alone; but we consider it proper to record our decision on the second point also as in our opinion the view taken by the High Court, on the merits of the case, appears to be plainly unsupportable.

36. In *Chand Singh v. The State* 1954 Cri LJ 1280 (Pepsu), the learned single Judge of Pepsu High Court considered the effect of Section 29 of the Arms Act, and held that the prosecution under Section 19(f) of the Arms Act, without the previous sanction of a District Magistrate under Section 29 or an invalid sanction, is without jurisdiction and is liable to be quashed.

37. In *State v. Fulchand*, a Division Bench of Madhya Bharat High Court held that mere production of the document was not sufficient but it was necessary to prove the sanction by examining the sanctioning authority.

38. In *Anirudhsinhji Karansinhji Jadeja v. State of Gujarat* : 1995 CriLJ4154, the Hon'ble Apex Court in the facts and circumstances of that case, while considering the provisions of Terrorists and Disruptive Activities (Prevention) Act, 1987, held that sanction was given by the State Government without application of mind because the sanction/consent was given by the Government merely on the basis of the Fax message. Para 15 of the judgment reads as under:

15. The aforesaid is however not all. Even if it be accepted that as an additional safeguard against arbitrary exercise of the drastic provisions, the State Government had provided by administrative instructions an additional safeguard whereunder the DSP was required to obtain the sanction/consent of the State Government, we are of the view that in the present case the same was given by the State Government without proper application of mind. We have taken this view because the sanction/consent was given by the Government merely on the basis of the Fax message dated 17-3-1995 of the DSP. The reason for our saying so is

that though there is on record a Fax message of Deputy Director General of Police also, which is dated 18-3-1995, the sanction/consent order has mentioned above the Fax message of the DSP only. Now, no doubt the message of the DSP is quite exhaustive, as would appear from that message which has been quoted above in full, we are inclined to think that before agreeing to use of harsh provisions of TADA against the appellants, the Government ought to have taken some steps to satisfy itself whether what had been stated by the DSP was borne out by the records, which apparently had not been called for in the present case, as the sanction/consent was given post-haste on 18-3-1995, i.e. the very next day of the message of the DSP. It seems the DSP emphasized the political angle in the first two paragraphs of his message. The dispute or motive stated was that the Darbars were annoyed because they were refused loan and not because of any, political rivalry. In the third paragraph there is reference to statements of accused after arrest which would ordinarily be inadmissible in evidence. Reference to avoid incident of the past does not provide any nexus. The State Government gave the sanction without even discussing the matter with the investigating officer and without assessing the situation independently. All these show lack of proper and due application of mind by the State Government while giving sanction/consent.

39. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh : 1979 CriLJ633 , the Hon'ble Supreme Court was considering the provisions of Prevention of Corruption Act, 1947 and, in the facts and circumstances of that particular case held that prosecution launched without any valid sanction and therefore the cognizance taken by the Special Judge was completely without jurisdiction.

40. In V. Venkata Subbarao v. State represented by Inspector of Police, A.P. 2007 AIR SCW 9, in the facts and circumstances of that case, while considering the provisions of the Prevention of Corruption Act, held that if the documents showing involvement of person actually making demand not produced before the authority then the sanction granted to prosecute accused is vitiated in law. Para 23 of the judgment is reproduced as under:

23. It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning

Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation.

41. In Mohd. Alam Khan v. Narcotics Control Bureau and Anr. : 1996 CriLJ2001 , the Hon'ble Supreme Court, while considering the provisions of Sections 66 and 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in the facts and circumstances of that particular case, held that the prosecution failed to establish the ownership of the flat in question as belonging to the appellant and set-aside the conviction.

42. In Mahmood v. State of Uttar Pradesh : 1976 CriLJ10 ; the Hon'ble Apex Court considered the circumstantial evidence of that particular case and found the same too shaky, suspicious and fragile to furnish a sound foundation for conviction, and consequently set-aside the order of conviction.

43. In Rajaram v. The State of Rajasthan 1985 (10) R.Cr. C. 342, a Division Bench of this Court, in the facts and circumstances of that case, held that it was obligatory on the part of the prosecution to have handed over the seal to some respectable person of the village or a witness who was present when the umbrella was taken over. Para 13 of the judgment reads as under:

13. Thus, it was obligatory on the part of the prosecution to have handed over the seal to some respectable person of the village or a witness who was present when the umbrella was taken. But, the umbrella remained with the SHO, and also, there is no evidence to this effect that the seal on the packet of the umbrella remained intact, till it was brought before the Chairman of Nyay Panchayat for identification parade.

44. In Manoranjan Singh v. State of Delhi : 1998 CriLJ2062 , the Hon'ble Supreme Court found conscious possession of the accused in respect of explosive articles on the basis of statement of prosecution witnesses, who stated that key was produced by the accused and with it the lock of that room was opened. Para 4 of the judgment is reproduced as under:

4. But, we see no reason to disbelieve the evidence of the said three witnesses who have categorically stated that the key was produced by the appellant and with it the lock of that room was opened. The witnesses have also stated that after opening the room the accused had pointed out the rexine bag containing dalda tin from which RDX was found. From this evidence, it becomes clear that the appellant was in conscious possession of the said explosive articles. We are of the view that the appellant was rightly convicted by the trial Court. Hence, we see no reason to differ from the findings recorded by the trial Court.

45. In *Gurbax Singh v. State of Haryana* : 2001 CriLJ1166 , the Hon'ble Apex Court held that Sections 52 and 57 of the NDPS Act, 1985 are directory. This citation was referred by the public prosecutor in reply to the submission of the learned Counsel for the appellant Chandra Prakash, who made his submissions and referred the same citations based on Sections 52 and 57 of the NDPS Act, 1985.

46. In *Rajesh Jagdamba Avasthi v. State of Goa* : 2004(97)ECC401 , the Hon'ble Apex Court held that some discrepancies in the description of the seal are not sufficient to hold that the case of the prosecution must be disbelieved. Para 11 of the judgment reads as under:

11. The evidence noticed above no doubt discloses a discrepancy as to the inscription on the seal. According to panch witness the inscription was ANCPS while according to PW 4 it was 'Anti-Narcotic Cell, Panaji, Goa'. According to PW 1, it was 'Anti-Narcotic Cell'. These discrepancies in the description of the seal, however, are not sufficient to hold that the case of the prosecution must be disbelieved. PW 2 while he described the inscription on the seal, himself stated that he was not sure as to what exactly was inscribed on the seal. At best he was stating from recollection. Similarly, the evidence of PW 4 discloses that there was only one seal of the Anti-Narcotic Cell and even according to PW 1, the seal bore the inscription 'Anti-Narcotic Cell'. We do not attach much importance to this discrepancy in the description of the seal. The High Court also did not attach much importance to this discrepancy.

47. In *Government of NCT of Delhi v. Jaspal Singh* : (2003)10SCC586 , the Hon'ble Apex Court believed the recovery which was made from the house of the accused who opened Almira with key. The Apex Court further held that there can be no impediment for the Court to reinforce its satisfaction of guilt of A-4 by referring confession of other co-accused as well. The relevant portion of Para 12 of the judgment reads as under:

12. ...The decision reported in *Maharaj Prithvisinghji Bhimsinghji v. State of Bombay* : AIR 1960 SC483 , as to possession and knowledge of existence, has no relevance or application to the facts of the case, since in the present case it has been proved not only to have been recovered from the house of A-4 but it was he who opened the almirah with a key and made available the directory and other cards and invitations from out of it. It is too much for the learned Judge in the High Court to expect that each one of them should have played identical roles and been parties to all events and happenings, at all stages and times. In such circumstances, there can be no impediment for the Court to reinforce its satisfaction of guilt of A-4 by referring to the confession of other co-accused as well. It is this misdirection as to the required legal norms and extent of proof that misled the High Court in the ultimate conclusions to be drawn.

48. So far as facts/merits of the case are concerned, it is a case relating to bomb-blast in Jaipur, the capital of the State of Rajasthan, on the Republic day of India i.e. 26th of January, 1996 at the time in between 8.30 and 8.35 a.m. in SMS stadium, where the entire preparation had already been undertaken to celebrate the Republic Day at SMS Stadium, which was a State level programme. Although the public had started coming there in the Stadium but before the function could start the bomb exploded in between 8.30 and 8.35 a.m. inside the SMS Stadium towards its southern and eastern side in between the Gate Nos. 12 and 13, and due to this blast, a big size crater came into existence at the scene of explosion, and one person also sustained injuries in the blast. The first information report was lodged immediately at 9.15 a.m. itself by Shri Prahlad Singh, the Station House Officer of Police Station, Jhotwara, who was on duty at that particular place fallen in the jurisdiction of Police Station Gandhi Nagar, Jaipur. It is relevant to mention that at the relevant point of time it was not known to anyone as to who caused this

incident, therefore, no person was falsely named in the first information report. The Investigating Officer prepared the site plan and started investigation in the matter. One anonymous letter in Urdu language (Exhibit P-57) (Hindi translation thereof is Exhibit P-58) was sent in the name of 'well-wisher' addressed to the Superintendent of Police, informing therein that while in custody in Central Jail, Jaipur, he came to know about the culprits of SMS Stadium bomb-blast case. It was mentioned that ISI of Pakistan is behind this bomb-blast. One Raies Beg of Agra made arrangements of visit of these culprits to Jaipur; one Abdul Hameed is resident of Flozabad, who has his shop near Jama Masjid; he appears to be a bogus Doctor; they made a conspiracy in village Farah; one person Pappu Puncturewala also helped them. A request was made that three persons may be arrested and later on he himself would come in open before him. Thereafter the police proceeded further and investigated the matter in that direction. The accused Abdul Hameed was arrested on 8th June, 1997 vide Exhibit P-162; accused Rales Beg was arrested on 8th June, 1997 vide Exhibit P-133; accused Abdul Mateen was arrested in Srinagar (J&K;) on 27th June, 1997 vide Exhibit P. 163; accused Pappu alias Saleem was arrested on the basis of the information given by accused-persons under Section 27 of the Evidence Act. The Investigating Officer proceeded for Roopbas from where the accused used to purchase explosive articles. The place was identified which was found to be of Chandra Prakash, who was also identified and arrested vide arrest-memo Exhibit P-37 on 1st August, 1997 and on his information and instance the police went to his house/go-down and bulky explosive articles were recovered from there.

49. So far as accused Abdul Mateen is concerned, the prosecution has relied upon the statements of PW-1 Pappu alias Saleem (the approver), PW-71 M. M. Attray (the Investigating Officer of the case) and PW-69 G.P.S. Virk, Assistant Commandant of BSF, who stated before the trial Court that during search of house of Mohammad Alam Baba in Srt Nagar, who is financial controller of 'Harkat-ul-Ansar Terrorist Organization', the accused Abdul Mateen was arrested from his house in Srinagar on 5th May, 1997, who was later on arrested in the present case on 27th June, 1997. Shri G.P.S. Virk also identified accused Abdul Mateen in the Court. The accused Abdul Mateen, in his statement under Section 313. Cr.P.C, has not disputed that he was not having Passport and Visa and he is of Pakistan

nationality. The prosecution has also relied upon the testimony of PW-6 Jai Narain, PW-7 Gopal Saini, PW-32 Bhoop Singh, PW-30 Mohit Jain, PW-67 Suresh Kumar Saini (SHO, PS Gandhi Nagar), PW-16 Vinod Sharma, PW-10 Gordhan, PW-22 Shiv Nath, PW-12 Shri Chand, PW-11 Kanchan Singh, PW-13 Murari Lal Sharma, PW-17 Ashok Kumar, PW-78 Prem Prakash Gupta (the Judicial Magistrate), PW-34 Shri Chetan Das Rawtani (FSL witness) and PW-77 Dr. P.S. Manocha. PW-1 Pappu alias Saleem, in his statement, specifically stated about involvement of accused Abdul Mateen in the incident. In addition to the statement of PW-1, it is relevant to mention that on 28th June, 1997, accused Abdul Mateen gave an information at 6.00 a.m. under Section 27 of the Evidence Act about another bomb and on the basis of the said information the Investigating Officer visited the spot along-with the accused and, at his instance, recovered the bomb, which was embodied under the earth, and a seizure-memo was prepared in the presence of the witness, who proved the same before the trial Court. The identification-parade in respect of accused Abdul Mateen is also proved from the statement of the prosecution witnesses. The information under Section 27 of the Evidence Act was also voluntarily given by the accused. So far as non-mentioning of the dates on certain exhibits is concerned, it is relevant to mention that on material exhibits the date has been mentioned like the information under Section 27 of the Evidence Act, but when the Investigating Officer proceeded immediately to investigate the matter in pursuance of the information and made the recovery and prepared the memo then a reference has been made in the memo that in pursuance of the information given by accused the recovery has been made and memo has been prepared. It shows that there was no break in investigation and it was continuously going on and the document was prepared on the same day soon after the recovery of article on the basis of information, therefore, even if the date is not given on subsequent document then it will be deemed to have been prepared on the same day and, in these circumstances, non-mentioning of the date on that particular document, which is otherwise connected with other documents bearing date, is not fatal to the prosecution case in any manner. The learned trial Court has minutely examined the statement of the approver PW-1 Pappu alias Saleem, and we have also gone through his statement in detail and, after considering his statement, we are of the view that the trial Court has rightly

relied upon the statement of PW-1, the approver, and, as per Section 133 of the Evidence Act, there is no need of any corroboration of the said evidence, but, in the present case, there is ample evidence available for its corroboration also. The informations given by accused Abdul Mateen and the recovery made on that basis have not only been proved by the relevant witnesses but the same has also been proved by the Investigating Officer Shri M. M. Atray. In this connection the statements of PW-6 Jai Narain, PW-7 Gopal Saini and PW-22 Shiv Nath Singh can be referred, who, in their respective statements, have stated that at the instance of the accused Mateen the live time-bomb was recovered on 28th June, 1997. The said recovered bomb was of high explosive, and gelatin (dynamite) was used in the said bomb. The prosecution witnesses PW-16 Vinod Sharma and PW-10 Gordhan were also accompanied with PW-22 Shiv Nath. PW-16 Vinod Sharma also stated that electric detonator was found in the time-bomb, which was neutralized. The evidence relating to recovery of live bomb is very important piece of evidence, which cannot be ignored particularly when the same is fully proved from the prosecution evidence. Therefore, even if there are some discrepancies or lapses of minor nature, the same cannot be treated as fatal to the prosecution case.

50. The aforesaid four witnesses have also identified all the three accused, namely, Abdul Mateen, Raies Beg and Abdul Hameed in the Court. The witness PW-12 Shri Chand has also stated that Pappu alias Saleem (PW-1) uses to take the names of three accused-persons, namely, Abdul Hameed, Raies Beg and Abdul Mateen; he further stated that all the three accused persons used to visit the village Farah and he saw them there at number of times. PW-13 Murari Sharma also identified the accused in the Court and stated that all the three accused used to go in 'madarsa' of the village. There is sufficient evidence available on the record to connect the accused Abdul Mateen with the offence under Section 14 of the Foreigners Act, under Section 4 of the PDPP Act, under Sections 446, 307/120B, 435/120B, 118/120B, IPC, under Section 9B of the Explosive Act, and under Sections 3, 4, 5 of the Explosive Substances Act.

51. So far as citations referred by the learned Counsel for the appellant Abdul Mateen are concerned, it is relevant to mention that each case is decided on the

basis of facts and circumstances of that particular case, therefore, before applying the case law, the facts and circumstances of that particular case are required to be minutely scrutinized. After having gone through the facts and circumstances of the present case and the facts of the cited cases and on minute scrutiny thereof, we find that all the citations relating to evidentiary value of statement of approver as well as conscious possession are not applicable in the facts and circumstances of the present case.

52. So far as accused Chandra Prakash is concerned, we are satisfied that there is ample evidence against him including the evidence of approver PW-1 Pappu alias Saleem, the information given by the accused and recovery made in pursuance thereof, to connect the accused with the charges levelled against him and the trial Court has rightly convicted him. On the basis of the information of the accused, the Investigating Officer made a search of his house and go-down at his instance and huge explosive articles were recovered which are clear from the recovery memos relating to accused Chandra Prakash. The 28 bags of Ammonia Nitrate were recovered from his possession. It is relevant to mention that recovery of explosive articles at village Roopbas was made from the places on the information and at the instance of accused himself, therefore, it cannot be said that he was not in possession or conscious possession of the same. Even if documentary evidence relating to ownership of house or go-down has not been produced then the same cannot be said to be fatal to the prosecution, particularly when the recovery of the articles was made from there after opening lock by accused from his key. AW-1 Pappu alias Saleem has also stated in this regard and there is no reason to disbelieve his statement also. Although his statement is not required any corroboration but in the present case there is corroborative evidence also viz. information given by accused and recovery of articles made in pursuance thereof. The statement of PW-71 M. M. Atray, the SHO, is also relevant, who proved all the relevant exhibits in the present case. The identification parade with regard to this accused has also been proved by PW-78 Prem Prakash Gupta, the Judicial Magistrate. The relevant exhibits are Exhibit P-284, Exhibit P-285, Exhibit P-36, Exhibit P-15 and Exhibit P-16. From the statement of PW-34 Chetan Das Rawtani of FSL and Exhibit P-49, it is clearly proved that the articles recovered at the instance of accused Chandra Prakesh could have been used in

manufacturing bombs. PW-32 Bhoop Singh has proved Exhibit P-42, the recovery memo. Although PW-49 Ram Prakash, the landlord, has been declared hostile, but the other evidence cannot be ignored which is sufficient to prove charges against the accused. The accused Chadra Prakash used to supply explosive articles viz., dynamite to accused Abdul Mateen and his colleagues, who are co-accused.

53. Sofar as submission of the learned Counsel for the appellant Chandra Prakesh about jurisdiction of Jaipur Court is concerned, it is relevant to mention that in FIR No. 305/1997 reference of FIR No. 39/1996, lodged at Police Station, Gandhi Nagar, Jaipur, has been given; it was only a supplementary information and the same was prepared only to deposit the recovered articles at Police Station Roopbas. The said information was nothing but in continuation of FIR No. 39/96 lodged at Police Station Gandhi Nagar itself. Apart from above, it is also relevant to refer Section 462 of the Code of Criminal Procedure which says that no finding, sentence or order of any Criminal Court shall be set-aside merely on the ground that the enquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district Court, special division or other local area; unless it appears that such error has in fact occasioned failure of justice. Looking to all the facts and circumstances of the case, the nature of offence, the manner in which the incident took place and the bulky articles relating to explosion recovered from the conscious possession of the accused-appellant, we are of the view that there is no failure of justice which has occasioned to the appellants in the present case, therefore, there is no force in the submission of the learned Counsel for the appellant.

54. So far as the submission of the learned Counsel for the appellant Chandra Prakash about invalid sanction (Exhibit P-278) under Section 7 of the Explosive Substances Act is concerned, we are of the view that after perusal of Exhibit P-278 we are satisfied that sufficient and relevant material was placed before the sanctioning authority before he accorded the consent and the consent was rightly given by the authority concerned under Section 7 of the Explosive Substances Act, 1908. The citations referred by the learned Counsel in this regard are not applicable in the facts and circumstances of the present case. The

consent/sanction order is self-speaking and detailed one. All the facts had been taken into consideration by the District Magistrate before the consent was granted. The entire police diary was made available to the sanctioning authority before the sanction was granted under Section 7 of the Explosive Substances Act, 1908. Apart from above, it is also relevant to mention as per Section 464 of the Code of Criminal Procedure it is clear that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, the confirmation or revision, a failure of justice has in fact been occasioned thereby. It is relevant to mention that the consent/sanction order was passed way back on 29th August, 1997 and the same was not challenged by the accused either before or after filing of the charge-sheet or during the trial of the case. Although we are satisfied on facts that the order Exhibit P-278 is in accordance with the law but apart from above we are also satisfied that the same cannot be allowed to be challenged now in view of Section 464 of the Code of Criminal Procedure, as we do not find any failure of justice which might have occasioned thereby to the accused.

55. The another submission that no key was recovered at the time of search of the appellant Chandra Prakash as the said fact was not mentioned in his memo of arrest is concerned, it is clear from the evidence on the record that when the accused went along-with the Investigating Officer and 'motbirs' towards house/go-down, he took his key and he himself opened the lock with the same; it clearly shows that he was in knowledge and conscious possession in respect of explosive articles. We have already held above that approver's statement cannot be disbelieved in the facts and circumstances of the present case. The approver has also stated against the appellant about supply of explosive articles to accused-persons.

56. So far as recovered articles, which were deposited in the 'maalkhana' at Police Station, Roopbas is concerned, we find that samples thereof were taken and the same were deposited on the second day itself at Jaipur, which were sent to Forensic Science Laboratory, and the prosecution witness has specifically stated

that he received the samples intact and the said fact has been corroborated by the FSL Report wherein it has been mentioned that the samples were recovered intact. In these circumstances we are satisfied that there is ample evidence on the record to prove that accused Chandra Prakash supplied the explosive articles to the co-accused-persons for manufacturing bombs and we do not find any force in any of the submissions of the learned Counsel for accused-appellant.

57. So far as remaining two accused Raies Beg and Abdul Hameed are concerned, as discussed above, there is ample evidence available against them on the record. PW-1 Pappu alias Saleem solely has taken their names; the other witnesses, as discussed above, have also stated that they were seen in village Farah with other co-accused Abdul Mateen; they have also been identified in the Court by the prosecution witnesses. The trial Court has also discussed the evidence available against these two accused-persons and, after considering the finding of the trial Court in detail in the light of submissions of the learned Counsel for the appellants, we are satisfied that there is no illegality or perversity in the finding of the trial Court. The trial Court has rightly believed on the statement of PW-1 Pappu alias Saleem and other prosecution witnesses and the documentary evidence as well. The offence of conspiracy against accused Raies Beg is proved from relevant documents about it i.e. Exhibit P-44 as well as from the statements of the witnesses, namely, PW-33 Ashok Raj Kapoor; Exhibit P-44 has been proved by PW-33 Ashok Raj Kapoor; Exhibits P-45 to Exhibit P-47 have been proved by P-33 Ashok Raj Kapoor, Exhibit PW-133 and Exhibit PW-134 have been proved by PW-71 M. M. Atray and PW-54 Prahlad Rai; Exhibit P-141 to P-143, Exhibit P-145, Exhibit P-256 and Exhibit P-280 to Exhibit P-281 have been proved by PW-71 M. M. Atray, the SHO Police Station, Gandhi Nagar, Jaipur. Exhibits P-284, P-285 and P-291 have been proved by the witnesses, namely, PW-12 Shri Chand, PW-78 Prem Prakash Gupta, PW-71 M. M. Atray and PW-56 Ashok Kumar. Similarly, the other charges are also proved from the evidence discussed above. So far as accused Abdul Hameed is concerned, the conspiracy and commission of offence by him is proved from the statement of PW-1 Pappu alias Saleem and in addition thereto the same is also proved from Exhibit P-24, Exhibit P-34, Exhibit P-34A, Exhibit P-35, Exhibit P-36, Exhibit P-53, Exhibit P-54, Exhibit P-140. Exhibit P-161, Exhibit P-162, Exhibit P-245 to Exhibit P-254, Exhibit P-284 and Exhibit P-291,

which have been proved by PW-17 Ashok Kumar, PW-71 M. M. Atray, PW-30 Mohit Jain, PW-78 Prem Prakash Gupta, PW-36 Rajesh Kumar, PW-76 Bhim Singh and PW-12 Shri Chand.

58. In view of the above discussion, we are of the view that the finding of the learned trial Court is based on cogent and reliable evidence and we do not find any illegality or perversity in it so as to interfere with the same. We do not find any force in any of the submissions of the learned Counsel for the appellants.

59. So far as leave to appeal, preferred by the State of Rajasthan for enhancement of sentence of imprisonment of three accused, namely, Abdul Hameed, Raies Beg and Chandra Prakash, is concerned, we find that the judgment of the trial Court was passed way back on 22nd April, 2000. The accused-appellants preferred their separate appeals against the order of their conviction in this Court and notices thereof were given to the State in the year 2000 itself. The present leave to appeal has been preferred in this Court on 15th January, 2008 with a delay of 2823 days i.e. about 7 years 9 months. The only explanation for delay given by the learned Counsel for the State is that the learned Public Prosecutor appearing on behalf of the State in the trial Court did not inform the State Government about result of the case; further the record of the trial Court had been summoned by this Court, therefore, the State Government could not peruse the record of the case. Both the explanations furnished on behalf of the State for condonation of delay are flimsy in nature and cannot be believed in any circumstances whatsoever. Even if the record of the trial Court had reached to this Court, no one prevented them to inspect the same in this Court. They could have moved proper application for inspection of the record or for obtaining certified copies of the documents. It is relevant to mention that a separate case-diary remains with the Public Prosecutor and that all the documents are produced by the Government in the Court and thus no question does arise of inspection or perusal of the documents. The Government has taken this ground only for the sake of ground and it has no force. The accused-persons are required to serve copy of memo of appeal along with the judgment of the trial Court to the counsel for the State or in the office of the Government Advocate and the same were supplied in the year 2000 itself. The notices of the appeals were also served upon the State in

the year 2000 itself. From the above discussion it is clear that the State Government had knowledge about the impugned judgment since 2000 itself and even if no information was given by the Public Prosecutor to it, It was a duty of the State to make an enquiry about it when notice of appeal of accused was served upon them. The matter relates to Bomb Blast on Republic Day at S.M.S. Stadium, where it was going to be celebrated. It is very surprising that in such an important matter, the State Government has proceeded in such a manner and has tried to furnish a flimsy ground to establish sufficient cause for condonation of delay. Thus, the explanation is furnished by the learned Counsel for the State in the application under Section 5 of the Limitation Act for condonation of 2823 days delay, do not constitute sufficient cause. Consequently, the application under Section 5 of the Limitation Act for condonation of delay of 2823 days i.e. about 7 years 9 months, is dismissed. Apart from above, we have also examined the leave to appeal for enhancement of sentence of merits and we are satisfied that the learned trial Court has rightly exercised its discretion in awarding the sentence to accused-persons looking to their involvement and in the facts and circumstances of the present case and the same does not call for any interference by this Court. Hence, the leave to appeal preferred by the State deserves to be dismissed being barred by limitation as well as on merits also.

60. In view of the above discussion, all the four appeals, filed by the accused-appellants are dismissed. The leave to appeal, filed by the State, is also dismissed being barred by limitation as well as on merits also. The appellant Chandra Prakash is on bail, hence his bail bonds are cancelled. He is directed to surrender himself before the trial Court forthwith, failing which the trial Court is directed to take necessary steps for his custody and to send him in jail to serve out his remaining part of sentence.