IN THE COURT OF SESSIONS FOR GR. MUMBAI

SESSIONS CASE NO. 175 OF 2009

The State of Maharashtra

D.C.B.C.I.D.-

1. C.R.No.182/08 (D.B.Marg P.Stn.C.R.No.305/08)
2. C.R.No.186/08 (Yellow Gate P.Stn.C.R.No.52/08)
3. C.R.No.187/08 (Azad Maidan P.Stn.C.R.No.245/08)
4. C.R.No.188/08 (Azad Maidan P.Stn.C.R.No.246/08)
5. C.R.No.191/08 (Marine Drive P.Stn.C.R.No.231/08)
6. C.R.No.192/08 (Marine Drive P.Stn.C.R.No.230/08)
7. C.R.No.193/08 (Colaba P.Stn. C.R.No.240/08)
8. C.R.No.194/08 (Colaba P.Stn. C.R.No.242/08)
9. C.R.No.197/08 (Colaba P.Stn.C.R.No.241/08)
10. C.R.No.198/08 (Vile Parle P.Stn.C.R.No.464/08)
11. C.R.No.200/08 (Byculla P.Stn.C.R.No.318/08)
12. C.R.No.213/08 (A.T.S.C.R.No.20/08 &
    C.S.T.Rly.P.Stn.C.R.No.155/08) ... Complainant

V/s

1. Mohammad Ajmal Mohammad Amir Kasab
   @ Abu Mujahid.
   Age : 21 yrs, Resident of –
   Village Faridkot, Tal. Dipalpur,
   Dist., Okara, Punjab, Pakistan.

2. Fahim Harshad Mohammad Yusuf Ansari
@ Abu Jarar @ Sakib @ Sahil Pawarkar
@ Samir Shaikh @ Ahmed Hasan
Age : 35 yrs. Resident of – Room No. 2409,
Chawl No. 303, Motilal Nagar No. 2,
M.G. Road, Goregaon (W), Mumbai

3. Sabuddin Ahmed Shabbir Ahmed Shaikh
@ Saba @ Farhan @ Mubbashir @ Babar
@ Sameersingh @ Sanjiv @ Abu-AL-Kasim
@ Iftikhar @ Murshad @ Mohammad Shafiq
@ Ajmal Ali.
Age : 24 yrs. Resident of At post Gandwar
(Sakri Police Station) via Pandol
Dist. Madhubani, Bihar State. ... Accused.

CORAM: H.H.ADDL.SESSIONS JUDGE.
SHRI M.L.TAHALIYANI

DATED : 6TH MAY, 2010

Mr.Ujjwal Nikam, Spl.P.P. for the State.

Mr.Abbas Kazmi a/w Mr.K.P.Pawar, Advocates for Accused No.1.

Later on Mr.K.P. Pawar, a/w Mr. More, Advocates for Accused No.1

Mr.Shahid Azmi a/w Ms.Saba Qureshi & Mr. Nilesh Jadhav, Advocates for Accused No.2

Later on Mr.R.B.Mokashi a/w Mr.Khalid Azmi & Mr. S.R.Mourya , Advocates for Accused No.2

Mr.Ejaj Naqvi a/w Mr.G.H.Thonge, Advocates for Accused No.3

J U D G M E N T

1. Death of 166 persons, minor to major injuries to 238 persons and loss of huge property at various places including prime locations like Chhatrapati Shivaji Terminus (C.S.T.), Hotel Taj and Oberoi, has been attributed to the well planned ill acts of accused Nos. 1, 2 and 3, nine deceased accused namely :

1. Ismail Khan@Abu Ismail,Resident of Dera Ismail Khan, Punjab, Pakistan.

2. Imran Babar @ Abu Aakasha
Resident of Multan, Punjab, Pakistan.

3. Nasir @ Abu Umar,
Resident of Faislabad, Pakistan.

4. Nazir @ Abu Umer,
Resident of Faislabad, Pakistan.

5. Hafiz Arshad @ Abdul Rehaman Bada
@ Hayaji.
Resident of Multan Road, Punjab, Pakistan.

6. Abadul Reheman Chhota @ Saakib,
Resident of Arafwala, Multan Road,
Punjab, Pakistan.

7. Fahad Ullah,
Resident of Ujarashamnkam, Dipalpur,
Harun Shaikh, Kasoor Road, Pakistan.

8. Javed @ Abu Ali.
Resident of District Okara, Panjab, Pakistan.

9. Shoaib @ Abu Soheb,
Resident of Naroral, Shakkar Road,
Sialkot, Panjab, Pakistan.

and thirty five wanted accused namely :

1. Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab
2. Zaki-Ur-Rehaman Lakhvi
3. Abu Hamza
4. Abu Al Kama @ Amjid
5 Abu Kaahfa
6. Mujja Mil @ Yusuf
7. Zarar Shah
8. Abu Fahad Ullah
9. Abu Abdul Rehman
10. Abu Anas
11. Abu Bashir
12. Abu Imran
13. Abu Mufti Saeed
14. Hakim Saab
15. Yusuf
16. Mursheed
17. Aakib
18. Abu Umar Saeed

19. Usman
20. Major General Sahab – (Name not known)
21. Kharaksing
22. Mohammad Ishfak
23. Javid Iqbal
24. Sajid Iftikhar
25. Col. R. Sadat Ullah
26. Khurram Shahdad
27. Abu Abdur Rehaman
28. Abu Mavia
29. Abu Anis
30. Abu Bashir
31. Abu Hanjla Pathan
32. Abu Saria
33. Abu Saif-Ur-Rehman
34. Abu Imran
35. Hakim Saheb.

Though the accused No.1 who is the sole surviving alleged attacker was arrested on the night of alleged attack i.e. **26th November, 2008**, the date which probably no Mumbait will forget, the alleged terror attack went on till the early hours of 29th November, 2008 at Hotel Taj, Hotel Oberoi and Nariman House in Colaba, Mumbai. During the whole incident, the

scenario went on changing so fast that saving lives of those hauled up at various places sieged by the attackers had become a matter of prime concern. Almost all the administrative agencies and security agencies in Mumbai were engaged to combat the attack and to apprehend the alleged terrorist who had been destroying property and killing people at four prime places in South Mumbai namely C.S.T.M. Railway Station, Hotel Taj, Totel Oberoi & Trident ,and Jewish prayer centre at Nariman House.

2. During the said attack Mumbai Police and Government Railway Police lost **13** policemen which included two very senior police officers namely Shri Hemant Kamlakar Karkare (I.P.S.) and Shri Ashok Marutrao Kamate (I.P.S.), young and dynamic Sr.Police Inspector Mr.Vijay Salaskar and Assistant Sub-Inspector Mr.Tukaram Ombale.

3. According to prosecution case the prime object of the terror attack was to separate Kashmir from India. It is a well known fact that the State of Jammu & Kashmir was acceded to India by an instrument of accession dated 26th October, 1947 by Shri Hari Singhji Maharajadhiraj of Jammu & Kashmir. It may also be noted here that Jammu

& Kashmir was one of the provincial States of India on which the British Paramountcy lapsed at the strike of midnight of 15th August, 1947. By the Indian Independence Act, 1947, two independent dominions i.e. India and Pakistan were settled. The rulers of Provincial States had an option to join either of the two dominions- India or Pakistan. As stated earlier by me, Maharaja of Jammu & Kashmir Shri Hari Singhji acceded Jammu & Kashmir to the dominion of India by the instrument dated 26th October, 1947. This was accepted by the Governor General Lord Mountbatten on next day. There was intrusion by Pakistan in the territory of Kashmir and ultimately there was a ceasefire which had brought about a line of control which is popularly known as L.O.C. It is the prosecution case that it was the object of accused No.1, the nine deceased accused and thirty five wanted accused to wage war against the Government of India and that actually they waged war to achieve their object of so called liberation or independence of Indian administered Kashmir.

4. To achieve this object , the accused No.1 , deceased accused Nos. 1 to 9 and thirty five wanted accused had allegedly made preparations for more than one year before launching attack on India on the night of 26th

& 27th November,2008. Briefly stated, during the course of preparations, they had allegedly acquired electrical gadgets including satellite phone, VOIP service, outboard machine for a speed boat and other articles. Physical and psychological training was imparted to the accused No.1 and the nine deceased accused. It is alleged that the accused No.1 and the nine deceased accused had undergone rigorous training at various camps held by Lashkar-e-Taiba in Pakistan as well as in Pakistan occupied Kashmir.

5. The accused No.1 and the nine deceased accused took part in the alleged incident. All of them had reached Badhwar Park, Cuffe Parade, Mumbai on 26th November, 2008 at about 9.00 p.m. by an inflatable boat powered by Yamaha Enduro O.B.M. Two of them including accused No.1 proceeded to C.S.T.M., another two proceeded to Nariman House, Colaba, the third pair proceeded to Hotel Leopold at Colaba, the fourth pair went to Hotel Taj. The last pair proceeded to Hotel Oberoi. The two accused who had proceeded to Hotel Leopold had, after opening indiscriminate fire at the Hotel, had joined their two associates at Hotel Taj. As already stated, in all **166** persons had died and **238** persons were injured. The total loss of property is calculated to be Rs.155,56,77,105/- (Rs. One hundred fifty five

crores fifty six lakhs, seventy seven thousand, one hundred five.). According to the prosecution case accused No.1-Ajmal Kasab and deceased accused No.1-Abu Ismail were responsible for the incident at C.S.T.Rly. Station , Cama Hospital (In), Cama Hospital (Out) and Vinoli Chaupaty. They were also responsible for the bomb explosion in taxi No. MH-01-G-7792 on Western Express Highway, Opp.City Swan Club, Vile Parle (East), Mumbai. Deceased accused No.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar were responsible for the incident at Nariman House. Deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9- Shoaib @ Abu Soheb were responsible for the incident at Hotel Leopold. They had also joined deceased accused No.5 & 8 at Hotel Taj. Deceased accused No.4 and 9 were also responsible for the bomb explosion in taxi No. MH-01-J-5308 at Wadibunder. Deceased No.5-Hafiz Arshad @ Abdul Rehaman Bada @Hayaji. and deceased accused No.8- Javed @ Abu Ali had attacked on Hotel Taj and deceased accused No.6 -Abadul Reheman Chhota @ Saakib and deceased accused No.7-Fahad Ullah were responsible for the incident at hotel Oberoi. It is alleged that the offences committed by the accused No.1 and the deceased accused Nos.1 to 9 were in furtherance of the conspiracy hatched within and

without India by the accused Nos. 1, 2 and 3, deceased accused Nos. 1 to 9 and the wanted accused Nos. 1 to 35.

6. It is alleged by the prosecution that the attack was masterminded by Pakistan based terrorist organization Lashkar-e-Taiba which is now known as Markaz-ud-Dawa-wal-Irshad. Lashkar-e-Taiba was allegedly formed in the year 1989 in Afghanistan. It is led by wanted accused No.1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab. It is alleged that the defining object of the group is to Islamicise the South Asia. As far as India is concerned, the alleged prime object of the group is to get so called freedom for Muslims in Indian Administered Kashmir. The organization, it may be noted, is banned in India under Unlawful Activities (Prevention) Act, 1967 . It is also banned in Pakistan, United Kingdom and many other countries. The wanted accused No.1- Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab has been listed as Major of Lashkar-e-Taiba. The United National Security Council has also listed the wanted accused No.2-Zaki-Ur-Rehaman Lakhvi as one of the senior members of Lashkar-e-Taiba.

7. It is the case of prosecution that the wanted accused No.2-Zaki-Ur-Rehaman Lakhvi is listed as terror group's chief for anti India operations. The prosecution has also alleged that the new outfit named as Jammat-Ud-Dawa has also been recently declared as terrorist front by United Nations as per its Resolution No.1267.

8. It is the case of prosecution that Lashkar-e-Taiba has its training camps in Pakistan Occupied Kashmir (P.O.K.) and that accused No.1 and the nine deceased accused had undergone rigorous training in three to four stages at various places before they began their journey from Karachi to Mumbai with the arms and ammunitions and requisite ration and other articles required during the journey period. The accused had sophisticated electronic gadgets to successfully carry out the planned attack on various places in Mumbai. For this purpose it was necessary for the attackers to be in touch with their alleged handlers including the wanted accused No.1 and 2 who were allegedly based in Pakistan. For the purpose of communication between the attackers and handlers, they had decided to use mobile phones and for that purpose five **Nokia 1200 model** phones were acquired by the conspirators. The said five Nokia phones were

shipped from Dong Guan factory of Nokia located in China. They were shipped in the names of two dealers in Pakistan the details of which are as under :

United Mobile, Pakistan. - 2 phones

12, Pakistan Pvt.Ltd. - 3 phones.

I.M.E.I. numbers of the said phones were as under :

353526024049451
353526025840890
353526025828739
353526025842235
353526025933620

The conspirators had also acquired some Indian Sim Cards to be installed on the cell phones to be used by the attackers. As far as the handlers were concerned, it was planned that they would be using Voice Over Internet Protocol (VOIP) to contact the attackers in Mumbai. Obviously the purpose was to have long time conversation at minimum charges. It was also obvious from this plan that the mobile phones proposed to be handed over to the attackers would be used only for limited purpose of contacting the handlers.

9. For the purpose of obtaining VOIP service, an account was opened on Internet with Callphonex of New Jersey in the name of Kharak Singh. The said Kharak Singh introduced himself as reseller of VOIP in India and therefore Callphonex had opened an account in the name of Kharak Singh.

10. It need not be stated here that the VOIP service allows an individual to make and receive telephone calls between the computer to computer (PC to PC), computers to telephones and/or telephone to telephone through the Internet. This service is available to any individual or entity with Internet connectivity regardless of where the individual or entity is located. Customer can also purchase Direct Inward Dialing (DID) numbers from the service providers. A DID allows telephones on public switched telephone network to connect to a VOIP account. Callphonex with whom an account was opened in the name of Kharak Singh for availing VOIP had purchased specific DID numbers from Voxbone, a separate and distinct corporate entity located in Belgium. Each account provided by the VOIP service provider has distinct account number. A client can pay for inter-net telephony via money orders or credit cards.

11. International Connection Service, Incorporated (I.C.S.) owned by Nizar Al Sharif, was running a business under the brand name Callphonex and had telephone number (201) 253-1824 for VOIP services until January 6, 2009. The peculiarity of this system is that the customer using the internet telephony will be disclosing his Caller ID as the number given by the service provider and in the present case it was (201) 253-1824. As such, in brief, it is the case of prosecution that the planners of attack had a telephone number (201) 253-1824 provided by Callphonex and if the internet telephony (VOIP) was to be used in between DID numbers purchased from Callphonex and the mobile phones of attackers, the Caller ID of the handlers on the mobile phones of the attackers would be (201) 253-1824. As already stated, one Kharak Singh had contacted Callphonex through their website and introduced himself as a reseller of VOIP in India and had opened an account. He had allegedly negotiated with Callphonex and made down payment of approximately Rs. $120 to Rs. $150.

12. On or about October 27, 2008, Callphonex established various accounts for Kharak Singh. Singh's account consisted of 15 PC To Phone accounts and ten common client accounts. It also included five Direct

Inward Dialing (DID) Austrian Phone numbers. The 15 PC to phone accounts each had eight digit account number. The details of which can be stated as under:

40000000	40000008
40000001	40000009
40000002	40000010
40000003	40000011
40000004	40000012
40000005	40000013
40000006	40000014
40000007	

The ten Common Client accounts with eight digit account number each were as under :

31000000	31000005
31000001	31000006
31000002	31000007
31000003	31000008
31000004	31000009

13. The five Austrian DID numbers were programmed to connect directly to Singh's PC to phone account numbers. When a caller dialed one of the said DID numbers it would connect directly to one of Singh's account numbers/computers. The DID numbers and corresponding PC to phone account number could be listed as under :

43720880764 ----- 40000000
43720880765 ----- 40000001
43720880766 ----- 40000002
43720880767 ----- 40000003
43720880768 ----- 40000004

14. The above said five DID numbers were purchased by Callphonex from Voxbone. Voxbone is a separate and distinct corporate entity located in Belgium. Callphonex then resold the DID numbers to the said Singh. It is the case of prosecution that these DID numbers were to be used from computers (internet telephony) to contact the attackers in Mumbai. The payments to Callphonex for Kharak Singh's account were made on October 27, 2008 and November 25, 2008 from Pakistan. The first payment dated October 27, 2008 of Rs. $ 250.00 was wired to Callphonex via Money Gram (M.G.). The sender of this payment was one

Mohammad Ishfaq. The payment was sent through the agent namely Paracha International Exchange , located at Road Anarkali Fayazuddin in Lahore, Pakistan. The second payment dated November 25, 2008 of Rs. $229.00 was wired to Callphonex via Western Union. The sender of this payment was one Javaid Iqbal. The sender had used Western Union's agent Madina Trading, located in Bescia, Italy to make the said payment to Callphonex.

15. During the course of investigation it was found that no payment was made to Callphonex after November 25, 2008. It was noticed that none of the payments to Callphonex were sent from India though Kharak Singh had introduced himself to be a reseller of VOIP in India.

16. It is alleged that during the course of investigation, Federal Bureau of Investigation (F.B.I.), U.S. had found that the **email account Kharak_telco@yahoo.com. was created on October 20, 2008 via Internet Protocol (I.P.) address 66.90.73.125.** The user with access to this account had logged in from following I.P. addresses :

I.P.Address	**Location**
58.27.167.153	(Pakistan)
66.90.73.125	(U.S.-apparent proxy)
67.159.44.63	(U.S.-apparent proxy)
80.78.132.155	(Kuwait)
82.114.138.18	(Russia-apparent proxy)
82.114.141.99	(Russia-apparent proxy)
118.107.140.138	(Pakistan)
203.81.224.201	(Pakistan)
203.81.224.202	(Pakistan)
203.81.224.203	(Pakistan)

17. Apart from this acquisition of telephone services through internet telephony to achieve the desired effects of the alleged attack on Mumbai, the alleged planners had also acquired one Yamaha Speed Boat which was allegedly used by the ten attackers to reach Indian seashore after alighting from the vessel **Kuber** which was hijacked on high sea. It is alleged that on the basis of serial numbers of Yamaha Enduro Outboard Machine (O.B.M.), it was discovered that the said machine was manufactured in Japan and was shipped to Business & Engineering Trading (B.E.T.) in republic of Pakistan.

18. As such it is the case of prosecution that various modern equipments were acquired before dispatch of ten attackers to India by the planners of the attack i.e. wanted accused Nos.1 to 35. It is also the case of prosecution that accused Nos.1,2 & 3 and deceased accused Nos. 1 to 9 were also part of the said conspiracy. The conspirators had also acquired firearms, ammunitions, hand grenades and the material, including RDX, to assemble deadly bombs. The accused No.1 and the deceased accused Nos. 1 to 9 were sent to Mumbai equipped with modern communication gadgets , lethal firearms, ammunitions, hand grenades, RDX bombs and miscellaneous articles. The ten attackers had also carried dry fruits with them for their survival during the period of attack.

19. The conspiracy was hatched within and without India to wage war against India or to attempt to wage war against India, to collect arms with intention to wage war against Government of India and also to commit various offences including murder, attempt to murder, causing grievous hurt, causing damage to public property, offenes under Arms Act, Explosives Act, Explosive Substances Act, Customs Act, Foreigners Act and Passport (Entry into India) Act, 1920. Out of ten attackers, nine

attackers (deceased accused Nos. 1 to 9) were killed by the security agencies. The accused No.1 is the sole surviving attacker. As far as accused Nos.2 and 3 are concerned, they were not present on the scene at the time of offence. However, they are alleged to be part of the conspiracy since beginning. In brief, for the time being, it can be stated here that the accused No.2 had prepared certain maps to guide the attackers and accused No.3 was instrumental in transporting those maps to Pakistan so that they could be explained to the attackers by the handlers and also so that they could be carried by the alleged ten attackers with them to facilitate their alleged operation in Mumbai.

20. Accused Nos. 1, 2 and 3 are charge-sheeted for the offences punishable u/ss 120-B, 121 r/w 120-B r/w 109, 121-A, 122 r/w 120-B r/w 109, 302 r/w 120-B r/w 109, 307 r/w 120-B r/w 109, 333 r/w 120-B r/w 109, 342 r/w 120-B r/w 109, 343 r/w 120-B r/w 109, 364 r/w 120-B r/w 109, 465 r/w 120-B r/w 109, 468 r/w 120-B r/w 109, 419 r/w 120-B r/w 109 **of Indian Penal Code**, u/ss. 25 (1B)(a) **of Arms Act** r/w 120-B r/w 109 **of Indian Penal Code**, 25 (1A) **of Arms Act** r/w 120-B r/w 109 **of Indian Penal Code**, 25 (2) (3) **of Arms Act** r/w 120-B r/w 109 of **Indian**

Penal Code, 27 **of Arms Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/ss.10, 13, 16, 18 and 23 of **The Unlawful Activities (Prevention) Act, 1967**, u/sec. 9-B(1)(a)(b) of **Explosives Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/sec. 3 of **Explosives Substances Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/sec.4(a) of **Explosives Substances Act** r/w 120-B r/w 109 of **Indian Penal Code,** u/sec.3(3) of **Passport (Entry into India) Act, 1920** r/w 120-B r/w 109 of **Indian Penal Code**, u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984** r/w 120-B r/w 109 of **Indian Penal Code**, u/ss. 151, 152 and 153 of **the Railway Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/s.135 of **Customs Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/s. 14 of **Foreigners Act** r/w 120-B r/w 109 of **Indian Penal Code**,

21. In addition to that accused no.1 is also charge-sheeted for the offences punishable u/ss. 302 r/w 34, 307 r/w 34, 333 r/w 34, 342 r/w 34, 343 r/w 34, 364 r/w 34, 465 r/w 34, 468 r/w 34, 419 r/w 34 **of Indian Penal Code**, u/ss. 25 (1B)(a) **of Arms Act** r/w 34 **of Indian Penal Code**, 25 (1A) **of Arms Act** r/w 34 **of Indian Penal Code**, 25 (2) (3) **of Arms Act** r/w 34 of **Indian Penal Code**, 27 **of Arms Act** r/w 34 of **Indian Penal**

Code, u/sec. 9-B(1)(a)(b) of **Explosives Act** r/w 34 of **Indian Penal Code**, u/sec. 3 of **Explosives Substances Act** r/w 34 of **Indian Penal Code,** u/s. 4(a) of **Explosive Substances Act** r/w 34 of **Indian Penal Code** u/sec.3(3) of **Passport (Entry into India) Act, 1920** r/w 34 of **Indian Penal Code**, u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984** r/w 34 of **Indian Penal Code**, u/ss. 151, 152 and 153 of **the Railway Act** r/w 34 of **Indian Penal Code**, u/s.135 of **Customs Act** r/w 34 of **Indian Penal Code**, u/s. 14 of **Foreigners Act** r/w 34 of **Indian Penal Code.**

22. Further, accused no.1 is also charge-sheeted independently for the offences punishable under sections 302, 307, 333, 342, 343, 364, 465, 468, 419 and 397 **of Indian Penal Code**, u/ss. 25 (1B)(a) **of Arms Act**, 25 (1A) **of Arms Act**, 25 (2) (3) **of Arms Act**, 27 **of Arms Act**, u/sec. 9-B(1)(a)(b) of **Explosives Act**, u/sec. 3 and 4(a) of **Explosives Substances Act,** u/sec.3(3) of **Passport (Entry into India) Act, 1920**, u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984**, u/ss. 151, 152 and 153 of **the Railway Act**, u/s.135 of **Customs Act**, u/s. 14 of **Foreigners Act.**

23. Accused no.2 has been independently charge-sheeted for the offences punishable u/ss. 465 and 471 of **Indian Penal Code**.

24. What has been stated by me herein above, is brief summary of the plan to commit the alleged offences. Now, let me advert to the prosecution case in detail particularly against accused No.1, 2 and 3.

PROSECUTION CASE IN DETAIL :

25. The accused No.1 Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid is a Pakistani national resident of Village Faridkot, Tal. Dipalpur, Dist., Okara, Punjab, Pakistan, the accused No.2-Fahim Harshad Mohammad Yusuf Ansari is Indian and he is permanent resident of Room No. 2409, Chawl No. 303, Motilal Nagar No. 2, M.G. Road, Goregaon (W), Mumbai and accused No.3-Sabuddin Ahmed Shabbir Ahmed Shaikh, also an Indian, is permanent resident of post Gandwar (Sakri Police Station) via Pandol Dist. Madhubani, Bihar State.

26. The prosecution case in brief is that a conspiracy was hatched within Pakistan and India by the wanted accused Nos. 1 to 35, deceased

accused Nos.1 to 9 and the arrested accused Nos. 1, 2 and 3 during the period between December, 2007 and November, 2008 to wage war against the Government of India, and to commit various other offences punishable under Indian Penal Code and other enactments. It is alleged that to achieve the object of conspiracy, the wanted accused, deceased accused and the arrested accused had also collected the arms and ammunitions within and outside India and had also made other preparations to wage war against the Government of India. They had also conspired to overawe by means of criminal force and the show of criminal force, the Central Government and the Government of Maharashtra.

27. The accused Nos. 2 and 3 did not take part in the actual training alleged to have been imparted to the accused No.1 and nine deceased accused by the wanted accused at Muridake and Manshera in Pakistan occupied Kashmir. However, it is alleged that they had been part of conspiracy since beginning and their role was to assist the perpetrators of crime mainly by providing sketch maps of various places of Mumbai so that the planned attack could be executed safely and in the manner conspired by the conspirators. It is alleged that the accused No.2 had

prepared sketch maps in his own handwriting of various locations of Mumbai city and he had travelled to Nepal from Mumbai to handover the said sketch maps to the accused No.3. It is further alleged that accused No.3 had sent or delivered the said maps to the perpetrators of the crime in Pakistan. One Mr.Naruddin Mehboob Shaikh (P.W.160) of Goregaon who was childhood friend of accused No.2 had gone to Nepal during the same period and he had occasion to meet accused No.2 on the main road of Kathmandu. He had also occasion to visit the hotel room of accused No.2 where he had seen accused No.2 handing over certain sketch maps to accused No.3. It is how the said Naruddin Shaikh had seen the accused No.3 for the first time at Nepal.

28. It is the case of prosecution that during the course of training to the accused No.1 and other nine deceased accused the sketch map handed over to the accused No.3 by the accused No.2 was given to the deceased accused No.1-Abu Ismail. The said sketch map was recovered from the clothes of deceased accused No.1- Abu Ismail during inquest panchanama of his dead body after his death in an encounter with police at Chowpaty, Mumbai. The specimen handwriting of accused No.2 was taken during the

course of investigation. The specimen handwriting and the sketch map were sent to the Government Document Examiner. It is alleged that the document examiner had opined that the specimen handwriting and the handwriting on the sketch map is of one and the same author. It is how the accused No.2 and 3 are alleged to be part of the conspiracy. In addition to this, it may also be mentioned here that the accused No.2 was found in possession of a Pakistani passport issued in the name of Hassan Hammad. It is alleged that the said passport had been issued by the Pakistani authorities on the basis of bogus documents produced by the accused No.2. The accused No.2 and 3 were in judicial custody of Addl.Sessions Judge, Rampur, U.P. on the date of the incident dated 26th November, 2008. The accused No.2 is facing trial in the Rampur Court for certain charges including the charge of holding Pakistani passport.

29. As far as accused No.1 is concerned, prosecution states that he left school in the year 2000 and started work as a labour along with his friend Dittu. He left his native place in the year 2000 along with his father in search of a job at Lahore, Pakistan. He was staying with his father and uncle Gulam Rasool at Mohalla Toriyabad, Lane No.54, House No.12 near

vegetable market. At Lahore also he engaged himself in labour work and worked there for about five years. His father and uncle left Lahore in the year 2005 for their native place. Accused No.1 was left alone at Lahore. He was intermittently visiting his native place while he continued to earn his livelihood at Lahore. On one occasion there was a quarrel between accused No.1 and his father over the amount earned by accused No.1 during his stay at Lahore. The accused No.1, therefore, got annoyed and started staying independently at Dargah of Ali Hajeri at Lahore.

30. While staying at Dargah of Ali Hajweri, accused No.1 came into contact with a boy named Shafiq. Both of them started working at Welcome Tent Service at Rawalpindi Road, Lahore. While working with Welcome Tent Service accused No.1 came into contact with one Mujjafar Lal Khan.

31. Accused No.1 and the said Mujjafar Lal Khan, in the year 2007, left Lahore for Rawalpindi in search of a better job. Both of them had been staying on rental basis in a house at Bangash Colony Rawalpindi. While they were staying at Rawalpindi, they had seen some persons of

Lashkar-e-Taiba purchasing skin of goats in the name of Jammat-Ul-Dawa. Those persons allegedly belonging to Lashkar-e-Taiba had been calling upon the people to extend help to liberate Kashmir. The accused No.1 and his friend Shafiq, therefore, developed a sense of respect for those persons belonging to Lashkar-e-Taiba. They thought of helping the persons belonging to Lashkar-e-Taiba since they had been fighting for Azad Kashmir (Independent Kashmir).

32. Accused No.1-Mohd.Ajmal Kasab and his friend Mujjafar knew that the persons of Jammat-Ul-Dawa had been organizing camps at various places. Accused No.1 and his friend therefore decided to attend those camps to hear discourses of leaders of Jammat-Ul-Dawa. During the same period accused No.1 and his friend also decided to take training for Jihad. Both of them therefore, in the month of December 2007, obtained address of office of Lashkar-e-Taiba situated at Raza Bazzar, Rawalpindi. The Raza Bazzar locality was situated near Bangash colony where the accused No.1 and his friend Mujjafar had been staying. Accused No.1 and his friend Mujjafar reached office of Lashkar-e-Taiba on one day in the month of December, 2007 and informed the guards of their intention to

participate in Jihad. The members of Lashkar-e-Taiba took details of accused No.1 and Mujjafar and asked them to attend the office on next day with their baggage. Accused No.1 and his friend Mujjafar accordingly reached the said office on next day. One of the persons manning the office gave them a chit containing address of Daura-e-Sufa, Markaz Taiba Muridake and asked them to proceed further to the said address. Accused No.1 and his friend Mujjafar after travelling in a bus for about six hours reached Muridake Bus Stand. They had to walk down one and a half kilometer to reach the camp of Lashkar-e-Taiba. They were allowed to enter the camp after their personal search. The chit given to them at Rawalpindi was handed over to the person by name Fahad Ullah. The said Fahad Ullah after taking details of accused No.1 and Mujjafar, gave them entry for training at Daura-e-Sufa.

33. According to prosecution, there were thirty (30) boys in the training camp at that time and they had taken training of 21 days. In the first place, all the trainees were converted to Ahele Hadis from Sunnis and they were trained to be Hadis instead of Sunnis. During the course of further training they were given physical training and they were also given

discourses/lectures on Jihad. The trainers, during the said period, were wanted accused No.8-Abu Fahad Ullah and wanted accused No.13-Abu Mufti Saeed. This training was concluded in the month of January, 2008. During the period of said training of 21 days, wanted accused No.1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab, wanted accused No.2- Zaki-Ur-Rehaman Lakhvi, wanted accused No.3-Abu Hamza. wanted accused No.4-Abu Al Kama @ Amjid, wanted accused No.6-Mujja Mil @ Yusuf and wanted accused No.18-Abu Umar Saeed were introduced to the accused No.1 and other trainees. Prosecution alleges that the wanted accused No.1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab, while addressing the trainees, had told them that all the Mujahidin have to fight for liberating Kashmir. The wanted accused No.2-Zaki-Ur-Rehaman Lakhvi had said that the time for Jihad was nearing. He further said that their community (Jamat) had been fighting for Kashmir since last fifty years and despite that Indian Government had not given independence to Kashmir. It was further said by him that Kashmir could be acquired only after waging war against India. After this address, all the trainees were asked as to whether they were ready for the war. The trainees replied in affirmative. It is alleged that the wanted accused No.4- Abu Al Kama @ Amjid told the trainees that big

cities of India were to be targeted and that their intention was to wage war against India from inside the country so that India could be made weaker from inside. The trainees were psychologically elevated to believe that one who dies would acquire martyrdom and would get place in heaven. Influenced by the lectures of the leaders of Lashkar-e-Taiba, all the trainees were mentally prepared to attack India.

34. In the month of February, 2008 those trainees were selected for the Daura-e-Aam training. They were given a chit bearing address of Bhai Vasool, Daura-e-Aam and were asked to proceed for Mansera Markaz Aksa. After travelling for about 12 hours, the trainees reached Mansera (Manshera). There after they had to walk to hilly area where the training camp was situated. Their personal search was taken at the gate. The trainees handed over the chit given to them by wanted accused No.8-Abu Fahad Ullah to the person who was manning the gate of training camp. After verifying contents of the said chit, those trainee boys were allowed entry in the training camp. After keeping them for a day at the said camp, they were taken to village Battal in an auto vehicle. They were taken to another training camp where they had undergone training of 21 days which

included physical training, use of arms and ammunitions, training in folding and unfolding the weapons etc. During the period of this training elder brother of Mujjafar Lal had come there and he had taken back his brother to their native place. The rule of training camp permitted any Mujahidin to leave the camp. In alternate he had to be there for three months in the service (khidamat) of leaders. Accused No.1 did not leave the camp and opted to remain there in service of the said leaders. During the said period of said service, wanted accused No.9-Abu Abdul Rehman, wanted accused No.10-Abu Anas, wanted accused No.11-Abu Bashir and wanted accused No.15-Yusuf had been imparting training to the trainees.

35. Once the service period was over, the accused No.1 and his co-trainees were sent for another training called Daura-e-Khas. The training camp for Daura-e-Khas was situated at Okara. Accordingly all the trainees reached Mansera bus stand in the vehicle belonging to Lashkar-e-Taiba. They travelled for about 12 hours and reached Lahore Lorry Terminus. From there they proceeded to Okara Bus Terminus and visited the office of Lashkar-e-Taiba situated at Model town. After completing necessary formalities in the said office , the trainees were sent to Mujjafarabad for

further training. After travelling for about 16 to 17 hours from the office of Lashkar-e-Taiba they reached Mujjafarabad in Pak Occupied Kashmir (P.O.K.). The place named as Maskar Aksa which is a training camp of Lashkar-e-Taiba was about one hour walking distance from Mujjafarabad. The accused No.1 and others, after walking for one hour, reached the place known as Maskar Aksa**.** The said place was situated at a hilly area . There were only 10 to 12 residential houses and one mosque . This training was very strict and rigorous. No trainee was allowed to go out during the period of said training. The wanted accused No.28-Abu Mavia was the trainer during the said training period. This training went on for about three months i.e. May, June and July, 2008. This training was a kind of final training to make a person as hardcore Jihadi. This training included teaching of Hadis, Quran, using arms and ammunitions including AK-47 rifle, folding, unfolding pistol, firing, use of launchers, hand grenade G.P.S. and map reading. In addition to these things, they were trained to remain without food for about 60 hours. It is the case of prosecution that this training was quite rigorous and everyone was not able to sustain the same.

36. When the accused No.1 and others were in the last leg of this training, ten of the trainees had deserted the place because of rigorousness of the training. The trainees were trained by wanted accused No.28-Abu Mavia and wanted accused No.31-Abu Hanjla Pathan during the said period. During the said training at Maskar Aksa the wanted accused No.20-Major General Sahab (name not known) had visited the camp and he had addressed all the trainees. After completion of the training, accused No.1 was given Rs.1300/- to visit his native place and thereafter return to the office of wanted accused No.1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab at Baitul Mujahidin (House of Mujahidin). Accused No.1 visited his native place and returned to Baitul Mujahidin in July, 2008. The accused No.1 was thereafter taken to selection point by wanted accused No.28-Abu Mavia . 20 to 22 other trainees (Mujahid) were present at the selection point near Sewai Creek. Apart from wanted accused No.1- Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab , one Salauddin was present at the selection point and he had played a C.D. on his laptop to show the trainees as to how a Fidaeen attack was carried out at Kashmir. The wanted accused No.4-Abu Al Kama @ Amjid had also addressed all the trainees and explained to them as to how Fidaeen attacks are successfully made.

37. The wanted accused No.1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab had selected fifteen persons including the accused No.1 for Fidaeen attacks and the said fifteen persons were sent to Markas Taiba Muridake for the training known as Daura-E-Ribat. This training was for intelligence collection, keeping knowledge of targets, keeping watch on the targets, chasing targets and also escaping in case of target hits back. They were also trained to misguide the people by giving false identity of their names and other details. During this training, two of the trainees namely Nasad and Abu Mavia left the training.

38. The trainers during the said period were wanted accused No.5-Abu Kaahfa and wanted accused No.34-Abu Imran. The wanted accused No.20-Major General Sahab (name not known) had visited this camp twice during the said training and had boosted moral of the trainees. The said training was concluded in the month of August,2008. The next leg of training was marine training. Therefore the accused No.1 and others were brought to Karachi and they were kept in a house in Ajijabad Mohalla. During their stay in the said house Holy month of Ramjan had commenced. They were given marine training by the wanted accused No.35-Hakim

Saheb. During the marine training they were also trained to read maps, to use G.P.S., to spread fish nets and to navigate vessels. After completion of this training the wanted accused Kaahfa had taken them back to Baitul Mujahidin (Lashkar Head Quarters). After completion of the training five Mujahidin were sent to carry out an attack on a place at Kashmir. Next day, already trained three mujahids i.e. the deceased accused No.1-Ismail Khan @ Abu Ismail , deceased accused No.7-Fahad Ullah and deceased accused No.8-Javed @ Abu Ali were inducted in the group of accused No.1.

39. It is on 13th day of Ramjan that wanted accused No.1 -Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab and wanted accused No.2-Zaki-Ur-Rehaman Lakhvi and other wanted accused had called the trainees to their office at Baitul Mujahid. The wanted accused No.1- Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab had told them that the time for Jihad had come and they had a plan to attack India. The wanted accused No.2-Zaki-Ur-Rehaman Lakhvi had told the trainees that the financial strength of India depends on the income of commercial city Mumbai. Therefore, it was necessary to carry out attack on Mumbai. They

were also told that they had to reach Mumbai by sea. During this period also, wanted accused No.20- Major General had come there and had taken test of all the trainees. The accused No.1 was considered to be one of the best as far as firing from AK-47 rifle was concerned. They were told as to how they had to carry out the attack by means of AK-47, hand grenades and RDX bombs. The trainees were also told that they would be given identity cards bearing Hindu names and they had to tie a thread on their wrists which normally is tied by Hindus in India.

40. It was decided that accused No.1 and deceased accused No.1-Abu Ismail would carry out attack at C.S.T. and Malabar Hill. The deceased accused No.5-Hafiz Arshad @ Abdul Rehman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali would attack Hotel Taj, deceased accused No.7-Fahad Ullah and deceased accused No.6-Abdul Reheman Chhota @ Saakib would attack Hotel Oberoi, deceased accused No.2-Imran Babar @ Abu Akasha and deceased accused No.3-Nasir @ Abu Umar would attack Nariman House . It was also decided that deceased accused No.9-Shoaib @ Abu Soheb and deceased accused No.4-Nazir @ Abu Umer, after firing at Hotel Leopold, would join the deceased accused No.5 and deceased accused

No.8 at Hotel Taj. It was further decided that the accused No.1would plant a bomb in a taxi which he would be hiring to reach C.S.T. station. The deceased accused No.4- Nazir @ Abu Umer would plant a bomb in a taxi which he would be hiring for going to Hotel Leopold. The other trainees were also directed to plant bombs near the proposed places of attack. It was decided that the attackers of Nariman House and Taj Hotel would keep some persons hostages and speak to media. It was decided that they would disclose their identity as Indian Muslims and throw challenge to Indian Government for liberating Kashmir. All the trainees i.e. accused No.1 and the nine deceased accused were taken to one hall. They were shown maps of various places of Mumbai on T.V. screen and on websites. The accused No.1 and the deceased accused Ismail Khan were shown maps of C.S.T. and Malabar Hill.

41. It is at this point of time that the maps drawn by accused No.2- Fahim Ansari were shown to the trainees. On 15th day of Ramjan the trainees were taken to Hills of Mujjafarabad and to practise firing from AK-47 rifle. They were also trained to prepare tiffin bombs of RDX and to install timers on those bombs. On the same night they were brought back to

Baitul Mujahidin . On the next day they were directed to remove their mustache and beard. New clothes and other necessary articles were brought for them from the market. Their photographs were also taken for identity cards.

42. On 17th day of Ramjan they were taken to the same house of Ajijabad locality of Karachi where they were earlier staying for sometime. In the said house, accused No.1 had seen photographs of some of the ex-trainees in one of the periodicals (magazine) who had died during the so called Fidaeen attack on Kashmir.

43. Ten Time bombs were brought on 16th day of Ramjan. All the trainees were directed to put their names on the labels affixed to the timers of bombs and those timers were kept by the wanted accused No.5 Abu Kaafa in his custody. The identity cards were also prepared and given to the trainees. The identity cards bore their photographs and fake names of colleges of cities of India. During the course of further training they were trained to inflate inflatable boat. They were also trained as to how sea valve of the vessels could be removed so that vessel sinks in sea. The said

trainees however could not be dispatched to India as per the original plan as there was some difficulty. That is what the trainees were told by the wanted accused No.2- Zaki-Ur-Rehaman Lakhvi. The trainees celebrated 'Id' in the same house in Ajijabad Mohalla of Karachi. During the said period, they were also trained as to how bomb could be placed below driver's seat in a running car.

44. It is on 21/11/2008 that journey of these ten persons i.e. accused No.1 and nine deceased accused commenced to commit terror attack on the city of Mumbai. On 21/11/2008 they were brought in a house near a creek from Ajijabad Mohalla of Karachi. The deceased accused No.1- Abu Ismail was nominated as a leader of the whole operation proposed to be carried out by the accused No.1 and his nine associates. Arms and ammunitions were handed over to accused No.1 and nine deceased accused in this house. Deceased accused No.1-Abu Ismail was told as to how the arms and ammunitions were to be distributed amongst the ten accused. Five pairs of the said ten accused were drawn and each pair was given one mobile phone each. They were told that the mobile phones were loaded with Indian Sim Cards and they would start working as soon as

the accused No.1 and nine deceased accused reached Mumbai. The telephone number on which the accused No.1 and nine deceased accused were supposed to call, was already fed in all the mobile phones. One satellite phone was given to deceased accused Ismail Khan. One haversack was given to each of the accused. Each of the sacks contained one AK-47 rifle, eight AK-47 magazines, 240 rounds**,** eight hand grenades, one bayonet , one pistol, three pistol magazines and twenty one extra rounds, a water bottle, one kg. raisin, one head phone, three batteries of nine volt each and chargers. They were also given RDX tiffin bombs, G.P.S. system and black waist belts with pouches. The haversacks were kept in a vehicle belonging to Lashkar-e-Taiba to be handed over to the accused No.1 and nine deceased accused later on. The accused No.1 and nine deceased accused were given Indian identity cards for keeping them in their pockets.

45. It is the case of prosecution that on 22/11/2008 at 6.00 a.m. after offering Namaz, accused No.1 and the nine deceased accused proceeded to the creek where wanted accused No.2- Zaki-Ur-Rehaman Lakhvi told the accused No.1 and nine deceased accused that wanted accused No.1- Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab had

worked hard on the whole operation and that the operation needed to be a successful one. The accused No.1 and the nine others were also told that the pairs of terrorists who would be occupying Nariman House, Hotel Taj, Hotel Oberoi, would try to contact the media. They were also given the sketch maps allegedly prepared by accused No.2 and 3. It is the case of prosecution that accused No.1 and deceased accused Abu Ismail were given the sketch map indicating road map leading to C.S.T.Station and Malabar Hill. They were told to tear off the maps after reaching their destination.

46. On the same day around 7.00 p.m. accused No.1 and the nine deceased accused were taken to a big marine vessel in high sea where wanted accused No.14-Hakim Saab was present along with his three associates. The haversacks containing arms and ammunitions and other articles to be carried by the accused No.1 and the deceased accused Nos.1 to 9 were transported to seashore in a separate vehicle. They were also loaded in the said big marine vessel. At about 9.00 p.m. the accused No.1 and the deceased accused Nos.1 to 9 were transferred from the said marine vessel to another ship by name Al-Hussaini. The haversacks were also

transferred to Al-Hussaini. The wanted accused No.14-Hakim Saab and his three associates who were present on the said big marine vessel, stayed back in the said vessel only. It is the case of prosecution that when the accused No.1 and the deceased accused Nos.1 to 9 were transferred to Al-Hussaini, seven persons including wanted accused No.16-Mursheed, wanted accused No.17-Aakib and wanted accused No.19-Usman were present on board of Al-Hussaini. The haversacks were handed over to accused No.1 and the nine deceased accused by wanted accused No.16-Mursheed on board of Al-Hussaini. Accused No.1 and the nine deceased accused were also given life saving jackets, blankets, ration for their journey period upto Mumbai which included milk powder, wheat floor, match box, detergent powder, tissue papers, cold drink bottles, dental cream, spray, towels , shaving kits etc. With these equipments, arms and ammunitions , articles required for the journey and ration, accused No.1 and nine deceased accused started travelling in Al-Hussaini along with the said seven persons including three wanted accused named above.

47. It is on 23/11/2008 at about 12.00 Noon that fishing vessel Kuber was hijacked in high sea. Four out of five fishermen of the hijacked

vessel were brought to vessel Al-Hussaini. The articles which were loaded on Al-Husaini, were transferred to fishing vessel Kuber. The fifth fisherman who was navigator of Kuber was taken hostage by the accused No.1 and nine others. Since the diesel in the fuel tank of vessel Kuber was found not to be sufficient to cover the journey upto Mumbai, the diesel already loaded on Al-Husaini was also transferred to vessel Kuber.

48. After taking the navigator of Kuber as hostage on board fishing vessel Kuber, accused No.1 and the nine deceased accused started their journey towards Mumbai seashore. With the help of G.P.S. and the navigator Amarchand Solanki, accused No.1 and the nine deceased accused had been successfully navigating the boat. They were guarding the boat also one by one. During the course of their journey on fishing vessel Kuber accused No.1 and the nine deceased accused had been communicating with wanted accused No.3-Abu Hamza on satellite telephone. At about 11.00 a.m. on 26/11/2008, accused No.1 and the nine deceased accused tied threads to their respective wrists. This obviously was with a view to hide their identity as foreigners/Pakistani nationals. The vessel reached Indian territorial waters at about 4.00 p.m. on 26.11.2008.

49. It is alleged that the deceased accused No.1- Abu Ismail after reaching Mumbai waters, received certain instructions on satellite phone. Accused No.1 advised deceased accused No.1-Abu Ismail that it would be advisable to kill the said navigator Amarchand Solanki. The deceased accused No.1-Abu Ismail subscribed the view of accused No.1 and they decided to kill the navigator. Thereafter the deceased accused No.9-Shoaib @ Abu Soheb and deceased accused No.3-Nasir @Abu Umar caught hold of hair of the navigator Amarchand Solanki and pulled his neck. Accused No.1 slitted neck of the deceased Amarchand Solanki in the engine room of boat Kuber.

50. Thereafter the deceased accused No.1-Abu Ismail , deceased accused No.3-Nasir @ Abu Umar, deceased accused No.7-Fahad Ullah and deceased accused No.8-Javed @Abu Ali pumped air into the inflatable boat and the said boat, after reassembling, was downed in the sea. Accused No.1 and the nine deceased accused changed their clothes. They wore new clothes they had bought from Karachi Market. All of them put on life saving jackets as well as waterproof trousers. Their earlier clothes were left in the boat Kuber. After changing their wearing apparels they had

offered Namaz. The arms and ammunitions were also transferred to the inflatable speed boat. At this point of time they had seen one vessel approaching from the opposite direction. Accused No.1 and other accused thought it to be a naval vessel and therefore they hurriedly jumped into the inflatable boat to leave the spot speedily. In fact according to the original plan the accused No.1 and the nine deceased accused were supposed to remove the sea valve of the boat Kuber. However, in view of the fact that they were hurriedly required to leave the place in inflatable speed boat, they could not remove the sea valve of boat Kuber. With the use of G.P.S. they reached seashore of Mumbai at Badhwar Park, Cuffe Parade. Accused No.1 and the deceased accused Abu Ismail got out of the speed boat first of all. They collected their haversacks and the bags containing RDX bombs. It was around 9.00 p.m. at that time. The case of prosecution is that some of the fishermen staying in the fishermen colony at Badhwar Park had inquired from accused No.1 and others regarding their identity and the purpose of being in the said locality. Accused No.1 had told them that they were students. There was a verbal quarrel between the accused No.1 and a fisherman for a while.

51. It is here at Badhwar Park that the five pairs (buddies) proceeded to their targets. In accordance with the plan accused No.1 and deceased accused No.1- Abu Ismail hired a taxi for C.S.T. railway station (herein after referred to as C.S.T.station). During the course of their journey from Badhwar Park to C.S.T. station deceased accused No.1- Abu Ismail kept the driver engaged in talk and accused No.1 installed a timer on a RDX bomb and placed the same below the driver's seat. Within 15 to 20 minutes they reached C.S.T. from Badhwar Park. After reaching the station accused No.1 and the deceased accused No.1- Abu Ismail tried to contact the wanted accused No.3-Abu Hamza but could not establish contact due to network problem. Both of them could see that there was main waiting hall meant for the long journey passengers. It is the case of prosecution that the deceased accused No.1-Abu Ismail thereafter went to toilet situated within the waiting hall and installed timer on the bomb which was in his custody and left the same in luggage of passengers lying in the waiting hall. Thereafter the accused No.1 and deceased accused No.1-Abu Ismail, as per their plan, went on the killing spree by means of AK-47 rifles. First of all, the deceased accused No.1- Abu Ismail took out hand grenade from his bag and threw in the direction of passengers in the waiting hall. Immediately

thereafter another hand grenade was thrown by the deceased accused No.1-Abu Ismail. Thereafter the accused No.1 and the deceased accused No.1-Abu Ismail took out their AK-47 rifles and started firing indiscriminately on the passengers. The police officers who tried to retaliate the firing were also shot at. Some of the policemen were also killed during the incident of firing. After killing large number of passengers in an indiscriminating firing, accused No.1 and deceased accused Abu Ismail proceeded towards the waiting hall of local railway. For this purpose they were supposed to pass through an open passage between the waiting hall of long journey passengers and waiting hall of local passengers. While crossing the said passage they had killed one of the police officers on duty. They had also killed one book stall owner. After reaching the local railway waiting hall, accused No.1 and deceased accused No.1-Abu Ismail had fired on the policemen belonging to Government Railway Police (G.R.P). Some of the Railway Protection Force Jawans (R.P.F. jawans) and G.R.P. had attempted to capture or kill the accused No.1 and the deceased accused No.1- Abu Ismail, The policemen had for this purpose used carbine and pistol but unfortunately neither the accused No.1 nor his associate deceased accused No.1-Abu Ismail were either caught or injured during the exchange

of fire between the police and R.P.F.men on one hand and the accused No.1 and deceased accused No.1-Abu Ismail on the other hand. The accused No.1 and his associate had also fired at the announcer who was sitting in the public announcement room in the mezzanine floor of the local waiting hall. During this period two photographers of Times of India Group who were in their office which is situated across the road opposite C.S.T., had entered C.S.T. railway station and had taken photographs of accused No.1 and the deceased accused No.1-Abu Ismail An F.I.R. vide **C.R.No.155/08** (A.T.S.CR No.20/08) in respect of this incident was registered at V.T. Rly. Police station on the complaint of API Mr.Bharat Bhosale. Investigation of this crime was later on handed over to DCBCID. A fresh **C.R.No.213/08** came to be registered and further investigation was done by Police Inspector Mr.Gangawane.

52. According to prosecution case total number of deaths caused by the accused No.1 and his associate deceased accused No.1-Abu Ismail at C.S.T. main station and local station were **52** and total number of persons injured were **109.** After committing such a mayhem at one of the busiest places in this city, the accused No.1 and his associate deceased accused

No.1-Abu Ismail went out of the station via foot over bridge and landed in a bylane known as Badruddin Tayyabji Road. It may be stated here that the Times Group's photographer Mr.Vernekar who had earlier taken photographs at C.S.T.railway station, noticing that the accused had been going out of the station via foot over bridge, immediately went to Times of India building which is on the corner of Badruddin Tayyabji Road. The said photographer knew that he could take photographs of the accused No.1 and his associate from the second floor of Times of India Building when they would be passing over the foot over bridge. He therefore, immediately went to the second floor of Times of India building. He had taken at least two photographs of accused No.1 holding AK-47 rifle in his hand and violently moving forward on foot over bridge.

53. After landing at Badruddin Tayyabji Road from the foot over bridge, accused No.1 and his associate deceased accused No.1- Abu Ismail had been in search of a vehicle to leave the spot. They therefore attempted to open any one of the cars parked in the by lane. Since almost all the cars were found locked and the accused could not open any one of them, they proceeded further and entered Cama Hospital from one of backside gate of

the hospital. Though the backside gates of the Cama hospital always remain closed, the accused No.1 and his associate deceased accused No.1- Abu Ismail jumped over one of the gates and entered Cama Hospital. The mention of Times Group is again necessary to be made here since they had installed C.C.T.V. cameras outside their building on the portion which is on the side of Badruddin Tayyabji Road. It is the case of prosecution that visuals of accused No.1 and his associate deceased accused No.1- Abu Ismail have been captured by those C.C.T.V. cameras. The accused No.1 and his associate deceased accused No.1 are allegedly seen in the visuals while attempting to open one of the cars holding rifles in their hands.

54. Before entering Cama hospital, the accused No.1 and his associate deceased accused No.1-Abu Ismail had killed Shivkumar Gupta, a Bhel Vendor, Thakur Budha Vaghela, a slum dweller on B.T.Road and Bhagan Gangaram Shinde, a young boy staying in the same locality. Shivkumar Gupta was selling Bhel on Badruddin Tayyabji Road, Thakur Budha Vaghela was simply sitting in the hut and Bhagan Gangaram Shinde was running away after seeing the accused No.1 and the deceased accused No.1- Abu Ismail armed with lethal weapon like AK-47.

55. After killing the said three persons on Badruddin Tayyabji Road, accused No.1 and the deceased accused No.1- Abu Ismail had entered Cama Hospital from backside gate. At Cama Hospital also they had killed two security guards namely Baban Balu Ughade and Bhanu Devu Narkar. After killing the said two persons on ground floor, they had gone up stairs and had attempted to kill the patients including children. However, by the time they reached upper floors, patients and hospital staff had closed almost all the doors of wards and other rooms. It was therefore not possible for accused No.1 and the deceased accused No.1- Abu Ismail to kill the patients. At this stage it may be stated here that Cama Hospital is exclusively meant for female patients and had the accused No.1 and the deceased accused no.1- Abu Ismail an opportunity of entering any of the wards, they would have been able to kill a large number of female and child patients or newly born.

56. As most of the rooms and wards were found closed, accused No.1 and the deceased accused No.1- Abu Ismail went on terrace of the main building of Cama Hospital. Chandrakant Dyandev Tikhe, one of the staff members of Cama Hospital was on duty on terrace of the building to

guard the generator installed on the terrace. The accused No.1 and the deceased accused No.1- Abu Ismail wanted to come down from the terrace and therefore they inquired from Chandrakant Tikhe as to how could they go down. The said Chandrakant Tikhe told them that there was only one staircase for entry and exit to the terrace , there was no other exit.

57. In the meantime a police team headed by Addl. Commissioner of Police Mr. Sadanand Vasant Date had reached 6th floor of Cama Hospital. There was a landing area between the 6th floor and the terrace and a door between this landing area and the terrace. The police party led by Addl.C.P. Mr.Date started firing towards the terrace. The accused No.1 and the deceased accused No.1- Abu Ismail found a good shield in the form of Chandrakant Tikhe and told him to be in front while both the accused proceeded towards the staircase leading to 6th floor of the building. While the accused No.1 and the deceased accused No.1- Abu Ismail shielding themselves behind the said Chandrakant Tikhe, were attempting to get down from the staircase, Addl.Commissioner of Police Mr.Sadanand Date, his subordinate officers and constables started firing towards accused No.1 and the deceased accused No.1-Abu Ismail.

However, due to the advantageous position of accused No.1 and the deceased accused No.1-Abu Ismail, location wise and weapon wise, the police officers could not succeed in apprehending or killing either accused No.1 or the deceased accused No.1-Abu Ismail. However, unfortunately , accused No.1 and the deceased accused No.1-Abu Ismail had been able to kill two police officers Prakash Pandurang More and Vijay Madhukar Khandekar. They could also succeed in injuring one Police Constable Sachin Tilekar and Addl.C.P. Mr.Sadanand Date and other policemen and officers. The injured persons were taken to lower floors for treatment. It was Mr.Date alone who was left on the 6th floor and accused No.1 and the deceased accused No.1- Abu Ismail were in the staircase between terrace and the 6th floor. The watchman Mr.Chandrakant Tikhe during this whole process, had been able to come down on 6th floor and from there he went to the lower floor. It is stated that Mr.Date was also injured due to fragments of grenades thrown by accused No.1 and the deceased accused No.1-Abu Ismail. In these circumstances, the accused No.1 and the deceased accused No.1-Abu Ismail could succeed in escaping from Cama Hospital.

58. When the accused No.1 and the deceased accused No.1- Abu Ismail came out of Cama Hospital, some policemen belonging to Azad Maidan Police Station were on duty on Mahapalika Road in front of Cama Hospital on other side of the road. The accused No.1 and the deceased accused No.1-Abu Ismail therefore, instead proceeding to Mahapalika Road (main road), entered Badruddin Tayyabji Road adjoining St. Xavier's college. It will be appropriate to state here that Badruddin Tayyabji Road has entry from D.N.Road from where the accused No.1 and the deceased accused No.1- Abu Ismail had allegedly entered the said road and exit of the said road is at Mahapalika Road adjoining St. Xavier's College. The accused No.1 and the deceased accused No.1-Abu Ismail before entering Badruddin Tayyabji Road, had shot at a police officer who was coming from the direction of Metro Junction. The police Officer Mr.Durgude died due to the bullet injuries. After killing the said police officer the accused No.1 and the deceased accused No.1- Abu Ismail had entered Badruddin Tayyabji Road from Mahapalika Road. One white Honda City car with red beacon was coming from the opposite direction. The said white Honda City car was official car of Mr.Bhushan Gagarani, the Secretary in Health Department of Government of Maharashtra. His driver Mr.Maruti Phad

was staying in the staff quarters behind G.T.Hospital. The said building is known as High Rise Building. He used to park the official vehicle of Mr.Gagarani in the premises of the said building after office hours. Due to the terror attack at multiple places, he was called by Mr.Gagarani and was directed to bring the car to his official residence at Yashodhan Building, Churchgate, Mumbai. Mr.Phad was driving his vehicle towards Mahapalika Road. However, he was confronted by the accused No.1 and the deceased accused No.1- Abu Ismail. The accused No.1 and the deceased accused No.1-Abu Ismail had fired at the said car thereby injuring the driver. The driver immediately sensing a serious trouble pretended to be dead and locked the car from inside.

59. It may be noted here that a police team headed by Sr.I.P.S. Officer Shri Hemant Karkare had been travelling in Qualis brand police vehicle to reach Cama Hospital to assist Addl.C.P.Shri Date. This vehicle was spotted by the accused No.1 and the deceased accused No.1-Abu Ismail. The accused No.1 and the deceased accused No.1-Abu Ismail had fired at the said vehicle. The police officers sitting in the said vehicle had also fired at accused No.1 and the deceased accused No.1-Abu Ismail. Due

to firing on the part of accused No.1 and the deceased accused No.1-Abu Ismail, three police officers and three police constables in the said vehicle had died. Three Senior Police Officers namely **Mr.Hemant Karkare**, **Mr.Ashok Kamate** and **Mr.Vijay Salaskar** and three police constables namely **Balasaheb @ Nana Chandrakant Bhosale**, **Jayawant Hanumant Patil** and **Yogesh Shivaji Patil** laid down their lives during the said incident. Police Constable Arun Dada Jadhav was lying in rear portion of the vehicle as he was also injured due to bullet shot. Since there was no firing from the vehicle, the accused No.1 and deceased accused No.1-Abu Ismail dared to go near the vehicle. They removed bodies of injured or dead officers from the vehicle. The deceased accused No.1-Abu Ismail occupied the driver's seat and accused No.1 occupied the adjoining seat in the front. The Police Constable Mr.Arun Dada Jadhav who was working under Mr.Salaskar and was holding a carbine was in the backside of the vehicle. He was also injured but he pretended to be dead. The deceased accused No.1 drove away the vehicle on Mahapalika Road. The vehicle thereafter proceeded to Metro Junction. From there he took the vehicle near Mantralaya via Maharshi Karve Road. One of the tyres and tubes of the said police vehicle was punctured, may be due to firing and therefore, it was

necessary for the accused No.1 and deceased accused No.1-Abu Ismail to search for another vehicle.

60. The accused No.1 and deceased accused No.1-Abu Ismail spotted a Skoda car near Vidhan Bhavan at Barrister Rajani Patel Road. The Skoda car was belonging to father of Mr. Sharan Arasa. Mr.Sharan Arasa himelf was driving the car and his friend Mr.Samit Ajgaonkar and his wife Medha Ajgaonkar were accompanying him in the same car. They had been going to rescue their friend Mr. Sidhath Umashankar who was brought at Inox theater at Nariman Point after being evacuated from Hotel Oberoi. Mr. Sidharth Uamashankar was working in Hotel Oberoi and he had given a call to his friend Mr. Mr.Samit Ajgaonkar to pick him up. It is how Mr.Arasa and Ajgaonkar couple were there in the Skoda car near Vidhan Bhavan which is situated near Inox theater at Nariman Point. Mr. Arasa, his friend and his friend's wife were directed by the accused No.1 and the deceased accused No.1 to come out of the car. The deceased accused No.1 occupied the driver's seat and accused No.1 occupied the front left seat of the car . At this stage it may be mentioned here that the prosecution alleges that the deceased accused No.1 had left his AK-47 rifle in the police vehicle

and had picked up AK-47 rifle of Mr.Ashok Kamate from the police vehicle. He had kept the said AK-47 rifle of Mr.Kamate in front of him in the leg space of driver's seat of Skoda car and proceeded further. The accused No.1 was holding his AK-47 rifle and a pistol.

61. In the meantime, it appears, police wireless message had sounded at all the police stations that two terrorists had hijacked a Skoda car and they should be intercepted wherever they were found. The officers of D.B.Marg Police Station led by Sr.P.I.Mr.Mali had barricaded the road at Marine Drive proceeding towards Malabar Hill. As the wireless message intimated that the Skoda car had left Nariman Point, it was obviously expected that if at all the car comes on Marine Drive, it will be on the other side of the road which leads to Malabar Hill. The barricades were installed in front of Cafe Ideal at Girgaum Chowpaty. Some police officers including Mr.Bhaskar Kadam, Sanjay Govilkar, Hemant Bavdhankar , A.S.I. Mr.Tukaram Ombale and police constables were on duty at the place barricaded by D.B.Marg Police Station. PSI Mr.Bhaskar Kadam was having 9 mm service pistol loaded with ten rounds. Few other police officers had also their service pistols with them.

62. It was around 00.16 hours that a message was received on wireless set that two terrorists armed with weapons had been moving in a Skoda Car and that they had proceeded towards Marive Drive. It is at about 00.30 hours that one Skoda Car was spotted by the police officers on duty at Girgaum Chowpaty. (In the police charge-sheet the place has been referred to as Vinoly Chowpaty. It is popularly known as Girgaum Chowpaty). The said car was seen on N.S.Purandare Marg (Marine Drive) and was proceeding from south to north. The Police Officer Mr.Hemant Bavdhankar and other police officials blew whistles and issued direction to the driver of the car to stop. The car stopped at the distance of about 50 ft. from the barricades. The driver of the car immediately put on head lights of the car. The accused did not respond to the directions of police to put off the lights. They also started spraying water on the windscreen to make it difficult for the police officers to identify the occupants. The car suddenly took 'U' turn from the road divider but could not proceed further. The car hit the divider and came to a halt . The police officers immediately swung into action. The accused No.1 and the deceased accused No.1-Abu Ismail initially raised their hands to indicate that they had surrendered before the police. When the police officers went near the car, the deceased accused No.1- Abu

Ismail suddenly started firing at police from his pistol. Police Officer Mr.Bhaskar Kadam and his colleague Mr.Bavdhankar both fired at the deceased Abu Ismail from their service pistols in the self defence. During the said firing deceased Abu Ismail was injured. On the other side i.e. on left side of the car Police Officer Mr.Sanjay Govilkar, A.S.I. Mr.Tukaram Ombale and other police officials attempted to catch hold of the accused No.1. The accused No.1 immediately came out of the car and laid himself down on the road in supine position. While he was trying to fire from his AK-47 rifle, deceased Asstt. Sub-Inspector Mr.Tukaram Ombale pounced upon him. In the result Mr.Tukaram Omable sustained bullet injury due to firing from AK-47 rifle of the accused No.1. Police Officer Mr.Sanjay Govilkar was also injured. In the mean time other police officers present on the spot used necessary force and disarmed the accused No.1 and he was taken into custody. The injured accused Abu Ismail was also taken in to custody. In the meantime other police officers from D.B.Marg Police Station had also reached the spot. Ambulance and other police vehicles had also reached. The Police Officer Mr.Sanjay Govilkar , A.S.I. Mr.Tukaram Ombale, accused No.1 and deceased accused no.1-Abu Ismail were taken to hospitals immediately. The Skoda car was barricaded and secured for

further investigation. The Asstt. Sub-Inspector Mr.Tukaram Ombale was declared dead at Hurkisondas Hospital and police officer Mr.Sanjay Govilkar was admitted for treatment. As far as the accused are concerned, accused Abu Ismail was declared dead at Nair Hospital and accused No.1 was admitted for treatment in the said hospital.

63. The matter was reported at police Station by P.S.I. Mr.Bhaskar Kadam. An F.I.R. vide **C.R. NO.305/08** for the offences punishable u/ss 120B, 121A, 122, 302, 307, 353 etc. of Indian Penal Code and under Arms Act was registered. During the course of further investigation spot panchanama was drawn during the course of which empty cartridge cases of pistols of police officers Mr.Bhaskar Kadam, Mr.Hemant Bavdhankar, pistols of accused, and rifle of accused No.1 were recovered from the spot. Some live cartridges, magazines of AK-47 rifle were also recovered. Apart from that some miscellaneous articles like black pouch and identity cards purportedly issued by some Indian Institution were also recovered. It is alleged that there was one jacket on rear seat of the Skoda Car. In one of the pockets of the said jacket there was one hand grenade. The said hand grenade was secured in the sand of Chowpaty and was later on defused by

Bomb Detection & Disposal Squad (B.D.D.S.) of Mumbai Police.

64. While the accused No.1 was in the hospital, he had allegedly made a statement which led to recovery of Kuber boat, dead body of deceased Amarchand Solanki (the navigator of boat Kuber), one G.P.S. and mobile phone from the boat Kuber.

65. During the course of inquest panchanama of dead body of deceased accused Abu Ismail, one map, allegedly prepared by accused No.2-Fahim Ansari, was recovered from his trouser pocket. It was seized and sealed. Further investigation of this case pertaining Chowpaty was also assigned to DCBCID. A fresh Crime Number **182/08** was registered at DCBCID and the investigation was carried out by Police Inspector Mr.Marde. During the course of investigation the accused No.2 and 3 were taken into custody from Rampur Jail with the permission of Addl.Sessions Judge, Rampur (U.P.). The specimen handwriting and signature of accused No.2 was taken. The sealed cover containing the map allegedly prepared by accused No.2 was opened as the same was required to be given identification numbers for being sent to handwriting expert to be examined

by him in comparison with the specimen handwriting of accused No.2. It is alleged that the map recovered from trouser pocket of the deceased accused No.1-Abu Ismail is in the handwriting of accused No.2.

66. It is also alleged that the accused No.2 was to lend logistic support to the attackers. He therefore, was in search of an accommodation at Colaba near Badhwar Park where the attackers were to land. He however, could not get accommodation in Colaba and ultimately acquired a room belonging to one Mrs.Shantabai Bhosale at Patthe Bapurao Marg, Mumbai-400 008 on rental basis. The prosecution case is that the said room was occupied by accused No.2 for a very short period and he did not turn up to collect back the deposit paid to the landlady. Accused No.2 had also taken admission in computer institute namely Softpro at Fort, Mumbai under an assumed name i.e. Sahil Pawaskar. The documents allegedly in the handwriting of accused No.2 submitted in the computer instituted were seized during the course of investigation. The handwriting expert's report revealed that the documents were written and signed by the accused No.2.

67. As far as accused No.3 is concerned, the prosecution had recorded statements of one Naruddin Mehboob Shaikh and one Mr.Bharat Thakur during which it was revealed that the map which was recovered from trouser pocket of deceased accused No.1-Abu Ismail, was handed over to accused No.3 by accused No.2 at Kathmandu, Nepal. It may be noted here that the alleged act of accused No.2 of acquiring admission in computer institute was investigated along with the crime registered at Yellow Gate Police Station pertaining to death of Amarchand Solanki. The alleged act of accused No.2 with regard to preparation of map recovered from the trouser packet of deceased accused No.1-Abu Ismail, was investigated by the Investigating officer Mr.Marde who had been investigating the case pertaining to the incident of Girgaum Chowpaty which was originally registered at D.B.Marg Police Station.

68. As far as other eight deceased accused are concerned, it is the case of prosecution that after the accused No.1 and the deceased accused Abu Ismail had got down from the inflatable boat, six other accused had also alighted from the same boat. Two of them had proceeded to Nariman House, other two had proceeded to Hotel Taj and the third pair of two

accused had proceeded to Hotel Leopold at Colaba. The last pair of two accused stayed back in the inflatable boat. The inflatable boat thereafter was navigated from Badhwar Park to Nariman Point. The last pair alighted from the inflatable boat and entered Hotel Oberoi.

69. A pair of accused (the deceased accused No.4-Nazir @ Abu Umer and the deceased accused No.9-Shoaib @ Abu Soheb) who had proceeded to Hotel Leopold had fired indiscriminately at the customers at Hotel Leopold and had caused death of 11 (eleven) persons and had injured 28 (twenty eight) persons. Colaba Police received information of the incident immediately as the Hotel Leopold is situated very near to Colaba Police Station. However, by the time police officers reached, the duo had already left Leopold Hotel and had gone to Hotel Taj to join the other pair of accused. An F.I.R. in respect of the incident which had allegedly occurred at Hotel Leopold was recorded at Colaba Police Station vide **C.R.No. 240/08** on the complaint of PSI Mr.Sudhakar Deshmukh. A Panchanama of the spot was drawn. It was revealed during the panchanama that a large scale destruction was caused at the Hotel Leopold. Number of empties were found. AK-47 magazines were also found. All the articles

found on the spot were seized and panchanama was drawn. The investigation of this case was also assigned to DCBCID. Later on a fresh Crime Number **193/08** was registered at DCBCID and further investigation was carried out by PI Mr. Damodar Chaudhari.

70. As far as the incident at Hotel Taj is concerned, it is the case of prosecution that the deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali were the two accused who had entered the Hotel Taj. Deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9- Shoaib @ Abu Soheb had joined them after firing at Hotel Leopold. It is alleged that they had indiscriminately fired at the ground floor particularly at Restaurant Wasavi and Golden Dragon and had caused deaths of large number of guests on the ground floor and had thereafter proceeded to upper floors. They had also used hand grenades during the course of attack on staff and guests of Hotel Taj. Considering seriousness of the situation and sophisticated weapons allegedly used by the above stated four deceased accused and the accused at two other places i.e. Hotel Oberoi and Nariman House, Marcos Commandos were called to help the police and later on

commandos of National Security Guards were called to apprehend or eliminate the terrorists. During the course of exchange of fire between the terrorists and commandos, four accused at Hotel Taj had used AK-47 rifle and hand grenades and had also allegedly set fire to the valuable property of Hotel Taj. Destruction at Hotel Taj was at large scale. It is alleged that the accused had caused death of 36 persons at Hotel Taj and had injured 28 persons during the 60 (sixty) hours they were inside the hotel. It is after 60 hours fight of National Security Guards that the deceased accused Nos. 4, 5, 8 and 9 were eliminated and the hotel was freed. The estimated loss of property at Hotel Taj was **Rs.114 crores** (One hundred and fourteen crores). Two live RDX ladden improvised explosive devices were recovered from outside Taj Hotel.

71. It is also alleged that the above stated four accused had established contact with the perpetrators of crime and their co-conspirators stationed at Pakistan and had been receiving instructions from them on telephone. The telephone conversation between the accused at Hotel Taj and co-conspirators in Pakistan was intercepted by the police with the help of telephone service providers and same was recorded. The transcription of

conversation revealed that it was not a simple crime of committing murders or destruction of properties but it was case of conspiracy by the arrested accused, deceased accused and the wanted accused to wage war against Government of India and to commit other offences. It is also alleged that some of the guest and staff members were kept hostage for few hours in one of the rooms at Hotel Taj and they were physically and mentally tortured. An F.I.R. in respect of alleged crime at Hotel Taj was registered at Colaba Police Station vide **C.R.No.242/08** on the complaint of P.I. Mr.Prakash Sampatrao Bhoite. Panchanamas of various places were drawn during the course of investigation. Four AK-47 rifles in burnt condition, few magazines of AK-47 rifles, haversacks allegedly carried by the accused, live rounds, empties and bullets were seized during the course of panchanamas. Panchanamas in respect of destruction of properties at Hotel Taj were also drawn. Inquest panchanamas of the deceased accused and deceased victims were also drawn and the dead bodies were sent for postmortem examination. Almost all the deaths were reportedly caused either by bullet shots or by fragments of grenades. Investigation of this case was also assigned to DCBCID. A **fresh C.R.No.194/08** came to be registered and further investigation was carried out by Police Inspector

Mr.K.V.Nigade.

72. The pair of deceased accused No.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar had entered Nariman House which is a prayer-cum-residential place for persons of Israely origin. At the time of incident the Gavriel couple, their child Moshe and their guests were at Nariman house. Their two servants were also there. At Nariman House also similar inhuman and heinous acts were committed by the deceased accused No.2 and 3. Property of Nariman House was also destroyed on big scale. It is alleged by the prosecution that servants Ms.Sandra and Mr.Kazi Zakir Hussain sensing serious danger to their lives had hidden themselves in one of the rooms . They had been hearing sound of firing consistently while hiding themselves. During an intervening period, when the firing appeared to be suspended, the said two servants went on the upper floors and found the child lying abandoned . They picked up the child and came out of Nariman House. Rest of the occupants and guests of Nariman House were killed in the alleged incident. It is alleged by the prosecution that in all nine persons were killed at Nariman house and in the adjoining buildings and seven persons were

injured. The total loss of property calculated is to the extent of Rs. one crore and nine lakhs. The deceased accused No.2-Imran Babar @ Abu Aakasha and the deceased accused No.3-Nasir @ Abu Umar allegedly involved in the incident, were eliminated by the N.S.G. Commandos. An F.I.R. in respect of the incident at Nariman House was registered on the complaint made by PSI Hanumant Bhandalkar vide **C.R.No.241/08** at Colaba Police Station. Panchanama of this place was also drawn in presence of panchas. Panchanama of the place where one of bomb had exploded near petrol pump was also drawn. Used and live fire arms and ammunitions were seized during the panchanama. Some of the arms and ammunitions recovered from Nariman House by the N.S.G.Commandos were also seized by the police at Colaba Police Station. Further investigation of this case was also assigned to DCBCID. Police Officer Mr.Vijay Shinde had registered **fresh C.R.No.197/08** and had carried out further investigation. During the course of further investigation statements of witnesses were recorded. Arms and ammunitions seized by the police were sent for analysis to Forensic Science Laboratory and other incidental investigation was also done.

73. As already stated, the pair of two terrorists namely Abadul Reheman Chhota @ Saakib,(deceased accused No.6) and Fahad Ullah (deceased accused No.7) had travelled from Badhwar Park to Nariman Point in the same inflatable boat and left the boat abandoned at Nariman Point. Both of them had entered Hotel Oberoi and Hotel Trident and like other pairs of terrorists had fired indiscriminately in the lobby of one of the restaurants at mezzanine floor. However, before entering the hotel they had planted RDX-laden Improvised Electronic Device (IED) on the slope of flowerbed adjacent to Trident Hotel main entrance. Subsequently the said RDX bomb had exploded. The said I.E.D. did not cause any serious damage because it was covered by the B.D.D.S. staff by mean of bomb blanket. A large number of guests and staff members were either killed or hurt at Bell Desk, Reception Counter, lobby and Tiffin Restaurant. One of the RDX-laden IED was planted near the Tiffin Restaurant which had subsequently exploded. Some guests were forcibly taken hostage from Kandhar Restaurant and were taken to upper floors. Thereafter the accused continued to fire and lob grenades from various position. These two terrorists had also contacted T.V.channels and had attempted to mislead the public by giving false information to the T.V.channels. The total number of deaths at

Hotel Oberoi was 35 including a large number of female guests . Estimated loss of property at Hotel Oberoi and Trident was Rs.40,40,000,00/- (Rs.Forty Crores forty lakhs) .The deceased accused No.6-Abadul Reheman Chhota @ Saakib, and the deceased accused No.7- Fahad Ullah were eliminated by N.S.G. Commandos.

74. As already stated all the ten terrorists including the accused No.1, had arrived at seashore at Badhwar Park, Cuffe Parade, Mumbai in the inflatable boat with Yamaha Enduro Outboard Machine (O.B.M.). It has also been stated by me that eight of them had left the boat at Badhwar Park itself and proceeded to the destinations assigned to them and two of the terrorists had proceeded to Nariman Point in the boat. After getting down at Nariman Point, they had entered Hotel Trident and Oberoi. It has further been stated that these two terrorists i.e. deceased accused No.6-Abadul Reheman Chhota @ Saakib and accused No.7-Fahad Ullah had caused death of 35 persons. An offence regarding the incident at Oberoi was registered at Marine Drive Police Station vide **Crime No.231/08**. It was later on assigned to D.C.B.C.I.D. vide **Crime No.191/08**. Further investigation was carried out by P.I.Mr.Shengale. During the course of

investigation arms and ammunitions were seized. Dead bodies of the accused were found in corridor at 18th floor of Hotel Oberoi. Inquest panchanamas were drawn of both the dead bodies. Postmortem examinations of dead bodies were conducted by medical officers at Government and Municipal Corporation hospitals.

75. As far as the inflatable boat is concerned, it was located by one of the fishermen of fishermen colony of Badhwar Park. The said boat was brought to the seashore at Badhwar Park from Nariman Point. The boat and material found in the boat was seized by the police. The police had seized life saving jackets and other miscellaneous articles from the said boat. Initially the boat was seized as an unclaimed property and no offence was registered at Cuffe Parade Police Station within whose jurisdiction the boat was seized. However, later on during the course of enquiry of death of the navigator Amarchand Solanki it was found that it was not a case of an accidental death but of a murder. An offence in that regard was registered on the complaint made by PSI Padmakar Deore vide **C.R.No.52/08** of Yellow Gate Police Station . The boat and other material was collected by Yellow Gate Police from Cuffe Parade and it was shown seized in that

particular crime. Later on, investigation of this crime was handed over to DCBCID. A **fresh C.R.No.186/08** was registered and further investigation was carried out by Police Inspector Mr.S.B.Kale.

76. As far as RDX-laden I.E.Ds. are concerned, it has been stated by me herein above that accused No.1 and nine deceased accused were given one RDX-laden I.E.D. each and they were carrying their respective bomb in carry bags.

77. One of the RDX-laden IEDs carried by the accused No.1 and deceased accused Abu Ismail was planted in the taxi which the accused No.1 and deceased accused Abu Ismail had hired from Badhwar Park to C.S.T.. The said taxi was later on hired from C.S.T. by Advocate Mr. Laxminarayan Goyal for going to Charkop, Kandivali, a western suburb. Advocate Mr. Laxminarayan Goyal was to travel by some outstation train from C.S.T.. railway station but due to the incident at C.S..T. he left the railway station to go to his sister-in-law's place at Charkop, Kandivali. Unfortunately he engaged the same taxi in which a bomb was planted by accused No.1 and deceased accused No.1- Abu

Ismail. The said bomb had exploded when the taxi was on its way to Charkop, Kandivali. The bomb exploded on Western Express Highway in front of City Swan Club causing death of Advocate Mr.Laxminarayan Goyal and the driver -Umar Shaikh. The taxi was also completely destroyed. The explosion was so severe and its impact was so devastating that the severed head of one of the dead bodies was thrown in the basement of City Swan Club opposite the place of incident. An F.I.R. vide **Crime No.464/08** was registered on the complaint made by A.S.I. Mr.Shankar Chandrakant Tambe at Vile Parel Police Station. Police rushed to the spot. They had prepared panchanama of the spot. Articles (broken parts of the taxi and mutilated limbs of human bodies) were seized for examination of explosive experts and biology experts. As far as limbs of dead bodies were concerned, they were sent to D.N.A. analysis to ascertain as to how many persons were travelling in the taxi. Initially police had registered three deaths at Vile Parle Police Station. However, the D.N.A. analysis of limbs of dead bodies revealed that two persons had been travelling in the said taxi. As such the said bomb was responsible for death of two persons ,injuries to some passersby and destruction of taxi. Investigation of this case was also handed over to DCBCID. A **fresh C.R.No. 198/08** was registered. Further

investigation was carried out by Police Sub-Inspector Mr.Vaibhav Dhumal.

78. One of such bombs was also planted in a taxi by the pair of deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb who had travelled from Badhwar Park to Hotel Leopold and had later on entered Hotel Taj to join deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali. The said taxi was hired by Mr. Wasim Ahmed Bashiruddin Shaikh from near Leopold Hotel for going to Dongari. He had left the taxi at Dongari which was later on hired by the deceased Zarina and Reema . Zarina was the mother-in-law of deceased Reema. Both of them wanted to go to the residence of Zarina at Bombay Port Trust. They had safely reached the spot. However, after getting out of the taxi, while they were paying taxi fare to the taxi driver, the bomb had exploded resulting into death of the taxi driver and the two ladies namely Zarina and Reema. The explosion of bomb had also caused damage to nearby huts and had seriously injured persons who were nearby the said taxi at the time of explosion. The matter was reported to Byculla Police Station by Police Constable Mr.Kishor Kharate. An F.I.R. vide **C.R.No.318/08** was

registered at Byculla Police Station. Police had visited the spot and panchanama of the spot was drawn. Material found on the spot was seized. Injured Zarina and Reema had been taken to hospital before arrival of the police. Zarina was declared dead before admission. Reema who was admitted for treatment had also succumbed to the injuries during course of the day. The taxi driver also had died following the blast. As such this incident was responsible for three deaths and also for causing injuries to several persons. The details of the same have been mentioned in the charge.

79. As far as other RDX laden bombs are concerned, two of such bombs were used at Hotel Oberoi by the deceased accused who had entered Hotel Oberoi. Another two bombs were used by the deceased accused who had gone to Nariman house. One of the said two bombs was planted near a petrol pump at Colaba allegedly by the deceased accused Nos.4 & 9 which had exploded on the same night. The other bomb explosion was caused at Nariman House during encounter of deceased accused with the N.S.G.Commandos.

80. One of the bombs had exploded at Hotel Taj. One live bomb

was recovered near Hotel Taj and another live bomb was recovered from near Gokul hotel in the vicinity of hotel Taj. One live bomb was recovered in the luggage of passengers which was kept safely by C.S.T. railway police when the luggage was being given to the claimants. All the three live bombs were defused by the B.D.D.S. of Mumbai. The remnants of defused bombs were sent to explosive expert for his opinion. It is the case of prosecution that in almost all the bombs RDX was used for explosion which is considered to be highly explosive material.

81. As such out of **ten** RDX laden IEDs allegedly carried by the accused No.1 and deceased accused Nos. 1 to 9, **three** were recovered live, **one** had exploded in front of hotel Trident (Oberoi), **one** had exploded in the taxi in which deceased Advocate Mr.Laxminarayan Goyal was travelling from V.T. to Charkop, Kandivali, **one** had exploded in the taxi in which Mrs.Zarina and Mrs.Reema were travelling from Dongari to Bombay Port Trust, **one** had exploded at petrol pump near Nariman House, **one** was allegedly exploded by the deceased accused No.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar in Nariman House, **one** had exploded in Hotel Taj during the incident and **one** more had exploded in Hotel Oberoi during the course of incident.

82. In all **166** deaths were caused by the accused No.1 and the nine deceased accused during the course of attack at various places the details of which have been incorporated in the above stated paras. To put it shortly, the offences registered at various places can be summarized in a tabular form as under :

TABLE NO.1 :

Sr.No.	Place of incident	C.R.No. & P.Stn.	Name of the complainant	C.R.No. of DCBCID
1.	C.S.T.	155/08 CST Rly.P.Stn.	API Bharat Bhosale	213/08
2.	Cama Hospital (In)	245/08 Azad Maidan P.Stn.	API Vijay Shinde	187/08
3.	Came Hospital (out)	246/08 Azad Maidan P.Stn.	PC Nitin A.Mathane	188/08
4.	Marine Drive (Skoda car)	230/08 Marine Drive P.Stn.	Mr.Sharan R.Arasa	192/08
5.	Girgaum Chowpaty	305/08 D.B.Marg P.Stn.	PSI Bhaskar Kadam	182/08
6.	Hotel Leopold	240/08 Colaba P.Stn.	PSI Sudhakar D.Deshmukh	193/08
7.	Hotel Taj	242/08 Colaba P.Stn.	PI K.V.Nigade	194/08
8.	Nariman House	241/08 Colaba P.Stn.	PSI Hanumant Bhandalkar	197/08
9.	Hotel Oberoi	231/08 Marine Drive P.Stn	PI Bhagwat K. Bhosale	191/08
10.	Murder of Navigator	55/08 Yellow Gate P.Stn.	PSI Padmakar Deore	186/08
11.	Vile Parle taxi blast	464/08 Vile Parle P.Stn.	ASI Shankar Tambe	198/08
12.	Mazgaon taxi blast	318/08 Byculla P.Stn.	PC Kishore Kharate	200/08

83. Number of deaths also can be stated in a tabular form as under:

TABLE NO.2:

Sr. No	Name of the Deceased	Place of Death	Nature of injury
1.	2	3	4
1	Salim Hussain Harharwala	Nariman House	Firearm injuries
2	Mehzabin @ Maria Salim Harharwala	Nariman House	Firearm injuries
3	Rivka Gavriel Holtzberg	Nariman House	Firearm injuries
4	Rabbi Gavriel Noach Holtzberg	Nariman House	Firearm injuries
5	Gajendra Singh	Nariman House	Firearm injuries
6	Ben Zion Chroman	Nariman House	Firearm injuries
7	Norma Shvarzblat Robinovich	Nariman House	Multiple firearm injuries
8	Rajendrakumar Baburam Sharma	CST/Nariman House	Firearm injuries
9	Yokevet Mosho Orpaz	Nariman House	Firearm injuries
10	Subhash Vanmali Vaghela	Hotel Leopold	Firearm injuries
11	Pirpashi Mehboobali Shaikh	Hotel Leopold	Firearm injuries
12	Shahabuddin Sirajuddin Khan	Hotel Leopold	Firearm injuries
13	Harishbhai Durlabbhai Gohil	Hotel Leopold	Firearm injuries
14	Hidayatullah Anwarali Kazi	Hotel Leopold	Firearm injuries
15	Malyesh Manvendra Banarjee	Hotel Leopold	Blast injuries
16	Gourav Balchand Jain	Hotel Leopold	Firearm injuries
17	P.K.Gopalkrishnan	Hotel Leopold	Firearm injuries
18	Kamal Nanakram Motwani	Hotel Leopold	Firearm injuries
19	Jurgen Hienrich Rudolf	Hotel Leopold	Firearm injuries
20	Daphne Hilary Schmidt	C.S.T./Leopold	Firearm injuries
21	Hemant Kamlakar Karkare	Cama Out	Firearm injuries
22	Ashok Marutirao Kamate	Cama Out	Firearm injuries

1.	2	3	4
23	Vijay Sahadev Salaskar	Cama Out	Firearm injuries
24	Bapurao Sahebrao Durgude	Cama Out	Firearm injuries
25	Balasaheb @ Nana Chandrakant Bhosale	Cama Out	Firearm injuries
26	Arun Raghunath Chite	Cama Out	Firearm injuries
27	Jayawant Hanumant Patil	Cama Out	Firearm injuries
28	Yogesh Shivaji Patil	Cama Out	Firearm injuries
29	Surendrakumar Bindu Rama	C.S.T	Firearm injuries
30	Prakash Pandurang More	Cama in	Firearm injuries
31	Vijay Madhukar Khandekar	Cama in	Firearm injuries
32	Baban Balu Ughade	Cama in	Firearm injuries
33	Bhanu Devu Narkar	Cama in	Firearm injuries
34	Thakur Budha Vaghela	Cama in	Firearm injuries
35	Bhagan Gangaram Shinde	Cama in	Blast injuries
36	Shivashankar Nirant Gupta	Cama in	Firearm injuries
37	T.Suda Hisashi	Hotel Oberoi	Firearm injuries
38	Murad Amarsi	Hotel Oberoi	Firearm injuries
39	Loumiya Hiridaji Amarsi	Hotel Oberoi	Firearm injuries
40	Scherr Alan Michael	Hotel Oberoi	Firearm injuries
41	Neomi Leiya Sher	Hotel Oberoi	Firearm injuries
42	Sandeep Kisan Jeswani	Hotel Oberoi	Firearm injuries
43	Lo Hawei Yen	Hotel Oberoi	Firearm injuries
44	Jhirachant Kanmani @ Jina	Hotel Oberoi	Firearm injuries
45	Altino D' Lorenjo	Hotel Oberoi	Firearm injuries
46	Brett Gilbert Tailor	Hotel Oberoi	Firearm injuries
47	Farukh Dinshaw	Hotel Oberoi	Firearm injuries
48	Reshama Sunil Parikh	Hotel Oberoi	Firearm injuries
49	Sunil Shevantilal Parekh	Hotel Oberoi	Firearm injuries

1.	2	3	4
50	Ajit Shrichand Chabriya	Hotel Oberoi	Firearm injuries
51	Sanjay Vijay Agarwal	Hotel Oberoi	Firearm injuries
52	Rita Sanjay Agarwal	Hotel Oberoi	Firearm injuries
53	Mohit Kanhaiyalal Harjani	Hotel Oberoi	Firearm injuries
54	Monika Ajit Chabriya	Hotel Oberoi	Firearm injuries
55	Harsha Mohit Harjani	Hotel Oberoi	Firearm injuries
56	Ravi Dara	Hotel Oberoi	Firearm injuries
57	Uma Vinod Gark	Hotel Oberoi	Firearm injuries
58	Pankaj Somchand Shah	Hotel Oberoi	Blast injuries
59	Ashok Kapoor	Hotel Oberoi	Firearm injuries
60.	Anand Suryadatta Bhatt	Hotel Oberoi	Firearm injuries
61	Rohington Bajji Mallu	Hotel Oberoi	Firearm injuries
62	Kannubhai Zaverbhai Patel	Hotel Oberoi	Firearm injuries
63	Ami Bipinichandra Thaker	Hotel Oberoi	Firearm injury
64	Jordan Geigy Fernandise	Hotel Oberoi	Firearm injuries
65	Neeta Prakash Gaikwad	Hotel Oberoi	Blast injuries
66	Shaunak Jayawant Chemburkar	Hotel Oberoi	Firearm injuries
67	Wilson Baburao Mandalik	Hotel Oberoi	Firearm injuries
68	Sarjerao Sadashiv Bhosale	Hotel Oberoi	Firearm injuries
69	JasminMahendrasingh Burji	Hotel Oberoi	Firearm injuries
70	Sanjy Sambhajirao Surve	Hotel Oberoi	Firearm injuries
71	Bimolchand Maibam	Hotel Oberoi	firearm injuries
72	Mohabbat Umer Abdul Khalid	Vile Parle	Blast injuries
73	Laxminarayan Goyal	Vile Parle	Blast injuries
74	Mrs.Jarina Samsuddin Shaikh	Mazgaon	Blast injuries
75	Fulchandra Ramchandra Bind	Mazgaon	Blast injuries

1.	2	3	4
76	Mrs.Reema Mohamad Rabivul	Mazgaon	Blast injuries
77	Shashank Chandrasen Shinde	C.S.T.	Firearm injuries
78	Hamina Begum Hamid Shaikh	C.S.T.	Firearm injuries
79	Ashraf Ali Allahrakha Shaikh	C.S.T.	Firearm injuries
80	Ajij Nabilal Rampure	C.S.T.	Firearm injuries
81	Aakash Akhilesh Yadav	C.S.T.	Firearm injuries
82	Mukesh Bhikaji Jadhav	C.S.T.	Firearm injuries
83	Sitaram Mallapa Sakhare	C.S.T.	Firearm injuries
84	Rahamtulla Ibrahim	C.S.T.	Firearm injuries
85	Mishrilal Mourya Shri Garib Mourya	C.S.T.	Firearm injuries
86	Vinod Madanlal Gupta	C.S.T.	Firearm injuries
87	Sunil Ashok Thackare	C.S.T.	Firearm injuries
88	Haji Ejaj Bhai Imamsaheb Dalal	C.S.T.	Firearm injuries
89	Mira Narayan Chattarji	C.S.T.	Blast injuries
90	Shirish Sawla Chari	C.S.T.	Firearm injuries
91	Sushilkumar Vishwambhar Sharma	C.S.T.	Firearm injuries
92	Murlidhar Laxman Choudhary	C.S.T.	Firearm injuries
93	Ambadas Ramchandra Pawar	C.S.T.	Firearm injuries
94	Jaikumar Durairaj Nadar	C.S.T.	Firearm injuries
95	Deepali Janardhan Chitekar	C.S.T.	Blast injuries
96	Raju Janardhan Chitekar	C.S.T.	Blast injuries
97	Aditya Ashok Yadav	C.S.T.	Firearm injuries
98	Isibul Raheman Faizuddin Raheman Shaikh	C.S.T.	Firearm injuries
99	Prakash Janath Mandal	C.S.T.	Firearm injuries
100	Harakha Lalji Solanki	C.S.T.	Firearm injuries

1.	2	3	4
101	Mohamed Amanat Mohamad Ali	C.S.T.	Firearm injuries
102	Sarafraz Sallauddin Ansari	C.S.T.	Firearm injuries
103	Ayub Yakub Qureshi	C.S.T.	Firearm injuries
104	Afarin Shahadab Qureshi	C.S.T.	Firearm injuries to the liver
105	Avadesh Sudama Pandit	C.S.T.	Firearm injuries
106	Chandulal Kashinath Tandel	C.S.T.	Firearm injuries
107	Manohar Sohani	C.S.T.	Firearm injuries
108	Mohamad Hussain Mohamad Alamgir Shaikh	C.S.T.	Firearm injuries
109	Murtaza Ansari Sallauddin Ansari	C.S.T.	Firearm injuries
110	Mohamad Arif Mohamed Islam Ansari	C.S.T.	Firearm injuries
111	Mohamad Mukhtar Malik	C.S.T.	Firearm injuries
112	Abbas Rajjab Ansari	C.S.T.	Firearm injuries
113	Unknown Male person	C.S.T.	Firearm injuries
114	Mrs.Gangabai Baburao Kharatmol	C.S.T.	Firearm injuries
115	Narul Islam Ajahar Mulla	C.S.T.	Air blast injury
116	Murgan Palaniya Pillai	C.S.T.	Blast injuries
117	Rakhila Abbas Ansari	C.S.T.	Firearm injuries
118	Nitesh Vijaykumar Sharma	C.S.T	Firearm injuries
119	Fatmabi Rehaman Shaikh	C.S.T.	Firearm injuries
120	Meenu Arjun Ansari	C.S.T.	Firearm injuries
121	Mohamad Itihas Ansari	C.S.T.	Firearm injuries
122	Mastan Munir Qureshi	C.S.T.	Firearm injuries
123	M.V.Anish	C.S.T.	Multiple injuries
124	Upendra Birju Yadav	C.S.T.	Firearm injuries
125	Unknown Male person	C.S.T.	Head injury

1.	2	3	4
126	Poonam Bharat Navadia	C.S.T.	Firearm & blast injury
127	Baichan Ramprasad Gupta	C.S.T.	Blast injury
128	Nathuni Parshuram Yadav	C.S.T.	Firearm injuries
129	Amarchand Naran Solanki	Boat Kuber	slitting of throat
130	Tukaram Gopal Ombale	Vinoli Chowpaty	Firearm injuries
131	Major Sandip Unnikrishnan	Hotel Taj	Firearm injuries
132	Rahul Subhash Shinde	Hotel Taj	Firearm injuries
133	Zaheen Sayyed Nisar Ali Jafary Mateen	Hotel Taj	Firearm injuries
134	Andres Don Livera	Hotel Taj	Firearm injuries
135	Gunjan Vishandas Narang	Hotel Taj	Firearm injuries
136	Vishandas Giridharidas Narang	Hotel Taj	Firearm injuries
137	Vijayrao Anandrao Banja	Hotel Taj	Firearm injuries
138	Sadanand Ratan Patil	Hotel Taj	Firearm injuries
139	Thomas Verghese	Hotel Taj	Firearm injuries
140	Ravi Jagan Kunwar	Hotel Taj	Firearm injuries
141	Boris Mario Do Rego	Hotel Taj	Firearm injuries
142	Satpakkam Rahmatulla Shaukatali	Hotel Taj	Firearm injuries
143	Faustine Basil Martis	Hotel Taj	Firearm injuries
144	Kaizad Naushir Kamdin	Hotel Taj	Firearm injuries
145	Neelam Vishandas Narang	Hotle Taj	Firearm injuries
146	Rupinder Devenersing Randhava	Hotle Taj	Firearm injuries
147	Eklak Ahmed Mustak Ahmed	Hotle Taj	Firearm injuries
148	Maksud Tabarakali Shaikh	Hotel Taj	Firearm injuries
149	Feroz Jamil Ahmed Khan	Hotel Taj	Firearm injuries
150	Teitelbaum Aryeh Levish	Hotle Taj	Firearm injuries

1.	2	3	4
151	Duglas Justin Markell	Hotle Taj	Firearm injuries
152	Chaitilal Gunish	Hotel Taj	Firearm injuries
153	Willem Jan Berbaers	Hotel Taj	Firearm injuries
154	Nitisingh Karamveer Kang	Hotel Taj	Shock due to burn
155	Samarveer Singh Karamveer Singh Kang	Hotel Taj	Firearm injuries
156	Udaysingh Karamveer Singh Kang	Hotel Taj	Shock due to burn
157	Sabina Saigal Saikia	Hotle Taj	Shock due to injuries
158	Hemlata Kashi Pillai	Hotel Taj	burn injury
159	Rajiv Omprakash Sarswat	Hotel Taj	Shock due to burn
160	Gutam Devsingh Gosai	Hotel Taj	Firearm injuries
161	Rajan Eshwar Kamble	Hotel Taj	Firearm injuries
162	Burki Ralph Rainer Jachim	Hotel Taj	Shock due to multiple injuries
163	Hemant Pravin Talim	Hotel Taj	Firearm injuries
164	Shoeb Ahmed Shaikh	Hotel Taj	Firearm injuries
165	Michael Stuart Moss	Hotel Taj	Firearm injuries
166	Elizabeth Russell	Hotel Taj	Firearm injuries

84. In all 238 persons were injured during the incidents at various places. Most of the persons had suffered firearm injuries and some had suffered injuries due to blast. I have prepared summary in a tabular form indicating total numbers of injured persons, place of incident and nature of injuries. The witnesses who could be examined in the court either directly or under section 296 of Cr.P.C., have been shown in Col.No.2 of **Table No.3.**

TABLE NO.3 :

Sr.No	PW.No.	Name of the injured	Place of incident	Nature of injury
1	2	3	4	5
1	-	Mukesh Bhagwatprakash Agarwal	C.S.T.	Bullet
2	62	Sudam Aba Pandarkar	C.S.T.	Bullet
3	-	Nisha Anilkumar Yadav	C.S.T.	Bullet
4	-	Jangam Vithalrao Bokade	C.S.T.	Bullet
5	518	Jayprakash Sohanlal Phalore	C.S.T.	Bullet
6	517	Balu Bandu More	C.S.T.	Bullet
7	506	Anilkumar Rajendra Yadav	C.S.T.	Bullet
8	516	Murlidhar Chintu Zole	C.S.T.	Bullet
9	63	Pandurang Subrao Patil	C.S.T.	Bullet
10	-	Parasnath Ramsoman Giri	C.S.T.	Bullet
11	-	Firozkhan Khusnurkhan Ghauri	C.S.T.	Bullet
12	-	Raziyabegum Noor Qureshi	C.S.T.	Bullet
13	519	Ramji Yabad Napit	C.S.T.	Bullet
14	69	Vishal Prakash Kardak	C.S.T.	
15	510	Shambunath Munai Yadav	C.S.T.	Blast
16	56	Kishor Vinayak Kale	C.S.T.	Bullet
17	88	Ansarallh Saudaarallh Baksh Mohd. Hanif	C.S.T.	Bullet
18	89	Harshada Suhas Salaskar	C.S.T.	Bullet
19	-	Sarita Shantaram Harkulkar	C.S.T.	Bullet
20	-	Neeta Gajanan Kurhade	C.S.T.	Bullet
21	-	Ajamat Ali Narhu Sha	C.S.T.	Bullet

1	2	3	4	5
22	504	Pappusing Mannusingh	C.S.T.	Bullet
23	64	Punamsingh Santoshsingh	C.S.T.	Bullet
24	-	Maltidevi Madan Gupta	C.S.T.	Bullet
25	-	Sulochana chandrakant Lokhande	C.S.T.	
26	-	Vijay Ramchandra Khote	C.S.T.	Bullet
27	-	Mumtaz Mohd. Yusuf Khan	C.S.T.	Bullet
28	-	Pappu Laldev Jawahar Laldev	C.S.T.	Bullet
29	87	Niranjan Sadashiv Sardar	C.S.T.	Bullet
30	-	Shabir Abdul Salam Dalal	C.S.T.	Bullet
31	515	Fakir Mohd. Abdul Gafoor	C.S.T.	Bullet
32	-	Laxman Shivaji Hundkeri	C.S.T.	Bullet
33	-	Akshay Tanaji Supekar	C.S.T.	Bullet
34	524	Bharat Shyam Nawadia	C.S.T.	Bullet
35	-	Nimba Shampuri Gosavi	C.S.T.	Bullet
36	521	Adhikrao Dyanu Kale	C.S.T.	Bullet
37	-	Mahadev Datta Petkar	C.S.T.	Bullet
38	-	Santoshkumar Faujdarsing Yadav	C.S.T.	Bullet
39	513	Alok Harilal Gupta	C.S.T.	Bullet
40	527	Prashant Purnachandra Das	C.S.T.	Bullet
41	-	Miraj Alam Ali Mulla Ansari,	C.S.T.	Bullet
42	-	Abdul Rashid Abdul Aziz	C.S.T.	Bullet
43	-	Abdul Salam Shaikh Sukha	C.S.T.	Bullet

1	2	3	4	5
44	-	Akhilesh Dyanu Yadav	C.S.T.	Bullet
45	-	Ramzan Sahrif Kadar Sharif	C.S.T.	Bullet
46	505	Habibul Mohd. Sukurddin Khan	C.S.T.	Bullet
47	-	Mohd. Siddiqu Mohd. Sagir Alam	C.S.T.	Bullet
48	-	Sachinkumar Singh Santoshkumar Singh	C.S.T.	Blast
49	-	Tejas Arjungi	C.S.T.	Bullet
50	53	Nafisa Sadaf Qureshi	C.S.T.	Bullet
51	507	Laji Jagganath Pandye	C.S.T.	Bullet
52	-	Shamshad Dalal	C.S.T.	Blast
53	-	Baby Ashok Yadav	C.S.T.	Bullet
54	512	Ashok Bhimappa Renetala	C.S.T.	Blast
55	-	Shital Upendra Yadav	C.S.T.	Blast
56	523	Vijaya Ramkomal Kushwah	C.S.T.	Bullet
57	-	Asha Shridhar Borde	C.S.T.	Bullet
58	-	Vatsala Sahadev Kurhade	C.S.T.	Bullet
59	-	Chandrakant Ganpatirao Lokhande	C.S.T.	Bullet
60	-	Abdul Razak Farukh Nasiruddin	C.S.T.	Blast
61	52	Farukh Nasiruddin Khaliluddin	C.S.T.	Bullet
62	525	Anilkumar Dyanoji Harkulkar	C.S.T.	Bullet
63	522	Uttam Vishnu Sasulkar	C.S.T.	Bullet
64	-	Afroz Abbas Ansari	C.S.T.	Bullet

1	2	3	4	5
65	-	Dadarao Rambhoji Jadhav	C.S.T.	Blast
66	-	Suryabhan Sampat Gupta	C.S.T.	Blast
67	508	Sanjay Nemchandra Yadav	C.S.T.	Bullet
68	509	Ratankumarji Kanhayaprasad Yadav	C.S.T.	Blast
69	-	Jagendrakumar Kailashkumar Mishra	C.S.T.	Blast
70	-	Gopal Julena Prajapati	C.S.T.	Bullet
71	86	Sangita Niranjan Sardar	C.S.T.	Blast
72	-	P. Nirmala	C.S.T.	Blast
73	-	P. Ponuraj	C.S.T.	Bullet
74	-	Mohan Bharti	C.S.T.	Bullet
75	-	Sushant Nityanand Panda	C.S.T.	Bullet
76	-	Annasaheb Ambu Waghmode	C.S.T.	Bullet
77	-	T. Thavasi Parnal	C.S.T.	Bullet
78	-	Anand Bhimrao Arjun	C.S.T.	Bullet
79	-	Kanhayya Kedarnath Sahani	C.S.T.	Bullet
80	-	Vibha Ashokkumar Singh	C.S.T.	Bullet
81	-	Beti Alfonso	C.S.T.	Bullet
82	-	Indraraj Luise	C.S.T.	Bullet
83	-	Jayram Harilal Chawan	C.S.T.	Bullet
84	-	Sunita Upendra Yadav	C.S.T.	Bullet
85	-	Sushama Akhilesh Yadav	C.S.T.	Bullet
86	520	Vishveshwar Shishupal Pacharne	C.S.T.	Bullet

1	2	3	4	5
87	49	Bharat Ramchandra Bhosale	C.S.T.	Bullet
88		Raviranjan Shriram Virendra	C.S.T.	Bullet
89	-	Priyanka Chitaranjan Giri	C.S.T.	abrasion
90	-	Imran Shakur Bhagwan	C.S.T.	Bullet
91	-	Rekha Shyam Rathod	C.S.T.	Bullet
92	-	Barjrang Jaykaran Prajapati	C.S.T.	Bullet
93	-	Satyanand Karunakaro Behra	C.S.T.	Bullet
94	51	Devika Natvarlal Rotawan	C.S.T.	Bullet
95	526	Sadahiv Chandrakant Kolke	C.S.T.	Bullet
96	514	Ganpat Gangaram Shigwan	C.S.T.	Bullet
97	-	Manoj Prafulchandra Kanojia	C.S.T.	Bullet
98	-	Balaji Baburao Kharatmol	C.S.T.	Bullet
99	-	Mehboob Abbas Ansari	C.S.T.	Bullet
100	-	Asif Abdul Rafik Shaikh	C.S.T.	-
101	-	Raghvendra Banvasi Singh	C.S.T.	-
102	-	Ashok Keshwanand Singh	C.S.T.	-
103	-	Radhadevi Bodhiram Sahani	C.S.T.	-
104	-	Tapasi Taramniggam Nadar	C.S.T.	-
105	511	Ganesh Sitaram Sakhare	C.S.T.	Bullet
106	-	Sayyed Shahnavaz Sayyed Salim Mujawar	C.S.T.	-
107	-	Arvind Gopinath Bhalekar	C.S.T.	Blast
108	-	Shivram Vijay Sawant	C.S.T.	-
109	-	Ashok Shivram Patil	C.S.T.	Bullet

1	2	3	4	5
110	118	Sadanand Vasant Date	Cama In	Blast
111	112	Vijay Abaji Shinde	Cama In	Bullet
112	469	Vijay Tukaram Powar	Cama In	Bullet & Blast
113	471	Mohan Dyanoba Shinde	Cama In	Bullet & Blast
114	470	Sachin Dadasaheb Tilekar	Cama In	Bullet & Blast
115	472	Vinayak Chintaman Dandgawhal	Cama In	Bullet
116	473	Hirabai Vilas Jadhav	Cama In	Bullet
117	109	Chandrakant Dyandev Tikhe	Cama In	Blast
118	111	Kailash Chandrabhan Ghegadmal	Cama In	Bullet
119	106	Harischandra Sonu Shrivardhankar	Cama In	Bullet
120	136	Arun Dada Jadhav	Cama Out	Bullet
121	139	Maruti Mahdevrao Phad	Cama Out	Bullet
122	456	Mohd. Asif Abdul Gani Memon	Cama Out	Bullet
123	454	Shankar Bhanusaheb Vhande	Cama out	Bullet
124	457	Kalpanth Jitai Singh	Cama out	Bullet
125	453	Anil Mahadev Nirmal	Cama out	Bullet
126	455	Prashant Sadashiv Koshti	Cama out	Bullet
127	2	Sanjay Yeshwant Govilkar	Vinoli	Bullet
128	171	Shyam Sunder Choudhary	Vile Parle	Blast
129	490	Balkrishna Ramchandra Bore	Vile Parle	Blast
130	-	Roldan Glandson Ayman	Vile Parle	Blast
131	-	Shabbir Tahirna Naruddin	Oberoi	Bullet

1	2	3	4	5
132	452	Chandresh Harjiwandas Vyas	Oberoi	Bullet
133	447	Apurva Natwarlal Parekh	Oberoi	Bullet
134	-	Amardeep Harkisan Sethi	Oberoi	Bullet
135	-	Sidharth Rajkumar Tyagi	Oberoi	Bullet
136	448	Dinaj Puranchand Sharma	Oberoi	Bullet
137	-	Drasuz Sobizuski	Oberoi	Bullet
138	-	Linda Oricistala Rangsdel	Oberoi	Bullet
139	-	Alisa Micheal	Oberoi	Bullet
140	-	Andolina Waokta	Oberoi	Bullet
141	-	Helan Connolly	Oberoi	-
142	-	Jahid Jibad Mebyar	Oberoi	Bullet
143	-	Shih Fung Chein	Oberoi	
144	-	Reshma Sanjay Khiyani	Oberoid	Bullet & Blast
145	-	C.M.Puri	Oberoi	
146	-	Imran Jan Mohd. Merchant	Trident	Bullet
147	451	Virendra Pitamber Semwal	Trident	Bullet
148	450	Joseph Joy Pultara	Trident	Bullet
149	-	Appasaheb Maruti Patil	Trident	Bullet
150	446	Gangaram Suryabhan Borde	Trident	Bullet
151	-	Anil Bhaskar Kolhe	Trident	
152	449	Ranjit Jagganath Jadhav	Trident	Bullet
153	-	Capt. A.K.Sing	Oberoi	Blast
154	-	Camando Manish	Oberoi	Blast
155	-	Deepak Narsu Dhole	Taj	Burn

1	2	3	4	5
156	493	Nitin Digamber Kakde	Taj	Blast
157	500	Ashok Laxman Pawar	Taj	Inhalation injury
158	501	Arun Sarjerao Mane	Taj	Inhalation injury
159	502	Saudagar Nivruti Shinde	Taj	Inhalation lung injury
160	499	Amit Raghnuath Khetle	Taj	Bullet
161	503	Shankar Shamrao Pawar	Taj	Bullet
162	-	Samadhan Shankar More	Taj	-
163	-	Sanjay Uttam Gomase	Taj	-
164	-	Rafal Godas	Taj	-
165	-	Maria Roza Romero	Taj	-
166	-	Saymond Helis	Taj	Bullet
167	497	Sajesh Narayan Nair	Taj	Bullet
168	496	Nitin Satishkumar Minocha	Taj	Bullet
169	188	Adil Rohengtan Irani	Taj	Burn
170	492	Ashish Ankush Patil	Taj	Leg injury
171		Iyujin Tan Jhonsi	Taj	
172	495	Jagdish Waman Gujran	Taj	Bullet
173	-	Hanifa Bilakiya	Taj	Bullet
174	-	Anjum Gaful Bilakiya	Taj	-
175	-	Yuti Barnad	Taj	-
176	184	K.R.Rammurthi	Taj	
177	-	Vinay Keshavaji Kuntawala	Taj	wound over left side of ankle
178	-	Deepak Pramod Gupta	Taj	-
179	-	Pragati Deepak Gupta	Taj	-
180	-	Mohanlal Pratap Taware	Taj	-

1	2	3	4	5
181	-	Sunil Kumar Jodha	Taj	
182	-	Vishwanath Maruti Gaikwad	Taj	Burn
183	494	Naushir Firoz Sanjana	Taj	Bullet
184	498	Rakesh Harischandra Chawan	Taj	Bullet
185	474	Pravin Pandurang Sawant	Leopold	Bullet
186	489	Nivruti Baburao Gavhane	Leopold	Bullet
187	-	Munira ul Rayesi	Leopold	Bullet
188	-	Faizal Miran Sabil ul Gidgali	Leopold	Bullet
189	-	Asma un Rayesi	Leopold	Bullet
190	-	Devid John Kokar	Leopold	Blast
191	-	Katherin Austin	Leopold	Bullet
192	477	Ijas Abdul Karupadan Kuddi	Leopold	Bullet
193	475	Kunal Prakash Jaiswani	Leopold	Blast
194	-	Harnish Patel	Leopold	Blast
195	-	Micle Charles Merphi	Leopold	Bullet & Blast
196	-	Riyan Micle Merphi	Leopold	Blast
197	480	Ramchandra Selumadhav Nair	Leopold	Bullet
198	481	Bharat Sasuprasad Gujar	Leopold	Blast
199	-	Anamika Bholanath Gupta	Leopold	Bullet
200	482	Rasika Krushna Sawant	Leopold	Blast
201	483	Mohd. Parvez Aslam Ansari	Leopold	Bullet
202	-	Minakshi Raghubhai Dattaji	Leopold	Bullet
203	486	Fanishang Misha Bhishum	Leopold	Blast
204	-	Bhaskar Paddu Dewadiga	Leopold	Bullet
205	485	Manoj Bahadur Thakur	Leopold	Bullet

1	2	3	4	5
206	476	Ransale Gilbert Santhumayor	Leopold	Bullet
207	484	Mohd. Ayub Mohd. Abdul Ansari	Leopold	Bullet
208	488	Prashant Vasant Tambe	Leopold	Bullet
209	-	Benjamin Jerold Methis	Leopold	Blast
210	487	Naresh Mulchand Jumani	Leopold	Bullet
211	478	Nilesh Mahendra Gandhi	Leopold	Bullet
212	479	Prakash Satan Bharwani	Leopold	Bullet
213	439	Prakash Rawji Surve	Nariman	Bullet
214	440	Bablu Rajsing Yallam	Nariman	Bullet
215	441	Sanjay Laxman Katar	Nariman	Blast
216	442	Vijay Ankush Falke	Nariman	Bullet
217	443	Ashok Babu Sunnap	Nariman	Bullet
218	444	Pradosh Prakash Perekar	Nariman	Blast
219	445	Anil Sakharam Varal	Nariman	Blast
220	-	Rajendraprasad Ramchandra Maurya	Mazgaon	Blast
221	467	Mukhtar Shriniwas Shaikh	Mazgaon	Blast
222	-	Abdul Salim Shaikh	Mazgaon	Blast
223	460	Sanju Kurshna Ghorpade	Mazgaon	Blast
224	462	Saiddiqui Firoz Shaikh	Mazgaon	Blast
225	-	Shahbaz Juber Khan	Mazgaon	Blast
226	466	Heena China Shaikh	Mazgaon	Blast
227	461	Manorabagum Ali Akbar Shaikh	Mazgaon	Blast
228		Sabira Majid Khan	Mazgaon	Blast

1	2	3	4	5
229	459	Hawa Abdul Salim Shaikh	Mazgaon	Blast
230	465	Rahaman Ali Akbar Shaikh	Mazgaon	Blast
231	458	Manoharabegum Ali Ahmed Shaikh	Mazgaon	Blast
232	-	Sohel Abdul Shaikh	Mazgaon	Blast
233	-	Kabir Bablu Shaikh	Mazgaon	Blast
234	-	Kulsum Babu Shaikh	Mazgaon	Blast
235	-	Jasmin Babu Shaikh	Mazgaon	Blast
236	-	Imran Mohd. Shafi Pathari	Mazgaon	Blast
237	468	Kanhaikumar Harikishor Paswan	Mazgaon	Blast
238	463	Shamin Rauf Shaikh	Mazgaon	Blast

85. As such in all twelve offences registered at various police stations were assigned to DCBCID for further investigation. During the course of investigation it was revealed that the handlers and co-conspirators who were allegedly stationed at some place in Pakistan, had used Voice Over Internet Protocol (VOIP) service provided by Callphonex, New Jersey, U.S.A. to establish contacts with the accused in Mumbai. It was also revealed that Direct Inward Dialing (DID) numbers were taken from Callphonex. These DID numbers when used, would display the caller ID of Callphonex Number in the phones of called party.

86. During the course of investigation it was revealed that the deceased accused Nos.4-Nazir @ Abu Umer, No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, No.8-Javed @ Abu Ali and No.9- Shoaib @ Abu Soheb who were killed at Hotel Taj by N.S.G.Commandos, had established contacts with handlers and co-conspirators by using cell phone No. 9910719424 and 9622588209. The investigation also revealed that the SIM card for the cell phone No. 9910719424 of Airtel was sold by one Gurvindersingh Bakshi of Delhi to one Mr.Suresh Prasad. Said Suresh Prasad had enclosed copy of identity card along with the application for SIM card. The said identity card showed that he was in the employment of Central Government in the department of Urban Development. However, it was revealed that the identity card was fake. The said Suresh Prasad could not be traced by the police though his photograph was available on the application form. In brief what is alleged by the prosecution is that some SIM cards of Indian Mobile companies were also obtained well in advance which was also part of the well planned attacks at various parts of Mumbai.

87. The deceased accused No.6- Abadul Reheman Chhota @ Saakib had established contacts with handlers/co-conspirators from

telephone numbers 9769679723 and 9820704507. It is the case of prosecution that the first telephone number belonged to Ms. Lisa Kristina Ringner who was staying in one of the rooms on 18th floor of Hotel Oberoi and the second telephone number belonged to Ms.Rita Agarwal who was killed in the incident at Hotel Oberoi. It is alleged by the prosecution that the SIM cards of these two female guests were used by the deceased accused No.6- Abadul Reheman Chhota @ Saakib for establishing contacts with his mentors in Pakistan.

88. As far as two accused at Nariman house are concerned, it is alleged that one of the said accused named Imran Babar @ Abu Aakasha (deceased accused No.2) had used SIM card of cell phone No.9819464530 belonging to the deceased Mr. Gavriel. The conversation between the deceased accused and co-conspirators from Nariman House, Oberoi and Hotel Taj to the unknown destination in Pakistan was recorded by the officers of DCBCID. The lines of the above said cell numbers were diverted to police numbers. The conversation could therefore be conveniently recorded by the police. It is alleged that the conversation clearly indicate that the accused No.1 and deceased accused Nos. 1 to 9 had

been acting in conspiracy with the wanted accused in Pakistan and during the course of incident also they had been receiving instructions from them.

89. During the course of investigation when the confession of accused No.1 was recorded by the ld. Magistrate, it was revealed that accused No.1 and the deceased accused Nos.1 to 9 were given one mobile phone each by the wanted accused No.7-Zarar Shah with Indian SIM cards. They were told that the SIM cards would start functioning once they entered Indian territory. It was further revealed during the course of investigation with Nokia U.S.A. and Nokia India that the said five phones with independent unique international mobile equipment identity numbers (I.M.E.I.) were dispatched from Nokia, China to Pakistani dealers. It is thus the case of prosecution that the five mobile phones were either acquired or purchased by the accused in Pakistan.

90. The investigation with regard to Yamaha Outboard Machine also revealed that the said machine i.e. Yamaha Enduro Outboard Machine seized by the police from Badhwar Park was shipped from Japan to Pakistan. As such prosecution alleges that the outboard machine and

inflatable boat had also connection with Pakistan indicating that all the preparations for attack were done in Pakistan.

91. The seized arms and ammunitions, remnants of explosives, sand and soil from the place of explosion were sent to the Ballistic Expert and Explosive Expert. The reports submitted by the Ballistic Experts from time to time indicated that the empties of 7.62 mm short rifle cartridges found at different places where the alleged offences had been committed, tallied with the empties test fired from the weapons allegedly brought by the accused No.1 and the deceased accused Nos. 1 to 9. The 7.62 mm short live cartridges recovered from various places of the alleged offences, were found to be live on test firing. The recovery of large amount of empties and cartridges indicated that a large scale of preparations were made to mount a serious attack on important locations in Mumbai and to wage war against the Government of India and further to overawe the State Government of Maharashtra.

92. Fired bullets recovered from the spot and retrieved from some of the dead bodies also positively indicated the role of accused No.1 and the

deceased accused. The bullets retrieved from some of the dead bodies from C.S.T. indicated that the deceased were shot either by the accused No.1 or deceased accused No.1-Abu Ismail. Tallying of bullet retrieved from the dead body of deceased Tukaram Ombale with the test fired bullet from AK-47 rifle allegedly used by accused No.1 showed that it is accused No.1 who was responsible for death of the deceased Tukaram Ombale. All the AK-47 rifles seized by the police were examined by the Ballistic Expert and it was found that they were used for firing before they received in the laboratory for examination.

93. Police had also recovered various articles from Boat Kuber which were transferred from Al-Husaini. The brand names of various articles and their places of manufacture showed that they were manufactured in Pakistan. A large number of blankets were also seized by the police from the boat Kuber. The D.N.A. of sweat found on some of the blankets tallied with D.N.A. of deceased accused. D.N.A. of sweat sample collected from the jackets found on the boat was also compared. The D.N.A. of blood sample of accused No.1 tallied with D.N.A. of sweat found on one of the jackets. A large number of fuel drums found on the boat

Kuber also showed that fuel cans or drums were also transferred from Al-Husaini to Kuber.

94. During the course of investigation, a confession of accused No.1 was recorded under Sec. 164 of Cr.P.C. by the Addl.Chief Metropolitan Magistrate. It is alleged that the confession gets corroboration from the circumstantial evidence and the direct evidence collected by the investigators. It is alleged that the accused No.1 has, in minute detail, stated everything in his confession before the ld. Magistrate.

95. The investigation at Porbandar port revealed that the boat Kuber was registered at Porbandar port in the name of brother of Vinod Babulal Masani (P.W.43). The investigation also revealed that there was one navigator deceased Mr.Amarchand Solanki and other four sailors (fishermen) on the boat Kuber when it had left for fishing in high seas. Dead body of only one of them i.e. Amarchand Solanki, was found in the boat when it was brought to the seashore at Sassoon Docks after the same was spotted in high seas by the coast guard on the statement made by accused No.1. It is the case of prosecution that the confession of accused

No.1 revealed that the other four fishermen who were forcibly taken to Al-Husaini from the boat Kuber had been killed by the wanted accused on the vessel Al-Husaini.

96. In brief, the prosecution has alleged that the confession given by accused No.1 and corroborative evidence in the form of circumstantial evidence and the direct evidence collected by the police clearly show that the accused No.1 along with the deceased accused No.1 to 9 and wanted accused No. 1 to 35 had conspired to commit offences in respect of which the charge-sheet has been submitted. They had conspired to wage war against the Government of India and to commit various offences under Unlawful Activities (Prevention) Act, 1967, Arms Act, Explosive Act, Explosive Substances Act, Passport (Entry into India) Act, Prevention of Damage to Public Property Act, Railway Act, Customs Act and Foreigners Act.

97. The prosecution further alleges that the accused No.1 and deceased accused Nos. 1 to 9 and wanted accused No. 1 to 35 in pursuance to the said conspiracy had collected men, arms and ammunitions within and

outside India and had made other preparations to wage war against the Government of India. In pursuance of the said conspiracy the accused had also committed substantive offences of muders, attempt to commit murder, causing grievous hurt, offences punishable under Unlawful Activities (Prevention) Act, 1967 and other laws mentioned by me herein above.

98. It is the case of prosecution that interception of telephone conversation was approved by the competent authority and ex-post facto permission was granted u/s 5(2) of the Telegraph Act, 1885 and Rules made thereunder. It is also the case of prosecution that a valid sanction was obtained u/s 196 of Code of Criminal Procedure for prosecution of the accused u/s 121, 121-A, 122 of the Indian Penal Code from the competent authority. It is further the case of prosecution that a valid sanction was granted by the competent authority for prosecution of accused for the offences punishable u/ss 10, 13, 16, 17, 18, 20 and 23 of Unlawful Activities (Prevention) Act, 1967. The Investigating Officer had also obtained sanction for prosecution of accused No.1 for the offence punishable u/s 25 (1B) (a) r.w. Sec. 3 of the Arms Act. The Commissioner of Customs had also granted sanction for prosecution of the accused for the

offence punishable u/s 135 of the Customs Act. Sanction u/s 188 of Cr.P.C. was also granted by the competent authority for taking cognizance of offences committed outside India. A sanction for taking cognizance of offence of conspiracy to commit offences other than punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more was also granted by the competent authority

99. All the twelve F.I.Rs. were clubbed together and a common charge-sheet has been submitted by the DCBCID against accused Nos. 1, 2 and 3 and the wanted accused Nos. 1 to 35. The charge-sheet was submitted in the Court of ld. Additional Chief Metropolitan Magistrate. On filing of the charge-sheet by the police before the ld. Addl.Chief Metropolitan Magistrate, the case was committed to the Court of Session for Gr.Bombay and it was assigned to me for holding trial on day-to-day basis.

100. Since the accused No.1 had not engaged any lawyer and he stated that he has no source of income to engage a lawyer of his choice, it was necessary for the Court to appoint a lawyer for accused No.1 in view of the provisions of Section 304 of Cr.P.C. Rules framed by the Hon'ble High

Court for providing free legal aid to accused in Sessions Cases enjoin upon the court to provide two lawyers , one senior and one junior, to the accused who is facing charge of murder. Since the accused No.1 was being tried for multiple murders and various other serious offences, it was necessary to appoint two lawyers for him. Accordingly, Ld. Advocate Mr.Abbas Kazmi and Ld.Advocate Mr.K.P.Pawar had been appointed to defend the accused No.1 in this case. It is necessary to be stated here that Ld.Advocate Mr.Abbas Kazmi is not on the panel of lawyers maintained by the Sessions Court for providing free legal aid to the accused in Sessions Cases. Considering the seriousness of the offences with which accused No.1 has been charged, it was found necessary to have an advocate having experience of handling such cases. After having examined the panel of lawyers, it was decided by me to appoint a lawyer from outside the panel and accordingly, ld.Advocate Mr.Abbas Kazmi had been appointed. Ld.Advocate Mr.K.P.Pawar, who is on the panel for free legal aid, had also been appointed as junior advocate to assist Mr.Kazmi.

101. In this regard it is necessary to be noted here that when recording of oral evidence was over and when the ld. Spl.P.P.wanted to file

affidavits of some of the witnesses whose evidence was considered to be of formal nature, a controversy had arisen in respect of conduct of ld.Advocate Mr.Abbas Kazmi. It is also necessary to be noted here that though this court did not approve his conduct and behaviour, it was not found advisable to abruptly revoke appointment order of Mr.Abbas Kazmi in view of the fact that the case was at the fag end of hearing . However, the controversy had again arisen and then the Court, for the reasons recorded separately, was constrained to revoke the appointment order of ld.Advocate Mr.Abbas Kazmi as a lawyer appointed for accused No.1. In view of revocation of his appointment, the next question before the Court was as to who would represent the accused No.1. As stated earlier ld.Advocate Mr.Pawar was appointed as Junior Advocate pursuant to the rules in that regard. However, during the course of trial it was observed that Mr.Pawar had been working very hard on the brief and he had extended full support to Mr.Abbas Kazmi during the course of cross-examination of witnesses. The Court had also observed that since majority of the papers of charge-sheet were in Marathi, Mr.Abbas Kazmi was able to follow the same only because of able assistance of Mr.Pawar. Otherwise also Mr.Pawar had taken a very keen interest in the matter during the course of trial. The Court therefore, found

him to be a fit person to be appointed for representing the accused No.1 on revocation of appointment of Mr.Kazmi. An order accordingly was passed. The vacancy created by appointment of Mr.Pawar as senior advocate for accused No.1 was filled in by appointing Mr.More as junior advocate to assist Mr.Pawar.

102. Ld.Advocate Mr.Ejaj Naqvi had earlier been appearing for accused No.2 and 3. However, in view of his withdrawal of Vakalatnama for accused No.2, ld.Advocate Mr.Shahid Azmi had appeared for accused No.2. As far as accused No.3 is concerned, Ld.Advocate Mr.Ejaj Naqvi has continued to appear for him.

103. It is most unfortunate that when the case was nearing end, the ld. Advocate Mr.Shahid Azmi, who had been appearing for accused No.2, was killed in his office. In his place ld. Advocate Mr.Mokashi and ld. Advocate Mr.Khalid Azmi who is younger brother of deceased Advocate Mr. Shahid Azmi have filed their Vakalatnama on behalf of accused No.2.

104. Ld. Spl.P.P. Mr.Ujjwal Nikam and the ld. Advocates for accused Nos. 2 and 3 were heard. On 6th May, 2009 charge vide Exh.50 was framed against accused Nos. 1,2 and 3 for the offences punishable u/ss 120-B, 121 r/w 120-B r/w 109, 121-A, 122 r/w 120-B r/w 109, 302 r/w 120-B r/w 109, 307 r/w 120-B r/w 109, 333 r/w 120-B r/w 109, 342 r/w 120-B r/w 109, 343 r/w 120-B r/w 109, 364 r/w 120-B r/w 109, 465 r/w 120-B r/w 109, 468 r/w 120-B r/w 109, 419 r/w 120-B r/w 109 of **Indian Penal Code,** u/ss. 25 (1B)(a) of **Arms Act** r/w 120-B r/w 109 of **Indian Penal Code,** 25 (1A) of **Arms Act** r/w 120-B r/w 109 of **Indian Penal Code**, 25 (2) (3) of **Arms Act** r/w 120-B r/w 109 of **Indian Penal Code**, 27 **of Arms Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/ss.10, 13, 16, 18 and 23 of **The Unlawful Activities (Prevention) Act, 1967,** u/sec. 9-B(1)(a)(b) of **Explosives Act** r/w 120-B r/w 109 of **Indian Penal Code,** u/sec. 3 of **Explosives Substances Act** r/w 120-B r/w 109 of **Indian Penal Code,** u/sec.4(a) of **Explosives Substances Act** r/w 120-B r/w 109 of **Indian Penal Code**, u/sec.3(3) of **Passport (Entry into India) Act, 1920** r/w 120-B r/w 109 of **Indian Penal Code,** u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984** r/w 120-B r/w 109 of **Indian Penal Code,** u/ss. 151, 152 and 153 of the **Railway Act** r/w 120-B r/w 109 of **Indian**

Penal Code, u/s.135 of **Customs Act** r/w 120-B r/w 109 of **Indian Penal Code,** u/s. 14 of **Foreigners Act** r/w 120-B r/w 109 of **Indian Penal Code.**

105. In addition to this, charge for the offences punishable u/ss. 302 r/w 34, 307 r/w 34, 333 r/w 34, 342 r/w 34, 343 r/w 34, 364 r/w 34, 465 r/w 34, 468 r/w 34, 419 r/w 34 **of Indian Penal Code**, u/ss. 25 (1B)(a) **of Arms Act** r/w 34 **of Indian Penal Code**, 25 (1A) **of Arms Act** r/w 34 **of Indian Penal Code**, 25 (2) (3) **of Arms Act** r/w 34 of **Indian Penal Code**, 27 **of Arms Act** r/w 34 of **Indian Penal Code**, u/sec. 9-B(1)(a)(b) of **Explosives Act** r/w 34 of **Indian Penal Code**, u/sec. 3 of **Explosives Substances Act** r/w 34 of **Indian Penal Code,** u/s. 4(a) of **Explosive Substances Act** r/w 34 of **Indian Penal Code** u/sec.3(3) of **Passport (Entry into India) Act, 1920** r/w 34 of **Indian Penal Code**, u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984** r/w 34 of **Indian Penal Code**, u/ss. 151, 152 and 153 of **the Railway Act** r/w 34 of **Indian Penal Code**, u/s.135 of **Customs Act** r/w 34 of **Indian Penal Code**, u/s. 14 of **Foreigners Act** r/w 34 of **Indian Penal Code** has been framed against accused No.1.

106. Further charge for the offences punishable under sections 302, 307, 333, 342, 343, 364, 465, 468, 419 and 397 **of Indian Penal Code**, u/ss. 25 (1B)(a) **of Arms Act**, 25 (1A) **of Arms Act**, 25 (2) (3) **of Arms Act**, 27 **of Arms Act**, u/sec. 9-B(1)(a)(b) of **Explosives Act**, u/sec. 3 and 4(a) of **Explosives Substances Act,** u/sec.3(3) of **Passport (Entry into India) Act, 1920**, u/ss. 3 and 4 of **Prevention of Damage to Public Property Act, 1984**, u/ss. 151, 152 and 153 of **the Railway Act**, u/s.135 of **Customs Act**, u/s. 14 of **Foreigners Act** has also been framed against accused No.1.

107. Independent charge for the alleged offence of forgery has also been framed against accused No.2 u/s 465 and 471 of **Indian Penal Code**.

108. The charge -**Exh.50** was explained to the accused on 6th May, 2009. All the accused have pleaded not guilty to the charge and have claimed to be tried. Their pleas are recorded at **Exh.51**, **Exh.52** and **Exh.53** respectively.

109. Later on certain clerical mistakes were detected in the charge-

Exh.50. Necessary corrections/amendments were made in the charge on 17/12/2009. The corrections did not affect the merits of the charge in any manner. The corrections were carried out with the consent of ld. Spl.P.P. and the ld.Advocates for the accused. The accused No.2 , in stead of Section 465 and 471 of IPC, stood charged for the offence punishable u/s 419 of IPC as per the amended charge. Apart from this amendment, an additional charge for the offence punishable u/s 20 of the Unlawful Activities (Prevention)Act, 1967 was framed against accused Nos. 1, 2 and 3. The said amended charge is at **Exh.50-A** . The additional charge is at **Exh.50-B.** The additional charge was explained to all the accused. All the accused have pleaded not guilty to the additional charge. Their pleas are recorded at **Exh. 51-A**, **Exh.52-A** and **Exh.53-A**.

110. Considering the charge-sheet and the documents on which prosecution has relied and after hearing arguments of both the sides, following points arise for my determination and my findings are recorded against each of the points for the reasons that follow.

POINTS	**FINDINGS**
(1) Criminal Conspiracy	
1. Does the prosecution prove that the accused No.1,2 and 3 along with the deceased accused Nos.1 to 9 and wanted accused Nos.1 to 35, during the period between December 2007 to November 2008 were party to a criminal conspiracy to wage war against the Govt.of India and to commit other offences i.e.offences punishable u/ss 302,307, 326, 325, 332, 333, 342, 343, 353, 364, 365, 419, 427, 435, 436, 465, 468, 471 and 474 of Indian Penal Code,offences punishable under sections 10,13, 16, 17, 18, 20 and 23 of Unlawful Activities (Prevention) Act, 1967, Sec. 25 and 27 of the Arms Act, offences punishable under Explosives Act and Explosives Substances Act, offences punishable under Sections 3 and 4 of Prevention of Damage to Public Properties Act, offences punishable under sections 151, 152 and 153 of the Railways Act, offence punishable under section 135 of the Customs Act and offences punishable under the provisions of Foreigners Act and the Passport (Entry into India) Act, 1920?	**1) Proved as against accused No.1 barring Sec.10, 20 & 23 of Unlawful Activities (Prevention)Act, 1967.** **2) Not proved as against accused Nos. 2 & 3** **3) Involvement of wanted accused Nos.1 to 11,13,15,18,20, 27,28,31, 34 & 35 is proved.** **4) Involvement of other wanted accused is not proved.**

(2)- Waging War

2.	Does the prosecution prove that accused No.1 along with deceased accused Nos.1 to 9 during the period between 26th November, 2008 to 28th November, 2008 had waged war against the Government of India?	**Yes.**
3.	Does the prosecution prove that accused Nos. 1, 2 and 3 along with the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 35 within and without India had conspired to wage war against the Government of India?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos. 2 and 3.** **3) Involvement of wanted accused Nos.1 to 11, 13,15,18,20,27,28 , 31, 34 & 35 is proved** **4) Involvement of other wanted accused is not proved.**
4.	Does the prosecution prove that accused Nos. 1, 2 and 3 along with the deceased accused Nos.1 to 9 and wanted accused Nos. 1 to 35 within or without India conspired to overawe by means of criminal force or show of criminal force, the Central Government and the State Government of Maharashtra ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos. 2 and 3.** **3) Involvement of wanted accused Nos.1 to 11, 13,15,18,20,27,28 , 31, 34 & 35 is proved** **4) Involvement of other wanted accused is not proved.**

5.	Does the prosecution prove that accused Nos.1, 2 and 3 along with the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 35 had , during the period between December 2007 and November, 2008 collected men, arms and ammunitions within and outside India and made any other preparations to wage war with intention of either waging war or being prepared to wage war against the Government of India ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos. 2 and 3.** **3) Involvement of wanted accused Nos.1 to 11, 13,15,18,20,27,28 , 31, 34 & 35 is proved.** **4) Involvement of other wanted accused is not proved.**

(3)- Murder, Common Intention & Abetment

6.	Does the prosecution prove that the deceased Amarchand Solanki had died due to slitting of his throat?	**Yes.**
7.	Does the prosecution that the accused No.1 had inflicted cut on throat of deceased Amarchand Solanki?	**Yes.**

8. Does the prosecution prove that the said injury was caused by accused No.1 with intention to cause death of Amarchand Solanki or with intention to cause bodily injury and that the bodily injury was sufficient to cause death in ordinary course of nature? **Yes.**

9. Does the prosecution prove that accused Nos. 2 and 3 had abetted murder of Amarchand Solanki ? **No.**

10. Does the prosecution prove that the below mentioned **166 persons** in col.No.2 of Table No.2 had died at the places mentioned in column No.3 due to the injuries shown against their names in column No. 4 ? **Yes.**

(Table No.2 is being reproduced here for ready reference)

TABLE NO.2

Sr. No	Name of the Deceased	Place of Death	Nature of injury
1.	2	3	4
1	Salim Hussain Harharwala	Nariman House	Firearm injuries
2	Mehzabin @ Maria Salim Harharwala	Nariman House	Firearm injuries
3	Rivka Gavriel Holtzberg	Nariman House	Firearm injuries

1.	2	3	4
4	Rabbi Gavriel Noach Holtzberg	Nariman House	Firearm injuries
5	Gajendra Singh	Nariman House	Firearm injuries
6	Ben Zion Chroman	Nariman House	Firearm injuries
7	Norma Shvarzblat Robinovich	Nariman House	Multiple firearm injuries
8	Rajendrakumar Baburam Sharma	CST/Nariman House	Firearm injuries
9	Yokevet Mosho Orpaz	Nariman House	Firearm injuries
10	Subhash Vanmali Vaghela	Hotel Leopold	Firearm injuries
11	Pirpashi Mehboobali Shaikh	Hotel Leopold	Firearm injuries
12	Shahabuddin Sirajuddin Khan	Hotel Leopold	Firearm injuries
13	Harishbhai Durlabbhai Gohil	Hotel Leopold	Firearm injuries
14	Hidayatullah Anwarali Kazi	Hotel Leopold	Firearm injuries
15	Malyesh Manvendra Banarjee	Hotel Leopold	Blast injuries
16	Gourav Balchand Jain	Hotel Leopold	Firearm injuries
17	P.K.Gopalkrishnan	Hotel Leopold	Firearm injuries
18	Kamal Nanakram Motwani	Hotel Leopold	Firearm injuries
19	Jurgen Hienrich Rudolf	Hotel Leopold	Firearm injuries
20	Daphne Hilary Schmidt	C.S.T./Leopold	Firearm injuries
21	Hemant Kamlakar Karkare	Cama Out	Firearm injuries
22	Ashok Marutirao Kamate	Cama Out	Firearm injuries
23	Vijay Sahadev Salaskar	Cama Out	Firearm injuries
24	Bapurao Sahebrao Durgude	Cama Out	Firearm injuries
25	Balasaheb @ Nana Chandrakant Bhosale	Cama Out	Firearm injuries

1.	2	3	4
26	Arun Raghunath Chite	Cama Out	Firearm injuries
27	Jayawant Hanumant Patil	Cama Out	Firearm injuries
28	Yogesh Shivaji Patil	Cama Out	Firearm injuries
29	Surendrakumar Bindu Rama	C.S.T	Firearm injuries
30	Prakash Pandurang More	Cama in	Firearm injuries
31	Vijay Madhukar Khandekar	Cama in	Firearm injuries
32	Baban Balu Ughade	Cama in	Firearm injuries
33	Bhanu Devu Narkar	Cama in	Firearm injuries
34	Thakur Budha Vaghela	Cama in	Firearm injuries
35	Bhagan Gangaram Shinde	Cama in	Blast injuries
36	Shivashankar Nirant Gupta	Cama in	Firearm injuries
37	T.Suda Hisashi	Hotel Oberoi	Firearm injuries
38	Murad Amarsi	Hotel Oberoi	Firearm injuries
39	Loumiya Hiridaji Amarsi	Hotel Oberoi	Firearm injuries
40	Scherr Alan Michael	Hotel Oberoi	Firearm injuries
41	Neomi Leiya Sher	Hotel Oberoi	Firearm injuries
42	Sandeep Kisan Jeswani	Hotel Oberoi	Firearm injuries
43	Lo Hawei Yen	Hotel Oberoi	Firearm injuries
44	Jhirachant Kanmani @ Jina	Hotel Oberoi	Firearm injuries
45	Altino D' Lorenjo	Hotel Oberoi	Firearm injuries
46	Brett Gilbert Tailor	Hotel Oberoi	Firearm injuries
47	Farukh Dinshaw	Hotel Oberoi	Firearm injuries
48	Reshama Sunil Parikh	Hotel Oberoi	Firearm injuries
49	Sunil Shevantilal Parekh	Hotel Oberoi	Firearm injuries

1.	2	3	4
50	Ajit Shrichand Chabriya	Hotel Oberoi	Firearm injuries
51	Sanjay Vijay Agarwal	Hotel Oberoi	Firearm injuries
52	Rita Sanjay Agarwal	Hotel Oberoi	Firearm injuries
53	Mohit Kanhaiyalal Harjani	Hotel Oberoi	Firearm injuries
54	Monika Ajit Chabriya	Hotel Oberoi	Firearm injuries
55	Harsha Mohit Harjani	Hotel Oberoi	Firearm injuries
56	Ravi Dara	Hotel Oberoi	Firearm injuries
57	Uma Vinod Gark	Hotel Oberoi	Firearm injuries
58	Pankaj Somchand Shah	Hotel Oberoi	Blast injuries
59	Ashok Kapoor	Hotel Oberoi	Firearm injuries
60.	Anand Suryadatta Bhatt	Hotel Oberoi	Firearm injuries
61	Rohington Bajji Mallu	Hotel Oberoi	Firearm injuries
62	Kannubhai Zaverbhai Patel	Hotel Oberoi	Firearm injuries
63	Ami Bipinichandra Thaker	Hotel Oberoi	Firearm injury
64	Jordan Geigy Fernandise	Hotel Oberoi	Firearm injuries
65	Neeta Prakash Gaikwad	Hotel Oberoi	Blast injuries
66	Shaunak Jayawant Chemburkar	Hotel Oberoi	Firearm injuries
67	Wilson Baburao Mandalik	Hotel Oberoi	Firearm injuries
68	Sarjerao Sadashiv Bhosale	Hotel Oberoi	Firearm injuries
69	JasminMahendrasingh Burji	Hotel Oberoi	Firearm injuries
70	Sanjy Sambhajirao Surve	Hotel Oberoi	Firearm injuries
71	Bimolchand Maibam	Hotel Oberoi	firearm injuries
72	Mohabbat Umer Abdul Khalid	Vile Parle	Blast injuries
73	Laxminarayan Goyal	Vile Parle	Blast injuries
74	Mrs.Jarina Samsuddin Shaikh	Mazgaon	Blast injuries
75	Fulchandra Ramchandra Bind	Mazgaon	Blast injuries

1.	2	3	4
76	Mrs.Reema Mohamad Rabivul	Mazgaon	Blast injuries
77	Shashank Chandrasen Shinde	C.S.T.	Firearm injuries
78	Hamina Begum Hamid Shaikh	C.S.T.	Firearm injuries
79	Ashraf Ali Allahrakha Shaikh	C.S.T.	Firearm injuries
80	Ajij Nabilal Rampure	C.S.T.	Firearm injuries
81	Aakash Akhilesh Yadav	C.S.T.	Firearm injuries
82	Mukesh Bhikaji Jadhav	C.S.T.	Firearm injuries
83	Sitaram Mallapa Sakhare	C.S.T.	Firearm injuries
84	Rahamtulla Ibrahim	C.S.T.	Firearm injuries
85	Mishrilal Mourya Shri Garib Mourya	C.S.T.	Firearm injuries
86	Vinod Madanlal Gupta	C.S.T.	Firearm injuries
87	Sunil Ashok Thackare	C.S.T.	Firearm injuries
88	Haji Ejaj Bhai Imamsaheb Dalal	C.S.T.	Firearm injuries
89	Mira Narayan Chattarji	C.S.T.	Blast injuries
90	Shirish Sawla Chari	C.S.T.	Firearm injuries
91	Sushilkumar Vishwambhar Sharma	C.S.T.	Firearm injuries
92	Murlidhar Laxman Choudhary	C.S.T.	Firearm injuries
93	Ambadas Ramchandra Pawar	C.S.T.	Firearm injuries
94	Jaikumar Durairaj Nadar	C.S.T.	Firearm injuries
95	Deepali Janardhan Chitekar	C.S.T.	Blast injuries
96	Raju Janardhan Chitekar	C.S.T.	Blast injuries
97	Aditya Ashok Yadav	C.S.T.	Firearm injuries
98	Isibul Raheman Faizuddin Raheman Shaikh	C.S.T.	Firearm injuries
99	Prakash Janath Mandal	C.S.T.	Firearm injuries
100	Harakha Lalji Solanki	C.S.T.	Firearm injuries

1.	2	3	4
101	Mohamed Amanat Mohamad Ali	C.S.T.	Firearm injuries
102	Sarafraz Sallauddin Ansari	C.S.T.	Firearm injuries
103	Ayub Yakub Qureshi	C.S.T.	Firearm injuries
104	Afarin Shahadab Qureshi	C.S.T.	Firearm injuries to the liver
105	Avadesh Sudama Pandit	C.S.T.	Firearm injuries
106	Chandulal Kashinath Tandel	C.S.T.	Firearm injuries
107	Manohar Sohani	C.S.T.	Firearm injuries
108	Mohamad Hussain Mohamad Alamgir Shaikh	C.S.T.	Firearm injuries
109	Murtaza Ansari Sallauddin Ansari	C.S.T.	Firearm injuries
110	Mohamad Arif Mohamed Islam Ansari	C.S.T.	Firearm injuries
111	Mohamad Mukhtar Malik	C.S.T.	Firearm injuries
112	Abbas Rajjab Ansari	C.S.T.	Firearm injuries
113	Unknown Male person	C.S.T.	Firearm injuries
114	Mrs.Gangabai Baburao Kharatmol	C.S.T.	Firearm injuries
115	Narul Islam Ajahar Mulla	C.S.T.	Air blast injury
116	Murgan Palaniya Pillai	C.S.T.	Blast injuries
117	Rakhila Abbas Ansari	C.S.T.	Firearm injuries
118	Nitesh Vijaykumar Sharma	C.S.T	Firearm injuries
119	Fatmabi Rehaman Shaikh	C.S.T.	Firearm injuries
120	Meenu Arjun Ansari	C.S.T.	Firearm injuries
121	Mohamad Itihas Ansari	C.S.T.	Firearm injuries
122	Mastan Munir Qureshi	C.S.T.	Firearm injuries
123	M.V.Anish	C.S.T.	Multiple injuries
124	Upendra Birju Yadav	C.S.T.	Firearm injuries
125	Unknown Male person	C.S.T.	Head injury

1.	2	3	4
126	Poonam Bharat Navadia	C.S.T.	Firearm & blast injury
127	Baichan Ramprasad Gupta	C.S.T.	Blast injury
128	Nathuni Parshuram Yadav	C.S.T.	Firearm injuries
129	Amarchand Naran Solanki	Boat Kuber	slitting of throat
130	Tukaram Gopal Ombale	Vinoli Chowpaty	Firearm injuries
131	Major Sandip Unnikrishnan	Hotel Taj	Firearm injuries
132	Rahul Subhash Shinde	Hotel Taj	Firearm injuries
133	Zaheen Sayyed Nisar Ali Jafary Mateen	Hotel Taj	Firearm injuries
134	Andres Don Livera	Hotel Taj	Firearm injuries
135	Gunjan Vishandas Narang	Hotel Taj	Firearm injuries
136	Vishandas Giridharidas Narang	Hotel Taj	Firearm injuries
137	Vijayrao Anandrao Banja	Hotel Taj	Firearm injuries
138	Sadanand Ratan Patil	Hotel Taj	Firearm injuries
139	Thomas Verghese	Hotel Taj	Firearm injuries
140	Ravi Jagan Kunwar	Hotel Taj	Firearm injuries
141	Boris Mario Do Rego	Hotel Taj	Firearm injuries
142	Satpakkam Rahmatulla Shaukatali	Hotel Taj	Firearm injuries
143	Faustine Basil Martis	Hotel Taj	Firearm injuries
144	Kaizad Naushir Kamdin	Hotel Taj	Firearm injuries
145	Neelam Vishandas Narang	Hotle Taj	Firearm injuries
146	Rupinder Devenersing Randhava	Hotle Taj	Firearm injuries
147	Eklak Ahmed Mustak Ahmed	Hotle Taj	Firearm injuries
148	Maksud Tabarakali Shaikh	Hotel Taj	Firearm injuries
149	Feroz Jamil Ahmed Khan	Hotel Taj	Firearm injuries
150	Teitelbaum Aryeh Levish	Hotle Taj	Firearm injuries

1.	2	3	4
151	Duglas Justin Markell	Hotle Taj	Firearm injuries
152	Chaitilal Gunish	Hotel Taj	Firearm injuries
153	Willem Jan Berbaers	Hotel Taj	Firearm injuries
154	Nitisingh Karamveer Kang	Hotel Taj	Shock due to burn
155	Samarveer Singh Karamveer Singh Kang	Hotel Taj	Firearm injuries
156	Udaysingh Karamveer Singh Kang	Hotel Taj	Shock due to burn
157	Sabina Saigal Saikia	Hotle Taj	Shock due to injuries
158	Hemlata Kashi Pillai	Hotel Taj	burn injury
159	Rajiv Omprakash Sarswat	Hotel Taj	Shock due to burn
160	Gutam Devsingh Gosai	Hotel Taj	Firearm injuries
161	Rajan Eshwar Kamble	Hotel Taj	Firearm injuries
162	Burki Ralph Rainer Jachim	Hotel Taj	Shock due to multiple injuries
163	Hemant Pravin Talim	Hotel Taj	Firearm injuries
164	Shoeb Ahmed Shaikh	Hotel Taj	Firearm injuries
165	Michael Stuart Moss	Hotel Taj	Firearm injuries
166	Elizabeth Russell	Hotel Taj	Firearm injuries

11. Does the prosecution prove that either accused No.1 or deceased accused No.1- Abu Ismail had caused injuries described in col. No.4 to the deceased from Sr.No.77 to 128, 30 to 36, 21 to 29, 72 and 73 in table No.2, except the deceased at Sr.Nos.81, 83, 84, 86, 93 and 112 for which the accused No.1 has been charged **Yes.**

separately and points for determination have also been framed separately ?

12. Does the prosecution prove that the injuries mentioned in col.No.4 were caused to the deceased mentioned at Sr.No. 77 to 128, 30 to 36, 21 to 29, 72 and 73 in col.No.3 of the table No.2 except the deceased at Sr.Nos.81, 83, 84, 86, 93 and 112 for which the accused No.1 has been charged separately and points for determination have also been framed separately, either by accused No.1 or by the deceased accused No.1-Abu Ismail with intention to cause death or bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ? **Yes.**

13. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail shared each other's intention at the time of committing **Yes.**

murders of deceased at Sr.Nos. 77 to 128, 30 to 36, 129 , 21 to 29 and 72 to 73 except deceased at Sr.Nos. 81-Akash Akhilesh Yadav, Sr.No.83-Sitaram Mallappa Sakhare, Sr.No.84-Rahemtullah Shaikh Ibrahim, Sr.No.86-Vinod Madanlal Gupta, Sr.No.93-Ambadas Ramchandra Pawar and Sr.No.112-Abbas Rajjab Ansari for which separate points for determination are being framed ?

14. Does the prosecution prove that accused No.2-Fahim Ansari and accused No.3-Sabuddin Shaikh had abetted commission of murder of deceased at Sr.Nos. 77 to 128, 30 to 36, 129 , 21 to 29 and 72 to 73 except the deceased at Sr.Nos. 81, 83, 84, 86, 93 and 112 for which separate points for determination are being framed ? **No.**

15. Does the prosecution prove that deceased Tukaram Ombale (Sr.No.130),had died due to firearm injuries ? **Yes.**

16.	Does the prosecution prove that accused No.1 had caused firearm injuries to the deceased Tukaram Ombale (deceased at Sr.No.130) with intention to cause death or with intention to cause bodily injuries and that bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?	**Yes.**
17.	Does the prosecution prove that accused No.2 and No.3 had abetted commission of murder of deceased Tukaram Ombale (deceased at Sr.No.130) ?	**No.**
18.	Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib@ Abu Soheb had caused injuries described in column No.4 to the deceased at Sr.Nos. 10 to 20 in the table No.2?	**Yes.**

19.	Does the prosecution prove that deceased accused Nos.No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb had caused those injuries to the deceased at Sr.No.10 to 20 with intention to cause death or with intention to cause bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?	**Yes.**
20.	Does the prosecution prove that the deceased accused No. 4 and No.9 had shared each others intention at the time of causing death of the deceased at Sr.No. 10 to 20 ?	**Yes.**
21.	Does the prosecution prove that the accused No. 1, No.2 and No.3 had abetted commission of above stated murders committed by the deceased accused Nos. 4 and 9 ?	**1) Proved as against accused No.1.** **2) Not proved as against accused No.2 & 3**

22.	Does the prosecution prove that deceased accused Nos.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar had caused injuries mentioned in col. No. 4 to the deceased at Sr.No.1 to 9 in table No.2?	**Yes.**
23.	Does the prosecution prove that the deceased accused Nos.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar had caused those injuries to the deceased at Sr.No.1 to 9 with intention to cause death or bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?	**Yes**
24.	Does the prosecution prove that the deceased accused No.2 and No.3 had shared each others intention at the time of causing death of deceased at Sr.No.1 to 9 in table No.2 ?	**Yes.**

25.	Does the prosecution prove that the accused No.1,2 & 3 had abetted commission of above stated murders committed by the deceased accused Nos. 2 and 3 ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos.2 & 3.**
26.	Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9- Shoaib @ Abu Soheb had planted bomb in the taxi bearing registration No.**MH-01-J-5308** and explosion of said bomb had resulted in injuries mentioned in col. No. 4 to the deceased at Sr.Nos. 74 to 76 in table No.2 ?	**Yes.**
27.	Does the prosecution prove that the deceased accused No. 4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb caused injuries to the deceased at Sr.No. 74 to 76 with intention to cause their death or with intention to cause bodily injuries and that the bodily injuries intended to be caused were	**Yes.**

	sufficient, in ordinary course of nature, to cause death ?	
28.	Does the prosecution prove that the deceased accused No. 4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @Abu Soheb had shared each others intention at the time of committing murders of the deceased at Sr.No.74 to 76 in table No.2 ?	**Yes.**
29.	Does the prosecution prove that accused No.1, 2 and 3 had abetted commission of murder of three persons i.e.deceased at Sr.No.74 to 76 ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos.2 & 3.**
30.	Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer, No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, No.8-Javed @ Abu Ali and No.9-Shoaib @ Abu Soheb had caused injuries mentioned in col. No.4 to the deceased at Sr.Nos.131 to 166 in table No.2 ?	**Yes.**

31.	Does the prosecution prove that the injuries to the said deceased at Sr.No.131 to 166 were caused by the deceased accused No.4-Nazir @ Abu Umer, No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, No. 8-Javed @ Abu Ali and No.9-Shoaib @ Abu Soheb with intention to cause death or with intention to cause bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?	**Yes.**
32.	Does the prosecution prove that the deceased accused No.4 , No.5, No.8 & No.9 had shared one another's intention of causing death of deceased at Sr.Nos. 131 to 166 in table No.2 ?	**Yes.**
33.	Does the prosecution prove that the accused No.1, No.2 and No.3 had abetted the commission of above stated murders of deceased at Sr.No.131 to 166 at Hotel Taj?	**1) Proved as against accused NO.1** **2) Not proved as against accused Nos.2 & 3.**

34.	Does the prosecution prove that the deceased accused No. 6- Abadul Reheman Chhota @ Saakib and deceased accused No.7- Fahad Ullah, had caused injuries mentioned in col. No.4 to the deceased victims at Sr.No. 37 to 71 in table No.2 ?	**Yes.**
35.	Does the prosecution prove that the deceased accused No. 6- Abadul Reheman Chhota @ Saakib and deceased accused No.7- Fahad Ullah had caused above injuries to the deceased at Sr.No.37 to 71 with intention to cause death or with intention to cause bodily injuries & that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?	**Yes.**
36.	Does the prosecution prove that deceased accused No.6 and No.7 had shared each others intention at the time of causing death of deceased at Sr.Nos. 37 to 71 mentioned in table No.2 ?	**Yes.**

37.	Does the prosecution prove that accused No.1,2 and 3 had abetted commission of murders of deceased at Sr.No. 37 to 71 in table No.2 ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos.2 & 3.**
38.	Does the prosecution prove that deceased at Sr.No.81-Akash Akhilesh Yadav had died due to firearm injury ?	**Yes.**
39.	Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ?	**It is not proved that the injuries were caused by accused No.1 but it is proved that it was caused either by accused No.1 or by deceased accused No.1 in furtherance of their common intention.**
40.	Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.81 of table No.2 ?	**No.**
41.	Does the prosecution prove that deceased at Sr.No.83-Sitaram Mallappa Sakhare had died due to firearm injury ?	**Yes.**
42.	Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab	**Yes.**

with intention to cause death or with intention to cause bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ?

43. Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.83 ? **No.**

44. Does the prosecution prove that deceased at Sr.No.84-Rahemtullah Shaikh Ibrahim had died due to firearm injury ? **Yes.**

45. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ? **Yes.**

46. Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.84 ? **No.**

47.	Does the prosecution prove that deceased at Sr.No.86-Vinod Madanlal Gupta had died due to firearm injury ?	**Yes.**
48.	Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ?	**Yes.**
49.	Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.86 ?	**No.**
50.	Does the prosecution prove that deceased at Sr.No.93-Ambadas Ramchandra Pawar had died due to firearm injury ?	**Yes.**
51.	Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ?	**Yes.**

52.	Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.93 ?	**No.**
53.	Does the prosecution prove that deceased at Sr.No.112-Abbas Rajjab Ansari had died due to firearm injury ?	**Yes.**
54.	Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature, to cause death ?	**Yes.**
55.	Does the prosecution prove that the accused No.2 and No.3 had abetted the commission of above stated murder of deceased at Sr.No.112 ?	**No.**

(4)- Attempt to commit murder -

56. Does the prosecution prove that the accused No.1 or deceased accused No.1-Abu Ismail had caused injuries of the nature mentioned in col.5 to the persons mentioned in Col. No.3 at Sr Nos. 1 to 130 at the places mentioned in Col.No.4 of the table No.3 ?

It is proved that accused No.1and deceased accused No.1 Abu Ismail had caused injuries to Sr.Nos.2,5, 6,7,8,9,13,14,15,16,17,18,22,23,29, 31,34,36,39,40,46,50,51,54,56,61, 62,63,67,68,71,86,87,94,95,96,105, 110 to 129 (P.W.Nos.62, 518,517, 506,516,63,519,69,510,56,88,89,504, 64,87,515,524,521,513,527,505,53, 507,512,523,52,525,522,508,509, 86,520,49,51,526,514,511,118,112, 469,471,470,472,473,109,111,106, 136,139,456,454,457,453,455,2,171 and 490 respectively)

(TABLE No.3 is being reproduced here for ready reference)

TABLE NO.3

Sr.No	PW.No.	Name of the injured	Place of incident	Nature of injury
1	2	3	4	5
1	-	Mukesh Bhagwatprakash Agarwal	C.S.T.	Bullet
2	62	Sudam Aba Pandarkar	C.S.T.	Bullet
3	-	Nisha Anilkumar Yadav	C.S.T.	Bullet
4	-	Jangam Vithalrao Bokade	C.S.T.	Bullet
5	518	Jayprakash Sohanlal Phalore	C.S.T.	Bullet
6	517	Balu Bandu More	C.S.T.	Bullet
7	506	Anilkumar Rajendra Yadav	C.S.T.	Bullet
8	516	Murlidhar Chintu Zole	C.S.T.	Bullet

1	2	3	4	5
9	63	Pandurang Subrao Patil	C.S.T.	Bullet
10	-	Parasnath Ramsoman Giri	C.S.T.	Bullet
11	-	Firozkhan Khusnurkhan Ghauri	C.S.T.	Bullet
12	-	Raziyabegum Noor Qureshi	C.S.T.	Bullet
13	519	Ramji Yabad Napit	C.S.T.	Bullet
14	69	Vishal Prakash Kardak	C.S.T.	
15	510	Shambunath Munai Yadav	C.S.T.	Blast
16	56	Kishor Vinayak Kale	C.S.T.	Bullet
17	88	Ansarallh Saudaarallh Baksh Mohd. Hanif	C.S.T.	Bullet
18	89	Harshada Suhas Salaskar	C.S.T.	Bullet
19	-	Sarita Shantaram Harkulkar	C.S.T.	Bullet
20	-	Neeta Gajanan Kurhade	C.S.T.	Bullet
21	-	Ajamat Ali Narhu Sha	C.S.T.	Bullet
22	504	Pappusing Mannusingh	C.S.T.	Bullet
23	64	Punamsingh Santoshsingh	C.S.T.	Bullet
24	-	Maltidevi Madan Gupta	C.S.T.	Bullet
25	-	Sulochana chandrakant Lokhande	C.S.T.	
26	-	Vijay Ramchandra Khote	C.S.T.	Bullet
27	-	Mumtaz Mohd. Yusuf Khan	C.S.T.	Bullet
28	-	Pappu Laldev Jawahar Laldev	C.S.T.	Bullet
29	87	Niranjan Sadashiv Sardar	C.S.T.	Bullet
30	-	Shabir Abdul Salam Dalal	C.S.T.	Bullet
31	515	Fakir Mohd. Abdul Gafoor	C.S.T.	Bullet
32	-	Laxman Shivaji Hundkeri	C.S.T.	Bullet
33	-	Akshay Tanaji Supekar	C.S.T.	Bullet
34	524	Bharat Shyam Nawadia	C.S.T.	Bullet

1	2	3	4	5
35	-	Nimba Shampuri Gosavi	C.S.T.	Bullet
36	521	Adhikrao Dyanu Kale	C.S.T.	Bullet
37	-	Mahadev Datta Petkar	C.S.T.	Bullet
38	-	Santoshkumar Faujdarsing Yadav	C.S.T.	Bullet
39	513	Alok Harilal Gupta	C.S.T.	Bullet
40	527	Prashant Purnachandra Das	C.S.T.	Bullet
41	-	Miraj Alam Ali Mulla Ansari,	C.S.T.	Bullet
42	-	Abdul Rashid Abdul Aziz	C.S.T.	Bullet
43	-	Abdul Salam Shaikh Sukha	C.S.T.	Bullet
44	-	Akhilesh Dyanu Yadav	C.S.T.	Bullet
45	-	Ramzan Sahrif Kadar Sharif	C.S.T.	Bullet
46	505	Habibul Mohd. Sukurddin Khan	C.S.T.	Bullet
47	-	Mohd. Siddiqu Mohd. Sagir Alam	C.S.T.	Bullet
48	-	Sachinkumar Singh Santoshkumar Singh	C.S.T.	Blast
49	-	Tejas Arjungi	C.S.T.	Bullet
50	53	Nafisa Sadaf Qureshi	C.S.T.	Bullet
51	507	Laji Jagganath Pandye	C.S.T.	Bullet
52	-	Shamshad Dalal	C.S.T.	Blast
53	-	Baby Ashok Yadav	C.S.T.	Bullet
54	512	Ashok Bhimappa Renetala	C.S.T.	Blast
55	-	Shital Upendra Yadav	C.S.T.	Blast
56	523	Vijaya Ramkomal Kushwah	C.S.T.	Bullet
57	-	Asha Shridhar Borde	C.S.T.	Bullet
58	-	Vatsala Sahadev Kurhade	C.S.T.	Bullet
59	-	Chandrakant Ganpatirao Lokhande	C.S.T.	Bullet

1	2	3	4	5
60	-	Abdul Razak Farukh Nasiruddin	C.S.T.	Blast
61	52	Farukh Nasiruddin Khaliluddin	C.S.T.	Bullet
62	525	Anilkumar Dyanoji Harkulkar	C.S.T.	Bullet
63	522	Uttam Vishnu Sasulkar	C.S.T.	Bullet
64	-	Afroz Abbas Ansari	C.S.T.	Bullet
65	-	Dadarao Rambhoji Jadhav	C.S.T.	Blast
66	-	Suryabhan Sampat Gupta	C.S.T.	Blast
67	508	Sanjay Nemchandra Yadav	C.S.T.	Bullet
68	509	Ratankumarji Kanhayaprasad Yadav	C.S.T.	Blast
69	-	Jagendrakumar Kailashkumar Mishra	C.S.T.	Blast
70	-	Gopal Julena Prajapati	C.S.T.	Bullet
71	86	Sangita Niranjan Sardar	C.S.T.	Blast
72	-	P. Nirmala	C.S.T.	Blast
73	-	P. Ponuraj	C.S.T.	Bullet
74	-	Mohan Bharti	C.S.T.	Bullet
75	-	Sushant Nityanand Panda	C.S.T.	Bullet
76	-	Annasaheb Ambu Waghmode	C.S.T.	Bullet
77	-	T. Thavasi Parnal	C.S.T.	Bullet
78	-	Anand Bhimrao Arjun	C.S.T.	Bullet
79	-	Kanhayya Kedarnath Sahani	C.S.T.	Bullet
80	-	Vibha Ashokkumar Singh	C.S.T.	Bullet
81	-	Beti Alfonso	C.S.T.	Bullet
82	-	Indraraj Luise	C.S.T.	Bullet
83	-	Jayram Harilal Chawan	C.S.T.	Bullet
84	-	Sunita Upendra Yadav	C.S.T.	Bullet
85	-	Sushama Akhilesh Yadav	C.S.T.	Bullet
86	520	Vishveshwar Shishupal Pacharne	C.S.T.	Bullet

1	2	3	4	5
87	49	Bharat Ramchandra Bhosale	C.S.T.	Bullet
88		Raviranjan Shriram Virendra	C.S.T.	Bullet
89	-	Priyanka Chitaranjan Giri	C.S.T.	abrasion
90	-	Imran Shakur Bhagwan	C.S.T.	Bullet
91	-	Rekha Shyam Rathod	C.S.T.	Bullet
92	-	Barjrang Jaykaran Prajapati	C.S.T.	Bullet
93	-	Satyanand Karunakaro Behra	C.S.T.	Bullet
94	51	Devika Natvarlal Rotawan	C.S.T.	Bullet
95	526	Sadahiv Chandrakant Kolke	C.S.T.	Bullet
96	514	Ganpat Gangaram Shigwan	C.S.T.	Bullet
97	-	Manoj Prafulchandra Kanojia	C.S.T.	Bullet
98	-	Balaji Baburao Kharatmol	C.S.T.	Bullet
99	-	Mehboob Abbas Ansari	C.S.T.	Bullet
100	-	Asif Abdul Rafik Shaikh	C.S.T.	-
101	-	Raghvendra Banvasi Singh	C.S.T.	-
102	-	Ashok Keshwanand Singh	C.S.T.	-
103	-	Radhadevi Bodhiram Sahani	C.S.T.	-
104	-	Tapasi Taramniggam Nadar	C.S.T.	-
105	511	Ganesh Sitaram Sakhare	C.S.T.	Bullet
106	-	Sayyed Shahnavaz Sayyed Salim Mujawar	C.S.T.	-
107	-	Arvind Gopinath Bhalekar	C.S.T.	Blast
108	-	Shivram Vijay Sawant	C.S.T.	-
109	-	Ashok Shivram Patil	C.S.T.	Bullet

1	2	3	4	5
110	118	Sadanand Vasant Date	Cama In	Blast
111	112	Vijay Abaji Shinde	Cama In	Bullet
112	469	Vijay Tukaram Powar	Cama In	Bullet & Blast
113	471	Mohan Dyanoba Shinde	Cama In	Bullet & Blast
114	470	Sachin Dadasaheb Tilekar	Cama In	Bullet & Blast
115	472	Vinayak Chintaman Dandgawhal	Cama In	Bullet
116	473	Hirabai Vilas Jadhav	Cama In	Bullet
117	109	Chandrakant Dyandev Tikhe	Cama In	Blast
118	111	Kailash Chandrabhan Ghegadmal	Cama In	Bullet
119	106	Harischandra Sonu Shrivardhankar	Cama In	Bullet
120	136	Arun Dada Jadhav	Cama Out	Bullet
121	139	Maruti Mahdevrao Phad	Cama Out	Bullet
122	456	Mohd. Asif Abdul Gani Memon	Cama Out	Bullet
123	454	Shankar Bhanusaheb Vhande	Cama out	Bullet
124	457	Kalpanth Jitai Singh	Cama out	Bullet
125	453	Anil Mahadev Nirmal	Cama out	Bullet
126	455	Prashant Sadashiv Koshti	Cama out	Bullet
127	2	Sanjay Yeshwant Govilkar	Vinoli	Bullet
128	171	Shyam Sunder Choudhary	Vile Parle	Blast
129	490	Balkrishna Ramchandra Bore	Vile Parle	Blast
130	-	Roldan Glandson Ayman	Vile Parle	Blast
131	-	Shabbir Tahirna Naruddin	Oberoi	Bullet

1	2	3	4	5
132	452	Chandresh Harjiwandas Vyas	Oberoi	Bullet
133	447	Apurva Natwarlal Parekh	Oberoi	Bullet
134	-	Amardeep Harkisan Sethi	Oberoi	Bullet
135	-	Sidharth Rajkumar Tyagi	Oberoi	Bullet
136	448	Dinaj Puranchand Sharma	Oberoi	Bullet
137	-	Drasuz Sobizuski	Oberoi	Bullet
138	-	Linda Oricistala Rangsdel	Oberoi	Bullet
139	-	Alisa Micheal	Oberoi	Bullet
140	-	Andolina Waokta	Oberoi	Bullet
141	-	Helan Connolly	Oberoi	-
142	-	Jahid Jibad Mebyar	Oberoi	Bullet
143	-	Shih Fung Chein	Oberoi	
144	-	Reshma Sanjay Khiyani	Oberoid	Bullet & Blast
145	-	C.M.Puri	Oberoi	
146	-	Imran Jan Mohd. Merchant	Trident	Bullet
147	451	Virendra Pitamber Semwal	Trident	Bullet
148	450	Joseph Joy Pultara	Trident	Bullet
149	-	Appasaheb Maruti Patil	Trident	Bullet
150	446	Gangaram Suryabhan Borde	Trident	Bullet
151	-	Anil Bhaskar Kolhe	Trident	
152	449	Ranjit Jagganath Jadhav	Trident	Bullet
153	-	Capt. A.K.Sing	Oberoi	Blast
154	-	Camando Manish	Oberoi	Blast
155	-	Deepak Narsu Dhole	Taj	Burn

1	2	3	4	5
156	493	Nitin Digamber Kakde	Taj	Blast
157	500	Ashok Laxman Pawar	Taj	Inhalation injury
158	501	Arun Sarjerao Mane	Taj	Inhalation injury
159	502	Saudagar Nivruti Shinde	Taj	Inhalation lung injury
160	499	Amit Raghnuath Khetle	Taj	Bullet
161	503	Shankar Shamrao Pawar	Taj	Bullet
162	-	Samadhan Shankar More	Taj	-
163	-	Sanjay Uttam Gomase	Taj	-
164	-	Rafal Godas	Taj	-
165	-	Maria Roza Romero	Taj	-
166	-	Saymond Helis	Taj	Bullet
167	497	Sajesh Narayan Nair	Taj	Bullet
168	496	Nitin Satishkumar Minocha	Taj	Bullet
169	188	Adil Rohengtan Irani	Taj	Burn
170	492	Ashish Ankush Patil	Taj	Leg injury
171		Iyujin Tan Jhonsi	Taj	
172	495	Jagdish Waman Gujran	Taj	Bullet
173	-	Hanifa Bilakiya	Taj	Bullet
174	-	Anjum Gaful Bilakiya	Taj	-
175	-	Yuti Barnad	Taj	-
176	184	K.R.Rammurthi	Taj	
177	-	Vinay Keshavaji Kuntawala	Taj	wound over left side of ankle
178	-	Deepak Pramod Gupta	Taj	-
179	-	Pragati Deepak Gupta	Taj	-
180	-	Mohanlal Pratap Taware	Taj	-

1	2	3	4	5
181	-	Sunil Kumar Jodha	Taj	
182	-	Vishwanath Maruti Gaikwad	Taj	Burn
183	494	Naushir Firoz Sanjana	Taj	Bullet
184	498	Rakesh Harischandra Chawan	Taj	Bullet
185	474	Pravin Pandurang Sawant	Leopold	Bullet
186	489	Nivruti Baburao Gavhane	Leopold	Bullet
187	-	Munira ul Rayesi	Leopold	Bullet
188	-	Faizal Miran Sabil ul Gidgali	Leopold	Bullet
189	-	Asma un Rayesi	Leopold	Bullet
190	-	Devid John Kokar	Leopold	Blast
191	-	Katherin Austin	Leopold	Bullet
192	477	Ijas Abdul Karupadan Kuddi	Leopold	Bullet
193	475	Kunal Prakash Jaiswani	Leopold	Blast
194	-	Harnish Patel	Leopold	Blast
195	-	Micle Charles Merphi	Leopold	Bullet & Blast
196	-	Riyan Micle Merphi	Leopold	Blast
197	480	Ramchandra Selumadhav Nair	Leopold	Bullet
198	481	Bharat Sasuprasad Gujar	Leopold	Blast
199	-	Anamika Bholanath Gupta	Leopold	Bullet
200	482	Rasika Krushna Sawant	Leopold	Blast
201	483	Mohd. Parvez Aslam Ansari	Leopold	Bullet
202	-	Minakshi Raghubhai Dattaji	Leopold	Bullet
203	486	Fanishang Misha Bhishum	Leopold	Blast
204	-	Bhaskar Paddu Dewadiga	Leopold	Bullet
205	485	Manoj Bahadur Thakur	Leopold	Bullet

1	2	3	4	5
206	476	Ransale Gilbert Santhumayor	Leopold	Bullet
207	484	Mohd. Ayub Mohd. Abdul Ansari	Leopold	Bullet
208	488	Prashant Vasant Tambe	Leopold	Bullet
209	-	Benjamin Jerold Methis	Leopold	Blast
210	487	Naresh Mulchand Jumani	Leopold	Bullet
211	478	Nilesh Mahendra Gandhi	Leopold	Bullet
212	479	Prakash Satan Bharwani	Leopold	Bullet
213	439	Prakash Rawji Surve	Nariman	Bullet
214	440	Bablu Rajsing Yallam	Nariman	Bullet
215	441	Sanjay Laxman Katar	Nariman	Blast
216	442	Vijay Ankush Falke	Nariman	Bullet
217	443	Ashok Babu Sunnap	Nariman	Bullet
218	444	Pradosh Prakash Perekar	Nariman	Blast
219	445	Anil Sakharam Varal	Nariman	Blast
220	-	Rajendraprasad Ramchandra Maurya	Mazgaon	Blast
221	467	Mukhtar Shriniwas Shaikh	Mazgaon	Blast
222	-	Abdul Salim Shaikh	Mazgaon	Blast
223	460	Sanju Kurshna Ghorpade	Mazgaon	Blast
224	462	Saiddiqui Firoz Shaikh	Mazgaon	Blast
225	-	Shahbaz Juber Khan	Mazgaon	Blast
226	466	Heena China Shaikh	Mazgaon	Blast
227	461	Manorabagum Ali Akbar Shaikh	Mazgaon	Blast
228		Sabira Majid Khan	Mazgaon	Blast

1	2	3	4	5
229	459	Hawa Abdul Salim Shaikh	Mazgaon	Blast
230	465	Rahaman Ali Akbar Shaikh	Mazgaon	Blast
231	458	Manoharabegum Ali Ahmed Shaikh	Mazgaon	Blast
232	-	Sohel Abdul Shaikh	Mazgaon	Blast
233	-	Kabir Bablu Shaikh	Mazgaon	Blast
234	-	Kulsum Babu Shaikh	Mazgaon	Blast
235	-	Jasmin Babu Shaikh	Mazgaon	Blast
236	-	Imran Mohd. Shafi Pathari	Mazgaon	Blast
237	468	Kanhaikumar Harikishor Paswan	Mazgaon	Blast
238	463	Shamin Rauf Shaikh	Mazgaon	Blast

57. Does the prosecution prove that the accused No.1 or deceased accused No.1-Abu Ismail had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons, they would have been guilty of offence of murder ? **Yes.**

58. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail shared **Yes.**

	each other's intention while causing injuries to the said persons?	
59.	Does the prosecution prove that accused No.2 and accused No.3 had abetted the said crime ?	**No.**
60.	Does the prosecution prove that deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb, had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 185 to 212, 220 to 238 at the places mentioned in Col. No.4 of the table No.3 ?	**It is proved that injuries were caused to Sr.Nos.185,186,192,193, 197,198,200,201,203,205,206,207 208,210,211,212,221,223,224,226, 227,229,230,231,237 & 238 (P.W. Nos.474,489,477,475,480,481,482, 483,486,485,476,484,488,487,478, 479,467,460,462,466,461,459,465, 458,468 and 463 respectively)**
61.	Does the prosecution prove that the deceased accused No.4 and No.9 had caused the said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said	**Yes.**

	persons, and had the accused Nos. 4 & 9 been alive they would have been guilty of offence of murder ?	
62.	Does the prosecution prove that the deceased accused No.4 and No.9 shared each other's intention while causing injuries to the said persons?	**Yes.**
63.	Does the prosecution prove that accused No.1, No.2 and accused No.3 had abetted the said crime ?	**1) Proved as against accused No.1** **2) Not proved as against accused Nos.2 & 3.**
64.	Does the prosecution prove that deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji , deceased accused No.8-Javed @ Abu Ali , deceased accused No.4-Nazir & deceased accused No.9-Shoaib had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 155 to 184 at the places mentioned in Col.No.4 of the table No.3 ?	**It is proved that the injuries were caused to the injured at Sr.Nos. 156 to 161,167 to 170,172,176,183 and 184 (P.W.Nos.493,500,501, 502,499,503,497,496,188,492,495, 184, 494 and 498 respectively. Injuries were also caused to Sr. 176 & 169 (PW 184 & 188 respectively)**

65.	Does the prosecution prove that the deceased accused No.5 ,8, 4 & 9 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons,and the accused Nos.4,5,8 & 9 been alive they would have been guilty of offence of murder ?	**Yes, except witness No.184 and 188.**
66.	Does the prosecution prove that the deceased accused No.4,5,8 and No.9 shared each other's intention while causing injuries to the said persons?	**Yes.**
67.	Does the prosecution prove that accused No.1, No.2 and accused No.3 had abetted the said crime ?	**1) Proved as against accused No.1.** **2) Not proved as against accused Nos.2 & 3.**
68.	Does the prosecution prove that deceased accused No.2-Imran Babar @ Abu Aakasha & deceased accused No.3-Nasir @ Abu Umar, had caused injuries of the nature	**It is proved that injuries were caused to Sr.No.213 and 219 (PW Nos.439 and 445 respectively)**

	mentioned in Col.No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 213 to 219 at the places mentioned in Col.No.4 of the table No.3 ?	
69.	Does the prosecution prove that the deceased accused No.2 and No.3 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons, and had the accused Nos.2 & 3 been alive they would have been guilty of offence of murder ?	**Yes.**
70.	Does the prosecution prove that the deceased accused No.2 and No.3 had shared each other's intention while causing injuries to the said persons?	**Yes.**
71.	Does the prosecution prove that accused No.1, No.2 and accused No.3 had abetted the said crime ?	**1) Proved as against accused No.1.** **2) Not proved as against accused Nos.2 and 3.**

72.	Does the prosecution prove that deceased accused No.6 -Abadul Reheman Chhota @ Saakib and deceased accused No.7-Fahad Ullah,had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col. No.3 at Sr.Nos.131 to 154 at the places mentioned in Col.No.4 of the table No.3 ?	**It is proved that injuries were caused to P.W.Nos.452, 447,448, 451, 450, 446 and 449 (Sr. Nos. 132,133, 136, 147, 148, 150 and 152 respectively)**
73.	Does the prosecution prove that the deceased accused No.6 & No.7 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons,and had the deceased accused Nos.6 & 7 been alive they would have been guilty of offence of murder ?	**Yes.**
74.	Does the prosecution prove that the deceased accused No.6 and No.7 had shared each other's	**Yes.**

	intention while causing injuries to the said persons?	
75.	Does the prosecution prove that accused No.1, No.2 and accused No.3 had abetted the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accused Nos.2 and 3.**

(5)- Assault or use of criminal force against public servants -

76.	Does the prosecution prove that accused No.1 & deceased accused No.1-Abu Ismail at C.S.T. Rly. Station had voluntarily caused grievous hurt to (1) Bharat Ramchandra Bhosale, A.P.I., G.R.P., (2) Pandurang Subrao Patil, A.S.I., G.R.I.,(3) Sudam Abasaheb Pandarkar,A.S.I., G.R.P., (4) Adhikrao Dyanu Kale, P.C. G.R.P.(5) Vishveshwar Shishupal Pacharne, Home Guard, (6) Uttam Vishnu Sasulkar, Home Guard, (7) Ramji Yabad Napit, A.S.I., R.P.F. (8) Parasnath Ramsoman Giri, Hawaldar ,	**It is proved that P.W.Nos. 62, 517, 516, 519, 69, 510, 56, 512, 522, 520 and 49 (Sr.Nos.2, 6, 8, 13, 14, 15, 16, 54, 63, 86 and 87 respectively) had suffered hurt due to voluntary act on the part of accused No.1 and deceased accused No.1. It is not proved that they had suffered grievous hurt.**

R.P.F., (9) Firozkhan Khusnurkhan Ghauri, Constable, R.P.F., (10) Ashok Shivram Patil, Security Guard, B.M.C., (11) Balu Bandu More, P.C., Mumbai Police, (12) Murlidhar Chintu Zole, H.C. Mumbai Police,(13) Vishal Prakash Kardak, Khalasi,Central Rly. (14) Kishor Vinayak Kale, Khalasi, Central Rly., (15) Shambunath Munai Yadav, Booking Clerk, Central Rly., (16) Ashok Bhimappa Renetala, Booking Clerk, Central Rly. (**at Sr.Nos.87, 9, 2, 36, 86, 63, 13, 10, 11, 109, 6, 8, 14, 16, 15, and 54 in the table No.3**)?

77. Does the prosecution prove that above said sixteen persons were discharging their duties as public servants ? **Yes.**

78. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the injuries to the said persons with intention to prevent or deter the **Yes.**

	said public servants from discharging their duties as public servants ?	
79.	Does the prosecution prove that accused No.1 &deceased accused No.1-Abu Ismail shared each others intention ?	**Yes.**
80.	Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ?	**No.**
81.	Does the prosecution prove that the accused No.1 and deceased accused No.1- Abu Ismail at Cama Hospital & Albless Hospital, Mumbai, had voluntarily caused grievous hurt to (1) Sadanand Vasant Date, Addl. Commissioner of Police,(2) Vijay Abaji Shinde, A.P.I., Mumbai Police, (3) Vijay Tukaram Powar, A.P.I.,Mumbai Police, (4) Mohan Dyanoba Shinde, H.C., Mumbai Police, (5) Sachin Dadasaheb Tilekar, P.C., Mumbai Police, (6) Vinayak Chintaman	**It is proved that P.W.Nos.118, 112,469,470,471,472,473,109 & 111(Sr.Nos.110,111,112,114, 113,115,116,117 & 118) had suffered hurt due to voluntary act on the part of accd.No.1 & deceased accd.No.1. It is not proved that they had suffered grievous hurt.**

Dandgawhal, P.C., Mumbai Police, (7)Chandrakant Dyandev Tikhe, Generator Operater, Cama & Albless Hospital, (8) Hirabai Vilas Jadhav, Staff, Cama & Albless Hospital, (9) Kailash Chandrabhan Ghegadmal, Security Guard, Cama & Albless Hospital (at **Sr.Nos.110, 111, 112, 113, 114, 115, 117, 116 & 118 of table No.3**) ?

82. Does the prosecution prove that the said nine persons were discharging their duties as public servants ? **Yes.**

83. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ? **Yes.**

84. Does the prosecution prove that accused No.1 and deceased accused **Yes.**

	No.1-Abu Ismail shared each others intention ?	
85.	Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ?	**No.**
86.	Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail at Badruddin Tayyabji Road had voluntarily caused hurt to (1) Arun Dada Jadhav, P.N., Mumbai Police, (2) Shankar Bhausaheb Vhande, P.C., Mumbai Police, (3) Maruti Madhavrao Phad, Driver, G.T.S. (**at Sr.No.120, 123 & 121 of table No.3**)?	**It is proved that accd.No.1 and deceased accd.No.1 had voluntarily caused hurt to P.W. 136, 139 & 454(Sr.No.120,121,123 respectively). P.W.No.139(Sr.121) lost his two fingers. Therefore, there was permanent privation of member of his body.(Grievous hurt)**
87.	Does the prosecution prove that the above said three persons were discharging their duties as public servants ?	**Yes.**
88.	Does the prosecution prove accused	**Yes.**

	No.1 & deceased accused No.1-Abu Ismail caused the said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?	
89.	Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail shared each others intention ?	**Yes**
90.	Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ?	**No.**
91.	Does the prosecution prove that the accused No.1 and deceased accused No.1- Abu Ismail at N.S.Purandare Marg, Girgaum Chowpaty, Mumbai, voluntarily caused grievous hurt to Sanjay Yeshwant Govilkar, A.P.I., Mumbai (at **Sr.No.127 of table No.3**) ?	**Yes. Prosecution has proved that accd.No.1 had caused grievous hurt to P.W.No.2(Sr.No.127).**

92.	Does the prosecution prove that said Sanjay Yeshwant Govilkar was discharging his duty as public servant ?	**Yes.**
93.	Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the said injury to the said public servant with intention to prevent or deter him from discharging his duty as public servant ?	**Yes. As against the accd.No.1.**
94.	Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail shared each others intention ?	**Does not survive.**
95.	Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ?	**No.**
96.	Does the prosecution prove that the deceased accused No.6-Abadul Reheman Chhota @	**Prosecution has proved that deceased accd.Nos.6 & 7 had caused grievous hurt to P.W.No.**

	Saakib and deceased accused No.7-Fahad Ullah at Hotel Oberoi and Trident had voluntarily caused grievous hurt to (1) Anil Bhaskar Kolhe, A.S.I.,S.R.P.F., (2) Ranjeet Jagganath Jadhav, P.C., S.R.P.F., (3) Capt.A. K. Sing, N.S.G., (4) Camando Manish, N.S.G., (**at Sr.No. 151, 152, 153, 154 of the table No.3**) ?	**449(Sr.No.152) because bullet injury had endangered his life.**
97.	Does the prosecution prove that the above said four persons were discharging their duties as public servants ?	**Prosecution has proved that P.W. No.449(Sr.No.152) was discharging his duty as public servant.**
98.	Does the prosecution prove that the deceased accused No.6 and deceased accused No.7 caused said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?	**Yes.**
99.	Does the prosecution prove that the deceased accused No.6 and	**Yes.**

	deceased accused No.7 had shared each others intention ?	
100.	Does the prosecution prove that accused No.1, No.2 and No.3 had abetted commission of the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
101.	Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb at Hotel Leopold, Colaba, had voluntarily caused grievous hurt to (1) Pravin Pandurang Sawant, P.N.,Mumbai Police, (2) Nivruti Baburao Gavhane, P. N., Mumbai Police (**at Sr.No. 185 & 186 of the table No.3**) ?	**Prosecution has proved that deceased accd.Nos.4& 9 had voluntarily caused hurt to P.W.Nos.474 & 489(Sr.Nos. 185 & 186)**
102.	Does the prosecution prove that the above said two persons were discharging their duties as public servants ?	**Yes.**
103.	Does the prosecution prove that	**Yes.**

	the deceased accused No.4 and deceased accused No.9 caused said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?	
104.	Does the prosecution prove that the deceased accused No.4 and deceased accused No.9 had shared each others intention ?	**Yes.**
105.	Does the prosecution prove that accused No.1, No.2 and No.3 had abetted commission of the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
106.	Does the prosecution prove that accused No.4-Nazir @ Abu Umer, deceased accused No.9-Shoaib @ Abu Soheb, deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali at Hotel Taj, Colaba, had voluntarily caused grievous	**Prosecution has proved that deceased accused Nos.4,5,8 & 9 had voluntarily caused hurt to P.W.No.493,500,501,502 (Sr. Nos.156,157,158 & 159) and had also caused grievous hurt to P.W. Nos.499 & 503(Sr.Nos.160 & 161)**

hurt to (1) Deepak Narsu Dhole, P.I., Mumbai Police, (2) Nitin Digamber Kakade, P.S.I., Mumbai Police, (3) Ashok Laxman Pawar, P.N., Mumbai Police, (4) Arun Sarjerao Mane, P.N., Mumbai Police, (5) Saudagar Nivruti Shinde, P.C., Mumbai Police, (6) Amit Raghunath Khetle, P.C., Mumbai Police, (7) Shankar Shamrao Pawar,P.C., Mumbai Police, (8) Samadhan Shankar More, P.C., S.R.P.F., (9) Sanjay Uttam Gomase, P.C.,S.R.P.F., (10) Sunil Kumar Jodha, Commando, N.S.G., (11) Vishwanath Maruti Gaikwad, P.C., S.R.P.F., & (12) Mohanlal Prataplal Taware, Driver, Mumbai Fire Brigade, **(at Sr.No.155, 156, 157, 158, 159, 160, 161, 162,163, 181, 182, 180 of the table No.3**) ?

107. Does the prosecution prove that the above said twelve persons were discharging their duties as public servants ? **Yes.**

108.	Does the prosecution prove that the deceased accused No.4, deceased accused No.9, deceased accused No.5 and deceased accused No.8 caused the said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?	**Yes.**
109.	Does the prosecution prove that the deceased accused No.4, deceased accused No.9, deceased accused No.5 and deceased accused No.8 had shared one another's intention ?	**Yes.**
110.	Does the prosecution prove that accused No.1, No.2 & No.3 had abetted commission of the said crime ?	**1) proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**

(6)- Wrongful confinement -

111.	Does the prosecution prove that the accused No.1 along with nine deceased accused in pursuance of the said conspiracy and in	**Yes.**

furtherance of common intention of accused No.1 and the nine deceased accused during the period between 23rd November, 2008 to 26th November 2008 wrongfully confined Amarchand Naran Solanki at **Indian Marine Vessel Kuber** ?

112. Does the prosecution prove that the accused No.2 and No.3 had abetted the said crime ? **No.**

113. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the deceased accused No.1-Abu Ismail on 26/11/2008 at **Cama Hospital & Albless Hospital** had wrongfully confined (1) Timesh Narsing Chinekar, (P.W.123) (2) Soman Dulal Ghosh, (3) Thomas Sidhappa Uledar (P.W.108) and (4) Ravsaheb Changdev Funde (P.W.107) ? **Yes.**

114.	Does the prosecution prove that accused No.2 and 3 had abetted the said crime ?	**No.**
115.	Does the prosecution prove that the deceased accused No.6 &7 in pursuance of the said conspiracy and in furtherance of common intention of deceased accused No. 6 and 7 during the period between 26th November, 2008 to 29th November,2008 at **Hotel Oberoi and Trident** had wrongfully confined (1) Pradeep Rammurti Benglurkar,(P.W.212), (2) Ketan Jayantilal Desai, (3) Apurva Natwarlal Parekh, (Sr.No.133) (4) Siddharth Rajkumar Tyagi, (Sr.No.135) (5) Amardeep Harkishan Sethi, (Sr.No.134) and (6) Chandresh Harjivandas Vyas (Sr.No. 132) ?	**Prosecution has proved that P.W. No.212 was kept in wrongful confinement.**
116.	Does the prosecution prove that the accused No.1 , No.2 and No.3 had abetted the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**

117.	Does the prosecution prove that the deceased accused No.2 & No.3 in furtherance of the said criminal conspiracy and in furtherance of common intention of deceased accused No.2 and 3 during the period between 26th November to 20th November, 2008 at **Nariman House**,Colaba, Mumbai, had wrongfully confined (1) Rivaka Gabriel Holtzberg, (2) Rabai Gabrial Noh Holtzberg (at Sr.No.3 and 4 of table No.2) ?	**Yes.**
118.	Does the prosecution prove that the accused No.1 , No.2 and No.3 had abetted the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
119.	Does the prosecution prove that deceased accused No.4, 9, 5 and 8 in pursuance of the said criminal conspiracy and in furtherance of common intention of the said deceased four accused during the period between 26th November , 2008 to 29th November,2008 at **Hotel Taj**, Colaba, Mumbai, had	**Yes.**

had wrongfully confined (1) Kuttalam Rajgopalan Ramamoorthy (Sr.No.176)) (2) Adil Rohinton Irani (Sr.No.169), (3) Sunil Rajaram Jadhav, (4) Rajendra Sadashiv Bagale ?

120. Does the prosecution prove that accused No.1 , No.2 and No.3 had abetted the said crime ?

1) Proved as against accd.No.1.
2) Not proved as against accd. Nos.2 & 3.

121. Does the prosecution prove that the accused No.1 and the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the nine deceased accused during the period between 23rd November 2008 to 26th November,2008 at Indian Marine Vessel Kuber had wrongfully confined Amarchand Naran Solanki for more than three days ?

Yes.

122. Does the prosecution prove that the accused No.2 and 3 had

No.

	abetted the said crime of wrongful confinement of Amarchand Naran Solanki for more than three days ?	
123.	Does the prosecution prove that accused No.1 & the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the nine deceased accused had abducted Amarchand Naran Solanki in order that the said Amarchand Naran Solanki might be murdered ?	**Yes.**
124.	Does the prosecution prove that the accused No.2 and 3 had abetted the said crime ?	**No.**

(7)- Forgery & impersonation -

125.	Does the prosecution prove that the accused No.1 and the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of their common intention had prepared false identity	**Offence under section 465 r/w 109 of IPC is proved against accused No.1 only.**

cards in the names of (1) Samir Dinesh Chaudhari, (2) Naresh Vilas Varma,(3) Arjunkumar Virakumar, (4)Dinesh Kumar Ravikumar, (5) Raghubir Singh Ranjit Singh, (6) Arun Vikram Sharma and (7) Rohit Dipak Patil ?

126. Does the prosecution prove that the accused No.1 and the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of their common intention had committed forgery of the said identity cards in order to commit offence of cheating ?

Offence Under section 465 r/w 109 of IPC is proved against accused No.1 only.

127. Does the prosecution prove that the accused No.2 and 3 had abetted the said offence of forgery in order to commit offence of cheating ?

No.

128. Does the prosecution prove that accused No.2-FahimAnsari in pursuance of the said criminal

No.

conspiracy on or about 10th December,2007 had secured admission in Softpro Computer Education, Engineer Premises, 93, Bombay Samachar Marg, near Bombay Stock Exchange, Fort, Mumbai, by personating himself to be Sahil Pawaskar ?

129. Does the prosecution prove that accused No.2-Fahim Ansari in pursuance of the said criminal conspiracy on or about 28th November, 2007 had obtained Reliance mobile phone SIM card from Utraula Consumers Co-Op. Society, Fitawala Chawl, Kurla (W), Mumbai by personating himself to be Sahil Pawaskar ? **No.**

130. Does the prosecution prove that the accused No.1 and 3 had abetted the said offences committed by the accused No.2 ? **Does not survive.**

(8)- Mischief -

131. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail on 26th November, 2008 at C.S.T. Railway Station had committed mischief by explosive substances intending or knowing it to be likely that they would thereby cause destruction of railway station which was ordinarily used as human dwelling and the place for storing property ? **Yes.**

132. Does the prosecution prove that accused No.2 and accused No.3 had abetted the said crime committed by accused No.1 and the deceased accused No.1-Abu Ismail ? **No.**

133. Does the prosecution prove that the deceased accused Nos. 4, 5, 8 and 9 in pursuance of the said criminal conspiracy during the period between 26th and 29th November, 2008 at **Hotel Taj** had committed mischief by fire **Yes.**

and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?

134. Does the prosecution prove that the accused No.1, 2 and 3 had abetted the said crime?

1) Proved as against accd.No.1.
2) Not proved as against accd. Nos.2 & 3.

135. Does the prosecution prove that the deceased accused Nos. 6 and 7 in pursuance of the said criminal conspiracy during the period between 26th and 29th November, 2008 at **Hotel Oberoi** had committed mischief by fire and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?

Yes.

136.	Does the prosecution prove that the accused No.1, 2 and 3 had abetted the said crime?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
137.	Does the prosecution prove that the deceased accused No.2 and 3 in pursuance of the said criminal conspiracy during the period between 26th November,2008 and 29th November 2008 at **Nariman House** Mumbai,committed mischief by fire and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?	**Yes.**
138.	Does the prosecution prove that accused No.1, 2 and 3 had abetted commission of the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
139.	Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail on 27th	**Yes.**

November, 2008 at about 00.15 hrs. at Barrister Rajani Patel Marg, Mumbai. wrongfully restrained Shri Sharan Ramesh Arsa (P.W.144), Shri Sameet Vijay Ajgaonkar(P.W.147) and Mrs. Megha Sameet Ajgaonkar ?

140. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail had shared each others intention ? **Yes.**

141. Does the prosecution prove that the accused No.2 and 3 had abetted the said crime ? **No.**

(9)- Robbery -

142. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the deceased accused **Yes.**

No.1-Abu Ismail had committed robbery in respect of the Skoda car bearing registration No.- MH-02-JP-1276 belonging to Shri Ramesh Arsa ?

143. Does the prosecution prove that the accused No.2 and 3 had abetted the said crime ? **No.**

144. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail at the time of committing the said robbery had used deadly weapons like AK-47 rifles and had attempted to cause death or grievous hurt to Shri Sharan Ramesh Arsa, Shri Sameet Vijay Ajgaonkar and Mrs.Megha Sameet Ajgaonkar ? **Yes.**

(10)- Arms Act -

145. Does the prosecution prove that the accused No.1 in pursuance of the said criminal conspiracy on 26th November, 2008 and 27th November, 2008 at (1) **Yes.**

C. S. T. Rly. Station, (2) Cama and Albless Hospital (In), (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction (4) Opp.Mittal Tower B wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg, Mumbai and (5) Opp. Ideal Café, underneath of foot over bridge,N. S. Purandare Marg North Bound Vehicular Road, Girgaum Chowpaty,Mumbai was in possession of a pistol,AK-47 rifle and ammunition without valid licence in contravention of provision of Sec.3 of Arms Act ?

146. Does the prosecution prove that accused No.2 and No.3 had abetted the said crime ? **No.**

147. Does the prosecution prove that accused No.1 during the same period had acquired and possessed prohibited **Yes.**

firearm AK-47 rifle and ammunitions at (1) C. S. T. Rly. Station, (2) Cama and Albless Hospital (In), (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction (4) Opp. Mittal Tower B wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg, Mumbai and (5) Opp. Ideal Café, underneath of foot over bridge, N. S. Purandare Marg North Bound Vehicular Road, Girgaum Chowpaty, Mumbai in contravention of provision of Sec.7 of the Arms Act ?

148. Does the prosecution prove that accused No.2 and 3 had abetted the said crime ? **No.**

149. Does the prosecution prove that the accused No.1 at the above mentioned places had used the said prohibited arms in contravention of provision of Sec.7of the Arms Act ? **Yes.**

150.	Does the prosecution prove that accused No.2 and 3 had abetted the said offence of use of prohibited arms by the accused No.1 ?	**No.**
151.	Does the prosecution prove that the nine deceased accused in pursuance of the said criminal conspiracy had acquired and possessed firearms in contravention of Sec.3 of the Arms Act at (1) C. S. T. Rly. Station, (2) Cama and Albless Hospital, (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction,(4) Opp. Ideal Café, below foot over bridge, N. S. Purandare Marg North Bound Vehicular Road, Girgaum Chowpaty, (5) on Western Express Highway, Opp. City Swan Club,Vile Parle (East), (6) Hotel Leopold, (7) Hotel Taj, (8) Hotel Oberoi and Trident and (9) Nariman House, Mumbai ?	**Yes.**

152.	Does the prosecution prove that accused No. 1, 2 and 3 had abetted the same crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
153.	Does the prosecution prove that the nine deceased accused had acquired and possessed the prohibited arms like AK-47 rifle and ammunitions at (1) C. S. T. Rly.Station, (2) Cama and Albless Hospital, (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction (4) Opp. Ideal Café, below foot over bridge, N. S. Purandare Marg North Bound Vehicular Road, Girgaum Chowpaty, (5) on Western Express Highway, Opp. City Swan Club, Vile Parle (East), (6) Hotel Leopold, (7) Hotel Taj, (8) Hotel Oberoi and Trident and (9) Nariman House , Mumbai ?	**Yes.**

154.	Does the prosecution prove that accused No.1, No.2 and No.3 had abetted the said crime ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
155.	Does the prosecution prove that the said nine deceased accused in pursuance of the said criminal conspiracy at the places mentioned above had used prohibited firearms like AK-47 rifle in contravention of provision of Sec.7 of the Arms Act ?	**Yes/**
156.	Does the prosecution prove that accused No. 1, No.2 and No.3 had abetted the said offence of use of prohibited arms by the nine deceased accused ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**

(11)- Offence under The Unlawful Activities (Prevention) Act,1967-

157.	Does the prosecution prove that the accused No. 1, No.2 and No.3 during the period between December, 2007 and November, 2008 were members of the unlawful association namely	**No.**

	Lashkar-e-Taiba which has been declared as unlawful by a Notification u/s 3 of Unlawful Activities (Prevention) Act, 1967 ?	
158.	Does the prosecution prove that accused No. 1, No.2 and No.3 continued to be the members of the said unlawful association ?	**Does not survive.**
159.	Does the prosecution prove that accused No.1, No.2 and No.3 had assisted the operation of said association ?	**Does not survive.**
160.	Does the prosecution prove that accused No.1,2 and 3 took part in and committed unlawful activities as defined u/s 2(1)(O) of Unlawful Activities(Prevention) Act, 1967 ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**
161.	Does the prosecution prove that the accused No.2 and 3 had advocated, abetted, advised and	**No.**

had incited commission of the said unlawful activities ?

162. Does the prosecution prove that accused No.1 and the nine deceased accused during the period between 26th November, 2008 and 29th November, 2008 at Mumbai and particularly at C.S.T.Rly.Station, Cama and Albless Hospital, Badruddin Tayabji Road, N.S.Purandare Road, Girgaum Chowpaty, Western Express Highway, B.P.T., Mazgaon, Mumbai, Hotel Oberoi, Trident, Hotel Taj, Nariman House and Cafe Leopold committed terrorist act as defined u/s 15 of the Unlawful Activities(Prevention) Act, 1967 ? **Yes.**

163. Does the prosecution prove that the said terrorist act of the above said accused had resulted in death of 166 persons at the places mentioned in the preceding charge ? **Yes.**

164.	Does the prosecution prove that the accused No. 1, 2 and 3, nine deceased accused and the thirty five wanted accused during the period between year 2007 and 2008 at Mumbai and other places had conspired to commit terrorist act and the acts preparatory to commission of a terrorist act ?	**1) Proved as against accd.No.1.** **2) Not proved as against accd.Nos. 2 & 3.** **3) Involvement of wanted accd. Nos.1 to 11,13,15,18,20,27,28, 31,34 and 35 is proved.** **4) Involvement of other wanted accused not proved.**
165.	Does the prosecution prove that the accused Nos.1, 2 & 3 were members of terrorist gang or terrorist organization viz. Lashkar-e-Taiba during the period between December 2007 and November 2008?	**1) Proved as against accd.No.1.** **2) Not proved as against accd. Nos.2 & 3.**

(12)- Offences under Explosives Act & Explosive Substances Act -

166.	Does the prosecution prove that accused No.1 and the deceased nine accused during the period between 26th November, 2008 and 29th November, 2008 in contravention of the rules made under Explosives Act,	**Yes.**

1984, without license imported, possessed, used and transported explosives at C.S.T. Mumbai, Cama Hospital, Badruddein Tayabji Road, N.S.Purandare Road, Western Express Highway, B.P.T., Mazgaon, Hotel Taj, Hotel Oberoi, Trident,Nariman House and Hotel Leopold ?

167. Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ? **No.**

168. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail during the period between 26th and 27th November, 2008 in contravention of rules made under the Explosives Act, 1984, had imported, possessed, used and transported explosives at C.S.T. Mumbai, Cama Hospital, Badruddein Tayabji Road, N.S. Purandare Road,Western Express Highway ? **Yes.**

169.	Does the prosecution prove that accused No.2 and 3 had abetted the said crime committed under the Explosives Act,1984 ?	**No.**
170.	Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail on the night of 26th and 27th November, 2008 at Western Express Highway, Opposite City Swan Club,Vile Parle (East), unlawfully and maliciously caused explosion by planting I.E.D.laden bomb in Motor Taxi No.MH-01-G-7792 of a nature likely to endanger life and to cause serious injury to the property ?	**Yes.**
171.	Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ?	**No.**

172. Does the prosecution prove that the accused No.1 and the deceased accused No.1-Abu Ismail on 26th November, 2008 at about 22.15 hrs. at C.S.T. Rly.Station unlawfully and maliciously caused explosion by lobbing hand grenades of a nature likely to endanger human life and cause serious injury to the property ? **Yes.**

173. Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ? **No.**

174. Does the prosecution prove that the accused No.1 and the deceased accused No.1-Abu Ismail in between 26th November, 2008 at about 22.20 hrs. and 27th November, 2008 at about 00.15 hrs. at Cama and Albless Hospital unlawfully and maliciously caused explosion by lobbing hand grenades of a nature likely to endanger **Yes.**

human life and cause serious injury to the property ?

175. Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ? **No.**

176. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail on 26th November, 2008 at about 22.15 hrs. at C.S.T. Rly.Station unlawfully and maliciously planted IED laden bomb for causing explosion of a nature likely to endanger human life or likely to cause serious injury to the property ? **Yes.**

177. Does the prosecution prove that the accused No.2 and 3 had abetted commission of the said offence of planting IED laden bomb at C.S.T. Rly. Stn. for causing explosion of a nature likely to endanger human **No.**

life or likely to cause serious injury to the property by accused No.1 and the deceased accused No.1-Abu Ismail ?

(13)- Offence under Prevention of Damages to Public Property Act,1984 -

178. Does the prosecution prove that accused No.1 and the deceased accused Nos. 1, 2, 3,4, 5, 8 & 9 during the period between 26th November, 2008 and 29th November, 2008 committed mischief by lobbing hand grenades and by exploding explosive substance and caused damage to public property namely signals , telecommunication system and electronic items at C.S.T. Rly. Station, B.M.C. Road, Opposite C.S.T., part of 5th floor and door of conference hall at 6th floor of Cama Hospital, the shutter of Corporation Bank A.T.M., at Badruddin Tayabji Road, police vehicles -Qualis bearing registration No.MH-01-BA-569, Bolero bearing

Yes.

registration No. MH-01-SA-3561, Maharashtra Government Honda City Car bearing No.MH-01-ZA-102 part of road on Western Express Highway, Police Jeep No. MH-01-SA-170 at Hotel Taj, part of B.M.C.Road near Nariman House and near Indian Oil Petrol Pump and Police Vehicle No. MH-01-SA-3722 at Hotel Leopold ?

179. Does the prosecution prove that accused No.1 and the said deceased accused Nos. 1, 2, 3, 4, 5, 8 & 9 caused damage to the said public property intending or knowing it to be likely that they would thereby cause destruction of the said property ? **Yes.**

180. Does the prosecution prove that accused No.2 and 3 abetted commission of the said crime of damage to the public property ? **No.**

(14)- Offence under Railways Act -

181. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in furtherance of their common intention on 26th November, 2008 at C.S.T. Railway Station caused damage or destruction to the property of railways by lobbing hand grenades and by indiscriminate firing ? **Yes.**

182. Does the prosecution prove that accused No.2 and 3 had abetted the said crime of damage and destruction to the property of railways ? **No.**

183. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail in furtherance of their common intention on the same date, at the same time and place at C.S.T. Railway Station **No.**

unlawfully threw or struck
against, into or upon any rolling
stock forming part of train
anything like wood or stone,
any other matter with intention
or with knowledge that they
were likely to endanger the
safety of any person being in
or upon such rolling stock ?

184. Does the prosecution prove **No.**
that accused No.1 and
deceased accused No.1-Abu
Ismail in furtherance of
their common intention on
the same date, time and at
same place at C.S.T. Railway
Station had endangered or
caused to be endangered
the safety of persons travelling
on any rolling stock upon railways ?

185. Does the prosecution prove **No.**
that the accused No.2 and

3 had abetted commission
of the said crime ?

(15)- Offence under Customs Act -

186. Does the prosecution prove that the accused No.1 and the nine deceased accused on 26th November, 2008 around 10.00 p.m. had smuggled prohibited arms, pistols and ammunitions into India and possessed the said contrabands which they knew or had reason to believe to be liable to be confiscated u/s 111 of Customs Act 1962 ? **Yes.**

187. Does the prosecution prove that accused No.2 and 3 had abetted commission of the said crime ? **No.**

(16)- Offence under Passport (Entry into India)Act, 1920 -

188. Does the prosecution prove that accused No.1 and the nine deceased accused being Pakistani nationals , entered into India without valid passport, visa or travel documents and thereby committed offence punishable under the Passport (Entry Into India) Act, 1920 and the Foreigners Act ? **Yes.**

189. Does the prosecution prove that the accused No.2 and 3 had abetted the said crime ? **No.**

(17)- Sanctions/Consent under various enactments -

190. Does the prosecution prove that a valid sanctions had been granted by the Competent Authority Under section 45 **Yes.**

of the Unlawful Activities
(Prevention) Act 1967 for
taking cognizance of the offences
punishable under the said Act?

191. Does the prosecution prove that a valid sanctions had been granted by the Competent Authority under Customs Act for taking cognizance of the offence punishable Under section 135 of the Customs Act? **Yes.**

192. Does the prosecution prove that a valid sanctions had been granted by the Competent Government under section 196 of Cr.P.C. for taking cognizance of the offences punishable u/s 121, 121A and 122 of Indian Penal Code? **Yes.**

193. Does the prosecution prove that a valid sanctions had been **Yes.**

granted by Competent Government
or Competent Authority under
section 196 for taking cognizance
of the offences of conspiracy
to commit offences other than
the offences punishable with
death or imprisonment for life
or rigorous imprisonment for term
of two years and upwards?

194. Does the prosecution prove that a valid sanctions had been obtained from the District Magistrate unde section 39 of the Arms Act for instituting the prosecution against accused no.1 for the offence under section 3 of the Arms Act? **Yes.**

195. Does the prosecution prove that a previous sanction had been granted by the Central Government under section 188 of the Cr.P.C. for trying the offences committed outside India? **Yes.**

196. Does the prosecution prove that the District Magistrate had granted Consent for trying the accused for the offences punishable under Explosive Substances Act? **Yes.**

197. What order ? **As per final order.**

R E A S O N S

111. The prosecution has examined in all **654** witnesses to establish the charges framed against the accused. Out of these 654 witnesses, **293** witnesses have been examined in open court, **3** witnesses have been examined through audio video linkage and **358** witnesses have been examined by following the provisions u/s 296 of Cr.P.C. The Court had summoned six witnesses to be examined as Court witnesses. Out of these, three witnesses have been examined through audio video linkage and rest of the witnesses have been examined in Court. The three Court witnesses examined through audio video linkage are members of National Security Guard who were part of the team involved in the operations carried out at hotel Oberoi, Hotel Taj and Nariman House to apprehend or to eliminate the accused involved in the alleged offences at those places. In fact the court

had issued summons to these witnesses to appear in court for the reasons recorded separately in a detail order. The said order was challenged by the N.S.G. before the Hon'ble High Court. The Hon'ble High Court had upheld decision of this Court to summon the said members of N.S.G. as witnesses but issued certain directions as to how their evidence was to be recorded. The Hon'ble High Court had also placed certain restrictions on this court in respect of publication of their evidence and the limit to the extent of which they were to be questioned by the court. This Court had followed the directions of Hon'ble High Court. In view of the directions issued by the Hon'ble High Court evidence of three Court witnesses i.e. Court witness Nos. 2 to 4 was recorded through audio video linkage and very limited questions were put to them within the four corners of the order of Hon'ble High Court.

112. As far as the Court witness No.1 is concerned, he was the in charge of control room of C.C.T.V. cameras installed by Times of India outside their building. The prosecution had produced compact disc containing visuals of alleged movements of accused No.1 and deceased accused No.1-Abu Ismail at the time of their entry in Badruddin Tayyabji

Road. Though the prosecution had examined other witnesses pertaining to that part of incident, Court felt that evidence of Mr. P.A.Varghese was necessary to find out whether the record was an authenticate record of visuals captured by the C.C.T.V. cameras of Times of India building. Another Court Witness Mr. Anthony Steven Mathew, Sr.Police Inspector, was responsible to defuse three live RDX bombs recovered at C.S.T. and near Taj hotel. There was no evidence at all to indicate as to who had defused those bombs except some oral evidence mentioning name of Sr.P.I. Mr.Anthony. Therefore, Mr. Anthony has been examined as Court Witness No.5 after recording of statements of accused Nos. 1,2 and 3 u/s 313 of Cr.P.C. was completed.

113. Police Inspector Mr.Thorawade is P.W.No. 128 but he was later on recalled by the court to be examined as Court Witness. This decision was taken by the Court in view of the evidence of P.W.138-Suresh Shantaram Kadam, Police Constable, who on the date of incident was attached to Azad Maidan Police Station and was present at Mahapalika Road when the police Qualis vehicle was allegedly taken away by the accused No.1 and the deceased accused No.1-Abu Ismail. It is the case of

prosecution and it has come in the evidence of P.W.138 Mr.Suresh Kadam that Mr.Thorawade who was in charge of Azad Maidan Police Station, was also present with him by the side of the road and was armed with pistol when the Qualis jeep had passed from near them at Mahapalika Road just near to junction of Baddrudin Tayyabji Road and Mahapalika Road adjoining ST. Xavier's college. It has also come on record that P.W.138-Mr.Suresh Kadam, Sr.PI Mr.Thorawade and other police constables were armed with firearms at that time. To decide whether the evidence of P.W.138-Mr.Suresh Kadam is to be accepted or not, it was found necessary by the court to examine Mr.Thorawade as he was the most responsible police officer of Azad Maidan Police Station at that time as he was holding charge of the police station in his capacity as I/C Sr. Police Inspector.

114. Evidence of 358 witnesses was allowed to be adduced by way of affidavits u/s 296 Cr.P.C. for the reasons recorded by me separately. I have stated in my order that evidence of these witnesses was formal inasmuch as none of the witnesses had mentioned anything about the alleged role of either of the accused. Evidence of some of the witnesses who were involved in inquest panchanamas , had carried articles to the

Forensic Science Laboratory and who had extended helping hands immediately after the incident to carry dead bodies to hospitals and to remove injured to the hospitals were absolutely of formal character. Summoning them as witnesses in the court would have involved lot of expenses and unnecessary waste of precious time of the court. At the same time the evidence of injured who had not seen either of the accused and had been able to describe nature of injuries sustained by them and the medical officers who had examined said injured persons were also considered to be of formal character. It is worth noting here that despite the court coming to the conclusion that the evidence of these witnesses was of formal character, option was always available to the defence to move this court to call any of such witnesses for cross-examination. It was also felt by the court that the Court was not prevented from calling any such witness in open court at any later stage if it was found that the evidence of a particular witness was not of formal character. Keeping all these things in view, Court had taken a very conscious decision of permitting the prosecution to adduce evidence of such witnesses in the form of affidavits.

115. It is further worth noting that some of such witnesses had been

called on the prayer of defence lawyer and had been cross-examined. As such no prejudice had been caused to any of the parties by examining these witnesses on affidavits. On the contrary the examination of these witnesses on affidavits has saved lot of time of this court and has also saved witnesses from being troubled unnecessarily and travelling from far-flung places to the place of sitting of this court . It would not be out of place to mention here that considering the amount of expenditure the Government has to incur on this Court per day, it was necessary to consider the prayer of prosecution u/s 296 Cr.P.C. As already stated by me, the decision was taken not only to save the money but Court was of the definite view that no prejudice would be caused to any of the accused. The paramount consideration of the court obviously was the interest of justice which includes interest of accused. Interest of accused has been protected and at the same time huge amount of public money has also been saved. The witnesses were also relieved of attending this Court personally. For the sake of clarity whole text of the said order can be reproduced as under :

"***ORDER BELOW EXH.1138-APPLN. SUBMITTED BY LD.SPL.P.P. U/S 296 CR.P.C. :***

1. At the outset it may be mentioned here that Exh.1138 is an application of ld. Spl.P.P. Mr.Nikam filed u/s

296 of Cr.P.C. Exh.1138-A is the reply of ld.Advocate Shri Abbas Kazmi for the accused No.1.

2. The ld.Spl.P.P. had moved this Court vide application- Exh.1138 on 26/11/2009 for grant of permission to tender evidence of 340 witnesses in the form of affidavits, as in the opinion of ld.Spl.P.P. the evidence of these witnesses was of a formal character. When the application-Exh.1138 was taken up for hearing on 26.11.09, the hearing took an unpleasant turn which is not necessary to be stated here. The ld.Advocate Mr.Kazmi for accused No.1 had unnecessarily invited ire of the court due to his own conduct. The details of said incident have already been recorded by me in my earlier order. It is not necessary to state the same in the present order. The dispute which had arisen on 26/11/2009 was resolved amicably between the Bench and the Bar on 27/11/2009. The Application- Exh.1138 was adjourned till 30/11/2009.

3. When the application-Exh.1138 was adjourned for hearing , one thing was made clear to the ld. Spl.P.P. as well as to the ld.Advocate Mr.Kazmi that the Court would consider prayer of the ld.Spl.P.P. category-wise. It was also made clear that it would not be possible for the Court to give composite finding whether all the witnesses i.e. 340 witnesses whose evidence was sought to be adduced by way of affidavits

were of formal character or otherwise. It was accordingly followed. The ld. Spl.P.P.was therefore, directed to categorize the witnesses according to their nature of evidence. Category wise lists of the witnesses provided by the prosecution are as under:

(1) *Claimants of dead bodies.(**Exh.1211**)*

(2) *Panch witnesses to the inquest panchanamas. (**Exh.1212**)*

(3) *Carriers of articles to the F.S.L. (**Exh.1295**)*

(4) *Injured persons. (**Exh.1310**)*

(5) *Witnesses on damage/loss of the property. (**Exh.1400**)*

(6) *Panch witnesses in whose presence clothes of some of the injured and deceased in the alleged incidents, were seized. **(Exh.1410)**.*

(7) *Only one witness - Fire Brigade Personnel (**Exh.1414**)*

(8) *Witnesses who stated about sufficient light. (**Exh.1416**) However, prosecution did not tender affidavits of witnesses in catergory No.VIII.*

(9) *Misc.category which included police officers who had drawn the panchanama and some witnesses on some other misc. issues.(**Exh.1417**)*

(10) *Medical Officers of various hospitals who had examined and treated the persons injured in the*

*alleged incidents at various places on the night of 26th & 27th November,2008.(**Exh.1425**)*

4. The first list of category No.1 was submitted in the Court by ld. Spl.P.P. on 30/11/2009. On the submission being made by the ld. Spl.P.P., the Court took up for hearing the first category of witnesses which comprised of 71 witnesses who had claimed or received dead bodies of the persons who died during the alleged terror attack. The ld.Advocate Mr.Kazmi however, did not agree to the suggestion of the Court that the nature or character of the evidence of witnesses could be ascertained conveniently if they are considered category-wise. He went on insisting that his reply-Exh.1138A should be considered as a whole and the Court should give finding in respect of all the witnesses i.e. 340 witnesses. It has been submitted in the reply Exh.1138-A that evidence of all the witnesses (340) go to the root of the case. I tried my level best to reason with Mr.Kazmi that we could take decision category-wise but I could not succeed. Ultimately, for the reasons recorded by me separately on the same day, appointment of ld.Advocate Mr.Kazmi made u/s 304 Cr.P.C. was required to be revoked. Ld.Advocate Mr.Pawar who had been assisting Mr.Kazmi since beginning, was appointed to represent the accused No.1. It may be noted here that Adv.Mr.More had been appointed on the next day to assist Mr.Pawar.

5. While passing the order revoking appointment of Mr.Kazmi it was stated by me in my order dated 30/11/2009 that reply-cum-application of Mr.Kazmi i.e. Exh.1138-A will be considered only after hearing ld.Advocate Mr.Pawar for accused No.1 and after resolving the issue concerning first category of the witnesses i.e. claimants of the dead bodies.

6. When the matter was again taken up in the afternoon session, ld. Advocate for the accused No.1 and 3 and the accused No.2 had submitted that they had no objection if the affidavits of 71 witnesses under first category were taken on record as their evidence was of a formal character. The said 71 affidavits were therefore taken on record. It was declared on behalf of all the accused that they did not want to cross-examine the said 71 witnesses.

7. The process of taking affidavits on record and cross-examination, if any, of the witnesses went on for four days i.e. 1st, 2nd, 3rd, and 4th December, 2009. As the Court went on to hear the matter on the basis of category-wise list, Ld.Advocate Mr.Pawar had submitted from time to time that he had no objection for treating evidence of majority of the witnesses, except the medical officers who had conducted postmortem examinations, as formal in charater. In the process of taking evidence of formal character in the form of affidavits and recording cross-examination of the witnesses ,

this application Exh.1138 remained to be disposed off finally.

8. It may be noted here that though evidence of most of the witnesses out of the said 340 witnesses has been treated as formal in character, some of them have been called for cross-examination as prayed by the defence counsel. The Court had already expressed the view that considering the nature of evidence of witnesses (total 340 witnesses as per the lists filed by prosecution category-wise from list-I to X) who mostly comprised injured persons, medical officers and panch witnesses of inquest panchanamas, and considering the fact that none of the injured persons had identified the accused during the course of investigation nor is it the case of prosecution that the accused No.1 or the deceased accused Abu Ismail was seen by either of the injured or panch witnesses, evidence of such witnesses could be treated as of formal character. However, it is necessary to record reasons for the same to finally dispose off the application-Exh.1138.

9. Before I proceed to record reasons for my decision, it may be mentioned here that the ld. Spl.P.P. has made it clear that he would not press for taking the affidavits of medical officers, who had conducted autopsies, on record. It is also submitted by him that he would, on the contrary, call upon the defence to admit or deny the genuineness of P.M.notes and that in case the defence did not admit the

genuineness and correctness of the P.M.notes, he might call the witnesses to be examined in the Court. It is further submitted that if some of the P.M. notes are not admitted by the defence, the ld. Spl.P.P. might call only those limited number of medical officers. In this background, I proceed to record the reasons for my decision to treat evidence of some of the witnesses as of formal in character to accept their evidence in the form of affidavits.

10. It is obvious that the procedure laid down u/s 296 Cr.P.C. is departure from the regular mode of recording of evidence as per the provisions of Evidence Act. The prime question which arises before Court while taking recourse to Sec.296 is whether the evidence of a particular witness is of a formal character. At the same time Court has also to consider the issue of prejudice. It is the duty of the Court to consider that by taking recourse to the provision of Sec.296, no prejudice is caused to any of the parties to the trial.

11. As already stated by me, the prime question which may arise for determination before Court is whether evidence of a particular witness is of a formal character or not. The word 'formal' has not been defined in Cr.P.C. nor there is any other provision from which Court can seek help or guidance to determine as to what evidence is of a formal character.

12 However, I am guided by the judgment of Hon'ble Supreme Court. The ***Hon'ble Supreme Court in a case reported at 2001 Cri.L.J. 4656 in the matter of State of Punjab Vs. Naib Din, has at para 7 & 8 stated :***

"7. The normal mode of giving evidence is by examining the witness in Court. But that course involves, quite often, spending of time of the witness, the trouble to reach the court and wait till he is called by the Court, besides all the strain in answering questions and cross-questions in open court. It also involves costs which on many occasions are not small. Should a person be troubled by compelling him to go to the court and depose if the evidence which he is to give is purely of a formal nature ? The enabling provision of Section 296 is thus a departure from the usual mode of giving evidence. The object of providing such an exception is to help the court to gain the time and cost, besides relieving the witness of his troubles, when all that the said witness has to say in court relates only to some formal points.

8. What is meant by an evidence of a formal character ? It depends upon the facts of the case. Quite often different steps adopted by police officers during the investigation might relate to formalities prescribed by law. Evidence, ifnecessary on those formalities, should normally be tendered by affidavits and not by examining all such policemen in court. If any party

to a lis wishes to examine the deponent of the affidavit it is open to him to make an application before the Court that he requires the deponent to be examined or cross-examined in Court. This is provided in sub-section (2) of Section 296 of the Code. When any such application is made it is the duty of the Court to call such person to the Court for the purpose of being examined."

(Emphasis supplied)

13. It is thus clear that the Hon'ble Supreme Court has expressed the view that no exhaustive list can be prepared to put evidence of a particular witness under the category of a formal in character. The Hon'ble Supreme Court at para-8 of the judgment has said that ' ***It depends upon the facts of the case'****. As such a duty is cast upon the trial judge to determine, on the basis of facts of the case, as to whether evidence of a particular witness is of a formal character or otherwise. No straight jacket formula can be laid down for the same.*

14. Before the trial court decides whether the evidence of a particular witness is of a formal character or otherwise, it is to be borne in mind as to what is the intention of legislature behind enacting Sec.296. The Hon'ble Supreme Court in the judgment cited supra has said the normal mode of giving evidence is by examining the witness in court. But that course involves, quite often, spending of time of the witness,

the trouble to reach the court and wait till he is called by the Court, besides all the strain in answering questions and cross-questions in open court. It also involves costs which on many occasions are not small. Should a person be troubled by compelling him to go to the court and depose if the evidence which he is to give is purely of a formal nature ? Enactment of provision of 296 is thus departure from usual mode the object of which is to help the court to gain time and cost, besides relieving the witness of his troubles, when all that the said witness has to say in court relates only to some formal points.

15. In another case reported at ***1985 Cri.L.J. 1517 in the matter of Gangadgaran V. Kochappi Chellappan and another, the Hon'ble Kerala High Court*** *has said at* ***para -4*** *:*

"4. The only material on which the Magistrate acted was an affidavit filed by the petitioner. Counsel for the petitioner relied on S.296 of the Criminal P.C. which provides that an affidavit may be read as evidence. But that is only in cases where the evidence is of a formal character. That is subject to all exceptions also. In a fit case the Magistrate can summon and examine the deponent of the affidavit. The mode of giving evidence in criminal cases by affidavit is a departure from the usual method. That provision does not override the general principle applicable to criminal proceedings. The application

of the special rule of reading affidavit as evidence is intended to accelerate disposal of cases. Only if the occasion demands application of the special rule, the Magistrate can permit affidavits to be read as evidence. (Emphasis supplied)

16. It is thus clear that the intention of legislature in enacting the provision of Sec.296 was to accelerate the trial and save the cost. At the same time it may be noted here that Court cannot compromise the interest of justice to accelerate the trial and save the cost. The interest of justice is of a paramount importance. The court has to be very careful to see that while taking recourse to the provision of Sec.296, the interest of justice is not compromised in any manner. I have stated in the earlier part of my order that apart from the fact that whether the evidence of a particular witness is of a formal character or otherwise, the court has to keep in mind that no prejudice is caused to any of the parties to the trial. Inconvenience and cost is not the only consideration. However, it can be one of the considerations. This always is subject to a rider that the interest of justice is paramount.

17. In the present case the objection raised on behalf of accused No.1 and opposition for permitting the prosecution to adduce evidence of certain witnesses in the form of affidavits was based on the arguments that the evidence of witnesses sought to be examined through affidavits, goes to

the root of the matter. The categories of witnesses whose evidence is sought to be adduced in the form of affidavits have already been enumerated by me herein above. Before I examine the arguments advanced on behalf of the accused No.1, it may be noted here that the Hon'ble Supreme Court in the judgment cited supra, has said ' whether evidence is of a formal character or otherwise, is to be decided on the facts of each case.' Therefore, a witness of a particular fact in one case may not be a formal witness but a witness of a similar fact in other case could be a formal witness depending upon nature of offence and set of facts of the case.

18. The issue in the present case has to be examined from the point of view of the nature of offences for which the accused are being tried, nature of evidence adduced by the prosecution so far and the nature of evidence which is sought to be adduced in the form of affidavits.

19. The first category of the witnesses whose evidence is sought to be adduced by way of affidavits, are the witnesses who had received dead bodies of the deceased who allegedly died in the incidents which took place between 26th to 28th November, 2008 at various places in Mumbai. Majority of the deceased had died on the night of 26th and 27th November, 2008 itself. None of these witnesses were present on the spot. The second category is of the injured persons

who were present on the spot and had sustained injuries ranging from very minor to serious in nature. None of the witnesses from the second category had seen either the accused No.1 or any of the deceased accused. It is not the case of prosecution also that any of these witnesses had seen the accused No.1 or any of the deceased accused. No such statement is made in any of the affidavits submitted in the court.

20. The ld.Spl.P.P. had made it clear that affidavits of such witnesses are being relied upon only to the extent that they had been injured on that night at the particular places.

21. The other category belongs to the medical officers who had examined the injured persons at various hospitals. Considering the nature of evidence of the witnesses who were injured, evidence of medical officers will also be fall in the same category.

22. At this stage it may be stated here that as far as the evidence of medical officers who had performed postmortem examinations of dead bodies, the ld. Spl.P.P. has withdrawn the affidavits of medical officers and he proposed to file a fresh application u/s 294 Cr.P.C. and he further proposed to examine the medical officers in case the defence lawyers do not admit the genuineness of P.M.notes.

23. As such, almost all the witnesses whose evidence was sought to be adduced, had not seen any of the accused . Recording of their statements during the course of investigation, taking acknowledgment of some of the witnesses in token of they having received the dead bodies of their relatives/friends, collecting injury certificates from various hospitals were the formalities which the Investigating Officers were under obligation to complete in view of the allegations made in the various F.I.Rs. registered at various police stations in Mumbai. In my view, the evidence of none of these witnesses go to the root of the case.

24. As stated earlier the character of the evidence is to be decided on the basis of facts of a particular case and that no straight jacket formula can be laid down for the same. In the present case, to decide whether the evidence of witnesses whose affidavits are sought to be adduced, was of formal character or otherwise, it was necessary for the court to see what is going to be achieved by introducing these witnesses in the witness box. It can also not be lost sight of that the defence is always at liberty to move the court u/s296(2) for cross-examination of the witness whose affidavit has been tendered. In the present case from the tenor of cross-examination of the witnesses it can be easily seen that it is nowhere the case of accused No.1 or for that matter any other accused that no incident as alleged had ever taken place in Mumbai. Accused

No.2 and 3 were admittedly not present on the spot. They were in custody of U.P. police on the date of incident. The case of accused No.1, all along, has been that the witnesses had not seen him. It is not even suggested to any of the Investigating Officers till today that no incident as alleged, had ever taken place. In this regard I have also taken note of ***para-10*** *of the judgment of Hon'ble Supreme Court reported at* ***2001 Cr.L.J. 4656*** *where the Hon'ble Supreme Court has said :*

"the facts stated in the affidavit were purely of a formal character. At any rate, even the defence could not dispute that aspect because no request or motion was made on behalf of the accused to summon the deponents of those affidavits to be examined in Court. In such a situation it was quite improper that the High Court used such a premise for setting aside the conviction and sentence passed on the respondent, that too in revisional proceedings."

25. As such the court is not prevented from examining as to what purpose will be achieved if the witnesses are required to personally remain present in the Court. The court is also under obligation to see as to what the defence is going to achieve by the same. It therefore follows that the court has to examine the issue of prejudice also.

26. In the present case as stated earlier the witnesses whose affidavits are adduced as a substitute for examination-in-chief, had not seen either the accused No.1 or the deceased accused No.1-Abu Ismail who were allegedly involved in the firing at C.S.T.Rly.Station, Badruddin Tayyabji Road, Cama Hospital and Metro Junction. I have gone through the evidence of witnesses who had identified the accused No.1 to be one of the two persons who had opened firing at C.S.T.Rly.Station, Badruddin Tayyabji Road, Cama Hospital and Metro Junction. It is nowhere the case of accused No.1 that no such incident had ever taken place. It has been suggested to most of the witnesses that they had not seen the accused No.1 or they had identified the accused No.1 at the instance of police. As such the character of evidence of witnesses has to be ascertained on the basis as to what is sought to be proved by their evidence. It will not be out of place to mention here that complicity or otherwise of the accused No.1 has to be established by the prosecution on the basis of evidence already adduced before filing of affidavits or the evidence which may be adduced later on but not on the basis of evidence of witnesses whose affidavits have been submitted in the place of witnesses being produced physically in the Court.

27. In my view, considering the magnitude of the incident and the charges levelled against the accused No.1

and others, which range from waging war to unlawful activities, multiple murders and terror acts, the evidence of witnesses whose affidavits had been submitted in the court, becomes a very very formal in character particularly when none of the witnesses had seen either the accused No.1 or his alleged associate deceased accused No.1-Abu Ismail.

28. The meaning of Sec.296 revolves round the meaning of word 'formal'. It is possible that in a case of a singular charge of Sec.307 IPC, the injured person, though he had not seen the assailant, can be one of the prime witnesses but in the case of present magnitude the persons who had received minor to major injuries within a fraction of minute and who had not been able to see as to who had caused explosion or as to who had fired at them, can be the witnesses whose evidence is of formal character.

29. As stated earlier, it is necessary for the Court to achieve the intention of legislature behind enacting a particular law. Law is enacted considering the difficulties faced in the past and the difficulties of the present. However, it does not mean that a particular provision cannot be taken recourse to in the situation which was not in sight at the time of enactment of that Section. In this regard I may take help of the judgment of ***Hon'ble Madhya Pradesh High Court reported at 1979 Cr.L.J. 1485*** *in the matter of* ***Ramsewak V.***

State of M.P. *At para* ***7, 8 & 9*** *the Hon'ble High Court has said :*

"7. According to Salmond's Jurisprudence, " the object of interpreting a statute is to ascertain the intention of the legislature enacting it." (11th Edition page 152). It is also a well established principle of rule of interpretation , that if the statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of legislature. His Lordship of the Supreme Court Gjendragadkar, J. (as then he was), in Ram Krishna Ram Nath V. Janpad Sabha, AIR 1962 SC 1073 at p. 1079 said, the first and primary rule of construction is that the intention of the Legislature must be found used by the legislature itself. Thus in our view it follows that in case of doubt, it is always safer to have an eye on the object and purpose of the statute, or reason and spirit behind it and that is why the Courts strongly lean against a construction which tends to reduce the statute to a futility. It has also been laid down by the Supreme Court of India, that the principle, that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is saving clause or a proviso.

8. It will not be out of place to mention that the historical facts and the surrounding circumstances which led to the enacting of a statute or a particular provision in the statute, are also an admissible aid to interpretation and construction so as to discover the real intention, object and spirit behind it. In H.M.Edwards Vs. A.G. of Canada, AIR 1930 PC 120 at p. 125 as stated by Lord Halsbury, it was laid down as under :

" The subject-matter with which the legislature was dealing and the facts, existing at the time with respect to which the legislature was legislating , are legitimate topics to consider inascertaining what was the object and purpose of the legislature in passing the Act".

9. The legislature in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. Primarily the legislation is directed to the problems before it based on information derived from past and present experience. It may also be designed by use of general words to cover up similar problems arising in future. But from the very nature of things it is impossible to anticipate fully the various situations arising in future. The words chosen to communicate such indefinite object and purpose, are bound to be in many cases, lacking in clarity and precision which give rise to controversial question of interpretation."

(Emphasis supplied)

*30. I may also take help of judgment of the Hon'ble Supreme Court reported at **AIR 2005 Supreme Court 3353 in the matter of Salem Advocate Bar Assocn. Vs. Union of India**. The Hon'ble Supreme Court has at **para- 21** said :*

" The rules of procedure are made to advance the cause of justice and not to defeat it.
Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not is mistress. In the present context, the strict interpretation would defeat justice."

*31. I may also refer to the judgment of **Hon'ble Supreme Court reported at 2003 Cr.L.J. 2033 in the matter of State of Maharahstra Vs. Dr.Praful B.Desai with P.C.Singh Vs. Dr.Praful B.Desai & anr**. In the said case issue before the Supreme Court was whether presence of accused does necessarily mean physical presence of the accused in the court and whether recording of evidence through video conferencing was permissible or not. While deciding the said issue Hon'ble Supreme Court at **para- 13, 14 and 15** has said :*

"13. One needs to set out the approach which a Court must adopt in deciding such questions. It must be remembered that

the first duty of the Court is to do justice, As has been held by this Court in the case of Sri Krishna Gobe V.State of Maharashtra (1973 4 SCC 23) Courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce reliable evidence. Of course the rights of the accused have to be kept in mind and safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights.

14. It must also be remembered that the Criminal Procedure Code is an ongoing statute. The principles of interpreting an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentaries titled "Statutory Interpretation", 2nd Edition page 617;

" It is presumed the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has t be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

In construing an outgoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology,the meaning of words and other matters... That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist in no argument against that construction. Parliament, in the wording of an enactment is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording. ....

An enactment of former days is thus to be read today, in the light of dynamic processing over the years, with such modification for the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation year in and year out. It also comprises processing by executive officials."

15. At this stage the words of Justice Bhagwati in the case of National Textile Workers' Union V. P. R.Ramakrishnan, (1983) 1 SCC 228, at page 256, need to be set out. They are :

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must

change with the changing social concepts and values. If the bark that protects the free fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bank and grow a new living bark for itself. Similarly, if the law fails to respond to the need of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind. (Emphasis supplied)

32. Court has also taken into consideration the fact that in the recent past Code of Civil Procedure had been amended and recording of examination-in-chief by affidavit has become a rule. Court has further taken note of the fact that recently Negotiable Instruments Act has also been amended and examination-in-chief of witness is required to be tendered by way of affidavit. As such the emphasis is to accelerate the trial and save cost.

33. As such considering the facts of this case which are altogether different from an ordinary criminal case, the nature of evidence sought to be adduced by way of affidavits and considering the law on the point, I am of the view that the application of ld. Spl.P.P. for grant of permission to adduce evidence of some witnesses in the form of affidavits needed to

be granted. Even at the cost of repetition it can be stated here that the production of affidavit of a particular witness does not prevent the defence from cross-examining the said witness. On the contrary the Section casts duty upon the court to call the witness for cross-examination if such an application is made by the defence. The Court, without any motion from the parties also, is not prevented from calling the witnesses, whose affidavits have been produced, to examine them in open court. As such sufficient safeguards have already been provided in the same Section .

34. As such the evidence of the witnesses as per categorywise lists given by the ld. Spl.P.P., except evidence of medical officers who had performed autopsies, can be taken u/s 296(1) of Cr.PC. At the same time it can be stated that the same would not cause prejudice of any nature either to the accused or to the prosecution.

35. The application-Exh.1138 stands disposed off in the above stated terms.

36. This order be appended to the roznama dated 2nd December, 2009.

Sd/-
07/12/2009 *(M.L.TAHALIYANI)*
Addl.Session Judge, Gr.Bombay.

116. After closure of case of prosecution, statements of accused Nos. 1, 2 and 3 were recorded u/s 313 Cr.P.C. Additional statements were also recored after recall of some witnesses and after examination of Court Witness No.5. All the incriminating circumstances appearing in the evidence were put to the accused. Accused No.1 was asked as many as **1611** questions during the course of recording of his statement. More or less similar number of questions were put to accused No.2 and 3. There was additional evidence against accused Nos. 2 and 3 pertaining to their meeting at Nepal and the alleged activities of accused No.2 at Mumbai. Those circumstances were also put to the accused while recording their statements u/s 313 of Cr.P.C.

117. Defence of the accused No.1 is that he has been falsely implicated in this case and that he was not apprehended at Girgaum Chowpaty as alleged by the prosecution. He has also stated that his confession has been recorded under duress and that it is not voluntary and true statement.

118. Accused No.2 has stated that he was forced to prepare the

sketch map-**art.101** when he was in police custody after being brought from the judicial custody of Addl. Sessions Judge, Rampur (U.P.) and that the said sketch map was never recovered from the trouser packet of deceased accused No.1-Abu Ismail.

119. Similarly, accused No.3 has also denied all the allegations and has stated that he has been falsely implicated in this case.

120. Let me therefore, now proceed to examine the evidence adduced by the prosecution and cross-examination of the witnesses. The documents produced by the prosecution and the articles seized during the course of investigation and produced in the court also will be referred at an appropriate stage during the course of consideration of evidence of the prosecution witnesses.

121. Since it is the case of the prosecution that the accused nos.2 & 3 were part of the larger conspiracy and since it is alleged that it is accused no.2 who had prepared sketch map of various important locations of Mumbai to assist the alleged perpetrators of the crime i.e. the wanted

accused and accused no.1 and the 9 deceased accused, it will be convenient and appropriate to deal with the evidence of witnesses who have been examined to prove the alleged role of accused no.2 and 3.

122. At the outset, it may be mentioned here that the accused no.2 is alleged to have been in search of residential place in Colaba area, so that he could frequent Badhwar park easily. It may also be mentioned here that it is fisherman's colony situated opposite Badhwar Park where the accused no.1 and his nine deceased associates had first landed from an inflatable boat and had thereafter proceeded to various locations as per the sketch maps given to them by their mentors in Pakistan. It is the prosecution case that the accused no.2 knew that the persons who were supposed to strike terror in Mumbai would be landing at Badhwar Park and therefore accused no.2 had been searching a place of residence in fisherman's colony and had taken admission in Computer Institute viz. “Softpro” situated at Fort.

123. The prosecution has examined various witnesses to substantiate their above stated allegations against accused no.2. As far as accused no.3 is concerned, it is the case of the prosecution that the accused no.3 had

collected maps from accused no.2 at Nepal and was instrumental in dispatching those maps to Pakistan, so that they could be used to succeed in terror strikes on Mumbai. To substantiate the allegations against accused no.3, the prosecution has examined only one witness i.e. P.W.160- Mr.Naruddin Mehboob Shaikh.

124. Prosecution has examined P.W.35- Jeevan Janardhan Culabkar, P.W.38- Rajendra Sopan Bhosale and P.W.40- Smt.Shanta Kisan Bhosale to establish that the accused No.2 was searching a place in south Mumbai and ultimately acquired one on tenancy basis at Pathhe Bapurao Marg, Mumbai-08.

125. **P.W.35- Jeevan Janardhan Culabkar** has stated in his evidence that he has been staying with his parents at fishermen colony since birth. Since he was suffering from polio, he was running a public communication centre (Phone P.C.O) under the name and style of 'Kushal Communication Centre' at fishermen colony. Accused No.2 had visited his P.C.O. in the year 2007 and had enquired from him whether any room could be available on rental basis in the colony. P.W.35 showed his

inability to assist the accused No.2. Accused No.2 however insisted and said that since P.W.35 was running a P.C.O. , he might be in contact with many persons who could help him getting an accommodation for accused No.2. Accused No.2 therefore gave Rs.5000/- to P.W.35 to arrange for a room. Thereafter accused No.2 went on frequently visiting the said P.C.O. of P.W.35 to find out whether P.W.35 could get accommodation for him. P.W.35 got tired of his frequent visits and returned Rs.4500/- to accused No.2. Accused No.2 however was reluctant to accept the said amount. Ultimately he accepted the said amount from P.W.35. It is stated by this witness that the accused No.2 had disclosed his name as Sahil Pawaskar and had stated that he was native of Delhi. Accused No.2 was identified by this witness during the course of investigation in the identification parade at Arthur Road prison. Accused No.2 has also been identified by this witness in the court at the time of recording of his evidence.

126. Cross-examination of this witness so far as accused No.1 and 3 are concerned, was declined . P.W.35 in his cross-examination on behalf of accused No.2 has admitted that the Municipal Corporation, Greater Mumbai has provided space for the P.C.O. He has further admitted in his cross-

examination that nobody else in the past had ever requested him to to extend assistance for getting a room on rental basis. It is thus clear that the cross-examination is directed to demonstrate that P.W.35 is not a regular estate agent and that it was not possible that the accused No.2 would have paid him Rs.5000/- to search a room on rental basis as there was no relation at all of any nature between the accused No.2 and P.W.35.

127. P.W.38-Rajendra Sopan Bhosale has stated in his evidence that P.W.40-Smt.Shanta Kisan Bhosale was known to him as both of them were staying in the same chawl at Pathhe Bapurao Road, Mumbai-08. P.W.40 was staying in room No.14 of the said chawl. P.W.40 had taken loan from some source for treatment of her son. Her son however died in the year 2007. She wanted to repay the loan amount and she therefore was in search of a tenant for room No.14. P.W.38 had therefore, with the help of one estate agent Kumar Shivaji, brought accused No.2 as a proposed tenant for room No.14 belonging to P.W.40. An agreement was executed under which P.W.40 had taken deposit of Rs. 60,000/- from the accused No.2 and monthly rent was decided to be Rs.3000/-. Accused No.2 had disclosed his name to be Sahil Pawaskar to P.W.38 during the said transaction. It is

stated by P.W.38 that accused No.2 suddenly left the said room without even demanding back his deposit.

128. Cross-examination of this witness so far as accused No.1 and 3 are concerned, was declined . P.W.38-Rajendra Bhosale, in his cross-examination on behalf of accused No.2 has denied that he had never seen accused No.2 and that the accused no.2 was never a tenant of P.W.40-Smt. Shanta Kisan Bhosale.

129. P.W.40-Smt.Shanta Kisan Bhosale has stated that her son Mahadev died of tuberculosis. She was in need of money to repay the loan which she had taken for treatment of her son. She therefore decided to let out her room on rent. It is further stated by her that accused No.2 had been staying in her room on rental basis. He had paid deposit of Rs.50,000/- and had agreed to pay additional deposit of Rs.10,000/-. Monthly rent was agreed to be Rs.3000/-. Accused No.2 was staying in the main room. P.W.40 herself was staying on the mezzanine floor in the same room. An agreement in respect of tenancy for a period of 11 months was executed. A copy of which is produced at **Exh.180**. It is further stated by this witness

that accused No.2 had stayed for a very limited period of about one month. It was about two years ago. Thereafter he left the room without any intimation and had not returned.

130. Though P.W.38 has been cross-examined after he was recalled on the prayer of ld. Advocate Mr.Shahid Azmi, P.W.40 has not been recalled for cross-examination. As such it is clear that the ld. Advocate for accused No.2 did not want to cross-examine P.W.40.

131. P.W.36- Vivek Om Saxena is Manager of Softpro Computer Education situated at 2nd floor, Engineer Premises 93, Mumbai Samachar Marg, Fort. This witness has stated that the accused No.2 had taken admission in their institution for four different courses. Accused No.2 had visited the institution on 10/12/2007 and his classes commenced on 12/12/2007. This witness has stated that accused No.2 had disclosed his name as Sahil Pawaskar. The necessary forms which are required to be filled in by a candidate for securing admission in the institute are inquiry form, admission form and application form. P.W.36 has stated that the inquiry form-**Exh.168** and the application/admission form-**Exh.169** are the

same. They were filled in by accused No.2 himself. P.W.36 had issued receipt in the sum of Rs. 6500/- in the name of Sahil Pawaskar to the accused No.2. A Carbon copy of the receipt is produced at **Exh.170**.

132. Cross-examination of this witness so far as accused No.1 and 3 are concerned, was declined . P.W.36 in his cross-examination on behalf of accused No.2 has admitted that he was working on administrative side of the institution and that he was not part of the teaching faculty. An attempt had been made by ld. Advocate Mr.Shahid Azmi to show that it was not possible for P.W.36 to remember faces of all the students of the institute as he had no occasion to interact with the students as a teacher. The witness has further stated that he was not sure whether attendance cards of the students for the relevant period could be available to be produced in the court. He has denied the suggestion that accused No.2 had never been a student of their institute.

133. During the course of investigation it was revealed to the police that the sketch map found in the right side pocket of trouser of deceased accused no.1 Abu Ismail was drawn by the accused No.2-Fahim Ansari. It

was also revealed to the police that accused No.3 was instrumental in dispatching the said map to the perpetrators of this heinous crime at Pakistan. Police also came to know that accused No.2 and 3 were in custody of Utter Pradesh Police in some other case and they were lodged in Rampur jail . Therefore with the permission of the Addl.Sessions Judge, Rampur, accused No. 2 and 3 were taken into custody by Mumbai Police and were arrested in the present case.

134. At this stage it may be stated here that the evidence in detail in respect of recovery of sketch map from right side pocket of trouser of deceased accused Abu Ismail will be discussed in later part of the judgment when I deal with the evidence pertaining to the incident of Vinoli (Girgaum) Chowpaty where the deceased accused no.1Abu Ismail was allegedly killed in the encounter with the police.

135. Since the accused No.2 was arrested later on and since the map recovered from the trouser of deceased terrorist Abu Ismail was already sealed at the time of inquest panchanama of dead body of the deceased accused No.1-Abu Ismail and seizure of his clothes at Nair Hospital, it was

necessary for police to open the said packet as the map was required for obtaining opinion of Document Examiner of Government. It is in these circumstances that P.W.32- Sanjay Shravan Sonawane was called by the police on 28.1.2009 at about 4.00 p.m. in the office of A.T.S. situated at N.M.Joshi Marg, Mumbai. Police Officer Mr.Marde was present in the said office. One more panch Mr.Shivaji was also present.

136. P.W.32-Mr.Sanjay Shravan Sonawane is the panch witness who was present at the time when a sealed packet containing sketch map art.101 was opened and was resealed by P.W.48-PI Mr.Marde. It is stated by this witness that one sealed packet was opened in his presence. The said packet contained a plain notebook. No writing was seen on any of the pages of said notebook. Therefore the said notebook and the wrapper in which the notebook was earlier sealed, were again sealed in presence of panch witnesses. The witness has identified **art.91** to be the same wrapper in which the notebook-**art.92** was found sealed. The brown wrapper **art.166** in which the earlier brown wrapper and the notebook were sealed were also shown to the witness. He has identified the brown wrapper **art.166** and his signature on the said wrapper to be **Exh.153**.

137. The witness further goes on to say that one more sealed packet was also opened in his presence. The sealed packet was having label with signatures of panchas and one police officer. The said packet was containing a road map showing various places of Mumbai. On reverse of the said map there were signatures of panchas and police officers. It is the case of prosecution that these signatures were taken when the map was recovered from trouser pocket of the deceased accused No.1-Abu Ismail. It is stated by this witness that names of the places mentioned in the said map were encircled by police officer Mr.Marde by means of red pen. The encircled portions were given identification numbers from **Q-1 to Q-12**. Thereafter a zerox copy of the said map was prepared by Police Officer Mr.Marde. The witness has identified **art. 101** to be the original road map which was found in the packet. **Art.99** has been identified by the witness as the same wrapper in which **art.101-** map was found wrapped . The original road map, after giving identification numbers to the various places of Mumbai shown on it, was resealed along with earlier wrapper. They were resealed in the wrapper **art.100**. The witness has identified his signature-**Exh.154** on the label which was affixed on the wrapper in which the map and earlier wrapper were resealed by the police. Panchanama in respect of the whole

sequence of events was drawn by police which is produced at **Exh.155**. The witness has identified his signature on the said panchanama.

138. During the course of cross-examination on behalf of accused No.1 the witness has admitted that the encircled portions of the map were given identification numbers by means of red ball pen. When the map was shown to him during recording of his evidence, the witness had stated that the identification numbers seen in the map are in green ink. This answer of the witness had created some ambiguity in his evidence. It was therefore necessary for me to intervene and ask certain questions to the witness. During the course of questions by the court it was brought to the notice of the witness that identification numbers Q-1 to Q-12 are written by means of green ink as well as red ball pen. As such there were two sets of identification numbers. The witness at this stage stated that the numbers written in Marathi from Q-1 to Q-12 by means of red ball pen were written by police officer in his presence. He could not say anything about the identification numbers from Q-1 to Q-12 written in green ink. It is stated by him that green identification marks were not assigned in his presence.

139. Cross-examination of this witness so far as accused No. 3 is concerned, was declined. P.W.32 in his cross-examination on behalf of accused No.2 has stated that the sealed packet was brought by a constable before the Investigating Officer Mr.Marde. It is further stated by this witness that the packet was brought from some other police station. However, the panchanama was drawn in the office of Unit-III of DCBCID. The witness has denied that no sealed packets were opened in his presence and that resealing was also not done in his presence. However, in earlier portion of cross-examination this witness has admitted that it is not stated in the panchanama that the packet brought by the constable had a seal of wax and string. The witness has clarified that it was mentioned in the panchanama that the packet was in sealed condition. It is also admitted by this witness that the names and addresses of the panchas in whose presence earlier panchanama in respect of seizure of map was drawn and whose signatures appear on the sealed cover, were not mentioned in the later panchanama Exh.155. Other things in cross-examination of P.W.32 do not need any discussion as they do not create any doubt about the correctness of evidence of this witness.

140. As far as Investigating officer Mr.Marde is concerned, it will be apt to reproduce part of his evidence with regard to opening and resealing of sketch map and other evidence incidental thereto in this part of the judgment. Rest of his evidence can be discussed wherever it is relevant. Sealed packets containing sketch map was opened by P.W.48- Police Inspector Mr.Marde in presence of two panchas including P.W.32. It is stated by this witness that there were two sealed packets in the seized articles handed over to him by D.B.Marg Police . One of the packets contained sketch map allegedly recovered from trouser of deceased accused no.1 Abu Ismail. The said map was required by this Investigating Officer for further investigation of the case after arrest of the accused nos.2&3. He therefore sought permission of the ld. Magistrate to open the sealed packet. The permission was granted. Accordingly on 28/1/2009 the said packet was opened in presence of two panchas by P.W.48 in the office of D.C.B.C.I.D. Unit-III, Mumbai. The English writing on the sketch map was assigned identification marks from Q-1 to Q-12. The sketch map, after assigning identification marks, was again sealed in presence of the same panchas. However, before being sealed, a copy of the map-art.101 was prepared on a scanner by P.W.48. Panchanama in respect of resealing of

the map was drawn. The said panchanama is produced at **Exh.155**. P.W.48 has identified his signature on the panchanama. He has also identified the sketch map **Art.101** to be the same, a copy of which was prepared on scanner. The original was sealed. He has identified wrapper -**Art.99** to be the same wrapper in which the map was earlier sealed by D.B.Marg Police Station and **Art.100** to be wrapper in which the map was resealed by P.W.48 himself.

141. As it is the case of prosecution that the map found in possession of deceased Accused Abu Ismail was prepared by accused No.2 and was dispatched to Pakistan by accused No.3, the Investigating Officer found it necessary to get the handwriting of the accused No.2 examined by the Document Examiner. He therefore, took specimen handwriting of accused No.2 on three occasions i.e. on 29th,30th and 31st January, 2009. The specimen handwriting were shown to the witness. He has identified the specimen handwriting to be the same which were taken in presence of panchas. The specimen handwriting of accused No.2 and the questioned documents i.e. the sketch map-**Art.101** with identification marks from Q-1

to Q-12 were sent to the Government Document Examiner through the Additional Commissioner of Police. The office copy of forwarding letter is produced at **Exh.360.**

142. **P.W.146-Mr.Jayant Kashiram Aher** is the Government Document Examiner. This witness has stated in his evidence that he joined services of Government of Maharashtra in the year 1980 as Assistant State Examiner of Documents. He is working as State Examiner of Documents since April, 2007. As far as experience in documents examination is concerned, it is stated by this witness that he has examined about two lakh documents and has given opinion in about four thousand cases. As regards the method of comparison, this witness has stated that he normally adopts side by side comparison under various types of magnifiers, illuminated ultra lens and stereoscopic microscope. Individual and general characteristics are examined during comparison of documents side by side.

143. On 10/2/2009 he had received a letter from Additional Commissioner of Police along with letter of Sr.Police Inspector of D.C.B.C.I.D. Mr.Prashant Marde and had also received the list of

documents and the questionnaire in one sealed packet. Both the letters have been produced in this Court at **Exh.571 colly**. with endorsement of office of Document Examiner. It is stated by this witness that the sealed envelope containing documents **Art. 101** and **Art. 102** have been produced in Court. Article 101 was the questioned document and art. 102 were specimen handwritings. It is further stated by this witness that the identification marks to the questioned words in the questioned document i.e. Q-1 to Q-12 were assigned by the Investigating Officer. The specimen writings were marked by the Investigating Officer as S-1 to S-108. P.W.146 has also assigned the same identification marks to the words in questioned document and the specimen document. However, the identification marks assigned to questioned words by this witness are in green ink.

144. In his further evidence the witness has stated that side by side comparison of questioned and specimen writings was done in the manner stated by him herein above. During the course of examination of said documents, the witness found that :

1) The questioned and specimen writings revealed similar skill and similar pictorial appearance.

2) Inter se examination of the questioned and specimen writings revealed that the general and individual writings characteristics were in the natural variations of one and the same person. These variations were within the range of natural variation. They were superficial in nature and do not affect the significant handwriting characteristics of the writer. They showed consistency among themselves.

3) The general writings characteristics such as movement, slant alignment, spacing and relative sizes of the letters showed similar writings characteristics of the writer.

4) When compared with specimen writings, the questioned writings showed significant similarities in the following respect:-

   a) The manner of execution of small letter 'i' and placing of 'i' dot.

   b) Formation of letters 'll' in word 'hill' and 'tt' in word 'Batti'.

c) Formation and connection of letters 'a' and 'j' in word 'Raj', 'a' and 'l' in word Terminal; 'a' and 'n' in word 'Bhavan'

d) Execution of capital letters 'A', 'B', 'C', 'J', 'M' and 'T'.

e) Formation of small letters 'n', 'w', 'y', 'p', 'd'.

f) Foot of the letters 'h, 'm'.

g) Position of letter 'e', 't' and 'r' in word 'Metro'.

h) Crossing of horizontal Bar in letter 't'.

i) Formation of small letter 's' from single curve to double curve.

j) The word 'of' is similarly written.

k) Spelling mistakes in word i.e. written as “polics”, “Carafat”, “Berig” revealed inconspicuous habit of the writer.

l) Formation and position of letter 'k' in word “Market”, 'g' in word “Berig”

The findings recorded by P.W.146 are at **Exh.572**. The rough notes of findings have also been produced in the court at **Exh.572A**. The opinion of this witness earlier produced in the court as part of **art.294** was shown to

the witness. He has identified his signature on the opinion-**Exh.573**. The rough notes of opinion are also produced at **Exh.573-A**.

145. The witness has stated that he had opined that the writing in English marked by him as Q-1 to Q-12(questioned) were written by the author of writing S-1 to S-108 (specimen). After completion of examination of documents and preparation of opinion, the original documents received from the office of Police were returned to them.

146. Cross-examination of P.W.146, so far as accused No.1 and 3 are concerned, was declined. He has been extensively cross-examined by ld.advocate Mr.Shahid Azmi for accused No.2. It is admitted by this witness that pattern of handwriting may be changed due to change of pen and paper. It is an admitted position that the age of ink and paper of the map- art.101 was not determined during the course of investigation. P.W.146 was also not an expert on this issue. He has honestly admitted that he was not able to give opinion in respect of age of paper and ink because there were many other institutions available for the said work. He has also admitted that knowledge of script of language is necessary for handwriting

expert to give opinion in respect of questioned document referred to the expert.. P.W.146 has admitted that he does not have knowledge of Urdu script. It is further admitted by this witness that the opinion regarding variations is general in nature. P.W.146 has not given separate opinion regarding variations specifically noted word by word or letter by letter. He, however, did not agree that the dots in the word **' c.s.t.'** in art.101 and dots in the same word in the art.102 specimen were distinct. He has admitted that dots after the letter **'s'** in Q-10 are not similar in nature of the dots in the word 'c.s.t.' in art.102. He has denied that dot in the document Q-10 after 's' in the word 'c.s.t.' was an interpolation.

147. It may be mentioned here that date of recording opinion is not mentioned in the documents **Exh.573 (final opinion)** and **Exh.573A (Rough Notes).** P.W.146 however, has denied that the date was not mentioned purposely as the documents have been prepared later on. He has also denied that the writing in Q-1 to Q-12 in art.101 clearly showed signs of duress. The witness has also denied that he has purposely avoided to note down dissimilarities in art.101 and art.102. He has also denied that his

opinion is not in consonance with the observations made by him with respect to the questioned document and specimen document.

148. In the last, this witness has denied the suggestion that he has been deposing false .

149. It is the case of prosecution that the map recovered from right side pocket of trouser of the deceased Abu Ismail was sent to Pakistan from Nepal and accused No.3-Sabuddin Shaikh was responsible for collecting the map from accused No.2-Fahim Ansari and sending the same to Pakistan. It is also the case of prosecution that the sketch map-Art.101 was handed over to accused No.3-Sabuddin Shaikh by accused No.2-Fahim Ansari at Nepal. Prosecution in this regard has examined P.W.160-Mr.Naruddin Mehboob Shaikh.

150. **P.W.160-Mr.Naruddin Mehboob Shaikh** is resident of Laxmi Nagar, Room No. 340, near Motilal Nagar ,Goregaon (W), Mumbai. He knows accused No.2 since childhood. He also knows accused No.3 since January, 2008. It is stated by P.W.160 that he had an occasion to meet

accused No.3 for the first time at Kathmandu, Nepal. That he knows one Mr.Bharat Thakur who is native of Purana Dahineshwar, Pashupatinath Mandir, Kathmandu, Nepal. It is stated by P.W.160 that he had visited Purana Dahineshwar, Pashupatinath Mandir, Kathmandu, Nepal in the month of January,2008. He had gone to Nepal along with Bharat Thakur. He was at Dahineshwar for about fifteen to seventeen days. The said place is 30 km. away from Kathmandu. He stayed with Bharat Thakur at the said place for about 10 to 12 days and thereafter he wanted to visit Kathmandu. However Bharat Thakur could not accompany him to Kathmandu because he was not well. P.W.160 stayed in a small guest house at New Road, Kathmandu. While he was visiting various places at Kathmandu, he suddenly met accused No.2 at New Road. Thereafter they had gone to a hotel to have a cup of tea together. P.W.160 was told by the accused No.2 that he had come to Kathmandu on a pleasure trip. P.W.160 had visited Hotel room of the accused No.2 along with accused No.2.

151. While the P.W.160 was with accused No.2 in his hotel room, it is at about 8.30 p.m. that the accused No.3 had also visited accused No.2. Accused No.3 was introduced to P.W.160 by the accused No.2. It is stated

by P.W.160 that after sometime accused No.3 had inquired from accused No.2 whether he had completed the work assigned to him by Mr.Laqhvi. Upon this, accused No.2 had taken out some papers from his pocket and had handed over the same to the accused No.3. While the papers were being handed over to accused No.3 by accused No.2,the same had fallen down and P.W.160 had an occasion to have a glance over the papers. After seeing those papers P.W.160 had asked accused No.2 whether he had started business of drawing maps. Accused No.2 however, did not respond. The accused No.3 had told P.W.160 that his friends from Pakistan wanted to visit Mumbai and therefore, they wanted some maps. It was also explained to P.W.160 by accused No.2 that since the maps available in the market do not give proper information, accused No.2 had prepared the maps for the friends of accused No.3 who would be visiting India.

152. P.W.160 stayed at Kathmandu for three days and thereafter he returned to native place of Bharat Thakur at Dahineshwar. He returned to Mumbai on 2nd February,2 008. The sketch map -art.101 was shown to the P.W.160. It is stated by him that the art.101 looked like the maps seen by him in the hotel room of accused No.2.

153. As far as cross-examination of P.W.160 is concerned, ld. Advocate Mr.Shahid Azmi for accused No.2 has brought his character under scanner and has tried to demonstrate that P.W.160 has bad record with the police. It is admitted by P.W.160 that is brother Shafi was facing criminal cases pertaining to Kandivali and Goregaon Police Stations. He has denied that his brother Lala was arrested for alleged rape on Asgar's wife. He maintains that Lala was never arrested by Goregaon Police . He has also denied in his cross-examination that he was wanted by police in any criminal case. It was attempted to demonstrate that this witness is jobless and has criminal background and therefore he could depose at the instance of police for various reasons. The witness however, has denied most of the suggestions made to him by ld.advocate Mr.Shahid Azmi during the course of cross-examination. He has in his cross-examination further stated that he did know that accused No.2 had been arrested by U.P.Police. He however knew that accused No.2 had been arrested in this case by the police. He came to know this from the news published in the newspaper.

154. P.W.160 however, was unable to produce any documentary proof of his visit to Nepal. He did not have any railway ticket or guest house

receipt to establish that he had gone to Nepal particularly Kathmandu and that he had occasion to meet accused No.2 and 3 at Kathmandu. It is pertinent to note here that even the police, during investigation, did not ask him the date of his visit to Kathmandu. Police have not inquired from him as to by which route he had completed his journey up to the border. This witness did not remember name of the guest house also.

155. In his further cross-examination, P.W.160 has stated that he had stated before the police that the accused No.3 had told him that his friends would be visiting India and therefore the maps were required. He had also stated before the police that there were eight to ten papers of school note book which had been handed over to accused No.3 by accused No.2. He was however unable to assign any reason as to why these two facts are missing from his statement.

156. It may be noted here that though the Police officer who had recorded statement of this witness during investigation was examined as prosecution witness (P.W.48-Mr.Marde) , the ld. advocate for accused No.2 has not asked any question to the said police officer to prove omissions. As

such these omissions are not proved.

157. At the end of cross-examination by the ld.advocate for accused No.2, P.W.160 had denied that he had never visited Nepal and that he had never meet accused No.2 and accused No.3. He has also denied that the map-art.101 had been identified by him at the instance of police.

158. In the cross-examination on behalf of accused No.3 this witness has denied that he was regular informer of police particularly Crime Branch and therefore he has been made to give evidence in this case against the accused No.2 and accused No.3. He has denied that accused No.3 was seen by him for the first time in police custody of Crime Branch. He has also denied that he has identified accused No.3 on the basis of his sitting position in the dock explained to him by the police outside the court.

159. Coming back to the alleged role of accused no.2, it may be stated here that to prove that the papers submitted by accused No.2 before P.W.36-Mr.Vivek Om Saxena, Manager of Softpro Computer Education were in handwriting of accused No.2 himself and were signed by him, the

prosecution has adduced evidence in respect of specimen handwriting and signatures of accused No.2 taken by P.W.47-Mr.Sripad Balkrishna Kale, the Investigating Officer of Crime No. 52/08 of Yellogate Police Station and the opinion of handwriting expert P.W.146.

160. **P.W.47- Mr.Sripad Balkrishna Kale** has stated in his evidence that inquiry form, admission form and payment receipt issued in the name of Sahil Pawaskar were handed over to him by P.W.36. They were taken charge of by P.W.47. He has identified accused No.2 and accused No.3 to be the same accused who were arrested by him in C.R.No.55/08 of Yellogate Police Station (C.R.No.186/08 of D.C.B.C.I.D). During the course of investigation, P.W.47 had taken specimen handwriting and signatures of accused No.2 on 10th, 11th and 12th February, 2009 in presence of two panchas. Documents A-1 to A-27 and B-1 to B-27 were shown to the witness. It is stated by the witness that documents A-1 to A-27 and B-1 to B-27 (**Exh.211 colly.**) are the specimen handwriting and specimen signatures respectively of accused No.2. P.W.47 has taken signatures of panch witnesses on each and every page of specimen documents and he himself had also signed all the pages. The specimen

handwriting and signatures were sent to the Addl. Chief State Examiner of Documents through the Addl.C.P.(Economic Offences Wing) along with the questionnaire. The letter addressed to Addl. C.P. was signed by the Asstt, Commissioner of Police Mr.Durafe. At this stage it may be stated here that the investigation of this crime as well as other connected crimes in respect of which a common charge-sheet has been submitted, was later on transferred to Asstt. Commissioner of Police Mr.Durafe in view of provisions of Unlawful Activities (Prevention) Act, 1967.

161. P.W.47 was recalled for cross examination because ld. advocate Mr.Shahid Azmi was not present when examination-in-chief of this witness was recorded. This witness has been mainly cross-examined on two points i.e. with regard to the agreement between accused No.2 and P.W.40-Smt.Shanta Kisan Bhosale and the admission of accused No.2 at Softpro Institute . As far as agreement is concerned, P.W.47 has admitted in cross-examination that P.W.38 had not stated before him that accused No.2 and Smt.Shantabai Bhosale had put thumb impression on the agreement. P.W.38 had stated that he did not remember whether he had stated so before the police. In view of evidence of P.W.47, the said omission has been

proved and it is proved by the defence that there is no evidence that Smt.Shantabai Bhosale and accused No.2 had signed the agreement. In fact this evidence was not required to be discussed at length inasmuch as the prosecution has failed to produce the original agreement for the reasons not explained by the prosecution. What is produced in the court is colored xerox copy of the so-called agreement. No explanation is given either by P.W.40 -Smt.Shantabai Bhosale or by the Investigating Officer.

162. As far as signature on the application form and the enquiry form allegedly submitted by accused No.2 in Softpro Institute are concerned, it appears from the cross-examination of this witness that it is not denied on behalf of the accused No.2 that the signatures and handwriting on the forms belonged to accused No.2. What is suggested to the witness is that the forms **Exh.168** (Enquiry form) and **Exh.169** (application form) were filled in by accused No.2 under duress and force. It is thus case of the defence that the forms Exh.168 and Exh.169 had been filled in by accused No.2 when he was taken into police custody in connection with this case. The witness has denied the suggestion that the story of accused No.2 searching for a room on rental basis and his

admission in Softpro Institute has been fabricated and introduced in the case to implicate the accused No.2 falsely in this case.

163. **P.W.146-Mr.Jayant Kashiram Aher**, State Examiner of Documents has stated in his evidence at **para-8 page 985** that he had received specimen writings marked as A-1 to A-27 and B-1 to B-27 from the police for examination and opinion. P.W.146 had also received the questioned writings i.e. Q-1 to Q-2 in Exh.169 and Q-3 and Q-4 in Exh.168. Exh.168 is the inquiry form and Exh.169 is the application form. Both the documents were allegedly submitted by accused No.2 in the office of P.W.36-Mr.Vivek Om Saxena, Manager at Softpro Computer Education. P.W.146 had assigned Sr.Numbers S-1 to S-54 (27 + 27 = 54) to the documents received by him from the police under Sr.Numbers A-1 to A-27 and B-1 to B-27. This witness has further stated that the questioned writings were compared with the specimen writings by means of various equipments mentioned by him in his earlier part of evidence. Side by side comparison process was adopted during the comparison of these documents also. During the course of examination of questioned documents, side by side, with the specimen documents, the witness had found that :

1) The questioned and specimen writings, figures and signatures revealed similar skill and similar pictorial appearance.

2) Inter se examination of the questioned and specimen writings, figures and signatures revealed that the general and individual writings characteristics were in the natural variations of one and the same person. These variations were within the range of natural variation. They were superficial in nature and do not affect the significant handwriting characteristics of the writer. They showed consistency among themselves.

3) The general writings characteristics such as movement, slant, alignment, spacing and relative size and connections showed similar writings characteristics of the writer.

4) When compared with specimen writing and figures, the questioned writings and figures showed significant similarities in the following respect:-

   a) Formation of letter 'k' in word 'Pawaskar', "S' in word 'Sameer'.

   b) Connections of letters 'a' and 's' in word 'Pawaskar', 'a' 'l' in word 'Kalpana'.

c) Position of letter 'f' in word 'floor'.

d) Manner of execution of letter 't' and position of horizontal bar of letter 't'.

e) The formation of letter 'i' and 'j' and dot over letter 'i' and 'j'.

f) Formation of letter 'g'.

g) The connection and formation of letters 'a' and 's' and 'i', 'a' and 'r'.

h) Formation of capital letters 'B', 'T;, 'G'.

i) Manner of execution of and formation of figures '4', '5', '7'.

5) When compared with specimen signatures, the questioned signatures showed significant similarities in the following respect:

a) The signatures were smooth, fluent and natural.

b) The signatures revealed same form and similar directions of strokes.

c) The signatures showed right hand side slant.

d) The manner of execution and formation of letter 'S'

from single curve to double curve.

e) Formation of letter 'i' and dot over letter 'i'.

f) The connections of letters 'a', 'h', 'i', 'l'.

g) The manner of execution of rubric line below signatures and two prominent dots below signatures revealed highly individual writing characteristics of the writer.

h) The signature did not reveal any signs of forgery either traced/simulated. It did not reveal defective line quality with hesitation, tremors, sudden changes in direction of strokes, pen-lifts or pen-pauses at unusual places.

The findings recorded by P.W.146 in respect of Exh.168 and Exh.169 were produced at **Exh.574**. P.W.146 has also produced rough notes of his findings . Exh.574 is the final print of findings given by P.W.146. The rough notes are produced at **Exh.574A.**

164. On the basis of his findings recorded in Exh.574, P.W.146 had come to the conclusion that the writings, figures and signatures in Q-1 to Q-4 were written by the author of writings S-1 to S-54 (A1 to A27 and B1

to B27). As such in his opinion the inquiry form and application form submitted to P.W.36 by the accused No.2 were in the handwriting of accused No.2 and they were signed by accused No.2 . The opinion of P.W.146 is produced at **Exh.575** and rough notes with regard to the opinion are produced at **Exh.575A**.

165. After discussing the evidence adduced to prove the involvement of the accused no.1 and 2, let me now proceed to the evidence with regard to the actual incident. Let me begin with the evidence of witnesses who had allegedly seen the arrival of the accused no.1 and nine deceased accused at Mumbai seashore at Badhwar park, Cuff Parade Mumbai

166. Though the prosecution witnesses have not been examined in a proper order, it is necessary for me to discuss their evidence in an order which can be comprehended easily. In view of this, now I will proceed to take up the case of when the inflatable boat was noticed at seashore near fishermen colony at Badhwar Park.

167. To begin with this part of the case, I may briefly state the testimony of **P.W.28-Bharat Dattatraya Tamore** who had seen 10 persons alighting from inflatable boat at fishermen colony. This witness is working in Hotel Taj. His duty hours were from 10.00 p.m. of 26.11.08 to 7.00 a.m. of 27/11/08. He resides at fishermen colony which is about 15 minutes walking distance from the hotel. His house is situated quite near to the seashore. While he was walking by the side of seashore to go to the hotel to attend his duty, he had seen one inflatable boat on the seashore. He had seen 10 persons on the said boat. The said ten persons were wearing life saving jackets of saffron colour. He could see all of them in the street light. According to this witness they all were in the age group of 20-25 years. Eight of the said ten persons removed their jackets and put the same in the boat. They got out of the boat. All of them were having one haversack and one hand bag each. This witness had seen two of said ten persons quite closely while they were proceeding towards the main road. Since both of them were unknown to the locality, P.W.28 had intercepted them. Both of them however disclosed that they were students. He had also seen remaining six persons proceeding towards main road. The two persons who were left out in the boat had proceeded in the same boat towards Nariman Point. The

P.W.28 left for Hotel Taj to attend his duty.

168. P.W.28, after having a brief talk with the accused No.1 and his associate, had left for his duty at Hotel Taj. It thus appears from the evidence of P.W.28 that he did not suspect anything foul at that time.

169. According to this witness he returned home on 27.11.2008 at about 7.00 a.m. At that time he had seen about 3-4 policemen standing near Badhwar Park Railway Officers' colony. The policemen were talking something about inflatable boat. P.W.28 therefore narrated the incident witnessed by him to the said policemen. During his further evidence, the witness has identified accused No.1 to be one of the two persons and the same person who had said that they were students. Accused No.1 had also been identified by this witness in the identification parade.

170. It is thus clear from the evidence of this witness that he was in Hotel Taj on the night of 26th and 27th November, 2008. He however, has not stated anything about the incident of Taj. (The ld. Spl.P.P. had submitted that the prosecution did not want to examine this witness on the

point of incident at Hotel Taj because this witness had not seen anything of the incident)

171. As far as cross-examination of this witness is concerned, it is denied by him that the boat of the description seen by him could, on its own, reach the seashore due to high tide. This witness however has admitted that there was high tide on the night of 26th and 27th November, 2008.

172. One omission is brought in the police statement of this witness. In his examination-in-chief the witness has described accused No.1 to be a shorter person. The witness was however unable to assign any reason as to why this particular fact has not been recorded in his statement by the police. However, prosecution has not been able to examine the Police Officer Mr.Anil Kamble who had recorded statement of P.W.28 because the officer is reportedly seriously ill. As such this omission could not be not proved. The fault therefore does not lie with the accused. Assuming for the sake of argument that the omission is proved, it hardly makes any difference to the merits of the case as the omission is of very minor nature.

173. As far as cross-examination of this witness by accused No.2 and 3 is concerned, it is admitted by the witness that he might have seen photograph of accused No.1 on television before identification parade was held.

174. The other witness in this connection is also resident of fishermen colony. He is **P.W.29-Prashant Hemnath Dhanu**. He is fisherman by generations . His family has got a fishing boat by name 'Ekvira' . On 26.11.2008 this witness along with his relatives Vijay Meher, Nityanand Meher and Milind Meher had left the fishermen colony in Ekvira boat for fishing in high seas at about 9.15 p.m. At this stage it may be stated here that it is necessary for any boat to pass from near Nariman point to reach high seas for fishing from fishermen colony. As such the boat Ekvira was also required to pass from Nariman Point. The witness has stated that when the boat reached Nariman point, a rubber boat was spotted by them. The boat was made of black rubber and there were yellow strips on the saidboat. It was found in abandoned condition and therefore the same was tied to Ekvira boat and was brought to the seashore near fishermen colony at Badhwar park. Police, by that time had already arrived there. The boat

was handed over to police. It was a motor boat of 'Yamaha' make. The witness has identified the boat **art.156**. This witness has also admitted that there was high tide in the sea at that time. This witness has further admitted that normally they give information to coast guard regarding unidentified boat. The witness in his evidence has stated that he had stated before police that there were yellow strips on the black inflatable boat. He was however, unable to give any reason as to why this particular fact has not been recorded in his statement.

175. P.W.47 the I.O. has stated that P.W.29 had stated during his police statement that there were yellow stripes on the inflatable boat. This is not recorded in his statement because description of the boat was already recorded in the panchanama..

176. The P.W.29, as regards other omission, has admitted that he had not stated before police that engine of the boat was 'Yamaha' make and that there were life saving jackets in the boat. He has denied the suggestion that he has given false evidence at the instance of police.

177. **P.W.34-Parshuram Kashinath Meher** is one of the panch witnesses in whose presence the inflatable boat was seized at seashore near fishermen colony. As stated earlier, P.W.28- Bharat Dattatraya Tamore has stated about arrival of ten persons in an inflatable boat at the seashore of fishermen colony. Eight of them had left in various directions by road and two of them had left in the same boat towards Nariman Point. It has come in the evidence of P.W.29- Prashant Hemnath Dhanu that the boat was spotted by him in the Nariman Point in abandoned condition and it was brought to fishermen colony by toeing the same to Ekvira Boat. This boat was seized by police as an unclaimed property under panchanama **Exh.162**. P.W.34 was one of the panch witnesses. It is stated by this witness that he is staying in fishermen colony, Colaba since last 32 years. He had seen a lot of policemen near seashore on 26.11.2008 at about 10.30 p.m. One rubber boat (inflatable boat) was seen at the seashore. PSI Kamble of Cuff Parade Police station and other policemen were present. They requested this witness and his friend Prakash Krishna Naik to participate in the panchanama to be drawn in respect of search and seizure of the said boat. A black inflatable boat with yellow strips was seen by this witness. There were five wooden planks for assembling the boat and one Yamaha engine of

40 horse power. One fuel can of red colour was also found in the said boat. There were two steel pipes and two wooden oars. Apart from these articles, the witness had also seen one red nylon rope, one white cotton rope, one black cap, one red high neck T-shirt , a pair of footwear , one leather waist belt, one glue tube made by Samad Rubber Pvt.Ltd.,Ferozpur Road, Lahor Pakistan, one blue oil can and a tool bag. These article were seized by the police including the boat and Yamaha engine. Panchanama-**Exh.162** was drawn in his presence. The witness has identified **art.156** -the inflatable boat , **art.157**- Yamaha engine, **art.170 colly**.-wooden planks, **art.171 colly**.-oars, art.**172 colly**.-two pipes, **art.173** and **art.174** -two ropes. He has also identified other miscellaneous articles marked as **art.175** to **art.180**. . It is stated by this witness that eight life saving jackets- **art.182 colly**. were also seized from the said boat.

178. As far as cross-examination of this witness is concerned, it is admitted by this witness that he is ex-chairman of fishermen colony and he frequently visits Cuff Parade Police Station. It is also admitted by this witness that police had not affixed any label on the wooden planks for securing their identification. Similarly, the Yamaha engine was also

identified by this witness on the basis of make thereof. There is nothing else worth noting in his cross-examination. He has denied suggestion that he has given false evidence because of his cordial relations with the police officers of Cuff Parade Police Station.

179. The case of prosecution is that accused No.1 along with nine deceased accused had left Karachi by Al-Hussaini boat. The boat Kuber was intercepted at high seas and was hijacked by the accused No.1 and deceased accused Nos. 1 to 9 and other conspirators who were in the boat Al-Husaini and that the articles which were loaded in boat Al-Husaini were transferred to boat Kuber. Four of the fishermen from the boat Kuber were forcibly taken to Al-Husaini boat and they were killed by the co-conspirators of the accused on the said boat Al-Husaini. The navigator deceased Amarchand Solanki was allowed to be on boat Kuber only with a view to help the accused No.1 and the deceased accused Nos.1 to 9 in navigating the boat. It is also the case of prosecution that on reaching near Indian waters the said navigator was killed by the accused No.1 in the boat and they left KUBER at high seas. The accused No.1 and others had travelled to Mumbai seashore in the inflatable boat described herein above.

180. The inflatable boat was initially seized as an abandoned property. However, after the disclosure statement of accused No.1 regarding alleged murder of Navigator of fishing vessel KUBER, an offence vide Crime No. 52/08 was registered at Yellow Gate Police Station. After seizure of the inflatable boat and Yamaha engine at Badhwar Park and after registration of offence at Yellow Gate Police station, when the matter was handed over to DBC CID for further investigation, **P.W.30-Gatala s/o Ankaiya Rajkumar** who is working as Marine Engineer and Service Supervisor in George Majio Industries Pvt.Ltd., was called by officers of DCB CID to examine the said engine. At this stage it may be stated here that machine of such type of boat is known as Outboard Machine (O.B.M.). The witness has stated that head office of the company is situated at 2B Apex Plaza, 5, Nunogambakkam High Road, Chennai. The company maintains record of O.B.Ms. imported in India and also maintains record of sale. Yamaha O.B.M. seized by the police was examined by this witness on 22.12.08 and after having requisite correspondence and telephonic talk with his officers at Chennai, he told the police that the O.B.M.-**art.157** was not imported by their company in India. He has also noted details of the O.B.M. The engine bracket number was 67602E-3. The capital discharge ignition

(C.D.I.) number was 6F6-01F 8 T 411727 Y 09. The engine number was 1020015. Size of the propeller was 11 x 15-G. The witness has further stated that their company is sole authorized importer and dealer of Yamaha O.B.Ms. in India. The Yamaha O.B.M. examined by this witness during investigation was identified by this witness in the court. It is **art.157.** He has also produced the diary in which details of the boat were recorded by him in his own handwriting. Relevant portion was exhibited as **Exh.147**. The diary was marked as **art.158**. Zerox copy of the relevant portion of the diary was exhibited as **Exh.147-A**. A summary of evidence of this witness is that the O.B.M.-art.157 was not imported in India by George Majio Industries, the sole authorized importer and dealer.

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181. During the course of cross-examination by ld. advocate Mr.Kazmi for accused No.1, the witness had revealed that he had sent details of O.B.M. boat by email to his general manager and that he had received email from the company in response to his own email. As the ld. advocate Mr.Kazmi required him to produce the printouts, the witness has produced printouts of both the emails. In the cross-examination witness has further clarified that in his police statement C.D.I. is not correctly

recorded. Instead of 6F6 it has been recorded as GF6. There is nothing more than this in the cross-examination of this witness for further discussion.

182. **P.W.154-Mr.Pat Williams** has been examined by the prosecution to establish that Yamaha Enduro 40- outboard machine seized by the police during investigation was shipped to Pakistan from Japan. This witness has been examined through video conferencing. P.W.154 in his evidence has stated that he had joined Yamaha Motor Corporation about 21 years ago and has now been working as Senior Product Specialist. The head office of Yamaha Motor Corporation is situated at Cypress California, U.S. Outboard machines of Yamaha are manufactured in Japan. The outboard machines are identified on the basis of serial number on the motor bracket and the engine. Last seven digits of the number identify the outboard machine. It is further stated by this witness that Yamaha Outboard machine bearing Sr.No. # 1020015 was dispatched to the business firm known as Business and Engineering Trend in Pakistan on 20.1.2008. It was shipped to Karachi Sea Port in Pakistan . The witness has identified signature of Ms. Michel , Asstt. Manager (Service) of Yamaha Motor Corporation, U.S.

It is stated by the witness that he has been working with Ms. Michel at least for six to seven years and therefore he has been able to identify her signature. The document **Exh.604** is a letter addressed to U.S. Department of Justice , F.B.I. Los Angeles by Yamaha Customer Support Group. According to this witness it is signed by Ms. Michel on behalf of Yamaha.

183. During the course of cross-examination this witness has admitted that Yamaha U.S. had no role to play in the transaction in respect of above stated outboard machine. It is also admitted by him that the payment was received at Japan and not in the office of Yamaha at U.S. The witness has denied suggestion that he was not authorized representative of Yamaha and that he was deposing false at the instance of F.B.I.

184. P.W.39-Mr.Padmakat Pandharinath Devare, Police Sub-Inspector, has stated in his evidence that he is attached to Crime Branch since 15.10.2008. On the instructions issued by Sr. Inspector of Police on 29.11.08 he had inquired into death of navigator of KUBER Mr. Amarchand Solanki registered as ADR (accidental death registration)No.65/08. On scrutiny of papers he came to the conclusion that murder of deceased

Amarchand Solanki was committed by the accused No.1-Mohd.Ajmal Amir Kasab and therefore he lodged F.I.R. at Yellow Gate Police Station. He has identified his signature on the FIR-**Exh.178**.

185. P.W.44- Mr.Laxman Dhingana Sable was attached to Yellow Gate Police Station as Police -Sub- Inspector. He was on duty on the night of 29th and 30th November, 2008. It is stated by this witness that PSI Devare had visited Yellow Gate Police Station at about 00.25 hrs. on 30.11.08. Mr. Devare had lodged FIR in respect of incident of murder of navigator Amarchand Solanki. F.I.R.was recorded by this witness and offence vide C.R.No.52/08 was registered on the F.I.R. of Mr.Devare. F.I.R. Exh.178 is in the handwriting of this witness and it is signed by him also. There is no cross-examination of this witness by any of the accused.

186. Further investigation of this case was carried out by Police Officer Mr.Sripad Balkrishna Kale of D.C.B.C.I.D. (P.W.47). During the course of further investigation, role of accused no.2, as far as acquisition of accommodation and securing admission in Softpro computer institute is concerned, was investigated by this investigating officer of this case.

Evidence of witnesses examined in that regard has already been summed up by me in the initial part of the judgment. A part of investigation with regard to origin of Boat Kuber was carried out at Probandar, Gujarat.

187. P.W.43-Vinod Babulal Masani has been examined to establish that boat Kuber was an Indian boat and that out of five members of the crew of the boat, Amarchand Solanki was the navigator. P.W.43-Vinod Babural Masani has stated in his evidence that he belongs to a fishermen family and that their family owned six fishing vessels. They are four brothers. Hiralal is their eldest brother. Hiralal is physically challenged person as he lost left leg in a train accident about 15 years ago. According to this witness boat Kuber was one of their family boat. It was registered in the name of his eldest brother Hiralal at Porbandar port. Registration number of the boat was PBR 2342. Their other family boat by name 'Maa' was registered in the name of his cousin Bhiku Premji Masani. It is further stated by this witness that whenever a boat goes for fishing in sea, a creek pass is issued by Custom Department and that the boat can travel upto 150 nautical miles from the pass issuing port. A creek pass in the name of boat Kuber was issued being pass **No.CH/PBR/174.** The registration certificate,

identity cards of the sailors (crew members) and creek pass are the necessary documents to be kept on the boat itself. As far as boat Kuber is concerned, zerox copy of registration certificate was kept in the boat. The original registration certificate was in the custody of Corporation Bank as the boat was pledged with the said bank. **Exh.160** is carbon copy of original registration certificate. Witness has identified his signatures at **Exh.190** and **Exh.191** at the bottom of carbon copy. It is stated by this witness that he might have signed carbon copy in token of having received the original registration certificate.

188. As far as creek pass is concerned, it is stated by the witness that it was issued on 16.8.08 for following five crew members.:

1) Amarchand Solanki (the deceased navigator)
2) Balwant Prabhu
3) Dhiru Arjan
4) Nathu Nanu and
5) Ramesh Nagji.

Boat Kuber left Porbandar port for fishing on 14/11/2008 and it was expected to return after 10 to 12 days. Ration and other requirement for 10 days was loaded on the said boat. According to this witness, the other boat

namely 'Maa' had also left Porbandar port on 14.11.2008. Both the boats had left at about 5.00 a.m. It is stated by this witness that the navigator Amarchand Solanki and other crew members namely Balwant Prabhu, Nathu Nanu , Ramesh Nagji and Mukesh Ambu had left Porbandar port on boat Kuber. The boat 'Maa' had returned to Porbandar port on 25.11.08. However, boat Kuber did not return. P.W.43 had therefore, inquired from the crew members of the other boat regarding whereabouts of boat Kuber. He was informed that they lost connection with the boat Kuber due to storm in the sea.

189. After waiting for two days, on 27.11.08 P.W.43 contacted Mr.Manish Lodhari, Secretary of National Fish Forum , and requested him to take help of coast guard to trace the boat Kuber. Mr.Lodhari assured him that necessary steps would be taken with the help of Coast Guard. P.W.43 at about 5.00 p.m. received a phone call from Mr.Lodhari that Coast Guard of Mumbai wanted to talk to P.W.43 on phone. P.W.43 could speak to Coast Guard officer through the telephone of Mr.Lodhari. The Coast Guard officer had made detail inquiry from P.W.43 and told P.W.43 that he would have to visit Mumbai for further details. P.W.43 agreed to visit Mumbai.

He accordingly visited Mumbai on 2.12.08. Before that he was called by S.P. of Porbandar on 27.11.2008 and was required to sit in the office of S.P. till he left for Mumbai. He had visited Mumbai on 2.12.08 along with police of Porbandar. He was taken to the office of Police Officer Mr.Kale at Crime Branch and thereafter he was taken to Melat Bandar,(docks) Sewree, Mumbai where his boat Kuber was shown to him. He could not see the navigator and sailors of the boat. He was told that dead body of Amarchand Solanki was found in the boat and same had been handed over to Amarchand's son Mr.Dilip by the police. Amarchand's body was cremated at Diu in the absence of P.W.43. Whereabouts of other four persons were not known to P.W.43 till the date of recording of his evidence.

190. It can be seen from the evidence of this witness that name of Mukesh Ambu who was one of the crew members on the boat Kuber was not mentioned in the creek pass. Mukesh Ambu was working on boat 'Maa' . The witness has explained that crew member Dhiru Arjan did not report for his duty on that day. Therefore Mukesh Ambu was sent in the place of Dhiru Arjan. As far as seizure of articles from the boat Kuber including G.P.S. and satellite phone is concerned, witness has stated that these articles

and other articles like tooth paste, shaving cream etc. do not belong to him or his crew members. The boat Kuber was returned to the witness on execution of bond -Exh.195 during the course of investigation. To a Court question, the witness has stated that the boat is at present lying on the seashore of Porbandar port for repairing. It has not been used since the time it has been returned to him by the police under the order of Magistrate.

191. During the course of cross-examination, an attempt was made by ld.Advocate Mr.Kazmi to show that this witness is a manipulated witness and that this witness was not concerned with the boat Kuber. In the cross-examination it was put to this witness that had been brought before Court to give evidence at the instructions of police. This suggestion has been denied by the witness. He had no certificate in writing to show that his brother Hiralal is physically challenged person. He has admitted that there is one ice factory at Porbandar in the name of his brother Hiralal Masani. As such contention of defence appears to be that Hiralal Masani being registered owner of the boat should have been brought as a witness. The witness has further admitted that the custom authorities were not informed that the boat had not returned on the expected date. The witness has clarified that the

authorities are informed only if boat does not return for 10 to 15 days from the expected date of return of any fishing boat. He has also admitted that his two or three other boats had also been detained by Pakistani authorities in the past. Witness has not denied the suggestion that some fishing boats keep life saving jackets on the deck. But as stated earlier, the life saving jackets produced in the court, according to this witness did not belong to boat Kuber. He has denied suggestion that the articles produced in court were on the deck of his boat Kuber and they were given to the crew members according to usual course of business. It is also denied by him that he has purposely avoided to claim the articles produced in the court.

192. Prosecution has also examined **P.W.606-Mr.Dilip Amarchand Solanki**, son of deceased Amarchand Solanki. It is stated by this witness that his father-deceased Amarchand Solanki was working as a navigator on the fishing vessel Kuber and that his father was killed on the said vessel. The dead body of his father was handed over to him by Mumbai police. He had given acknowledgment in token of having received the dead body which is produced at **Exh.1603.** P.W.606 has identified his signature on the same.

193. To produce original registration certificate of the boat, prosecution has examined **P.W.45-Manjunath Ramshastri,** who is working as Sr.Manager of Corporation Bank, Pobandar, Gujarat. This witness has produced the original registration certificate-**art.214.** Zerox copy thereof was taken on record at **Exh.214-A** and the original was returned to the witness for being kept in safe custody until further orders of the Court. It is stated by this witness that a loan of Rs.2 lakhs was sanctioned from Corporation Bank of Porbandar Branch for boat Kuber and therefore the original certificate was in the custody of bank. P.W.45 himself was the loan sanctioning authority. One Pravin Masani was the guarantor . Hypothication agreement was produced at **Exh.198**. A zerox copy thereof was produced at **Exh.198-A**. The original agreement was returned to the witness and zerox copy of the same was taken on record. This witness has denied suggestion that the loan could not have been sanctioned without insurance. In fact he has denied that loan was not sanctioned for the boat Kuber and impliedly has also denied suggestion that the registration certificate Art.214 did not belong to boat Kuber.

194. Prosecution has examined **P.W.33-Mahendrakumar**

Gopinath Mohanti, Port Officer, Porbandar Port to establish that boat Kuber was registered at Porbandar Port. A common registration code for all boats registered at Porbandar Port was **PBR** . This witness has produced the registration book of Port and has stated that the vessel Kuber was registered at Porbandar Port in the month of March 1998. The registration number of the boat was PBR 2342. Mr.Hiralal Masani was recorded as registered owner of the said boat. The registration book is produced at **art.167**. The entry in respect of registration of boat Kuber is marked as Exh.157. It was signed by Mr.Rathod who was working as Traffic Officer at the Port. Copy of the said entry is taken on record. It is marked as **Exh.157-A**. The original register **art.167** was returned to the witness for being kept in safe custody of the port office until further orders of this Court. The ownership documents produced by the owner of the vessel for registration of the boat were produced at **art.169 colly.**

195. In the cross-examination this witness has stated that there was nothing illegal if the boat registered at Porbandar Port enters waters of Bombay port. The witness has further stated that office of Porbandar Port has not received any information whether the boat was lost or destroyed.

196. **P.W.46-Deepakkumar Vishwanath Dave** was working as Superintendent of Customs. This witness was examined to prove creek-pass issued in the name of Boat Kuber. Office copy of creek pass issued for boat Kuber is produced at **Exh.201**. The said office copy was in bound book of passes issued by the Customs Department. It is stated by this witness that Mukesh Ambu was one of the crew members of the fishing boat 'Maa'. Office copy of creek pass of the said boat was also produced at **Exh.202**. It is admitted by this witness that some of the names mentioned in the creek pass earlier appear to have been deleted and other names have been retained. Witness has further stated that names were deleted by him as the members of the crew could be changed even after issuance of the creek pass. Zerox copy of **Exh.201** and **Exh.202** were taken on record and marked as **Exh.201-A** and **Exh.202-A**. The originals are returned to the witness for being kept in safe custody until further orders of the court.

197. Before I proceed further to discuss the evidence of witnesses in respect of the incident which had allegedly occurred at C.S.T. railway station, it may be stated here that investigation of C.R.No.52/08 of Yellow Gate Police Station (in respect of death of Amarchand Solanki- Navigator

of boat Kuber) was assigned to P.W.47- Sripad Balkrishna Kale of DCB CID when the investigation was taken over from Yellow Gate Police Station by DCB CID. Similarly, the investigation of C.R.No.305/08 of D.B.Marg Police Station was handed dover to P.W.48-Mr.Prashant Marde, P.I.,attached to DCB CID. Evidence of these two witnesses will be discussed in parts at appropriate stages. Similarly, the evidence of other Investigating Officers will also be summed up and discussed in parts, and not at a stretch, whenever the relevant portion of evidence required to be discussed.

198. As stated in the earlier part of the Judgment, FIR at Yellow Gate Police Station in respect of death of navigator Mr.Amarsingh Solanki, was lodged by **P.W.N0.39- Mr.Padmakar Pandharinath Devare** and an offence vide Crime No.305/08 was registered against the accused no.1-Ajmal Amir Kasab and 9 others. The FIR was recorded by PSI Sable (P.W.N0.44). After registration of the offence, the investigation was handed over to **P.W.47- Sripad Balkrishna Kale** of DCB CID. He had registered a fresh crime number at DCB CID bearing Crime No.186/08. The case papers and seized articles were handed over to Mr.Kale by

Mr.Sable. He had collected 150 sealed packets from Mr.Sable. The entry in respect of articles was made in the property register at DCB CID. Similarly,the articles seized by Cuffe Parade Police Station which included Yamaha engine, one inflatable boat and other articles seized during the panchnama (Ex.162),were handed over to P.W.N0.47 by Cuffe Parade Police station.

199. During the course of further investigation, P.W.N0.47-Inspector Mr.Kale had recorded the statements of P.W.N0s. 29, 43 & 37. He had also recorded statements of P.W.Nos. 26, 35, 36, 38 & 40. During the course of recording the statement of P.W.N0.36, P.W.N0.36 had produced certain documents in respect of admission of accused no.2 in the Computer Institute known as “Softpro”. They were taken charge of by P.W.N0.47. The contents of the book(Ex.175) found in the boat 'Kuber' during the course of panchnama, were translated into Hindi by ASI Mr.Liyakat Mehboob Khan. The statement of Mr.Liyakant Khan was also recorded by this witness. The doctor who performed the Post Mortem Examination reported that the cause of death of Mr.Amarsingh Solanki was homicidal. Part of the investigation of this crime was carried out at

Porbandar by API Mr.Gopale. The evidence of witnesses who were brought before the court from Porbandar has already been discussed by me hereinabove.

200. **P.W.N0.47** has stated that during the course of further investigation, he has requested P.W.N0.30 to examine Outboard machine of Yamaha make and given his opinion in that regard. P.W.N0.30 who is working in Yamaha Company, has given his opinion during the course of his evidence before the court. His evidence has already been discussed by me in earlier part of the Judgment.

201. P.W.N0.47 has further stated that identification parade was held on 28.12.2008 by S.E.O.Mr.Vichare. Identification of dead bodies of 9 deceased accused was held at Mortuary of J.J.Hospital by S.E.O. Mr.Kandalkar. Accused no.1 was arrested in the case of Yellow Gate Police Station on 3.2.2009. Accused nos.2 & 3 were in custody of DCB CID in some other crime. They were also arrested in this crime on 5.2.09. The witness has identified all the accused present before the court to be the same accused who had been arrested by him during the course of

investigation.

202. This witness had also taken specimen signature and hand-writing of accused no.2 on 10th,11th and 12th February,2009 in presence of two panchas. Therefore, his handwriting and specimen were taken. The specimen handwriting and signature are at **Ex.211 colly**. The evidence in detail in this regard of this witness has already been discussed in earlier part of the Judgment when the evidence of witness with regard to the alleged role of accused no.2 in the whole conspiracy was discussed. This witness in his cross-examination has denied that the identification parades were not held in accordance with the guidelines issued in the manual. He has also denied that the identification parade memos were fabricated.

203. P.W.N0.99-Mr.Mohd.Azam Yusuf Patel, is also one of the police officers, attached to DCB CID, who has stated that the articles seized by Cuffe Parade Police Station at Badhwar Park Seashore which included Yamah Out-Boat Machine and other articles described in earlier part of the Judgment were taken charge by DCB CID as the investigation of the case registered at Yellow Gate Police Station pertaining to the death of Navigator

Mr.Amarchand Solanki in Kuber Boat was handed over to DCB CID as per the orders of superior police officers.

204. The evidence of **PW No.162-Mr.Pralhad Narayanrao Jagtap**, is in respect of seizure of Outboard Machine. The panch in that regard has also been examined. However, the officer who had drawn panchnama in respect of the seizure of boat and other articles is suffering from HIV + and is unable to attend the court. P.W.N0.162 -Mr.Pralhad Jagtap, Police Inspector was present when the panchnama was drawn by PSI Kamble who is not able to attend the court. His evidence is not required to be discussed in detail as the evidence in respect of seizure of boat and other articles given by a panch witness had already been discussed in detail.

205. As can be seen from the prosecution case narrated by me hereinabove, it is the case of the prosecution that after reaching Badhwar Park by sea, accused no.1 and deceased accused No.1-Abu Ismail had directly proceeded to C.S.T.Railway Station in a taxi and after alighting from the taxi, they had entered C.S.T.Railway Station from the side of public toilet situated in the waiting hall/main hall of main line of

C.S.T.Railway Station. It is thus the prosecution case that the first ever incident of firing on the part of accused no.1 and deceased accused no.1 Abu Ismail had occurred at waiting hall of C.S.T.Railway Station main line. In my view, it will be therefore appropriate at this stage to discuss and analyze the evidence of the witnesses examined by the prosecution to substantiate their charge that it is accused no.1 and deceased accused no.1-Abu Ismail who were responsible for the massacre at C.S.T.Railway Station.

C.S.T.M. RAILWAY STATION INCIDENT -

206. Let me now therefore turn to the evidence of witnesses who were present at C.S.T. Railway station at the time of alleged incident of indiscriminate firing on the part of accused No.1 and the deceased accused No.1-Abu Ismail.

207. At this stage before I proceed to sum up evidence of the witnesses with regard to the actual incident, it will be apt and necessary to record the location of important places of the station for better appreciation

of evidence of the witnesses who claimed to have seen the incident of firing by the accused No.1 and deceased accused No.1- Abu Ismail. As far as sequence platforms is concerned, the platform No.1 is at C.S.T. Local Railway Station and the last platform is platform No.18 which is on main line at the extreme end. The platform No.1 is abutting D.N.Road and platform No.18 is abutting 'P. D'mello road'. Platform No.1 to 7 are used for local rail service and platform No.8 onwards are used for main line rail service. There is a small passage between platform No.7 and platform No.8. This passage divides the main line from the local line. There is one waiting hall each on ground floor at local as well as main line. The said passage is between main line waiting hall and local line waiting hall. C.S.T. Railway Police Station is situated in local line building and its main entrance is from the said passage. There is one small local booking office in front of railway police station. This booking office is situated in the main line building. The persons intending to travel by a local railway can buy ticket from this small booking office also and after crossing the passage can enter local railway waiting hall and thereafter they can go to the desired platform. It is how one can easily frequent between the local line station and main line station via this passage. There is one book stall in the said

passage and some A.T.M. centres of banks between platform No.7 & 8. This description of the spot is recorded here on the basis of evidence and I have also taken judicial note of the location of the spot because I have visited the railway station on many occasions. The map of the spot produced in the court by the prosecution has been admitted by the defence. It is part of **Exh.577A colly**. A zerox copy of the map is at **page No.293A.** I feel that description of the above stated important locations and the map will help in appreciating evidence of witnesses properly. Let me now proceed to discuss evidence of eye witnesses to the incident of firing.

208. P.W.50-Mr.Natwarlal Gigaji Rotawan is resident of Sumerpur Rajasthan. He had come to Mumbai to proceed further to Pune to visit his son- Bharat who is running a General Stores at Pune. P.W.50 was accompanied by his daughter Devika aged about 10 years and son Jayesh. They wanted to travel from C.S.T. to Pune by a passenger train which leaves C.S.T. at 10.55 p.m. They had reached C.S.T. Railway station at about 9.00 p.m. and had been waiting in the main hall at C.S.T. in front of platform No. 13. It is at about 9.50 p.m. that the witness heard a loud noise of explosion and had seen two terrorists with gun machines. It is stated by

him that those two terrorists had been firing indiscriminately in the main hall of C.S.T. While the witness along with his children was trying to run away from the hall, one of the bullets had hit right leg of his daughter Devika. She was seriously injured. Witness had also seen many other passengers lying in pool of blood in main hall. After the incident of firing he had seen both the terrorists proceeding towards main hall of local line. After sometime some policemen had come to their rescue and his daughter was removed to ST.George Hospital. She regained consciousness at about 1.30 a.m. and was shifted to J.J.Hospital. She was operated at J.J.Hospital. During the course of operation a bullet was removed from her body by the doctor. She was treated as indoor patient for about one and half month and was bedridden for another six months. He has identified accused No.1 to be one of the said two terrorists and who has been described by him as a shorter fellow aged about 22 to 24 years of white complexion. Cross-examination of this witness is targeted to demonstrate that police had miserably failed in their duty on the night of incident. There is nothing in the cross-examination of this witness which could dilute his testimony in any manner as far as identification of the accused and the narration of incident is concerned.

209. P.W.51-Ms.Devika Natwarlal Rotawn is daughter of P.W.50. She was about 10 years old when she was examined in the court. I had therefore verified whether she could understand the meaning of oath and whether oath could be administered to her. During the course of questioning, a substance of which has been recorded in the introductory para of her evidence, I had come to the conclusion that the witness was able to understand meaning of the oath. Her evidence was therefore recorded on oath. This witness has also stated that she was to go to Pune to visit her brother. When they were waiting at C.S.T.Railway station, she had heard loud noise of explosion. Her father (P.W.50) decided to leave the waiting hall and while they were leaving the waiting hall, one of the bullets had hit her right leg. She had fallen down due to bullet injury. There was bleeding injury on her leg. It is stated by her that she became unconscious due to firearm injury and had regained consciousness at J.J.Hospital. She had seen two persons firing at railway station. She has identified accused No.1 to be one of the persons who had been firing at C.S.T. railway station. There is no cross-examination of this witness at all by ld.advocate for accused No.1 and other accused.

210. P.W.52-Farooqi Nasiruddin Khaliluddin is also one of the passengers who along with his son Abdul Razak was waiting at C.S.T.Railway Station to board a train for Jalgaon. He was accompanied by his son and was sitting in the main hall in front of platform No. 13 and 14. The date of incident is stated to be 26.11.2008 and time stated by this witness is about few minutes earlier to 10.00 p.m. He had heard noise of big explosion and in the result he got frightened. He therefore immediately stood up and could see that two boys in front of platform No.13 were holding guns and rexine bags. Both of them started firing indiscriminately at the passengers in the main waiting hall. The passengers had sustained injuries due to indiscriminate firing. P.W.52 and his son had laid themselves down on the floor to save themselves from volley of bullets. The witness had also seen one of the said two boys taking out a bomb from his bag and throwing the same in direction of passengers. He had seen the bomb exploding near them. P.W.52 and his son had sustained injuries due to the splinters and fragments of the bomb. His son was badly injured. The witness had seen both the boys from a distance of 15 to 20 ft. The boy who had thrown bomb was tall about 6 ft. in height and other one was shorter. The shorter fellow who was firing at the passengers appeared to be in

joyous mood after witnessing the result of his firing at the passengers. The firing went on about 15 to 20 minutes. The witness has given description of both the boys who were firing and has identified accused No.1 to be the same person who was firing indiscriminately and appeared to be in joyous mood.

211. The P.W.52 and his son were removed to hospital by policemen. They were discharged after about one week. It is stated by the witness that some of the particles of bomb were still in his body. Doctors have advised him not to go for surgery as it will complicate the problem.

212. In the cross-examination by ld. advocate Mr.Kazmi, the witness has stated that he had stated before police that firing went on for 15 to 20 minutes. He was unable to assign any reason as to why police have not recorded this fact in his statement. However, this omission is not proved during the course of cross-examination of the Investigating Officer. Otherwise also the omission is of very minor nature. Even if it was not stated in the earlier statement that the firing went on for 15 to 20 minutes, evidence of this witness, on that ground itself, cannot be disbelieved. He

has denied that he had occasion to see photograph of accused No.1 on television or in newspaper.

213. P.W.53-Ms.Nafisa Shadab Qureshi is another unfortunate passenger who had lost her daughter in the firing at C.S.T. railway station and who herself had sustained bullet injury on her left leg. Her daughter who was accompanying her had sustained a bullet injury on her back. The parents of this witness stay at Aurangabad. The witness along with her husband and daughter Afrin were to go to Aurangabad by Devgiri Express. The scheduled departure of the train was 9.10 p.m. However, it was running late on the date of incident i.e. 26.11.2008. P.W.53 along with her daughter was waiting in the main hall. Her husband had gone out to buy some eatables . It was around 9.30 p.m. that witness had heard noise of explosion and she suddenly got up and saw that firing was going on. She had seen two persons firing in all directions. Due to said firing, a bullet had hit her left leg. One of the bullets had hit her daughter's back. Her daughter died on the spot due to the firearm injury sustained on her back. The witness herself had become unconscious and regained consciousness at J.J.Hospital on 30.11.2008. She has given description of both the persons and had

identified accused No.1 to be one of the persons who were firing at C.S.T. railway station. Accused No.1 has been described by this witness also as shorter fellow.

214. The witness was unable to tell in the cross-examination as to from which direction accused No.1 and his companion had entered the railway station. A grievance was made on that day by ld. advocate Mr.Kazmi that the accused No.1 was shown to the witness. The suggestion made to the witness in that regard has been denied by her. P.W.53 has admitted that she had not stated before police that the train was running late on that day. She had stated before the police that her husband had gone out to bring some eatables. When her attention was drawn to her statement recorded by police, she was unable to say as to why this particular portion has not been recorded in her statement by the police. Apart from these two omissions there are no other major omissions in the evidence of this witness. She has denied usual suggestion made by the advocate for accused No.1. The omissions in earlier statement of this witness have not been proved. Assuming for the sake of arguments that the omissions could have been proved, they hardly would have made any difference on merits of

evidence of this witness.

215. Prosecution has also examined **P.W.86-Smt.Sangeeta Niranjan Sardar** and **P.W.87-Niranjan Sadashiv Sardar.** P.W.86 is wife of P.W.87. This couple was to travel to Akola from C.S.T. Therefore they were at C.S.T. railway station on 26.11.2008. **P.W.86** has stated that at about 10.00 p.m. there was big explosion in the main hall of the station. She had seen two persons holding guns. One of them was taller and other was shorter. They had been firing on passengers from the said guns. In the meantime there was another big explosion. The witness, in the result sustained multiple injuries due to fragments (steel balls) of the bomb. After explosion the shorter fellow had again fired at the passengers. In the result her husband -P.W.87 had sustained bullet injuries. Her husband had sustained one bullet injury on right side of his head and another bullet injury below his right ear. Both the injuries were profusely bleeding. Both P.W.86 and P.W.87 were removed to hospital by the police. The witness has identified accused No.1 to be the same *Butka* (shorter) person who had been firing at C.S.T. railway station. She has also identified photograph on **art.61** to be of the same person who was accompanying the *Butka* fellow and who

has been described by this witness as taller fellow (*Lamboo)*. There is nothing in the cross-examination of this witness which deserves consideration.

216. **P.W.87-Niranjan Sadashiv Sardar** has narrated the incident in similar manner and has stated that accused No.1 had fired bullets from his gun. Two bullets hit him. His wife was injured due to bomb explosion. P.W.87 himself had sustained one bullet injury below his left ear and other on his head. This witness has denied usual suggestions put to him in his cross-examination by ld.advocate for accused No.1. He has not been cross-examined by ld. advocate for accused No.2 and accused No.3 .

217. It can be noted here that there is some contradiction in the evidence of P.W.86 and P.W.87. The contradiction is of minor nature. P.W.86 has stated that her husband-P.W.87 had sustained bullet injury below right ear whereas P.W.87 has stated that he had sustained one of the injuries below left ear.

218. **P.W.88-Ansar Alabaksha Mohd. Hanif Saudagar** is also one

of the passengers who was to go to Pune from C.S.T.Railway Station. He was there on the station on 26.11.2008 at about 9.00 p.m. He also heard loud noise at about 9.50 p.m. He had seen two persons holding guns in front of platform No.13. He had also seen both of them firing indiscriminately at public. The taller fellow was seen firing at the police who were near the public toilet. The shorter fellow was firing at the passengers in the main hall. This witness had sustained a bullet injury on his right leg below knee joint and was taken to G.T.Hospital for treatment. Bullet was retrieved by the doctor at G.T.Hospital. He was indoor patient for six days in the said hospital. He has identified accused No.1 to be the said shorter fellow who was firing at C.S.T.railway station. He has also identified photograph on art.61 to be of the person who has been described by him as taller fellow.

219. In his cross-examination this witness has stated that since the train had not arrived on the platform, he was waiting in the hall. There were 4 to 5 policemen near the toilet. The bomb was thrown towards the police and not towards the toilet.

220. **P.W.89-Ms.Harshada Suhas Salaskar** has stated that she was to return to her native place on 26/11/2008 and was supposed to board the Kokan Kanya train at 11.00 p.m. Her aunt Rajeshree was accompanying her. Both of them were at C.S.T.Railway station. Suddenly there was a big explosion and two persons were seen firing at the passengers. One of them who was taller had taken out something from his bag and had thrown it at the public. The other fellow was firing. One of the bullets had hit left thigh of this witness. She had sustained bleeding injury due to the said bullet. The bullet was retrieved by the doctors at G.T.Hospital. Accused No.1 has been identified by this witness as the person who had shot at her. She has also identified the photograph on art.61 to be of the person who was accompanying accused No.1.

221. In the cross-examination of this witness also there is nothing which requires discussion in the judgment. Cross-examination of this witness is confined to very minor issues which do not in any manner discredit this witness.

222. **P.W.64-Smt.Poonam Santosh Singh** was to travel by

Mahanagari Express on 26/11/2008 from C.S.T.Railway station . The departure time of the train was 00.35 hours. She was accompanied by her father, brother and two children. Since they had no confirmed journey tickets, they had reached V.T.station earlier to the departure time of the train. They were at the station at about 9.00 p.m. Her elder son was six years old and the younger son was two years old. Since they had no confirmed journey tickets, her father and brother had gone to buy tickets at booking window. The witness was waiting in the hall along with her elder son as the younger son was taken by her brother along with him while going to buy tickets. It is around 9.55 p.m. that this witness heard noise of explosion and had also seen two persons holding guns. One of them was taller and the other one was shorter. She had also seen that both of them were firing at the passengers. Many passengers had died on the spot due to the indiscriminate firing. Some of the passengers were injured. As her son stood up and tried to run away, this lady caught hold of him and it is at this time that she had sustained bullet injury on her back at right shoulder . She had fallen down and became unconscious due to the said injury. She regained consciousness at ST. George's Hospital and came to know that her son had also been injured. Her son was admitted in J.J.Hpspital. She had

seen her son after about one month as she was admitted in intensive care unit of ST.George's hospital for about two and half months. There is no cross-examination as the witness has not identified the accused No.1.

223. P.W.56-Kishor Vinayak Kale was working as Hamal (labour) at C.S.T.Railway Station. He was on duty at C.S.T.railway station on 26.11.2008 from 16.00 hours to 00.00 hours of 27.11.2008. The parcel room of C.S.T. railway station was situated in the passage leading to platform No.14 and 15. It is stated by this witness that the main hall of railway station is adjoining the parcel room. At about 21.50 hrs. he was proceeding towards platform Number 13. He had heard noise of big explosion when he was in the main hall of C.S.T.railway station. He had seen two persons holding gun machines and firing at the passengers in the waiting hall. They were firing in all the directions. Many passengers were injured due to the firing. The witness himself was also injured. He had sustained injury on his left ankle. He was admitted in ST.George's hospital and was later on shifted to Byculla railway hospital.

224 P.W.57-Lau Shivram Kharat, was working as an employee of

the contractor of Central Railway. He was assigned duty of locking and unlocking of railway compartments before they leave the station for yard. He is working at C.S.T.railway station for last four years. He was on duty on 26/11/2008 from 16.00 hours to 00.00 hours. He was at platform No.9 and 10 at about 21.30 hours of 26/11/2008 when he had heard noise of explosion in the main hall . His attention was therefore diverted to the direction of explosion. He had seen two young persons holding machine guns in their hands and firing in the main hall. One of them was taller and the other was shorter. He had seen both of them from a distance of 20 ft. He had also seen that the taller boy had proceeded towards taxi stand while he was firing at the passengers and the shorter one had proceeded towards local railway station. It may be stated here that one can reach local railway station of C.S.T. via taxi stand by crossing railway police station and the common passage. It hardly takes two to three minutes to reach local station from main station via taxi stand and the common passage. The witness has identified accused No.1 to be the same person who has been referred to by him as a shorter boy. He has also identified photograph of art.61 to be of the taller boy who was accompanying accused No.1. He had identified accused No.1 in the identification parade from amongst seven persons at

Arthur Road Prison. The identification parade was held by Spl.Executive Officer Mr.Vichare and two panchas. (Evidence of S.E.O. Mr.Vichare has been discussed in detail in later part of the judgment.)

225. One omission is brought on record in cross-examination of this witness. This witness in his evidence has stated that the firing went on for 15 to 20 minutes. However, in his police statement this fact has not been stated by him. This factual position is admitted by this witness. As far as identification parade is concerned, this witness has stated in his cross-examination that he could not describe clothes of the accused No.1 which he was wearing on the date of identification parade. He has denied usual suggestions put to him by the ld.advocate Mr.Kazmi.

226. **P.W.69-Vishal Prakash Kardak** was working as Khalashi in Central Railway. On 26/11/2008 he was on duty at C.S.T.Railway Station main line from 4.00 p.m. onwards. While he was on platform No.10 he had heard noise of big explosion on railway station at about 21.50 hours. He had also seen two terrorists in front of platform No.13 holding one gun each. One of them was taller and the other was shorter. It is stated by this

witness that the taller person had taken out something from his bag and had thrown the same towards passengers. It resulted in a big explosion. Many persons in the hall were injured due to explosion. The shorter person started firing indiscriminately at the passengers. In the result the witness himself had also sustained injury on right side of his head. It was a brush injury. However, it was a bleeding injury. He was admitted in Byculla railway hospital and was discharged after about one month. He had seen both the persons from a distance of about 15 to 30 ft. He has identified accused No.1 to be the same shorter terrorist who had been firing indiscriminately at the passengers in the main hall.

227. In the cross-examination this witness has clarified that he is working as a helper and assists railway mechanics repairing diesel engines within the jurisdiction of Kalyan Loco Shed. This witness in the cross-examination has stated that he had seen both the terrorists going towards local railway line station. He has denied suggestion that he had identified accused No.1 at the instance of police.

228. **P.W.63-Pandurang Subrao Patil**, was working as Assistant

Sub-Inspector of police attached to C.S.T.Railway station. He was on duty on the night of incident at Mumbai Local Railway Station. At about 21.45 he received message from public address system that he was required to be at C.S.T.railway police station. He reached railway police station within 2 to 3 minutes. While he was at police station, he had heard noise of bomb explosion and firing at about 21.50 ours. He therefore rushed to the waiting hall of main line. He had seen two terrorists holding AK-47 rifles and firing indiscriminately at the passengers. The witness had no firearm at that time . He had only *lathi* (stick) with him. According to him one of the terrorists was taller and one was shorter. The taller terrorists had taken out a bomb from his bag and had hurled the same towards passengers. The bomb explosion had resulted in causing injuries to lot of passengers. Many of the passengers were seen lying in the pool of blood and writhing in pain. He therefore asked the passengers to go towards local line railway station to ensure that in case of further assault they do not suffer any injury. He, at the time of above stated incident, was in front of platform No.11 and 12 in the main hall. At this time the shorter terrorist had fired at him. The bullet had entered in his left thigh, exited and again had entered in his right thigh and exited from exterior portion of the right thigh. As such the bullet had passed

through and through from both of his thighs. The terrorists however, continued to fire at the passengers and proceeded towards the local line railway station. This witness had seen both the terrorists from a distance of 22 to 25 ft. After giving description of both the accused he had identified accused No.1 to be the same terrorist who has been described by him as a shorter terrorist. The witness was removed to ST.George's Hospital for treatment by the police officers and later on was shifted to Bombay Hospital. During the course of further evidence the witness has identified photograph on art.61 to be of the person who was described by him as the taller one.

229. In cross-examination witness has stated that it did not happen that the bullet had entered from right thigh and had exited from left thigh. Rest of his cross-examination is targeted to demonstrate that there were many policemen and R.P.F.Jawan in the hall but they did not leave up to the call to their duty. It is not necessary to discuss that part of cross-examination at this stage. This witness has also denied usual suggestions made to him by ld.Advocate Mr.Kazmi.

230. P.W.55-Dhananjay Haribhau Gavali was a student of 2nd year of Arts and was working as honorary Home Guard. He was on duty at Gate No.2 of C.S.T.Railway Station on the night of 26th and 27th November, 2008. He had no firearm with him. He was armed with a *lathi* (stick). At about 21.50 hrs. this witness had also heard noise of bomb explosion. He had seen passengers running from waiting hall of main line to the local line. Some of them were in injured condition. The witness therefore proceeded to the main hall of C.S.T.Railway Station from the point of his duty. When he reached the main hall, he had seen two persons firing indiscriminately at the passengers in the main hall. Many passengers were injured. Some of them were seen lying in the main hall in injured condition. In the meantime Police Inspector Mr.Shashank Shinde reached there. He directed P.W.55 and others to rescue the passengers and to take them out of the main hall. The terrorists however continued to fire and proceeded towards local line. Since the terrorists continued to fire, this witness took shelter in the toilet situated in the waiting hall of C.S.T.Railway Station (local line). It is stated by this witness that two Jawans of G.R.P. and R.P.F. fired at the terrorists in retaliation. After giving description of both the terrorists, the witness had identified accused

No.1 to be the same terrorist who had been described by him as shorter . He has also identified photograph of other fellow on art.61. The witness had also participated in identification parade dt.28.12.2008 when he had identified accused No.1 from amongst 7 persons of similar height and built. He had also identified dead body of companion of accused No.1 on 6/1/2009. In the cross-examination he was unable to tell names of police officers and policemen who were seen by him in the main hall. The witness was also unable to tell as to at which serial number the accused No.1 was standing during the identification parade. He has denied that he has identified accused No.1 at the instance of police. He has also denied that identification parade memo was fabricated by the police.

231. **P.W.49-Bharat Ramchandra Bhosale** was in fact the first witness in the series of witnesses examined by the prosecution with regard to the incident of C.S.T. railway station. He was attached to C.S.T. railway police station from March 2006 to May 2009. This witness has stated in his evidence that he joined Maharashtra Police in the year 1978 and rose to the position of Police Inspector. He was on duty at C.S.T. railway station on the night of 26th and 27th November, 2008. He reported for duty at 20.30

hours. PI Mr.Shashank Shinde, PSI Mr.Khandale and PSI Mr.Ganjure and other police officers were also on duty. The incident had occurred at about 21.50 hrs. while he was getting out of railway police station.

232. He had heard sound of firing from the direction of main line waiting hall which was at the distance of 50 to 60 ft. from the railway police station. Therefore, the witness proceeded to the main hall from the side of taxi stand . PI Shashank Shinde had proceeded to the said hall by the side of S.B.I. ATM centre i.e. from the common passage between two stations. As P.W.49 entered the main hall, he had seen two terrorists holding AK-47 rifle and firing indiscriminately on passengers in the main hall. In the result many people had been injured and were lying in pool of blood in main hall. Many of them were crying. Some of them were trying to run away from the main hall. The terrorists were near the public toilet when they were seen by P.W.49. The public toilet is located in the main hall itself near food stall known as ' Food Plaza'. The terrorists had been seen by this witness from a distance of about 40 ft. in the clear light in the main waiting hall.

233. The said two terrorists had been described by this witness

during the course of his evidence. He had also identified the accused No.1 as one of the two terrorists he had seen firing in the main hall. Art.61-identity card recovered from the dead body of deceased Abu Ismail was shown to this witness and it is stated by this witness that the photograph on the identity card belongs to the associate of accused No.1 who was also firing. It is further stated by P.W.49 that on witnessing this sudden incident he had rushed to railway police station for additional force. It is stated by this witness that when he was proceeding towards the police station and had reached near the entrance door of police station, said two terrorists had fired at him. One of the bullets had pierced through his right upper arm and had later on stuck to the wall near table of Station House Officer. The witness therefore immediately intimated the police help line that terrorists had entered railway station premises and additional force was needed. He had also intimated the Commissioner of Police (Railway) on walkie-talkie.

234. After intimating the police help line and the Police Commissioner (Railways), this police officer accompanied by a Police Constable Mr.Nalawade had come to the main hall. P.C.Nalawade was armed with a carbine. While both of them were proceeding towards main

hall they had seen PI Shashank Shinde lying in injured condition near ATM of S.B.I. About 100 to 125 passengers were lying in the main hall in injured condition. P.C.Nalawade had fired three rounds from his carbine to retaliate. In the meantime additional force had also come. The injured passengers were sent to ST.George's Hospital. P.W.49 himself was also removed to ST.George's Hospital. PI Shashank Shinde succumbed to the injuries. Statement of this witness was recorded at ST.George's Hospital. His statement was treated as F.I.R. The statement bears his signature . It is at **Exh. 219**. His statement was scribed by Head Constable Mr.Shinde in presence of Sr.P.I. Mr.Dilip Mane. Proforma of FIR was also recorded. It is at **Exh.220**. This witness has identified accused No.1 during investigation in the identification parade from amongst 7 persons of the similar height and built. Identification parade was held by Spl.Executive Officer Mr.Vichare.

235. On queries made by the Court the witness has stated that he had 9 mm pistol and 9 rounds with him when he had entered the main hall. He did not fire because there were many passengers in between him and accused No.1 and the deceased accused No.1. The witness apprehended that there were strong chances of passengers being injured or killed due to

firing. This witness has given certain admissions regarding location of the railway police station. The location of railway police station is not disputed. I have already described the location of important places of C.S.T.M. station in the earlier paras. Therefore, the particular part of cross-examination touching to locations of a various spots is not required to be discussed again.

236. The witness has in his cross-examination stated that he could not say whether the bullet which had hit him was either fired by accused No.1 or his companion-deceased accused No.1. In this regard it is sufficient to mention here that there is no independent charge against accused No.1 of causing injury to P.W.49. The injuries caused to P.W.49 is in the common charge against accused No.1 and the deceased accused Abu Ismail. Therefore, this cross-examination also is not very important and needs no further discussion. What was tried to be demonstrated by Mr.Kazmi in cross-examination of this witness was that in spite of large number of police constables and Home Guards at C.S.T.railway station, there was no satisfactory resistance to the firing on the part of alleged terrorist. This fact, in my opinion, will not change the nature of alleged offence. This may at

the most reflect on the response of police to sudden attack by two persons.

237. As regards identification of accused No.1, witness has stated in his cross-examination that he did not remember whether accused No.1 was wearing same clothes on the date of identification parade which he was wearing on the night of 26/11/2008. The witness has admitted that description of accused No.1 and his companion (deceased accused No.1) was given by him in his further statement recorded later on.

238. **P.W.60-Ms.Geetanjali Krishnarao Gurav** is a female Police Commando. Basically she is a police constable and has taken commando training at Ghatkopar, Mumbai. She was on duty at C.S.T. Railway station on the night intervening 26th and 27th November, 2008. She was near main gate No.3. She had heard noise of big explosion at C.S.T. railway station at about 21.50 hours. Therefore, PI Mr.Shinde, API Mr.Bhosale, PSI Khandale and other policemen including this female constable had gone to the waiting hall of main line. She had seen two terrorists in the main hall. One was taller and the other was shorter. The taller fellow had thrown hand grenade the explosion of which had caused injuries to many passengers.

Thereafter both the terrorists opened fire from AK-47 rifles. P.W.60 and P.W.49-Bharat Bhosale therefore went to railway police station for additional force. While P.W.49-Bharat Bhosale and P.W.60 were at C.S.T.Railway Police Station, one of the bullets had hit P.W.49- Mr.Bharat Bhosale. Mr.Bharat Bhosale fell down due to injury. At this time this witness had seen both the terrorists proceeding towards local railway station. She had also seen more than 100 passengers lying in badly injured condition in the main hall. API Mr.Bhosale was removed to ST.George's hospital for treatment. P.W.60 has identified accused No.1 as the same terrorist who has been described by her as a shorter one and has further identified photograph on art.61-identity card to be of other terrorist.

239. In the cross-examination, this witness has stated that there were more than 35 policemen and police officers who had proceeded towards the main hall. There were other 15 policemen in the main hall. R.P.F.Personnel were also on duty in the railway premises. As such this part of cross-examination is again mainly with a view to demonstrate that policemen had failed in their duty miserably which had resulted in large scale death of innocent persons. As far as merits of the case are concerned,

this witness in her cross-examination has admitted that she had not stated before police that Mr.Bhosale had sustained injury on his right upper arm. When attention of P.W.60 was drawn to her police statement where it is stated that Mr.Bhosale had sustained bullet injury on right upper arm, the witness has stated that particular part of her statement is not correctly recorded, Therefore that portion has been marked as **'A'.** It may be stated here that the P.W.49-Mr.Bharat Bhosale has stated in his evidence that he had sustained injury on right upper arm. Therefore, this part of evidence of P.W.60 hardly makes any difference. This witness has also denied suggestion that she had not seen accused No.1 and that she has identified him at the instance of police.

240. P.W.58-Mr.Mammath Motilal Nardele was working as Police Constable and was attached to C.S.T. railway police station. He was on duty from 8.00 p.m. of 26th November, 2008 to 8.00 a.m. of 27th November, 2008. His duty point was foot over bridge at platform No.1 opposite Times of India building. It may be noted here that this foot over bridge is built over D.N.Road to get out of C.S.T.M. local railway station without crossing D.N.Road. He was assigned anti sabotage duty and

therefore was provided with a carbine with 10 rounds. Home Guards Mr.Lokhande and Mr.Jaiswal were also on duty along with him. At about 21.45 hours he proceeded to police help center situated in waiting hall of local railway station for dinner. As soon as he reached near the said help centre, he heard sound of big explosion and firing from waiting hall of main line. It is not disputed that there was a police help centre in the waiting hall of local railway station. It is also not disputed that a foot-over bridge over D.N.Road opposite C.S.T. railway station is available from platform No.1 and leads to Badruddin Tayyabji road behind Cama Hospital. All passengers from the said waiting hall started running towards waiting hall of local line immediately after the explosion. In the meantime PI Mr.Shashank Shinde came near help centre and informed this witness that terrorists had been firing in the waiting hall of main line. Mr.Shashank Shinde asked this witness to accompany him. P.W.58 therefore loaded 10 rounds in his carbine. However, before he could load the rounds and accompany Mr.Shashank Shinde, Mr.Shinde had already proceeded towards the main hall of main line via platform No.6 & 7. He was accompanied by A.S.I. Mr.Pandarkar, a police constable and a photographer. They proceeded towards platform No.6. This witness also followed them. By that time

Mr.Shinde, Mr.Pandarkar, the police constable and the photographer had reached platform No.7. P.W.58 also therefore wanted to follow them towards platform No.7. But since he suddenly heard sound of firing on platform No.7 and therefore, he entered a local train stationary on platform No.6. He took position and kept watch on the entrance of local line waiting hall from the common passage. He had seen two terrorists holding AK-47 rifles and carrying one handbag each on their shoulders proceeding towards local railway station. The witness therefore fired 8 rounds from his carbine at them. The terrorists also retaliated and fired at P.W.58. Since P.W.58 had taken position in the compartment of a train, he could not be hurt by the terrorists. When this witness again tried to open fire, his carbine got locked. In the result he was unable to fire. However, he could see the terrorists proceeding towards police help center. At this stage it may be stated here that the police help center is in front of platform No.3 and P.W.58 was in a train compartment at platform No.6. Taking advantage of this position he proceeded towards armoury of railway police station to collect cartridges from the armoury. He unlocked his carbine and loaded the same with fresh 20 rounds. After wearing a bulletproof jacket he returned to the waiting hall of local line. By that time the terrorists had left the local railway station.

241. It appears that thereafter he did not follow the terrorists and no further steps were taken by this witness to locate those terrorists. He states in his evidence further that he had seen the terrorists from a distance of 20 to 25 ft. There was sufficient light on the platforms and main hall so that he could clearly see the terrorists. After giving description of the two terrorists he has identified accused No.1 to be the same person who has been described by him as shorter terrorist. According to this witness the other terrorist was taller as compared to the accused No.1. He has also identified photograph of the other terrorist on identity card-art.61. It is also stated by this witness that accused No.1 was identified by him in the identification parade held on 28.12.2008 at Arthur Road Prison, Mumbai from amongst seven persons of similar height and built. The dead body of other terrorist was identified by this witness in the mortuary of J.J.Hospital from amongst six dead bodies shown to him.

242. There is one omission in the earlier statement of P.W.58 which is admitted by him that he had not stated before police that he had unlocked his carbine before loading the same in the armoury. This witness has denied that he had not seen the accused No.1 and that he is giving false

evidence. Omission obviously does not require any consideration. He could not have loaded the carbine without unlocking the same.

243. P.W.62-Mr.Sudama Aba Pandarkar was attached to Thane Railway Police Station and he was on duty on 26/11/2008 at local railway compartment. He was assigned patrolling duty in the local train. He was provided with 303 rifle and 10 rounds. In view of the nature of his duty he had boarded a local train from Thane at 8.54 p.m. He was on duty in ladies compartment. The train reached C.S.T. at about 9.45 p.m. at platform No.4 or 5. The witness had gone to police help center to make entry in respect of his patrolling duty. After about five minutes he had heard noise of bomb explosion and firing. He had seen many passengers running helter-skelter . Lot of them had gone out of the station through waiting hall of the local line. In the meantime PI Mr.Shashank Shinde reached police help center and informed that terrorists had been firing at waiting hall of main line of C.S.T. railway station. P.W.62 was directed by Mr.Shinde to load his 303 rifle and was also directed to be alert. It is stated by the witness that he accompanied PI Mr.Shashank Shinde when Mr.Shashank Shinde was proceeding towards main line. While both of them were proceeding

towards main line, they had seen a terrorist who was about 6 ft. in height, coming from the direction of taxi stand and was firing towards railway police station. He was standing in front of railway police station at that time. P.W.62 therefore fired two rounds from his 303 rifle. However, none of the shots could hit the said terrorist. At this point of time Police Constable Ambadas Pawar who was also accompanying Mr.Shashank Shinde, took rifle from P.W.62 and fired one round at the terrorist. In the meantime other terrorist was seen approaching the police from the side of platform No.8. It is stated by P.W.62 that this terrorist was shorter as compared to the terrorist seen by him in front of C.S.T. railway police station. This terrorist also started firing from his AK-47 rifle. When P.W.62, Police Constable Ambadas Pawar and PI Mr.Shashank Shinde went towards platform No.7 through platform No.6 and reached near A.T.M. of Indian Bank, both the terrorists started firing at them. One of the bullets fired by the terrorists had pierced through chest of this witness and exited from his back. The witness had therefore fallen down due to bullet injury. PI Mr.Shashank Shinde and Police Constable Mr.Ambadas Pawar had also sustained bullet injuries. They had also fallen down because of the firearm injuries. Both the terrorists thereafter proceeded towards local line waiting

hall. P.W.62 went to ST George's Hospital with help of P.W.57-Lau Kharat and was admitted for treatment. He was later on shifted to Bombay Hospital by his relatives and was treated as indoor patient for ten days in the Bombay Hospital. P.W.62 has given description of both the terrorists and has identified accused No.1 to be the terrorist who has been described by him as shorter one. He has also identified photograph on the identity card-art.61 to be of the other terrorist. Accused No.1 was identified by this witness in the identification parade on 14.1.2009. The parade was conducted by Spl.Executive Officer Mr.Vichare and panchas. He has denied that he had not seen accused No.1 at C.S.T.railway station on 26/11/2008. He has also denied that he was giving false evidence.

244. P.W.68- Mr.Kirankumar Vasant Bhosale, was on duty at C.S.T. railway station as he was attached to railway protection force. At about 21.50 hours on 26/11/2008 he was at platform No.13 near reservation counter. The said reservation counter was at a distance of 30 to 40 ft. from the main gate of platform No.13. At that time he heard noise of big explosion in the waiting hall of main railway station. When he looked at the direction of explosion, he had seen one tall person with AK-47 gun firing

indiscriminately at the passengers in general hall (waiting hall). The said person had also thrown bomb towards passengers. There was one more person who was shorter as compared to the earlier person seen by P.W.68. The shorter person was also holding AK-47 rifle. He was also firing indiscriminately at the passengers. P.W.68 therefore immediately rushed to the armoury of R.P.F. which is situated on the ground floor below the G.M.office. He collected a pistol and twenty rounds from the armory and proceeded towards main line waiting hall. When he reached there, he was told that the said two persons had proceeded towards waiting hall of local line. This witness met PSI Mr.Khiratkar and PI Mr. Kshirsagar at G.M.gate while returning from waiting hall of main station. Mr.Kshirsagar, Mr.Khiratkar and P.W.68 took position in G.M. gate of local railway station from where main porch of the station was visible. The said two terrorists were seen by these three officers coming out of the local line railway station in the main porch near sub-way. It may be noted here that G.M. gate and main porch are outside the railway station abutting D.N.Road. The terrorists were at the distance of 30 to 35 from these three officers. The officers had fired at the said two terrorists and in retaliation there was firing from the terrorists also. As such exchange of fire went on between the

terrorists on one hand and police officers on the other hand. None from the two sides was injured during said exchange of fire. Later on the said two terrorists were seen entering platform No.1 of local line.

245. Since both the terrorists were seen entering main hall from the main porch, police officers also entered the main hall through G.M.porch. Police Inspector Mr.Khiratkar had fired at both the terrorists after reaching the main hall (main hall of local line). A.S.I. Mr. Suryawanshi was also there. Since P.W.68 had no ammunition left with him, he took one magazine from A.S.I. Mr.Suryawanshi and loaded the same in his pistol and fired two rounds at the direction of said terrorists. In retaliation there was firing from terrorists also. The said terrorists were seen by the witness going towards ticket collector's office at platform No.1.

246. Description of both the terrorists was given by this witness and has identified accused No.1 to be same terrorist who has been described by him as shorter terrorist. This witness had participated in identification parade held on 28/12/2008 and had identified accused No.1 from amongst seven persons of similar height and built. The identification parade was

held by Spl. Executive Officer Mr. Vichare and two panchas.

247. In the cross-examination this witness has denied that he had not seen the accused No.1 along with taller fellow in front of platform No.13 in the waiting hall of main line. The witness in his cross-examination has clarified that though the arms are not issued to any officer from the armory without making any entry in the records of armory, he did not wait till the entry was made as there was emergency. The witness volunteered that arms can be given without taking any entry in situation of emergency. Certain questions have been asked to this witness with regard to apparels of accused No.1 which he was wearing on the date of identification parade. However, I do not think it necessary to discuss that part of cross-examination as it does not put any question mark before the credibility of this witness as far as identification of accused No.1 is concerned. The witness has denied that he had not seen accused No.1 on the date of incident.

248. Evidence of **P.W.66- Sandeep Dadaji Khiratkar**, Police Inspector attached to R.P.F., is more or less similar to the evidence of

P.W.68- Mr.Kirankumar Vasant Bhosale as far as encounter between the police and terrorists at G.M.porch and main porch is concerned. This witness was also working as Inspector of R.P.F. and had in fact left C.S.T. railway station as his duty was over. He was at home when he received a phone call from one of the Jawans of R.P.F. He immediately rushed to C.S.T. railway station on his motorcycle and reached there within 5 to 7 minutes from Byculla. He directly went to armoury and collected 303 rifle and 20 rounds. He thereafter came out of armoury via G.M.porch and took position in G.M.porch alongwith P.W.68 and Inspector Mr.Kshirsagar. As far as the incident of exchange of fire between the terrorists and police officers at this porch is concerned, I have already described the same in the evidence of P.W.68. Evidence of P.W.66 is also more or less similar. He had fired 20 rounds from his rifle but could not achieve any success in the whole operation. This witness has also been able to identify accused No.1. It stated by this witness that accused No.1 was identified by him in the identification parade also held by Spl.Executive Officer Mr.Vichare.

249. Apart from this evidence, P.W.66 has also given further evidence with regard to footage of C.C.T.V. cameras installed at C.S.T.

local railway station. It is stated by him that C.C.T.V. cameras have been installed at railway station by railway administration. However, the maintenance thereof is looked after by R.P.F. There were in all 21 C.C.T.V. cameras on local line. The control room of C.C.T.V.cameras is in the office of R.P.F. A Data Visual Recorder (D.V.R.) is installed in the control room. All the visuals captured by the C.C.T.V. cameras were being recorded by the said D.V.R. automatically. It is stated by this witness that the movements of accused No.1 and his associate were captured by C.C.T.V. cameras. He therefore immediately prepared C.D. from the D.V.R. on the same day. Copy of movements of accused No.1 and his associate in the local waiting hall and platform No.1 were taken on the said C.D. The C.D.was sealed by this witness immediately on the same day. On 6/12/2008 said C.D. was handed over to Sr.P.I.Mr.Shaikh of DCB CID Mumbai Police. A panchanama was prepared by Sr.P.I.Shaikh in that regard.

250. P.W.66 further states that recording of seven days is saved on the D.V.R. and thereafter same is deleted automatically when further recording of next seven days begins. In his further examination-in-chief on 18/6/2009 the witness has stated that there were two separate control rooms

of C.C.T.V. One for main line and the other for local line. The main line C.C.T.V.control room was situated in the office of Inspector of RPF. In all there were 21 C.C.T.V. cameras installed at local line and main line. The witness has given clarification that due to inadvertence he has stated in his earlier evidence that 21 C.C.T.V.cameras are installed at local line only. According to this witness there were 15 C.C.T.V. cameras on main line and 6 on local line. It is further stated by the witness that 15 C.C.T.V.cameras installed at main line were not working on the night of 26/11/2008. They were under maintenance. D.V.D.- **Exh.255** was shown to this witness. It is stated by this witness that **Exh.255** is the same D.V.D. on which data was copied from the D.V.R. The said D.V.D. was played before the Court when the witness was in the witness box. The visuals were seen by him. It is stated by this witness that the visuals seen on the screen are the same which are copied by him from the D.V.R.

251. In the cross-examination P.W.66 has stated that seven R.P.F. personnels were on duty at local line. He was not aware as to how many R.P.F. personnels were on duty on the main line. This witness had also not made any entry in the armory while collecting rifle and rounds. Normally

they are required to take arms and ammunition after making necessary entry. It is necessary to record here that in such an emergent situation even a slightest lapse of time could have proved disastrous and therefore this part of cross-examination does not deserve much attention of the court. It is admitted by this witness that the original visuals recorded on the D.V.R. could have been preserved had the D.V.R. been sealed on the same day. He has denied the suggestion that C.D./D.V.D. produced by him was doctored and manufactured to suit the prosecution case.

252. P.W.59-Mr.Harshad Punju Patil is also a police constable and was attached to Vashi Railway Station. He was on duty for patrolling ladies compartment of local railway . It is by nature of this duty that he had reached C.S.T.railway station on 26/11/2008 by a local train from Vashi railway station. He had reached C.S.T railway station at about 9.35 p.m. and was supposed to leave C.S.T. railway station in Panvel local train at 22.10 hrs. He was armed with 303 rifle. Since the train which he was supposed to board for patrolling on his return journey for Panvel, had not arrived at the platform, he was waiting for the train in front of platform No.3 in the waiting hall of local railway station near police help center.

At 9.50 p.m. he heard loud noise of explosion and thereafter he had seen passengers running helter-skelter. Within a short time PI Shashank Shinde of C.S.T.Railway Police Station came near him and informed him that two terrorists had entered the railway station and they had been firing in the waiting hall of main line. Police Constables Mr. Nardele and Mr.Gavit were also there near police help center. Both of them had one carbine each. It is further stated by P.W.59 that PI Mr.Shashank Shinde proceeded towards the main line station. He was followed by P.C.Nardele and Gavit. P.W.59 also loaded his 303 rifle with 10 rounds. After sometime he had seen two terrorists proceeding towards local railway station. He had fired one round by taking position behind the police help center. The round however had misfired because of defective cartridge. He therefore took shelter behind a pillar and tried to open bolt of his rifle. However, the bolt could not open as it had jammed. In the meantime both the terrorists had already entered waiting hall of local railway station and they were in front of police help center. At the same time one R.P.F. Jawan Mr.Jillu Yadav (P.W.54) reached there. Jillu Yadav had seen P.W.59 holding a rifle and not doing anything to attack the terrorists. He therefore thought that P.W.59 was avoiding to fire. Jillu Yadav therefore rushed to P.W.59 and snatched

the rifle from him and attempted to fire at the terrorists. Since the misfired round had already stuck in the barrel, it was not possible to open fire from the said rifle. Jillu Yadav therefore returned the rifle to P.W.59. P.W.59 continued to be behind the said pillar. Jillu Yadav was also with him. Jillu Yadav made an attempt to do something on his part by throwing a plastic chair on the terrorists. The terrorists had therefore fired in the direction of Jillu Yadav and P.W.59 but they could not be hurt because of the pillar. Thereafter Jillu Yadav and P.W.59 went to main hall to help the injured persons.

253. This witness has also given description of both the terrorists and has identified accused No.1 to be one of them. It is stated by the witness that accused No.1 was identified by him in the identification parade also.

254. In the cross-examination, this witness has explained that he did not accompany PI Mr.Shashank Shinde as Mr.Shinde was already accompanied by two police constables with carbines. Though P.W.59 did not know P.W.54-Jillu Yadav, he did not resist the attempt of P.W.54 to

take away rifle from P.W.59. This is simply because P.W.54 was also in uniform. The explanation obviously is acceptable in the circumstances of the case. The witness has denied that he has given false evidence at the instance of police.

255. As far as evidence of **P.W.54-Jillu Yadav** is concerned, he has corroborated evidence of P.W.59 in so far as entry of accused No.1 and his associate in the waiting hall of local railway line is concerned. P.W.54 was working as Head Constable in R.P.F. and he was on duty at G.M. Gate at the time of incident. He had also rushed to the spot only after hearing noise of explosion and firing. When he entered the station from G.M.gate (local line railway station) he had seen one person sitting in the main hall of local railway station loading his rifle with magazine. This witness has also referred to the police help center of local line railway station. Further evidence of P.W.54 corroborates evidence of P.W.59- Mr.Harshad Punju Patil. P.W.54 has stated that he had thrown one plastic chair towards the said person. Accused No.1 has been identified by this witness also as the same person who was firing from AK-47 rifle. This witness had also seen accused No.1 and his associate going towards platform No.1 of local

railway station.

256. In the cross-examination this witness has stated that accused No.1 and his associate had fired about 20 to 25 rounds. Most of the rounds fired by accused No.1 and his associate had hit walls of railway premises. It appears from the cross-examination of this witness that none of the persons were injured within the waiting hall of local line railway station because of firing on the part of accused No.1 and his associate. This witness was unable to give description of apparels of accused No.1 which he was wearing at the time of identification parade. Witness was also unable to tell whether accused No.1 had any bandage on his hand at the time of identification parade. He was unable to describe hair of accused No.1 seen by him at the time of identification parade. He has denied suggestion that he had not seen accused at C.S.T. railway station on 26/11/2008. There is one minor omission in his earlier statement which is not of material nature. However, there is one more omission with regard to height of accused No.1. The witness has stated in his cross-examination that he had mentioned height of accused No.1 in his police statement. When his attention was drawn to his police statement and it was brought to his notice that

description of accused No.1 had not been stated by him to the police, the witness replied that he could not assign any reason as to why the Investigating Officer had not recorded description of accused No.1 in his statement.

257. P.W.65-Mr.Vishnu Dattaram Zende was also working at C.S.T. Railway Station. He was announcer at public address system at C.S.T. local railway station. The announcer's room was situated in the mezzanine floor just above the police help center. This witness in introductory portion of his evidence has given the locations of various important places of main line as well as local line railway station. I do not think it necessary to repeat the same as I have already described same in earlier part of judgment. What is important to be noted here is that the announcer's cabin which is on mezzanine floor, was covered by glass pans. He was on duty on 26/11/2008 from 3.00 p.m. to 10.00 p.m. It is stated by this witness that at about 9.55 p.m. he heard noise of big explosion and that he realized that there was a bomb explosion. He therefore peeped out of the window of his cabin. What was witnessed by this witness was that the passengers from main line were running towards local line. He therefore

informed the police and railway protection force regarding the same on public address system and requested both the forces to go to the main line. While announcement was in progress, this witness had heard noise of firing and at the same time he had also seen that some persons having bleeding injuries were running towards local line. Realizing that something serious had occurred on the main line, P.W.65 announced on public address system that the passengers who had arrived at local railway station by local train, should leave the platform from the rear side of platform and not from the main hall (waiting hall). At this point of time four local trains were stationary at four platforms out of the seven platforms of local railway station. While announcement was in progress, three other local trains had also arrived and all the platforms were occupied by local trains at C.S.T. local railway station.

258. P.W.65 had also seen two terrorists approaching local railway station from the side of platform No.7. He could see them from a distance of 15 to 20 ft. Sensing the trouble this witness suspended announcement on public address system as his cabin was visible from the main hall of local railway station due to glass pans. This witness has stated that the terrorist

who was shorter, sat down in the waiting hall and loaded his gun with a magazine. He had thrown his bag in the hall itself and continued to fire. The witness further states that to avoid being shot by the terrorists, he and his colleagues sat down on floor of the cabin so that the terrorists could not see him. During this period, one of the bullets hit glass pan and after piercing through the glass pan it exited from backside plywood partition. Since P.W.65 and his colleagues were sitting down on floor of the cabin, bullets could not hit them. P.W.65 and his colleagues were in contact with their officers on telephone. The passengers had been leaving the platforms from rear gates due to the announcement made by this witness. He has identified accused No.1 to be the same shorter fellow who was loading rifle and had thrown away his bag. Art.61- identity card recovered from the dead body of deceased accused Abu Ismail was shown to this witness and he has identified the photograph to be of the person who was accompanying accused No.1 and was firing. **Art.219**- haversack (bag) has been identified by this witness to be the same bag which was thrown by accused No.1 in the waiting hall of local line.

259. One omission was brought to the notice of this witness in his

police statement. He had stated before police that accused No.1 and his associate had started firing after the accused No.1 had loaded his gun. This fact however, is not there in his police statement. The witness was unable to give any explanation for this omission in his statement. Even if this omission is proved, it does not go to the root of the case or in any manner does not harm evidence of this witness. Therefore, in my opinion the omission does not require any discussion. Therefore, this omission will not be referred to when I analysis evidence of the witness in detail in later part of the judgment. This witness states in his cross-examination that he has identified the bag in the court on the basis of yellow belt. He has admitted that he had not given description of the bag in his police statement. He has denied that he had not seen accused No.1 throwing bag in the hall and had also denied all other usual suggestions.

260. Prosecution has also examined two photographers, who in fact had risked their lives to take photographs of accused No.1 and deceased accused No.1 from very close quarters. Both the photographers are, incidentally, working in Times of India Group. P.W.61-Mr.Sabastian Barnal D'souza was working with Mumbai Mirror which is publication of

Times of India Group. P.W.102-Mr.Sriram Ramakant Vernekar was working for Times of India particularly.

261. P.W.61-Mr.Sabastian Barnal D'souza is attached to Times of India Group since last two years. There were other six photographers working under him. His office was situated in Times of India Building opposite C.S.T.Railway station. On 26.11/2008 he was on duty. At about 9.50 he came to know from one of his colleagues that some gunmen had entered Taj Hotel and they had been firing randomly. As part of their profession, two photographers of Times Group immediately proceeded to Taj Hotel. P.W.61 and one of his other colleagues came out of the office. As they came out of main gate of the building, there was firing at C.S.T.railway station. At this stage it may be stated here that the road in between C.S.T. railway station and Times of India building is known as D.N.Road. It is divided into two parts by cement concrete divider of the height of two and half feet. P.W.61 after hearing gun shots from C.S.T. railway station jumped the said road divider and entered platform No.1 of local railway station. The local railway station was seen completely deserted. There was one local train on platform No.1. The witness crossed

through the said local train and reached platform No.2. There was no train in between platform No.2 and 3. As such he could not go to platform No.3 and proceeded towards main hall/waiting hall of the local railway station. At this stage it is necessary to be noted here that the exit/entrance gates of all the platforms i.e. from platform No. 1 to 6 are parallel to each other and they are abutting waiting hall of local railway station.

262. As P.W.61 walked upto exit/entrance of platform No.6, he had seen two persons (accused) in the common passage between the main waiting hall and local waiting hall. Both of them were firing. They were at a distance of 100 ft. from P.W.61. The owner of book stall situated in the common passage started pulling down his shutter. While pulling down the shutter, he had sustained bullet injury and he had fallen down. His photograph was snapped by this witness by means of digital Nikkon camera. The said photograph is at **Exh.238**. One of the gunmen was taller and the other was shorter. This witness has identified accused No.1 to be the gunman who was described by him as shorter gunman. According to this witness both of them had one gun each. The witness being a professional photographer, wanted to take photographs of those gunmen.

He therefore entered the train stationary at platform No.6. As far as presence of policemen at railway station is concerned, it is stated by this witness that he had seen two policemen at the station. One of them was in uniform and other one was in plain clothes. He had seen that police officer in plain clothes taking gun from the policeman in uniform. He took position to fire at accused No.1 and his associate. Photographs of this situation was also snapped by the witness and these photographs are produced at **Exh.239 colly**. The witness had warned both the policemen to enter the train as he apprehended danger to the police officers from the two gunmen who were proceeding towards local line. The witness himself had gone away to platform No.4 from platform No.6. He, however, continued to take photographs by taking shelter behind a pillar. It is stated by the witness that he had taken 100 photographs. Most of them were blurred because of bad light. He could not use flash gun obviously because that could have attracted attention of accused No.1 and his associate towards P.W.61. He has produced photographs **Exh.240 colly.**, **Exh.241 colly**, **Exh.242** and **Exh.243 colly**.

263. In his further examination-in-chief P.W.61 has stated that

photographs snapped by him were saved by him in the memory card of his camera and thereafter he prepared C.D. from the memory card. Printouts produced in the court are taken from the said C.D. at **Colo Lab** at Bora Bazar. The memory card has been produced by this witness which is marked as **art.216** . The memory card was returned to the witness for being kept in safe custody until further orders of the court. It was not taken into custody of the court as the same was not seized by the police during the course of investigation. C.D.-**art.217** however, has been taken on record as the same was seized by police during the course of investigation.

264. At this stage the said C.D. was opened by me on my laptop in open court and it was found that some of the photographs produced in the court were not in the said C.D. To a query of the court witness has stated that the photographs which are not available on the C.D. might be copied from memory card.

265. P.W.61 has stated in his cross-examination that he could not see any policemen or R.P.F.Jawan in the waiting hall when the gunmen were proceeding towards platform No.1. It is stated by the witness

voluntarily that his main target was to take photographs of the gunmen and as such he did not bother to see whether police were there or not. This part of cross-examination is with a view to demonstrate that the two witnesses examined by the prosecution P.W.59-Harshad Punju Patil, and P.W.54- Jillu Yadav who had thrown a plastic chair at accused No.1 and his associate, were not present at the station. Whether evidence of these two witnesses is to be believed or not , will be discussed at later stage of the judgment. Suffice it to say that P.W.54 and P.W.59 were behind a pillar in a passage which leads to the booking office and from there to the exit gate (main porch) . It is further stated by P.W.61 that one train had arrived at platform No.2 while accused No.1 and his associate were in one of the motorman's cabin of the train already stationed at one of the platforms. 8 to 10 passengers alighted from the said train. The two gunmen did not fire at those passengers. The witness has denied suggestion that the photographs produced by him have been morphed and that he is deposing false.

266. P.W.102- Mr.Sriram Ramakant Vernekar, another photographer, has stated that his father was working as Press Photographer in Times of India and that he himself is a professional photographer since

last more than 20 years. He has joined Times of India in the year 1986 as Press Photographer. Normally his duty hours are from 3.00 p.m. to 11.00 p.m. On 26/11/2008 around 10.00 p.m. when he was in his office, he had heard noise of firing from C.S.T. railway station. Since the firing continued, this witness picked up his camera and rushed towards C.S.T.railway station which is just opposite Times of India building. As he approached the station from sub-way gate, he had seen two persons firing in the direction of railway office and booking office. He had snapped photographs of the said two persons from near the entrance of main hall from subway porch. As both of them were approaching subway porch the witness went out of the station , crossed road divider and went towards Times of India building. He had brought four enlarged copies of photographs. Same have been produced in the court at **Exh.410 colly**. (for the purpose of identification only) . The original memory card has also been produced. It is exhibited as **Exh.411**.

267. The witness has further stated that when he was outside C.S.T. railway station on the road, he had seen said two persons climbing foot over bridge from platform No.1. They had also been lobbing hand grenades.

P.W.102, with a view to take their photographs, went to second floor of Times of India Building from where the foot over bridge is clearly visible. He took about 2-3 photographs from the second floor. Since the quality of photographs was not satisfactory, he took one more photograph by using the flash gun. Due to the use of flash gun, attention of the shorter fellow was diverted to the witness (P.W.102) and the said shorter person fired three rounds at the witness from his gun. Photograph- **Exh.410-D** which is part of **Exh.410 colly**. was taken by this witness when the shorter fellow was getting down from the bridge towards Badhruddin Tayyabji Road. Accused No.1 has been identified by this witness to be the same shorter fellow. He has identified photograph of other person on art.61-identity card.

268. This witness has also stated in his cross-examination that he had not seen any policemen or R.P.F.Jawan in the main hall or in the sub-way. He had also not seen any railway police or railway protection force jawan chasing accused No.1 and his associate. It is admitted by this witness that the memory card- **art.411** was not handed over to police when his statement was recorded during investigation. It is further stated that the police had not demanded the same. Photographs however were given to the

police during recording of his statement. He has denied suggestion that the photographs produced in the court have been morphed.

269. P.W.70-Mr.Chandrakant Ganpat Sarnobat is the panch witness who was present at the time of panchanama of waiting halls of main line and local line of C.S.T. railway station. This witness was working in Oberoi Hotel as Life Guard. Due to the incident of terror attack at Oberoi Hotel on 26/11/2008 , he had to leave the hotel from back door and reached C.S.T. railway station to board a train to go to his residential place at Sanpada, New Bombay. It is how this witness happened to be at C.S.T. railway station on 26.11.2008. According to this witness following articles were seized by police from waiting hall of main line station :

1. **Seven firearm empties**- recovered in front of platform No.12 & 13 in the main hall.
2. **Two hand grenades**- found near the pillar of platform No.13.
3. **Five firearm empties**- found near the said two hand grenades.
   (witness corrected himself that there were six empties).
4. **Three firearm empties**- found in the main hall in between the gate of platform No.13 & 14.
5. **Four magazines** - found near platform No.14 & 15.

6. **Sample of blood from pool of blood in the main hall**.
7. **44 firearm empties** stained with blood from near a pit which was in front of platform No.12 & 13 and appeared to have been created because of explosion of hand grenade.
8. **Sample of soil** from the pit of similar nature near platform No.11 & 12.
9. **Eight empties** from near the said pit.
10. **Six empties** - from in front of platform No.9 & 10.
11. **One black magazine -** from near the ATM center. It was found to have contained eighteen live cartridges.
12. **Blood sample** on a cotton swab from a blood patch found near the ATM center.
13. **Sixteen empties** - from near the booking window No.40 in front of railway police station.
14. **One hand grenade safety pin** - from near the same place.
15. **One empty -** found in the ticket counter No.40.
16. **One haversack** - found in front of Platform Nos.5 & 6 in main hall of local line.
17. **One pistol holster** from near the said bag.
18. **Steel blade of 6'' length in a fiber bannet**.
19. **Four magazines -**found near platform No.3 in the main hall
20. **Five empties** - found near the said magazine.
21. **Three empties** -found near the police help center.

270. It is stated by this witness that these articles were sealed by

police in brown papers. Labels were affixed to the sealed packets. Signatures of panchas were taken. Mr.Gore, P.S.I. who was preparing the panchanama of the spot had also put his signatures on all the labels. One Mr.Santosh Kavtalkar was also present as panch witness at the time of panchanama. Panchanama was shown to this witness. He has identified his signature on the panchanama. The said panchanama is at **Exh.257**. The witness has further stated that he can identify the articles seized by police in his presence. The articles produced by the police in sealed packets No. 120, 122, 123, 124, 125, 126, 128, 130, 131, 132, 134, 135, 136, 138, 139, 140 and 141 were shown to this witness. The witness has identified these articles to be the same which were seized in his presence. Those articles are as under :

1) **Art.221 colly.** -Seven empties
2) **Art.223 colly**.- Six empties
3) **Art.225 colly**. – three empties,
4) **Art.227colly.-** four magazines,
5) **Art.229** - Clay sample,
6) **Art.231 colly.** - 44 empties,
7) **Art.233** -Residue collected from the place of explosion,
8) **Art.235colly** – Eight empties,

9) **Art.237 colly.** - Six empties,
10) **Art.243 colly**.- Sixteen empties,
11) **Art..245** - One empty,
12) **Art.247**-Safety pin,
13) **Art.249** - pistol holster,
14) **Art.251**- One rifle bonnet,
15) **Art.253 colly**. –Four magazines,
16) **Art.254 colly**.- Five empties,
17) **Art.256 colly.**- Three empties
18) **Art.219**- haversack.

Art. 239- one magazine and **art.240 colly**.- sixteen cartridges have also been identified by this witness. Wrappers Art.Nos. 222, 224, 226, 228, 230, 232, 234, 236, 238, 242, 244, 246, 248, 250, 252, 255,257 and Art.220 were shown to this witness. He has identified his signatures on all the wrappers.

271. As far as cross-examination of this witness is concerned, he has stated that he had identified cartridges and empties on the basis of his signatures on the wrappers. In further cross-examination this witness was shown **art.240** and **art.241**- sixteen cartridges and two empties respectively. He has admitted that during the course of panchanama 18 cartridges were seized by police and not 16. In this regard it is to be noted here that two live

cartridges were used by the Ballistic Expert for examination of cartridge cases sent to him by the police for analysis and opinion. This can be seen from the evidence of ballistic expert which is discussed in the later part of the judgment.

272. Police Officer **Mr.Dilip Ramchandra Gore-P.W.73** who had drawn the panchanama-Exh.257, has more or less given similar evidence with regard to the articles seized from the spot. I therefore do not find it necessary to reproduce his evidence. What is additional in his evidence is in para-23 which is with regard to the second panchanama drawn at about 7.15 a.m. It is at **Exh.259** . The second panchanama was necessary to be drawn because some more articles were found after conclusion of the earlier panchanama. What was seized under second panchanama is two magazines found together coupled by adhesive tape, 13 empties, 8 bullets and one hand grenade safety pin. These articles were seized under second panchanama.

273. **P.W.71- Indrajit Chandrashsekhar Singh** is the panch witness who was present at the time of second panchanama. He was staying near C.S.T.railway station and wanted to go Koliwada. He was called by

P.W.73 - PI Gore and was requested to participate in panchanama. According to this witness panchanama-**Exh.259** was drawn in his presence. He had signed the said panchanama. Witness has identified his signature on the panchanama. According to this witness **art.258**- one pair of black magazines, **art.260 colly**.-13 empties, **art. 262 colly**.- 8 bullets and **art.264**- safety pin were recovered by the police under the second panchanama.

274. As such P.W.70- Mr.Chandrakant Ganpat Sarnobat was present at the time of first panchanama i.e. **Exh.257** and P.W71- Indrajit Chandrashsekhar Singh was present at the time of second panchanama-**Exh.259.** Both the panchanamas were drawn by the same police officer who has been examined as P.W.73.

275. P.W.73- PI Gore in his further evidence has stated that two hand grenades seized under panchanama-Exh.257 were defused by officers of Bomb Detection and Disposal Squad (B.D.D.S.). Panchanama in that regard was drawn by him. Panchanama-Exh.263 drawn at Girgaon Chowpaty in respect of defusing of hand grenades is produced in court. It is stated by P.W.73 that remnants of defused hand-grenades were seized by

him under the same panchanama. what is seized under the panchanama is :

1) sand mixed with remnants of bomb

2) control sample of sand and

3) one detonator wire.

The witness has identified **art.279**-detonator wire, **art.280**- control sample of sand and **art.281**- sand mixed with remnants of defused bomb and has stated that these articles were seized by him under the panchanama- **Exh.263**.

276. As far as cross-examination of this witness is concerned, witness has stated in his cross-examination that he did not remember whether he had mentioned date on labels affixed to various wrappers. He also did not remember whether he himself had put date below his signature. There is nothing else in the cross-examination of this witness which may be important from the point of appreciation of evidence.

277. **P.W.74-Mr.Pandarinath Rajaram Yeram** is one of the Investigating Officers of C.R.No.155/08 of C.S.T. Rly. Station. Apart from drawing certain inquest panchanamas and recording statements of some

witnesses, this witness has also stated that the luggage of injured and deceased passengers following the incident dated 26/11/2008 was separately stored in one of the rooms of Court of Metropolitan Magistrate (Railway Court) at C.S.T. The luggage was being delivered to the claimants after verification. It is on 3/12/2008 that Police Constable Mr.Shendge told P.W.74 that one of the bags in the stored luggage appears to be suspicious. P.W.74 therefore visited the said room . The suspicious bag was found to have contained a metal box covered with pink coloured foam pieces. P.W.74 therefore called officers of Bomb Disposal and Detection Squad. Occupants of the building were evacuated. Within a short time B.D.D.S. officers also reached there. The bag was shown to P.I.Anthony of B.D.D.S. B.D.D.S. Police dog was also brought there. The dog indicated that there were some explosive in the said metal box. P.W.74 was therefore directed to get himself away of the place so that the officers of B.D.D.S. could defuse the said bomb. The bomb was defused by the squad and articles were brought down and were produced before P.W.74 by the officers of B.D.D.S. Following articles were produced before P.W.74 :

1) One bag - **art.282**

2) One tin box of ash colour weighing about 1.42 Kgs. It had a lock which was made in China- **art.285 colly.**

3) Pink foam pieces found affixed to the said tin box(container) - **art.286 colly.**

4) Electric circuit with one timer- **art.288**

5) Two batteries- **art.290 colly.**

6) Two detonators- **art.266** and **art.269**

7) One cortex wire- **art.274 colly.**(part)

8) One explosive powder mixed with steel ball (bearings) weighing about 7 Kgs.- **art.980** and **art.981** (two bags)

278. It is stated by P.W.74 that a sample was drawn from the explosive substance weighing about 7 kgs. The said sample was weighing about 50 gms. All the articles were wrapped separately and sealed with labels bearing signatures of panchas. Panchanama **Exh.269** was drawn by P.W.74. Panchas Mr.David and Mr.Dhake had also signed the said panchanama. The articles seized by P.W.74 had been shown to him and he has identified those articles . The witness was recalled and during his further examination-in-chief he had identified **art.980** and **art.981** , the two bags

containing explosive substance. **Art.291** is the sample which was sent to the C.A. for examination and his opinion. The articles identified by the witness included electric circuit , batteries and explosive substance. The explosive substance mixed with steel balls (sample) was produced in the court by police during the evidence of this witness. It was marked as **art.291** and was returned to the police.

279. As far as cross-examination of this witness with regard to the panchanama is concerned, there is nothing much in the cross-examination which needs to be mentioned in the judgment except few minor discrepancies in the panchnama.

280. Though P.W.73- Mr.Dilip Gore, Police Inspector has stated that two hand-grenades and one RDX bomb was defused by the officers of B.D.D.S., the prosecution had not examined any officer of B.D.D.S. who had defused the bomb and hand-grenade or who was present at the time when the bomb and hand-grenades were defused. It was therefore found necessary to call the concerned officer. I had therefore issued summons to Court Witness No.5-Mr.Anthony Steven Mathews to appear before me. He

had appeared on 9th March, 2010. It may be noted here that his evidence was recorded after completion of statements of accused Nos. 1,2 and 3 u/s 313 of Cr.P.C. Therefore, further additional statements of the accused were also recorded.

281. What this witness has stated in his evidence with regard to the evidence of P.W.73 is that on 30th November, 2008 two hand-grenades seized by C.S.T.Railway Police Station were defused by the team of Court Witness No.5 at Girgaon Chowpaty and that the remnants were handed over to P.I.Mr.Gore of C.S.T. Railway Police Station. As stated earlier, Mr.Gore has given evidence with regard to seizure of remnants of bomb. It may further be noted here that P.W.74-Mr.Yeram has stated about detection of RDX bomb in the luggage of passengers and defusal thereof. He has also given evidence regarding seizure of remnants of the defused bomb. This bomb was also defused by the B.D.D.S.team headed by Court Witness No.5. C.W.5 in his evidence has stated that on 3rd December, 2008, B.D.D.S. Unit had got a call from C.S.T.Railway Police Station that one suspected article was detected on 2nd floor of the building. It is further stated by this witness that it was on the same floor where the court of

Metropolitan Magistrate was situated in the railway premises. The suspected article was a metal container covered by pink foam pieces. It was a RDX bomb. Same was defused by using remote techniques and the remnants were handed over to P.I.Mr.Yeram of C.S.T.Railway Police Station. Mr.Yeram has been examined by the prosecution as P.W.74. He has given evidence which corroborates the evidence of C.W.No.5. The detonators **art.266** and **art.269** were also seized by this officer. The detonators- art.266 and art.269 were defused by the B.D.D.S. in presence of independent panch witness P.W.72.

282. It is stated by **P.W.72-Mr.Rajesh Vinodchandra Kacheria** has stated in his evidence that two wires and some other articles were defused in his presence by the police in the office of B.D.D.S situated at Picket Road. This witness stays at Dava Bazar. It may be noted here that Dava Bazar is adjoining to the Picket Road. P.W.72 in his evidence has stated that one more panch by name Parvez was also present at the time of panchanama for defusing explosive articles. The witness was unable to describe the articles defused in his presence but has stated that articles were defused in his presence and remnants of defused articles were packed and

sealed in his presence. The soil from the pit where the explosive articles were defused, was also collected and it was sealed. In all three packets were prepared by the police after defusal of articles received from the Investigating Officer of C.S.T. case. The three packets were produced by the prosecution. Two packets contained one detonator each one soil sample each and the third packet contained one polythene bag containing sand. The witness has identified the articles i.e. art.266-one detonator, art.267-soil sample, art.269- one detonator and art.270- soil sample. He has also identified the polythene bag containing sand i.e. art.272. He has identified his signature on the wrappers art.268, art.271 and art.273. Similarly, one more packet containing cortex wire and white powder -art. 274 colly. sealed in the wrapper -art.275 had also been identified by this witness. In the cross-examination P.W.72 has denied that no articles were defused in his presence and that he has been deposing false. The other part of cross-examination is aimed at to find out whether the witness was really present on the spot. Answers given by the witness do not create any doubt about his presence at the time of panchanama-**Exh.261** in respect of defusal of explosive articles in the office of B.D.D.S.

283. The discussion of evidence in the foregoing paras would show as to how the accused No.1 and deceased accused No.1-Abu Ismail had entered C.S.T. railway station and as to how they had indulged into indiscriminate firing and lobbing of hand-grenades. Case of the prosecution is that the accused No.1 and deceased accused No.1-Abu Ismail had gone out of C.S.T. railway station from foot over bridge of D.N.Road and had entered Badruddin Tayyabji Road behind Cama Hospital. It may be noted here that Times of India building is situated just opposite C.S.T. railway station. There were C.C.T.V. cameras installed outside Times of India building. It is the case of prosecution that two of the cameras facing Badruddin Tayyabji Road had captured movements of accused No.1 and the deceased accused No.1-Abu Ismail when they got down from the foot over bridge and entered Badruddin Tayyabji Road and when they were trying to open one of the cars parked in the said lane. In this regard the prosecution has examined one of the employees of Times of India. Court Witness No.1-Mr.Peedikayil Abraham Varghese was called by the Court for the reasons stated herein after.

284. **Court witness No.1-Mr.Peedikayil Abraham Varghese** was

summoned by me because he was not cited as prosecution witness though P.W.116-Me.Prabhakar Balwant Yadav, security guard working in Times of India Building has stated that copy of the footage of C.C.T.V. cameras of Times of India was taken charge of by police from his officer Mr.Varghese (C.W.1). As Mr.Varghese was available, it was found necessary by me to examine Mr.Verghese though the prosecution had already examined P.W.116.

285. C.W.1- P.A.Varghese in his evidence has stated that he was in charge of security of Times of India Building. The control room was in his office and computer was also located in his office. Visuals captured by C.C.T.V.cameras of Times of India were being recorded on hard disk of the computer situated in the office of this witness. P.W.119-Sriniketan Joshi was in charge of computers and cameras. C.W.1 himself was custodian of the computer. The C.D. which was marked as **art.381** during the course of recording of evidence of P.W116 was shown to this witness. It is stated by the witness that this C.D.-**art.381** was prepared by Mr.Joshi (P.W.119) in his office in the presence of police.

286. P.W.116-Prabhakar Balwant Yadav has also stated that the C.D. was sealed by police in a wrapper. A sealed cover was produced in the court. It was opened during the course of recording of evidence of P.W.116. The brown wrapper was marked as **art.380.** The C.D. was marked as **art.381**. Panchanama in respect of seizure of C.D. was drawn by police and signature of P.W.116 was taken thereon. Said panchanama is at **Exh.488**.

287. P.W.119-Sriniketan Srikrishna Joshi has been examined to establish that the visuals seen in the C.D.-**art.381** are from the Badhruddin Tayyabji Road and were captured by the cameras installed by Times of India. P.W.119 was working as General Manager (Information Technology) in Times of India. His office was situated in Times of India building opposite C.S.T. railway station. It is stated by this witness that Mr.Varghese was working as security officer. Six cameras had been installed outside the Times of India building. Two of them were facing Badruddin Tayyabji Road. They were camera Nos. 7 and 8. Management of C.C. T.V. cameras was under security department. The software Zycon Security Systems was installed on the system. It is stated by this witness

that the visuals captured by cameras were being recorded on hard disk of the computer. The system was able to retain recording of four days and thereafter the system would automatically delete the recording day by day as further recording from the 5th day begins. It has been stated by this witness that in view of the fact that recording could be automatically deleted after 5th day, the visuals captured on the night of 26th and 27th November, 2008 were separately saved on hard disk for being provided to **'TIMES NOW'** channel which is run by Times of India Group. The C.D.-**art.381** was shown to this witness. It is stated by him that it is the same C.D. which was copied from the data recorded in their computer at Times of India Building.

288. It has further come in the evidence of P.W.119 that there was inbuilt clock in the operating system. The said clock was running one hour ahead of the Indian standard time. This mistake, according to this witness was revealed when the police officers had visited their office to get clarification regarding time. This witness was recalled because the visuals were not played in the presence of this witness when his evidence was recorded on 10.7.2009. It was therefore found necessary to play the C.D. in

presence of this witness to verify whether contents of the C.D. produced in the court are same or not. The witness in his further examination-in-chief has stated that the visuals were being recorded digitally. During the course of recording of his evidence, the C.D.-**art.381** was played on a screen with the help of computer engineer Mr.Mohammed Avez Khan. The visuals were seen by this witness and he has stated that visuals shown to be recorded between 23.22 hrs. and 23.25 hrs. were copied by him from recording of C.C.T.V. visuals of Times of India. It may be noted that in view of wrong time set in the inbuilt clock, the recording time is shown as 23.22 hrs. instead of 22.22 hrs.

289. In the cross-examination of P.W.119 and Court Witness No.1, it was brought on record that a copy of visuals was given to 'TIMES NOW' channel before the C.D.-**art.381** was prepared and was given to police. P.W.119 in his earlier cross-examination dated 10.7.2009 had denied that the C.D. had been fabricated. He has also denied that there was no mistake in the clock and that he was deposing false. In his further cross-examination on 16/7/09 this witness had denied that the visuals captured by the cameras were blurred. He has denied that he was deposing false to help the police.

He has further denied that no such images as shown in the court were captured by C.C.T.V.cameras of Times of India.

290. The prosecution case as is revealed from the charge-sheet is that after getting down from the foot over bridge accused No.1 and his associate deceased Abu Ismail had entered Badhruddin Tayyabji Road and thereafter they had entered Cama Hospital from the backside gate.

291. The summary of evidence so far reproduced by me herein above, shows that the witnesses claim that they had seen accused No.1 and the deceased accused No.1 at C.S.T. railway station. They had seen them firing from guns and lobbing hand grenades. Some photographers had captured their photos. Some policemen had fired at them. Some of the policemen had died at C.S.T.railway station due to firing. A large number of passengers had died at C.S.T. railway station. Witnesses have further seen both the accused going towards platform No.1 and from there they had gone to foot over bridge and thereafter to Badruddin Tayyabji Road. P.W.116-Prabhakar Balwant Yadav, Security Guard in Times of India, P.W.119-Sriniketan Srikrishna Joshi, General Manager (Information Technology) in

Times of India and Court Witness No.1-Peedikayil Abraham Varghese, Chief Security Officer in Times of India, have given evidence regarding the recording of movements of accused No.1 and his associate when they were entering Badruddin Tayyabji Road.

292. Before I proceed further to discuss the evidence of witnesses who were present at Badruddin Tayyabji Road and at Cama Hospital, it will be necessary and convenient for better appreciation of evidence to mention here that Badruddin Tayyabji Road has entry/exit from D.N.Road and exit /entry at Mahapalika Road. D.N.Road runs east to west and Mahapalika Road is north-south. Badruddin Tayyabji road is '**C**' shape road and total length of the road might be less than one kilometer. The one end of Badruddin Tayyabji road which meets Mahapalika Road, is near the corner of ST. Xavier college and other end of the said road at D.N.Road is adjoining Times of India building. The maps of the three spots one of Badruddin Tayyabji Marg and the other two of Cama Hospital Compound (in & out) produced in the court by the prosecution have been admitted by the defence. They are part of **Exh.577A colly.** Zerox copies of the maps are at **page No. 367A , 367B** & **367C** respectively.

293. There are servants' quarters of Cama Hospital and G.T.Hospital abutting Badruddin Tayyabji Road (herein after referred to as B.T. Road). It appears that there are some unauthorized huts also. B.T.Road is also known as Rang Bhawan Lane as the auditorium called Rang Bhawan is situated along the said road. There are backside gates of Cama Hospital abutting Badruddin Tayyabji Road. One Police office known as passport office (S.B.-1) is also situated on Badruddin Tayyabji Road. High rise building of State Government Staff (Health Deptt.) is also near the passport office. There is ATM of Corporation Bank near St.Xavier's college. Before I proceed to sum-up the evidence of prosecution witnesses examined with regard to the incident at Cama Hospital and outside of Cama Hospital, it will not be out of place to recall here the prosecution case in brief. Briefly stated it is the case of prosecution that the accused No.1 and the deceased accused No.1-Abu Ismail had entered Cama Hospital from backside after killing three persons on Badruddin Tayyabji Road and they had killed two security guards of Cama Hospital and had also killed few police officers on 6th floor. After getting out of the hospital they had killed police officer Mr. Bapurao Sahebrao Durgade at Mahapalika Road and thereafter they had attacked Honda City car of Mr.Bhushan Gagrani, a Secretary in

Government of Maharashtra. The said car was being driven by driver Mr.Maruti Phad (P.W.139). Thereafter the accused No.1 and the deceased accused No.1 had attacked police vehical of Qualis brand in which three senior police officers viz. Mr.Hemant Karkare, Mr.Ashok Kamate and Mr.Vijay Salaskar were travelling along with four constables namely Balasaheb @ Nana Chandrakant Bhosale, Arun Raghunath Chite, Jayawant Hanumant Patil and Yogesh Shivaji Patil and thereafter they had taken away the said vehicle and had confronted Mr.Sharan Aarsa (P.W.144) at Barrister Rajani Patel Road, Nariman Point, Mumbai.

294. To support that an incident had taken place **outside Cama Hospital**, I may refer to the evidence of P.W.103. **P.W.103-Mr.Bharat Budhabhai Waghela** has stated in his evidence that he was working with Voltas as *Safai Kamgar* . His father was working in G.T.Hospital. He was staying in a hut behind Cama Hospital. Sandeep Waghela and Bhagan Shinde were his friends. Sandeep Waghela had been staying in Cama Hospital quarters and the deceased Bhagan Shinde was staying in the same hutment where P.W.103 himself was staying. Hut of P.W.103 was situated abutting Badhruddin Tayyabji Road about 5 ft. away from the road.

P.W.103 and his above stated two friends namely Sandeep and Bhagan were chitchatting in front of backside gate of Cama Hospital at about 9.30 p.m. on 26/11/2008. One Gupta bhel vendor was selling bhel near the said gate. It is around 10.30 p.m. that this witness and others who were present there had seen two persons entering Badruddin Tayyabji Road from Times of India Building side. One of them was taller and other one was shorter. It is further stated by this witness that both of them suddenly started firing. The taller and shorter fellow have been described as *Lamboo* and *Butka respectively* by this witness as well as most of other witnesses examined by the prosecution. The witness has further stated that the *Butka* fellow started firing at him and his friends. He had shot at Gupta Bhelwala also. Gupta Bhelwala had fallen down on the road due to bullet shot. P.W.103 got frightened due to the incident and ran towards his hut. His two other friends had also run away from the spot. He immediately shut door of his hut and narrated the incident to his mother. It is further stated by P.W.103 that he could see outside from the gap between door frame and shutter of his hut. He had seen the *Butka* fellow in front of his brother's house which was adjoining house of P.W.103. He had also seen the *Butka* fellow firing at his brother's house and immediately thereafter the witness heard cries of his

brother. The *Lamboo* fellow was firing in the lane. After sometime witness had seen both of them going towards gate of Cama Hospital.

295. Thereafter when he visited house of his brother, he had seen his brother Thakur Bhudha Waghela lying in a pool of blood. His brother's son aged about 5 years was also there. His wife was absent as she had gone to village Titwala. P.W.103 therefore took his brother to G.T.Hospital where he was declared dead before admission.. After five minutes Bhagan Shinde was also brought to the hospital. He was also declared dead before admission. Accused No.1 had been identified by this witness to be the same person who had fired at Gupta Bhelwala and at the house of his brother. Accused No.1 was identified by this witness during the course of investigation also when identification parade was held on 27/12/2008. He had identified dead body of the *Lamboo* fellow at J.J. Mortuary from amongst six dead bodies shown to him. Identity card-**art.61** was also shown to this witness. It is stated by the witness that the photograph on the identity card-art.61 belongs to the said *lamboo (taller one)*.

296. In the cross-examination, the witness has stated that he had no

knowledge of any terrorists attack before arrival of accused No.1 and the Lamboo fellow at Badruddin Tayyabji Road. He had also seen people frequenting on Badruddin Tayyabji Road between 10.00 p.m. to 10.30 p.m. as usual. He had not seen any security guard at the gate of Cama Hospital. As far as identification parade is concerned, this witness has stated that he had reached Arthur Road prison at 1.00 p.m. on 27/12/2009 and was the third witness to be called for identification. Accused No.1 was at Sr.No.3 from left in the parade room. He was wearing a T-shirt of blue colour and pant of gray colour. The witness has further stated in his cross-examination that accused No.1 was having long hair on the date of incident as well as on the date of identification parade. He did not know whether other witnesses had identified accused No.1. He has denied usual suggestion put to him and has also denied that he was deposing false at the instance of police.

297. P.W.105-Sandeep Waghela is cousin of P.W.103. This witness has more or less given the similar evidence as given by P.W.103. He has also stated that he was chitchatting with P.W.103 and one Bhagan Shinde in front of backside gate of Cama Hospital. Gupta Bhelwala was selling Bhel below the street light. It was around 10.30 p.m. when he heard

noise of firing and had seen two persons coming towards Cama Hospital from the side of Times of India Building. He could see them in the street light. One was taller and one was shorter. It is stated by this witness that the shorter person had fired from his gun and the taller fellow was giving him cover and at the same time he was also firing. Gupta Bhelwala was shot at by the shorter fellow. Gupta Bhelwala had fallen down due to bullet injury. P.W.105 therefore got frightened and took shelter behind a motorcycle which was found parked nearby. He had seen Bhagan Shinde and Bharat Waghela running away from the spot. After giving description of accused No.1, the witness has identified him to be the same person who had shot at Gupta Bhelwala. The accused No.1, according to this witness was identified by him in the identification parade held on 27/12/2008.

298. Cross-examination of P.W.105 also is on more or less similar line as the cross-examination of P.W.103 was. Similar questions have been put to this witness and answers given by this witness are also similar to the answers given by P.W.103. I therefore do not think it necessary to repeat the same. What is additionally stated by this witness in the cross-examination is that both the persons who were firing had gone towards SB-I

office(known as passport office) and had continued to fire there also. They had returned from SB-I office to Cama Hospital and had jumped in the premises of Cama Hospital from the gate.

299. About the identification parade this witness has stated that there was one officer holding identification parade. The witness however did not know designation of the said officer. According to this witness accused No.1 was at Sr.No.5 from right and Sr.No.3 from left when he was identified by this witness. This witness has also denied all other usual suggestion made by ld. advocate Mr.Kazmi for accused No.1. There is no cross-examination on behalf of accused No.2 and 3.

300. **P.W.101-Smt.Anjali Vijay Kulathe** was working as Staff Nurse at Cama Hospital. She was on duty in the night intervening 26th and 27th November, 2008. She reported for her duty at about 8.00 p.m. She was on duty on first floor of the new building. It is at about 10.30 p.m. that she had heard noise of firing from backside of the hospital. She therefore peeped out from backside window of Ante Natal Care Unit. She had seen two persons climbing on steel gate of Cama Hospital situated at backside.

Out of the said two persons one was taller and one was shorter (*butka*). She could see both of them as there was sufficient light of street lights. The gate was at a distance of 10 ft. to 15 ft.from the window from where the witness had seen above described two persons. Both the persons had jumped inside the premises of Cama Hospital. The taller person had fired a shot at the place from where P.W.101 was looking at the duo. It is stated by this witness that one bullet had hit right wrist of Ms. Hira Jadhav who was working as servant at Cama Hospital. The injured servant was therefore immediately removed to casualty ward by the staff members. Dr.Archana was on duty. She was informed by P.W.101 that two terrorists had entered the hospital building. After intimating Dr.Archana the witness immediately rushed back to her ward and closed all the doors from inside. There was also collapsible gate to the said ward. The witness put lock on the said gate. All the patients from Ante Natal Care ward were removed to pantry with a view to keep them in a safer place. There were in all 20 patients in the ward at that time. Witness further states that noise of firing and the explosion went on for about two hours. P.W.101 and her patients who had taken shelter in the pantry were scared due to continuous noise of firing. They continued to be in the pantry till 4.00 a.m. of 27/11/2008. Their senior

officers had reached there at about 4.00 a.m. and all the patients and P.W.101 were taken out of the pantry.

301. P.W.101 has identified accused No.1 to be the same person who has been described by her as *Butka* . She has also identified photograph on identity card-art.61 to be of the person who was accompanying accused No.1.

302. As far as identity of accused during the course of investigation is concerned, witness has stated that accused No.1 was identified by her on 27/12/2008 at Arthur Road Prison. There were in all 7 persons including accused No.1. Judge Sharad Vichare and two panchas were present at the time of identification parade.

303. In the cross-examination this witness has denied suggestion that there was no sufficient light on Badruddin Tayyabji Road to identify the terrorists. It is stated by the witness that the road is always well lit from Times of India Building to Rangbhavan. She has further denied suggestion that the distance between the window and backside gate was about 60 ft. It

is clarified by this witness that difference in the actual distance and the distance stated by her could be hardly of 5 ft. to 10 ft. There was no security guard on the gate where terrorists were seen by this witness. It is further stated by this witness in the cross-examination that all the patients could be accommodated in the pantry which was on the first floor itself. She has denied that she had not seen accused no.1 and other person entering Cama Hospital. She has further denied that she had not identified accused No.1 on 27/12/2008 in the identification parade.

304. P.W.108-Mr.Thomas Sidhappa Uledhar was also at Cama Hospital as his sister Gracy was admitted in the hospital for delivery. She had delivered a female baby on 25/11/2008. Since the child had breathing problem, P.W.108 had visited the hospital on 26/11/2008. He was accompanied by his friend Soman, his brother-in-law Timesh and cousin Mozes. Some other relatives had also come there to visit Gracy. The relatives who had come to see Gracy had left the hospital for C.S.T. railway station to go back to their respective homes. However, within a short time they returned to the hospital and told P.W.108 that there had been incident of firing at C.S.T. and firing was still continuing. As P.W.108 was

discussing this with his relatives, somebody told them that terrorists had entered Cama Hospital. At that time this witness and P.W.123-Mr.Timesh Chinnekar, with other relatives, were standing in the open ground in front of the hospital. All of them therefore rushed to 5th floor where sister of P.W.108 was admitted. All of them had hidden themselves at the places where ever they got the place to hide. After sometime P.W.108, his brother-in-law and his friend Soman came near the entrance or ward No.5 to see as to what was happening . As soon as he opened the door, he could see two persons in the corridor near the staircase. According to this witness one of them was taller and the other was shorter. Both of them came near the witness . The said two terrorists had forced the witness and his friend to enter the ward and directed them to face towards the wall. The shorter fellow snatched mobile phones from all of them. The other person was looking for people in the hospital. The witness had seen the taller fellow assaulting one elderly person. He had seen the taller fellow stabbing the elderly person and had also seen the said taller fellow firing a shot at the said elderly person. After sometime they were forced to enter bathroom and it was bolted from the outside. After sometime one more person was brought and he was also forced to enter the bathroom and the bathroom was

again bolted from outside. The witness has identified accused No.1 to be the same shorter fellow. According to this witness accused No.1 had a bleeding wound near his left eye.

305. In the cross-examination this witness has stated that visiting hours of the hospital were from 4.00 p.m. to 6.00 p.m. It is obvious from the evidence of this witness that he was there beyond visiting hours. It need not be stated that Cama Hospital is a Government Hospital and visiting hours are not strictly followed in government hospitals. Presence of the witness therefore cannot be doubted simply because he was there beyond visiting hours. The witness did not know from where the said elderly person was brought to the bathroom. He was brought to the bathroom after about 5 to 7 minutes.

306 **P.W.123-Mr.Timesh Narsingh Chinnekar** is husband of Gracy who was admitted in Cama hospital and had delivered a female child. This witness has also stated that his relatives had visited Cama Hospital and they had left at 10.00 p.m. The relatives however returned to the hospital after sometime and told P.W.123 and P.W.108 that firing was

going on at C.S.T. Railway Station. In the meantime somebody told that terrorists had been approaching Cama Hospital. Therefore, all of them rushed to 5th floor. This witness has also corroborated the testimony of P.W.108 as far as they entering the ward and hiding themselves at some places is concerned. He has also corroborated the testimony of P.W. 108 inasmuch as this witness has also stated that as soon as they came out of the ward to see as to what had happened, they were confronted by two terrorists. One was taller and the other was shorter. P.W.123 has identified accused No.1 to be the same shorter terrorist. He has further stated that accused No.1 had directed P.W.123 and his two other companions to turn towards the wall. In the meantime the taller fellow had brought one elderly person in the ward and had assaulted him by means of knife. He had probably fired a shot at the said elderly person because P.W.123 had heard sound of firing at that time. His two mobile phones were snatched away by accused No.1. Mobile phone of P.W.108 was also snatched by accused No.1. Accused No.1 had said '***awaz karega to tumhara bhi yahi haal karega***' . Accused No.1 had directed P.W.123 and P.W.108 to enter the bathroom and had bolted the door of bathroom from outside. After sometime one more person was brought to the bathroom and he was also

confined in the bathroom. After sometime there was continuous noise of firing which went on till early hours of 27/11/2008.

307. In the cross-examination this witness has stated that they had heard from somebody that terrorists had entered Cama Hospital. He could not specifically tell as to who had informed about the same. The witness was also unable to tell as to where his other relatives had been hiding themselves during the course of incident.

308. **P.W.107-Raosaheb Changdev Funde** is a retired Jawan of Indian Army. He retired as Naik from Indian Army in the year 1993. He was working as security guard at Cama Hospital on the night of the incident. He was not provided with any firearm by the hospital authority. According to this witness there are in all four gates to the Cama Hospital. Out of these, three gates always remain closed. Only one gate by the side of Mahapalika Road was being used for entry as well as for exit. He was on duty on 26/11/2008 from 2.00 p.m. to 10.00 p.m. at Nurses' Hostel in the premises of Cama Hospital. After his duty hours he was to go to his residence by local train to be boarded from C.S.T.railway station. It may be stated here

that C.S.T. railway station is about 5 to 7 minutes walking distance from Cama Hospital. As the witness reached the main gate of Cama Hospital, he learnt from the staff members of the hospital that there was incident of firing at C.S.T. railway station. The witness therefore decided to stay back at the hospital itself instead of going to C.S.T.railway station. When he came back near the main gate of the building near collapsible gate, he had seen the security guard Mr.Baban Ugade. While this witness was standing near security guard Mr.Baban Ugade, he had seen accused No.1 and one more person approaching the gate of Cama Hospital. It is stated by this witness that accused No.1 had shot at security guard Mr.Ugade by means of a rifle. Mr.Ugade in the result had sustained bullet injury and he fell down. The bullet had hit Mr.Ugade in his abdomen. The witness himself therefore got scared and ran upstairs . He went to the 5th floor of the building and took shelter in one of the wards. P.W.107 took shelter behind a clothes drying rack in the ward. The said rack was being used for drying clothes of patients. Accused No.1 reached the place where P.W.107 had taken shelter and directed him to accompany accused No.1 and to proceed towards bathroom. This was done by accused No.1 at the point of gun. P.W.107 had also seen one person in the ward lying in pool of blood. P.W.107 was

forced to enter the bathroom and the bathroom was bolted from outside. This witness had seen three persons already confined in the bathroom. P.W.107 and others were rescued from the bathroom after about 2 to 3 hours after police had arrived. As far as identification of accused No.1 and his associate is concerned, it is stated by this witness that photograph on the identity card-art.61 belongs to the associate of accused No.1 (deceased Abu Ismail). It is admitted by this witness in the cross-examination that backside gate was about 100 ft. away from the place from where the accused No.1 had fired at the security guard Mr.Ugade. The collapsible main entrance was about 125 ft.away from the backside gate. The witness had denied that he had not seen accused No.1 and that he had not identified accused No.1 in the identification parade.

309. P.W.106-Harishchandra Sonu Shrivardhankar has stated in his evidence that he was working as Senior Clerk at Mantralaya, Mumbai. On 26/11/2008, he left his office at about 6.00 p.m. to visit Darga of Hajrat Sayyed Shah Baba situated behind Metro Cinema. There was Urs at the said Darga on that day. The witness attended the said Urs and left the Darga at about 10.30 p.m. to go to C.S.T. railway station. He was proceeding to

C.S.T. railway station via Metro subway and St.Xiever's College. It is stated by this witness that when he reached near the gate of Cama Hospital at Mahapalika Road, he had seen many persons running helter-skelter on the said road. It was learnt by this witness that there was an incident of firing at C.S.T. railway station. Apprehending danger to his life, the witness entered Cama Hospital to take shelter. As soon as he entered Cama Hospital, he had seen a dead body at the main entrance of the main building. The witness got scared on seeing dead body. He suspected that some incident must have occurred in the premises of the hospital. Therefore, he entered the building and found that there was complete silence in the building. All the doors of wards were found closed. He went upto 4th floor of the building and found that all most all floors were seen deserted. As soon as he reached 5th floor of the building, he was confronted by a person holding a gun and a knife. The said person was carrying a bag on his shoulder. According to this witness, he was about 5' 6" tall and having short hair. He was wearing a jacket. The said person put his knife on the neck of witness No.106. The witness realized that his life was in danger and,therefore, he decided to resist. In the process of resisting the assault, he had hit private part of the said person and had also attempted to hit the said person by

means of his bag. The bag, however, slipped out of his hand. In the process of this scuffle, the said person had inflicted two knife blows on neck of P.W.No.106. In the result, PW 106 sustained bleeding injury. He was bleeding profusely. The said person caught hold of the shirt collar of this witness and fell him down. Thereafter he had inflicted one more knife blow on the back of P.W.No.106. One bullet was also shot at the back of P.W.No.106. Due to the bullet injury and knife blow, P.W.No.106 had lost strength to resist the said person and had ultimately become unconscious. He regained consciousness after about 3 to 4 days at J.J.hospital. He was treated in the hospital for about three months as an indoor patient. During the course of the incident narrated above, this witness had lost his spectacle and footwear. The witness has identified spectacle **Art.310** to be the same spectacle which he had lost during the above narrated incident. As far as identity of the assailants is concerned, photographs produced by the prosecution at **Ex.410 colly.** were shown to the witness. The witness has identified in the said photograph, one taller person to be the same person who had assaulted him at Cama Hospital. Those two photographs have been marked as **Ex.410A and Ex.410B.**

310. During the course of his cross-examination, this witness has admitted that he has not stated before the police that he had attempted to hit the assailant by means of his bag. When the identity cards produced by the prosecution were shown to the witness, the witness had identified the photograph on the identity card **Art.61** to be the photograph of the person who had assaulted him at Cama Hospital.

311. It is the case of prosecution that after confining the P.W.107-Mr.Raosaheb Funde and other witnesses in the bathroom and after assaulting the P.W.106-Mr.Harishchandra Shrivardhankar , the accused No.1 and deceased accused No.1 Abu Ismail had gone to the terrace of the building where P.W.109-Mr.Chandrakant Tikhe , a lift operator, was on duty as generator operator.

312. **P.W.109- Chandrakant Dnyandev Tikhe** was working as Lift Operator at Cama Hospital. He was on duty on the night of 26th and 27th November,2008 as Generator Operator. Generator of the Hospital was situated on terrace of the building. His duty hours were from 10.00 p.m. to 7.00 a.m. The witness has stated that when he was on terrace of the

building at about 10.00 p.m., he had heard noise of firing from ground floor of the building. He,therefore, immediately shut the collapsible gate of enclosure on the terrace where Solar System has been installed. The witness himself was inside the said enclosure. While the witness was on the terrace in the above-stated enclosure, he had seen two persons entering terrace of the building. According to this witness, one of them was taller and other one was shorter. The shorter held his rifle towards P.W.No.109 and had warned P.W.No.109 that if he attempted to move,he would be killed. Accused no.1 has been identified by this witness to be the same shorter fellow who had threatened P.W.No.109 .

313. It has further stated by this witness that accused no.1 wanted to know the way leading outside the hospital. He was informed by P.W.No.109 that there was only one staircase which could be used for entrance as well as exit and there was no separate exit from the terrace. While the accused no.1 was in conversation with P.W.No.109, the other person who was taller as compared to accused no.1, was keeping watch on the situation. The taller person suddenly shouted “police” and started firing towards the staircase. At this point of time, accused no.1 had held his gun

on back of P.W.No.109 and pushed him towards the staircase. Both the accused i.e. accused no.1 and his associate had brought P.W.No.109 in the landing of the staircase between 6th floor and the terrace. As such the P.W.109 was used by the accused No.1 and his associate as a shield. P.W.No.109 could see that some persons were there in front of lift of 6th floor. He, therefore, apprehended that police might start firing suddenly. Apprehending danger to his life, he had raised his both the hands. At the same time, one Mr.Kailash who was one of the staff members of Cama Hospital and was accompanying police, also informed the police that P.W.No.109 was one of the staff members of Cama Hospital. The police at this point of time , had started firing at accused no.1 and his associate. In the result, accused no.1 and his associate had rushed back to the terrace of building. P.W.No.109 taking advantage of this situation, came down on 6th floor and narrated the incident to the police. He had informed the police that there were two terrorists. According to further evidence of this witness, accused no.1 thereafter started firing at police and P.W.No.109. Accused no.1 had also thrown hand-grenade on 6th floor of the building. The fragments of hand-grenade had hit the witness on his neck and he had sustained bleeding injuries. Some of the policemen were also injured due to

explosion of hand-grenade. The accused no.1 and his associate both had opened fire at policemen. This witness had seen one police officer and policemen collapsing in front of the lift,due to the said firing. After sometime, accused no.1 and his associate had again exploded one hand-grenade and fired indiscriminately in the direction of lift at the 6th floor. Some other policemen and officers were injured due to this explosion and firing. P.W.No.109 any how came down to the 2nd floor of the building accompanied by two policemen and staff member of Cama Hospital Mr.Kailash. First aid was given to P.W.No.109 and the injured policemen. After the first aid, P.W.No.109 was shifted to G.T.Hospital. From there, he was shifted to K.E.M. Hospital for treatment as there were splinters of hand-grenade in his neck. He was in the hospital as an indoor patient for about 7 days. According to this witness, he had identified the accused no.1 in the identification parade held on 27.12.2008.

314. As far as cross-examination of this witness is concerned, this witness has admitted that he was on the staircase and was between police and terrorists when there was an exchange of fire between the police and the terrorists. He,however, has explained that he had ducked down when there

was an exchange of fire between the police and the terrorists. As regards identification parade, this witness has stated in his cross-examination that there were in all five identifying witnesses present on the day when he had gone for identification of accused no.1. He had identified the accused no.1 in the said parade. P.W.No.109 was taken to the parade room by one of the panch witnesses. He had denied the suggestion that he has not seen the accused no.1 on 26.11.2008 and that he has been given false evidence.

315. P.W.No.111- Kailash Chandrabhan Ghegadmal is the witness who was accompanying the police officers when they had gone to 6th floor of the building. As stated by P.W.No.109, this witness was one of the staff members of Cama Hospital. According to this witness, there are in all seven buildings in the premises of Cama Hospital. The main building is known as 'new building' and it is a six storied building. The incident in question had occurred on 6th floor terrace of the said 'new building'. There is one building known as 'RMO Quarters'. The RMO Quarters are about 300' away from the main building. There is one Doctors' building i.e. known as 'Zafar Suleman Dispensary'. It is 70' from the main building.

316. According to this witness, he was on second floor of Doctors' building at the time of incident at Cama Hospital. He had heard noise of firing and therefore he peeped out of the window of 2nd floor. He had seen that watchman Baban Ugade was lying in a pool of blood near the entrance of main building. He had also seen that other watchman Bhanu Narkar was also lying in an injured condition near benches in the courtyard of the building. After sometime, he had seen watchman Appa Jadhav entering the premises of the hospital with some police officers. P.W.No.111, therefore, came down from Doctors' building and went near them. The Police had asked him whether he had seen any terrorists in the building. P.W.No.111 told the police that the terrorists might have gone on the terrace of the building. Two watchmen were seen lying in an injured condition. There were in all seven police officers and policemen. These seven Police officers, policemen alongwith Appa Jadhav and P.W.No.111 had gone to 6th floor of the building through elevator. After reaching 6th floor, the seven police officers and this witness got out of the lift/elevator and Appa Jadhav went down in the same lift. According to this witness, there was some noise on terrace of the building. Therefore, the police officer Mr.Date had climbed two steps of the staircase leading to the terrace and had thrown

some object towards the terrace. Thereafter, there was immediate firing from the terrace of the building in the direction of 6th floor. The police officers and this witness took shelter behind the wall. After sometime, P.W.No.109-Chandrakant Tikhe was seen coming down from the terrace raising his both the hands. The police held their guns towards Mr.Tikhe. P.W.No.111, however, informed the police that Mr.Tikhe was staff member of the Hospital. The Police officer Mr.Date indicated him that he should duck down. The police thereafter started firing towards the terrace. In the meantime, Mr.Tikhe had come down on 6th floor. Immediately, thereafter one hand-grenade was thrown from the terrace towards 6th floor where P.W.No.111 and police officers were standing. P.W.No.109 Mr.Tikhe was injured in the said grenade explosion. One police officer and one policeman had proceeded further towards the staircase leading to the terrace. Both of them had started firing. There was firing in retaliation from terrace of the building also. P.W.No.111 has stated that one butka(shorter terrorist) was firing from terrace of the building. That terrorist was seen on the landing area between the terrace and the 6th floor. The witness has identified the accused no.1 to be the same shorter terrorist and has stated that accused no.1 was firing at police officers and policemen. P.W.No.111 had started pulling

P.W.No.109 towards him as P.W.No.109 was injured in the grenade explosion. The witness has further stated that the police officer and the policeman who were firing towards terrace were also injured due to firing and had collapsed on 6th floor of the building. In the meantime, there was one more explosion due to the grenade thrown by the terrorists. This second explosion had injured most of the police officers present on 6th floor and P.W.No.111. P.W.No.111 had sustained injuries on his left chest and left thigh. Apart from these two injuries, he had also sustained some minor injuries on other parts of his body. He had,therefore, gone to second floor of the building where he was given first aid and was thereafter removed to G.T.Hospital. The accused no.1 was identified by this witness in the identification parade dated 14.1.2009.

317. As far as cross-examination of this witness is concerned, he has stated that he had seen the accused no.1 behind P.W.No.109 when P.W.No.109 was getting down from the terrace. This witness has no occasion to see the other terrorist. This witness has stated that he does not know as to at what time the terrorists had gone down from the terrace. As regards identification parade,this witness has stated that he does not

remember as to what clothes accused no.1 was wearing at the time of parade. He also does not remember as to at which serial number the accused no.1 was standing during the parade. He has denied the suggestion that he has not seen the accused no.1 on 26.11.2008 and that he is deposing false before the court.

318. P.W.112- Vijay Abaji Shinde was attached to Azad Maidan Police Station as A.P.I. in the month of November,2008. He was on duty at police station on 26.11.2008. He had reported for duty at about 20.45 hours. A wireless message was received on a Peter Mobile of Azad Maidan Police Station at about 21.50 hours that there was an incident of firing at Hotel Taj and C.S.T. railway station. The wireless operator had informed P.W.No.112. P.W.No.112, therefore, accompanied by other police officers and policemen, came out of the police station for patrolling. He was armed with a service pistol and 10 rounds. He and his other colleagues and policemen started patrolling the area in a police vehicle. When they reached near Metro Cinema, a message was received on Peter Mobile that the terrorists had gone to terrace of Cama Hospital and that they had been firing and lobbing grenades from terrace of the building. In the

meantime, Addl.Police Commissioner Mr.Date had reached Metro Cinema in his car. Addl.C.P.Mr.Date , P.W.No.112 himself and Mr.Date's Wireless Operator Mr.Tilekar, API Mr.Pawar,Head Constable Mr.Shinde, Wireless Operator Mr.Khandekar and other policemen proceeded towards Cama Hospital. When they reached near the gate of Cama Hospital on Mahapalika Road, PSI Mr.More also met them and joined them. As soon as they entered the hospital, they had seen two dead bodies in a pool of blood near main entrance of the building. Mr.Date and other police officers who were accompanying him had gone to 6th floor of the building. As soon as they reached 6th floor of the building, the terrace door was found closed. Mr.Date, therefore, hit a small stone on the said door to check movements of the terrorists. Immediately, thereafter firing started from the terrace. All the police officers,therefore, took position on 6th floor of the building and started firing towards the terrorists. At that time, P.W.No.112 realized that his pistol had locked and that it was not working. He,therefore, could not fire even a single round from his pistol. In the meantime, the terrorists had thrown one hand-grenade towards P.W.No.112 and other police officers. There was a big explosion. One of the fragments of hand-grenade had entered left knee joint of P.W.No.112. In the result, P.W.No.112 sustained

a bleeding injury on his knee joint. One more hand-grenade was thrown by the terrorists towards the police officers. P.W.No.112 sustained injury on his abdomen due to the second explosion and had become semi-unconscious. First he was removed to second floor of the Cama Hospital and thereafter he was removed to Bombay Hospital for further treatment. He was treated there for about 10 days. His statement was recorded by PSI Desai at Bombay Hospital. The statement was shown to this witness. He had identified his signature on the statement at **Ex.439.** It may be stated here that his statement was treated as FIR and offence was registered at Azad Maidan Police Station by the police officer Mr.Babasaheb Krishna Desai who has been examined as P.W.No.127. I will deal with the evidence of P.W.No.127 at a later stage. The clothes, belt,pistol holster of this witness were handed over to police by hospital authorities and they were seized by the police.

319. During the course of his further examination, he had identified his clothes and other Misc. articles seized by the police from the hospital authorities at Bombay Hospital. The witness has stated in his evidence that he had lost his pistol on the spot where the explosion had taken place. The

pistol seized by the police was shown to this witness. He had identified his pistol to be **Art.326.** P.W.No.127 in his evidence has stated that he had recorded the statement of P.W.No.112 which was scribed by a constable assisting P.W.No.127. The witness P.W.No.127 had identified his signature on the statement of P.W.No.112 and has further stated that on the basis of said statement of P.W.No.112, an offence vide Crime Registration No.245/08 was registered at Azad Maidan Police Station. The proforma FIR was filled in by the police constable assisting P.W.No.127. It was signed by P.W.No.127 himself and it is at **Exh.439A.**

320. As far as cross-examination of witness P.W.No.112 is concerned, he has stated that his signature is not there in the column for signature of complainant in the proforma FIR. According to this witness, his signature was not taken on the proforma FIR recorded by P.W.No.127. The witness has admitted that he has not stated in his statement that his pistol had locked during the incident and,therefore, he could not fire. He has also admitted that it is necessary to be stated in the police station, but he could not state so because he was feeling pain due to the injuries. He had no occasion to see the alleged terrorists in Cama Hospital. The witness in

his cross-examination has stated that he has identified his pistol on the basis of butt number-3275. It was suggested to him that 3275 was not correct butt number of his pistol. When the pistol was shown to this witness during the cross-examination, he had admitted that the correct butt number of the pistol produced by police at **Art.326** was 3725. He has denied the suggestion that his pistol had not locked during the alleged incident and that he had not lost his pistol. He also denied the suggestion that **Art.326** did not belong to the witness and that his statement **Exh.439** was not recorded at Bombay Hospital. The witness has denied that the FIR was fabricated by the police.

321. P.W.No.127-Babasaheb Krishna Desai was working as a Police Inspector and was attached to Azad Maidan Police Station on the night of 26th and 27th November,2008. The FIR of P.W.No.112 was recorded by this witness at Bombay Hospital. **Exh.439** was shown to this witness. It is stated by him that **Exh.439** , statement of P.W.No.112 was scribed by a police constable and was signed by P.W.No.127 himself. On the basis of statement of P.W.No.112, P.W.No.127 has registered an offence vide Crime Registration No.245/2008. The proforma FIR was shown to this witness. He has identified his signature on the proforma FIR **Exh.439A.**

Further investigation of this case was carried out by PI Mr.Thorawade.

322. **P.W.No.128-Mr.Yashwant Shankar Thorawade** has stated in his evidence that he was working as Police Inspector attached to Azad Maidan Police Station since Senior Police Inspector Mr.Prakash Shishupal had proceeded on leave on the night of 26.11.2008. This witness was holding charge of Senior Police Inspector of Azad Maidan Police Station. He had taken over investigation of Crime No.245/2008 from P.W.No.127 -Mr.Desai. During the period between 28.11.2008 and 2.12..2008,he has attempted to get some witnesses to record their statements. But none of the witnesses were ready to come forward to give any statement. The further investigation of this case was taken over by DCB CID on 2.12.2008. There is no cross-examination of this witness.

323. As stated by P.W.No.112, P.W.No.118 Mr.Sadanand Date, Addl.Commissioner of Police,was on 6th floor of new building of Cama Hospital. There was exchange of fire between the terrorists and the police.

324. **P.W.No.118-Mr.Sadanand Vasant Date** in his evidence has

stated that in the month of November,2008, he was Addl.C.P.,Central Region. On 26.11.2008 at about 10.00 p.m. when he was at home, he received information regarding incidents of firing. He,therefore, inquired from the Addl.C.P. of South Region in whose jurisdiction the incidents of firing had taken place, if he required any assistance from P.W.No.118. The said Addl.C.P. requested P.W.No.118 to visit C.S.T. railway station. The witness,therefore, went to Malbar Hill Police Station to collect arms and ammunitions before proceeding to C.S.T. He had collected one carbine and 20 rounds from Malbar Hill Police Station in the name of his wireless operator Mr.Tilekar. The carbine and rounds were issued in the name of wireless operator because the same were physically collected by him from the armory of Malbar Hill Police Station. He,thereafter, proceeded to C.S.T. Railway Station. When he reached near Metro junction, he met officers of Azad Maidan Police station viz. API Mr.Shinde, API Mr.Pawar and two head constables. He was informed by the officers that there was noise of firing on the backside of G.T.Hospital. It may be stated here that the backside of G.T.Hospital and Cama Hospital is more or less situated in the same direction. Badruddin Tayyabji road is on the backside of Cama Hospital as well as backside of G.T.Hospital. P.W.No.118 accompanied by

above- named police officers of Azad Maidan Police station proceeded to G.T. Hospital. They left their vehicles at Metro Junction and started walking towards G.T.Hospital. When P.W.No.118 and other officers reached near the lane leading to G.T.Hospital from the side of Mahapalika Road, they found that there was nothing abnormal in the said lane. (This lane is called Rang Bhavan lane or Badruddin Tayyabji Road) It was, however, learnt by them that there was some problem at Cama Hospital. They, therefore, proceeded to Cama Hospital and reached there within 7 to 8 minutes. One watchman of Cama Hospital met them on main gate of the hospital on Mahapalika Road and told them that there was some problem on 4th floor of the building. He also told them that firing had taken place inside the building. The police officers accompanied by the said watchman, therefore, proceeded to the main building. It may be stated here that the watchman who had accompanied the police officers is the same employee who has been referred to by P.W.111 in his evidence. The name of said employee was Mr.Appa Jadhav. Before the said watchman Mr.Appa Jadhav and police officers could reach the main building, they met a police officer by name Mr.More and one constable. The said police officer Mr.More and police constable had also joined P.W.No.118 and other police

officers. P.W.No.118 had also seen that two dead bodies were lying in front of main building of the hospital. He,therefore, briefed his subordinate officers at the main entrance of the building itself and asked one of the Head Constables to be at the main entrance. The said Head Constable was having a fire-arm with him. Except the Head Constable, all other police officers proceeded towards the lift. They came to know from the staff members that there was some problem on the terrace of the building. Police officers, watchman Appa Jadhav and P.W.111 Mr.Kailash Ghegadmal went to 6th floor by lift. All the police officers and P.W.No.111 got out of the lift. Watchman-Appa Jadhav, however, went down in the same lift .

325. P.W.No.118 was wearing a bullet proof jacket. He,however, instead of directly going to the terrace, thought it proper to assess the situation, and,therefore, he threw one metal object, which was lying on 6th floor of the building, towards the terrace door. Immediately, there was burst firing from an automatic weapon from terrace of the building. All the police officers, therefore, took position behind a wall and in retaliation started firing towards terrace door. After sometime, one bulky person was seen on the landing area between terrace and 6th floor. P.W.No.118, therefore,

challenged the said person who was coming down, obviously thinking that he was one of the persons who had been indulging in firing. The said bulky person, however, raised his hands and at the same time P.W.No.118 was informed by P.W.No.111 that the said bulky person was staff member of the hospital. P.W.No.118, however, indicated the said bulky person to duck down. This bulky person is the same person who has been examined by the prosecution as P.W.No.109 viz. Chandrakant Tikhe. P.W.No.109 followed the direction of P.W.No.118. Thereafter P.W.No.118 fired towards the terrace door. Taking advantage of this situation, P.W.No.109 came down from the terrace to 6th floor of the building. In the meantime, one grenade was thrown from the terrace door which exploded on 6th floor injuring P.W. No.109-Mr.Tikhe, P.W.No.118 himself and other police officers. After the explosion of hand-grenade, the police officers continued to fire towards the terrace. In the meantime, there was another grenade explosion on 6th floor. The second explosion had injured almost all police officers who were on 6th floor of the building. The injured police officers, policemen and staff members of Cama Hospital were asked to go down. Mr.More,Police officer, who had joined P.W.No.118 at the gate of Cama Hospital, could not move because he was badly injured and was unconscious. Police Constable

Mr.Khandekar also could not move for the same reasons. P.W.No.118 continued to fire towards terrace in retaliation of firing from the terrace. The exchange of fire went on for about 40 minutes. During the course of said 40 minutes of exchange of fire, P.W.No.118 had taken cover behind a wall situated in front of right side lift of 6th floor. After sometime, P.W.No.118 sensed some movements on 6th floor and he could see that two persons had gone down from 6th floor to 5th floor. It was around 11.50 p.m. P.W.No.118 accordingly informed his superior officers on cell phone that two persons had left Cama Hospital from 6th floor. He had also informed his superiors that they had automatic weapons and hand- grenades. The help came to P.W.No.118 after about 45 minutes of his intimation to the superior officers. He was shifted to K.E.M.Hospital and was admitted there as indoor patient. He had sustained injuries on his right eye,left side of chest and below armpit, throat, right knee and left ankle due to the fragments of the grenades. He had also sustained other minor injuries, apart from the abovesaid major injuries. His uniform, which he was wearing at the time of incident, was later on seized by the I. O. He had identified his shirt and pant as **Arts.382 & 383**. He has also identified his cap as **Art.385**.

326. During the course of cross-examination by Ld.Advocate Mr.Abbas Kazmi, he has admitted that Mr.More and one constable who had joined them, had come to Cama Hospital in a police jeep. They got down from the police vehicle and the police officers went ahead. It is also stated by this witness in the cross-examination that his wireless operator Mr.Tilekar and police constable Mr.Khandekar had one carbine each at the time of incident. These carbines were used by P.W.No.118 also during the course of operation narrated above. He has denied the suggestion that he had not seen anybody moving from 6th to 5th floor. Though cross-examination is quite lengthy, the other part of cross-examination does not appear to be necessary to be discussed in the Judgment.

327. **P.W.No.130-Mr.Nitin Appaso Mathne, P.C.No.970793,** has stated in his evidence that he was attached to Anti Terrorist Squad for about 8 months till the date of incident. He was working as wireless operator on the office vehicle of Late Shri Hemant Karkare, the then Joint Commissioner of Police(A.T.S.). A wireless set was installed in the car provided to Mr.Hemant Karkare. Mr.Hemant Karkare was also provided with a protection by Special Unit of Mumbai. Three officers of Quick

Response Team(QRT) were deployed for protection of Mr.Hemant Karkare.

328. The witness has further stated that on 26.11.2008, after finishing office work, Mr.Hemant Karkare and this witness reached the residence of Mr.Hemant Karkare at about 9.45 p.m. However, after sometime,Mr.Karkare came out of his residence and told P.W.No.130 and other staff members that they were required to go to C.S.T. Accordingly, Mr.Karkare, P.W.No.130 and the officers attached to the protection squad, proceeded to C.S.T. Driver Mr.Girola was driving the car. The officers of QRT were armed with AK-47 rifles. As they reached near Haj House on D.N.Road, it was seen that the police had installed barricades on the road to block the road. Mr.Hemant Karkare and his team, therefore, had to got down from the vehicle and had to walk upto C.S.T. Railway Station. D.C.P. Mr.Sanjay Mohite, Addl. Commissioner of Railway Police Mr.Raghuwanshi and D.C.P.Mr.Koregaonkar were present there. During the course of conversation with the said officers, it was disclosed to Mr.Karkare that the terrorists who had been firing at C.S.T.Railway Station, had gone towards SB-1 from railway foot over bridge. Mr.Karkare, therefore, put on a bulletproof jacket and helmet and took his pistol from his

vehicle. Mr.Karkare accompanied by the jawans of QRT, proceeded towards SB-1 office through Badruddin Tayyabji Road (B.T.Road). When they reached at backside of Cama Hospital, there was noise of firing and explosion from the hospital. P.W.No.130, Mr.Hemant Karkare and others accompanying him, took crouching position near the backside gate. After sometime, some staff members of crime branch were seen approaching from the side of SB-1 office. They were in all 4 to 5 officers. After sometime, Addl.C.P. Mr.Ashok Kamate also reached there alongwith his staff members. PI Mr.Salaskar also reached there within a short time. There was a brief discussion amongst the officers as to what action they should take in the circumstances. In the meantime, there was again noise of firing and explosion in Cama Hospital and after sometime Mr.Tilekar, wireless operator of Addl.C.P. Mr.Date was seen coming out from backside gate of Cama Hospital. Since the gate was locked, Mr. Tilekar was rescued by breaking open the said lock. There was one Bolaro police jeep in Cama Hospital near backside. The said Bolero jeep was also brought out of the hospital premises. At this point of time, there was firing from terrace of Cama Hospital directed towards the place where these officers were standing on Badruddin Tayyabji Road. Addl.C.P. Mr.Ashok Kamate fired

towards terrace of Cama Hospital. After sometime, noise of firing was heard from the side of St.Xavier's College,which is adjoining Cama Hospital towards SB-1 office. Mr.Hemant Karkare told P.W.No.130 and other policemen and police officers to take position behind Cama Hospital itself. Mr.Karkare also told them that Mr.Hemant Karkare himself and other officers would enter Cama Hospital from the main gate abutting Mahapalika Road. Therefore, PI Mr.Salaskar, Addl. C.P.Mr.Ashok Kamate and Mr. Hemant Karkare left the said place in a Qualis police vehicle of Addl.C.P, Pydhoni, which was found parked nearby. The drivers' seat was occupied by Mr.Salaskar, Addl.C.P. Ashok Kamate occupied front left seat, Mr.Hemant Karkare occupied the middle seat, the driver of the said vehicle Mr.Bhosale, Mr. Ashok Kamate's wireless operator Mr. Jaya Patil and Mr. Arun Jadhav occupied extreme back seat of the vehicle. As such, in all three officers and three policemen proceeded towards the main gate of Cama Hospital via B.T.Road in the said Qualis vehicle at about 11.55 p.m. The witness has further stated that after 5 to 7 minutes of the departure of said vehicle, he heard sound of burst firing from the direction of St.Xavier's College. P.W.No.130 himself and other policemen who were present on the backside of Cama Hospital thought that the firing must have been done by

the police. However, after sometime, there was complete silence. There was no sound of either firing or explosion inside or outside Cama Hospital. Therefore, P.W.No.130 and members of QRT proceeded towards St. Xevier's college via B.T.Road. They had seen the three officers viz. Late Mr.Hemant Karkare,Mr.Kamate and Mr.Salaskar lying in injured condition on B.T.Road in front of A.T.M. of Corporation Bank. All of them had bleeding injuries and were profusely bleeding. There were lot of empty cartridges and glass pieces on the road. The police vehicle in which the officers had travelled from the backside of Cama Hospital was missing. One Honda City White car was seen stationary in a slanting position on B.T. Road at some distance from the ATM Center. Mr.Hemant Karkare was removed to hospital in the vehicle of QRT. Mr.Kamate was removed to hospital in the vehicle of police escort of Mr.Karkare. In the meantime, one Bolaro Police Jeep came there and Mr.Salaskar was taken to the Hospital in the said jeep. This witness had accompanied the injured Mr.Ashok Kamate who was taken to Bombay Hospital. Mr.Kamate was declared dead before admission. The witness came to know that Mr.Karkare had been taken to J.J.Hospital. He, therefore, rushed to J.J.Hospital. He was there upto 8 a.m. on 27.11.2008 and thereafter he had gone to the residential house of

Mr.Karkare. He had narrated the incident to wife of Mr.Karkare. After that he had gone to Azad Maidan Police Station to lodge the complaint. His complaint(**Ex.522)** was recorded by P.W.No.141-Mr.Shelke. P.W.No.130 has identified his signature on the complaint(**Ex.522**). He has also identified his signature on the proforma FIR (**Exh.522A**). The witness has further stated that he was present when the spot panchnama was drawn by PI Mr.Londe.

329. This witness has admitted in his cross-examination that deceased Mr.Ashok Kamate was having AK-47 with him. Moreover, this is the case of prosecution itself that Mr.Ashok Kamate had an AK-47 with him at the time of incident. This witness has denied the suggestion that the complaint and proforma FIR were not registered on 27.11.2008 and that they were fabricated later on. He has also denied that he was deposing false. There is one minor omission in the earlier statement of this witness. Though he has stated in his evidence before the court that he has gone to the house of Mr.Karkare and had narrated the incident to Mrs.Karkare, he has not stated this fact to the police in his complaint. There is nothing more than this in the cross-examination of this witness.

330. P.W.No.141-Mr.Atmaram Rangnath Shelke, Police Sub Inspector has stated in his evidence that he had recorded statement of P.W.No.130. The statement/ complaint **(Ex.522)**was shown to this witness. He has stated that it is in the hand-writing of Asstt.Sub-Inspector Mr.Valvi. It bears signature of P.W.No.141. The proforma FIR also bears the signature of P.W.No.141. This witness had registered the offence vide Crime No.246/08 on the basis of complaint of P.W.No.130.

331. P.W.No.133-Mr.Shantilal Arjun Bhamre, was working as Addl.C.P.,Pydhoni Division. On 26.11.2008, he left his office at about 9.00 p.m. in his Qualis police vehicle bearing Registration No.MH-01-BA-569. At about, 10.00 p.m.,he received a telephone call from his wireless operator that there was a terror attack and that firing was going on in some parts of South Mumbai. The wireless operator was in the vehicle itself and the said vehicle was returning to the office of P.W.No.133 after dropping him at his residence. As stated earlier, the wireless operator of said vehicle had intimated P.W.No.133 regarding the incident. He, therefore, called the vehicle back to his residence and returned to his office. In view of the message received by him, he immediately deployed police in front of

L.T.Marg P.Stn.,G.T.Hospital upto Crowford Market and he himself was also patrolling the area in his Qualis police vehicle. Asstt.Sub-Inspector Mr.Balasaheb Bhosale was driving the vehicle and police constable Mr.Yogesh Patil was manning the wireless set. The call sign of the said wireless set was '**Able**'. While this witness was patrolling the area within the jurisdiction, it was noticed by him that the Sr.police Inspector of L.T.Marg. P.Stn. was not there at B.T. Road,where he was supposed to be as per the deployment made by P.W.No.133. He, therefore, proceeded further to B.T.Road from the side of Mahapalika Road and noticed that some armed officers and policemen had taken position at the backside of Cama Hospital. The Sr.P.I. of L.T.Marg P.Stn. and his staff members were also seen by P.W.No.133. He had also seen three Sr.Police Officers viz. Mr.Karkare, Mr.Kamate and Mr.Salaskar on B.T.Road. After sometimes, these three officers had boarded the Qualis vehicle of P.W.N0.133 and had proceeded in the said vehicle towards SB-1 office. They were accompanied by their staff members also. The driver Mr.Bhosale and wireless operator-Mr.Yogesh Patil of the said vehicle also went alongwith the said three Sr.Police Officers in the same vehicle.

332. At this stage,it may be stated here that B.T.Road is one way road, entry is permitted from D.N.Road from the side of Times of India and the exit of that road is Mahapalika Road by the side of St.Xavier's College. SB-1 office, popularly known as 'passport of police' is situated in between Times of India and St.Xavier's college on B.T.Road.

333. After sometime P.W.133 left B.T.Road alongwith Sr.P.I. of L.T Marg.P.Stn. in the vehicle of Sr.P.I., as it was necessary for these officers to go to their jurisdiction to supervise the patrolling. Sometime thereafter , there was a message from Control Room on Peter Mobile of Sr.P.I.that they were required to reach the lane of Rangbhavan (B.T.Road). P.W.No.133,therefore, immediately rushed to B.T.Road near Corporation Bank ATM Center and had seen that Mr.Karkare,Mr.Kamate & Mr.Salaskar were lying in injured condition. They were removed to hospitals in different police vehicles. This officer, in his cross-examination has stated that he heard sound of firing after about 5 to 7 minutes of departure of Mr.Karkare and other officers in the Qualis vehicle. It may be noted here that this witness in his examination-in-chief itself has stated that he left B.T.Road via D.N.Road and not via Mahapalika Road. Had he left

B.T.Road for L.T.Marg P.Stn. via Mahapalika Road, probably he would have come across Mr.Hemant Karkare and others who had left B.T.Road few minutes before P.W.No.133 leaving the place. There is nothing more in his cross-examination which needs to be stated here.

334. It is the case of prosecution that the accused No.1 and the deceased accused No.1- Abu Ismail had fired at the white Honda City car at B.T.Road and that the driver of the said car Mr.Maruti Phad was injured due to the said firing . The prosecution has examined P.W.139-Mr.Maruti Phad and P.W.140-Mr.Bhushan Gagrani to establish these allegations.

335. **P.W.No.140- Mr.Bhushan Ashok Gagrani** is IAS Officer who stays in Yashodhan Building at D.V.Road,Churchgate. He was provided with official Honda City Vehicle bearing Registration No. MH-01-ZA-102. P.W.No.139- Maruti Madhavrao Phad was the official driver of the said car. Mr.Maruti Phad was staying in Govt.Quarter at High Rise Building within the premises of G.T.Hospital,Mumbai. The official vehicle of P.W.No.140 was normally being parked in the premises of High Rise Bldg. after office hours as there was no sufficient place of parking in

Yashodhan Bldg. at Churchgate. On 26.11.2008, at about 11.30 p.m., this witness had received a message from Chief Secretary to reach Mantralaya as there was some urgent meeting. He,therefore, called his driver(PW No.139) to bring his car to Yashodhan Bldg. The car however did not reach within expected time. P.W. No.140 again called his driver P.W.No.139,but he did not turn up. P.W.140, therefore, went to Mantralaya in his personal car. P.W.No.140 again tried to contact P.W.No.139. At this time, he got response from P.W.No.139 and was told that the car was in the vicinity of Rangbhavan and that there had been firing on the car. P.W.No.139 requested for immediate help. P.W.No.140, therefore, tried to contact police control room. He was getting the number of control room busy continuously. Therefore, he requested the Supdt. of G.T.Hospital to provide necessary help to P.W.No.139. After about one hour, P.W.No.140 received a message that P.W.No.139 had sustained bullet injuries and that he had been admitted to G.T.Hospital for treatment.

336. P.W.No.139- Maruti Madhavrao Phad who was working as an official driver of P.W.No.140 has corroborated evidence of P.W.No.140 inasmuch as the registration number of the car and his residential address is

concerned. He has further corroborated the evidence of P.W.No.140 that he had received a phone call from P.W.No.140 at about 11.30 p.m. on 26.11.2008 on his Cell No. 9869309161. He was directed by P.W.No.140 to bring the car to Yashodhan Bldg. as they were required to reach Secretariat for urgent meeting. P.W.No.139,therefore, took out the car from the premises of High Rise Bldg. and was proceeding towards Yashodhan Bldg via Mahapalika Road. As he was approaching Mahapalika Road through B.T. Road, he had seen two persons firing on the road, one of them was taller and other was shorter. The shorter person has been identified by this witness to be the accused no.1 before the court. Apprehending danger from the said two persons, P.W.No.139 stopped his vehicle and thereafter took the vehicle in reverse direction. At that time, accused no.1 and his associate had fired at his vehicle. Two of the bullets had pierced to the windscreen and had hit right hand of P.W.No.139. P.W.No.139 had taken duck position to avoid fatal injury from the shorts fired at him. When the accused no.1 and his associate reached near the said Honda City Car, P.W.No.139 was lying on the seat and pretended to be dead. The accused no.1 and his associate had caused further injuries to this witness by firing at the vehicle. One of the bullets had hit on left side waist

of P.W.No.139. This witness, at that time, realized that one of the tyre tubes had been punctured and,therefore, he center locked the doors by means of switch available inside the car. Accused no.1 and his associate tried to open the car, but they could not succeed. After sometime, both of them were seen going towards SB-1 office on B.T.Road. This witness has seen them from windscreen of the car. As both of them reached near High Rise Bldg.,they had taken cover behind the bushes abutting High Rise Bldg. At the same time, one police vehicle was seen approaching Mahapalika Road from the side of SB-1 office. As soon as the vehicle reached in front of bushes, the accused no.1 and his associate started firing indiscriminately on the said vehicle. During the said incident, accused no.1 had sustained a bullet injury. Consequently, his gun fell down,but he picked up his gun and again started firing at the police vehicle. Within a very short time, the associate of accused no.1 who was comparatively much taller to him, went near the said police vehicle, opened right front door and pulled the driver down on the road. He also pulled another person down from the middle seat of the vehicle. Accused no.1 went on left side of the vehicle and pulled the person who was sitting on the left front seat. His associate occupied the driver's seat and accused no.1 occupied left front seat of the vehicle. The

vehicle proceeded to Mahapalika Road. P.W.No.139 apprehended danger to his life from the said two persons and he continued to be in a lying position in his own vehicle. The above narrated incident was seen by this witness from the distance of about 150 ft.

337. This witness has also corroborated the evidence of P.W.No.140 inasmuch as he has stated that when he was lying in the car,he had received phone call from Mr.Gagrani (PW-140) and he had narrated the incident in brief. After sometime, one jeepsy police vehicle and a police wireless came there and P.W.N.139 was shifted to hospital. P.W.No.139 lost his ring finger due to the bullet injuries sustained by him on his right hand. His other fingers are also not functioning properly due to the bullet injuries.

338. According to this witness, the associate of accused no.1 was taller and his height was about 6ft.,he was of fair complexion and aged about 22 to 25 years. The accused no.1 has also been identified by this witness. Accused no.1 was earlier identified by this witness during the course of investigation when identification parade was held by S.E.O. Mr.Vichare. As far as the deceased accused No.1-Abu Ismail is concerned,

as stated earlier, it is the case of the prosecution that he died in the incident which had occurred at Chowpaty. He was found in possession of fake identity card. The said identity card Art.-61 was shown to this witness. The witness has identified the photograph on the said identity card to be of the same person who was accompanying the accused no.1. The dead body of the deceased accused No.1 was identified by this witness in the mortuary of J.J.Hospital.

339. In his cross-examination, this witness has stated that he had seen the accused no.1 and the deceased accused No.1 firing at the police officers at Mahapalika Road. It may be stated here that it has come in the evidence of some other witnesses that one police officer was shot at by the accused no.1 and the deceased accused No.1 at Mahapalika Road. As such, in fact this part of the cross-examination of the witness corroborates the evidence of other witness, as far as the incident of firing at the said police officer is concerned. In the further cross-examination, this witness has stated that the accused no.1 did not have bag on his shoulder,whereas the deceased accused No.1 had a bag on his shoulder. Both of them were holding guns. This witness has also stated in his cross- examination that the

police vehicle had come within 4 to 5 minutes of the accused taking cover behind the bushes. The vehicle was in slow speed. He had seen the accused no.1 and the deceased accused No.1 leaving the spot in the said police vehicle. He had not seen anybody else in the said vehicle. He has denied the suggestion made by the Ld.Adv. for the accused that he was deposing false and that he has identified the accused No.1 at the instance of the police.

340. P.W.No.136- Mr.Arun Dada Jadhav is one of the policemen who were sitting in the extreme rear portion of the police Qualis vehicle in which the police officers Mr.Karkare,Mr.Kamate and Mr.Salaskar and three other policemen were killed. This witness was attached to Anti Extortion Cell of Mumbai Police, where the Late Shri Vijay Salaskar was working as Chief of the said Cell. The office of the Cell was situated within the premises of Commissioner of Police, Mumbai at Crowford Market. This witness reached the office of Anti Extortion Cell at 21.45 hrs. on 26.11.2008. Around that time, he received a phone call from Police Inspector Mr.Alaknure that firing had been going on at Colaba & Taj Hotel. P.W.N0.136, therefore, intimated his Chief Mr.Salaskar regarding the same.

Mr.Salaskar told P.W.No.136 that he himself and other staff members of Anti Extortion Cell should reach Colaba Police Station with arms and ammunitions from the Armoury of Anti Extortion Cell. P.W.N0.136 and his colleague Mr.Shetye collected one carbine each and 35 rounds each from Armoury of Anti Extortion Cell and reached Colaba Police Station. Mr.Salaskar & Mr.Alaknure were present at the Police Station.

341. P.W.N0.136, when he was at Colaba Police Station, received information that some terrorists after firing at C.S.T.Railway Station, had entered Cama Hospital via B.T.Road. Therefore, both the officers i.e.Mr. Vijay Salaskar and Mr.Alaknure and both the policemen i.e. P.W.N0.136, himself and Mr.Shetye, reached B.T.Road at about 11.30 p.m.. Some police officers including Mr.Karkare and Mr.Kamate and some policemen were already present at B.T. Road of behind Cama Hospital All the officers and policemen took position for encountering the terrorists who were reportedly in the premises of Cama Hospital. One policeman was seen coming out of Cama Hospital from backside gate. He was in an injured condition. While the said policeman was coming out of Cama Hospital from the backside, the firing from Cama Hospital towards B.T.Road started.

Addl. C.P. Mr.Kamate, who was holding AK-47 started firing up in the direction of Cama Hospital. The said police constable who was in an injured condition informed that Addl.C.P.Mr.Date and some police officers were lying in an injured condition on upper floors of the hospital. The said police constable was sent to the hospital for treatment. After getting this information, the police officers Mr.Karkare, Mr.Kamate and Mr.Salaskar had some discussion and it was decided that the officers should enter Cama Hospital from the main gate. It may be noted here that the main gate of Cama Hospital is situated on Mahapalika Road. The officers apprehended that the terrorists might escape from Cama Hospital . Therefore, the said three police officers alongwith P.W.N0.136, two constables Mr.Yogesh Patil and Mr.Jaywant Patil and driver of Qualis Vehicle of Addl.C.P. of Pydhoni Division Mr.Bhosale, proceeded to Mahapalika Road in the Qualis Vehicle of Mr.Bhamre Addl. C.P. Pydhonie Division (PW no.133). Mr.Salaskar occupied the driver's seat. Mr.Kamate occupied left front seat and Mr.Karkare occupied the middle seat of the vehicle. Constables Mr.Jaywant Patil and wireless operator Yogesh Patil, driver Mr.Bhosale and P.W.N0.136 sat on the small seat available in the extreme back of the vehicle. There was one wireless set in the said vehicle.

342. While the vehicle was proceeding towards SB-1 office on B.T.Road,, a message was received on wireless of the said Qualis Vehicle that the terrorists had been firing in Rangbhavan (B.T.Road) lane near a red vehicle. Mr.Kamate, therefore, directed Mr.Salaskar to slow down the vehicle. The vehicle, therefore proceeded further in a slow speed. As soon as the vehicle reached near the bushes, where the accused no.1 and deceased accused No.1-Abu Ismail were hiding themselves, firing started from behind the bushes. P.W.N0.136 had seen two persons firing at the vehicle by means of AK-47 rifles. One of them was taller and other one was shorter. In retaliation, Mr.Karkare, Mr.Kamate,Mr.Salaskar & P.W.No.136 started firing at the shorter i.e. accused no.1 and the taller fellow. During the incident of exchange of fire between the police on one hand and accused no.1 and his associate on the other, P.W.No.136 had sustained bullet injuries on his right elbow and left shoulder. As P.W.N0.136 had sustained injuries on limbs on his both the sides, he could not hold the carbine and the same had fallen down in the said vehicle itself. The accused no.1 and his associate had continued to fire at the vehicle. After sometime, there was complete silence. P.W.N0.136 had seen the taller fellow while trying to open the rear side door of the vehicle, he

however could not open the same. P.W.N0.136 tried to pick up his weapon, but was unable to do the same. Driver Mr.Bhosale, Mr.Yogesh Patil and Mr.Jaywant Patil were badly injured and were unable to move. Realizing that it is difficult for him to retaliate or apprehend the accused no.1 and associate, P.W.N0.136 confined himself to his fate and pretended to be dead. He had heard noise of opening doors of vehicle and after sometime also heard noise of starting of the said vehicle and realized that the vehicle was running on a road. He had seen that the taller fellow was driving the vehicle. His officers Mr.Karkare, Mr. Kamate and Mr.Salaskar were not seen in the vehicle. When the vehicle reached at Metro Junction, he had heard sound of firing, but he continued to pretend as if he was dead. P.W.N0.136 also realized that the vehicle was running in a damaged condition and that one wheel tubes seemed to have punctured. The vehicle after some distance, had stopped at the backside of Vidhan Bhavan. The accused no.1 and deceased accused No.1-Abu Ismail got down from the vehicle and left the spot in a car looking like Honda City car. P.W.136 could see both of them in street lights. After accused no.1 and deceased accused No.1-Abu Ismail left the spot, P.W.N0.136 gave information to the Control Room that two terrorists had run away in a car and that the vehicle

of Addl. C.P., Pydhoni Division(Able), in which Mr.Karkare and others were travelling, was lying abandoned in front of State Bank of Mysore. P.W.N0.136 had also requested for help from the Control Room. After sometime, Peter Mobile of Marine Drive Police station reached there. Police officer Mr.Amrute had come in the said vehicle. P.W.N0.136 had narrated the incident to Mr.Amrute. P.W.N0.136 was removed to St.George's Hospital in an ambulance. He was thereafter shifted to Bombay Hospital for further treatment. He was treated as an indoor patient at Bombay Hospital for about 20 days. He has given description of both the accused. According to him, the taller terrorist was 6ft. in height and in the age group of 22 to 25 years. The accused no.1 has been identified by him in the court. The accused no.1 was earlier identified by this witness in the identification parade on 27.12.2008. Dead body of the deceased accused No.1 who was accompanying the accused no.1, was also identified by this witness on 6.1.2009. The carbine & magazine seized by the police, as per the panchnama of Qualis vehicle were shown to this witness. He has identified his carbine and magazine Art.444 colly. This witness in his cross-examination has stated that he did not know whether police constables Jaywant Patil and Yogesh Patil had fire arms with them. He had not seen

them firing at the terrorists. This witness however had seen one white car with red beacon At B.T.Road. This vehicle is the same vehicle P.W.N0.139-Maruti Madhavrao Phad was driving to Yashodhan Building from High Rise Building, but could not reach Yashodhan Building because of the incident of firing. P.W.136 had also seen one red colour vehicle on B.T. Road. According to this witness, there were street lights on B.T.Road and that there were no pedestrians on the road when Qualis vehicle was proceeding towards Mahapalika Road. He had also not seen any passerby or anybody from the High Rise Building. The carbine which P.W.N0.136 was holding was on single fire mode. He could not convert the same into burst firing mode. He could not get an opportunity to do so as incident itself lasted for not more than 4 to 5 minutes. He has admitted that the gun of accused no.1 had fallen down during the firing. The accused no.1, had however again picked up his gun and fired at police vehicle. The witness further states that in all 5 bullets had hit him during the incident. Three bullets had hit him on the right elbow and two bullets on his left shoulder. One of the three bullets is still inside his body. He claims that he was conscious even after sustaining bullet injuries. He has partly collapsed on the seat. However, his head was at the level of backside of the seat and he

was able to see the road from the window. He was unable to say whether Jaywant Patil, Yogesh Patil and Bhosale were dead or they were unconscious. He is however candid enough to tell that none of them was able to speak. It appeared that their breathing had stopped, in fact Constable Yogesh Patil was lying on the knee of this witness after the incident of firing.

343. While accused no.1 and deceased accused No.1-Abu Ismail took charge of the vehicle and started proceeding further from B.T.Road, mobile phone of the deceased Constable Yogesh Patil had rung. Accused no.1, who was sitting on left front seat, had opened fire in a burst mode towards rear side of the vehicle by sitting on his seat only. The bullets had hit Mr.Yogesh Patil after piercing through middle seat of the vehicle. According to this witness, Mr.Yogesh Patil had died due to the bullet injuries sustained by him during this incident of firing. P.W.N0.136 however did not sustain any bullet injury during the burst firing which took place in the vehicle itself. It is stated by this witness that accused no.1 might have shot 10 to 15 rounds from the burst firing. The deceased accused No.1Abu Ismail had pulled Mr.Salaskar out of the vehicle.

Accused no.1 had pulled Mr.Karkare out of the vehicle and Mr.Kamate was also taken out of the vehicle by deceased accused no.1. It is further stated by him that accused no.1 had also assisted the deceased accused no.1 in removing Mr.Karkare from the vehicle. In his further cross-examination, this witness has stated that it was around 00.25 hrs. that Accd.No.1 and the deceased accused No.1 had left police vehicle. Thereafter,he pulled hand-set wireless which was hanging behind the driver's seat and had given intimation to the Control Room regarding location of Qualis vehicle.

344. P.W.No.137-Mr.Sanjay Dattatraya Amrute was working asSr.Inspector of Police,Marine Drive Police Station on 26.11.2008. At about 00.27 hrs. he was on duty outside Oberoi Hotel following the terror attack on the said hotel. At about 00.27 hrs. he received wireless message that police vehicle of Pydhoni Division had been hijacked and same had been left near Vidhan Bhavan. He was informed that there were some injured persons in the said vehicle. Therefore, he immediately rushed to the said spot. He reached there at about 00.30 hrs. as the place where the vehicle was left by accused no.1 and the deceased accused No.1 was hardly

less than 1 k.m.from Oberoi Hotel. API Mr.Kude and other staff members were also with him. P.W.N0.136 was there in the vehicle. He disclosed his identity to P.W.N0.137. Three other policemen were also seen lying in an injured condition on rear seat of the vehicle. The incident was narrated to P.W.N0.137 by P.W.N0.136. P.W.N0.137 therefore immediately gave message to Control room to send ambulance. The ambulance reached there within few minutes. P.W.N0.136 and other injured constables were removed to St. George's Hospital. One constable was kept on duty near the Qualis vehicle for security reasons. P.W.N0.137 thereafter returned to Oberoi Hotel.

345. His cross-examination is confined to the operation of Oberoi Hotel and no material question has been asked to this witness pertaining to the vehicle found on backside of Vidhan Bhavan. (Barrister Rajani Patel Marg).

346. **P.W.N0.138- Mr.Suresh Shantaram Kadam** is another witness who is an eye witness to the incident which had occurred at Mahapalika Road and B.T. Road and in which the accd.no.1 and his

deceased associate Abu Ismail were involved. This witness at present working in Protection Branch of Mumbai Police. He was attached to Azad Maidan Police Station on 26.11.2008 and was on duty on the fateful night of 26th and 27th November,2008. A message was received at police station that there had been indiscriminate firing by certain elements at C.S.T.railway station. PSI Mr.Shinde, Mr.Pawar & Mr.Shelke left Azad Maidan Police station immediately for patrolling. P.W.N0.138 also accompanied them. While they were patrolling within the jurisdiction of Azad Maidan Police station near the office of DCP Zone-I near Bora Bazar, they received a wireless message that the two terrorists had been proceeding to Metro Cinema. They therefore immediately proceeded to Metro Cinema in two police vehicles. In the meantime, Addl.C.P. Mr.Date also reached at Metro junction. He discussed the whole incident with the officers of Azad Maidan Police Station. In the meantime, one more wireless message was received that the terrorists had reached the terrace of Cama Hospital. Addl.C.P. Mr.Date, the officers of Azad Maidan Police station who were on patrolling duty and P.W.N0.138 proceeded to Cama Hospital on foot. They left their vehicles at Metro junction. Mr.Date and other officers directed P.W.N0.138 that he should collect bullet proof jackets and arms &

ammunitions from Azad Maidan Police Station. Accordingly, P.W.N0.138 accompanied by P.W.N0.141-PSI Mr.Shelke and other policemen visited Azad Maidan Police Station to collect bullet proof jackets and arms & ammunitions. He collected two jackets from the police station and reached in front of Cama Hospital in Bolero police vehicle. He was accompanied by Sr.PI Mr.Thorawade(P.W.No.128), P.W.N0.141-Mr.Shelke, P.C.-Mr.Utekar and P.C.-Mr.Rathod. P.C.-Mr.Gawade was driving the said vehicle. The vehicle was parked on left side of the Mahapalika road opposite Cama Hospital, as they thought that the terrorists might come out of the hospital from the main gate. It may be stated here that the vehicle was on the other side as the road divided by road divider in front of Cama Hospital. The place indicated by this witness is just opposite gate of Cama Hospital on other side of the road. It may also be stated here that the place indicated by this witness is also just opposite B.T.Road. As such, it can safely be said that the B.T.Road was visible from the place where P.W.N0.138 and his police officers had taken position.

347. It is around 11.45 p.m. that two persons were seen by this witness on footpath of Cama Hospital. One of them was taller and other

one was shorter. He has identified the accd. no.1 to be the same shorter fellow. While these two persons were on footpath of Cama Hospital, P.W.N0.138 had also seen one motorcycle proceeding towards C.S.T. Railway Station from Metro junction on Mahapalika Road. There was one police officer on pillion seat of the motorcycle. The said police officer got down near the gate of St. Xavier's College. The motorcycle went ahead. The said officer had been directing the persons returning from C.S.T.Railway station to go back to the same direction. At this point of time, accused No.1 and the deceased accused No.1-Abu Ismail proceeded towards the said officer and fired at him from a distance of 15 to 20 ft. P.W.N0.138 and his officers also fired at accused no.1 and the deceased accused No.1. P.W.N0.138 claims to have fired one round from his pistol. The accused no.1 and the deceased accused No.1 fired at P.W.N0.138 and his officers in retaliation. In the meantime, one white car was seen approaching Mahapalika Road from B.T. Road. It had red beacon. After sometime, the said car was seen going in the reverse direction. Accused no.1 and the deceased accused No.1 were seen firing at the said vehicle. One of them was seen throwing hand-grenade to the said white car. Thereafter, the accused no.1 and the deceased accused No.1 proceeded

towards Rangbhavan Lane (B.T.Road). It may be noted here that this was the same white car which the P.W.N0.139 was driving as he wanted to go to Yashodhan Building to pick up P.W.N0.140 Mr.Bhushan Gagrani, who was required to attend urgent meeting at Mantralaya.

348. As far as the officer who got down from the pillion seat of motorcycle is concerned, he was injured due to firing on the part of accused No.1 and the deceased accused No.1 and was taken to St. George's hospital for treatment. The witness had seen the name plate of the said officer and has stated that the name of the said officer was Mr.Durgude. The accused no.1 was identified by this witness during investigation when identification parade was held on 27.12.2008. The dead body of the other person who was accompanying accused no.1 and who is stated to be the deceased accused Abu Ismail, was also identified by this witness on 6.1.2009. This witness was also present when the spot panchnama was drawn and he had shown police the place where Mr.Durgude was shot at.

349. In his cross-examination, this witness has admitted that he was directed by Mr. Date to reach Cama Hospital after collecting bullet proof

jackets and arms & ammunitions from Azad Maidan Police Station. It was therefore suggested to this witness that they had entered Cama Hospital in Bolero Vehicle.

350. In this regard, it may be stated here that one Bolero vehicle was seen parked on backside of Cama Hospital which was taken out of the premises by the police officers when the injured Mr.Tilekar had come out of the backside of Cama Hospital. The prosecution has not given any explanation regarding the same. It is therefore, possible that P.W.138 along with Police Officers of Azad Maidan Police Station had entered Cama Hospital and ran away back to the Mahapalika Road apprehending danger to their lives as it is around this time the accused No.1 and the deceased accused No.1-Abu Ismail had come out of the hospital. This definitely is cowardliness and lack of devotion towards the duty. As far as its effect on merits of the case is concerned, the same shall be discussed later on at an appropriate stage.

351. The witness however had denied that he and police officers who had brought bullet proof jackets had entered Cama Hospital in the said

Bolero vehicle. He has specifically stated that he and police officers did not enter Cama hospital and his Sr.PI Mr.Thorawade decided to wait outside the hospital. During the course of cross-examination, an attempt was made to suggest the witness that the Accused No.1 and deceased accused No.1 were part of the crowd which had been coming from C.S.T.Railway Station after the terror attack and therefore it was not possible for this witness to see the accused no.1 properly and that he has been identifying him falsely today in the court. The witness denied all these suggestions put forth by the Ld.Adv. Mr. Abbas Kazmi. This witness has stated in his cross-examination that he did not fire more than one round because Mr.Thorawade was firing at the terrorists. This witness has clearly stated that Rangbhavan Road (B.T.Road) was clearly visible from the place where he was standing. He had not seen any residents of High Rise Building in Rangbhavan lane. He had heard noise of burst firing from the direction of Rangbhavan Lane. He had also seen Qualis vehicle proceeding towards Mahapalika Road from Rangbhavan Lane. He had not seen anybody else in the vehicle. This question was asked to this witness keeping in view the fact that P.W.N0.136- Mr.Jadhav and three other police constables were on the rear seat of the vehicle. However, it may be noted here that three officers and three police constables were in

fact dead and Mr.Jadhav was only alive and that Mr.Jadhav was also on the extreme rear portion of the vehicle. Therefore, it might not be possible for this witness to see if anybody else than the accused was there in the said vehicle. This witness had also identified the accused in the identification parade on 27.12.2008. He has denied the suggestion that he had not seen accused no.1 on 26.11.2008 and that he is giving false evidence.

352. At this stage it is necessary to state here that in charge- Sr.P.I. of Azad Maidan Police Station P.W.128-Mr.Yeshwant Shankar Thorawade had accompanied P.W.138-Mr.Suresh Shantaram Kadam, P.N.No.27213 when he had collected the bullet proof jackets, arms and ammunitions from Azad Maidan police station and was to supply it to Addl.C.P. Mr.Date as per Mr.Date's direction. P.W.128 was examined on 14.7.2009. Though he has given evidence with regard to temporary charge of investigation of C.R.No.245/08, he has not stated anything about the incident which had occurred at Mahapalika Road and B.T.Road where the accused No.1 and the deceased accused No.1-Abu Ismail had killed police officer Mr.Durgude who was on bike and had also killed three senior police officers and three constables in police Qualis vehicle. Since he was one of

the most natural witness to the incident along with P.W.138 and since he had not given evidence with regard to the incident despite the fact that he was present along with P.W.138, it was found necessary by the court to recall him as a Court Witness. P.W.128 was therefore recalled and was examined by the Court. During the course of his examination by the Court he has more or less, supported the evidence of P.W.138. There is no major variation in his evidence from the evidence of P.W.138 as far as the incident at Mahapalika Road and B.T.Road is concerned. However, what is noticed by the Court is that this officer lacks courage to take initiative and in the result his supporting the police constable including P.W.138 also could not do anything to stop the accused No.1 and the deceased accused No.1-Abu Ismail from their alleged activities of firing at public and police at Mahapalika Road and B.T.Road. As stated by me earlier while discussing the evidence of P.W.138 , this shows cowardliness on the part of police and lack of devotion towards duty. As far as merits of the case are concerned, evidence of P.W.128 and P.W.138 will be considered in later part of the judgment at an appropriate stage. I am really aghast to note that P.W.128 did not even bothered to go to B.T.Road despite the fact that he had seen the accused No.1 and deceased accused No.1-Abu Ismail entering

B.T.Road. Instead of showing leadership quality and proceeding to B.T.Road along with his team, this officer left Mahapalika Road for Metro junction which is exactly in the opposite direction of B.T.Road. The authorities concerned will take care of the attitude of this officer on the night of incident and it is possible that they might have taken note of it and might have taken appropriate action against the said police officer.

353. Here, I may recall evidence of P.W.136 - Mr.Arun Dada Jadhav who in his evidence has stated that while he was lying in an injured condition in the Qualis vehicle of police department near Vidhan Bhavan at Barrister Rajani Patel Road, Nariman point, Mumbai, Police Officer Mr.Amrute from Marine Drive Police Station had come and he had extended help to the said witness. The witness was taken to the hospital in an ambulance. P.W.N0.136 has also stated that the accused no.1 and his associate got down from the said Qualis vehicle and left Rajani Patel Marg, Nariman Point, Mumbai in a car looking like Honda City car. Now, therefore, let me discuss evidence of the witnesses concerning hijacking of Skoda car by the accused No.1 and the deceased accused No.1-Abu Ismail.

354. P.W.No.144- Mr.Sharan s/o Ramesh Arasa is son of registered owner of Skoda car bearing Registration No. MH-02-JP-1276. According to the prosecution case, it is this car which was hijacked by the accused no.1 and his associate near Vidhan Bhavan and in the same car they had travelled from Vidhan Bhavan to Vinoli Chowpaty(Girgaon Chowpaty) where the accused no.1 was apprehended by the police officers of D.B. Marg Police Station and the deceased accused No.1-Abu Ismail was killed by the police. P.W.144 was driving the said Skoda car when it was allegedly intercepted by the accused No.1 and the deceased accused No.1-Abu Ismail at Barrister Rajani Patel Road near Vidhan Bhavan, Nariman Point, Mumbai.

355. The witness No. 144 has stated in his evidence that his father is the registered owner of the said car. Mr.Samit Ajgaonkar, is his friend and stays at Mahim alongwith his wife Mrs.Megha Ajgaonkar. What can be summarized from the evidence of this witness is that, one Mr.Sidharth Umashankar who was working as Sales Manager at Hotel Oberoi was common friend of this witness and P.W.147-Mr.Ajgaonkar . After the attack of Oberoi Hotel, some of the employees including Mr.Sidharth

Umashankar and guests were evacuated and they were taken to Inox Multiplex (mall) which is situated near Vidhan Bhavan at Nariman Point. P.W.N0.144, P.W.N0.147 and wife of P.W.N0.147 were travelling in the said car and were proceeding to the said Multiplex to pick up their friend Mr.Sidharth Umashankar. When they reached Barrister Rajani Patel Road at 00.15 hrs. of 27.11.2008, they had spotted one police Qualis Vehicle approaching their car from opposite direction. It is said by this witness that somebody from the said vehicle had directed him to stop the car and had fired one round in the air. The witness apprehending danger, stopped the car. It is stated by this witness that accused no.1 was seen by him, getting out of the said Qualis vehicle. Accused no.1 asked P.W.N0.144 to get out of the Skoda car. In the meantime, other person who was driving Qualis vehicle had also come and he had pulled P.W.N0.144 out of his Skoda Car. In the meantime his friend P.W.N0.147 and his wife Megha had already left the car and were sitting on the adjoining footpath. As P.W.N0.144 got out of the car, he realized that the key was with him. He threw the key towards the car obviously because he realized that the person who had pulled him out of the car wanted to run away in the car. Obviously instead of taking any further risk, he threw the key towards the car which, it appears, was not

noticed by accused no.1 and the deceased accused No.1. Accused no.1, therefore, approached P.W.N0.144 and demanded the key. The key was lying near right rear wheel of the car which was picked up by P.W.N0.144 and was handed over to the accused no.1. P.W.N0.147 had seen the deceased accused no.1 occupying the driver's seat and accused no.1 had himself occupied the left front seat of the car and thereafter the car left the spot.

356. Within 3 to 4 minutes, three to four police vans reached there. The incident was narrated to them by P.W.N0.144 and his friend. As P.W.N0.144, his friend and friend's wife were scared due to the incident, they hired a taxi and went to the house of P.W.N0.147 at Mahim. After about one and half hour, they visited Mahim Police Station and reported the matter to police. The statement recorded by the police was shown to the witness. The witness has identified his signature on the statement Ex.566.

357. At about 3.00 p.m. of 27.11.2008, P.W.N0.144 received a phone call from PSI Mr.Zende of Marine Drive Police Station and was requested to visit Police station. Accordingly, he visited the police station

and was taken to the spot where his Skoda car was hijacked by accused no.1 and the deceased accused No.1.

358. P.W.N0.144 had identified the accused no.1. He had identified him in the identification parade on 28.12.2008 from amongst 7 persons of similar height and built. The parade was Spl. Executive Officer and two independent witnesses. Art.61- Identity card allegedly recovered from the clothes of deceased accused-Abu Ismail was shown to this witness. He has identified photograph on Art.61 to be of the associate of accused no.1. His vehicle was shown to him on 25.12.2008. There was a bullet hole on right front door of his car and the car was found in badly damaged condition on the right side. The car was returned to him on execution of bond.

359. In the cross-examination he has stated that he had seen one Skoda car on the same road after sometime. He however was unable to say whether it was his car or it was some other Skoda car. He however had told the police that his own car was similar to the car which was seen by him on the same road after sometime of the incident. The police, it appears, suspecting that it might be the same car and that the alleged offenders might

be in the car, chased the said car. In his further cross-examination, he has stated that he had not seen anybody else, except accused no.1 and his associate in the Qualis police vehicle. It appears that this cross examination was directed to find out whether P.W.N0.144 had seen P.W.N0.136 who was occupying extreme rear seat of Qualis Police vehicle. I do not think that this cross examination needs to be discussed at length at this stage or at later stage because normally extreme portion of Qualis vehicle is difficult to be seen from the front windscreen and moreover it is not the case of the prosecution that this witness had gone near the said police Qualis Vehicle.

360. P.W.N0.147-Mr.Samit Ajay Ajgaonkar, as stated earlier, was accompanying P.W.No.144. The evidence given by P.W.147 is more or less corroborating the evidence of P.W.No.144. This witness has given location of the spot where the car was intercepted by the accused No.1 and deceased accused No.1. During the course of recording of evidence of P.W.147, prosecution has produced a map showing location of Barrister Rajani Patel Road. Ld.Advocate Mr.Kazmi did not dispute correctness of the sketch map. The sketch map is therefore exhibited as **Exh.577.** A zerox copy of the map-Exh.577 is at **page No.443A** of the judgment. It is not necessary

to reproduce whole of his evidence. It is suffice to state here that P.W.N0.147 alongwith his wife had accompanied P.W.144 and they were confronted by accused no.1 and deceased accused No.1 at Barrister Rajani Patel Road. The Skoda Car belonging to father of P.W.N0.144 which P.W.N0.144 was driving at that time, was taken away by accused no.1 and deceased accused No.1-Abu Ismail. This witness has also stated that the accused no.1 had occupied left front seat and deceased accused No.1-Abu Ismail had occupied the driver's seat. The evidence in respect of ignition key has also been corroborated by this witness. Arrival of police vehicle and other incidental narration given by P.W.N0.144 has also been corroborated by this witness.

361. As far as cross-examination of this witness is concerned, he has admitted that they took left turn from Marine Drive on D.V.Road i.e.from the corner of Marine Plaza Hotel and they reached Vidhan Bhavan Road via Maharshi Karve Road. This witness has admitted that they could have taken turn from Marine Drive directly leading to Inox Multiplex. The witness has however clarified that because lot of police force was deployed at and around Oberoi Hotel , they took left turn from the corner of Marine

Plaza Hotel which is earlier to AIR INDIA Junction and Oberoi. I have personally seen both the locations because I stay in the same locality and in this regard the evidence of this witness is quite acceptable that on the night of 26.11.2008 and 2/3 days thereafter there was heavy police deployment on Marine Drive towards Nariman Point from the junction of Marine Plaza Hotel to Oberoi Hotel. Therefore, the decision of P.W.N0.144 to take left turn from Marine Plaza Hotel cannot be questioned. The rest of the cross-examination pertaining to the printouts of mobile phone calls, in my opinion, is not very much relevant and needs no discussion. Whether this witness received phone calls from his friend Mr.Sidharth Umashankar or not is not of much relevance. Moreover, Mr.Sidharth Umashankar has also been examined as P.W.No.238. It, however, is necessary to be stated here that the accused no.1 was identified by this witness in the identification parade on 14.1.2009 in presence of S.E.O. Mr.Vichare. The statement of this witness was also recorded by the police. The accused No.1 has been identified by this witness in the court.

362. P.W.238-Mr.Siddharth Ramarao Umashankar in his evidence has stated that he was working as Sales Manager in Oberoi . He

has further stated that Mr. Samit Ajgaonkar and M.Sharan Arasa (P.W.147 and P.W.144) were his friends. He was on duty at Hotel Oberoi on 26th November, 2008. He continued to be in the hotel even beyond his office hours as there was some pending office work. He was in his office at mezzanine floor in hotel Oberoi. It was around 9.45 p.m. he heard sound of gun shots. He therefore went down in the lobby area. Many guests and staff members of the hotel had gathered there. The guests and staff members were taken to Inox Multiplex which is few minutes walking distance from Oberoi Hotel. This witness has corroborated the evidence of his friends to the effect that they had come to pick him up from Oberoi. He was also informed by his friend Mr.Samit at about 00.45 hrs. of 27th November 2008 that his Skoda car was taken away by two terrorists when P.W.144 and P.W.147 were on their way to Inox. As such the evidence of P.W.144 and P.W.147 is corroborated by this witnesses.

363. His cross-examination is confined to the telephone number and his duty hours. In my opinion no part of cross-examination of this witness creates any doubt about correctness of evidence of this witness.

364. **P.W.No.145-Mr.Bhimrao Satapa Sarolkar**, who is the police officer who had recorded the statement of P.W.N0.144-Mr.Sharan Ramesh Arasa at Mahim Police Station. Statement (**Exh.566**) was shown to the witness. He has identified his signature as the same. Since the incident had occurred within the jurisdiction of Marine Drive Police Station, the witness had forwarded the said statement to Marine Drive Police Station under a covering letter signed by the Sr.P.I.. The covering letter is at **Exh.569**.

365. **P.W.N0.148-Mr.Maruti Namdeo Zende**,was working as Sub-Inspector of Police at Marine Drive Police Station. He had registered an offence vide proforma FIR Ex.567 on the basis of statement Ex.566 of P.W.N0.144. The witness has identified his signature on the proforma FIR Ex.567. It is further stated by this witness that the place of incident was shown by P.W.N0.144. Panchnama (Ex.580) was drawn by this witness . This witness had also recorded statement of Mr.Samit Ajgaonkar (P.W.N0.147), his wife Mrs.Megha Ajgaonkar and Mr.Sidharth Umashankar.

366. The evidence of prosecution witnesses discussed so far

hereinabove would indicate that what the prosecution wants to establish is that the accused no.1 and his associate first indulged into firing at C.S.T. Railway Station, left C.S.T. Railway Station via foot-over bridge from D.N.Road, entered Cama Hospital, killed some police officers and guards of Cama Hospital in the hospital, left that hospital and injured some witnesses at B.T. Road and killed three police officers and three policemen in Qualis vehicle, hijacked Skoda car of P.W.N0.144 and proceeded towards Girgaum Chowpaty junction where accused no.1 was apprehended and deceased accused No.1 was killed.

367. Before I proceed to consider evidence of witnesses in respect of the incident at Vinoli Chowpaty case (C.R.No.305/08 of D.B.Marg Police Station and C.R.No.182/08 of D.C.B.C.I.D.), it can be seen that so far the evidence of eye-witnesses pertaining to the incident at C.S.T. railway station, Cama Hospital- inside and outside, Metro Junction and Barrister Rajani Patel Road has been discussed in detail. At the same time it can also be seen that the evidence of panch witnesses pertaining to the panchanamas drawn at C.S.T. railway station under which a huge quantity of empties and other articles were recovered , has also been discussed. Now, let me

therefore, proceed to discuss the evidence of witnesses who have been examined to prove recovery of certain articles including arms and ammunitions from inside Cama Hospital and also from outside Cama Hospital, at B.T. Road, Mahapalika Road and Metro Junction.

368. In this regard, it may be stated here that in all 12 offences were registered at different police stations following the incidents of attack at various places and explosions of bombs. However, all the cases were later on taken over by DCB CID and one Investigating Officer for each case was appointed. Mr.Ramesh Mahale was appointed as a Chief Officer of all cases assigned to D.C.B.C.I.D. as such. The spot panchanama in almost all cases have been drawn by the police officers of respective police stations before the cases were assigned to D.C.B.C.I.D.. Some statements of material witnesses had also been recorded by the officers of respective police stations before the cases were handed over to DCB CID.

369. As far as **Crime No.245/2008** of Azad Maidan Police Station is concerned, it mainly pertains to the incident which had occurred inside Cama Hospital. The said incident had been labeled by police as 'Cama In

Incident. The spot panchnama of the spot in this case was drawn by police Officer Mr.Subhash Borate (P.W.N0.117) who was working as A.P.I. at Azad Maidan Police Station. He was directed by Sr.P.I. Mr.Thorawade to draw panchnama in respect of the spot. He had called two panchas for drawing the panchnama. One of the panch witness is Mr.Nazimuddin Shaikh, who has been examined as P.W.N0.115.

370. P.W.N0.115-Mr. Nazimuddin Nihaluddin Shaikh was working as Administrative Officer at Cama Hospital. It is stated by him that on 27.11.2008, there was a meeting in the office of Supdt. in the hospital. The police had visited Cama Hospital at about 8.30 a.m. They requested for help from the Supdt. to draw a spot panchnama. P.W.N0.115 and his colleague Ravindra Morye had agreed to participate in the panchnama as panch witnesses. It has stated by this witness that a pool of blood was noticed in front of main entrance of the building. The police had collected soil stained with blood by way of sample which was sealed by the police. The police had also seized one bullet from near the A.N.C.Ward and one more bullet from N.I.C.U.Ward. The witness has stated that the bullet Art.343 and iron piece- Art.344 were seized by the police from near

N.I.C.U.Ward. It is also stated by this witness that a pair of leather shoes and one socks were seized from near the lift of second floor of the building. Nothing was recovered from the third & 4th floor of the new building. A pair of slipper (footwear) and a pair of glasses(spectacles) were seized from near the entrance door of Ward No.9. While proceeding further to 6th floor of the building, it was noticed that there were dents on various places on walls of the staircase and 6th floor indicating that there had been indiscriminate firing at that place. There were signs of firing on the lift door also. A lot of tube lights were found broken. Blood was seen at various places. The witness has also stated that four pits were seen on various places of 6th floor of the building. The revolver Art.346 was found lying on 6th floor in front of the lift. There were three live cartridges and three empties in the said revolver. One police plastic cap- Art.364, three empties of different description, overall 15 empties found lying at different places on 6th floor. They were also seized by the police. They were sealed and signatures of panchas were obtained. When the witness was shown **one live cartridge-Art.348, two empties- Art.349 colly. and two bullets- Art.350 colly.,** he has shown his inability to identify the same. He was also not able to identify the empties- **Art.350 colly.** However, he has stated that the

articles were sealed and his signatures were taken on the sealed wrappers. In this regard, it may be stated here that the police had seized three live cartridges from the revolver-**Art.346**, two empties were used by the Chemical Analyser for test firing and, therefore, two empties and two bullets,the pellets of used cartridges have been produced in the court. The safety clips of hand-grenades **Art.354 colly**. were shown to the witness. He was not able to identity whether they were the same safety clips which were seized by the police. He, however, has identified his signature on the wrapper-**Art.355** in which two safety clips were sealed by the police. He has identified the rexine bag- Art.356 and has stated that the bag was seized by the police in his presence. It contained three cell phones, two of them were of '**Nokia**' make and one was '**LG**' make. The cell phone could not be shown to the witness as they were not produced by the prosecution in view of the fact that they had returned to the witness under the orders of Magistrate during the course of investigation. The witness has identified five safety pins- **Art.358 colly.**, one wire with a switch- **Art.360**, two 'L'shape clips- **Art.362 colly.**, one plastic cap- **Art.364**, a foam piece of pink colour- **Art.366**, one plastic folder made china- **Art.368**, one measuring scale- **Art.370**, one Protractor- **Art.372**, two printed maps-

Art.374 colly., pistol holster- **Art.376** and Duracell battery made in E.C.- **Art.378**, to be same articles which were recovered by the police in his presence from the premises of Cama Hospital. He has also identified his signature in wrappers- **Arts.359,361,363,365,367, 369, 371,373,375, 377 & 379.** He has identified his signature on the panchanama **Exh.486.**

371. In the cross-examination, this witness has stated that the value of the articles was not stated in the panchnama. The witness had not put the date below his signature in the panchnama. Similarly, date was not mentioned below the signature on the labels affixed to packets containing seized articles.

372. As far as identification of bag is concerned, this witness, in his cross-examination has stated that he could identify the bag because it had a label of **'Changing the tide'**. The bag was found on left side of the terrace outside the enclosure of solar system. He has denied the suggestion that the articles identified by him were never recovered from the spot.

373. **P.W.N0.117-Mr.Subhash Anandrao Borate** is the police

officer who had drawn panchnama. This witness in his evidence has stated that Art.-346- revolver was seized under the panchnama. **Arts.343/1-** bullet and **343/4-** iron pieces were also seized under panchnama **(Ex.486)**. **Arts. 348, 349 and 350** were shown to the witness. He has identified Art.348 to be the intact cartridge and has stated that **Art.349 colly.-** two empties and **Art.350 colly.-** two bullets are part of two other intact cartridges seized by him alongwith **Art.348**. It is stated by this witness that two cartridges might have been broken by the Ballistic Expert for examination. He has identified **Art.352 colly**.- 3 empties to be the same which were recovered from the revolver. **Art.354 colly**.- two safety clips were recovered from the terrace of the building. **Art.356-** one rexine bag was also recovered from the terrace. **Art.358-** 5 safety pins, Art.360- one wire with switch, **Art.362** colly.- two 'L' shape clips, **Art.364-** one police plastic cap, **Art.366-** a foam piece of pink colour, **Art.368-** one plastic folder made in china, **Art.370-** measuring scale, **Art.372-** one protractor, **Art. 374 colly**.- two printed maps, **Art.376-** pistol holster and **Art.378-** Duracell Battery made in E.C. were seized under the panchnama. It is stated by this witness that these articles were found in the rexine bag **Art.356**. The wrappers were also shown to this witness. The witness has stated that all the wrappers which were used

for sealing the seized articles bear his signatures. He has denied the suggestion in cross-examination that he has fabricated the panchnama. The butt number of the revolver, according to this witness, was wrongly recorded as '**213**' in the panchnama. It is stated by him that it should have been '**313**'.

374. The complainant in the case in respect of the incident which had occurred inside Cama Hospital is P.W.N0.112- Mr.Vijay Abaji Shinde. He was admitted for treatment at Bombay Hospital after sustaining injuries during the incident. The clothes which he was wearing at the time of incident were seized by P.W.N0.127 under the panchnama (Ex.436) at Bombay Hospital.

375. **Panch witness Mr.Mahadeo Malu Lambore** has been examined as **P.W.No.110.** He has stated that he had gone to Bombay Hospital to purchase some medicines from the medical shop situated outside Bombay Hospital. At that time, he was called by one Police constable and was taken to 2nd floor of the hospital. Police Officer Mr.Desai (P.W.No.127) was present. Mr.Desai wanted to take charge of

clothes of one police officer who was injured in the incident of Cama Hospital. P.W.N0.110 consented to be a panch witness. The following articles were seized in his presence under the panchnama (**Ex.436**).

Blood stained shirt,
one blood stained pant (both police uniform),
one police belt,
one handkerchief,
one underwear,
one blood stained vest,
one pistol holster and
one socks.

P.W.N0.110 has identified his signature on the panchnama. He has also identified the articles shown to him which were seized in his presence. They are Arts.-311,313,315,317,320,322,323 and 325. The witness has also identified his signatures on all the wrappers which were used for sealing the articles.

376. The clothes of Addl.C.P.Mr.Date were seized at KEM Hospital,where he was admitted for treatment. The clothes were produced before the police by wireless operator Mr.Singh. The clothes seized by the

police officer- Mr.Ramchandra Pawar (P.W.No.122) were one cap**(Art.385)**, one pant**(Art.373)**, one shirt **(Art.382)**, bulletproof jacket **(Art.392)** and other Misc. articles which were shown to the witness. He has further stated that there was one hole on left side of bulletproof jacket seized by him. There were blood stains on the shirt on the portion corresponding to the bullet hole of the jacket. He has identified the bulletproof jacket **(Art.392)** and has stated that there is a whole on left portion of the jacket.

377. **P.W.121-Mr.Venkatesh Balaiya Sawala** is the panch witness with regard to the seizure of uniform and other articles of Addl.C.P. Mr.Date. This witness has corroborated the evidence of P.W.No.122. He has identified his signature on the panchnama **(Ex.504)**. He has also identified the seized articles including the bulletproof jacket **(Art.392)**.

378. P.W.No.112's evidence has already been reproduced by me hereinabove. He has stated that 9 mm pistol was with him at the time of encounter with the terrorists in between 6th floor and terrace of Cama Hospital and that he could not fire from the said pistol because it had locked. Since he was injured and was taken to Bombay Hospital, pistol was

lost by him on 6th floor of the building. He has identified **Art.326** to be the same pistol.

379. The prosecution has examined **P.W.N0.114- Mr.Umesh Bula Ishi,** Head Constable of Azad Maidan Police Station to establish that **Art.326** was issued to P.W.N0.112 from the Armoury of Azad Maidan Police Station. He had brought the original register in the court which was produced at **Art.330**. The original entry in respect of issuance of pistol to P.W.N0.112 was exhibited as **Ex.464**. It has stated by him that the original entry bears the signature of P.W.N0.112, API Mr.Shinde in token of having received pistol and 9 rounds. He has identified the pistol bearing **Butt No. 3725.** There is cross-examination of this witness with regard to certain discrepancies in the register. However,it does not affect the testimony of this witness(P.W.N0.112) and this witness that P.W.N0.112 was holding a 9 mm pistol**(Art.326)** at the time when the incident on 6th floor of Cama Hospital had occurred.

380. **P.W.N0.126-Mr.Raghunath Narayan Mahale,** Police Sub-Inspector, has stated in his evidence that on 27.11.2008, he had recorded

the statement of P.W.N0.109 Mr. Chandrakant Dnyandev Tikhe as directed by Sr.PI. Station diary entry in that regard was made. He had also recorded the statement of Addl.C.P.Mr.Sadanand Date(P.W.No.118) on the same day in the I,C.U. of K.E.M.Hospital.

381. **P.W.N0.124- Mr.Mukhtar Dawood Shaikh,** API, has stated that the C.D. containing C.C.TV footage recorded by the Security Department of Times of India was seized by him on 10.12.2008 under the panchnama **Ex.488**. He has identified the C.D. **(Art.381)**. The brown wrapper in which the C.D. was sealed was also shown to this witness. He has identified his signature on the brown wrapper. The sealed packet containing C.D. was handed over to Police Officer Mr.Badgujar. The officials of Times of India and panch witness in this regard have also been examined by the prosecution. Their evidence has already been discussed by me hereinabove.

382. P.W.N0.124- Mr.Mukhtar Shaikh has further stated that on 24.12.2008, he had visited Bombay Hospital in connection with investigation of this case and he had collected three sealed containers from

the Assistant of Dr.K.K.Choudhary of Bombay Hospital. There were names of three policemen on the said three containers. The names on the containers were-

(1) Mr.Shinde Vijay Abaji

(2) Mr.Shinde Mohan

(3) Mr.Tilekar Sachin

The said three containers were seized under the panchnama in presence of two panchas. The panchnama (Ex.509) was shown to the witness. It is stated by him that the panchnama bears his signature. The panchnama and containers were handed over to PI Mr.Badgujar. Similarly, on 27.11.2008 also he had visited Cama Hospital as instructed by PI Mr.Badgujar and had seized clothes of the injured witness- Mr.Kailash who has been examined as P.W.N0.111. One white shirt**(Art.394)** and white pant**(Art.395)** were seized under the panchnama **(Ex.510).**

383. P.W.N0.129-Mr.Pravin Shashikant Kuyeskar, has stated in his evidence that he was working as Sub-Inspector of Police attached to DCB CID. Investigation of Crime No.**245/2008** of Azad Maidan Police Station (involving the incident which had occurred inside Cama Hospital)

was handed over to him by PI Thorawade under the orders of Superiors. This witness had registered a fresh crime Registration No.**187/08** at DCB CID, Mumbai. During the course of investigation, he had recorded the statement of P.W.N0.106-Mr.Srivardhankar. He had taken 75 sealed packets from the custody of Azad Maidan Police Station containing articles seized by Azad Maidan Police during the investigation of this case. 56 sealed packets out of 75 received from Azad Maidan Police were sent to C.A. on 3.12.2008. The sealed packets were carried to the laboratory by PSI Mr.Shaikh of DCB CID. The office copy of letter addressed to FSL was produced at Ex.520. Further investigation of this case was handed over to PI Mr.Badgujar.

384. Police Inspector Mr.Ravindra Baliram Badgujar has been examined by the prosecution as **P.W.N0.158**. This witness has stated that during the course of further investigation, he had recorded the statements of P.W.N0s.101,108,111,107 & 123. He had also requested the Chief Investigating Officer Mr.Mahale to arrange for identification parade. The identification parade was held on 27.12.2008. The witnesses were kept present for taking part in the parade at Arthur Road Prison. Again on

29.12.2008 also, one more identification parade in respect of identification of dead bodies was held on 7.1.2009 at Mortury of J.J.Hospital. The accused no.1 was arrested in this crime on 6.1.2009. The witness has identified the accused no.1 to be the same who was arrested on 6.1.2009. Some of the articles seized during investigation of this case were forwarded to FSL on 9.1.2009 under the forwarding letter Ex.610. The opinion of the FSL was received vide **Exh.611** on 31.3.2009. One more identification parade was held on 14.1.2009,where P.W.N0.111 had participated. The report of Foreign Science Laboratory in respect of Articles forwarded to the laboratory by Police Officer Mr. Kuyeskar (P.W.N0.129) was received on 3.12.2008. The said report is at **Ex.637**. This witness has also produced four more reports received from the Chemical Analyser. The FSL reports are at **Exhs.638,639,640 & 641**. The Police officer had also requested the Director of Forensic Science Laboratory to give DNA report in respect of **Art.356**(sack) and DNA report of blood sample of accused no.1. The report was received from the laboratory vide **Ex.643**.

385. The evidence of witnesses, who had seen the incident on B.T.Road where three police officers and three policemen were killed in

Qualis Police Vehicle has been discussed by me herein above. It is also stated that the offence concerning the said incident was registered at Azad Maidan Police Station vide Crime No.**246/08**. This case is known as 'Cama Out' case. During the course of investigation of said crime, the panchnama of spot of incident was drawn by police officer Mr.Pradeep Londe (PW 132) in presence of two panchas. One of the panch witness present during the said panchnama has been examined by the prosecution as P.W.N0.131.

386. P.W.N0.131- Mr.Rajesh Prabhakar Kombekar had participated in the panchnama as panch witness on the request of P.W.N0.132. This witness in his evidence has stated that 12 empty cartridge cases were found in the bushes opposite the ATM Center. One pillow, one broken wrist watch and pieces of broken glass were also seen around the said place. The police had collected the said 12 empties and other articles from the spot. The witness had also seen bullet marks on the shutter of Corporation Bank. Four lead pieces were found in front of the said shutter. These lead pieces were also seized by the police. Bullet mark was found on one red colour junction box of B.E.S.T. situated near the said place. One lead bullet was found stuck in a tin shed in between lane of two

buildings near ATM Center. One Honda City white car was seen near the spot. The Registration number of the said car was **MH-01-ZA-102**. The car was having a red beacon and it belonged to Government of Maharashtra. There was one hole on the front windscreen of the car. Front left tube of the wheel was punctured. Left head lights were found broken. There was one bullet mark on left side of bumper. One more bullet mark was seen on handle of left rear door of the car.

387. On internal examination of the car, it was seen that there were blood stains on driver's seat and steering wheel, one broken piece of dash board was found on driver's seat. Two lead pieces (bullets) were found below driver's seat. The registration book and other papers of the car were also seized by the police. The articles including lead pieces were taken charge of by the police and they were seized in presence of this witness. Three empties were found below the tariff board of B.M.C. at Pay & Park area. Small melted pieces of plastic at various places on the road were also seen. There were small holes on the shutters of garages in front of Pay & Park area. Dried blood stains were seen in front of entry gate of St.Xavier's College. Two empties were found near the compound wall of St.Xavier's

College. Thereafter the panch witness and police officers proceeded to Metro Junction where dried blood spots were seen near the island on the corner of Elphinsten School. Two lead bullets were found on the road. Two empties were found on island in front of Parsi Ambulance Service. These articles were seized by the police. The panchnama was drawn in presence of this witness. The witness has identified his signature on the panchnama Ex.524. The property produced by the police with seals of Forensic Science Laboratory was produced in the court and articles were shown to the witness. The witness has identified-

' Six glass bottles-**Art.397 colly**., 12 empties- **Art.399 colly**., Seven broken (deformed)metal pieces- **Art.401 colly**., an iron piece- **Art.403**, One broken wrist watch- **Art.405**, Cotton pillow-**Art.407**, Blood stained pieces of glass- **Art.409**, Three empties-**Art.411 colly**., Broken pieces of bullets-**Art.412 colly**., Blue colour plastic pieces-**Art.414 colly**., Two bottles-**Art.416 colly**.,Two packets containing soil samples-**Art.418 colly**., Two empties-**Art.419 colly**., Bottle containing cotton swab- **Art.421**, Two empties & two broken pieces of copper jackets- **Art.423 colly**. and Two cotton swabs in a bottle- **Art.425 colly.**,' to be the same articles which were

seized in his presence. He has also identified his signatures on the wrappers in which the articles were seized and sealed by the police.

388. In his cross-examination, this witness has admitted that the articles had been identified by him in the court on the basis of his signatures on the wrappers. He denied the suggestion that the panchnama was drawn at the police station and that nothing was recovered in his presence by the police.

389. **P.W.N0.132-Mr. Pradeep Uttam Londe** is the Police Officer who has drawn the panchnama. He has more or less given similar evidence to that of P.W.N0.131 and has identified the articles and his signatures on the wrappers. He has corroborated the evidence of P.W.N0.131. His evidence has not been taken by the prosecution in detail because the independent witness P.W.N0.131 has been examined in detail. In brief, P.W.N0.132 has stated that **Article Nos.-397 colly., 399 colly., 401 colly., 403, 405, 407, 409, 411 colly., 412 colly., 414 colly., 416 colly., 418 colly., 419 colly., 421, 423 colly. and 425 colly.,** were seized by him in presence of panchas. This witness has also identified his signatures on the wrappers

and the panchnama **Ex.524.**

390. Further investigation of this case was carried out by Police Inspector **Mr.Ganesh Parshuram Rekulwad** of Azad Maidan Police Station who has been examined as **P.W.N0.142**. On 28.11.2008, he had recorded statements of witnesses P.W.N0s.136 & 139. He had also forwarded three sealed bottles received from J.J.Hospital to the Forensic Science Laboratory under forwarding letter **Ex.541**. The report of C.A. has been produced at **Ex.541-A**. On the same day, he had forwarded deformed bullet and other articles retrieved from the dead body of deceased Mr.Hemant Karkare to the Forensic Science Laboratory under forwarding letter **Exh.542.** A copy of C.A. Report is produced at **Exh.542A.** Similarly, the forwarding letters in respect of the sealed bottles containing articles retrieved from the dead bodies of Shri Ashok Kamate, Shri Vijay Salaskar and Shri Vijay Khandekar were signed by this witness. Copies of those forwarding letters are produced at **Exhs. 543,544 and 545** respectively. It may be stated here that the report of C.A.(Ballistic Expert) will be discussed in later part of the Judgment and the original letters of P.W.N0.142 received by the Ballistic Expert also will be discussed at the

same stage. In the case of deceased Shri Balasaheb Bhosale and Shri Bapurao Dhurgude (both policemen) also, articles were forwarded to the F.S.L. under forwarding letters by this witness. Copies have been produced at **Exhs. 546 & 547**. The reports received by the Sr. P.I. from F.S.L. have been produced at **Exhs. 546A & 547A** respectively.

391. P.W.No.134-Mr.Santosh Hari Pawar and P.W.N0.135-Mr. Sanjay Thansing Chavan are the witnesses who are concerned with the panchnama in respect of Police Qualis Vehicle bearing Registration No. MH-01-BA-569 which was left abandoned by the accused No.1 and the deceased accused No.1 at Barrister Rajani Patel Marg, Nariman Point,Mumbai. It may be noted here that the panchanama of the vehicle was drawn by the police officer of Marine Drive Police Station as Qualis was found abandoned within territorial jurisdiction of Marine Drive Police Station. However, this part of investigation has been included in the Crime No.246/08 of Azad Maidan Police Station (Cama Out case). P.W.N0.134 has stated that he runs a tea stall in front of Vidhan Bhavan at Barrister Rajani Patel Road, Nariman Point, Mumbai. He resumed his business at about 7.00 a.m. on 27.11.2008. However, he found that other food stalls in

the area were closed due to the incident dt. 26.11.2008. After about half an hour of his reaching at his place of business, he was called by one police constable and was told that police wanted to draw a panchnama in respect of the abovestated vehicle. P.W.N0.134 agreed to be a panch witness. Other panch witness was Mr.Yadav. During the course of panchnama, it was seen that tube and tyre of right rear wheel were missing. There were three bullet holes on front windscreen. The windscreen was also shattered. Right side mirror was found broken. There were three marks of bullets on right front door and 10 bullet holes on rear portion of the right side. One of the sliding glasses of right backside door was completely broken and other was also shattered. . The rear windscreen was also found completely broken. Three bullet holes were found on the rear door. Glass of left front and right front door were also found broken. There were no firing holes on left side of the vehicle. Footrest of the vehicle was found stained with blood. The driver's seat had also blood stains. One spectacle cover and one broken wrist watch were also found in the vehicle. One gun with a magazine was found on left front seat of the vehicle. The magazine however was empty. There were three extra magazines on left front seat, two of them were empty, 28 rounds were found in the third magazine. One pistol was also found on the same

seat which was loaded with a magazine. There were 13 rounds in the said magazine. One more pistol containing three rounds was also found in the vehicle.

392. The witness has further stated that two empties were found in the front leg space and two more empties were found in the middle leg space of the vehicle. Three pistols were found on the middle seat. All the pistols were loaded with magazines. One of the said three magazines was found empty and remaining two magazines were containing twelve and ten rounds each. Twenty-three live cartridges were found on front left seat. In the extreme rear portion of the vehicle, one machine gun(carbine) was found loaded with magazines containing 27 rounds. There was one bag and four helmets. One chain of yellow metal was also found in the extreme rear portion of the vehicle. Five mobile phones were also there in the said vehicle and there were two walkie-talkies of police. All the articles were sealed by the police separately.

393. The vehicle was thereafter taken to Marine Drive Police Station. A Mobile Police Investigation Van had also come there. The

officers of Mobile Police Investigation Van had collected twenty articles from the Qualis Vehicle. These twenty articles were apart from the articles mentioned by the witness hereinabove. The articles recovered by the Mobile Investigation Cell had also been handed over to the officer of Marine Drive Police Station. It is stated by the witness that these articles were also sealed by the officers in his presence. Panchnama was concluded at Marine Drive Police Station and signature of this witness were taken on panchanama**(Ex.529).** He has identified AK-47 rifle-**Art.427** to be the same rifle which was recovered from the vehicle. He has identified the magazine **Art.428** to be the same magazine which was found attached to AK-47 rifle-**Art.427**. The pistols with magazines-**Art.430 colly**. **Art.434 colly. & Art.439 colly.** were shown to the witness. The witness has stated that he would not be able to identify the pistols without referring to the panchnama. He was also unable to identify cartridges and bullets produced by the police, stated to be seized under the panchnama(Ex.529). As far as carbine with one empty magazine-**Art.444 colly.**is concerned, this witness has stated that the carbine with magazine is the same which was recovered from the vehicle. He was also shown 25 live cartridges of 9 mm- **Art.445 colly.** It is stated by this witness that these cartridges were found in the

magazine of carbine -**Art.444 colly.** According to this witness, there were in all 27 cartridges in the magazine of carbine. Two helmets-**Art.449 colly**., according to this witness, were seized by the police under the same panchnama. Four empties**-Art.451 colly.** were shown to the witness. It is stated by him that these four empties were found in the vehicle. Two empties were found in the front leg space and remaining two were found in the middle leg space.

394. The Qualis vehicle was produced by the police in the court and same was shown to the witness. He has identified the vehicle to be the same vehicle which was found at Barrister Rajani Patel Road on backside of Vidhan Bhavan, Mumbai. The said vehicle was marked as **Art.454**.

395. **P.W.N0.135-Mr.Sanjay Thansing Chavan**, is the police officer who had drawn the panchnama in respect of Qualis Vehicle. During the course of said panchnama, P.W.N0.134 was present as an independent witness. P.W.N0.134 has not been able to identify some of the articles. Some of the sealed packets received from Forensic Science Laboratory by the police produced in the court were opened in presence of P.W.N0.134.

P.W.N0.134 ,however, was unable to identify some of the articles shown to him during the course of his evidence. Even the pistols found in the vehicle could not be identified by P.W.N0.134. However, the article numbers were given to all the articles which were shown to the witness during recording of his evidence. P.W.N0.135 has identified AK-47 rifle(Art.427), one pistol with empty magazine(Art.430 colly.), one pistol with empty magazine(Art.432 colly.) and one pistol with empty magazine(Art.439 colly.). He has also identified the pistol(Art.326). This witness has stated that the above-stated four pistols were recovered from the Qualis Vehicle. He has also stated that AK-47 rifle (Art.427) was also recovered from the vehicle. This witness was shown eleven 9 mm live cartridges(Art.435 colly.) , two empties(Art.436 colly.) and two bullets (Art.437 colly.). According to this witness, the cartridges were of Glock pistol and two empties and two bullets might be the part of the test firing bullets by the Chemical Analyser. Similar evidence is given in respect of the two other groups of 9 mm live cartridges. In this regard, it may be stated here that these pistols belonged to the police officers, they did not belong to the accused no.1 and his associate deceased-Abu Ismail. The witness has also identified carbine with empty magazine(Art.444 colly.).He has also

identified 25 live cartridges of 9 mm(Art.445 colly.), two empties (Art.446 colly.)and two bullets(Art.447 colly.). It is stated by this witness that Art.444 colly. and Art.445 colly. are the same articles which were recovered from the said Qualis Vehicle. It is further stated by this witness that Art.446 colly. and Art.447 colly. are probably the empties and bullets examined by the Forensic Science Laboratory. It may be noted that carbine also belonged to police and was held by P.W.136-Arun Dada Jadhav at the time of incident of firing on police vehicle at B.T.Road.

396. Four empties allegedly found in Qualis Vehicle and identified by P.W.N0.134, were shown to this witness. This witness has stated that Art.451 colly. were collected by the Ballistic Expert from the Qualis Vehicle. During the course of recording of evidence of this witness, the Ld. P.P. has requested for opening the packet no.303(13) produced by the prosecution as per the list of articles. It contained two empties. Both the empties were shown to the witness and it is stated by the witness that the two empties Art.455colly. were found in leg space of middle seat of Qualis Vehicle.

VINOLI CHOWPATY CASE.

397. As stated by P.W.144-Mr.Sharan Aarsa and P.W.147-Mr.Samit Ajgaonkar, accused No.1 and the deceased accused No.1-Abu Ismail had fled away from Barrister Rajani Patel Road in a Skoda car belonging to Mr.Sharan Aarsa's father. The said car was intercepted at Girgaum Chowpaty by the police officers and policemen of D.B.Marg Police station. (The map of the spot produced in the court by the prosecution has been admitted by defence. It is part of **Exh.577A colly**. A zerox copy of the map is at **page No.475A.)** During an encounter between police on one hand and the accused No.1 and the deceased accused No.1-Abu Ismail on the other hand, accused No.1 was apprehended and deceased accused No.1-Abu Ismail was killed. A.S.I. Shri Tukaram Ombale was allegedly killed by the accused No.1. The witness Mr.Sanjay Govilkar , P.S.I. had also sustained a bullet injury during the said incident. To prove this part of the case, prosecution has examined complainant of CR No.305/08 of D.B.Marg Police Station Mr.Bhaskar Kadam, P.S.I. and other police officers who were present on the spot. The prosecution has also examined the police officers who had taken the injured accused No.1 and the deceased accused No.1-Abu Ismail to the hospital and the medical officers and staff members

of Nair Hospital. The prosecution has further examined panch witnesses and the I.O. of this case. The first ever witness pertaining to this incident is P.W.1-Mr.Bhaskar Kadam, P.S.I. who was present on the spot as well as who had lodged the FIR Exh.57.

398. **P.W.1-Bhaskar Dattatray Kadam** was attached to D.B.Marg Police Station as Sub-Inspector of Police. He was on duty on the night of 26th & 27th November, 2008. It is stated by him that at about 22 hrs. he was called by Sr.P.I.Mr.Nagappa Mali in the chamber of Mr.Mali. P.W.1-PSI Bhaskar Kadam was informed by the Sr.PI Mali that some terrorists had attacked certain parts of South Mumbai and that they had been firing and exploding bombs. P.W.1-PSI Bhaskar Kadam was therefore directed by Sr.PI Mr.Mali to organize 'Nakabandi' (road block) at Girgaon (Vinoli) Chowpaty (Girgaon seashore).

399. P.W.1-PSI Bhaskar Kadam therefore collected his 9 mm service pistol and ten rounds from the constable who was custodian of arms and ammunition at D.B.Marg Police Station. He along with six members of Detection Branch visited Girgaon (Vinoli) Chowpaty and organized

Nakabandi by means of barricades. This witness has stated that north bound traffic i.e. western portion of N.S.Purandare Marg (Marine Drive) was partly blocked by means of barricades. It was just opposite Ideal Cafe situated below foot over bridge. The witness has further stated that API Mr.Hemant Bavdhankar, Operator of Peter Mobile wireless Mr.Sanjay Patil, ASI, Driver of Peter Mobile van Mr.Chandrakant Kamble were already present at Girgaon Chowpaty when he reached Chowpaty. Beat in charge of police outpost of Chowpaty Mr.Pawar, Assistant Sub-Inspector of Police (ASI), Mr.Kochale, ASI, Mr.Chavan, Head Constable and Mr.Naik, Police Naik and other policemen were also present. Witness has also stated that the road blocking (Nakabandi) had already been organized by the above stated staff members of D.B.Marg Police Station. P.W.1-PSI Mr.Bhaskar Kadam and his team members joined the policemen already present on the spot. After sometime API Mr.Govilkar, ASI Mr.Tukaram Ombale and some other policemen had also reached the spot.

400. In the meantime a message was received on peter mobile wireless that some terrorists had killed many persons including some police officers by firing indiscriminately at C.S.T.Railway Station, Hotel Taj,

Hotel Oberoi, Cama Hospital and Nariman House. In view of this message the barricading was strengthened by installing double barricades at the place of Nakabandi. After sometime of the earlier message, one more message was received that two terrorists had been proceeding towards Chowpaty from Vidhan Bhavan via Marine Drive in a Skoda car. At about 00.30 hrs. of 27.11.2008 one Skoda car was spotted by P.W.1 and other policemen. The car was approaching Chowpaty where the road blocking was organized. As the car reached near the barricades, P.W.1 and other policemen shouted and indicated the driver of the car to stop the car. The policemen had raised their hands to indicate that driver should stop the car. The car had stopped at the distance of 50 ft. from the barricades. P.W.1 and other policemen directed the car driver to put off head lights and also directed him to put on lights inside the car. The driver was informed that Nakabandi was in progress and that the car was required to be searched. The car driver however, ignored the directions issued by the police. On the contrary he started spraying water on the windscreen by means of wiper spray. He had also put on wipers of front windscreen. It was therefore difficult for the police to see persons sitting in the car. At this stage the driver started the car and attempted to take 'U' turn just before the place of barricades. He

could not turn the car as there was R.C.C. road divider. While attempting to take 'U' turn, the driver had hit the car to the said road divider. P.W.1 and other policemen immediately surrounded the car. The driver and other person sitting of left front seat of the car had raised their hands to pretend that they had surrendered before the P.W.1 and his colleagues. As the P.W.1 started proceeding towards the driver, the driver started firing at P.W.1 by means of firearms . P.W.1 has stated that the window glass had already been rolled down and the driver was firing from the window. P.W.1 retaliated by firing from his service pistol in defence of himself and his team members. Due to firing by P.W.1 the driver was injured. The passenger on left front seat however opened left front door and got out of the car. The said passenger while getting out of the car had purposely fallen down on the road. ASI Mr.Tukaram Ombale and API Sanjay Govilkar, were, at that time, proceeding towards left front door of the car. The person who got out of the car from left front door and was lying down , started firing at ASI Tukaram Ombale by means of AK-47 rifle. At this stage ASI Tukaram Ombale pounced upon the said person. In the process ASI Tukaram Ombale and API Sanjay Govilkar both had sustained firearm injuries. However, other team members of ASI Tukaram Ombale and API

Sanjay Govilkar started assaulting the said person by means of lathis (sticks) and ultimately they succeeded in disarming the said person. His AK-47 rifle was snatched away from him by the policemen and the said person was taken into custody.

401. P.W.1-PSI Bhaskar Kadam had asked the wireless operator to call for extra force in view of the incident narrated above. P.W.1 thereafter went to remove the injured driver from the car. Sr.PI Mali, PI Sawant, PI Surulkar, API Yadav, API Gawade, PSI Gaikwad and PSI Warang also reached the spot shortly. Two ambulance had also reached the spot within a short time. Injured police officer Mr.Sanjay Govilkar and ASI Mr. Tukaram Ombale were taken to hospital in peter mobile van of police. The injured accused were taken to hospital by PI Surulkar and API Gawade in the ambulance . As the police mobile van and ambulance left the spot, P.W.1 and other policemen barricaded the whole spot of the incident to secure it for further investigation. The registration number of the car was MH-02-JP-1276. It was of silver colour. A.S.I. Mr.Kochale and other policemen were directed to be on the spot. P.W.1 had returned to D.B.Marg Police Station.

402. A phone call was received by P.W.1 at D.B.Marg Police Station from API Gawade who had taken injured terrorists to the hospital that one of the terrorists had expired before admission in the hospital. It was also intimated by API Gawade that other terrorist had been admitted in the hospital for treatment. The terrorist who had survived had disclosed his name as Ajmal Amir Kasab, age 21 years and he had also disclosed his address as resident of Faridkot, Taluka Jipalpura, Dist.Ukhad, Punjab State, Pakistan. The name of deceased terrorist was disclosed as Abu Ismail, aged 25 years, resident of Dera Ismail Khan, Punjab State Pakistan. The information received from API Gawade was conveyed to the duty officer Mr.Gangaram Patil. Mr.Gangaram Patil had accordingly made entry in the station diary of D.B.Marg Police Station..

403. It is further stated by P.W.1 that after sometime a phone call was received from API Yadav who had taken Mr.Tukaram Ombale and Sanjay Govilkar for treatment that Tukaram Ombale had succumbed to the injuries. Station diary entry was made by Station House Officer Mr. Gangaram Patil.

404. The F.I.R. of P.W.1-PSI Bhaskar Kadam was recorded by PI Sawant. The F.I.R. was prepared on computer and was read over by P.W.1 . He found it to be correct. P.W.1 has identified his signature on the **F.I.R. -Exh.57.**

405. P.W.1 has also identified accused No.1 to be the same terrorist who was sitting on the left front seat of the car. As far as driver of the car is concerned, P.W.1 has stated that he was strong built and was about 6 ft. in height . He was of shallow complexion and his hair was black. He was wearing a T-shirt and cargo trouser. P.W.1 has stated that he could identify the clothes if shown to him. The property produced by police at Sr.No.349 and 350 as per the list in sealed packets was opened in the court. P.W.1 has identified the brown wrapper **Art.2** to be the same in which the cargo trouser was sealed. He has also identified the cargo trouser which is marked as **Art.3** to be the same which the driver of the car was wearing. Similarly he has further identified a brown wrapper and a T-shirt and has stated that T-shirt -**Art.5** was the same which the driver of the car was wearing at the time of incident.

406. P.W.1 has further stated that accused No.1 is the same person who had fired at the deceased Tukaram Ombale. Accused No.1 was also wearing a cargo trouser and T-shirt. The witness has identified **Art.7** and **Art.9** to be the same cargo trouser and T-shirt which the accused No.1 was wearing at the time of incident.

407. The witness had shown the spot of incident to the Investigating Officer PI Mr. Sawant. The spot of the incident was opposite Cafe Ideal at Girgaon Chowpaty. Spot panchanama was drawn in presence of two panchas. Thirty nine articles including firearms, empties of cartridges, magazines, Skoda car etc. were recovered and seized by the police during the course of investigation. According to P.W.1 in all four firearms were seized. Two of them were AK-47 rifles and the rest two were pistols. Both the pistols were found on the road. One of them was lying on right side of the driving seat and other one was lying on left side of the car near the left front door. One AK-47 rifle was found on left side of the car on the road and other AK-47 rifle was found in the leg space below driving seat of Skoda car. AK-47 rifles produced in the court in sealed condition were shown to the witness. The witness has identified **Art.10** to be the same

which the accused No.1 had used for firing at the deceased Tukaram Ombale. He has also identified AK-47 rifle **Art.12** to be the same which was found in the leg space of driving seat of Skoda car. P.W.1 has stated that AK-47 rifle **Art.10** was found loaded with one magazine and one more magazine was attached to it by means of cellophane tape.

408. P.W.1 has further stated that he had service pistol in his possession which he had used to shoot at the driver of the Skoda car. He had fired three rounds from his pistol. The investigating officer had seized his service pistol and the remaining seven rounds during the course of investigation under panchanama-**Exh.58**. Prosecution has produced a sealed packet bearing No.365. The said packet was found containing one 9 mm.pistol-**art.18**, one empty magazine-**art.20**, five live cartridges-**art.21 colly**., two empty cartridge cases-**art.22 colly**. and two bullets-**art.23 colly.** P.W.1 has identified **art.18** to be the same pistol which he was carrying with him at the time of incident. Two live cartridges appears to have been broken by the ballistic expert for examination.

409. P.W.1 has further stated that two pistols **Art.14** and **Art.16**

were seized under the panchanama by PI Sawant on the spot. This witness has stated that he was three feet away from the road divider- the place which was about 10 to 12 ft. away from the car from where P.W.1 had fired at the driver. P.W.1 was on the road near left head light of the car when the deceased Tukaram Ombale had pounced upon the accused No.1.

410. P.W.1 has further stated that he had participated in the identification parade conducted by Special Executive Magistrate Mr.Vichare. P.W.1 had identified accused No.1 from amongst seven persons shown to him. According to this witness seven persons including the accused No.1 were of similar height and built. The witness had also identified the dead body of deceased driver of the car at mortuary of J.J.Hospital on 6/01/2009. Seven dead bodies were shown to him and he had identified one of them to be of the person who was driving the said Skoda car.

411. P.W.1 in his cross-examination has stated that he would not be able to state as to why accused No.1 had pretended to fall down on the road. The witness has also stated that there was scuffle between the accused No.1

on one hand and deceased Tukaram Ombale and other policemen on the other hand. Accused No.1 had fallen down during the scuffle. At this stage deceased Tukaram Ombale had pounced upon accused No.1 and accused No.1 had fired at deceased Tukaram Ombale by means of AK-47. The only difference in examination-in-chief and cross-examination of this witness which can be seen is that there is no mention of scuffle in the examination-in-chief. Otherwise this vital portion of evidence of P.W.1 in the examination-in-chief as well as in the cross-examination is more or less same.

412. There are some admitted omissions in the FIR. P.W.1 in his evidence at para-37 has admitted that he had not stated in his FIR that the pistol and ten rounds were taken from custodian of he firearms. He had also not stated in his FIR that *nakabandi* was arranged by other policemen who had arrived at Girgaon Chowpaty earlier to the arrival of P.W.1. This witness had also not stated in the FIR that the driver of Skoda car was told that *nakabandi* was in progress and that the police wanted to check his car. The witness had also not stated in his FIR that the accused No.1 was assaulted by means of *lathis* . The witness however, has denied the

suggestion that the **FIR-Exh.57** was a fabricated document and has been prepared after due deliberations. He has also denied that the weapon had been planted to created a false case against the accused No.1. In the cross-examination for accused No.2 this witness has denied suggestion that all the weapons were collected by the police from the spot immediately after the alleged incident and there were no arms and ammunitions on the spot at the time of pachanama.

413. **P.W.3-Hemant Anant Bavdhankar**, API, has stated in his evidence that he had gone to Girgaon Chowpaty for Nakabandi as directed by Sr.PI Mr.Mali of D.B.Marg Police Station. Nakabandi was arranged on the N.S.Purandare Marg. The road was barricaded for north bound traffic. This witness further states that after sometime P.W.1-Bhakar Kadam, PSI, and other policemen had also reached the spot. API Mr.Govilkar (P.W.2) ad ASI Mr. Tukaram Ombale had also reached the spot.

414. It was around 00.30 hours that one car was seen approaching Girgaon Chowpaty in high speed. It was on the road meant for north bound traffic i.e. Nariman Point to Malabar Hill. P.W.3 and other policemen

directed the car driver to stop the car. The car had stopped at a distance of 50 feet from the barricades. The police officers and policemen were unable to see number plate of the car due to bright head lights. They had therefore directed the passenger of the car to put off the head lights and intimated them that Nakabandi was in progress. The driver of the car however, ignored the directions issued by the police. He, on the contrary put on wipers and water spray on windscreen and tried to run away by taking 'U' turn on the spot. He could not succeed because of the road divider which was made of R.C.C. The car hit the divider. By this time P.W.3 had suspected that the passengers in the car were terrorists. Policemen therefore shouted at the passengers. Both the passengers raised their hands pretending that they had surrendered before the police.

415. At this time P.W.3 was standing on road divider . As already stated the car had hit the road divider as the driver could not take 'U' turn. P.W.3-API Bavdhankar tried to approach the car. The driver however, started firing from his pistol towards P.W.3 , P.W.1 and other policeman. The bullets fired towards P.W.3 could not hit him as they missed him. At this point of time P.W.3 had reached other side of the road i.e. meant for

north bound traffic. He went behind the car and shot three rounds from his service pistol on rear wind screen of the car. P.W.1 had also at the same time fired at the driver. The driver was injured due to the firing. He was taken into custody. In the meantime P.W.3 had reached near the left front door of the car. He had seen co-passenger of the driver fired from his firearms at Tukaram Ombale and Sanjay Govilkar. Tukaram Ombale and Sanjay Govilkar, both had sustained bullet injuries due to firing by the co-passenger. The other policemen accompanying Mr.Govilkar and Tukaram Ombale had disarmed the said co-passenger.

416. Accused No.1 has been identified by the witness to be the same person who had fired at deceased Tukaram Omable and Sanjay Govilkar (P.W.2) .

417. After this incident, wireless operator of peter mobile van was asked to call for extra police force. P.W.3-API Bavdhankar and P.W.1-PSI Bhaskar Kadam had tied hands of accused No.1 and the driver by means of handkerchiefs . After sometime Sr.PI Mali, API Gawade and other police officers had also reached the spot. The car was inspected by the police

officers. Registration number of the car was found to be MH-02-JP-1276. The injured police officers Tukaram Ombale and Sanjay Govilkar were removed in the hospital in the peter mobile van. The accused No.1 and his associate (driver) were removed to Nair Hospital in ambulance. P.W.3 had seen some suspicious articles in the car and had therefore directed the wireless operator to call for Bomb Detection & Disposal Squad (B.D.D.S.) . Officers attached to B.D.D.S. had reached the spot. They found one hand grenade and two magazines of AK-47 in the jacket lying on rear seat of the car. One AK-47 rifle was found in leg space of driving seat. The hand grenade was carefully removed by PSI Mr.Ghodse of B.D.D.S. The witness has identified Art.12 to be the same rifle which was found in the leg space. He has also identified **Art.10** to be the same which was held by accused No.1 .

418. As far as bomb is concerned, P.W.3 has stated that it was kept in secured place in the sand at Chowpaty and that it was later on defused by Mr.Anthony of B.D.D.S. The remnants of defused bomb were seized by this witness under panchanama **Exh.65.** This witness has stated that he had taken part in the identification parade where he had identified accused No.1.

He had also identified dead body of the driver (associate of accused No.1) in the mortuary of J.J. Hospital on 06/01/09.

419. P.W.3 has stated that he was carrying with him one pistol with nine rounds at the time of incident. He had fired two rounds from the said pistol. It is already stated that the deceased accused Abu Ismail had died due to bullet injuries following the firing from the pistol of P.W.3. The Investigating Officer during the course of investigation had seized the said pistol and remaining 7 rounds from the possession of P.W.3. Prosecution has produced one sealed packet bearing No.364. The said packet was containing the brown wrapper in which the pistol was seized i.e. art.28, one pistol-**art.29**, one magazine-**art.30,** five live cartridges-**art.31 colly**., two empties-**art.32 colly.** and two bullets -**art.33 colly**. P.W.3 has identified **art. 29** to be the same pistol which he had used at the time of incident.

420. P.W.3-Hemant Bavdhankar, API, in his cross-examination has admitted that he had a pistol with him however, he had not fired at accused No.1 because there were strong chances of either Tukaram Ombale or Sanjay Govilkar (PW.2) being injured. This witness has also denied the

usual suggestion of ld.Advocate Mr.Kazmi for accused No.1 that he had been giving false evidence and that nothing was recovered from the possession of accused No.1.

421. P.W.2-Sanjay Govilkar,API, is one of the officers who was injured in the incident. He was accompanying ASI Tukaram Ombale when both of them had approached left front door of Skoda car. This officer did not have any firearms with him at the time of incident. This officer was at home after his duty hours but had reported at police station after watching news on television that certain part of south Bombay had been attacked by terrorists. He was directed by his Sr.P.I. to report Vinoli Chowpaty for Nakabandi. It is how this witness was on the spot of incident. This witness has more or less repeated the same story as narrated by P.W.1-PSI Bhaskar Kadam and P.W.3-API Hemant Bavdhankar in respect of arrival of the Skoda car on the spot and attempt made by the driver of the car to take 'U' turn which resulted in car hitting the road divider. This witness has stated that when he and Tukaram Ombale had proceeded towards left side of the car, API Bavdhankar (P.W.3) and PSI Kadam (P.W.1) were on the driver's side. As soon as P.W.2 and Tukaram Ombale reached near left door of the

car, one terrorist had opened fire while coming out of the car. This witness has identified accused No.1 to be the same terrorist who was holding AK-47 rifle. P.W.2 himself and Tukaram Omable had attempted to catch hold of the said weapon. Accused No.1 had however resisted and had fallen on the road. Accused No.1 started firing after lying down on the road. P.W.2 had sustained only one firearm injury on right side of his waist, deceased ASI Tukaram Ombale however had received multiple firearm injuries and was seriously injured due to said firing. The other policemen accompanying P.W.2 and Tukaram Ombale started assaulting accused No.1 by means of lathis (sticks) and had apprehended him on the spot. He was thereafter disarmed and his AK-47 rifle was snatched away from him. This witness has identified **Art.10** to be the same AK-47 rifle which accused No.1 had used for firing. This witness has also identified the clothes **Art.9-** T-shirt and **Art.7-** cargo trouser to be the same which accused No.1 was wearing at the time of incident. This witness has further identified a pair of shoes **-Art.25 (colly.)** to be the same which the accused No.1 was wearing.

422. P.W.2-Sanjay Govilkar and Tukaram Ombale were taken to Hurkisondas Hospital in peter mobile van. P.W.2 was admitted in the

hospital for treatment and was discharged on 29/11/08. He had fever after discharge from the hospital and therefore he joined his duties on 2/12/2008. His statement was recorded by the Investigating Officer at Unit-III of D.C.B.C.I.D. He has identified his shirt-**Art.27** to be the same which he was wearing at the time of incident. There is one hole on right side of the shirt which according to this witness was caused due to firing by accused No.1 which had resulted in one firearm injury to P.W.2.

423. P.W.2 had participated in the identification parade held by Special Executive Officer Mr.Vichare in Arthur Road Prison. P.W.2 had identified accused No.1 in the identification parade. According to this witness there were six dummies, the accused No.1, two panchas and S.E.O. in the parade room when P.W.2 had identified the accused No.1.

424. This witness has also admitted that there was scuffle between accused No.1 on one hand and P.W.2 himself and deceased Tukaram Ombale on the other hand.

425. P.W.2-API Mr.Sanjay Govilkar in his cross-examination at

page-33 has stated that AK-47 rifle held by accused No.1 was taken charge of by the supporting team. He was however, unable to tell as to where the said weapon was kept by the supporting team. The witness has denied suggestion that he could identify the rifle AK-47- art.10 because it had no sling. It is also denied by him that he could distinguish art.10 from art.12 because art.12 had a sling. The witness has also denied that sling was purposely put on art.12 with a view to facilitate identification of art.10 by the witness. The witness has emphatically and positively stated that he could identify AK-47 rifle-art.10 because the same was seen by him very closely. He has denied suggestion that he has identified art.10 on the basis of label affixed by the Court.

426. There is one minor omission in his police statement which the witness has admitted in the cross-examination. It is admitted by P.W.2 that he has not stated in his police statement that policemen had used *lathis* for assaulting accused No.1.

427. In the cross-examination on behalf of accused No.3 it is denied by this witness that he was shown both the rifles art.10 and art.12 by the

Investigating Officer before the same were sealed and seized under the panchanama.

428. P.W.4-Pandurang Laxman Gawade is Assistant Police Inspector who was also at home on 26.11.08 when he received emergency call at about 11.30 p.m. from D.B.Marg Police Station to report on duty immediately. He reported at D.B.Marg Police Station at 11.30 p.m. and was directed by Sr.P.I. Mr. Mali to carry on patrolling in the vicinity of D.B.Marg Police Station. He was carrying walkie-talkie which he was taken from Beat Marshall of the area. He had heard messages on walkie-talkie which indicated that two terrorists had been apprehended at Girgaon Chowpaty and one ASI had been injured in the incident and that extra force had been called at the place of incident i.e. Girgaon Chowpaty. He therefore along with PI Surulkar had rushed to the spot on his motorcycle. He reached there within three minutes of hearing the message on walkie-talkie. According to this witness when he reached Girgaon Chowpaty, he had seen that injured ASI Tukaram Ombale and API Sanjay Govilkar (P.W.2) were being taken in hospital in peter mobile van. The two injured terrorists were taken to Nair hospital in two separate ambulance. This witness and PI

Mr.Surulkar had taken one of the terrorists to Nair Hospital and other terrorist was taken to the said hospital by PSI Mr.Warang and other policemen. They reached Nair Hospital within ten minutes from Girgaon Chowpaty.

429. It is further stated by P.W.4 that Dr.Yogita Delkar was on duty at Out Patient Department (OPD). She had examined both the terrorists. One of them was declared dead and accused No.1 who has been identified by P.W.4 , was admitted to trauma ward for treatment. At about 1.30 p.m. when P.W.4 interrogated the accused No.1 after obtaining permission from the doctor . Accused No.1, during the course of interrogation, had disclosed his name to be Ajmal Amir Kasab, age to be 21 years and resident of Faridkot, Tal. Jipalpur , Dist.Ukhad Punjab State, Pakistan. Name of the deceased terrorist was also disclosed by accused No.1 to P.W.4. P.W.4 has stated that name of the deceased terrorist was disclosed to be Abu Ismail and age to be 25 years. The deceased terrorist was disclosed to be resident of Dera Ismail Khan , Punjab, Pakistan. P.W.4 had conveyed the details of both the terrorists to PSI Warang. At about 1.50 p.m. he had made a phone call to D..Marg Police Station and had given details of both the terrorists to

PSI Bhaskar Kadam (P.W.1).

430. As far as cross-examination of P.W.4 is concerned, it is stated by this witness that his statement was not recorded during investigation of the case. It is stated by this witness in his cross-examination that both the terrorists were lying on the road when he reached the spot. He has admitted that both of them were unconscious. Hands of both the terrorists were found tied by means of handkerchiefs. P.W.4 has also admitted that he had not reported the matter to duty police officer at Nair Hospital before the injured terrorists were taken to O.P.D.

431. As far as cross-examination on behalf of accused No.2 is concerned, P.W.4 has stated that he had not voluntarily gone to any investigating officer to give his statement during investigation. This witness is also cross-examined with regard to personal search of dead body of the deceased accused Abu Ismail. In the cross-examination he has stated that he did not ask the police officers who were present on the spot at Girgaon Chowpaty as to whether they had taken personal search of deceased Abu Ismail. The witness himself also did not find it necessary to

check whether there was any weapon or explosive on the person of deceased. It may be noted here that the witness was not knowing at that time that the said terrorist was dead. Both the terrorists were taken to the hospital as injured persons for treatment.

432. In further cross-examination on behalf of accused No.2 the witness has stated that he did not sustain blood stains on his clothes while carrying the terrorists to the hospital. He was unable to tell whether there were any blood stains in the vehicle in which the said terrorist was carried to the hospital.

433. **P.W.8-Dr. Shirish Rajaram Bhagwat** who was attached to Hurkisondas Hospital as General Surgeon , has stated in his evidence that on 27/11/08 at about 2.00 a.m. he had received emergency call from the hospital. He had attended the patient by name Sanjay Govilkar in ward No.18. This witness had found that there was one abrasion on right loin region of the patient. The said abrasion had little bruising around it. The witness has further stated that the patient was admitted in the hospital and was discharged on 29/11/08. The injury found on the person of the patient

according to this witness, could be caused by passing bullet.

434. **P.W.21-Dr.Jyothi Rao** has stated in her evidence that she has been working as Assistant Medical Director at Sir Hurkisondas Hospital . She was shown certificate **Art.37** in respect of discharge of Sanjay Govilkar (P.W.2) from the hospital. This witness has stated that discharge certificate was prepared by her on the basis of hospital record. It shows that the patient by name Sanjay Govilkar was admitted in the hospital on 27.11.08 at 1.00 a.m. and was discharged on 29.11.08. It is further stated by this witness that the patient was treated by Dr.Bhagwat (P.W.8). The witness has identified her signature on the certificate **Exh.115.**

435. The shirt of P.W.2-Sanjay Govilkar worn by him at the time of incident was seized by Police Officer Mr. Shivalkar on 3/12/2008 in presence of two panchas. **P.W.5-Sanjay Krishna Jadhav** is one of the panch witnesses who has stated that **Art.27** is the same shirt which was seized by the police in his presence under panchanama-**Exh.70**. He has identified his signature on the label on khaki wrapper-**Art.26** in which the said shirt was sealed.

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436. P.W.11-Dr.Yogita D/o Narendra Delkar, has stated in her evidence that she was on duty as Chief Medical officer at Nair Hospital on the night of 26th & 27th November, 2008. At about 00.50 hours on 27th November,2008 two patients with firearm injuries were brought by PSI Mr. Warang, PSI Mr.Gawade and Police Constable No.30426. They were examined by this witness in casualty department. One of the patients was found dead. He was sent to Cama hospital for confirming his death by cardiograph. The other patient was conscious and well oriented. The witness has identified accused No.1 to be the same patient who was admitted in trauma ward for treatment. O.P.D. paper and emergency slip in respect of accused No.1 was prepared by this witness. This witness has stated that age of accused No.1 was recorded as 25 years on the basis of physical appearance of accused No.1. This witness has produced the casualty register and has stated that the entry at Sr.No.18555 is in respect of patient who was found dead and entry No.18556 is in respect of accused No.1. Both the entries are in the handwriting of P.W.11. Names of both the patients could not be recorded as they were not disclosed to P.W.11. Entries in the casualty register in respect of both the patients in the handwriting of P.W.11 have been identified by her at **Exh.83** and **Exh.84** respectively. The

details of accused No.1 regarding name and age below the entry **Exh.84** in the casualty register are made by Dy. Dean of Nair Hospital.

437. P.W.11 has stated in her evidence that cover page of indoor papers is prepared in Medical Registration Office by Medical Registration Assistant . The cover page of OPD papers of accused No.1 was prepared by the Registration Assistant Mr.Kedar Dutt Joshi.

438. This witness has admitted in the cross-examination that there was one police constable always on duty at Nair Hospital and that any medico legal case brought by any person other than police is required to be registered in the register maintained by the said police constable. Said register is called 'Emergency Police Register ' (E.P.R.). The witness however, has clarified that medico legal case brought to the hospital by the police is not required to be registered in the said register. In this regard it may be stated here that many a times medico legal cases brought by the police are also registered in the Emergency Police Register. This particular case was admittedly not registered in the Emergency Police Register. The witness has also admitted that she had stated age of the accused No.1 to be

25 years when her statement was recorded by the police during investigation. She has denied suggestion that the O.P.D. register and indoor papers have been fabricated.

439. P.W.12-Dr.Venkat Rammurthy who was attached to Nair Hospital as Resident Medical Officer, has stated that he had examined and treated accused No.1 in trauma ward in the night of 27.11.08. This witness has also identified accused No.1 to be the same patient who was treated by him in the trauma ward. On physical examination of the patient (accused No.1) P.W.12 found following injuries on the person of accused No.1:

1) Lacerated wound 3 x 2.5 cm on posterior medial aspect of right elbow. It was 1 cm distal to the elbow join with contamination.
2) Lacerated wound 3 x 2.5 cms, around 2.5 cms from the first wound.
3) 3 x 1 cm lacerated wound on the dorsal ulna of left wrist join.
4) 5 x 6 cms bruise over anterior aspect of left thigh.
5) Superficial abrasion on the anterior aspect of right thigh.

6) There was one punctured wound of 1cm over the posterior aspect of right elbow.

440. As far as ability of accused No.1 to sign is concerned, this witness has been cross-examined by ld.Advocate Mr.Abbas Kazmi. In response to the questions put in the cross-examination the witness has stated that accused No.1 could have signed but not with precision. He has admitted that signature of accused No.1 was not taken on indoor papers in the column provided for signature of patient/representative. The witness has stated that signature of police constable who had brought accused No.1 in the hospital was taken in this column. In this regard it may be stated here that since the accused No.1 could not sign and he was brought in injured condition and there were no relatives of accused No.1, there was nothing abnormal if the signature of police constable was taken. It is in any such case that hospital authorities take signature of the policemen who brings medico legal case to the hospital.

441. The witness has admitted one omission in his statement recorded by the police during investigation. It is admitted by him that he had not stated before the police that accused No.1 was able to speak when he

was brought to the hospital. He has also admitted that he had not stated at page -2 of indoor papers **(Exh.87)** that accused No.1 was able to speak when he was brought to the hospital in trauma ward. It is stated by this witness that generally police are not permitted to interrogate patients who are admitted in trauma ward. The witness has further stated that the name, address, age and other details of accused No.1 were recorded at page No.4 of indoor papers **(Exh.88)** after 03.55 hours of 27.11.08. It is admitted by this witness that there is overwriting in the column provided for ' time of discharge' on cover page of indoor papers. He however, was unable to explain the discrepancy as the writing did not belong to him. The witness has denied suggestion that accused No.1 was discharged from Nair Hospital on 9.25 a.m. on 27.11.08.

442. P.W.12 has further stated that the person having injuries of the nature stated herein above could handle the weapon like Art.10. According to this witness the accused No.1 was absolutely in normal condition. His pulse rate was 106 and blood pressure was 120-70. Injuries found on the person of accused No.1 were recorded at page No.2 of indoor papers. The witness has identified his handwriting and signature at page No.2 of indoor

papers. Page No.2 has been exhibited at **Exh.87.** According to this witness requisite medical treatment was provided to the accused No.1 in trauma ward. The police had come there to interrogate accused No.1 on the same night.

443. **P.W.13-Dr.Vikaskumar Kashinath Kesari** is also one of the Medical Officers who was attached to Nair Hospital and was on duty in trauma ward on 26th and 27th November, 2008. According to this witness accused No.1 was brought to trauma ward for treatment at about 1.00 a.m. on 27th November,2008. He was attended by Dr.Venkat Rammurthy (P.W.12). Dr.Venkat Rammurthy had requested P.W.13 to put the accused on I.V. catheter . Accordingly I.V. catheter in right neck vein of accused No.1 was put by P.W.13.

444. This witness has further stated that 3 to 4 police officers had visited trauma ward on 27/11/08. They wanted to know whether accused No.1 was in a condition to give statement. P.W.13 after examination of accused No.1 had told that accused No.1 could give statement. An endorsement in that respect was made by P.W.13 on a paper on which

names of two panch witnesses were found to have been written. He has identified the endorsement which is **Exh.90.** He has also identified his signature below the endorsement. According to this witness statement of accused No.1 was recorded by police. The accused No.1 could not sign the statement because of pain in his right hand. P.W.13 had therefore made an endorsement on the statement to that effect. P.W.13 has identified the endorsement to be in his handwriting. He has also identified his signature. The endorsement and signature is at **Exh.91.** P.W.13 has further stated that accused No.1 was discharged from the hospital on 27.11.08 at 9.25 p.m. Discharge note was prepared by this witness which is at **Exh.92.**

445. As stated earlier in the examination-in-chief this witness has stated that memorandum statement of accused No.1 was recorded in trauma ward and that he had given certificate that accused No.1 was in a condition to make statement. During the course of cross-examination of P.W.13 ld. Advocate Mr.Kazmi has brought on record that this witness had not stated before police in his statement during investigation that he had given certificate regarding ability of accused No.1 to give statement. The witness has clarified that the police officer who recorded the statement, did not ask

him anything about the certificate given by him regarding health of accused No.1 and therefore this fact did not appear in his police statement. The witness has denied that the endorsements (certificates) made by him **(Exh.90 & Exh.91**) were drafted and signed by him on blank paper

446. **P.W.22-Dr.Vandana Tandel** has stated in her evidence that she is working as Assistant Medical Officer at Nair Hospital. She was on duty as A.M.O. 'on call' from 5.00 p.m. of 26th November, 2008. The witness further states that the hospital employees and officers were put on red alert by the Disaster Management Cell of the Corporation around 9.00 to 10.00 p.m. on 26/11/08.

447. The witness in her cross-examination has denied that the documents had been fabricated and that in fact accused No.1 was handed over to police in the morning on 27.11.08. It is also denied by the witness that she had given false evidence at the instance of police.

448. On the same night around 1.00 to 1.30 a.m. of 27/11/08 this witness was on duty in casualty department. Dr.Yogita Delkar (P.W.11)

was also on duty as Casualty Medical Officer. According to this witness two patients were brought by police in the Casualty Ward. One of them was dead. The other patient was rushed to trauma ward for specialized treatment. Emergency slip was prepared by this witness. She has identified her signature on the emergency slip-**Exh.117.**

449. It has come in the evidence of this witness that Dr.Sanjana on 27/11/08 had advised discharge of the patient who was admitted in the trauma ward . The witness has identified signature of Dr.Sanjana and the endorsement made by him at **Exh.118**. She further states that after endorsement of Dr.Sanajana advising discharge of the patient, she had also made an endorsement asking the M.R.O. to draft a letter being addressed to the police for taking charge of the patient. She has identified the endorsement and her signature at **Exh.119.**

450. P.W.22 has also identified accused No.1 to be the same person who was admitted in trauma ward and was later on discharged. Accused No.1 was handed over to police at 9.25 p.m. of 27/11/08. Police had acknowledged receipt of custody of accused No.1 on the office copy of

letter -**Exh.118.** The endorsement was made by police officer Mr.Sawant in presence of P.W.22.

451. Ld. SPP Mr.Nikam wanted to know from this witness as to why the patient was handed over to police late in the evening despite the fact that Dr.Sanajana had advised discharge of the patient in the morning itself. The witness has stated that when the patients who are brought by the police, connected with police case, are handed over to police whenever police come to take their custody. As such according to this witness though accused No.1 was advised to be discharged in the morning of 27/11/08, he was actually discharged from the hospital in the evening and that during the intervening period accused No.1 was in the same trauma ward of Nair Hospital.

452. Prosecution has produced carbon copy of letter **Exh.106** under which police had been informed by the hospital authorities that accused No.1 had disclosed his name, address and age. During the course of recording evidence of this witness, original of **Exh.106** was produced and it was exhibited **Exh.106A**.

453. At this stage Court wanted to know from the witness as to why it was found necessary to issue letter **Exh.106** when the letter **Exh.108** was already drafted and numbered intimating the police that they could take charge of accused No.1. The witness had stated that the letter **Exh.106** was issued to the police with a view to inform the police regarding the name, address , age etc. of the accused No.1. This letter was issued to the police on the instructions given by Dr.Venkat Rammurthy. P.W.22 has further stated that an endorsement asking the M.R.O. to draft a letter was made at **Exh.120**. This endorsement was made by this witness on the indoor papers around 3 to 3.30 a.m. on 27/11/08. This witness has denied in the cross-examination that **Exh.120** has been made by her later on at the instance of police. She has also denied that the accused No.1 was handed over to the police on 27/11/08 in the morning itself. The witness has denied the suggestion that the letter **Exh.106A** was fabricated later on at the instance of police.

454. **P.W.16-Kedar Dutt Dharmanand Joshi** has stated in his evidence that he was on duty at Nair Hospital as Record Assistant from 11.00 p.m. of 26/11/08 till 7.00 a.m. of 27/11/08. It was his duty to prepare

indoor papers of the patients admitted in the hospital for treatment.

455. It is stated by this witness that on 27/11/08 at about 1.30 a.m. Police Constable No.34026 visited his office and produced O.P.D. papers **(Exh.85 colly.)** and emergency slip **(Exh.117)** in respect of one patient. **Exh.85 colly.**-indoor papers were shown to this witness. The witness has stated that name and address of the patient was recorded as 'unknown' and his age was recorded as 25 years in the cover page of indoor papers. The other details of admission including casualty number, O.P.D. number etc. were also recorded in the cover page by this witness. He has identified his handwriting and also identified his signature in the column provided for signature of 'clinical clerk.'

456. P.W.16 in his cross-examination has stated that the time of admission is indicated as **'A.M.'** or **'P.M.'** Both the options are available in the printed form. The option which is applicable is encircled. At this stage it may be stated here that in the indoor papers **Exh.85 colly.** word 'A.M.' is encircled to indicate that the patient was admitted. Similar procedure is adopted at the time of discharge also. At this stage it may be stated that in

the indoor papers **Exh.85 colly.** in the column of 'discharge' option 'A.M.' was encircled initially and thereafter it appears to have been scored out and option 'P.M.' has been encircled and tick marked. The time of discharge is mentioned as 9.25. It means it was earlier shown as 9.25 a.m. and later on it appears to have been corrected as 9.25 p.m. The witness has further stated in his cross-examination that the changes in respect of name and address and other details of the patients were later on changed. Necessary changes were made by senior of P.W.16.

457. P.W.17-Vinayak Diwakar Gavankar is working as Medical Record Officer in the Nair Hospital and was on duty as such from 9.00 a.m. of 27/11/08 to 4.00 p.m. of the same day. At about 9.30 a.m. indoor papers **Exh.85 colly.** were given to him by Dr.Vandana Tandel (P.W.22) . P.W.22 had requested this witness to address a letter to Sr.P.I. of D.B.Marg police station informing name, address and other details of the patient who was initially admitted as unknown patient vide indoor papers **Exh.85 colly.** A carbon copy of the letter was shown to him. He has identified carbon copy of signature of Dr.Tandel on Exh.106. This part of evidence of this witness is not necessary to be discussed in detail as Dr.Vandana Tandel herself has

been examined as P.W.22 and she has stated that original letter- **Exh.106A** was addressed to the police to intimate name ,address and age of the accused No.1. What is material in the evidence of P.W.17 is that the changes made in the indoor papers are in his handwriting. The changes had been made by this witness on the basis of details recorded by Dr.Rammurthy in the indoor papers **Exh.85 colly.** P.W.22 -Dr.Vandana Tandel had directed this witness (P.W.17) to carry out necessary changes in the columns of indoor papers. The witness has identified his handwriting where changes in respect of name, address and age of the patient have been made.

458. If one refers to indoor papers-**Exh.85 colly.** , it can clearly be shown that the patient was admitted as unknown male, aged about 25 years. He was brought by P.C.30426. Later on name of the patient has been recorded as Ajmal Amir Kasab, address as Faridkot, Tal. Jipalpur, District Ukhad, Punjab , Pakistan and age is recorded as 21 years . As stated earlier these details have been recorded by P.W.17 in his own handwriting and has identified the same. He has also mentioned that the changes were made in the indoor papers. It is admitted by this witness that letters **Exh.106,**

Exh.107 and Exh.108 had been issued from his office having outward number of the same outward register. **Exh.106** is the handwritten letter which contains details of accused No.1. **Exh.108** is the letter prepared on computer giving intimation to the police that the accused No.1 has been discharged and police might take custody of the accused. **Exh**.**107** is a cyclostyled form which appears to have been filled in by the official of Nair Hospital and appears to have been addressed to Sr.P.I. of D.B.Marg Police Station. The Sr.PI was informed under said letter that the person by name Ajmal Amir Kasab, aged about 25 years was admitted to the hospital on 27/11/08 and that right hand wash sample in respect of the said patient had been preserved by the police. Police were informed that they could collect it for being forwarded to Chemical Analyzer. This witness has denied suggestion that letter **Exh.106** was manufactured at the instance of police and that it was prepared during the period when the inquiry in respect of determination of age of accused no.1 was in progress in this Court.

459. As such what ld. Advocate Mr.Kazmi had tried to convey through his cross-examination is that accused No.1 was discharged from the hospital in the morning itself and that the document **Exh.106** which bears

Outward No.2197 obviously later in time of the document **Exh.108** which bears Outward No.2196, was prepared to create evidence to show that the accused No.1 was discharged from the hospital in the night of 27.11.08.

460. P.W. 14-Shivaji Dagadu Shivekar is one of the panch witnesses who was present at the time of examination of dead body of the deceased Abu Ismail at Nair Hospital. This witnesses has stated that he had gone to Nair Hospital on getting information that one of his friend had been admitted to hospital following a vehicular accident. He was requested by police to be a panch witness. He agreed to witness the panchanama. He was shown a dead body in the trauma ward No.28 which was lying on the stretcher. Clothes of dead body were removed by the ward boy Mr.Daji Patil. Dr.Mohite was also present at that time. According to this witness following injuries were seen on the dead body:

1) Injury on left back side of the skull

2) Injury near the right eye.

3) Two injury on right shoulder

4) One injury on right index finger

5) One injury on left side of waist

6) One injury just above knee joint on left leg.

The ward boy had collected blood sample from the dead body. The blood sample was collected in a small bottle. Hand wash of both the hands of dead body was also collected in a bottle. It is stated by P.W.14 that both the bottles were sealed by the police. Panchanama-**Exh.97** was prepared in his presence. He has admitted his signature on the panchanama. His friend Kishore Nawale had also signed the said panchanama.

461. The witness in his further examination-in-chief has stated that he could identify photograph of the person whose dead body was seen by him. Identity card produced by the prosecution at **Art.61** was shown to the witness. He has stated that photograph on the identity card belongs to the deceased whose dead body was seen by him at Nair Hospital.

462. P.W.14 has further stated that one more panchanama was drawn in his presence in respect of seizure of clothes of the deceased and accused No.1. The police had seized following clothes and articles of the deceased whose dead body was seen by P.W.14:

1) Cargo trouser of blue colour.

2) T-shirt of ash colour

3) one vest

4) A pair of socks of ash colour

5) one shoe of left foot, it had a brand name of 'G' sports, made in China

The clothes of the deceased found to be stained with blood at various places. There was one hole on the trouser at the level of left knee joint. The witness further states that he can identify clothes seized in his presence. According to this witness one sketch map showing various places of Mumbai City was recovered from one of the pockets of cargo trouser. The witness has identified **Art-3** and **Art.5** to the same trouser and T-shirt respectively which were seized in his presence. He has identified his signatures on the wrapper **Art.2** and **Art.4**. He has stated that these wrappers were used for sealing the trouser and T-shirt. The witness further states that one vest-**Art.94**, a pair of socks-**Art.96 colly**. and a shoe of left foot- **Art.98** are the same which were seized in his presence. He has identified his signature on the wrappers **Art.95** and **Art.97**. He has further identified his signature on label affixed on the brown wrapper **Art.99** and has also identified the sketch map-**Art.101.** It is stated by this witness that the sketch map was recovered

from right pocket of cargo trouser -**Art.3.** Signature of this witness was taken on the back of the sketch map in token of he having seen the said map. He has identified his signature at **Exh.98.**

463. As far as seizure of clothes of accused No.1 is concerned, P.W.14 has stated that following clothes were seized by the police which were produced by the ward boy:

1) Cargo trouser of green colour-**Art.7**
2) Blue T-Shirt-**Art.9**
3) full sleeves T-shirt of dark orange colour
4) one under wear
5) one lungi
6) a pair of socks

It is stated by this witness that there were blood stains at many places on the cargo trouser-**Art.7.** The trouser had in all six pockets- three on each side. One identity card issued by one of the colleges of Bangalore was found in one of the pockets of the trouser. The I-card issued in the name of Samir Chaudhary was shown to this witness. He has identified the photograph on the said identity card to be the photograph of accused No.1. The Identity card -**Art.104** has been identified by this witness. Indian currency of

Rs.5400/-**Art.106** was recovered from one of the pockets of the trouser-**Art.7.** The same was also seized by the police. Wrapper in which Indian currency notes were seized by the police was shown to this witness. He has identified his signature on the wrapper-**Art.105.** The other articles seized in presence of this witness i.e. one underwear-**Art.108**, one full sleeves T-shirt-**Art.110**, one lungi-**Art.112**, a pair of socks-**Art.114 colly**. and one Nokia battery-**Art.116** have been identified by this witness and has stated that they were seized in his presence. He has identified his signature on the wrappers -**Art.107**, **Art.109**, **Art.111**, **Art.113** and **Art.115.** According to this witness these wrappers were used for sealing Art.108-underwear, Art.110-one full sleeves T-shirt, Art.112-one lungi, Art.114 colly.-a pair of socks and Art.116-one Nokia battery.

464. As far as cross-examination of this witness by ld. Advocate for accused No.1 is concerned, there is nothing in the cross-examination which needs discussion in this judgment. However, in the cross-examination by ld.Advocate Mr.Shahid Azami for accused No.2 this witness has admitted that his friend Sawant was never admitted in Nair Hospital. It is clarified by him that Sawant had not sustained any major injury and therefore, was not

taken to Nair Hospital. In his cross-examination by ld. Advocate Mr.Shahid Azami P.W.14 has also admitted that two different pens had been used for writing the inquest panchanama-**Exh.97** and the panchanama in respect of seizure of clothes i.e. **Exh.99**. It is admitted position that both the panchanamas were scribed by one and the same constable. The witness further admits that quality of paper of panchanama-Exh.97 is different from the paper of panchanama-Exh.99. He however, denies that panchanama -Exh.97 was prepared on 27.11.2008 and Exh.99 was prepared after two to three weeks of the incident. It is the case of accused No.2 that sketch map-**art.101** was never seized from trouser pocket of deceased accused No.1-Abu Ismail and that the panchanama-Exh.99 in respect of seizure of clothes of the deceased accused No.1 is a fabricated document and had been prepared after the arrest of accused No.2 to falsely implicate the accused No.2 in this case.

465. P.W.27-Mr.Subhash Warang, API, was attached to D.B.Marg Police Station and he was on duty on the night from 8.00 p.m. of 26th November, 2008 till 8.00 a.m. of 27th November, 2008. He was on patrolling duty along with Police Constable Mr.Kijbile. Both of them were

patrolling the area on motorcycle. Police Constable Mr.Kijbile was driving the motorcycle and P.W.27-API Warang was a pillion rider . He had walkie-talkie with him. At around 00.36 hours this officer had heard a message on walkie-talkie being conveyed to the control room by peter mobile van of D.B.Marg Police station that two police officers had been injured at Girgaon Chowpaty in an encounter with terrorists. It was also heard by him on the walkie-talkie that two terrorists had been detained following the said incident of encounter. P.W.27 therefore along with said Police Constable Mr.Kijbile had rushed to Girgaon Chowpaty. When he reached Girgaon Chowpaty, he had seen two injured persons in the custody of police. One Skoda car was seen on the road. Sr.P.I. Mr.Mali was also present on the scene. Other Police Officers namely Mr.Bavdhankar, Mr.Kadam, Mr.Gawade, Mr.Suralkar and police staff was also seen by this witness.

466. According to this witness Sr.PI Mali had directed him to take both the injured terrorists to the hospital. This witness had taken one of the terrorists to Nair Hospital and other injured terrorist was taken to the hospital by other police officer. The witness has identified accused No.1 to be the same terrorist who was taken by him to the hospital. The other

injured terrorist brought to the hospital was declared dead before admission. Accused No.1, after examination by Casualty Medical Officer, was immediately sent to trauma ward for further treatment. P.W.27 himself had taken to accused No.1 to trauma ward. The dead body of other terrorists whose name later on revealed as Abu Ismail, was also brought to the same ward.

467. I have already summed up evidence of panch witness P.W.14 who was present at the time of inquest panchanama. P.W.27 had drawn the said inquest panchanama. Clothes from the dead body of the deceased were removed by the ward boy Daji Patil. There were in all seven injuries on the dead body. There was one bullet injury on right side of right eye and another injury was on left backside of head. Blood clots were seen on both the injuries. Two injuries were seen 5 cm below the right shoulder on front portion and one injury was seen on right index finger. There were other two injuries below the left armpit. There minor injuries on left thigh and the right knee joint. Blood sample of the deceased was collected in a glass bottle by the ward boy. The said bottle was sealed and labelled. P.W.27 had signed the label. It was also signed by both the panchas present during

the course of panchanama. Hand wash of both the hands of deceased was collected in a clean glass bottle. The said bottle was also sealed. As stated earlier clothes of the deceased were removed by the ward boy. There was only underwear on the body of the deceased at the time of inquest panchanama. The said underwear was also removed and was seized under panchanama. There were blood stains on read side of the underwear. Panchanama **Exh.97** was shown to the witness. He has stated that it is the same panchanama and bears his signature. Cargo trouser-**art.3**, T-shirt-**art.5**, vest-**art.94**, pair of socks-**art.96 colly**., one shoe of left foot-**art.98** were shown to the witness. He has identified these articles to be same which were removed from the dead body. He has also identified underwear of blue colour-art.155 to be the same which was removed from the dead body. It is stated by P.W.27 that this underwear was seized under separate panchanama-**Exh.99.** The witness has further stated that there were six pockets to the cargo trouser. Examination of the pockets resulted in recovery of one sketch map from right side pocket of the trouser. It is stated by the witness that the said pocket was just above the knee portion of the trouser. The map showed various locations of Mumbai city. The sketch map-**art.101** was shown to the witness . It is stated by him that map is the

same article which was found in right side pocket of the cargo trouser. Witness has put his signature on backside of the map. Signatures of panchas were also taken. The witness has identified his signature on the panchanama-**Exh.99.** This is the same panchanama under which clothes of the deceased terrorist Abu Ismail and sketch map were seized by the witness in presence of two panch witnesses .

468. As already sated accused No.1 was also admitted in the same ward for treatment. He was asked to remove his clothes as the same were required to be seized for further investigation. Hospital clothes were given to the accused No.1. Clothes of accused No.1 were also seized under panchanama-**Exh.99** . P.W.27 had identified **art.7**-cargo trouser of green colour, **art.9**-blue T- shirt, **art.108-**underwear, **art.112**-lungi, **art.114**- a pair of socks, **art.104**-I-card, **art.116**- one Nokia battery and **art.106**-Indian currency notes of Rs.5400/- in the denomination of five currency notes of Rs.1000/- each and four currency notes of Rs.100/-each. This witness has identified his signature on all the wrappers in which the articles were seized during the course of panchanama.

469. In the cross-examination of this witness it is admitted by this witness that photograph of identity card (**art.104**) of accused No.1 was taken during the course of panchanama-**Exh.99**. The witness has stated that no other photographs were taken during the course of said panchanama. It is further stated by this witness that there were stains of semen on genitals of deceased accused Abu Ismail. However, there were no stains of semen on the underwear. The witness has denied that accused No.1 was also wearing half sleeves shirt and that the said half sleeves shirt was also removed by the ward boy Daji Patil. It is denied by this witness that the panchanamas and the labels had been fabricated. It is stated by this witness in his examination- in -chief that the underwear of deceased Abu Ismail was sealed in a polythene bag-**art.154.**

470. During the course of cross-examination by ld.Advocate Mr.Shahid Azami on behalf of accused No.2, the cross-examination was directed to demonstrate that the panchanama had been manipulated and that in fact if the sketch map-**art.101** seized from pocket of cargo trouser of deceased Abu Ismail, it should have been stained with blood. A suggestion was made to P.W. 27 that there were more stains on front portion of

underwear as compared to the back portion. P.W.27 has denied the said suggestion. He has however admitted on seeing art.155-underwear, that there were more stains on right side of the underwear as compared to left side. The witness has also denied suggestion that inquest panchanama of dead body of a person who had died due to police firing was required to be drawn by the police officer not below the rank of Asstt. Commissioner of Police. He has admitted that there were standing orders of Police Commissioner that thumb impression or impression of fingers of the deceased should be taken on the panchanama and the label. The witness has denied suggestion that there were more blood stains on right side of the trouser as compared to left side. On the contrary he asserted that there were more stains of left side. The witness has admitted that the sketch map-**art.101** was found in the trouser pocket having label of 'RAPIDFIRE'. This fact however, was not stated in the panchanama. Witness has clarified that he did not find it necessary to mention in the panchanama that map was found in the pocket having particular description. He has denied suggestion that **art.101**- sketch map was not found in the trouser-**art.3.** He has also denied suggestion that right portion of the trouser of deceased Abu Ismail was soaked with blood. It was admitted by P.W.27 that there were no visible

stains of blood or any other stains on the sketch map-**art.101**. The witness has however denied suggestion that both the panchanamas i.e. **Exh.97** and **Exh.99** had been prepared after 17th December, 2008 i.e. after arrest of accused No.2. He has also denied suggestion that clothes of the deceased were sealed in wet condition and that they had not dried till the time of sealing.

471. P.W.23-Dr.Shailesh Chintaman Mohite from Nair Hospital, had performed autopsy on the dead body of deceased Abu Ismail which was conducted in between 9.45 a.m. to 11.00 a.m. on 27/11/08. As far as experience of this witness is concerned, it is stated by him that he has been working as Professor and Head of the Department of Forensic Medicines at Nair Hospital since last three years. Prior to date of post-mortem examination of dead body of deceased Abu Ismail he had experience of performing about more than 5000 autopsies. This witness has stated that the dead body was brought to him by P.C.30426 along with inquest panchanama and accidental death report (A.D.R.). External examination of the dead body revealed that there were following injuries on the dead body:

1. Circular lacerated wound of size 06x0.6 cm. inverted margins, over left occipital region of scalp 8 cm above mastoid process. Circular abrasion collar , brownish black in colour seen around the central aperture; 0.1 cm in thickness. No evidence of burning, blackening, tattooing and singeing of hairs. (entry wound) . The wound was directed to the right, medially and forward.

2. Whole right eyeball lacerated with lacerations of upper and lower eyelids at the margins, 1 cm. away from the lateral canthus. The eyeball was collapsed, sunken and showed e/o haemorrhage in the eyeball (Exit wound)

3. Oval lacerated wound of size 2.08 cm. margins were inverted; seen over anteromedial aspect of right arm, middle 1/3rd, 15 cm above elbow joint. Elliptical abrasion collar, brownish black in colour seen around the central aperture; 01-0.2 cm in thickness. No evidence of burning, blackening, tattooing and singeing of hairs (entry wound). The wound was directed upwards and laterally. There was e/o bluish contusion seen around it.

4. Oval lacerated wound of size 1.6 X 0.8 cm; seen over anterolateral aspect of right arm, upper 1/3rd, 5 cm below acromion process. Elliptical abrasion collar, brownish black in colour seen around the central aperture; 0.1-0.2 cm in thickness. No evidence of burning, blackening and tattooing (Exit wound) On opening the track injury No.3 and 4 were communicating. Evidence of haemorrhages seen in the track. Track length 12 cm. Injury No.3 and 4 were surrounded by contusion in an area 12 X 5 cm bluish in colour. There was no fracture of underlying bone.

5. Oval lacerated wound of size 1 X 0.6 cm. inverted margins; seen over left lateral aspect of chest, 10 cm. below axilla in posterior axillary line. Abrasion collar seen around it, brownish black in colour, 0.1-0.2 cm. in thickness. No evidence of burning, blackening tattooing and singeing of hairs (Entry wound)

6. Oval lacerated wound of size 1 X 0.6 cm; seen over left lateral aspect of chest, 9 cm below axilla in mid-axillary line No evidence of burning, blackening, tattooing and singeing of hairs (Exit wound). On opening the track injury No. 5 and 6 were communicating . Evidence of haemorrhages seen in the track. Track length 6 cm. Injury No.5 & 6 were

surrounded by contusion of size 10 X 4 cm bluish in colour. There was no fracture of underlying ribs.

7. Abraded contusion of size 7 X2 cm. seen over medial aspect of left arm, middle 1/3rd , 10 cm below anterior axillary line, bluish in colour.

8. Oval lacerated wound of size 0.6 X 0.6 cm, inverted margins; seen over palmer aspect of right index finger between proximal and middle phalanges (Proximal IP joint.) Elliptical abrasion collar, brownish black in colour seen around the central aperture; 0.1-0.2 cm. in thickness. No evidence of burning , blackening tattooing and singeing of hairs (entry wound)

9. Irregular lacerated wound of size 1.2 X 0.6 cm , the margins were everted; seen over dorsal aspect of right index finger between proximal and middle phalanges (proximal IP joint). Injuries No.7 & 8 were communicating. The fractured underlying bones were palpated and seen, the fractured bone pieces were everted (exit wound)

10. Circular lacerated wound of size 0.6 X 0.6 cm. inverted margins, seen over lower 1/3 rd of left thigh anterolaterally , 5 cm above patella. Elliptical

abrasion collar seen at upper border, brownish black in colour seen around the central aperture. No evidence of burning , blackening , tattooing and singeing of hairs (entry wound) .On opening the track, the bullet was recovered from left knee joint medial aspect; sub patellar region.

11. Abrasion of size 1X 0.8 cm. seen on left knee joint medial aspect, subpatellar region, brownish black in colour. The bullet was palpated beneath this injury .

12. Graze abrasion of size 5X5 cm seen over right knee joint anterior aspect, reddish brown in colour.

472. According to this witness all the injuries were ante-mortem. The witness has stated that to recover the bullet which was found stuck in the dead body, an incision of 3.5 cm was made 0.5 cm. below the injury and the bullet was recovered from the said injury. The witness has also stated that there were haemorrhages in the muscles surrounding the bullet. The tip of the bullet was directed slightly upwards and laterally. Description of the bullet given by this witness is as under :

"short elongated with rounded tip
length 2 cms.
diameter at the base 0.8 cm.
weight -11.7 gm.

To describe the bullet further, the witness has stated that a circular groove was seen over the bullet 0.8 cm. above the base. The bullet was intact with lead core seen at the base. The jacket of the bullet was also intact. Multiple linear markings were found on the said bullet.

473. Following injuries were found on internal examination of the dead body :

<u>On reflection of scalp</u> :

There was Evidence of blood infiltration in left parleto-occipital region with few blood clots in an area of size 9X7cm.

(1) Evidence of circular fracture (depressed) with clean cut outer table + bevelled inner table seen 8 cm. above left.mastoid process. (wound of entry.)

(2) Fissured fractures of cribriform plate of ethmoid, right orbital plate of frontal bone extending into middle cranial fossa.

(3) Irregularly depressed fracture of size 1.2 cm X 1 cm. seen in right orbital plate of frontal bone (exit wound)

Duramater

(a) Evidence of circular lacerated wound of size 0.6 cm diameter seen beneath entry wound of skull.

(b). Evidence of circular lacerated wound of size 0.7 cm diameter seen at and overlying exit wound of skull.

brain

(a) Patchy sub-arachnoid haemorrhage (thin film) seen all over the brain surface.

(b) lacerated wound, circular of size 0.4 cm diameter seen in left occipital region beneath wound of entry in skull.

(c) lacerated wound, circular of size 0.4 cm diameter seen at base of right frontal lobe near tip of right temporal lobe.

(d) **Track of bullet:**

Bullet had first travelled from lateral aspect left occipital lobe . The it had come out of medial aspect left occipital lobe and had passed through optic chiasma and had passed through interior aspect of right frontal lobe and had pierced duramater and had caused fracture of orbital plate of right frontal bone .(exit wound). Evidence of haemorrhage and lacerations of brain tissues was seen in the track.

(e) Evidence of intra ventricular haemorrhages was seen .

All the injuries described by this witness as internal injuries were corresponding to external injury No.1 and 2.

474. After examination of the dead body internally and externally, the witness had formed an opinion that the deceased had died due to head injuries caused by firearm. Original post-mortem notes were produced by this witness. He has stated that Dr.Pawan Sable was also present with him at the time of post-mortem. The post-mortem notes produced by this witness are at **Exh.122.** The witness has stated that the post-mortem notes were signed by him as well as by Dr.Pawan Sable. At the same time a separate certificate regarding cause of death of said Abu Ismail was issued by this witness and Dr.Pawan Sable. The said certificate is at **Exh.123.** Requisition received from D.B.Marg police for conducting post-mortem examination was produced by this witness. It is stated by this witness that an endorsement was made by Mr.L.C.Aher ,the mortuary attendant, in token of having received the dead body for postmortem examination. The said endorsement was exhibited as **Exh.124** only for the purpose of

identification.

475. During the course of postmortem examination blood samples for detection of alcohol and blood grouping were collected. Nail clippings of both the hands were collected. Apart from the blood samples and nail clippings, police had also collected following material for D.N.A. analysis :

(a) 5 cc blood.
(b) scalp hair about 10 to 20 gms.
(c) muscle mass from thigh about 500 gms.

Witness states that the samples were sealed in separate containers. The recovered bullet was also sealed in a separate container. The samples collected by this witness were handed over to the police for being forwarded to the Forensic Science Laboratory. Letters addressed to the laboratory were also handed over to the police. The witness has produced office copies of these letters at **Exh.125**, **Exh.126**, **Exh.127**, **Exh.128** and **Exh.129**. It is stated that the letters addressed to F.S.L. were signed by Dr.Sable in presence of this witness (P.W.23). To a Court Question this witness has stated that a sample of impression of seal used for sealing the above stated articles was also forwarded to the F.S.L. in the same forwarding letters. A

plastic container containing a bullet was shown to the witness. It was seen that there was one filter paper in which the bullet is wrapped and is thereafter kept in a container. Postmortem number was written on the said filter paper. The postmortem examination number of the dead body of deceased Abu Ismail is M.L.O.No.834/08. The number written on the filter paper was in the handwriting of this witness. The writing on filter paper is marked **Exh.130**. The container is marked **Art.134** and the bullet is marked **Art.135** . The witness has stated that description of the bullet **Art.135** tallies with the description of bullet recovered from the dead body a mention of which has been made in the postmortem notes.

476. Apart from preparing the postmortem notes, this witness was also present when clothes from the dead body (deceased Abu Ismail) were removed and inquest panchanama was drawn. It is stated by him that the clothes were removed by the ward boy Mr. Daji and same were seized by the police in his presence.

477. P.W.23 -Dr.Mohite has identified accused No.1 to be the same person who was seen by him in the trauma ward of Nair Hospital. It is

stated by this witness that clothes of accused No.1 were also seized in his presence.

478. In the cross-examination by ld. Advocate Mr.Kazmi for accused No.1 this witness has stated that age of the deceased was written on the basis of information provided in the requisition letter received from the police and the A.D.R. Though this witness was not 100% sure that the bullet **Art.135** was the same bullet which was recovered from the dead body of the deceased Abu Ismail, he could say that it might be the same bullet asthe description of the bullet tallies with the description given by him in respect of the bullet recovered from the dead body of deceased Abu Ismail. He has denied the suggestion that the bullet **Art.135** was not recovered from the dead body . He has also denied that clothes of the deceased Abu Ismail and accused No.1 were never seized in his presence.

479. In the cross-examination by ld.Advocate Mr.Shahid Azmi for accused No.2 this witness has stated that photographs of the deceased were taken during the course of post-mortem examination. He has admitted that photographs were not taken at the time of inquest panchanama.

480. The witness in further cross-examination has stated that he could not say as to how much blood might have oozed from the internal injuries. However, it was stated by him that there might be loss of large amount blood considering the nature and number of the injuries. According to this witness the third internal injury would not cause profuse bleeding. Similarly the circular lacerated wound on duramater would also not emit blood . A patchy subarchonoid haemorrhages would lead to bleeding . One circular lacerated wound of 10.4 cm. diameter on occipital region would lead to minimal bleeding. A circular lacerated wound of 0.4 cm diameter at base of frontal lobe would lead to bleeding. Fracture of orbital plate of right frontal bone would lead to bleeding . It is specifically stated by this witness that none of the wounds mentioned as external injuries in his evidence would lead to profuse bleeding. The witness refused to agree with ld. Advocate Mr.Shahid Azmi that the external injury Nos.2 and 4 would lead cascading bleeding. The witness also rejected the suggestion that external injury No.6 i.e. oval lacerated wound of size 1 x 0.6 cm. found on left lateral aspect of chest, could not be a corresponding injury to the injury No.5 i.e. oval lacerated wound of size 1 x 0.6 cm. inverted margins seen over left lateral aspect of chest 10 cm. below axilla in posterior **mid** axillary

line. According to this witness the total blood loss could be around 500 ml.to 1000 ml. It is stated that in certain cases blood may ooze from injuries even after death.

481. P.W.23 has denied the suggestion that there was profuse bleeding from head to toe when the dead body was seen by him in trauma ward. It is stated that the white sheet in which the body was wrapped after inquest, was found soaked with blood at places. He has denied suggestion that there were blood stains on both the thighs. It is stated by him that there were blood stains only on left thigh. P.W.23 did not remember whether there was blood on pelvic region of the dead body. He however, has admitted that there were blood stains on neck , chest and both the hands. He did not recollect whether the right index finger was on right thigh when the dead body was seen by him for the first time. The witness also did not recollect whether trouser of deceased was found blood stained on both the sides. The T-shirt was stained with blood at few places. As far as description of trouser is concerned, the witness has stated that he had no occasion to notice texture of the clothes of the deceased particularly the trouser. The witness agreed that blood oozing from a body lying on a

stretcher would collect on the stretcher. He was not able to tell as to after how much time the clothes removed from the dead body were sealed by the police. He has also denied the suggestion that the ward boy had given two trousers to the police at one and the same time.

482. The witness has stated that it is not necessary that the clothes with undried blood stains when wrapped, would produce uniform impression on other side of the clothes and the wrapper too. He also did not agree with the ld. Advocate Mr.Shahid Azmi that it is mandatory to preserve skin around entry wound of the deceased if he had been killed in a police encounter . Skin around the entry wound of the deceased in this case was also not preserved.

483. It is further stated by P.W.23 that the trauma ward was air conditioned and the air conditioners were functioning during the night intervening 26th and 27th November,2008. This witness has stated that body would not remain warm for a longer time if it is kept in air conditioned room.

484. He has denied suggestion that description of injuries recorded in inquest panchanama was dictated by him. He has further denied that there was profuse bleeding from the injuries sustained by deceased Abu Ismail. He has also denied that the trouser was stained with blood on both the sides. He had not seen pockets of the trouser and therefore was unable to tell the court whether both side pockets were stained with blood. The witness has further denied that his answers to the questions in cross -examination do not follow the observations made by him in P.M.notes. He has denied that he is deliberately telling lies.

485. As such above stated witnesses have been examined by the prosecution to establish the incident pertaining to encounter between accused No.1 and the deceased accused No.1 on one hand and the police on other hand at Girgaon Chowpaty and the subsequent events. The subsequent events include removal of both the terrorists including accused No.1 to Nair Hospital and discharge of accused No.1 from Nair Hospital at 9.30 p.m. on the night of 27/11/08.

486. While the accused No.1 was being treated at Nair Hospital and

the postmortem examination of dead body of the deceased accused Abu Ismail was being done , Police Officer Vinod Pandurang Sawant-P.W.31 had visited the spot and drew spot panchanama in presence of panchas.

487. Prosecution has also led evidence regarding recovery of arms and ammunitions, empties and bullets from the place of incident at Girgaon Chowpaty. The said evidence is mainly given by P.W.9-Rajendra Punjabrao Ghodse, PSI, who was attached to Bomb Detection & Disposal Squad, P.W.10-Shashikant Chandrakant Pawar and P.W.31-Vinod Pandurang Sawant, P.W.10- Shashikant Chandrakant Pawar is the panch witness and P.W.31- Vinod Pandurang Sawant, P.I. is the police officer who had drawn panchanama of the spot.

488. Spot panchanama was drawn by **P.W.31-Vinod Pandurang Sawant,** PI. He was attached to D.B.Marg Police Station on the night of incident. His duty hours were from 8.00 a.m. to 8.00 p.m. on 26/11/08. He however, as usual continued to be at the police station even beyond his duty hours. At around 22 hours he was told by Sr.P.I. Mr.Mali that some terrorists had attacked some parts of Bombay. P.W.31 was therefore

directed by his Sr.P.I. to organize *Nakabandi* (road blocking) at Tribhundas Bhimji Zaveri square (herein after referred to as T.B.Z. square). Sr.PI Mr.Mali himself was part of the police team who had gone for *Nakabandi* at T.B.Z. square. It is at around 00.36 hrs. that a message was received on walkie-talkie that some terrorists had fired at police officers at Girgaon Chowpaty and some of the police officers had been injured in the incident. Therefore police force was needed at Girgaon Chowpaty. P.W.31 himself along with Sr.PI Mali and others had proceeded to Girgaon Chowpaty.

489. On reaching the spot he found that two officers namely Mr.Ombale and Mr.Govilkar were in injured condition. He had also seen two terrorists in the custody of police. Both of them were seen injured. P.W.31 had also seen one Skoda car on N.S.Purandare Marg below foot over bridge in front of Cafe Ideal . The car appeared to have hit the road divider. Both the front doors of the car were found open. P.W.31 was informed by the other police officers who were present on the spot that Mr.Tukaram Ombale and Mr.Sanjay Govilkar (P.W.2) had been injured due to firing by the terrorists. At this stage it may be stated here that PSI Mr. Bhaskar Kadam (P.W.1), who is the first informant and who was

present on the spot at the time of incident, and API Mr.Hemant Bavdhankar (P.W.3) have narrated the incident during the course of their evidence. It appears that these two officers and other officers were present on the spot and they had informed P.W.31 that Mr.Tukaram Ombale and Mr.Sanjay Govilkar (P.W.2) had been injured due to firing by the terrorists. The injured police officers were taken to Hurkisondas Hospital for treatment and the injured terrorists were taken to Nair Hospital in two separate ambulance.

490. P.W.31 -PSI Vinod Sawant was directed by the Sr.PI Mr.Mali to record FIR of PSI Bhaskar Kadam and carry out further investigation. P.W.31 therefore directed PSI Mr.Koyale and other policemen to secure the place of incident by barricading the same. The witness himself along with PSI Kadam had gone to police station to record F.I.R. The F.I.R.-Exh.57 was shown to the witness. On the basis of said F.I.R. crime being crime registration No. 305/08 against two persons namely Ajmal Amir Kasab and Abu Ismail was registered. Station diary entry to that effect was taken. Further investigation was carried out at the spot.

491. The spot of the incident was shown to P.W.31 by P.W.1-PSI Kadam (P.W.1).Panchanama of the spot was drawn in presence of two panchas. Panchanama Exh.80 was shown to this witness. He has identified his signature on the spot panchanama. It is further stated by this witness that the articles found on the spot were seized during the course of investigation.

492. **P.W.10-Shashikant Chandrakant Pawar** is one of the panch witnesses who has stated in his evidence that he was staying at Ganesh Bhuvan, 3rd floor, Grant Road, Mumbai. On the night of incident i.e. 26th and 27th November, 2008, he was watching television when it was shown in the news that there was an encounter at Girgaon Chowpaty within the jurisdiction of D.B.Marg Police Station. P.W.10 therefore along with his friend Mahendra Sable had gone to Girgaon Chowpaty to find out as to what exactly had happened at Girgaon Chowpaty.

493. According to P.W.10-Shashikant Pawar, there were many police officers on the spot. One of the Police Havildar had requested P.W.10 to appear as panch witness for panchanama. P.W.10 had given

consent to work as panch witness. His friend Mahendra Sable had also consented for working as panch. Police Officer Mr.Sawant (P.W.31) was present on the spot. He had explained the incident in brief to P.W.10 and his friend Mr.Mahendra Sable. Mr.Kadam, (P.W.1) another police officer, was introduced to panch witnesses by police officer Mr.Sawant (P.W.31). Panch witnesses were told that the spot will be shown by P.W.1-PSI Kadam. According to P.W.10 he had seen one Skoda car of silver colour bearing registration No.MH-02-JP-1276. The car was facing the Culfi Centre. Both the front doors of the car were open. There was a dent on the right front portion of the car.

494. As far as spot is concerned, it will be convenient to state as to how many articles and from where they were seized by the police as per the **panchanama-Exh.80** before I deal with the evidence of P.W.10 and P.W.31.

495. As far as **art.10** is concerned, it is **AK 47 rifle.** P.W.1-Bhaskar Kadam, who is the complainant has stated that art.10-AK 47 rifle is the same rifle by means of which accused No.1 had fired at the deceased

Tukaram Ombale. P.W.10-Shashikant Chandrakant Pawar, the panch witness , has stated that art.10 is the same AK-47 rifle which was found lying on left side of the Skoda Car. Similarly, P.W.31-Mr.Vinod Pandurang Sawant, PI, has also stated that art.10-AK-47 rifle was found on left side of the Skoda car.

496. **Art.12**-AK 47 rifle, according to prosecution case is concerned, P.W.1-Bhaskar Kadam, PSI, in his evidence has stated that this AK-47 rifle was found in the leg space of Skoda car. **Art.14** is a 9 mm pistol. It was without magazine found lying on the road on right side of the Skoda car. P.W.1 in his evidence has stated that two pistols were seized under the panchanama, one was found on left side of the car and another was found lying on right side of the car. P.W.10 in his evidence has stated that **art.14** is the pistol which was seized in his presence at Girgaon Chowpaty under panchanama.

497. P.W.31-PI Vinod Sawant who had drawn the spot panchanama has stated in his evidence that **art.14** was found lying on right side of the car. It may be stated here that according to prosecution case **art.14** is the

pistol which the deceased Abu Ismail was holding and that he had fired from the said pistol at the complainant- P.W.1 while the deceased accused was sitting on driving seat of the car.

498. **Art.16** is a 9 mm pistol which according to prosecution case was found lying on the spot on left side of the car and it was seized under panchanama. It may be noted that this pistol was not shown to P.W.10-Shashikant Pawar during recording of his examination-in-chief. It was shown to P.W.1-Bhaskar Kadam, the complainant, in whose presence the panchanama was drawn and it was shown to P.W.31-PI Vinod Sawant who had drawn the panchanama. P.W.1 in his evidence has stated that pistol-**art.16** was also seized under panchanama of the spot. P.W.31 has stated that **art.16** was found in the pistol holster which was found lying on left side of the car on the road. It is the case of prosecution that this pistol holster was in possession of accused No.1 and that had fallen down on the road during incident at Girgaon Chowpaty.

499. **Art.36 colly.** are three AK-47 magazines. according to prosecution these three magazines of AK-47 rifle were supplied to deceased

Addl.Commissioner of Police Mr.Ashok Kamate from the armoury of Mumbai Police. P.W.7-Arun Jande, ASI, 16855, has given evidence to that effect. So far as recovery of these magazines from the spot is concerned, P.W.10-Shashikant Pawar, panch, has identified one of the magazines of **art.36 colly**. The said magazine has been marked as **art.36-A.** According to P.W.10 **art.36-A** was found attached to AK-47 which was found in the leg space of the car. P.W.31 has stated in his evidence that **art.36-A** was found attached to the rifle and **art.36-B colly**.- two magazines were found in the jacket which was lying on the rear seat of the car. It may be noted here that prosecution case is that the rifle of police officer Mr. Ashok Kamate was taken away by the accused No.1 and his companion after killing Mr.Kamate behind Cama Hospital. It is also the case of prosecution that the jacket on rear seat of the car belonged to deceased accused Abu Ismail.

500. As regards **art.39**- ash coloured jacket, recovered during the panchanama, it may be stated here that P.W.31-Mr.Vinod Sawant, P.I., in his evidence has stated that this jacket was found on the rear seat of the car. It is further stated by P.W.31 that two magazines were recovered from the said jacket. P.W.9- Rajendra Ghodse, PSI, has also identified the jacket-

art.39 to be the same jacket in which hand grenade was found. P.W.9 was mainly called to secure and defuse the hand grenade. He was not concerned with the the spot panchanama. Therefore he had no role to play during the course of spot panchanama except removal of hand grenade from the jacket and securing the same at a safe place.

501. **Art.41 colly.** are the two empties .These two empties, according to P.W.31 were found on the road provided for south bound traffic on Marine Drive in front of Cafe Ideal. These two empties according to the prosecution case are the empties of cartridges fired by the complainant at the deceased accused Abu Ismail. According to prosecution the complainant-P.W.1- Bhaskar Kadam was on that side of the road and therefore these empties were lying there. P.W.10-Shashikant Pawar, who is an independent panch, has stated in his evidence that these two empties were seized from the spot by the police. He was however, unable to tell the court as to from which place on the spot of incident these two empties had been recovered by the police.

502. There was another pair of empties found on rear side of the car.

These two empties have been numbered as **art.43 colly.** In respect of these two empties also P.W.10- panch has stated that they were seized from the spot. He however, was unable to tell the court as to from which place they had been seized. P.W.31 has stated in his evidence that these two empties were found on rear side of the car. According to prosecution these two empties were from the cartridges fired by P.W.3-Hemant Bavdhankar, API, at the deceased Abu Ismail from rear side of Skoda car.

503. **Art.45** is the magazine which was found attached to pistol **art.14** which according to prosecution case belonged to the deceased Abu Ismail. The said magazine was found loaded with five live cartridges. One cartridge was found in the chamber of pistol-art.14 . As such there were in all six cartridges loaded in the pistol-**art.14.** The cartridges were removed from the magazine and were seized by the police. They were sealed separately from the pistol and the magazine. P.W.31 in his evidence has stated that **art.45**- magazine was found attached to the pistol which was lying on right side of the car.

504. This witness has further stated that six live cartridges were

sealed and seized by the police. During the course of recording of evidence prosecution has produced four live cartridges-**art.47 colly.**, two empties-**art.48 colly.**, and two bullets- **art.49 colly.** in a sealed packet No.314 having seal of FSL and FSL Numbers.

505. P.W.31 has stated in his evidence that he had seized six rounds from the pistol-**art.14** but what is shown to him is four live rounds, two empties and two bullets.

506. **Art.51 colly.** are the two empties which were found on the road near right front door of the car. It is the case of prosecution that these two empties were of the cartridges fired by the deceased terrorist Abu Ismail from his pistol since he was sitting in the driving seat of the car. These two empties were found on right side of the car. P.W.10 in his evidence has stated that he would not be able to tell as to wherefrom and which place at Girgaon Chowpaty these two empties had been seized by the police. P.W.31 however, has categorically stated that **art.51 colly. -**two empties were seized from the place near the right front door of the car.

507. **Art.53** is one black colour pouch which was found on driver's seat of the Skoda car. This pouch has been identified by both P.W.10 and P.W.31 to be the same pouch which was seized under panchanama. One magazine was found in the said black pouch. The magazine has been numbered as **art.55.** P.W.10, the panch witness, has stated that this magazine was seized under the panchanama in his presence. P.W.31 has stated that the magazine- **art.55** was found in the pouch-**art.53.** According to prosecution seven live rounds were found in the magazine-**art.55.** These rounds were seized under panchanama. During the course of recording of evidence of P.W.10 packet No.318 was opened and it was found to have contained five live cartridges-**art.57 colly.,** two empties- **art.58 colly.,** and two fired bullets- **art.59 colly.** P.W.10 has stated that these articles were seized under the panchanama in his presence. P.W.31 has stated that he had seized seven live cartridges from the magazine. Articles however shown to him consisted of five live cartridges, two empties and two fired bullets. Two fired bullets and two empties are the parts of two cartridges examined by the Ballistic Expert.

508. One identity card purportedly issued by Arunodaya Degree &

P.G.College, Dilkush Nagar, Hyderabad- **art.61** was also recovered from the said pouch. This evidence has been given by both P.W.10 and P.W.31.

509. Similarly one Nokia battery, one Nokia charger and Indian currency of Rs.5310/- **art. 63**, **art.65** and **art.67 colly.** respectively were also recovered from the said pouch. P.W.10 and P.W.31 both have given evidence to that effect. P.W.10, panch, has stated that these articles were seized in his presence by the police. P.W.31 has clearly stated that **art.63, art.65 and art.67 colly**. were recovered from the pouch-**art.53** which was found lying on the driver's seat of the car.

510. According to P.W.10 and P.W.31 a single shoe-**art.69** was recovered from the leg space near the accelerator lever of the said car.

511. P.W.10 has stated that two magazines- **art.71colly.** were seized under the panchanama in his presence. P.W.10 was not able to identify the two magazines-**art.71 colly.** allegedly found attached to the rifle-**art.10** allegedly belonging to accused No.1. P.W.31 however, has stated in his evidence that **art.71 colly.** - two magazines were found attached to AK-47

rifle- **art.10.**

512. **Art.73 colly., art.74 colly.** and **art.75 colly.** are 20 live cartridges, four empties and four bullets respectively produced in sealed packet No.332 by the prosecution. P.W.10, the panch witness, was not able to identify the cartridges It is stated by P.W.31 that he had seized 24 live cartridges from the magazine attached to **art.10 -**AK-47 rifle which was found on left side of the car. Prosecution has produced only twenty live cartridges. Four live cartridges had been broken by the Ballistic Expert for examination .

513. It is stated by P.W.31 that eight empties-**art.77 colly.** were recovered from the spot during the course of panchanama. P.W.10 was not able to identify these empties. These empties have been produced in court in sealed packed No.333 bearing seal and number of F.S.L. It is stated by P.W.31 that one lead bullet-**art.79** was found on left side of the car. P.W.10 was not able to identify the lead bullet. One pouch with steel chain was found on the left side of the car . Pouch is **art.81** and the steel chain is **art.82.** P.W.10 in his evidence has stated that these articles were seized

from the spot by the police in his presence. P.W.31 has stated that the pouch with chain was found on left side of the car. One pistol holster was found on left side of the car. One pistol magazine was found in the said pistol holster and one note pad was also found. Pistol holster is **art.84** and the magazine found in the pistol holster is one of the three magazines-**art86 colly**. **Art.86 colly**.-three pistol magazines were shown to P.W.31. It is stated by him that one of the magazines was attached to the pistol found in the pistol holster, second magazine was found in the outer pocket of holster and the third magazine was found in the black pouch which was found lying on the left side of the car. It may be stated here prosecution case is that the pistol holster belonged to accused No.1 and these three magazines were also in possession of accused No.1 at the time of incident.

514. **Art.88, art.89 and art.90** are 19 live cartridges, two empties and two bullets respectively. According to P.W.31 he had seized 21 live cartridges from three magazines- one attached to the pistol (art.16 of accused No.1), one found in the pistol holster and one found in the black pouch. It is the case of prosecution that all the three magazines were containing seven live cartridges each. Prosecution has produced 19 live

cartridges, two empties and two bullets in the packet No.339. Two bullets had been broken by the ballistic expert for examination.

515. **Art.92** is the writing pad. P.W.31 has stated that this writing pad was found in the black pouch which was found lying on left side of the car . At this stage it may be stated here that the said black pouch-**art.81** and has been identified by both P.W.10 and P.W.31.

516. It is how the articles recovered from the spot of the incident at Girgaon Chowpaty (Vinoli Chowpaty) have been identified by the two witnesses i.e. the panch witness and the police officer who had conducted the panchanama. It is stated by both the witnesses that these articles were sealed and labels with signatures of panchas and police officers were affixed on the sealed packets. All the wrappers were shown to the witnesses and they have identified their signatures on the wrappers. Wrappers have been accordingly given article numbers as stated in the evidence of these two witnesses and list of articles.

517. It has also come in the evidence that both the accused No.1 and

his companion who was driving the Skoda car were taken to Nair Hospital. Clothes of both of them were seized at Nair Hospital. It has also been stated by the prosecution witnesses that accused No.1 was discharged from the hospital at about 9.30 p.m. on 27.11.08. It is the case of prosecution that while the accused No.1 was in police custody at Nair Hospital, he had made a voluntary statement to the police which was recorded under a memorandum after obtaining certificate from Dr.Vikaskumar Kesari (P.W.13).

518. As stated by P.W.1-Mr.Bhaskar Kadam, ASI Tukaram Ombale was reported dead at Hurkisondas Hospital. It was therefore necessary to draw inquest panchanama of his dead body. Sr.PI Mali had directed P.W.24- Police Sub Inspector Mr.Sanjay Gaikwad to draw inquest panchanama in respect of dead body of Tukaram Ombale. Accordingly he had visited Hurkisondas Hospital. Dead body of Tukaram Ombale was available on third floor of Hurkisondas Hospital. Two panchas were called and inquest panchanama was drawn in their presence . It is stated by **P.W.24-Mr.Sanjay Laxman Gaikwad** that there were in all 8 injuries on the dead body. They were as under :

1) One injury near right armpit,
2) One firearm injury on left ribs,
3) One firearm injury on left forearm,
4) One incised injury on right forearm,
5) One firearm injury on right thigh &
6) One incised wound above right knee joint.

There were two firearm injuries on back of the dead body. There was one minor abrasion on right side of waist. The inquest panchanama was drawn and clothes of the deceased were taken into custody. Panchanama is produced at **Exh.102.** P.W.24 has identified his signature on the panchanama. It is stated by him that signatures of two panchas were also taken. Clothes of the deceased Tukaram Ombale i.e. one shirt-**art.118**, one pant- **art.119**, one vest- **art.120** and one underwear-**art.121** were shown to the witness and he has identified the same.

519. It is further stated by this witness that the clothes were taken to police station. They were seized after they had dried. Seizure panchanama was drawn. The panchanama was drawn at 5.00 p.m. and it was concluded at 6.00 p.m. All the clothes were separately sealed in polythene bag. The polythene bag was produced as **art.117.** It is stated by this witness that the

label on polythene bag bears his signature. Panchanama in respect of seizure of dry clothes is produced at **Exh.103**.

520. As far as cross-examination of P.W.24 is concerned, he has stated that it will not be correct to say that the deceased had only six injuries. It is clarified by him in his cross-examination that the deceased had six bullet injuries.

521. **P.W.15-Rajan Umakant Vasaikar** is the panch witness who **was present at the time of both the panchanamas Exh.102** and **Exh.103.** This witness has stated that there were six injuries on the dead body and description of the injuries was recorded in the inquest panchanama-**Exh.102.** Clothes were taken to the police station. They were found stained with blood and that panchanama in respect of seizure of clothes was drawn separately at the police station. This witness has identified his signature on the panchanama-**Exh.102** and **Exh.103.** He has also identified article No. 117 to art.121.

522. It is stated in the cross-examination by this witness that doctor

was not present at the time of inquest panchanama.

523. In the meantime it was necessary for the police to dispose of the hand-grenade which was allegedly recovered from the Skoda car. **Police officer Mr.Rajendra Ghodse who has been examined as P.W.9** was attached to Bomb Detection & Disposal Squad (B.D.D.S.). It is stated by this witness that on 26/11/08 he was on duty and he continued to be on night duty also as his reliever had not attended his duty. At about 00.45 hrs. of 27.11.08 he received message on wireless from police room (South Control) that B.D.D.S. is required to be at Vinoli Chowpaty (sea beach) . Since the witness had already been attending one call at Badhwar Park, he reached Vinoli Chowpaty after ten minutes.

524. At Vinoli Chowpaty he was directed by Sr.P.I. Mr.Mali to take search of the Skoda car bearing registration No.MH-02-JP-1276. One jacket -**art.39** was found on rear seat of the car . There was one hand grenade in right pocket of the jacket and two magazines in left pocket of the same jacket. Hand grenade was secured by the witness by means of cellophane tape and it was kept in sand at Chowpaty to avoid any untoward

incident . He had also asked his colleagues to keep sand bags around the said hand grenade. As far as two magazines were concerned, they were left in the car itself as this witness was mainly called to dispose of the bomb. After securing the bomb in the sand at chowpaty, API Mr.Hemant Bavdhankar (P.W.3) had visited the spot .

525. There is minor omission in the police statement of P.W.9. He had not stated in the police statement that the hand grenade was secured by him by applying cellophane tape. He had also not stated in his police statement that sand bags were kept around the hand grenade. It was further not stated by him in the police statement that the two magazines were left in the car.

526. P.W.9 has denied suggestion that he did not receive any message from South Control and that he had not recovered any hand grenade or magazines from the Skoda Car.

527. Bacchha Yadav is the panch witness who was present at the time of panchanama drawn by Police Officer Mr.Bavdhankar. **Bachha**

Yadav has been examined as P.W.20. He had seen the bomb secured by means of sand bags at Chowpaty. It is stated by this witness that police officer Mr.Anthony had come during the course of panchanama and that bomb was defused by Mr.Anthony and his colleagues. This witness had heard sound of explosion of bomb. Remnants of defused bomb were sealed in his presence and panchanama was drawn. He had identified his signature on the panchanama- **Exh.65.** He has also identified **art.132** to be the remnants of bomb and **art.131** to be the brown wrapper which bears his signature.

528. In the cross-examination this witness has stated that he himself has not witnessed as to how the bomb was defused. He did not know whether the hand grenade pin was also seized by the police. He has denied suggestion that he had not seen disposal of bomb.

529. As stated by Dr.Kesari-P.W.13, statement was made by accused No.1 when he was at Nair Hospital. It is also stated by Dr.Kesari that police had taken his certificate whether accused No.1 was able to make a statement. The said statement was recorded by P.W.42-Chandrakant

Jabardast Jadhav who was working as Police Sub-Inspector attached to D.B.Marg police station. He was on duty on 26.11.08. He continued to be on duty on 27th November also because of the incident of terror attack on 26.11.08. At about 10.30 a.m. on 27.11.08 he was directed by Police Inspector Mr. Sawant (P.W.31) to visit Nair Hospital and to interrogate accused No.1 Ajmal Amir Kasab. Station Diary entry in that regard was made by P.W.42 which is produced at **Exh.184.** Zerox copy of the station diary is produced at **Exh.184A**. The original has been returned to the witness for being kept in safe custody of police station.

530. P.W.42-Chandrakant Jadhav, PSI, has further stated that when he reached Nair Hospital, he had seen PI Marde of DCB CID. Accused No.1 has been identified by this witness and it is stated by him that the said accused was interrogated by him in trauma ward of Nair Hospital. Accused No.1 wanted to make some disclosure statement. Therefore a police constable was directed to call two panch witnesses. Panch witnesses Mr.Talkalkar and Mr.Hargude had appeared before this court. It was explained to the panch witnesses that accused No.1 wanted to make some statement before the police. Panch witnesses were requested to take part in

the panchanama. Both of them had given their consent. A certificate was obtained from Dr.Kesari (P.W.13) in respect of health of accused No.1 of his ability to make a statement. The certificate has already been exhibited as **Exh.90.** Witness P.W.42 has further stated that accused No.1 during the course of interrogation, had volunteered to show the place in the boat where he had concealed dead body of the navigator of the said boat and that he would also show where he had concealed satellite phone, a GPS and a notebook . This portion of evidence was recorded subject to objection by Ld.Advocate Mr.Kazmi for accused No.1.

531. Statement of accused No.1 was reduced into writing. After completion of memorandum of statement of accused No.1, Dr.Kesari (PW-13) was again called and he certified that accused No.1 was not in a position to sign the memorandum. A certificate-**Exh.91** to that effect was issued by Dr.Kesari. Signatures of both the panchas were taken on the memorandum. The memorandum statement of accused No.1 is produced at **Exh.136** in the Court. P.W.42 has identified his signature on the memorandum.

532. P.W.42 has further stated that what revealed from the statement of accused No.1 was that the dead body of navigator had been concealed by accused No.1. However location of the boat was not known. The terrorists attack was still going on at some places and it was therefore, not found safe to take the accused No.1 to the seashore for locating the boat. It was found necessary to take help of coast guard to locate the boat. Panchanama in that regard was prepared and it is produced in court at **Exh.137.** Panchas were allowed to go and they were told that they would be called as and when the boat was located. A message was given to the control room by PI Marde of DCB CID in respect of boat in which dead body was allegedly concealed by the accused No.1. Accused No.1 was left in the trauma ward of Nair Hospital. P.W.42 returned to D.B.Marg Police Station and made a station diary entry in respect of proceedings which took place at Nair Hospital. Station diary entry was made at 14.50 hours. The station diary entry is produced at **Exh.185**. Zerox copy of the station diary entry was taken on record as **Exh.185A**. The original station diary (**art.199**) containing original entry (**Exh.185**) was returned to the witness for being kept in safe custody of D.B.Marg Police Station until further orders. At about 10.30 p.m. on the same day a message was received from PI Marde

that the boat had been located and that the same had been anchored at Sassoon Docks, Mumbai. It was located by the coast guard. P.W.42 therefore contacted the same panch witnesses and requested them to attend D.B.Marg Police Station. PI Marde was requested to bring the accused No.1 at D.B.Marg Police Station. Station diary entry in that regard was also made which is produced at **Exh.186.** Zerox copy thereof was produced at **Exh.186-A.** As soon as the panch witnesses had arrived, they were informed that the boat had been located. In the meantime accused No.1 was also brought to D.B.Marg Police Station by PI Marde. After arrival of accused No.1 at D.B.Marg Police Station, P.W.42 had made station diary entry in that regard which is produced at **Exh.187.** Zerox copy therefore is produced at **Exh.187A.**

533. Thereafter police officers along with accused No.1 and panchas proceeded to Sassoon Docks. They reached Sassoon Docks at about 00.00 hours of 28.11.08. Police officer Mr.Baviskar attached to Police Launch, Aboli and his staff were present at Sassoon Docks. Officers of coast guard were also present. After identifying the boat, accused No.1 had shown the dead body lying in engine room of the said boat. He had also shown one

satellite phone, G.P.S. and a notebook. Both the hands of dead body were found tied behind the dead body. The dead body was removed from the engine room and was brought to the jetty. It was dead body of a male aged about 40 years. Clothes on the dead body were one black short , one saffron colour sweater and black jacket. There were dried blood stains on the clothes. The clothes were removed and the dead body was examined at jetty. There were injuries on the chest and left side of abdomen. Neck was found cut semi circle from the backside. There were injuries on buttocks of dead body. The clothes and rope with which hands of dead body were found tied were seized under panchanama. They were sealed in polythene bag separately. Labels with signatures of panchas were affixed on the said bag. One cloth piece was found tied around eyes of the dead body. The said cloth piece was also separately sealed. The G.P.S., satellite phone and the notebook were also seized by the police. It is stated by P.W.42 that something was written on the notebook. Signatures of panchas were taken on six pages of the said notebook. Blood stains from the place where the dead body was found lying were also collected by way of sample. Bottle containing blood sample was sealed and label with signatures of panchas was affixed on the said bottle.

534. P.W.42 has stated further that name of the said boat was Kuber and had registered number of Porbundar being PBR 2342. It was measuring 45 ft in length and 15 ft. in width. Panchanama in respect of recovery of dead body and seizure of articles was drawn. Panchanama has been produced in Court at **Exh.138.** P.W.42 has identified his signature on the panchanama. It was stated by him that panchanama was scribed by police constable Mr.Khedekar. Panchanama commenced at 22.10 hours of 27.11.08 and was concluded at 02.00 hours of 28.11.08. There appears slight mistake of date below signature of this witness. Instead of writing 28.11.08 he has written 27.11.08. Though serious objection was raised by Mr.Kazmi in this regard, it may be stated here that it is obviously due to inadvertence on the part of witness as the panchanama had commenced on 27.11.08 and was completed at 28.11.08. As far as body of panchanama is concerned, it is clearly stated in panchanama -**Exh.138** that it was concluded at 02.00 hours of 28.11.08. P.W.42 has identified short pant-**art.137,** sweater-**art.139** and jacket-**art.141** to be the clothes of deceased. He has identified **art.143** to be the same cloth piece which was found tied around eyes of the dead body. **Art.145** has been identified as the rope which was found tied around both the hands of dead body. Labels for

sealing above stated articles were shown to the witness. He has also identified all the labels. He has identified satellite phone-**art.147,** G.P.S.-**art.149** and notebook-**Exh.175**. He has identified **art.152** to be the same bottle in which blood sample from the dead was collected.

535. After completion of inquest panchanama P.W.42 requested the duty officer of D.B.Marg Police Station to inform as to what was the Accidental Death Registration Number (A.D.R.No.) so that accidental death report could be prepared and the dead body could be sent for postmortem examination. After getting A.D.R.number 65/08 P.W.42 had forwarded the dead body to medical officer of J.J.Hospital for postmortem examination. He has identified his signature on the carbon copy of A.D.R. Panchas were relieved after completion of this panchanama. After conclusion of above stated panchanama in respect of recovery of the dead body and the articles allegedly shown by accused No.1, P.W.42 wanted to draw panchanama in respect of the boat. He therefore requested Police Constable Mr.Mali to call two pancha witnesses so that panchanama of the boat could be drawn. The next panchanama in respect of the boat was commenced at about 3.30 a.m. in presence of panchas Mr.Nalawade and Mr.Beloskar.

536. Next panchanama was general panchanama in respect of articles on the boat. It is stated by P.W.42 that apart from the usual articles found on a fishing boat some other articles were also found. Near about 145 articles were seized during the course of panchanama. It is stated by this witness that articles which are not normally found on fishing boat could be described as under :

1) Six pieces of foam of pink colour -
2) Fourteen blankets.
3) Two shawls
4) One mattress
5) One empty bottle of cold drink.
6) One scarf used at the time *Namaj*.
7) Four caps
8) Six T-shirts
9) Six pants(one of the pant had brand name of Pakistani manufacturing company i.e. South Pole)
10) One shirt
11) 15 jackets.
12) Seven tooth brushes
13) Shaving razors.
14) One tube of shaving cream
15) One tube of tooth paste.
16) One empty sugar bag.

17) One empty paper bag wheat flour
18) Two air pumps
19) Four packets of Detergent powder (Brand name 'PAK')
20) Empty containers of Nestle milk powder.
21) Eight cans of oil having capacity of 55 litrs each.(One of the cans had marking of 'Gulf 'and 'Karachi')
22) Five barrels of Diesel (One of them was empty).
23) Five containers of colour spray.
24) One dagger
25) One knife
26) One scissor
27) Three boat covers made of tarpaulin.
28) Floor cleaning brush (made in Pakistan).

All the above stated articles were seized under panchanama. Apart from the seizure of above stated articles, soil sample from the deck was also collected. Panchanama-**Exh.182** was drawn. Signatures of panchas were taken on the panchanama. All the sealed packets of the articles recovered from the boat were brought to D.B.Marg Police Station and were deposited in property room of the police station. Station diary entry in that regard was taken vide **Exh.188** (Zerox copy of the same is at **Exh.188-A**) . Photographs of the boat from various angles were also taken during the course of panchanama. Witness has stated that he could identify the articles

seized from the boat. **Art.202 colly**. were shown to this witness. It is stated by him that these pink foam pieces were seized from the boat. He has identified his signature on the label which was used for sealing the packet containing foam pieces. The following articles which were given article numbers during the course of evidence of P.W.41 were also shown to P.W.42. He has identified them to be the same which were recovered from the boat.

1) Art.184 colly. & Art.185 colly. - 14 blankets.
2) Art.186 colly. - 15 jackets.
3) Art.187 colly. - 4 caps
4) Art.188 colly. - 4 packets of detergent powder
5) Art.190 - Shaving cream
6) Art.191 - Tooth paste
7) Art.192 - Empty cold drink plastic bottle
8) Art.194 - One empty sugar bag
9) Art.195 - Empty paper bag of wheat flour of Hari Atta Chhaki
10) Art.193 colly. - washing brushes
11) Art.189 - Empty packets of Nestle Milk powder
12) Art.206 - One scarf
13) Art.207 colly. - Two air pumps.

The witness has further stated that labels on the wrappers used for sealing of these articles bear his signatures.

537. As such witness P.W.42 recorded statement of accused No.1 at Nair Hospital leading to recovery of dead body of the navigator Amarchand Solanki, G.P.S., satellite phone and a notebook. This witness has also drawn panchanama in respect of recovery of these articles from the boat Kuber and has further drawn panchanama in respect of seizure of articles from the boat.

538. **P.W.25-Bhavesh Mahadeo Takalkar**, panch witness, was present during the course of panchanama in respect of statement of accused No.1 and recovery of dead body of the navigator Amarsingh Solanki and other articles from the boat and P.W.41-Gorakh Ganapati Nalawade was present at the time of panchanama-**Exh.182** during the course of which other articles (which are not normally found on a fishing boat) were seized from the boat Kuber.

539. P.W.25- Bhavesh Mahadeo Takalkar in his evidence has stated

that he is in profession of photographer since last 7-8 years. On 27.11.2008 he had gone to State Transport Bus Stand at Bombay Central to see off his cousin Mr. Sandeep Takalkar who was going to Pune. While returning hom he was waiting at city bus stop near Nair Hospital. At about 11.45 a.m. one police constable approached him and inquired from him as to whether he would be willing to participate in panchanama to record statement of the accused who was in police custody. P.W.25 gave consent for the same and accompanied the said police constable to Nair Hospitl. Police Officer Mr.Chandrakant Jadhav (P.W.42) was there who had introduced himself to P.W.25. PSI Mr.Marde was also introduced to P.W.25. One more panch by name Pravin Hargude was also introduced to P.W.25. It is stated by P.W.25 that doctor had examined accused No.1 who was admitted in trauma wrd and had certified that accused was able to make a statement.

540. It is further stated by P.W.25 that accused No.1 had disclosed his name as Mohd.Ajmal Amir Kasab and had made a statement before P.W.25 and police that he would show dead body of Nakwa (navigator), satellite phone, G.P.S. and a notebook on the boat and the place in the boat where he had concealed dead body of Nakva. Statement of accused No.1

was reduced to writing by police. The doctor however, had certified that accused was not able to sign because of injury on his hand. An endorsement to that effect was taken from the doctor. The memorandum in respect of statement of accused No.1 was shown to the witness. He has identified his signature on the memorandum- **Exh.136.** This witness has corroborated the testimony of P.W.42 that panchanama was suspended as location of the boat was not known. Panchanama regarding suspension of recovery if any, on the basis of statement of accused No.1 has been exhibited as **Exh.137**.

541. P.W.25 has further stated that he was again called on the same date at about 10.30 p.m. and was informed that the boat in question had been traced and it had been anchored at Sassoon Docks. Police and panchas proceeded to Sassoon Docks. Coast guard officers were present at the docks. A boat was identified by accused and thereafter he had led police and panchas to the engine room. A dead body was found near the staircase in the engine room. One satellite phone, G.P.S. and one notebook were found concealed in the wooden plank in the engine room. As far as condition of the dead body is concerned, it is stated by this witness that both the hands of

dead body were found tied by means of a nylon rope. The rope was untied by the police constable and the body was brought to the jetty. The satellite phone, G.P.S. and the notebook was also brought to the jetty. It is stated by this witness that these three articles were shown by the accused No.1 below the wooden plank. During the course of examination of dead body it was seen that one black cloth piece was found tied around eyes of the dead body. The clothes on the dead body have been described as one black half pant, orange sweater and black jacket. It was stated by the witness that there were dried blood stains on the clothes. The clothes, nylon rope and the cloth piece were put in polythene bags separately and those bags were seized by police. Labels were affixed on those bags and signatures of panchas were taken on the labels.

542. During the course of examination of dead body it was seen that there were abrasions on both sides of chest and on abdominal portion, one incised wound was found on the back portion of neck, half of the neck was found cut in 'C' shape. There were dried blood clots on the injury. Abrasions were seen on back side of the dead body. The body was taken charge of by the police. Articles recovered allegedly at the instance of

accused No,1 were sealed and signatures of panch witnesses were taken on the labels on sealed packets. It is stated by this witness that something was written in Urdu on first few pages of the said notebook. The panchanama concluded at about 2.15 a.m. of 28.11.08. The witness has stated that it was read by him and found to be correct. Panchanama is produced at Exh.138. The witness has identified following articles to be the same which were recovered under the panchanama in his presence.

1. Brown wrapper - **Art. 136**
2. Black colour half pant - **Art.137**
3. Brown wrapper – **Art.138**
4. Sweater – **Art.139**
5. Brown wrapper – **Art.140**
6. Jacket – **Art.141**
7. Brown wrapper – **Art.142**
8. Black cloth strip – **Art.143**
9. Brown wrapper – **Art.144**
10. Nylon rope – **Art.145**

543. P.W.25 has also identified one polythne bag-**Art.146** , satellite phone of THURAYA Hughes make.- **Art.147, o**ne polythene bag- **Art.148,** One GPS of Garmin make – **Art.149**, one polythene bag-**Art.150** and one green cover note book - **Art.151,** to be the same which were recovered at

the instance of accused No.1. He has identified his signature on pages 1 to 6 of the notebook. He has also identified his signatures on the labels on art. 146, 148, 150 (polythene bags) which were used for sealing satellite phone, G.P.S. and the notebook.

544. As stated earlier **P.W.41-Gorakh Ganpat Nalawade** is the panch witness who was present during the course of second panchanama in respect of recovery of articles from the boat. It is stated by P.W.42 that earlier two panchas were relieved on completion of panchanama, statement of accused and consequential recovery of dead body and other articles from the boat. As far as P.W.41 is concerned, he was working as Asstt.Shed Superintendent in Mumbai Port Trust. He was on duty at Sassoon Docks from 11.30 p.m. of 27.11.2008 to 8.00 a.m. of 28.11.2008. At about 3.00 a.m. on 28.11.2008 he was called by Police Constable Mali. He was requested to participate in the panchanama of a boat. On he giving consent for the same, he was taken to new fish jetty of Sassoon Docks. He was introduced to police officers who were present at jetty. According to him police officer Mr. Marde, M.Jadhav and Mr.Ambre were present. One Mr.Satish was present as a panch witness.

545. Panchanama of the boat Kuber was drawn in the presence of these witnesses. P.W.41 has stated that name of the boat was written on the body of the boat in Gujarati as well as in English. Registration number of the boat was PBR 2342. The boat was measuring 45 X 15 ft. There was one cabin in center of the boat. There was one engine room also. According to this witness 145 articles found in the boat were seized by police in his presence. Some of the articles described by this witness are as under :

1) Fourteen Woolen blankets
2) Two Shawls
3) One mattress
4) Four caps
5) Fifteen jackets
6) One handkerchief
7) Shaving cream made in Pakistan
8) Tooth paste made in Pakistan
7) Seven tooth brushes
8) One big rope
9) Fifty six pieces of rope.
10) One dagger
11) One knife
12) One scissor
13) One empty sugar bag
14) Three boat covers made of tarpaulin

15) Four barrels of oil

16) Five body spray containers

17) Eight oil cans having capacity of 55 litrs. each.

546. Apart from above stated articles, there were many other miscellaneous articles on the boat. It is stated by P.W.41 that all the articles were sealed and seized by the police. Labels were affixed on the sealed packets and signatures of both the panchas were taken. Panchanama was drawn. **Exh.182,** according to this witness is the same panchanama. It is further stated by this witness that he could identify the articles seized in his presence. The ld.Spl.P.P. had submitted during the course of recording of evidence of this witness that prosecution did not want to show all the articles to the witness. It was prayed that the blankets, jackets, caps and handkerchief seized by the police, may be shown to the witness to see whether he could identify the same. Two bags having seal of Forensic Science Laboratory State of Maharashtra and DNA No.433.B/08 were opened. They were found containing following articles.

1) Twelve blankets of different colours.- **Art.184(colly)**

One corrugated box bearing DNA No. 433. B/08) was also opened. It was found containing following articles.

1) Two blankets – **Art.185(colly)**
2) Fifteen jackets – **Art.186(colly)**
3) Four caps – **Art.187(colly)**
4) Twenty four packets containing other articles.

Art.184 colly.- Twelve blankets of different colours , art.185 colly.-Two blankets ,art. 186 colly.- Fifteen jackets and art.187 colly.- Four caps were shown to the witness. He has identified the articles to be same which were seized in his presence from the boat. It is stated by this witness that labels on polythene bags containing these articles bear his signatures. Four detergent powder boxes- **art.188(colly),** three empty packets of Nestle Milk - **art.189(colly),** one shaving cream of 'TOUCHME' make - **art.190**, one Dental Cream of 'MEDICAM' make- **art.191** and one empty plastic container of 'Mountain Dew'- **art.192** were shown to the witness. He has identified these articles to be same which were seized from the boat. It is stated by him that labels on the polythene bags in which these articles were sealed bear his signatures. Two washing brush made in Pakistan by Victory Brush- **art.193(colly),** one empty sugar bag of 'Pakistan White Refined Sugar- **art.194,** one empty paper bag of wheat flour of Hari Atta Chakki, Qmar Food Products, Shah faisal Town, Karachi- **art.195** have also been

identified by this witness to be same articles seized in his presence from the boar. He has identified his signatures on the labels on bags in which the articles were seized. Eight plastic cans of 55 litrs capacity each- **art.196(colly)**. were shown to the witness. It was found printed on the cans 'Sulaz Cog Industrial Area, Karachi, Pakistan'. It is stated by him that these plastic cans were also found on the boat.

547. As far as cross-examination of P.W.42-Chandrakant Jabardast Jadhav, PSI., P.W.25- Bhavesh Mahadeo Takalkar and P.W.41- Gorakh Ganpati Nalawade is concerned, it is their common evidence that date below their signatures on labels were not mentioned. P.W.42 has admitted that none of the blankets were made in Pakistan. It is admitted by this witness that he might get confused if the blankets produced in court are mixed up in another 15 blankets of similar description. This admission apply to the jackets also. It is admitted by the witness that jackets are also not made in Pakistan. P.W.42 further admitted that he had gone to interrogate the accused No.1 in connection with Crime No.305/08 of D.B.Marg Police Station. The witness however, has denied that accused No.1 was discharged from the hospital when P.W.42 had gone to interrogate

accused No.1. It is admitted by him that memorandum statement-**Exh.136** was recorded during investigation of Crime No.305/08 of D.B.Marg Police Station and that Crime No.305/08 has not been recorded in the memorandum. The explanation given by the witness is that he did not find it necessary to record crime number in the memorandum of statement of accused No.1. It is further explained by this witness that he could not take thumb impression of accused No.1 on the memorandum-**Exh.136** because there was bandage on his both the hands.

548. Further cross-examination of P.W.42 was directed on the point that he could not have drawn the panchanama in respect of dead body and other articles on the alleged statement of accused No.1 because investigation of Crime No.305/08 had been transferred to D.C.B.C.I.D at 20.00 hours of 27.11.2008. The witness has admitted that there was a separate compartment for storing ice but no snow was found in the compartment. Fish was also not found in the boat though fishing nets were there. This witness has also admitted that there are lot of holes on the short pant-**art. 137.** The holes were not there when the short pant was removed from the dead body. Like P.W.25 this witness has also admitted that the

cloth piece art.143 is not complete black. He has also admitted that some pages from the notebook-E**xh.175** appears to have been removed after page No.2. He has however, explained that the notebook produced in court is in the same condition in which it was seized from the boat. Witness had not taken permission of superior officer of Mr.Nalawade (P.W.41) before involving him in the panchanama. Witness has further explained that though Crime No.305/08 has not been mentioned in the panchanama-**Exh.182**, he has mentioned A.D.R.No.65/08 of D.B.Marg Police Station. Police photographer was present during the course of panchanama-**Exh.138.** He was also present during the course of panchanama-**Exh.182.** Dog squad and finger print expert had not come till conclusion of panchanama-Exh.182. Witness had admitted that blankets are required by the fishermen on the fishing boats. He has further denied that accused No.1 was discharged from the hospital at 9.25 a.m. on 27.11.2008. He has also denied that accused No.1 was able to sign and give his thumb impression . He has denied suggestion that thumb impression or signature of accused No.1 was not taken because no such statement leading to recovery of dead body was made by accused No.1. He has denied usual suggestion of giving false evidence and fabricating panchanama etc.

549. It was tried to be brought on record that P.W.25-Bhavesh Takalkar was not present during the course of panchanama. A searching cross-examination was made by ld. advocate Mr.Kazmi for accused No.1. P.W.25 has admitted in his cross-examination that police had clearly told him that it was not certain as to how much time the panchanama would consume. He has also admitted that the doctor did not inquire from accused No.1 as to whether he could put his thumb impression if he was not able to sign. Witness has also stated that crime number was not mentioned in the panchanama.(at this stage it may be noted here that crime with respect to death of Amarchand Solanki was not registered till that time).

550. P.W.25-Bhavesh Takalkar has further stated that **art.137**-short pant has lot of holes and that these holes were not seen at the time of panchanama. This witness has admitted that he was told that one of the instrument was G.P.S. and other was phone. Cloth piece-**art.143** which was allegedly tied around eyes of the dead body of deceased navigator was shown to the witness. He has admitted hat it is not black cloth. It is also admitted by him that some pages after page No.2 have appeared to have been removed from the notebook-**art.151**. It may be noted that however,

there is no discontinuity in the signatures of witness on the notebook.

551. It is an admitted position that P.W.41-Gorakh Ganpati Nalawade had participated in the panchanama as a witness during his duty hours. He has admitted that he could not attend any other work except his official work during the said period. He had no idea as to how much time the panchanama would consume and he had not inquired about the same from police also. It was tried to be brought on record during the cross-examination of this witness that the accused No.1 was on the boat even during the course of second panchanama under which the articles lying in the boat except articles recovered allegedly at the instance of accused No.1, were seized. However, the witness has categorically stated that he had not seen accused No.1 on the boat. He had seen photographer on the boat. However, no finger print expert was seen by him. He had also not seen dog squad.

552. It is an admitted position that Crime No. 305/08 of D.B.Marg police station is not mentioned in the panchanama. An endeavor on the part of ld.Advocate Mr.Kazmi is to demonstrate that though alleged recovery at

the instance of accused No.1 and seizure of articles on Kuber Boat was part of investigation of Crime No.305/08 of D.B.Marg Police Station, police have purposely avoided to mention this in the panchanama because the panchanama is fabricated and manipulated later on. It is also admitted by the witness that he has not mentioned date below his signature in the panchanama.

553. At this stage it may be stated here that the case of prosecution appears to be that they were led to boat Kuber by accused No.1 while he was in police custody. It further appears to be the case of prosecution that mention of Crime Number in the panchanama or otherwise is irrelevant to Sec.27 of the Evidence Act. As far as my comments on this aspect of the case are concerned, I will deal with the same at later stage when I will deal with the arguments of ld. Spl.P.P. and ld. advocates for the accused.

554. **P.W.7-Mr.Arun Balkrishna Jande,** A.S.I.16855, was working at Naigaon Police Armoury and it is he who had issued one AK-47 rifle in the name of Mr.Ashok Kamate, the then Addl.Commissioner of Police (East Region), Chembur. Mr.Ashok Kamate was also issued four

empty magazines, one magazine pouch and one rifle sling. He has produced the register in which entries are made regarding issuance of arms and ammunitions from the armoury. It is stated by this witness that the said entry is at **Exh.76**. It is in the handwriting of Police Constable Mr.Jagtap. It is further stated by him that P.C. Jagtap had made the entry in the presence of P.W.7. It was signed by Mr.Ashok Kamate in token of having received the above stated articles including one AK-47 rifle. The butt number of AK-47 rifle was 94 and body number was LY8860. P.W.7 has identified AK-47 rifle-Art.12 which was issued to Mr.Ashok Kamate. Zerox copy of entry of register is taken on record as **Exh.76-A** and the original is returned to the witness for being kept in safe custody until further orders. The witness has also identified **art.36 colly.** to be the same three magazines which he had issued to Mr.Ashok Kamate. According to him they are three magazines out of four issued to Mr. Ashok Kamate. He has identified the magazines on the basis of butt number number 94. It is stated by the witness that butt number of rifle and accompanying magazines are normally one and the same.

555. In the cross-examination this witness has stated that rifle

AK-47 was issued to Mr.Kamate on the basis of order received from his superior. He has denied suggestion that butt number on the rifle is FY8860. In view of the fact that 'L' on the butt of the rifle written up side down, I had intervened during the course of cross-examination and had brought to the notice of ld.Advocate Mr.Kazmi that it is not **FY** but **L** is written up side down. Though suggestions to the contrary were put, I do not think that it is seriously disputed that this rifle was issued to Mr.Ashok Kamate from the police armoury.

556. P.W.18-Ramesh Apparao Manipuri is the panch witness in whose presence pistols of P.W.1-PSI Bhaskar Kadam and P.W.3-API Mr.Hemant Bavdhankar which they had used for firing at the time of incident at Chowpaty, were seized by the Investigating Officer. P.W.18 is resident of Koliwada, Girgaon Chowpaty. On 27.11.2008 at bout 1.00 p.m. while this witness and his friend Shrikant Birajdar were proceeding towards Grant Road market for buying footwear, police constable from D.B.Marg Police Station called him. P.W.18 and his friend were introduced to police officer Mr.Bavdhankar and Mr.Kadam. They were told that police wanted to seize two pistols one each from Mr.Bavdhankar and Mr.Kadam.

557. It is stated by P.W.18 that police had seized one pistol, seven cartridges and one magazine from the possession of Mr.Bavdhankar. Similarly, one pistol, seven cartridges and one magazine was seized from the possession of Mr.Kadam (P.W.3 and P.W.1 respectively) . They were sealed in presence of the witness. Panchanama was drawn. The witness has identified his signature on the panchanama -Exh.110. He has identified pistol-**art.29** to be the pistol produced by API Mr.Bavdhankar and **art.18** to be the pistol produced by PSI Kadam.

558. In the cross-examination it is stated by this witness that he had recorded the date below his signature and it was in Marathi. However, when the panchanama -**Exh.110** was shown to him he has admitted that the date below his signature was in English. He has also admitted that he had not mentioned date of panchanama on the label affixed to the wrapper in which pistol were sealed by the police. He has denied suggestion that he was deposing false because he was regularly visiting D.B.Marg police station to participate in various seizure memos.

559. At this stage it may be stated that the prosecution is that the

accused No.1 along with deceased terrorists were having forged identity cards of Arunoday Degree College, Hyderabad. Prosecution has examined **P.W.19-Mr.G.Radhakrishnan S/o G.V.Subramaniam,** Principal of Arunoday Degree College, Hyderabad, to show that the identity cards found in possession of accused No.1 and deceased accused were never issued by the said college. Identity card-**art.61**, **art.104,** identity card- **art.-123** (in the name of Raghuvir Singh, identity card-**art.126** (in the name of Rohit Patil, identity card-**art.127** (in the name of Arjunkumar, identify card-**art.128** (in the name of Dinaish Kumar and identity card-**art.130** (in the name of Arun Sharma) were shown to this witness. It was stated by this witness that these I-cards do not bear his signatures. This witness is Ad-hoc Principal of Arunoday College since 2002. It is stated by him that the college maintains record of identity cards issued to the students. A student has to sign the identity card only after signature of the principal. The identity card issued by the college of the witness bears year of the issuance, code number of the college, and roll number. The cards issued by the college of P.W.19 are manually written by the concerned student himself. According to this witness the computerized cards produced before this court do not belong to their college.

560. During the course of cross-examination by ld. advocate Mr.Kazmi for accused No.1, this witness has denied that the identity cards produced in court were signed by some other official on behalf of P.W.19.

561. **P.W.67-Mrs. Usha Shree Shivakumar** has stated that she is the owner of property known as 254 Teachers' colony . According to her it is an open plot. It was purchased by her on 27/3/2002 and since then it is lying vacant. She has produced receipts in payment of tax at Exh.252 colly. It is further stated by P.W.67 that this plot was not given on rent or otherwise to anybody and that accused No.1 was never tenant of the said property. This witness was examined only to show that the address mentioned in the cards is false and that forged identity cards had been prepared by the conspirators of this crime.

562. It has also come in the evidence that accused No.1 had made a statement to show the place in the boat where slain body of navigator Amarchand was kept. Said statement was recorded in Nair Hospital. However,the panchanama in respect of recovery of anything at the instance of accused No.1 was deferred as the location of boat was not known and

was not disclosed by the accused. It has also been stated in the earlier part of the evidence that police officer had given message to the control room regarding disclosure statement made by the accused No.1.

563. P.W.37-Mr.Saravanasamy Jagannathan was working as Additional Commissioner of Police, Head Quarters, Mumbai in the month of November, 2008. On the night of 26th and 27th November, 2008 he was working at the main police control room, Mumbai City. Joint Police Commissioner of Police was also with him. This witness was assisting Mr.Maria for controlling the situation arising out of incident on that night. At about 14.00 hrs. on 27.11.08 a phone call was received from Mr.Marde, P.I. (PW.48) that one Indian fishing vessel had been abandoned about four nautical miles away from Colaba coast and that sailor of the said boat had been killed and that dead body had been left in the said boat. This witness was further informed that killing was executed by the terrorists who had landed at Mumbai. P.W.37 was therefore requested to pass on this information to the coast guard so that the vessel could be traced. P.W.37 in response to the said call took further action . He contacted Commandant Mr.Bakshi of Coast Guard and had requested him to search the vessel. A

station diary entry was made in the police control room. The original station diary entry was produced in the Court at **Exh.172** and a zerox copy thereof is at **Exh.172-A**. The original is returned to the witness for being kept in safe custody until further orders. At about 14.40 hrs. Mr.Maria had also spoken to Mr.Bakshi. Station diary in that regard was also made. It is at **Exh.173.** A zerox copy of the same is at **Exh.173-A**. The original entry is returned to the witness for being kept in safe custody until further orders.

564. P.W.26-Mr.Prabhdeep Singh Malhotra was working as Commandant Coast Guard, Colaba, Mumbai. His office was situated at Worli. However, their functioning was from the naval base at Colaba which is known Naval Air Station Kunjali-II, Colaba, Mumbai. It is stated by this witness that on 27.11.2008 at about 14.40 hrs. he had received message from the Regional Operation & Planning Officer Mr.Ashish Srivastav to search for an abandoned fishing vessel. The location was given as four nautical miles from Mumbai coast. This witness therefore took off from from Kunjali Naval Station at about 15.00 hours. He could locate the boat at about 16.40 hrs. The boat was cited 6 (six) nautical miles away from the Mumbai coast. It was on south-west coast. He reported the matter to

Mr.Ashish Srivastav. This witness was directed to keep watch on the boat till arrival of the Coast Guard Ship Sankalp-46. Accordingly he again took off from Kunjali and kept watch on the boat. The Coast Guard ship Sankalp-46 arrived near the boat at about 18.40 hrs. This witness has further stated that name of the boat, which was found abandoned, was Kuber and its registration number was PBR-2342. There is nothing in the cross-examination of this witness.

565. As such so far evidence of witnesses pertaining to the incidents of C.S.T. railway station, Cama Hospital (In & Out), Badruddin Tayyabji Road, Metro Junction, alleged robbery of Skoda car and alleged incident of encounter of the accused No.1 and the deceased accused No.1-Abu Ismail with police at Girgaum Chowpaty has been summed up. The evidence with respect to the alleged role of accused No.2 and accused No.3 has also been summed up by me in the initial part of the judgment. At the same time the evidence pertaining to the seizure of inflatable boat, fishing vessel Kuber, alleged discovery of dead body of the navigator deceased Amarchand Solanki at the isntance of accused No.1 and seizure of articles from boat Kuber has also been summed up. Panchanamas in respect of various places

have been considered and the evidence of witnesses relating to panchanamas has been summed up and details of articles have also been mentioned in the earlier part of the judgment. Now, let me proceed further to sum up the evidence of witnesses pertaining to other incidents i.e. the incident of Hotel Oberoi, Taj, Leopold, Nariman House and the taxi blasts.

THE INCIDENT OF TAXI BLAST AT VILE PARLE

566. Before I proceed to discuss the evidence of witnesses pertaining to the incidents at Oberoi Hotel,Taj Hotel and Nariman House, it will be apt to discuss the evidence of witnesses who had spoken about the blast in a taxi at Western Express Highway at Vile Parle. The map of the spot produced in the court by the prosecution has been admitted by the defence. It is part of **Exh.577A colly.** A zerox copy of the map is at **page No. 598A.** It is the case of the prosecution that the accused no.1 and the deceased accused-Abu Ismail had travelled from Badhwar Park to C.S.T.Railway Station in a taxi bearing Registration **No.MH-01-G-7792**. The driver of the taxi was Mr.Mohd.Umer Abdul Khalid. It is also the case of the prosecution that the accused no.1 and the deceased accused-Abu Ismail had planted a RDX bomb in the said taxi weighing approximately 8

kgs. The said taxi was hired by Mr.Laxminarayan Goyal, an Advocate from Hyderabad. He wanted to go to Charkop, Kandivali to his sister-in-law's place. The bomb planted in the taxi, however, unfortunately had exploded at Vile Parle and in the result, the driver and advocate Mr.Laxminarayan Goyal lost their lives in the said explosion.

567. The case was registered in this regard at Vile Parle Police Station on a complaint of **Mr.Shankar Tambe,A.S.I.(PW No.164)** who had visited the spot immediately after the incident. When he visited the spot after explosion, he had seen that the taxi was broken into pieces. A dead body of a male was found at some distance from the explosion. Papers of the vehicle were found in partially burnt condition. From the papers, he could gather that the driver of the taxi might be one Mr.Mohd.Umer Abdul Khalid and owner thereof might be Mr.Abdul Rahim Abu Bakar. He lodged the complaint at Vile Parle Police Station vide **Exh.691**. On his complaint, FIR was registered by Police Officer Ms.Mausmi Patil vide proforma FIR **Ex.691A.** The panchnama of the spot was drawn by API Mr.Lotlikar in presence of complainant. The complainant has identified the driving license, identity card issued by Taxi Union and badge of driver as **Arts. 545,**

546 and **547** respectively. He had also identified the insurance policy issued by Reliance General Insurance as **Art.548.** There is no cross- examination of this witness by either of the accused.

568. Police Officer Ms.Mausmi Subhash Patil, has examined as **P.W.N0.165.** She had recorded FIR/complaint and had registered the offence vide FIR **Exh.691A** at Vile Parle Police Station **Crime No.464/08** U/s.302 of IPC and other sections. This witness had also not been cross-examined by the defence.

569. Police Officer Mr.Ramchandra Rohidas Lotlikar, has been examined as **P.W.N0.167.** This witness had visited the spot at Western Express Highway in front of City Swan Club and had drawn panchnama in presence of two panch witnesses. In all, 44 articles were seized from the spot by this witness. According to this witness, the taxi was completely destroyed and was seen broken into pieces. There was a pit of 2' dia on the road. Black powder was seen in the said pit. Sample was collected from there for being sent to the C.A. Sample was sealed in presence of panchas. A dead body of male aged about 45 years old was seen at some distance

from the said pit. The body was badly mutilated. A severed head of male was found in the basement of City Swan Club. Pieces of human flesh and bone were found scattered on the spot. The severed head of male found in the basement was about 330' away from the place of the incident. The CNG fuel tank of the taxi however was found intact. This witness has also identified the license, identity card, batch, insurance policy earlier shown to the complainant. The panchnama was exhibited as **Exh.694**. Though, this witness has been cross-examined by Ld.Advocate Mr.Abbas Kazmi, there is nothing in the cross-examination about the credibility of this witness, therefore, is not found necessary to discuss the cross-examination in detail.

570. PW No.166-Mr.Mohak Keshav Velankar, is an independent panch witness who was present during the course of panchnama **Exh.694**. This witness has also identified the driving license, identity card, batch and insurance policy. He had also seen one broken cell phone and SIM Card which was shown to him in the court and has been identified by him as Arts. **549 & 550**.

571. P.W.N0.171-Mr.Shyamsunder Rambharat Chaudhary was

injured in the said incident dt.26.11.08 as he was passing from near the place of incident. He had sustained a bleeding injury on his right shoulder immediately on explosion of a bomb in a taxi. The evidence of this witness has also not been questioned in the cross-examination.

572 P.W.N0.170-Mr.Abdul Rahim Abubakar Shaikh, was the owner of **taxi No.MH-01-G-7792**, which was involved in the unfortunate incident resulting in the deaths of driver and the lawyer. This witness has stated in his evidence that due to damage of his taxi, he suffered loss to the extent of Rs.1,50,000/-. The taxi union had also lodged a claim before the Government for grant of compensation. There is nothing more in the evidence of this witness.

573 P.W.No.169-Mr.Irshad Ahmed Shaikh, was one of the friends of the deceased taxi driver. This witness has stated that P.W.170 was the owner of Taxi No.MH-01-G-7792. The deceased Mr.Umar Shaikh was plying the said taxi mainly during night hours. P.W.No.169 himself is a taxi driver and he plies taxi belong to the son of Mr.Shaikh Abdul Rahim. It is how he is connected with the deceased and the owner of the taxi. He

had given his driving license to the deceased for renewal. He,therefore, on 26.11.08 at about 10.00 p.m. made a phone call to the deceased on his mobile telephone to find out whether the license had been renewed or otherwise. He was informed that the license had not been renewed. The deceased also told P.W.No.169 that it was good that he had not been driving taxi on that night, because there had been an incident of firing at C.S.T. The deceased had also informed P.W.N0.169 that he was proceeding to Kandivali to drop a passenger who had hired the taxi from C.S.T. From television news P.W.N0.169 came to know that there had been a bomb blast in a taxi at Vile Parle. He had, therefore, visited Vile Parle Police Station. He had identified the dead body of deceased Umar Shaikh at Cooper Hospital.

574. P.W.N0.168- Mrs.Usha Sharad Chaudhary ,was staying at Achit Building,Charkop, Kandivali(W). The deceased Late Shri Laxminayaran Goyal was her sister's husband. He was practicing law at Hyderabad. He had visited Mumbai for some court work and there to return to Hyderabad on 26.11.2008. He, however,missed the train due to the incident from C.S.T. He,therefore, informed P.W.No.168 that he would be

staying with her at Charkop and that he was leaving C.S.T. He had also informed P.W.N0.168 that there had been an incident of firing at C.S.T. Railway Station. P.W.N0.168 advised him not to travel by local train and that he should prefer to travel by taxi.

575. The case of the prosecution is that the deceased later had hired taxi No.MH-01-G-7792 and had been travelling in the said taxi. It is this taxi which had exploded at Western Express Highway at Vile Parle due to RDX bomb explosion. P.W.N0.168 was in constant touch with the deceased Lawyer on his mobile phone. At about 11.45p.m. she received a phone call from the daughter of the deceased Miss Diksha who is staying at Malbar Hill that she also could not contact her father on phone as the phone was not reachable. Obviously, the telephone of the deceased would not be reached because of the incident of bomb explosion in the taxi. Ultimately, P.W.N0.168 had to visit Kandivali Police Station to lodge the report. She was directed to visit Mazgaon, Dadar & Vile Parle Police Stations to find out whether her brother-in-law was injured or dead in any of the incidents of bomb explosion in taxi. Here it may be stated that there was one bomb explosion in taxi at Mazgaon. After frantic search, P.W.N0.168 could get

dead body of her brother-in-law at Cooper Hospital and she learnt that he had died due to bomb explosion in the taxi at Western Express Highwat at Vile Parle.

576. P.W.N0.173-Mr.Dilip Sakharam Kale, P.I. had taken over investigation of the crime registered at Vile Parle P.Stn. and during the course of investigation, he had recorded statements of the witnesses. Originally, offence was registered pertaining to three deaths in the incident. However, DNA report of taxi of dead body revealed that only two persons had died during the incident. It has already been stated by me that taxi driver and lawyer lost their lives in the said incident. Though the police had registered three accidental deaths, the ADR No.81/08 of unknown person was closed as finally it was found that there were only two deaths. Further investigation of this case was also handed over to DCB CID,Mumbai.

577. P.W.N0.174-Mr.Vaibhav Vijay Dhumal, is the Asstt.P.I. of D.C.B.C.I.D. who had taken over investigation of this crime from Vile Parle Police Station. He had received injury certificates in respect of injuries sustained by the injured Mr.Shyamsunder and Mr.Balkrishna. The

certificates were issued by Cooper Hospital. The certificate in respect of injury sustained by one Mr.Sheldon Aiman was received from Holy Spirit Hospital. The injury certificates have been produced at **Exhs.717, 718** and **719** respectively. He had collected P.M.Notes in respect of Post Mortem Examination of dead bodies of Advocate Mr.Laxminarayan Goyal and taxi driver Mr. Mohd.Umar Shaikh. The accused no.1 was arrested in this case on 13.12.2008 and was remanded to judicial custody till 17.12.2008. There is no cross-examination of this witness also.

578. As alleged in the charge-sheet, ten terrorists were selected during the course of conspiracy to attack at various places in Mumbai. The said ten terrorists were grouped in five buddy pairs of two each. According to the complainant, five buddy pairs had landed at Badhwar Park in an inflatable boat after completing their journey by Al-Hussein and Kuber. It is alleged by the prosecution that the pair of deceased accused No.9-Abu Soheb and accused No.4-Abu Umer had headed for Hotel Leopold, Colaba from Badhwar Park in a taxi bearing Registration No. MH-01-J-5308. During the course of their journey from Badhwar Park to Hotel Leopold, they had planted one bomb in the said taxi. Evidence of witnesses in this

regard has been discussed in later part of the judgment while discussing the incident of blast in a taxi at Mazgaon, Mumbai. However, evidence of witnesses with regard to the incident of hotel Leopold can be summed up here.

HOTEL LEOPOLD CASE-

579. After getting down at Leopold, deceased accused No.9-Abu Soheb and accused No.4-Abu Umer started indiscriminate firing at the hotel and committed murder of 11 persons and injured 28 persons including nine foreign nationals.

580. The prosecution in this regard, has examined the complainant **P.W.No.179- Mr.Sudhakar Dattu Deshmukh** who was attached to Colaba Police Station as Sub-Inspector on the date of the incident. He was on duty at the Police Station. At about 9.30 p.m., he heard noise of firing and had seen people running helter-skelter near Hotel Leopold. Hotel Leopold is situated about 100' from Colaba Police Station. (Here also the map of the spot produced in the Court by the prosecution has been admitted by the defence. It is part of **Exh.577A colly.** A zerox copy of the map is at page **No.607A**.) The complainant, therefore, after collecting his pistol and ten

rounds from the armoury, proceeded to the spot. However, before he could reach Leopold Hotel, the two attackers had already completed their job of eliminating 11 persons and injuring about 28 persons and they were seen running towards Hotel Taj by this witness. Police Naik Mr.Sawant who was on duty at Colaba Mobile-I Van, had sustained bullet injury during the said incident. He was sent to hospital for medical treatment. When the complainant reached Leopold Hotel, he had seen that Colaba Tourist Mobile Van was also parked near the hotel. Police Driver of the said vehicle was also seen injured due to the firing. He was also sent to St.George's Hospital. Thereafter, Complainant, Police Inspector Mr.Desai,PSI Mr.Kakade and other staff members of Colaba Police Station had visited Leopold Hotel. About 20/30 persons including some foreigners were found injured. There was one big pit in front of service counter. The police officers immediately arranged to remove the injured persons to hospital.

581. During the course of visit of police officers at Leopold Hotel, they had also recovered two pairs of magazines of AK-47 rifle near the entrance of hotel. Some police constables were directed to guard the place of incident. Police Officers Mr.Desai and Mr.Kakade proceeded to Hotel

Taj as the terrorists were seen running towards Hotel Taj. However, the complainant-P.W.179 returned to Police Station and lodged the complaint **Exh.728** in respect of incident at Hotel Leopold. He has identified his signature on **Exh.728** and the proforma FIR **Exh.728A**.

582. The cross-examination of this witness is mainly directed to the incompetence of the police officers and does not any way help any of the accused on merits of the case. In my view,therefore, it is not necessary to discuss the same at this stage. It is obvious from the evidence of PW 179 that he had not seen the faces of those two terrorists, therefore, he could not identity the accused.

583. **P.W.No.181- Mr.Sachin Nivrutti Sorte,** who was working as Security Guard at shop known as "United Colours of Benetton of India Pvt.Ltd.. had seen the said two terrorists who had entered hotel Leopold and he has identified the dead body of one of the said terrorists. Both the terrorists had allegedly entered Taj Hotel after their killing spree at Leopold Hotel for a very short period. They were, later on, killed in Taj Hotel by National Security Guard Commandos. The dead bodies were kept at

Mortury of J.J.Hospital. P.W.N0.181 had identified one of the said two dead bodies. This witness in his evidence has stated that the shop Benetton of India Pvt.Ltd. is situated opposite Leopold Hotel at Colaba. On 26.11.2008, he reported for duty at 20.45 hours. It is at about 9.40 p.m., that he heard a noise of bomb explosion and firing immediately thereafter. He was standing in front of the shop where he was working as watchman. After the firing was over, he had seen two persons coming out of the hotel. In the meantime, he had downed the shutter of the shop which was being guarded by him. One of the said two persons had fired at the shop also. At least two bullets had hit the shutter of the said shop. The witness has given the description of both the persons in his evidence and has stated that he had identified the dead body of a person who had fired at the shop from his rifle. This witness had left Mumbai immediately after the incident as he was very much scared due to the incident. He had returned to Mumbai on 11.12.2008. His statement was recorded on 12.12.2008. He had identified the dead body of the said person on 7.1.2009 who had fired at their shop.

584. In his cross-examination, this witness has stated that he had not seen any policemen firing at the terrorists. There were many hawkers in

front of Leopold Hotel at the time of incident. He has further admitted that he had received a letter from police officer Mr.Choudhary when he was at his native place i.e.Kolhapur. Therefore he had visited Colaba Police Station to give his statement.

585. The panchnama of the spot at Leopold Hotel was drawn by Police Officer Mr.Desai in presence of two panchas. The prosecution has examined one of the panch witnesses i.e.**Mr.Vinod Valjibhai Waghela** as **P.W.No.180.** P.W.N0.180 is running a shop which is at about 50' to 100' away from Leopold Hotel. He was called by Police Officer Mr.Desai to participate in the panchnama. Police Officer Mr.Sudhakar Deshmukh (P.W.No.179) was also present. During the course of visit at Leopold Hotel for panchnama, it was seen that glass pans of hotel were broken, the hotel appeared to be completely ransacked and a lot of blood stains were seen everywhere in the hotel. The police had seized following articles from the hotel in presence of this panch witness.

1) One pair of AK-47 empty magazines.

2) One pair of AK-47 magazines containing seven cartridges.

3) Pistol holster.

4) One pistol magazine with six cartridges.

5) One iron rod.

6) In all thirty nine empty cartridges.

7) Five lead bullets.

8) Two blood samples were collected from the spot and they were sealed by the police.

9) Broken glasses with blood stains.

10) One fork

11) One spectacle

12) One currency note of Rs.10/- denomination.

The abovesaid articles were seized and sealed by the police. The witness had also seen bullet marks on the shutters of Benetton & Lacoste shop situated opposite Leopold Hotel. The property produced in sealed wrappers of FSL was opened at the request of Ld.Spl.P.P. and the following articles were shown to the witness-:

Two empty magazines-**Art.608colly**., two empty magazines-**Art.610 colly**., six live cartridges-**Art.612 colly.**, one empty-**Art.613**, one pistol

holster- **Art.615,** one black colour pistol magazine-**Art.617**, six live cartridges- **Art.619 colly.**, one empty-**Art.620,** one fire-arm butt of iron-**Art.622**, 22 empties-**Art.624 colly.**, 17 empties- **Art.626colly**., three fired bullets-**Art.628colly**., two fired bullets-**Art.630 colly**.(lead cartridges), two glass bottles containing dried blood samples- **Art.632colly**., blood mixed with earth-**Art.634**, glass pieces-**Art.636 colly**., one steel fork-**Art.638**, one spectacle-**Art.640,** one Indian Currency Note of Rs.10/- - **Art.642.** The witness has stated that these articles were seized by the police in his persence from Hotel Leopold. It is stated by this witness that as far as articles-612 colly. and 613 are concerned, what the police had seized in his presence was 7 live cartridges and not 6 live cartridges. (It may be stated here that one cartridge had been used by Ballistic Expert for test firing). Similar is the position with Art.619 colly. & 620. The wrappers used for sealing these articles were also shown to the witness and article numbers are given to the wrappers. The witness has identified his signature on the panchanama **Exh.-732**. The witness has stated that the labels of all the wrappers bears his signature. The witness in his cross-examination has admitted that he was told by the police that the magazines found on the spot were AK-47 rifle magazines. Similarly, the description of the empties and

magazines has also been recorded by the police on their own accord as he had no occasion to see the cartridges and empties in the past.

MAZGAON TAXI BLAST-

586. **Taxi No. MH-01-J-5308** in which the deceased accused No.9-Abu-Soheb and accused No.4-Abu Umer had travelled from Badhwar Park to Leopold Hotel was, left by them at Leopold Hotel. It is alleged that the deceased accused No.9 & 4 had planted a bomb in the said taxi and the said bomb had exploded when the taxi had reached opposite Bombay Port Trust,Mazgaon, Mumbai. The map showing the place of offence produced in the court by the prosecution has been admitted by the defence. It is part of **Exh.577A colly.** A zerox copy of the map is at **page No.614A.** Two female passengers were killed instantly and nine bye-standers were badly injured. The deceased female passengers had been identified as Mrs. Zarina and Mrs.Reema.

587. **P.W.NO.176-Mr.Mohd.Rabiul Mohd.Kiramal Shaikh**, has stated in his evidence that deceased Zarina was his mother-in-law and decased Reema was his wife. Both of them had hired a taxi from

Musafirkhana, Dongri to go to Zarina's place at Dockyard Road. Within a few minutes of their departure from Dongri, P.W.No.176 received an information that there was a blast in the taxi. He, therefore, rushed to the J.J.Hospital and was told that his mother-in-law was declared dead before admission and his wife was admitted for treatment. His wife also succumbed to the injuries on the next day. It is further told by this witness that one passenger was travelling in the said taxi when it had reached Suleman Musafirkhana,Dongri from where it was hired by Mrs.Zarina and her daughter-in-law Mrs.Reema.

588. The passenger who had travelled in the taxi when it had reached at Musafirkhana, was one **Mr.Wasim Ahmed Bashiruddin Shaikh.** He has been examined as **P.W.225** by the prosecution. This witness has stated that he had hired a taxi from near the Bank of Baroda opposite Hotel Leopold. The witness has further stated that the taxi which was hired by him near Hotel Leopold, had reached in front of the hotel carrying two passengers. One of them was wearing gold coloured T-shirt and the other was wearing T-shirt of gray colour. The total fare they were supposed to pay to the taxi driver was Rs. 13/-. One of them had handed

over a currency note of Rs.100/- to the taxi driver and did not bother to take back Rs.87/- from the driver. The taxi, as stated earlier, was hired by P.W.225 from Colaba to Musafirkhana. The witness has further stated that when he got down from the taxi at Wadibunder, the same taxi was hired by two Muslim females for going to Mazgaon, Azad Nagar. During the course of his further evidence this witness has stated that he had identified dead body of one of the said two persons who had alighted from the taxi in front of Hotel Leopold. He had identified dead body of the person who was wearing gray coloured T-shirt. Identification parade was held by S.E.O. Mr.Kandalgaonkar.

589. The visuals captured by CCTV of Hotel Taj were played in open court during the course of recording of evidence of this witness. He had identified two persons in CCTV footage as the same persons who were seen by him getting down from the taxi at hotel Leopold.

590. P.W.176-Mr.Mohd. Rabiul Shaikh has stated that his mother-in-law and wife died in the blast. The report in respect of this incident was lodged at Byculla Police Station by police constable **Mr.Kishor Waman**

Kharate, P.C.No.29691 -PW No.175. It is stated by P.W.175 that at about 22.45 hours when he was on patrolling duty, he was informed that there was a bomb blast in a taxi at Wadibunder, Mazgaon, Mumbai. He, therefore, immediately rushed to the spot. Taxi No.MH-01-J-5308 was found damaged badly. Human limbs were found scattered here and there. One severed head was found at the distance of 15' to 20' from the damaged taxi. About 10/12 persons were seen injured in the incident. They were taken to hospital for treatment. This witness had learnt that one male and one female had died in the incident . He,therefore, reported the matter to Byculla Police and offence U/s.302,307 r/w 120B of IPC was registered against unknown persons. The complaint was shown to the witness. He has identified his signature. The complaint is exhibited as **Ex.722**. Proforma FIR is exhibited as **Exh.722A**.

591. P.W.N0.177-Mr.Abdul Salim Shaikh, has stated that he was staying in the same locality where Mrs.Zarina was staying. At about 10.30 p.m., on the date of the incident, a taxi had arrived in the said locality. He had seen Mrs.Zarina and her daughter-in-law Mrs.Reema in the said taxi. Suddenly, there was a blast in the said taxi. The taxi was broken into pieces

and broken pieces had gone up in the air upto 2nd floor of the neighbouring building. P.W.N0.177 had also sustained injuries due to the said blast. His family members including his wife,son,mother-in-law and brother-in-law had also sustained injuries. Mrs.Zarina & Mrs.Reema were removed to hospital in an injured condition. P.W.N0.177 was also taken to the hospital where he was admitted for treatment. He was treated as an indoor patient for about one month. He had sustained loss to the extent of Rs.60,000/-to his hut due to the explosion.

592. P.W.N0.178-Mr.Dilip Raghunath Wagaskar is the panch witness in whose presence panchnama of the spot was drawn by the police. He had gone to the place of incident at about 2.45 p.m. after learning that there was an explosion. Other panch Mr.Afzal Sarang was also present. The place was shown by P.W.N0.175 to the police officers. It was in front of Building No.8 of Bombay Port Trust. Driver's badge and other articles including registration book were seen on the spot. Panchnama was drawn by the police. The panchnama **(Ex.726**) was shown to this witness. He has identified his signature on the panchnama. The police had also seized the following articles from the spot:-

1) One broken piece of bumper**(M-473-08 Ex.6)** – **Art.599**

2) One broken piece of bumper**(M-473-08 Ex.8)** – **Art.600**

3) Broken tin sheet**(M-473-08 Ex.7)** – **Art.601**

4) Sample of soil **(M-473-08 Ex.4)**– **Art.602**

5) Broken piece of part of taxi**(M-473-08 Ex.5)** -**Art.603**

6) One cotton swab in envelope **(M-473-08 Ex.9)**– **Art.604**

7) One cotton swab in envelope**(M-473-08 Ex.10)** – **Art.605**

All the articles were sealed and wrapped in his presence by the police during the panchnama.

593. In his cross-examination, the witness has admitted that the wrappers **Arts. 606 & 607** do not bear his signature. It may be stated here that the prosecution case is that these two wrappers are out of the few wrappers used by the police for sealing the articles seized from the spot of taxi blast.

594. Prosecution has also examined **P.W.229- Mr.Jagdish Dattaram Rane,** Police Sub-Inspector who had drawn panchanama- **Exh.726.** This witness had recorded FIR- **Exh.722** of Police Constable

Mr.Kishor Kharate (P.W.175) before drawing panchanama of the spot in respect of the incident of bomb blast in a taxi at Wadibunder, Mazgaon. It is stated by this witness in his evidence that he was on duty at Byculla Police Station on the night intervening 26th and 27th November, 2008 as Station House Officer. At about 10.45 p.m. he learnt that there was a bomb explosion in a taxi at Wadibunder ,Mazgaon. He immediately intimated his superior officers and visited the spot along with his staff members. On visiting the spot he noticed that the taxi was broken into pieces and was lying on the road. Registration number of the taxi could be seen from the number plate. The registration number of the taxi was MH-01-J-5308. He had also seen pieces of human limbs lying on the spot. There was a big pit on the road apparently caused due to the explosion. The witness had also noticed that a considerable damage was caused to the adjoining huts. Household articles of the hutment dwellers were seen scattered near the road. Some other vehicles which were parked nearby the spot were also damaged.

595. As already stated, before drawing the panchanama this witness had recorded FIR-Exh.722 and had also prepared the proforma FIR-

Exh.722A. He had identified his signatures on the FIR and the proforma FIR. An offence vide Crime Registration **No.318/08** was registered at Byculla Police Station . After registration of the offence P.W.229 had visited the spot and had drawn the spot panchanama. During the course of panchanama he had seized following articles :

1. Sample of soil
2. Severed limbs of a human body including one severed head.
3. One taxi driver's badge
4. Papers of the taxi
5. Broken pieces of the taxi
6. Some pieces of the taxi collected from 2nd floor and 5th floor terrace of the adjoining building.

Articles seized under the panchanama were shown to the witness. He has identified following articles :

art.597- Badge & key.
art.598- a metallic plate containing details of CNG kit.
art.599- broken piece of bumper
art.600- broken piece of bumper
art.601- broken tin sheet
art.602- sample of soil
art.603- broken piece of taxi,

The wrappers in which these articles were sealed, were shown to this witness and he had identified his signatures on the wrappers. He has further stated that signatures of panchas were taken on the rappers. The panchanama commenced at 2.50 a.m. and was concluded at 9.15 a.m. of 27th November, 2008. The witness has identified his signature on the panchanama. Another panchanama was drawn on the same day at about 1.00 p.m. when the forensic experts had visited the spot. It is at **Exh.853.**

596. As far as cross-examination of P.W.229 is concerned, it may be noted here that there is exchange of labels affixed to the wrappers of sealed articles of these two panchanamas. P.W.229 has stated in his evidence that the earlier panchanama was concluded in all respects before he returned to the spot for another panchanama. He has further stated that articles seized during the course of second panchanama (Exh.853) were also sealed on the spot. As such though the witness has stated that there was no chance of exchange of labels but the evidence of P.W.178-Mr.Dilip Wagaskar who was the panch witness, clearly indicates that there was exchange of labels. It however, does not materially affect merits of the case and does not require unnecessary attention of the court. What is important to be noted here is that all the articles under both the panchanamas were seized from the same spot

and what the police were concerned to find out as to what type of explosive material was used for explosion. The explosion by itself is not disputed. There are eye-witnesses who have given evidence regarding the explosion. As such the small mistake on the part of Investigating officer, though not admitted by him, cannot adversely affect the prosecution case.

597. P.W.230-Mr.Madhav Waliba Jagtap was working as Police Inspector at Byculla Police Station. The investigation of C.R.No.318/08 was handed over to him by P.W.229-PSI Mr.Rane. During the course of further investigation this witness had recorded statements of witnesses and had forwarded 19 sealed parcels pertaining to C.R.No.318/08 to the F.S.L. Mumbai. Forwarding letter was shown to this witness. He had identified his signature on the forwarding letter- **Exh.855**. The reports received from the Chemical Analyzer have been produced at **Exh.856, Exh.857, Exh.858, Exh.859, Exh.860, Exh.861** and **Exh.862**. In this regard it may be noted here that these reports will be referred to by me in detail when I will consider the evidence of C.A. who had examined these articles and had given his reports.

HOTEL TAJ CASE

598. It is the case of prosecution that the deceased accused No.4-Nazir @Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb after firing indiscriminately at Hotel Leopold had proceeded to Hotel Taj and had joined the deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali. As far as registration of offence with regard to the incident of Hotel Taj is concerned, the same was registered by P.W.183 on the complaint made by P.W.182. **P.W.N0.182-Mr.Prakash Sampatrao Bhoite,** was attached to Colaba Police Station as Police Inspector and he was on duty on 26.11.2008. At about 21.30 hours, when he was at police station,he had heard sound of firing. He,therefore, came out of the police station and had seen that the incident of firing was going on at Leopold Hotel. He, therefore, immediately collected his pistol with rounds from the armoury and came out of the police station. At that time, he had heard sound of firing from the direction of BEST Road. He had learnt that two persons who had been firing at Leopold Hotel had entered Taj Hotel from the back side. Immediately thereafter he had heard the noise of firing and explosion of bombs from Taj Hotel. He, therefore, immediately informed his Sr.P.I. and

requested for additional force. The Police Officers who had reached the spot with additional force were armed with fire-arms and they had entered Hotel Taj.

599. As far as P.W.N0.182 is concerned, he was directed by his Senior Police Officer to keep watch around the locality of Taj to check if any explosive material has been planted near the Hotel. It is stated by this witness that during the course of search, he found one article in front of New Taj Hotel where renovation of portion of Gateway of India was in progress. The article was found wrapped by means of pink foam. P.W.N0.182 has stated that it was a metal box wrapped with pink foam. He suspected it to be a bomb and,therefore, called the Bomb Detection and Disposal Squad. The BDDS has defused the said bomb. On 27.11.2008, at about 8.00 a.m., another bomb was found near Gokul Hotel behind Hotel Taj. This bomb was also similar to the bomb detected earlier. It was also defused by BDDS. P.W.N0.182 had,therefore, lodged complaint at police station in respect of the incident dt. 26th & 27th November,2008 which had occurred within the jurisdiction of Colaba Police Station at Hotel Taj. His complaint recorded by PSI Mr.Khetre was shown to him. He has identified

his signature on the complaint. The complaint is at **Exh.735.** He has also identified his signature on the proforma FIR **Exh.735A**.

600. On 27.11.2008, the remnants of two defused bombs were deposited at Colaba Police Station by the officers of BDDS. P.W.N0.182 had called two panchas and had taken charge of the remnants from the possession of officers of BDDS. The BDDS Officers had handed over two rectangular mental containers, two pieces of pink foam and 16 kgs. explosive materials to P.W.N0.182. They had also handed over four batteries, four electronic detonators and two timers to P.W.N0.182. The samples were collected from the explosive material for being sent to the C.A. **Arts.552 colly.** & **553 colly**.- two metal boxes and foam pieces respectively were shown to the witness. **Arts.554/2 & 555/2** (electric circuit wires) were also shown to the witness. The witness has identified these articles to be the same which were seized under the panchnama. He has identified his signature on the panchnama **Exh.736.** It is also stated by this witness that one chit each, the contents of which were in Urdu were also found attached with each of the metal box, seized by him. The contents of both the chits were translated by one Mr.Muqtar Pirjade.

601. During the course of investigation, this witness had recorded statements of some of these witnesses who were present in Taj at the time of alleged incident. In the cross-examination, this witness has admitted that he had no occasion to see the terrorists against whom FIR had been lodged. The witness was also unable to tell the Court as to by which road the terrorists had proceeded to Hotel Taj. He has admitted that he was told by some unknown person that the terrorists had proceeded towards Hotel Taj.

602. In the cross-examination, this witness has stated that the chits- **Arts. 644** & **645** containing some writing in Urdu were found affixed to the metal boxes. The witness has further admitted that he was not present when the bombs were defused by B.D.D.S. officers.

603. Though the police officer from Colaba Police Station has given evidence regarding the detection of bombs and seizure of remnants of defused bombs, it was noticed by the Court that officer who had defused the alleged RDX bombs , one recovered from Hotel Taj and another recovered from hotel Gokul, was not examined. His evidence was necessary for just decision of the case. Therefore, the said officer was called as Court Witness

No.5. **C.W.5-Mr.Anthony Steven Mathews** has stated in his evidence that he had visited Hotel Taj at about 1.00 p.m. on 27th November, 2008 where suspected article was lying about fifty meters away from the main porch of Hotel Taj. After wearing bomb suit C.W.5 and his colleague Sub-Inspector Mr.Deepak Sawant took the said bomb at an isolated place thirty meters away from the place where it was found lying. The lead wire was removed and four components of the bomb were segregated. There two Duracell batteries, one black colour firing mechanism m two detonators and a piece of cortex wire. Eight kg. explosives containing steel balls was found in the container. The said container was taken to Girgaum Chowpaty. The explosive material was removed from the container. The C.W.5 has further stated that the explosive material and all the remnants of the bomb were handed over to Colaba Police Station. One more similar article-RDX bomb detected behind hotel Taj near Hotel Gokul was also defused by C.W.5 and his team members in the manner stated hereinabove and the remnants were handed over to Colaba Police Station under a panchanama.

604. P.W.N0.183-Mr.Shyam Genu Khetre, is the police officer who had recorded complaint of P.W.N0.182. P.W.N0.183 had also

registered an offence vide **Crime No.242/08** at Colaba Police Station. He has identified his signature on the proforma FIR **Exh.735A**.

605. The prosecution has examined **P.W.N0.185- Mr. Muqtar Ahmed Abdul Gani Pirjade**, who had translated the contents of Chits-Arts. 644 & 645 in Marathi. This witness is a resident of Bhiwandi within Maharashtra, his knowledge of Marathi is not questioned. In the examination-in-chief, this witness has stated that the translation was done by him and translation has been recorded on Exhs. 741 & 742. According to this witness, the words '**Ammar**' & '**Askari**' on the chits means- ' **Yuddhakade Ishara'** (indication towards war). In the searching cross-examination by Ld.Adv.Mr.Abbas Kazmi, this witness has given fatal admission which create doubt about the credibility of the witness. He has admitted that these words were translated from Arabic to Urdu and then from Urdu to Marathi. The witness himself does not know Arabic. He had taken help of one of his friends to understand the meaning of 'Ammar' & 'Askari' and thereafter had translated the same in Marathi. So long as the said friend has not examined, the evidence of this witness is worthless and does not require any detail discussion.

606. It is the case of the prosecution that the deceased accused No.9-Abu Soheb and deceased accused No.4-Abu Umer after committing massacre at Leopold Hotel, had proceeded to Hotel Taj. Two other accused i.e. accused No.5 -Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and accused No.8- Javed @ Abu Ali also reached Taj Hotel directly from Badhwar Park. As such, according to the prosecution, in all four accused named above had attacked Hotel Taj. The prosecution has examined police witnesses to establish that the guests in the hotel were kept hostage and many of them were killed. The prosecution has also examined witnesses to establish that AK-47 rifles were used by the accused Nos. 4,5,8 and 9 and they had exploded bombs intermittently.

607. One of the guests who was occupying Room No.632 on 6th floor of Hotel Taj Palace had been examined as P.W. No.184. **P.W.N0.184-Mr.Kuttalam Rajgopalan Ramamoorthy**,_ aged 69 years was working as Non-Executive Chairman of ING Vyashya Bank. His office was situated at Bangalore. He had arrived at Mumbai on 26.11.2008 in connection with a Board Meeting of one of the companies. He was staying in Room No.632 of 6th floor of Hotel Taj Palace. He had checked in the afternoon of

26.11.2008.

608. It was around 10.15 p.m. that this witness received a call from Hotel Service Room intimating him that there was an emergency and that he should take care of himself. The witness,therefore, immediately switched on television and had seen images of what was happening at Taj,Leopold and Oberoi hotels. After witnessing the images on television, he became restless. T.V.Channels were also put off after thirty minutes and only movies were being shown on television. As such,this witness had no access to the outside world at all and was confined to his room without any help.

609. At about 11.15p.m., somebody had knocked the door of his room saying 'Room Service, Room Service'. Considering the message given by service room of the hotel,the witness was hesitant to open the door. He, however, immediately thereafter heard noise of gun shots and the door was flung open. Two persons had entered the room. One of them was very tall and he held his gun on the fore-head of the witness and warned him to keep quiet. He said in Hindi 'Chup Raho'. The other fellow gave the blow on the neck of P.W.N0.184. The witness was brought outside the room

forcibly and was asked to knock doors of neighbouring rooms. The witness helplessly followed the orders,but there was no response from any of the rooms. He was, therefore, again pushed back in his own room i.e.Room No.632. He was asked to removed his Kurta & Pyjama. When he showed his hesitant to do so, he was assaulted by both the persons and was ultimately compelled to remove his clothes. His both the hands were tied behind him, so his legs were also tied by means of his own clothes. Thereafter he was made to lie down on the floor. The person with red T-shirt and who was little hefty started inflicting kick blows on the back of the witness. The other person was wearing golden colour T-shirt. The witness was crying & telling him that he was blood pressure patient. But the said two persons did not listen to him. After sometime, the said two persons established telephonic contact with somebody. The conversation was in Hindi. The witness could follow the meaning of what the said persons had been talking on mobile phone. The person who was wearing Gold colour T-Shirt was seen talking on mobile phone. According to the witness, first of all, he said 'Salam Valekum' and there was frequent conversation on mobile phone. Within a few minutes, one hotel staff was brought inside the room by one of the said two persons. The said hotel staff was also crying.

Closely followed by this incident of arrival of hotel staff, one more staff member was brought to the room. P.W.N0.184 had later on came to know that the names of those staff members as 'Adil' and 'Swapnil'. Within next half an hour, two more hotel boys were brought in the room. As such, there were four terrorists and five hostages including P.W.N0.184. There were two terrorists described hereinabove. P.W.N0.184 has stated that two more terrorists had joined the earlier two terrorists within a short time. As far as two other staff members are concerned, their names were also revealed to P.W.N0.184 later on who were Mr.Rajendra and Mr.Sunil.

610. After arrival of the two more terrorists in the room, the said four terrorists started interrogating P.W.N0.184. One of the two terrorists who had come later on was wearing a black T-shirt and he was limping. The fourth terrorist was wearing a gray shirt and was in the age group of 20/25 years. During the conversation between the terrorists,the witness had heard two names i.e. Ali & Soheb. He had also heard one more name i.e. Rehman. During the course of interrogation, P.W.N0.184 had disclosed his name and his father's name. He also told them that he hails from Bangalore. P.W.N0.184 told them that he was a teacher by profession. The information

collected from P.W.N0.184 was being conveyed to somebody on mobile phone. The terrorists who is interrogating him became furious when P.W.N0.184 told him that he was a teacher. The terrorist also questioned the ability of P.W.N0.184 to occupy such costly room as he belonged to a teaching profession. As the terrorist had seen the sacred thread around the neck of P.W.N0.184. They had also inquired from him whether he was a Brahmin. The constant interrogation had ultimately compelled P.W.N0.184 to disclose that he was Chairman of ING Vyashya Bank. This was also intimated to somebody on telephone. The description of P.W.N0.184 was also given to the person on other side of the telephone.

611. It is further stated by P.W.N0.184 that hands and legs of other hostages were also tied and all of them were made to lie on the floor. All the hostages were interrogated by the terrorists. At about 2.15 a.m.on 27.11.2008, P.W.N0.184 and other hostages were brought to Room No.520 on 5th floor. The conversation on telephone was going on. After about 5 minutes, there was a major blast somewhere and smoke started entering the Room No.520. P.W.N0.184 and other hostages felt suffocation because of the smoke. It is difficult to breath in the situation due to smoke in the room.

Two terrorists who had been guarding the hostages in Room No.520 had left the room due to the suffocating situation in the room. It is when the terrorists had left the five persons in Room No.520, that the P.W.N0.184 started crawling and went near the cot. He knew that the business kit includes a scissor. With the help of that, he could untie his hands and also help others to untie their hands. As such, gradually all the five hostages made free. One of the hotel boys immediately shut the glass door of the room to prevent smoke entering the room. Other two boys broke open one of the windows by means of metal waste paper basket. The fresh air thereafter entered the room. The five hostages including P.W.N0.184 could see one another. At this stage, P.W.No.184 had come to know the names of four hotel staff members who were kept as hostages.

612. Considering the position that there was a blast and the four terrorists might be somewhere in the hotel, the hotel boys invented an idea making a big rope by means of bed linen and curtains and they could get out of the room from the broken window. The young staff members could do the exercise but P.W.N0.184 due to his age and weight, could not get down by means of the said rope. The boys had been trying their level best to help

P.W.N0.184, but he was unable to hear them. Fire and metal pieces were seen falling from above on the window side. P.W.N0.184 found it to be highly unsafe to jump from the window itself. After searching a pair of clothes of occupant of Room No.520 and after wearing the same, he came out of the room at about 6.00 a.m. He could reach the window which was opening outside the hotel,he could see fire brigade personnel from the said window. It is at this stage that the fire brigade personnel came to his rescue and safely removed him out of the hotel. He was immediately taken to J.J. Hospital and was examined there. He was relieved from the hospital after about three hours. In an identification parade of dead bodies on 7.1.09, he had identified the dead bodies of two terrorists seen by him in the hotel. He had identified the dead body of terrorist who was wearing T-Shirt and who was limping. He had also identified the dead body of the terrorist who was wearing gray T-Shirt. According to this witness, all the four terrorists had fire-arms with them. There is no cross-examination of this witness on behalf of any of the accused.

613. As far as **P.W.N0.188-Mr.Adil Rohintan Irani** is concerned, he is one of the four staff members, who has been kept hostage by the

terrorists in the hotel alongwith P.W.N0.184. He has corroborated the testimony of P.W.N0.187 in all material aspects. Immediately after the incident of firing, this witness and Mr.Swapnil has confined himself in Room No.639 to secure their lives. However, at about 1.15 a.m. on 27.11.2008, the terrorists had reached their room also and they were taken to Room No.632. According to this witness, both the terrorists were holding guns. One of them was limping and he was wearing grayish or blackish T-Shirt and other one was wearing golden T-Shirt. The story narrated by P.W.N0.184 as regards two staff members of hotel who were brought in the first lot has been repeated by this witness also. As already stated by me,the evidence given by this witness corroborates the evidence of P.W.N0.184 in all material aspects. This witness has stated that there was an elderly guest in Room No.632. P.W.N0.188 and his colleague Mr.Swapnil were also made to lie on the room. The terrorists had been hitting them on their back and they had been interrogating both of them. When P.W.N0.188 has disclosed his name as Adil, they had abused him by saying,"Tu Gaddar Musalman Hai". It appears that the terrorists thought that the witness must be Muslim as his name is Adil. The fact that the witness is a Parsi boy. This witness has also stated that during the course of

interrogation of hostages, the terrorists had been continuously talking on mobile phone. This witness has further stated that after sometime two other staff members viz. Sunil Jadhav and Mr.Rajendra were also brought to Room No.632. All the five hostages were taken to Room No.520 on 5th floor. After sometime, mobile phone, wallet and other articles were taken away by the terrorists. When the mobile phone belonging to P.W.N0.188 had rung, one of the terrorists had received the call and had said on phone that "Operation rukwa do nahi to tabhai macha denge"(ask them to stop the operation otherwise we will cause disaster.) The terrorist who had been talking on phone, has directed the three associates to shot the grenades and set the hotel on fire. It appears from the evidence of this witness that the terrorists had been taking instructions from somebody on phone as to what further steps they have to take. They had also intimated other side that they had kept five persons hostages, four of them were young and 5th one was Senior one. The words used by the terrorists while talking on phone have been reproduced by this witness as under:-

> "**hamlogone paach murge pakade hai usmese ek bada hai. Inlogoka kya karna hai."** (We have caught 5 cocks(persons) one of them is bigger. Tell us what we should do).

614. The incident of some entering the room has also been narrated by this witness. Similarly, the steps taken by this witness for preparing rope and to get out of the room has also been corroborated by this witness. The witness after being rescued, was taken to Bombay Hospital in an ambulance. He has stated that he heard the names of Rehmanbhai, Alibhai and Sohebbhai during the course of conversation between the terrorists. The witness was admitted and treated at Bombay Hospital for about 3 days and was thereafter discharged. This witness had also identified the dead bodies of two terrorists - (1) limping fellow and (2) who was talking on mobile phone.

615. **P.W.224-Mr.Sunil Rajaram Jadhav** was colleague of P.W.188-Mr.Adil Irani. This witness has virtually corroborated the evidence of P.W.184-Mr.Kuttalam Ramamoorthy and P.W.188- Mr.Adil Irani. He corroborates the evidence of P.W.184 that two other staff members were brought to room No.632 by the four terrorists. When P.W.184 referred to two staff members, he had referred names of Rajendra Bagade and P.W.224-Sunil Jadhav. Rest of the incident as described by P.W.184 and P.W.188 has been repeated by this witness . This witness had

also identified two dead bodies out of the ten dead bodies shown to him during identification of the deceased accused. This witness had identified dead bodies of the persons who were wearing black shirt and gray T-shirt respectively.

616. What is additionally brought on record in the evidence of this witness is the evidence with respect to visuals captured by C.C.T.V. cameras installed in the corridors of Hotel Taj. It is stated by P.W.224 that C.C.T.V. cameras have been installed in the corridors of hotel Taj. The witness further states that he can identify the persons in the visuals if shown to him. The contents of hard disk-**art.860** produced in the court , were played in the open court during recording of evidence of P.W.224. The contents of hard disk were captured by camera No.9 at about 04.18 hrs. of 27.11.2008 and 02.45 hrs. to 02.47 hrs. of the same day . The witness has identified four persons in the C.C.T.V.visuals and had stated that the said four persons had been directing P.W.224 and other staff members and the guests (P.W.184-Mr.Kuttalam Rammurthy) to room No.520 on 5th floor. It has already come in the evidence that P.W.184, P.W.188 and P.W.224 were taken hostage in room No.632 first and thereafter they were taken to room

No.520. I have gone through the cross-examination of this witness and I do not find anything material which may question the credibility of this witness with regard to the narration of incident given by him. This witness was recalled on the prayer of prosecution. In his further examination-in-chief he has stated that the persons who were seen wearing black T-shirt and gray T-shirt in the C.C.T.V. visuals, had been identified by him during the course of identification of dead bodies.

617. Prosecution has also examined a witness to prove that the C.C.T.V. cameras had been installed in Taj Hotel. **P.W.235-Mr.Prakash Shukla** was working as Senior Vice President and Chief Information Officer of Taj Group since 2000. He was having his office in Oxford House behind Taj Hotel. He had additional office in the building of Taj hotel itself. This witness was custodian of D.V.Rs (Data Visual Recorders). It is further stated by this witness that the DVRs installed on the machine were taken out and they were handed over to Mr.Patil working under the DCP Zone-I on 7/12/2008. **Art. 859** and **art.860** (two hard disks) produced in the court were shown to the witness during the course of recording of his evidence. He had identified both the hard disks and stated that these hard

disks were removed from DVRs of Hotel Taj Palace and Taj Tower after the incident dated 26/11/2008 and they were handed over to police. He has denied in his cross-examination that the hard disks-**art.859** and **art. 860** were not handed over to police by him. He however, has admitted that he had not made any specific identification marks on the hard disks for maintaining their identity.

618. Prosecution has also examined **P.W.223-Mr.Santosh Shivdas Dhemare**, Police official , from the office of DCP Zone-I, who had taken the two hard disks from P.W.235. This witness on 7/12/2008 while working as Reader to the DCP Zone-I, had collected two hard disks from P.W.235. Those hard disks were handed over to Mr.Nigade, PI of DCBCID by P.W.223. They were seized under panchanama in presence of two panchas. This witness has identified art.859 and art. 860. In cross-examination the witness has denied the suggestion that the hard disks identified by him were not the same which were collected by him from P.W.235-Mr. Prakash Shukla.

619. As far as recovery of articles is concerned, it appears that

before entry of NSG Commandos in the hotel, the operation was under the command of Naval Commandos known as Marcos. The articles recovered by Marcos Commando were handed over to the police on 27.11.2008 in presence of panch witnesses. They were seized by the police under a panchnama. The panchnama was drawn in porch of Hotel Taj.

620. According to **P.W.N0.186- Mr.Nishant Shridhar Gaikwad**, the following articles were seized by police from one Marcos Commando:-

1 Seven magazines of black colour. Six of them were containing live rounds and one of them was empty. Some of the magazines contained thirty rounds each and other magazines were containing twenty two to twenty three rounds each.

2 One cotton bag.

3 Said bag was containing 132 live cartridges.

4 Five hand grenades. One of them was of blue colour and rest of them were of green colour.

5 One bayonet.

6 Seven empty cartridges

7 Duracell batteries, Nokia Charger, Airphones, nail cutter,

packets containing dates & almonds, red threads

8 One wallet. The wallet was containing ATM card and other misc. articles including cash amount of Rs.6840/-

9 One sack bag of blue and red colour It had a label of 'Changing the Tide'.

621. P.W.N0.186 has stated that he can identify the articles seized in his presence. The property produced by the prosecution in sealed packets with seals of Forensic Science Laboratory was opened and the articles were shown to the witness. The articles shown to the witness are as under:-

1 13 live cartridge and one empty (**BL 41-09 Ex.2**)– **Art.647colly and Art.647-A**.

2 28 live cartridges and two empties (**BL 41-09 Ex.4**) **Art.648colly and Art.648-Acolly**

3 Twenty nine live cartridges and one empty (**BL 41-09 Ex.6**)– **Art.649colly andArt.649-A**.

4 Twenty two live cartridges and one empty(**BL 41-09 Ex.8**) – **Art.650colly and Art.650-A.**

5 Twenty nine live cartridges and one empty(**BL 41-09 Ex.10**) – **Art.651colly andArt.651-A**.

6 Twenty nine live cartridges and one empty(**BL 41-09 Ex.12**) – **Art.652colly andArt.652-A**.

622. It is stated by the witness that the cartridges described herein above were found in the magazines **Arts. 646 colly**. Seven empty magazines were produced by the police and they were shown to the witness. He has identified those empty magazines as **Arts. 646 colly**. It is further stated by this witness that all the magazines seized in his presence were containing live cartridges. He had not seen any empty or fire bullet in the groups of cartridges seized in his presence. (At this stage, it may be stated here that some of the cartridges probably might have been used by the Ballistic Expert. The evidence of Ballistic Expert may disclose the same). The witness was also shown cotton bag-**Art.653**. He has identified the same. He was shown 121 live cartridges and 11 empties. It is stated by this witness that there were 132 live cartridges and that he had not seen any empties. Five empty shells of hand-grenades (**Arts.591, 563, 570, 577** and **584**) were shown to the witness. He has identified the same. However, he has stated that the hand-grenades seized in his presence were live hand grenades and they were having clips. The bayonet- **Art.655**, 7 empties

-**Art.656 colly**., Duracell batteries, Nokia Charger,Airphones, Nail cutter, dates & almond packets and Misc.articles (**Arts. 657 colly.**) were also shown to the witness. He had identified these articles also to be the same which were seized from Marcos Commando. Similarly, credit cards and cash amount-**Art.658 colly**. have also been identified by this witness. The sack bag-**Art.659** has also been identified by this witness to be the bag seized in his presence. The panchnama was shown to him. He had identified his signature under panchnama. The panchnama is exhibited as **Ex.744.**

623. The Police officer **P.W.N0.199- Mr.Dinesh Parshuram Kadam**, has stated that he was deployed for duty at Taj Hotel on the night of 26.11.2008 and he continued to be on duty at the same place. During the course of investigation of Crime No: 242/08 of Colaba Police Station,he had seized certain articles from Marcos Commando. The articles shown to P.W.N0.186 were shown to this witness also and he has identified those articles to be the same which were seized from Marcos Commando. It is stated by this witness that the shortage of live cartridges and presence of empty cartridges in place of live cartridges in some lots of cartridges seized

from Marcos Commando could be attributed to the fact that some of the cartridges might have been used by the Ballistic Expert for test firing.

624. As stated earlier, the operation to evacuate the guests from the hotel and to nab the terrorists was taken over by N.S.G. commandos from Naval Commandos (Marcos). One of the commandos who took part in the operation was Cap. Anil Jakhad of National Security Guard. He had recovered certain articles including arms and ammunitions from Hotel Taj and same were handed over to police at Colaba Police Station. The articles recovered by Cap. Anil Jakhad were taken from him by the Police Sub-Inspector **Mr.Rahulkumar Naik (P.W.196**).

625. **P.W.196-Rahulkumar Dhanaji Naik** has stated that he was on duty on 29/11/2008 at Colaba Police Station as Liaison Officer. Cap.Anil Jakhad had visited the police station and had produced following arms and ammunitions before P.W196.

1) Four AK-47 damaged rifles. One rifle was with magazine.
2) Eight magazines of AK-47
3) Two pistols of Star make with one magazine each(One of the

pistols was found loaded with two 9mm rounds)

4) One separate pistol magazine

5) Eight 9mm loose cartridges

6) Six 7.62mm loose cartridges

7) One 7.62mm empty

8) One Nokia mobile mode NO.1200 partly burnt with SIM card of Airtel

9 One GPS of GARMIN make with three batteries

10 One mobile earphone

All the articles produced by Cap. Anil Jakhad were seized under the panchanama **Exh.760**. The articles produced by the prosecution were shown to this witness. He has identified Four AK-47 rifles (**Art. 681 to Art. 684**), Nine AK-47 magazines (**Art.685 colly**.), Pistol with magazine (**Art.507** colly.) ,Magazine (**Art.508**) ,Pistol (**Art.686**), Magazine (**Art.686A**), One GPS(Q.123)& one Nokia Phone (**Art.668**) to be the same articles which were seized by him under the panchanama. Four 9mm cartridges (**Art.687 colly**.) and four 9mm cartridge cases (empties) (**Art.687-A colly.**) were shown to this witness. The witness has stated in his evidence that eight

9mm cartridges were seized by him from Cap. Anil Jakhad. He has stated that probably out of eight cartridges, four cartridges were test fired by the Ballistic Expert and therefore the Investigating Officer might have produced four intact cartridges and four empty cartridge cases. As far as one 7.62 mm empty cartridge case mentioned by the witness at Sr.No.7 is concerned, he has not been able to identify the same from the empties shown to him. The panchanama was shown to this witness. He has identified his signature on the panchanama-**Exh.760**.

626. This witness has also drawn panchanama-**Exh.746** on 30/11/2008. This panchanama was also drawn in presence of two panchas. It was in respect of search and seizure at Wasabi Restaurant and Harbour View Restaurant of Hotel Taj. It is stated by the witness that both the restaurants were in badly damaged condition. There were bullet marks on the walls of both the restaurants. One hundred and fifty pistol empties, six rifle empties and twenty eight bullets were found at different places during the course of panchanama. They were seized by this witness under the panchanama-Exh.746. During the course of visit to Shopping Arcade and pool side of Hotel Taj , ten small empties were recovered from near the

pool. Twelve big cartridges were also found at the pool side. Five bullets were found near the same place. During the course of visit to Shamiyana Restaurant one grenade pin and one small empty were found. They were also seized under the same panchanama.

627. As far as cross-examination of this witness is concerned, there is nothing much in his cross-examination which needs to be discussed. On the contrary this witness has clarified in his cross-examination that small empties means 9mm pistol empties and big empty means rifle empties. He has also clarified that it was wrongly stated in the panchanama that thirty four bullets were recovered during panchanama -**Exh.746**.

628. **P.W.195-Mr.Raj Atvir Sarkania** was present during the course of panchanama- **Exh.760.** This witness in his evidence has stated that Cap. Anil Jakhad had produced following articles in his presence before police officer Mr. Rahul Naik **.**

1 Four AK-47 rifles in broken condition.

2 Eight magazines of AK-47

3 Two pistols

4 Three pistol magazines containing ten rounds.

5 There were two rounds each in each of the pistols.

6 One Nokia mobile mode No.1200 with Airtel SIM card

7 One earphone.

8 One GPS containing three batteries.

Four AK-47 rifles (**Art. 681, Art.682,Art.683 and Art.684**) were shown to this witness. He has identified the same. The witness has also identified AK-47 magazines. He however, has stated that he was shown only eight AK-47 magazines at the time of panchanama. He has also identified Art.507- one pistol with magazine and another pistol-Art.686 and magazine-Art.686-A. As far as GPS is concerned, the Court has retained the identification number as Q.123 which identification number was assigned to the said GPS by the officers of Federal Bureau of Investigation who had examined the GPS and had retrieved data from the same. The said GPS-Q.123 and Nokia Phone were also identified by this witness. He has identified his signature on the panchanama-**Exh.760**.

629. Cap. Anil Jakhar has also been examined through audio-video linkage as Court Witness No.3 pursuant to the order of Hon'ble High Court

dated 5th November, 2009 in Writ Petn.No.2885 of 2009. However, evidence of C.W.No.3 Mr.Anil Jakhar is not being discussed here as the Hon'ble High Court had directed to keep the evidence of N.S.G. Commandos as confidential.

630. Panch **Mukund Krishnan Kumar-P.W.187** was present during the course of panchanama drawn at various restaurants in Hotel Taj. He has identified his signature on the panchanama-**Exh.746** and has also identified one hundred sixty one (161) -9mm cartridge cases-**Art.660 colly**., eighteen big empties-**Art.661 colly**., thirty three lead bullets- **Art.662 colly.** and hand grenade pin -**Art.558**.

631. **P.W.190-Mr.Milind Ramchandra Kurade**, is another Police officer who had been deputed for duty at Taj Hotel though his parent police station was Yellow Gate Police Station. During the course of his duty hours at Hotel Taj he was directed to draw spot panchanama on 29/11/2008 at about 4.30 p.m. The spot was shown by the security officer of the hotel Mr.Birhade. This Police Officer had visited various places along with the security officer Mr.Birhade. He had first visited Wasabi Restaurant and

Golden Dragon Restaurant of Hotel Taj. According to this witness Golden Dragon in fact is part of Wasabi Restaurant itself. Two bags were found in Golden Dragon . **Art.663** and **Art.664** were shown to the witness. He had identified these articles to be the same bags which were recovered from Golden Dragon. This witness has stated that one wallet was found in the bag-**Art.663**. There was one photo identity card purportedly issued by Arunodaya Degree & P.G.College issued in the name of Raghbhirsingh S/o Ranjeet Singh resident of Elise Bridge, Ahmadabad. There were five Indian currency notes of Rs.500/- denomination. **Art. 123, Art. 124** and **Art.125** were shown to this witness. He has identified the identity card, wallet and currency notes respectively to be the same articles. Sealing wrapper shown to the witness was identified by him. He has stated that it bears his signature and was used for sealing the articles 123, 124 and 125. In addition to these articles, hundred (100) live cartridges were found in the bag-**Art.663**. They were 9mm cartridges. The witness further has stated that they were big cartridges. Ninety five (95) live cartridges (**art.665 colly**.,) and five empties (**Art.666 colly**.) were shown to the witness. He has identified the cartridges **Art.665 colly**. It may be stated here that the cartridges produced by the police at Art.665 colly. are 7.62mm rifle

cartridges and empties -**Art. 666 colly**. are empty cartridge cases of 7.62 mm rifle. The witness has described them as big cartridges but at the same time has stated that they were 9 mm cartridges.(It appears that knowledge of the witness regarding arms and ammunition is not perfect and therefore he has not correctly described the cartridge cases.)

632. As far as bag-**Art.664** is concerned, it is stated by this witness that one GPS and one Nokia cell phone were found in the bag. There were three Duracell batteries in the GPS. One of the antennas of GPS was found broken. The body number of GPS was 41514528. The model number of Nokia phone was 1200. The letters on key pad of the phone were in English and Urdu. The Nokia phone (**Art.670**) and GPS (Q.124) were shown to the witness. He has identified both the articles and has also identified wrappers used for sealing these articles. He has identified his signature on the wrappers. It is also stated by this witness that there was one Airtel SIM card in the Nokia Phone. Panchanama-**Exh.749** was drawn in respect of seizure of above stated two bags and the contents thereof.

633. **P.W.189-Mr.Ishwar Mahadeo Kolekar** was present when

the panchanama **Exh.749** was drawn by the Police Officer **Mr.Milind Ramchandra Kurade** who has been examined as P.W.190. P.W.189 has stated in his evidence that he was called by the police to participate in the panchanama. During the course of panchanama he had visited Wasabi Harbour Bar of Hotel Taj. He had seen that the Bar was in highly damaged condition. Glass pans pieces were found scattered here and there. Major portion of the wall was found blackened due to smoke. Two bags were found in the said restaurant. The witness has identified the bags **Art.663** and **Art.664** to be the sane which were recovered from the said restaurant. On examination of the said bags it was found that there was one wallet in the blue bag(art.663) . There was one identity card in the said wallet issued in the name of Raghbhirsingh S/o Ranjeet Singh by Arunodaya P.G. and Degree College. The identity card carried photograph of the card holder. There were five currency notes of Rs.100/- denomination. Hundred live cartridges were found in the said bag-art.663. P.W.189 has identified the wallet-**Art.124 ,** identity card-**Art.123** and currency notes-Art.125. Art.665 colly.-ninety five 7.62 mm live cartridges and art.666 colly.- five 7.62 mm empties were shown to the witness. He has stated that what the police had seized in his presence were hundred live cartridges. The wrapper found in

the packet received from the FSL was shown to the witness. He has stated that this wrapper bears his signature indicating that the cartridges were seized by police in presence of panchas and wrapped in the particular wrapper.

634. The other bag-**Art.664** was also searched by the police in presence of panch witnesses. It contained one GPS and one Nokia phone. There was SIM card in the said phone. These articles were also seized by the police. The GPS article Q-123 and Q-124 were shown to the witness. The witness has identified GPS article Q-124 to be the same which was recovered from the bag-Art.664. At this stage it may be noted here that the articles numbers Q-121, Q-122, Q-123 and Q-124 given to the GPS are the lab numbers of Federal Bureau of Investigation, U.S. This Court has not given any separate numbers to the GPS. The Nokia phone-**Art.668** and **Art.670** were shown to this witness. It is stated by this witness that Nokia phone-A**rt. 670** was recovered from the bag-**Art.664.** As far as Nokia phone -**Art.668** is concerned, it is stated by the witness that it was not seized in his presence and he did not know anything about this phone. He has identified his signature on the wrapper-**Art.671** which was used for

sealing at the time of seizure of the phone. He has also identified his signature on the panchanama-**Exh.749.**

635. This witness had also participated in another panchanama-**Exh.750** which was drawn at room No.551 of Hotel Taj. According to this witness four magazines and one empty cartridge were found below the bed in the said room. Panchanama in respect of seizure of these articles was drawn in his presence. The four magazines-**Art.672 colly**. and **Art.673 colly** and the empty cartridge- **Art.674** were shown to this witness. He has identified the same as recovered in his presence.

636. The witness has further assisted police in panchanama-**Exh.751.** This panchanama was drawn at about 2.00 p.m. on the same day i.e. 29/11/2008. During the course of this panchanama the panchas and police had visited Ballroom and Sea Lounge Restaurants. Both the places were found badly damaged. The witness has further stated that two empty cartridge cases were recovered from Ballroom and one empty cartridge was recovered from the Hotel Sea Lounge. The witness has identified two empties-**Art.675 colly.** He has also identified **Art.676**-one empty and has

stated that these articles were seized in his presence by the police. He has identified his signature on the panchanama-**Exh.751**.

637. One more panchanama was drawn in the presence of this witness when one pistol with magazine and one empty magazine of pistol were recovered in the debris during the course of renovation of Wasabi Restaurant. The pistol with magazine-**Art.677** and one empty magazine-**Art.678** were shown to this witness. He has identified the articles. The panchanama in respect of seizure of **Art.677** and **Art.678** is at **Exh.752**.

638. As already stated panchanama-Exh.749 was drawn by P.W.190- **Mr.Milind Ramchandra Kurade** in presence of panch witness P.W.189. I have already stated that P.W.189 had participated in the panchanama **Exh.750, Exh.751** and **Exh.752**.

639. As far as panchanama-Exh.750 is concerned, it was drawn by the police officer **Mr.Vishwanath Sripat Bhosale** who has been examined as **P.W.192**. This witness has stated that he was attached to Pydhonie Police Station. However, due to the incident dated 26/11/2008, he was

deployed for duty at Hotel Taj on 30/11/2008. He reported to Police Inspector Mr. Patil of Colaba Police Station. Mr.Patil had directed him to check all the rooms on 5th floor of the hotel. The directions were followed by P.W.192. It is stated by this witness that four empty magazines and one empty cartridge- Art.672 colly, Art.673 colly and Art. 674 were recovered from the room No.551 of the hotel. There is no cross-examination of this witness. by the accused.

640. As regards panchanama-**Exh.751**, it may be stated here that police officer **Rajendra Mahadev Macchinder (P.W.191)** was attached to L.T.Marg police station and he was also deployed as an additional police officer for maintaining law and order at Hotel Taj. He had drawn panchanama of Ballroom and Sea Lounge Restaurant on the first floor of Hotel Taj. He has corroborated evidence of panch witness as far as destruction of property is concerned. He has also stated that two empties of 9mm were recovered from the Ballroom and one 7.62 mm empty was recovered from Sea Lounge Restaurant. He has identified empties-**Art.675 colly** and **Art.676 .**He has also stated that the panchanama-**Exh.751** was in his handwriting. He has identified his signature on the panchanama.

641. **P.W.193-Mr.Ramchandra Shankar Shinde** and **P.W.194-Mr.Balasaheb Bhau Gadekar** are the witnesses concerned with the panchanama drawn at Crystal Hall of Hotel Taj. The said panchanama is at **Exh.757**. P.W.193- **Mr.Ramchandra Shankar Shinde,** panch witness and P.W.194- **Mr.Balasaheb Bhau Gadekar**, Police-Sub-Inspector had drawn the said panchanama. It is stated by these witnesses that seven empties were recovered during the course of said panchanama. Empties were shown to these witnesses. Both of them have identified the empties-**Art.679** colly. The panch witness-P.W.193 has stated that the wrapper **Art-680** bears his signature. Both the witnesses have identified their signatures on the panchanama-**Exh.757**.

642. **P.W.198-Mr.Anil Narayan Dhole**, Police-Sub-Inspsector, has stated in his evidence that on 17/12/2008 while he was attached to Colaba Police Station, he had received a phone call from the Security Officer of Hotel Taj that some suspicious articles were found during the course of renovation of Wasabi Restaurant. The Police Officer therefore along with panch witnesses had visited the Restaurant which was under renovation. One bayonet and two magazines were found in a bag lying in the debris.

One of the magazines contained five live rounds and other magazine contained two live rounds. Articles produced by the prosecution i.e. bag-**Art.689**, two magazines-**Art.691** colly. and one bayonet-**Art.690** were shown to the witness. He had identified the said articles. He also stated that four cartridges and one empty- **Art.692 colly.** and one cartridge and one empty cartridge case -**Art.693 colly**. are part of the cartridges seized by the police. It is stated by him that one cartridge each from two groups might have been used by the C.A. for analysis or test firing. As such instead of there being five live rounds and two live rounds, prosecution has produced four live rounds and one live round respectively. The witness has also identified his signature on the panchanama-**Exh.763.**

643. **P.W.197-Mr.Anil Dattatraya Padghe** was an independent panch witness to the panchanama **Exh.763**. He has corroborated evidence of Police Officer and has identified the same articles which were shown to the Police Officer P.W.198. This witness has also identified his signature on the panchanama-**Exh.763**.

644. It is the case of prosecution that two pistols were recovered

during the course of removal of debris from Hotel Taj and they were handed over to police by the security officer of Hotel Taj. The prosecution has examined **P.W.268-Mr.Ajay Ramdevo Bhirade** and **P.W.269-Mr.Sunil Gajanan Kudyadi** to establish that two pistols were recovered during the course of removal of debris from Hotel Taj. P.W.268-Mr.Ajay Bhirade has stated in his evidence that he was working as a Security Officer in Hotel Taj. During the course of renovation of Wasabi Restaurant of Hotel Taj, one pistol with magazine and one empty magazine were found in the debris. These articles were collected by him and were handed over to Police Officer Mr.Nigade of DCBCID. The two pistols produced the police i.e. **art.946** and part of **art.677** colly. were shown to the witness. He was unable to identify the pistol recovered from the debris by him and handed over to police. There is no cross-examination of this witness.

645. Similarly, **P.W.269-Sunil Gajanan Kudyadi**, who was working as Security Manager at Hotel Taj, has stated that he had recovered one pistol, five magazines and twelve live rounds from debris during the course of renovation of Wasabi Restaurant. Those articles were handed over to Police Officer Mr.Nigade by P.W.269. **Art.946** and part of **art.677**

colly . earlier shown to P.W.268, were also shown to this witness. This witness had identified art.946 as the same pistol which was recovered by him from the debris. This witness has been cross-examined by ld.Advocate Mr.Kazmi for accused No.1. P.W.269 was unable to tell as to how many other weapons were recovered from debris at Wasabi restaurant. The witness has admitted that the articles were physically retrieved by the workers and were handed over to him. There is nothing more in his cross-examination.

646. As such I have summed-up evidence of eye-witnesses, panch witnesses and police officers concerning the case of Taj Hotel. I have also summed up the evidence pertaining to the C.C.T.V. visuals of hotel Taj. Now, let me proceed further to examine evidence of prosecution witnesses who are concerned with the incident of Nariman House, Colaba, Mumbai.

NARIMAN HOUSE CASE :

647. According to prosecution case out of the ten terrorists including accused No.1 who were ashore at Badhwar Park on 26/11/2008. One buddy pair of terrorists had gone to Nariman House and had kept the inmates of

Nariman House as hostage and ultimately all of them were killed. The terrorists were also killed during the operation by N.S.G. Commandos. F.R.I. in respect of the alleged incident at Nariman house was lodged by **P.W.200-Mr.Hanmant Vishnu Bhandalkar**, Police Sub-Inspector attached to Colaba Police Station. This witness in his evidence has stated that Nariman House is within the territorial jurisdiction of Colaba Police Station. It is under Beat No,2 of the said police station. The map of the spot produced in the court by the prosecution has been admitted by the defence. It is at part of **Exh.577A colly**. A zerox copy of the map is at **page No.664A.** This witness was on duty at the Police Out Post of Beat No.2 at Colabawadi. The alleged incident had occurred at about 9.45 p.m. of 26/11/2008 when this witness had heard sound of firing from the direction of Paachpayari locality. After hearing the sound he immediately came on the main road near Pipewala building. There he had heard sound of bomb explosion. He later on came to know that a bomb had exploded near the petrol pump at Shahid Bhagatsingh Road and that the firing had been at Nariman House. He had also come to know that an incident of firing had taken place at Hotel

Leopold and Hotel Taj also. He therefore reported the matter at police station at about 5.30 a.m. on 27/11/2008 vide complaint- **Exh.767**. Proforma FIR was recorded by PSI Deshmukh. There is no cross-examination of this witness.

648. P.W.202- Mr.Rambuval Chandrapati Yadav was an employee of the Express Petrol Pump situated at Shahid Bhagatsingh Road, Colaba. He was on duty at the petrol pump on 26/11/2008. At about 10.20 p.m. he received a phone call from his employer that there had been firing and that he should close the petrol pump. P.W.202 accordingly followed instruction given by his employer. After closing the petrol pump he was sitting in the office situated near the petrol pump. At about 10.30 p.m. a bomb had exploded near the wall adjoining the petrol pump. In the result the whole wall had collapsed. The office cabin occupied by P.W.202 was also damaged to some extent due to the explosion. According to this witness police had visited the spot after few days. Statement of P.W.202 was recorded by the police. This witness has also not been cross-examined by the ld. advocates for the accused.

649. **P.W.201-Mr.Kamal Liladhar Singh** is staying at Mehta Building which is about 15 to 20 ft. away from the Nariman House. It is stated by this witness that people of Israeli origin had been staying at Nariman House. It is residential-cum-prayer house.

650. As far as the incident is concerned, this witness has stated that on 26/11/2008, as usual, he had come down from his residence in the lane after his dinner. It was around 9.30 p.m. that he suddenly heard noise of bursting crackers . The noise was from the direction of Nariman House. He therefore went near Nariman House. Many people had gathered there. It was realized later on that it was not sound of bursting of crackers but firing had been going on in Nariman House. The witness therefore picked up a bamboo from a building which was under construction in the same line. He entered Nariman House holding the same bamboo. He had seen two persons in the landing area of staircase between second and third floor. This was seen by the witness from the staircase of first floor. The witness has further stated that one of the said two persons turned around and called P.W.201 as 'Kafar' and had pointed a gun towards him. P.W.201 ducked down immediately to save himself from firing. However, after sometime

when he realized that there was nobody on the place he had seen earlier, he, immediately came out of the building. The witness has stated that he was very much scared and therefore directly went to his residential place. He has described the said two persons. He has also described their clothes and has said that dead bodies of the said two persons were identified by him at the J.J.Marg mortuary on 7/1/2009.

651. In the cross-examination this witness has stated that he had not seen any watchman of Nariman House . He also did not know as to how many rooms are there on the first floor. It is admitted by this witness that he had not voluntarily gone to the police station to give his statement. It is on the call of police that he had gone there and gave his statement. He has denied suggestion that he had not witnessed the incident of firing and that he has been telling lies.

652. **P.W.206- Mr.Mohd. Salim Harharwala** is the unfortunate witness who lost his parents in the incident particularly when they had shifted from one building to another building after the incident to save their lives. It is stated by this witness that he along with his parents had been

staying at Faridun Court Building since last 15 years. Said building is very close to Nariman House. After the incident of firing they apprehended danger to their lives and therefore P.W.206 and his family members including his parents had temporarily gone to flat No.21 on 4th floor of Colaba Court where Mrs. Kalpana Sonawane was staying as a caretaker of the flat. Colaba Court is situated in front of Nariman House. It appears that the witness found Colaba Court a safer place to stay there and therefore he had temporarily gone to room No.21 on 4th floor of Colaba Court after the incident of firing at Nariman House. When the incident of firing was going on, P.W.206 and his parents, out of curiosity were standing near the window which was facing towards Nariman House. It was around 10.30 p.m. there was firing from Nariman House towards Colaba Court. In the incident of said firing some of the bullets hit parents of P.W.206. Both of them were seriously injured and were taken to ST.George's Hospital where both of them were declared dead before admission. This witness has also not been cross-examined by any of the accused.

653. P.W.204-Mr.Shripat Vithal Hate and **P.W.205-Mr.Shirish Ramchandra Desai, Police Inspector**, are concerned with the panchanama

of Nariman House and the petrol pump. Prosecution has taken evidence of P.W.204 in detail as he is an independent panch witness. This witness in his evidence has stated that he was requested to participate in the panchanama by the police. Another panch Mr.Harischandra Awhad was also present. During the course of panchanama near petrol pump witness had seen a partially damaged wall near the petrol pump. He had also seen a big pit between the wall and Mahavir Luggage and shutter of the said shop was also partially damaged. Some of the articles of the said shop were lying scattered outside. The cabin of petrol pump was found damaged. Four cars parked near the said wall were also found damaged. The panchanama-**Exh.773** was drawn on 29/11/2008. It was completed at 12.00 noon.

654. Thereafter panchanama in respect of Nariman House was drawn. The said building was also in mess . Heaps of broken glasses and debris were found all over the compound. Four(4) empty cartridges of 7.62 mm were found in the compound. Forty(40) empties of 9mm were also found in the compound. One steel helmet, one small empty cylinder were also recovered by the police during the panchanama. Lift doors and other parts of the building were also damaged. Glass pans were found

broken. Articles in the kitchen were found scattered. Blood stains were found in the drawing room. Police had collected sample of blood from the floor. Sixteen empties of 9mm and twenty three empties of 7.62 mm were found at different places on second floor. All the articles were seized by the police and sealed in packets. The third floor visit of Nariman House led to recovery of twenty eight 9mm empties, three clips and one aluminum wire . On fourth floor also the condition was more or less similar. Blood stains were found here and there. Pillows and bedsheets in the bedrooms were found stained with blood. Police had taken samples of pillow covers and bedsheets by cutting small pieces of pillow covers and bedsheets. They were sealed by police in presence of panchas. During the course of panchanama police had recovered following articles from the fourth floor :

1 Three aluminum clips
2 Three steel clips
3 Three nuts
4 60 empties of 7.62mm
5 151 empties of 9mm
6 Three fired bullets of 7.62 mm cartridges
7 Two fired bullets of 9 mm cartridges
8 One live cartridge of 7.62 mm
9 One small magazine containing six rounds

10 One Bayonet of 32 cm in length

655. Police had recovered five empties of 7.62 mm, twelve empties of 9mm and one aluminum clip from fifth floor. There was one makeshift cabin on the terrace of the building. Blood stains were found on the terrace also. Debris was lying here and there. It could be seen from the terrace that glass pans of windows of surrounding buildings were also broken . Bullet marks were seen on the shutter and wall of the Rex Bakery situated opposite Nariman House. There were bullets marks on the walls of building known as Merchant House. Five empties of 9mm were recovered from the compound of said Merchant House. Two broken tear gas cells and one aluminum clip were also recovered from the Merchant House. Panchanama-**Exh.774** was drawn in presence of this witness. Articles produced by the police in sealed packets of FSL bearing lab number and exhibit were opened in open court and the articles were shown to the witness. Following sealed packets containing articles mentioned against each packet were opened and contents were shown to the witness.

Packet NO.654 TO 660

1 Four empties of 7.62 mm cartridges **(BL 1123-08 Ex.5A)** - **Art.717colly**

2 40 empties of 9 mm cartridges **(BL 1123-08 Ex.5B)**– **Art.718colly**

3 One green colour metal clip **(BL 1123-08 Ex.5C)**– **Art.719**

4 One metal spring with clip holder**(BL 1123-08 Ex.5D)** – **Art.720**

5 One battery with cover **(BL 1123-08 Ex.5E)**– **Art.721**

6 One metal cap **(BL 1123-08 Ex.5F)**– **Art.722**

7 One metal cylinder **(BL 1123-08 Ex.5G)** – **Art.723**

Packet NO.661

1 One Nokia mobile – **Art.724**

Packet NO.663 to 668

1 16 empty cartridges of 9mm **(BL 1123-08 Ex.6A)** – **Art.725colly**

2 23 empty cartridges of 7.62 mm **(BL 1123-08 Ex.6B)** – **Art.726coll**

3 3 Aluminum clip **(BL 1123-08 Ex.6D)** – **Art.727colly**

4 4 circular metal rings **(BL 1123-08 Ex.6E)** – **Art.728colly**

5 2 metal tubes **(BL 1123-08 Ex.6F)** – **Art.729colly**

6 1 metal cap **(BL 1123-08 Ex.6G)** – **Art.730**

PACKET NO.669,670,671,672,675 and 676

1 28 empty cartridges of 9mm **(BL 1123-08 Ex.7A)** – **Art.731colly**

2 3 aluminum clip **(BL 1123-08 Ex.7B)**– **Art.732colly**

3 2 metal spring with clip holder**(BL 1123-08 Ex.7C)** – **Art.733colly**

4 2 metal clips **(BL 1123-08 Ex.7D)**– **Art.734colly**

5 2 rounded pin**(BL 1123-08 Ex.7E)** – **Art.735colly**

6 1 aluminum wire with covering with metal**(BL 1123-08 Ex.7F)** – **Art.736**

PACKET NO.681 to 686

1 3 aluminum clips **(BL 1123-08 Ex.32A)**– **Art.737colly**

2 Three metal clip **(BL 1123-08 Ex.32B)**– **Art.738colly**

3 3 busted gas cells**(BL 1123-08 Ex.32C)** – **Art.739colly**

4 1 aluminum metal cylinder**(BL 1123-08 Ex.32D)** – **Art.740**

5 7 twisted springs**(BL 1123-08 Ex.32E)** – **Art.741colly**

6 3 aluminum nuts **(BL 1123-08 Ex.32F)**– **Art.742colly**.

PACKET NOS.687 TO 689

1 3 leads of 7.62 mm **(BL 1123-08 Ex.8A)– Art.743colly**

2 2 leads of 9 mm **(BL 1123-08 Ex.8B)- Art.744colly**

3 4 leads **(BL 1123-08 Ex.8C)– Art.745colly**.

PACKET NO.691

1 One pistol magazine with five cartridges - one empty and one fired bullet**(BL 1123-08 Ex.9A & Ex.9B) – Art.746colly.**

PACKET NO.692

1 One empty and one bullet**(BL 1123-08 Ex.10)- Art.747colly**.

PACKET NO.693 AND 694

1 59 empty cartridges of 7.62 mm**(BL 1123-08 Ex.11A) – Art.748colly**

2 151 empty cartridges of 9 mm**(BL 1123-08 Ex.11B & 11C) – Art.749colly**

PACKET NO.695

1 One Bayonet**(BL 1123-08 Ex.38) – Art.750**

PACKET NO.696 TO 699

1 12 empty cartridges of 9 mm **(BL 1123-08 Ex.12A)– Art.751colly**

2 5 empty cartridges of 7.62 mm **(BL 1123-08 Ex.12B)– Art.752colly**

3 1 aluminum clip and 2 metal twisted clips**(BL 1123-08 Ex.12C & Ex.12D) – Art.753colly**

4 1 black nut **(BL 1123-08 Ex.12E)– Art.754**

PACKET NO.701 TO 706

1 5 empty cartridges of 9 mm**(BL 1123-08 Ex.13A) – Art.755colly**

2 1 spring having aluminum cover**(BL 1123-08 Ex.13C) – Art.756**

3 2 green colour metal clips **(BL 1123-08 Ex.13D)– Art.757colly**

4 1 green colour aluminum clip **(BL 1123-08 Ex.13E)– Art.758**

5 1 aluminum clip holder **(BL 1123-08 Ex.13F)– Art.759**

6 2 busted tear gas cells **(BL 1123-08 Ex.13B)– Art.760colly**

The witness has stated that all the articles except art. 746 colly. and art.747 colly. described above, were seized from Nariman House and Merchant House. **Art.746** and **Art.747**, as per the description given by the police in their forwarding letter to the F.S.L. were live cartridges. However, one cartridge each from the two articles is produced in two pieces each - one empty and one bullet (at this stage it may be stated here that probably the cartridges might have been examined by the ballistic expert. Evidence of

ballistic expert will be relevant for this purpose)

656. The building known as Colaba House where parents of P.W.206 had died due to firing on the part of alleged terrorists was also visited by the police for drawing panchanama. P.W.204 was present at the time of said visit. It is stated by this witness that one lady by name Mrs.Kalpana Sonawane was present in room No.21 on 4th floor. Glass pans of the windows of the flat were found broken. There were bullet holes on glass pans. Bullets marks were also seen on the walls and doors. Two 7.62mm fired bullets were recovered from the door. Both the fired bullets were recovered by the police under panchanama. Bullets- **Art.761 colly**. were shown to the witness. He had identified the same. He has identified his signature on the panchanama-**Exh.775**.

657. As far as cross-examination of the witness is concerned, he has admitted that he had no occasion to see live or empty cartridges of any firearm in the past. He has also admitted that description recorded in the panchanama was as told by the police to him. He did not know what is 7.62 mm or 9mm. he has also admitted that he had identified the articles in

the court on the basis of his signatures on the labels.

658. According to prosecution only two persons could escape unhurt from the Nariman House. One of them has been examined as **P.W.239-Mr.Kazi Zakir Hussain**. Mr.Kazi was working as a servant at Nariman House. Other lady who had been successful to come out of the Nariman House along with P.W.239 was Ms.Sandra. Ms.Sandra was also working as a servant with Holtzberge family at Nariman House.

659. P.W.239 has stated in his evidence that he was working in Nariman House for about two years prior to the date of incident. He was provided accommodation in the same building on 2nd floor. Nariman House is a six storeyed building i.e. ground + five. It is further stated by this witness that Mr.Gavriel Holtzberge and his wife Mrs.Rivka were permanently residing at Nariman House along with their child Master Moshe who was aged about two years on the date of incident. There was one watchman by name Kesari. He used to go to his residence during lunch and dinner hours. It is stated by P.W.239 that watchman Kesari was not present at the time of incident dated 26th November, 2008.

660. It has also been stated by P.W.239 that there were four outside guests with Holtzberge family, two of them were males and rest two were females. Holtzberge family and their guests had finished their dinner at about 8.00 p.m. After the dinnner P.W.239 and Sandra were busy in miscellaneous work and after completing the same P.W.239 was going down towards the ground floor at about 9.45 p.m. While P.W.239 was climbing down from the staircase he had seen one person armed with gun standing at the landing area between second floor and the first floor . As soon as the said person saw P.W.239, he had fired a shot towards P.W.239. P.W.239 however, could escape unhurt. He immediately went in the hall of first floor where Ms.Sandra was present. P.W.239 shut the door of the said hall from inside. Holtzberge family and their guests were on the second floor of the building. P.W.239 and Ms.Sandra hid themselves in the storeroom and bolted the storeroom from inside. They also put off the light of the storeroom. P.W.239 came out of the storeroom at about 11.00 a.m. Of 27th November, 2008. It is stated by him that during the period when he was hiding himself in the storeroom along with Sandra, he had been intermittently hearing gun shot sound within the premises of Nariman House. While P.W.239 and Sandra were trying to get out of the building,

they heard cry of Moshe on second floor. Therefore, both of them had reached to the second floor. Moshe was found in the hall of second floor. He was picked up by Sandra and thereafter P.W.239 and Sandra along with Moshe had come out of Nariman House. They were immediately taken to Colaba Police Station.

661. The person who was seen by P.W.239 has been described as the person in the age group of 22 to 23 years and was about 5'.6" in height. The identity cards seized by the police during investigation i.e. art.No.61, 104, 123, 126, 127, 128 and 130 were shown to this witness. The witness has identified photograph on identity card-art.127 to be of the person who was seen by him at Nariman House.

662. As far as cross-examination of P.W.239 is concerned, it has been tried to demonstrate that it was not possible for this witness to see any person in the landing area while getting down from the first floor as the staircases of Nariman House are zigzag. The witness has admitted in his cross-examination that the staircases of Nariman House are zigzag. However, no suggestion is put to the witness that he was not able to see the

person holding gun at the landing area. It has also been attempted to bring on record that the prosecution has failed to examine Ms.Sandra though she was available as a prosecution witness. P.W.239 has stated that Sandra is native of Goa. As such defence had attempted to demonstrate in the cross-examination that no attempt has been made by the prosecution to call Sandra as a prosecution witness.

663. It is the case of prosecution both the deceased accused i.e. accused No.2- Imran Babar @ Abu Aakasha and accused No.3-Nasir @ Abu Umar were killed by N.S.G. Commandos during the operation to rescue the occupants of Nariman House. Major Pavitar Prashant of N.S.G. had taken part in the said operation and he has been examined as Court Witness No.4 through audio-video linkage. His evidence is limited to the extent permitted by the Hon'ble High Court in the order in **Writ Petn.No. 2885 of 2009 dated 5th November, 2009.** What in brief can be stated here is that this witness had proved recovery of certain articles from Nariman House which included two AK-47 rifles. The other details are mentioned in the evidence of other related witnesses.

664. As regards cross-examination of Court witness No.4 is concerned, it may be stated here that the witness has admitted in his cross-examination that he had not drawn any panchnama on the spot at Nariman House while collecting the arms and ammunitions which he claims to have been deposited at Colaba Police station.

665. **P.W.234- Mr. Maniksingh Prayagsingh Patil**, Police Inspector, in his evidence has stated that he was on duty at Colaba Police station on 29.11.2008 and that he was one of the Investigating Officers investigating the offences alleged to have been committed during the incident dated 26.11.2008. In fact this officer was Chief Investigating Officer of three offences registered at Colaba Police Station pertaining to attack on Hotel Taj, Leopold and Nariman House. The witness has stated that the articles mentioned in the panchanama Exh.771 were seized at Colaba Police Station when they were produced by Major Prashant and Subedar Charandas of N.S.G. This witness has also stated that in all twenty four articles were produced by the above stated two N.S.G. Commandos and that they were seized under the panchanama. Police Officer Mr.Patil appeared to be little confused while giving evidence in respect of seizure of

articles from N.S.G.Commandos. He however, after going through the panchanama, has stated that he had seized two AK-47 rifles and sixteen AK-47 magazines. He had also seized live cartridges, one GPS and some mobile phones under the panchanama Exh.771.

666. It may be noted here that there is some exchange of labels affixed on the wrappers used for sealing the articles seized from various places. This fact has been admitted by P.W.234-Mr.Maniksingh Patil. He has stated in his examination-in-chief that since he was investigating three cases registered in Colaba Police station at a time, he was under tremendous pressure of work and therefore, there had been some overlapping of labels or exchange of labels used for sealing of articles of various cases. It is admitted by him that he had taken signature of panch witness Mr.Hitesh Avasti instead of signature of panch witness Mr.Sagar Prem Singh on some of the labels. It may be noted here that Mr.Hitesh Avasti is the panch witness in respect f some other panchanama. Since the witness has honestly admitted the mistake committed by him and since there is nothing else on record to show that the articles were purposefully changed or some other articles instead of the seized articles were put in the packets, I do not think

that the same should prove fatal to the prosecution case.

667. It is stated by P.W.234 in cross-examination that he did not remember whether one panch witness was requested to participate in more than one panchanama. However, when the panchanama **Exh.780** and **Exh.911** were shown to this witness, he had admitted that the panch witness Mr.Vinaykumar Singh was common in both the panchanamas. I do not think that P.W.234 has committed any illegality or irregularity if he had invited one and the same person to act as a panch witness for more than one panchanama.

668. **P.W.203-Mr.Sagar Prem Singh** who is an independent witness to the panchnama -Exh.771 has stated that Major Prashant had produced following documents before the police :

1 Two AK-47 rifles.
2 Sixteen magazines of AK-47.
3 Four pistols
4 Four pistol magazines
5 There were 230 big live cartridges
6 Fourteen 9mm cartridges
7 One identity card issued in the name of Arjun Kumar

8 One GPS of black colour

9 There was one leather bag containing four cell phones – three Nokia and one Motorola

10 Five currency notes of Rs.100/- denomination.

The said articles were seized by the police. The witness has identified the articles seized in his presence. He has identified **art. 694** and **art.695**- two AK-47 rifles, **art.696** and **art.697**- two pistols, **art. 698 colly**.- three empties and **art. 699 colly.-** 16 AK-47 magazines. The witness has also identified a bag containing Toshiba pocket P.C., Nokia phone, visiting cards of Mr. Rabbi Gavriel, one book named 'TORAH STUDIES' -**Art.700colly**. one GPS-art.Q.21, two Nokia mobile phones-**art. 701 colly**, one Motorola Mobile-**art.702**. He has further identified thirty five AK-47 live cartridges, three empties and three bullets-**art.703 colly**, One hundred eighty eight(188) AK-47 live cartridges, four empties and four bulllets- **art.704 colly**. He has also identified identity card-**art.127** as the one recovered from the said bag. He has identified his signature on the panchanama -**Exh.771**.

669. After summing up the evidence of witnesses pertaining to the incident of Nariman House, let me now proceed to sum-up evidence of witnesses pertaining to the incident of hotel Oberoi and Trident. The

prosecution case is that deceased accused No.6- Abadul Reheman Chhota @ Saakib and deceased accused No.7-Fahad Ullah had entered hotel Oberoi after alighting from the inflatable boat at Nariman Point. The prosecution has examined some staff members of the hotel , police officers and panch witnesses to prove allegations against the accused in respect of the incident at Hotel Oberoi and Trident.

HOTEL OBEROI CASE-

670. As far as occurrence at hotel Oberoi and Trident is concerned, the complaint in respect of the said incident was lodged at Marine Drive Police Station by **P.W.208-Mr.Bhagwat Kachru Bansode**, Police Inspector. P.W.208 was attached to Marine Drive Police Station and he was on patrolling duty in the vicinity of Mantralaya on the night intervening 26th and 27th November, 2008. He was patrolling the area on the mobile van of Marine Drive Police Station (Peter Mobile). A wireless message was received from the control room at about 21.55 hrs. that an incident of firing had taken place at Hotel Oberoi and Trident and that the firing was still going on. P.W.208 therefore, immediately rushed to the place of incident i.e. Hoel Trident and Oberoi. At this stage it may be stated here that Hotel

Oberoi and Trident are managed by the same management and that though there are two separate buildings, both of them are interconnected and are popularly known as Hotel Oberoi. The witness has stated that as soon as he reached the main entrance of the hotel, he found that glass pans of Galleria Showroom were broken. The main entrance glass door was also found broken. The witness immediately realized that some incident of serious nature had occurred at the hotel . The witness therefore entered the said hotel along with his staff members. The witness was having a revolver with six rounds. One of the Police Head Constable accompanying him was also possessing a pistol. As soon as P.W.208 and his team entered the hotel, they found that there were bullet marks behind bill desk, a dead body was lying in a pool of blood, glass pans of lobby were shattered and broken . The witnesses has further stated that the sound of firing was emanating from inner portion of the hotel. He therefore, along with his team members proceeded to New Oberoi from the staircase. He had seen two persons firing indiscriminately in the restaurant known as Tiffin situated at Hotel Oberoi. He therefore took position behind a wall and fired two rounds towards the said two persons. However, the said two persons did not retaliate and proceeded further. P.W.208 realized seriousness of the incident and

immediately informed the police control room for additional force. During the period intervening the incident described by P.W.208 and arrival of additional force which included ATS, QRT and SRP, the said two persons continued to lob hand-grenades and also continued to fire. P.W.208 at that time was on the ground floor of the hotel New Oberoi. The additional force reached the spot within next 15 to 20 minutes. It appears from the evidence of this witness that he either left the hotel thereafter or was deployed for some other duty. What has been stated by him in his further evidence is that the N.S.G.Commandos had come on 27.11.2008 and that both the terrorists were killed on 28.11.2008 by the N.S.G.Commandos.

671. FIR of this incident was given by this witness at Marine Drive Police Station on 28.11.2008. The FIR and proforma FIR are produced by the prosecution at **Exh. 783** and **Exh.783-A** respectively. P.W.208 has identified his signature on the FIR-exh.783. According to this witness both the said persons/terrorists were in the age group of 25 to 30 yrs. and their height was about 5'.6" each. One of them was wearing a blue full shirt and black pant and the other was wearing a black full shirt and black pant. The witness also states that in all thirty five persons were killed and twenty four

were injured during the incident which lasted till 28.11.2008.

672. To explain the delay in lodging the FIR, this witness has stated that the FIR could not be lodged on 26.11.2008 because the whole force of Marine Drive Police Station was deployed at Hotel Oberoi and Trident.

673. **P.W.212-Mr.Pradeep Rammurthy Bengalorkar** has stated in his evidence that he has been working with Hotel Oberoi since 1986 as Steward. As far as the incident dated 26.11.2008 is concerned, this witness has stated that he was on duty at Kandhar Restaurant of Oberoi. His colleagues Mr.Jorden , Mrs. Dinaj Sharma , manager Mr.Rahul Kadam and other staff members were also on duty. There were fifty to sixty guests in the restaurant Kandhar at about 22 hrs. of 26.11.2008. It is stated by this witness that Kandhar restaurant is situated on mezzanine floor above the ground floor of Oberoi Hotel . Tiffin restaurant was situated in the main lobby of hotel Oberoi . Tiffin restaurant was visible from the mezzanine floor where Kandhar restaurant was situated. This witness had heard sound of firing at about 22 hrs. on 26.11.2008 . The witness had seen that two persons had been firing in Tiffin restaurant by means of automatic firearms.

P.W.212 and his colleagues therefore came back to Kandhar Restaurant and bolted the same from inside. They also requested the guests of the restaurant to get out of the rear service door. While P.W.212 and his colleagues were in the process of rescuing the guests, there was firing at the main entrance of Kandhar Restaurant. One of the bullets, after piercing through the glass pan of entrance door, had hit Mrs. Dinaj Sharma on her right forearm. P.W.212 and other staff members had, by that time been successful to evacuate the guests from the restaurant. When P.W.212 returned back to the restaurant after leaving the guests outside the restaurant, the said two persons who had been firing, had entered Kandhar restaurant and directed P.W.212 and others that none of them should move from their place and warned them that if they tried to run away, they would be killed. The said two persons who were being called as terrorists by almost all the witnesses , thereafter directed P.W.212 to spill liquor on tables and furniture and further directed colleague of P.W.212 Mr.Jorden to set furniture on fire by means of a loiter . The loiter was provided by one of the terrorists himself. Since the loiter did not work, Jorden was directed to set fire by means of match stick. Jorden therefore followed the direction and continued to set fire to the furniture. While Jorden was setting fire to

the furniture, he had sustained burn injuries. He had therefore shouted however, one of the terrorists had fired at Jorden resulting in his instant death. Thereafter P.W.212 was directed to set furniture on fire. P.W.212 followed the direction. After sometime the said two terrorists asked P.W.212 to take them to upper floor where V.I.Ps had been staying. The said two terrorists and P.W.212 therefore came in front of lifts. P.W.212 had pushed switch of the lift which was exclusively meant for lower lobby. The terrorists however, wanted to go to the upper floor. Till the lift for upper floor could be available, the terrorists went on lobbing hand-grenades in the lobby area . Taking advantage of this situation P.W.212 entered the lift meant for lower lobby and disappeared from there. It is how P.W.212 could save himself from the attack. He directly went to Food & Beverage Manager Mr.Pawanjit Singh in the basement area and described the incident to him. It is stated by this witness that the person who had shot at Jorden was 5'.7" in height and was in the age group of 25 to 26 years. The other person was also of similar physics .As far as identification of the said two persons is concerned, P.W.212 had identified both of them in the identification parade of dead bodies held by S.E.O. Kandalkar.

674. It has further come in the evidence of this witness that C.C.T.V. Cameras had been installed at hotel Trident. It is the case of prosecution that small portion of activities of the said two terrorists was capture by these CCTV cameras and the C.D. Copied from the D.V.R.of hotel Trident was produced in the court. The C.C.T.V. Footage of camera No.9 was played in the presence of this witness. He has stated in his evidence that the persons seen in the said visuals are the same persons who had attacked hotel Oberoi and Trident on 26.11.2008.

675. As far as cross-examination of P.W.212 is concerned, Ld. Advocate Mr.Kazmi has tried to demonstrate that the witness was telling lies and that he had not seen the incident as described by him. The witness has admitted in his cross-examination that faces of both the terrorists are not clearly visible in the C.C.T.V. Footage shown to him. Except this there is nothing in the cross-examination of this witness which needs to be discussed in this judgment.

676. Apart from P.W.212, who was very much present in the hotel itself at the time of alleged incident, there is one more witness who has been

examined as **P.W.215 namely Mr.Rajesh Ganpat Kadam** who was working as Asstt.Chief Security Officer at Hotel Oberoi. He had already left the hotel after his duty hours. However, he had to return to the hotel after receiving a telephonic call from his colleague at about 9.51 p.m. that fire had been going on in the porch of the hotel. On receiving the message from his colleague P.W.215 immediately rushed back to the hotel on his motorcycle and reached there within five to six minutes. The Chief Security Officer Mr.Nagmote was present in the porch. P.W.215 reported his arrival to his Chief and was busy with him discussing about the incident in the porch of the hotel Trident itself. It is at this point of time that P.W.215 had seen one person coming out of the main entrance of the hotel Trident and was shouting ' my friend save him save him'. P.W.215 realizing that somebody was in danger and the person who had come out of the hotel was shouting to save the person, rushed to the main entrance of hotel Trident. He however , was restrained by his senior Mr.Nagmote on the ground that firing was going on in the hotel. P.W.215 was told that he should be very very careful considering the fact that the firing was in progress. It appears from the evidence of this witness that despite the warning from his senior, this witness appeared to have entered the main lobby of hotel Trident where

Varanda restaurant is situated. One boy aged about 7 to 8 years was rescued from the hotel Trident. In the meantime one suspected article was seen outside the porch in front of hotel Trident. P.W.215 therefore intimated the police of Marine Drive Police Station . The B.D.D.S.was called. The said suspected article was covered by means of bomb suppression blanket. After sometime P.W.215 entered the hotel again. It is at this point of time that he heard sound of bomb explosion and it was revealed to him later on that the suspected article which was seen outside the porch had exploded. This witness had also seen two policemen in injured condition. They were being rescued by other police officers present on the spot.

677. It has come in the evidence of P.W. 215 that there were seventeen (17) C.C.T.V. Cameras installed at various places at Hotel Trident and that there was no C.C.T.V.camera in hotel Oberoi. Captain Mr.Dhamankar who was also working as Asstt. Security Officer in the same hotel, was in charge of the control room of C.C.T.V. P.W.215 therefore informed Mr.Dhamankar that two terrorists had entered the hotel. Obviously, P.W.215 wanted Mr.Dhamankar to keep watch on C.C.T.V. to locate those terrorists.

678. P.W.215 has further stated that On 27th November, 2008 fifty NSG Commandos headed by Colonel Mr.Rathi and Lt.Colonel Mr.Sharma had reached hotel Trident. P.W.215 being Asstt.Chief Security Officer of the hotel, had accompanied NSG Commandos during the operation which lasted till the morning of 28th November, 2008. This witness had been with the Commandos to rescue the guests from hotel rooms and to nab the terrorists who had virtually captured both the hotels by indulging into indiscriminate firing and lobbing hand-grenade . The NSG Commandos and P.W.215 reached on 18th floor of the hotel Oberoi at 5.30 p.m. Of 27/11/08. All the rooms were opened by P.W.215 by means of master key provided to him by the management. It is stated by this witness that as they went on searching the rooms for terrorists, they could not find any of them till 17th floor of the hotel. While 18th floor of the hotel was being checked by opening doors of the rooms by means of master key, and when room No.1856 on 18th floor was attempted to be opened by means of the key, somebody had started firing from the room. Major Mr.Sourabh of NSG was injured due to the firing. It was therefore clear to the Commandos and P.W.215 that the terrorists had been hiding in room No.1856. The NSG Commandos therefore, also started firing and had thrown grenades towards

room No.1856. The Commandos were at a distance of 10 ft. from room No.1856 at the time of incident described herein above. P.W.215 was with them at the time of said incident. P.W.215 has further stated that one of the terrorists had come out of the room No.1856. The Commandos had taken position to attack the terrorist. The terrorist started firing at the Commandos. The Commandos also fired in retaliation. It is stated that during the course of exchange of firing between the Commandos and the terrorist had challenged the Commandos by saying

(Why are you attacking from your hiding. Why don't you come out and attack). Thereafter the terrorist had again started firing at Lt.Colonel Sharma who was leader of the hit team. Mr.Sharma had also fired at the terrorist. After this exchange of fire, the witness had heard one of the terrorists writhing in pain and realized that the said terrorist must have been injured due to firing on the part of NSG Commandos. The time was around 11.30 p.m.of 27th November, 2008 . It appears from the evidence of this witness that the lights were put off purposely during the course of operation. Since it was 11.30 p.m. , it was decided to suspend the operation till next day morning. The NSG Commandos and P.W.215 including the injured Mr

Sourabh had stayed at 18th floor of the hotel during the course of whole night. The operation was resumed again at 7.00 a.m. On 28th November, 2008. The witness has stated that there was no firing from either of the sides during the period between 11.30 p.m. of 27th November, 2008 and 7.00 a.m.of 28th November, 2008.

679. During the course of further operation on 28th November, 2008, it was seen that one of the terrorists was found lying near guest lift No.3. Some NSG Commandos had fired at him and thereafter they went near him. His body was minutely examined to check if he was carrying any explosives on his body. The terrorist however, was found dead and there were no explosives on his body. The NSG Commandos and P.W.215 therefore went on the terrace of the hotel. Six dead bodies were found lying on the terrace and four persons were found in injured condition. The said four injured persons were brought to 18th floor and were lodged in the room which was secured for the guests of the hotel. After keeping the injured persons in a secured place, the NSG Commandos and P.W.215 again started search for the other terrorist on 18th floor. He was not found in any of the rooms on 18th floor. However, door of room No.1856 was found

closed. The Commandos therefore decided to take search of the said room as they suspected that the terrorist might have been hiding himself in the said room. The Commandos therefore fired at room No.1856. There was firing in retaliation from the said room also. It was therefore confirmed that the terrorist had been hiding in the said room. The door was broken by exploding hand-grenades. P.W.215 had not entered the said room. However, he had seen that the other terrorist was also lying dead in room No.1856.

680. During the course of identification parade of dead bodies P.W.215 had identified two dead bodies out of twelve. According to this witness the dead bodies belonged to the two terrorists who had been seen by him on 18th floor of Hotel Oberoi. The witness has further stated that S.E.O. Mr.Kandalgaonkar and panch witnesses were present during the course of identification parade.

681. P.W.215 in his cross-examination on behalf of accused No.1 has admitted that he had not seen P.W.212-Mr.Bangalorkar coming out of the lift nor had he seen dead body of Jorden. The witness was also not

aware whether the police officers had gone to upper floors of the hotel on the night of 26th and 27th November, 2008. The witness has further stated that they had started searching rooms from the top floors i.e. 21st floor of Hotel Oberoi. He has admitted that this fact he has not stated before the police during the course of his statement recorded by the police. The accused No.2 and No.3 had declined to cross-examine P.W.215.

682. It appears from the prosecution evidence that after the death of terrorists on 18th floor of the hotel, it was clear to the police and NSG Commandos that there was no more terrorists in the hotel . The police therefore started further investigation and in the first leg of investigation they had drawn inquest panchanama of dead bodies of two terrorists on 18th floor of Hotel Oberoi. At this stage it may be stated here that though Hoel Trident and Oberoi were withing the jurisdiction of Marine Drive Police Station and though primarily it was the police officers of Marine Drive Police Station who could have drawn inquest panchanamas, considering the nature of incident and engagement of police force in relief and rescue operation, police officers from other police stations were also called. The inquest panchanamas of dead bodies of both the deceased accused who have

been identified as accused No.6-Abadul Reheman Chhota @ Saakib and accused No.7-Fahad Ullah, were drawn by the officers of Gamdevi police station who were specially called to assist police in investigation.

683. **P.W.211-Mr.Vinayak Gulabrao Patankar**, Police Sub-Inspector, attached to Gamdevi police station has stated that he had been to Oberoi Hotel as directed by his superior officers. He was on duty on 18th floor of the hotel. He had therefore drawn inquest panchanama of one of the dead bodies. The other panchanama was drawn by PSI Subalkar on the same floor. The panchanama drawn by P.W.211 is at Exh.791. This witness has stated that panchas, during the course of this panchanama and the panchanama drawn by Mr. Subalkar were same and panchanamas were drawn one after another and there was no overlapping of time.

684. According to P.W.211 there were sixteen bullet injuries on various part of the dead body and apparent cause of death was bullet injuries. The deceased was wearing blue striped full shirt, black round neck T-shirt and blue trouser. One Nokia mobile battery was found in one of the pockets of the said trouser. The witness has

identified clothes of the

deceased as well as Nokia battery-**art.800.**

685. It is the case of prosecution that two terrorists were eliminated by NSG Commandos in the operation carried out at Hotel Oberoi. One of the witnesses examined by the Court in this respect is Court Witness No.2-Mr.Ramesh Kumar Sharma. His evidence was also recorded through audio-video linkage which is limited to the extent permitted by the Hon'ble High Court in the order in Writ Petn. No.2885 of 2009 dt. 5th November, 2009. The evidence of C.W.No.2 is not being discussed in detail as the Hon'ble High Court has directed to keep the evidence confidential. However, it can be seen from his evidence that evidence of P.W.215- Mr.Rajesh Ganpat Kadam has been fully corroborated by this witness.

686. **P.W.226-Mr.Santosh Hanumansing Subalkar** is another police officer who was attached to Gamdevi Police Station as Sub-Inspector of Police and was involved in investigation of the case. He had drawn inquest panchanama of the dead body lying in front of room No.1850 on 18th floor of Hotel Oberoi. It was dead body of a male in the age group of

25 to 30 years. The clothes worn by the deceased were blue T-shirt and black multi pocket trouser. In all there were 33 bullet injuries on the dead body. Apparent cause of death was bullet injuries. One AK-47 rifle was found lying on left side of the dead body. In addition to this, following other articles were also seized by this witness lying near the said dead body.

1 Two empty magazines of AK-47 coupled with an adhesive tape.

2 One pistol of STAR make of 7.62 mm. The body number of the pistol was 3207045766.

3 Two pistol magazines lying near the said pistol. One of them was empty and other one was containing seven 7.62 mm live cartridges.

4 Two empties of AK 47 cartridges found lying on left side of the body.

5 One black pouch attached with the belt tied around waist of the deceased which contained following articles :-

(a) Currency notes of Rs.3,500/- were found in the said pouch

(b) One steel knife.

(c) One surgical blade.

(d) One identity card issued in the name of Rohit Deepak Patil bearing identity card No.56NJ97C issued by Arunoday Degree & P.G. College having address of 313

S.K. Apartment, Indira Nagar, Vijay Nagar Colony,

Hyderabad.

(e) The identity card had a photo. The photo appear to be of the deceased person himself.

6 A Cashio Wrist watch found on left wrist of the deceased.

All the articles were separately sealed in polythene bags and labels bearing signatures of panchas and signature of this witness were affixed on the polythene bags. One Nokia mobile phone model No.1200 was found in left pocket of pant . The said mobile phone was functioning at that time. According to this witness the IMEI number of the said mobile was 353526025933620. Clothes of the dead body were removed and were kept for drying and thereafter inquest panchanama was drawn. The inquest panchanama is at **Exh.790.** Thereafter the dead body was sent for postmortem examination. The witness has identified the AK-47 rifle art.765. He has also identified :-

two magazines	- Art.771colly,
one pistol	- Art.773,
two pistol magazines	- Art.775colly,
Six live cartridges	- Art.777colly,
one empty	- Art.778,

one bullet	- Art.779,
two empties	- Art.780colly,
one black pouch	- Art.782
Cash amount	- Art.784colly,
Nokia mobile	- Art.786,
mobile battery	- Art.787,
brown blue shirt	- Art.790,
black pant	-Art.794,
Orange SIM card	-Art.797

and has stated that they are the same articles which were seized by him under the panchanama. It is further stated by this witness that he had seized seven live cartridges- art.777 colly. The witness was unable to explain as to why there was shortage of one cartridge and instead there was one empty and one bullet in the said lot . [This can be explained in the evidence of Ballistic Expert who had used one of the cartridges for test firing].

687. As far as evidence of P.W.226 with regard to seizure of one bullet and the evidence of witness by name Sandhya Dhuru, P.R.O. of Jaslok Hospital is concerned, it may be stated here that said part of the evidenced is not required to be discussed in the judgment as the person by name Mrs.Hanifa Bilakhia who was allegedly injured in the incident at

Hotel Oberoi and from whose body the bullet was allegedly retrieved, has not been examined by the prosecution.

688. P.W.210-Mr.Edvin Thomas Saldana is also one of the employee of Hotel Oberoi. He was working as Concierge at New Oberoi. He was one of the panch witness during the course of panchanama-Exh.790 and also another panchanama Exh.791. As far as panchanama Exh.790 drawn by P.W.226 is concerned, it is stated by this witness that the dead body was found lying in front of room No.1880 of 18th floor. It was bleeding profusely. In all there were thirty three bullet injuries on the dead body. The deceased was wearing blue full sleeves shirt and round neck T-shirt. The deceased was also wearing black pant with seven pockets. One AK-47 rifle was found lying near his left hand . Two empty magazines were also found near the said rifle. The magazines were found coupled with white adhesive tape. There was one Star pistol near the said two magazines. There were two pistol magazines, one of them was empty and other one was found loaded with seven live cartridges. One Nokia mobile phone model No.1200 was found in the pant pocket of the deceased. There was one extra mobile phone battery in the pant pocket. A black pouch was found

tide around the waist . The pouch had two compartments. Indian currency

of Rs.3500/- was found in the said pouch. In addition to Indian currency, one knife, one surgical blade and one identity card purportedly issued by a college from Hyderabad was also found in the said pouch. The identity card was issued in the name of Rohit Deepak Patel and was bearing one photograph. The photograph on the identity card belonged to the person whose dead body was being examined under the panchanama in presence of this witness. The clothes of dead body were removed and were kept for drying in a room. They were thereafter seized and sealed separately by the police. Blood samples from the dead body were also collected. Panchanama-Exh.790 was drawn in his presence. The witness has identified his signature on the panchanama Exh.790.

689. The articles seized by the police and produced in the court were shown to the witness. Rifle art.765 and art.768 allegedly recovered from hotel Oberoi were shown to this witness. He has identified the rifle art.765 to be the one which was found near the dead body. There is some discrepancy with regard to the signatures on the labels [affixed to the articles seized during panchanama]. The said discrepancy will be discussed

later on when I appreciate the evidence of witnesses.

690. P.W.210 has further identified two magazines -art.771colly. and one pistol art-773. He has identified his signature on the wrappers used by the police for sealing the said articles. The witness has further identified two pistol magazines-art.775 colly, cash amount of Rs.3500/- art.784 colly, one Nokia mobile -art.786 and one mobile phone battery-art.787. HE has also identified black pouch-art. 782 and the identity card-art. 126. As far as seven live cartridges are concerned, the witness was shown six live cartridges , one empty and one bullet- art. 777 colly., art.778 and art.779 respectively. It is stated by this witness that he has identified these articles on the basis of his signatures on the wrappers. Use of one live cartridge has been explained by the Ballistic Expert. The witness has also identified clothes of the deceased shown to him during the course of his evidence. He was shown two SIM cards i.e. art. 796-Vodafone SIM card and art.797-Orange SIM card. The witness has stated in his evidence that he could not say whether Orange SIM Card-art.797 colly. was the same which was seized in his presence. The signature on the wrapper did not belong to this witness and therefore, he was not able to say whether the SIM card was same or otherwise. [This aspect of the case also will be discussed in detail

in the later part of the judgment.]

691. As far as inquest panchanama of another dead body is concerned, P.W.210 has stated that another dead body was lying at the distance of 10 ft. from the first dead body . It had sixteen bullet injuries. One mobile phone battery of Nokia make was found in trouser pocket of the dead body. The inquest panchanama-Exh.791 was drawn in presence of this witness.

692. It is admitted by this witness in his cross-examination that he has identified almost all the articles on the basis of his signatures on the wrappers. It is further admitted by him that he would not be able to identify the magazines shown to him in the court if they are mixed with another similar type of rifle magazines.

693. The next two witnesses concerned with search and seizure at Hotel Oberoi are P.W.216-Mr. Bhupendra Manohar Dhamankar and P.W.217-Mr.Kiran Vasantrao Kale, Police Inspector, attached to Gamdevi Police Station. The panchanama Exh.804 was drawn by P.W.217 in presence of two panch witnesses namely Mr.Dhamankar and Mr.Manoj

Gupta . Prosecution has examined P.W.216 and P.W.217 to prove the search and seizure of arms and ammunitions from certain rooms on 18th floor of hotel Oberoi where the alleged encounter between the terrorists and Commandos had taken place.

694. P.W.216-Mr.Bhupendra Manohar Dhamankar , Asstt. Chief Security Officer at Hotel Oberoi & Trident, has stated in his evidence that he had participated in the panchanama as panch witness on 18th floor of hotel Oberoi. The panchanama was drawn by P.W.217 in presence of P.W.216 and Mr.Manoj Gupta, the Security Guard of Hotel Oberoi. The place of incident was shown by P.W.215- Mr.Rajesh Kadam. It is stated by P.W.216 that room No. 1851 to 1882 except room No. 1868 are situated on 18th floor of hotel Oberoi. It is further stated by this witness that room No.1868 has been merged into room No.1867. As such there is no room bearing number 1868.

695. During the course of panchanama it was seen that the condition of 18th floor was very bad. Most of the walls were seen blackened. It appeared that the incident of firing and blast had taken place at 18th floor of

the hotel. One dead body was found lying in front of room No.1854.

According to this witness one AK-47 rifle was found lying near the said dead body. Apart from AK-47 rifle, the other articles found near the dead body were as under :

1) 54 empties of AK-47 rifle.

2) One blue coloured bag partly burnt containing following articles -

a) two bayonets

b) two magazines containing 54 live cartridges

c) three grenades

d) four pieces of PVC pipe of black colour

e) One Ear phone

f) One charger

g) one Duracell battery

h) two Panasonic batteries

i) one bag containing dry fruits.

All the articles were seized by the police in the presence of this witness and they were sealed in transparent polythene bags. P.W.216 has identified art.768 to be the same rifle which was seized from near the dead body . The witness has also identified other articles which were recovered from the bag

lying near the said dead body. He has identified :-

six magazines	-art. 810 colly.,
54 empties	-art.812 colly.,
Blue bag	-Art.814,
2 Bayonets	-Art.816 colly.,
4 Fiber pipes	-Art.822 colly.,
One mobile charger	- Art.824,
One Ear phone	-Art.825,
One DURA Cell Battery	-Art.826,
Two panasonic batteries	-Art.827 colly., and
one packet of dry fruits	-Art.829.

As far as art.818 colly. is concerned, it is stated by this witness that what is shown to him is 47 live cartridges, seven empties and seven bullets. Police however, had seized 54 live cartridges in his presence. [The consumption of seven cartridges can be explained in the evidence of Ballistic Expert who had used seven cartridges for test firing.] After the above stated panchanama which was drawn by P.W.226-PSI Subalkar whose evidence has already been discussed herein above, this witness had also taken part in the panchanama in respect of other place at 18th floor . The second panchanama is at Exh.804. It was drawn by P.W.217. P.W216 has further stated that after seizure of articles from near the dead body, police had visited room

No.1856 on 18th floor. There were bullet marks on the walls of the room. Window glass pans were seen broken. Door was also found broken. The articles in the room were found scattered. The television set was also found broken. Carpet was found wet. Police had seized 65 fired bullets, 19 empties, 6 grenade pins and two springs partially burnt from the said room. The witness has identified art.837 colly., art.841, art.843 colly., art.845, art.831 colly., art.833 colly and art.835 colly. to be same articles which were seized from room No.1856. He has also identified art.847 colly.- 69 bullets, deformed bullets and bullet pieces. During the visit to room No. 1857 it was seen that there were bullet marks on the walls and the carpet was wet. Two live cartridges were found in the said room. The witness was shown art.849- one live cartridge and art.850-one empty. He was unable to say anything about these two articles. However, he had identified his signature on the wrapper -art.851.

696. In the cross-examination this witness has stated that no articles were seized from room No.1851. He has also admitted that the wrapper-art.770 does not bear his signature. He however, has stated that he had

identified the articles on the basis of his signatures on the labels affixed to the wrappers which were used for sealing the articles.

697. P.W.217-Mr.Kiran Vasantrao Kale, is the Police Officer who had drawn panchanama-Exh.804. It is stated by this witness that one AK-47 rifle was found near the dead body which was lying in front of room No.1854. He has identified art.768 to be the said rifle. There were two magazines attached to the said rifle. Both the magazines were empty. There were two other empty magazines lying near the said dead body. Fifty four empty cartridges were found at various places near the room No.1854. One partially burnt bag was also found near the said dead body. The bag contained following articles.

a) two bayonets
b) two magazines containing 54 live cartridges
c) three grenades
d) four pieces of fiber pipe of black colour
e) One Ear phone
f) One charger
g) one Duracell battery
h) two Panasonic batteries
i) one bag containing dry fruits.

The witness has identified Art. No.810 colly.-six magazines , Art.812 colly.-54 empties , Art.814-Blue bag , Art.816 colly.-2 Bayonets , Art.822 colly.-4 Fiber pipes , Art.824-One mobile charger , Art.825-One Ear phone , Art.826- One Duracell Battery , Art.827 colly.- Two panasonic batteries , and Art.829-one packet of dry fruits . He has also identified his signatures on the wrappers used for sealing of the articles. As far as art.818 colly.-47 live cartridges are concerned, it has been stated by this witness that 54 live cartridges were seized at the time of seizure and that some of the cartridges might have been used by the Ballistic Expert for test firing.

698. After seizure of these articles from where the dead body was lying, the witness had proceeded to visit room No.1856 of Hotel Oberoi. At this stage it may be stated here that the inquest panchanama in respect of the dead body near which above stated articles were found by P.W.216 and P.W.217, was drawn by PSI Patankar (P.W.211) and that evidence has already been discussed by me herein above. It may also be stated here that another Police Officer P.W.226-Mr.Santosh Hanumansing Subalkar has

drawn panchanama in respect of another dead body. He had also seized articles found near the said dead body under the same panchanama.

However, as stated earlier, P.W.211- Mr.Vinayak Gulabrao Patankar, PSI and P.W.217- Mr.Kiran Vasantrao Kale, P.I. had drawn two separate panchanamas , one in respect of inquest of dead body and the other in respect of seizure of articles found near the dead body. In addition to the seizure of articles found near the second dead body, P.W.217 along with P.W.215 had also visited certain rooms of 18th floor. Evidence of P.W.215 has been discussed herein above. As far as P.W.217 is concerned, he has given more or less similar evidence to that of P.W.215.

699. According to P.W.217 room No.1856 was in very bad shape. The false ceiling had collapsed . Bullet marks were seen on walls of the room. The glass pans were found broken . Following articles were seized from the said room :

1) 19 empties found at various places in room no.1856.

2) six hand-grenade clips

3) two partially burnt springs.

4) 65 fired bullets, deformed fired bullets and pieces of fire

bullets.

The witness has identified the articles seized from the room. During the course of visit to room No. 1857, it was seen that the said room was also badly damaged. Two live cartridges were recovered from the said room. P.W.217 has identified **art.849** to be one of the live cartridges. As far as other live cartridge is concerned, it appears that the said cartridge was used by the Ballistic Expert for test firing. The empty of test fired bullet has been produced at **art.850**. Other rooms on 18th floor were also found damaged and the panchanama in that respect was drawn in detail as per **Exh.804**. This witness has also admitted that the labels **art. 769** and **art.770** do not bear his signatures. It may be stated here that the panch the panch P.W.16-Mr.Bhupendra Dhamankar has also admitted this fact in his evidence. The labels art.769 and art.770 were used for affixing on the wrappers which were used for sealing the articles. It appears that there was exchange of wrappers due to certain reason which can be taken care of in later part of the judgment.

700. The other minor discrepancy brought on record in the cross-

examination of this witness is that the signatures of panch witnesses on all the wrappers have not been taken in the same order. To my mind this does not create any doubt about genuineness of the seizure , this particular discrepancy does not require any detail discussion and the controversy needs to be put to an end here itself.

701. At this stage it may also be noted here that P.W.134-Mr.Santosh Hari Pawar , the panch witness and P.W.220-Mr Sudhir Shankar Garud, Police Officer of Marine Drive Police Station were recalled by the prosecution to prove the recovery of certain articles from Hotel Oberoi. It is the case of prosecution that N.S.G.Commandos Mr.Das and Mr. Teli had collected certain arms & ammunitions from 18th floor of Hotel Obero and the said articles were deposited at Marine Drive Police Station. They were seized under panchanama Exh.1030 by P.W.220 - Police Officer Mr.Sudhir Garud. This part of evidence had not come on record in the evidence of these two witnesses. Therefore, both P.W.134 and and P.W.220 were directed to be recalled and were further examined by the prosecution.

702. P.W.220- Police Officer Mr.Garud has stated in his evidence that on 29th November, 2008 he was on duty at Marine Drive Police Station.

Two N.S.G.Commandos Mr.Das and Mr. Teli had visited Marine Drive Police Station. They were accompanied by Police Constable Mr.Padelkar. They had produced certain articles recovered from Hotel Oberoi. These articles were seized under panchanama by P.W.220 in presence of panch witness P.W.134 and Police Constable Mr.Deepak Padelkar (P.W.252) . P.W.252-Mr.Deepak Padelka has given description of these articles and has identified the said articles. P.W.220- Police Officer Mr.Garud has also identified the following articles :

1 Art.902colly – Two empty magazines.

2 Art.896 – Pistol

3 Art.903colly – Two pistol magazines.

4 Art.129 – black pouch.

5 Art.130 – I-card.

6 Art.Q122 – GPS

P.W.220 has also identified 18 live cartridges-art. 898A + 899A + 900 colly. and 13 live rounds-art.901A colly. to be part of the articles produced

by N.S.G. Commandos. The empties and bullets in the articles, according to P.W.220 , might be result of test firing by the Ballistic Expert. The

panchanama is at Exh.1030.

703. It may be stated here that P.W.252 -Mr.Deepak Padelkar, Police Head Constable, who had accompanied the Commandos to police station, has stated in his evidence that the Commandos had produced thirty two live rounds, sixteen of them were of AK-47 and another sixteen were of 9mm. As stated earlier, the empties and bullets produced by the police can be the result of test firing by the Ballistic Expert. In this regard the detail discussion will be there in the judgment when the evidence of Ballistic Expert is considered.

VOIP, GPS AND NOKIA CELL PHONES -

704. It is the case of prosecution that during the course of attack on Mumbai, the accused had established contacts with their handlers in Pakistan and that they had been receiving instructions from the handlers during the course of whole incident till the accused were killed by N.S.G. Commandos at three places namely hotel Taj, Oberoi and Nariman House.

It is also the case of prosecution that the handlers who were stationed somewhere at Pakistan during the course of conspiracy, had acquired **five**

Nokia mobile phones from various dealers in Pakistan. It is also the case of prosecution that a V.O.I.P. (Voice Over Internet Protocol) account in the name of one Kharak Singh was opened with Callphonex , the seller of VOIP, having his office at New Jersey, U.S. It is further the case of prosecution that handlers had developed contact with the accused during the course of attack through Voice Over Internet Protocol (Internet Telephony) The prosecution has also alleged that on the basis of source information the officers of Technical Wing of A.T.S. had recorded conversation between the accused , deceased accused and the wanted accused (handlers). The officers of Technical Wing had also recorded conversation between the deceased accused and the news readers of India T.V. electronic channel . To establish this part of their case, prosecution has examined some witnesses who are F.B.I. agents, proprietor of Callphonex, the witness who are employees of Nokia, Nodel Officers, mobile services providers- Airtel and Vodafone and also the witnesses whose SIM cards were used by the accused during the course of said conversation.

705. The prosecution, in the series of these witnesses, in the first place has examined **P.W.155-Ms.Mary Lozanco,** Enforcement Manager in the Nokia Incorporation. Evidence of this witness was recorded on audio-video linkage.

706. During the course of her evidence this witness has stated that she was working as Enforcement Manager in Nokia Incorporation and that her office was situated at Texas in United States. The head office of Nokia Incorporation is situated at Finland. The Nokia manufactures mobile phones. It is also the evidence of this witness that each mobile equipment has got IMEI (International Mobile Equipment Identity) number. This IMEI number is the unique identifier for each mobile phone. P.W.155 had supplied information with regard to five Nokia devices to F.B.I., Los Angeles under Exh.606. According to the information supplied by this witness, the five devices the details of which have been recorded in Exh.606, were manufactured at China and were shipped to Pakistan in the month of June 2008. The information supplied by this witness to F.B.I. was based on the data base of Nokia Company. It is stated by this witness that the data base is maintained in regular course of company's business and the

same can be accessed by the offices of the company situated in various countries with the help of passwords given by the company.

707. In the cross-examination this witness has admitted that she had no first hand knowledge of the transaction in question. Further details of her cross-examination are not necessary to be discussed inasmuch as the witness in her examination-in-chief itself has stated that the information is based on data base of the company. The only question that may arise for determination of the court is whether the information supplied on data base can be acceptable or not.

708. The prosecution has examined one more witness i.e. **P.W.209-Mr.Bhabajit Chandra Nandi**, to establish this fact. This witness is also working in Nokia Incorporation. He is working with Nokia India as Logistic Security Specialist. According to this witness Nokia has ten manufacturing Units for manufacture of handsets and accessories . One of the manufacturing units is situated at Dongguan, China. He had supplied information to DCBCID on the request of Asstt. Commissioner of Police Mr.Durafe. The information supplied by this witness is based on fax copies of the bills and deliver notes received by him from China factory of Nokia.

The copies of delivery notes and shipping bills are marked **Exh.763 colly**.

The letter addressed to the A.C.P. by this witness has been exhibited as **Exh.785**.

709. From the contents of Exh.606 exhibited during the course of evidence of P.W.155 and the contents of documents produced by P.W.209, it can be revealed that two Nokia devices Model No.1200 bearing IMEI Nos. 353526024049451 and 353526025933620 were shipped from China to United Mobile of Pakistan. It is also revealed that three Nokia equipments Model No.1200 bearing IMEI Nos. 353526025842235, 353526025828739 and 353526025840890 were shipped from China to 12 Pakistan (Pvt.) Ltd. in Pakistan.

710. The prosecution has examined the owner of International Connection Service (Callphonex) as P.W.156- Mr.Nizar Al Sharif. His evidence was also recorded through video conferencing. This witness is resident of Clifton, NJ 07011, USA. He is owner of International Connection Service (I.C.S.), a private Corporation. According to this

witness it was incorporated in the year 1993 and was registered in a State of Delaware in U.S. Office of International Connection Service is situated at

New Jersey and Callphonex is their brand name as well as domain name of their website . International Connection Service provides VOIP service in wholesale as well as in retail. The persons who want to avail VOIP service and who are not in U.S. can contact I.C.S. through their website known as Callphonex. The customer has to register through email . The services are set up by I.C.S. in accordance with the requirements of the customer. Pre-payment is the condition precedent for providing VOIP services. It is also in the evidence of this witness that the Callphonex has a particular number which is provided to the customer. Callphonex was using telephone number (201) 253-1824 in the month of November, 2008. It is also stated by this witness that the Customer who makes call through VOIP provided by Callphonex, would display caller I.D. as (201) 253-1824 preceded by I.S.D. code of U.S. It is also stated by him that the user has no control over this number. Service providers and members are from various countries. In the case of Callphonex also , P.W.156 had members from different countries and some of them were U.S. based. The user can make phone calls through VOIP to any mobile number.

711. As far as the present case is concerned, the witness has stated that one Kharak Singh had contacted Callphonex on 20.10.2008 through email and had disclosed himself tobe a reseller of VOIP service. After correspondence of Kharak Singh on email, Callphonex had provided him fifteen PC2 phone accounts, ten Common Client accounts and five DID Austrian phone numbers. The email ID of Kharak singh was Kharak-telco@yahoo.com. No specific address was provided by said Kharak Singh. He however, had disclosed to Callphonex that he was from India . The first payment of 250 US dollars was made by Kharak Singh through Moneygram from Pakistan. The sender of the payment was one Mr. Mohammed Isfaq. A copy of the receipt of Moneygram -art. 530 was shown to the witness and he has identified the copy of receipt of Moneygram. The second payment of 229 US dollars in the account of Kharak Singh was received by Callphonex through Western Union . The copy of receipt is at art.531.

712. The witness has further stated that the services provided on the account of Kharak Singh were most heavily used between 24th to 27th November, 2008. Initial use was only for testing. The witness had provided

following details to FBI under his letter Exh.614 dated 13th February, 2009.

1) Call Detail Records for sub-account 310000xx and 400000xx for client Mr. Kharak Singh;
2) Callphonex Call Detail Records for calls to 5 DID numbers;
3) Voxbone Call Detail Records to DID numbers (that Callphonex has access to and obtained on its own);
4) Three chat logs between a representative of Callphonex and Mr.Kharak Singh;
5) Copy of MoneyGram Receipt dt.27th October 2008 and copy of Western Union receipt dt.25th October 2008.
6) Emails between Mr.Kharak Singh and Callphonex.

713. The witness has further stated that the information supplied to F.B.I. was a computer generated record and was therefore authenticate record. There was no manual intervention. The Callphonex maintains call logs on their network and on computers of the company. P.W.156 only has access to the said record. The record was being maintained by him in ordinary course of his business. The record furnished to the F.B.I. by this

witness was shown to him and he has identified the same. The record from page No.25 to page No. 287 was furnished by this witness to F.B.I., The

said record has therefore been exhibited as Exh.615 colly. According to this witness following fifteen PC2 phone accounts , ten Common Client accounts and five DID numbers were provided to Kharak Singh :

I) fifteen PC2 phone accounts:

1)	40000000	2)	40000001
3)	40000002	4)	40000003
5)	40000004	6)	40000005
7)	40000006	8)	40000007
9)	40000008	10)	40000009
11)	40000010	12)	40000011
13)	40000012	14)	40000013
15)	40000014		

II) ten Common Client accounts

1)	3100000	2)	3100001
3)	3100002	4)	3100003
5)	3100004	6)	3100005
7)	3100006	8)	3100007
9)	3100008	10)	3100009

III) five DID numbers

1) 43720880764 --- 4000000

2) 43720880765 --- 4000001

3) 43720880766--- 4000002

4) 43720880767 --- 4000003

5) 43720880768 --- 4000004

714. The witness was shown page Nos. 59, 63. 67, 71 & 77 of Exh.615 colly. It is stated by him that the numbers shown on these pages had been generated by the user. It is further stated by this witness that the last email received by him from Kharak Singh was on 25th November,2008 at about 12.08 p.m. Thereafter there was no contact with Kharak Singh. The account of Kharak Singh was closed sometime subsequent to December, 2008. The witness has also stated that he entertained doubt about the identity of Kharak Singh somewhere at the end of November. The witness initially did not doubt his identity because in good faith he thought that some friends of Kharak Singh or his relatives might have made payment from Pakistan in the account of Kharak Singh. The witness has also stated that the time shown in Callphonex record is 'Eastern standard time' .

715. P.W.156 in his cross-examination has denied that the data provided to F.B.I. could be fed in computer manually. It is also stated by

this witness that immediately after the incident dated 26th November, 2008,

he did not suspect that the services provided to Kharak Singh might have been used during the said incident. The services provided to Kharak Singh were suspended only when P.W.156 got summons from F.B.I. The reason for suspension of service was lack of activities and lack of fulfillment of agreement. He has denied that he was detained by the F.B.I. He has also denied that he had actively added and abetted perpetrators of Mumbai terror attack. He has further denied that there was tampering of call record data. He has also denied that he has moved Canada temporarily to evade his arrest by F.B.I. At this stage it may be mentioned here that when the evidence of this witness was recorded on video conferencing , the witness was in Canada and not in Clifton .

716. It is the case of prosecution that evidence was collected during the course of investigation with the help of F.B.I. through a letter **rogatory i** issued by Addl.Chief Metropolitan Magistrate of Mumbai. The prosecution has examined **P.W.153-Mr. Geoffrey Maron** to establish that the investigation in U.S. was carried out pursuant to the letter of request issued by the Addl. Chief Metropolitan Magistrate. This witness has stated that

he joined F.B.I. in the year 2003 as Special Agent and that he was working

in Los Angeles office of F.B.I. As a special agent, he is authorized to attest the documents also. There is a special division for counter terrorism cases and this witness was attached to the said division. It is also stated by him that six American citizens were killed during the attack on Mumbai. According to this witness if any American citizen is killed outside America in terror attack, the F.B.I. normally initiates investigation in America. A case concerning killing of American citizens was registered at Los Angeles office of F.B.I. and the said case was being investigated by P.W.153 himself. It was a F.B.I. case bearing registration No. LA252196.

717. The witness has further stated that a letter of request was received from Addl. Chief Metropolitan Magistrate, 37th Court, Esplanade , Mumbai in the form of Letter of Rogatory through the department of Justice. The request was received in Indian Embassy in Washington . The representative of Department of Justice had collected the same from Embassy. The investigation , as per request letter was assigned to P.W.153 by Director of F.B.I. The letter of request was accompanied by certain articles to be examined in the laboratory of F.B.I. The articles were as

under :

1)Five GPS devices,

2)One ' THURAYA' satellite phone

3)One compact disk.

All the articles were in sealed condition when they were received by the F.B.I. The five GPS devices and one THURAYA satellite phone were sent to F.B.I. Laboratory in sealed condition. In all five communications were sent to the Ld.Addl.Chief Metropolitan Magistrate in response to is request. All the communications sent to the Magistrate were signed by this witness. They were submitted to the Embassy of India through the Department of Justice and thereafter they were sent to ld. Additional Chief Metropolitan Magistrate. True copies of the communications received by the ld. Addl. Chief Metropolitan Magistrate were shown to this witness. The original signatures of the witness were there on all the true copies. The witness had also produced the original documents from his custody which he had retained at the time when the copies were given to Embassy of India through the Department of Justice. The originals are at Exh. 617 to Exh.621 and copies are at Exh.617A to Exh.621A. The original note signed by this

witness was shown to him and the same has been exhibied as Exh.622.

718. P.W.153 in his cross-examination has stated that he was not aware as to on which date P.W.156 was detained by the F.B.I. The witness has also stated that the original receipt of Western Union in respect of payment made for the account of Kharak Singh to Callphonex had been collected by the F.B.I. and that the same is not produced in this Court.

719. It is the case of prosecution that Yahoo account of Kharak Singh was accessed from different places. During the course of investigation the prosecution could find out ten I.P.addresses from where Kharak Singh's account was accessed. The ten I.P. Addresses are as under :

1) 58.27.167.153	2) 66.90.73.125
3) 67.159.44.63	4) 80.78.132.155
5) 82.114.138.18	6) 82.114.141.99
7) 118.107.140.138	8) 203.81.224.221
9) 203.81.224.202	10) 203.81.224.203

720. These I.P.addresses were provided to the investigators by F.B.I.in response to the letter of request issued by the ld. Addl.Chief

Metropolitan Magistrate. During the course of investigation **P.W.159-**

Mr.Mukund Gopal Pawar, who was working as Police Inspector in DCBCID, attached to Cyber Crime Investigation Cell was requested by Chief Investigating Officer Mr.Mahale to find out geographical locations of the ten I.P. addresses. He had obtained geographical locations of the ten I.P. addresses from the website www.all-nettools.com . Print outs Exh.645 colly. Were handed over to the Chief I.O. According to this witness and he material supplied by the F.B.I., above stated ten I.P.address were located at the places shown against the I.P. address as below :

I.P.Address	**Location**
58.27.167.153	(Pakistan)
66.90.73.125	(U.S.-apparent proxy)
67.159.44.63	(U.S.-apparent proxy)
80.78.132.155	(Kuwait)
82.114.138.18	(Russia-apparent proxy)
82.114.141.99	(Russia-apparent proxy)
118.107.140.138	(Pakistan)
203.81.224.201	(Pakistan)
203.81.224.202	(Pakistan)
203.81.224.203	(Pakistan)

721. The prosecution case is that the accused No.1 and nine

deceased accused had used GPS devices during the course of their journey

from Karachi to Badhawar Park, Mumbai. The investigating officers, as already stated, had seized five GPS devices from various places during the course of investigation. It is the case of prosecution that these five GPS devices were sent to the department of Justice, U.S. Along with letter of request issued by the ld. Addl.Chief Metropolitan Magistrate. The investigators wanted data of these GPS devices to be retrieved for further investigation of the case . **P.W.152- Mr.Daniel Jackson** who was working as Electronics Engineer, Forensic Examiner in F.B.I.had examined these five devices. He had also examined THURAYA phone art.Q.119. The five GPS devices have been numbered as at.Q.120 to Q.124. It may be noted here that these are the identification numbers of articles assigned to them by the F.B.I. During the course of recording of evidence the identification numbers of these six devices have not been changed.

722. P.W.152 has stated that he had undergone training in classes in respect of preparation of evidence in forensic cases. He has experience of examining over 1000 electronic devices in the laboratory of F.B.I. Electronic devices is his speciality particularly mobile phones, GPS, I-pods.

It is also stated by this witness that a software is required to copy data of

GPS to the computers. He was shown five GPS devices Q.120 to Q.124. It is stated by him that the devices were received by him on 11.2.2009 and they were examined by him in the laboratory of F.B.I. It is further stated by him that the examination commenced on 11th February, 2009 and was completed on 18th February, 2009. According to this witness no data could be retrieved from art.Q.121 and Q.122 because the data was found deleted because of depletion of batteries. Art.Q-119 was a THURAYA make satellite phone. As far as art. Q.120, Q.123 and Q.124 are concerned, they are sated to be GARMIN make GPS devices. The way-points saved in the devices were retrieved and maps of the way-points were prepared with the help of software of GARMIN. According to this witness way-points list of GPS Q.120 showed that way-points between Karachi and Mumbai were saved on this device. The first way-point was in the ocean of gulf of Karachi and the last way-point was in Mumbai. The way-points found to have been saved on the GPS device Q.123 showed locations in the city of Karachi, Pakistan. The way-points also showed some locations in the city of Mumbai. P.W.152 had submitted his report-Exh.601 colly. A compact disc of the data retrieved and the maps drawn on the basis of data have been

produced in the court as 'Derivative evidence 1' and the physical copy

described as 'Derivative evidence 2' has been produced in court at Exh. 601 colly. The C.D. is art. 517.

WIRE TAPPING

723. As stated by me earlier, the case of prosecution is that the deceased accused who had taken part in the incident at Hotel Taj, Leopold , Oberoi and Nariman House had been receiving instructions from their handlers in Pakistan. Prosecution has examined **P.W.242-Mr.Nivruti Tukaram Kadam,** Police Inspector, who had recorded telephonic conversation allegedly between some of the wanted accused on one hand and the deceased accused Nos. 1 to 9 on the other hand. The interception and recording of the conversation was done after taking approval from the competent authority. P.W.242 has stated in his evidence that he has been attached to A.T.S. as Inspector of Police. He was looking after technical wing of A.T.S. Phone interception, data analysis and collection of intelligence etc. are the tasks assigned to technical wing of A.T.S. This officer has experience of interception of telephone conversation in about 1000 cases.

724. As far as this case is concerned, it is stated by this witness that on the night intervening 26th and 27th November, 2008 he was in his office situated at Nagpada, Mumbai. Around midnight he received information from secret source that terrorists had been using mobile phone No.9910719424. He therefore found it necessary to intercept the said telephone number. According to the prevailing procedure he took approval of the Addl. Commissioner of Police Mr.Param Bir Singh (P.W.241) who was in charge of A.T.S. after the death of Mr.Hemant Karkare just before the receipt of secret information. He had put up a note before the Addl. Commissioner of Police Mr.Param Bir Singh vide Exh. 955. The Note Exh.955 was shown to P.W.241-Mr.Param Bir Singh also and he had identified his initials on the note Exh.955 and office copy of the order-Exh.956 issued to the service providers. After taking approval of the Addl. Commissioner of Police, P.W.242 had requested the service providers to transfer the mobile number 9910719424 on police land line No. 02223053162. The service provider had accordingly diverted the said number to the said land line number of police. The talk between the said mobile number and the telephone number 0012012531824 was recorded by

this witness (P.W.242). The recording commenced at 01.04 hrs. and it was concluded at 10.27 hrs. of 27.11.2008. P.W. 242 has stated that he has been listening the talk between two numbers whether it was incoming call or outgoing. He could hear voice of three persons making outgoing calls from mobile phone No.9910719424 and two persons making incoming calls to the said mobile number. He could also gather from their talk that the mobile No. 9910719424 was being used from hotel Taj. Telephone No. 0012012531824 was located in some other country (It may be noted here that telephone No.2012531824 was the number provided to Kharaksingh by Callphonex). The witness has further stated that from the talk he could also gather that names of three persons at Hotel Taj were Ali, Umar and Abdul Rehman. He had also heard one more name i.e. Shoeb during the course of the talk and said Shoeb also appeared to be at hotel Taj. The person who had been calling could be identified as Vashibhai and Kafabhai. The talk was recorded on hard disk of the computer and a C.D. thereof was prepared which is produced in the court as art.852. It is further stated by this witness that the copy of conversation between above stated two telephone numbers which is copied from the hard disk on compact disk art.852 was wrongly marked as telephone No.9910719924. It is stated by

this witness that the correct number is 9910719424 .

725. This witness had also intercepted the talk between the telephone No. 9820704561 and 0012012531824 and conversation between 9819464530 and 0012012531824 . It thus appears from the evidence of this witness that the persons on three mobile phone numbers had been contacting telephone number 0012012531824. As stated by me earlier, this telephone number was assigned to Kharaksing's account by Callphonex. The conversations on the above two phone numbers were also recorded on hard disk and were copied on compact disk which were handed over to the I.O. Art.853 was shown to the witness which bears telephone No.9820704561. Art. 854 was also shown to the witness which bears telephone number 9819464530. The witness has stated that the telephone numbers on both the compact disk have been wrongly interchanged. It is stated by him that the telephone number of compact disk art.853 is 9819464530 and telephone number on compact disc art.854 is 9820704561.

726. P.W.242 had further intercepted two other mobile numbers 9820704561 and 9819464530. He had also intercepted the telephone number 0012012531824. Notes in respect of these suspected numbers were

also put up before the Addl.Commissioner of Police Mr. Param Bir Singh

for grant of approval. The notes prepared by P.W.242 and placed before the Addl. Commissioner of Police in respect of above stated three telephone numbers are at Exh. 958, Exh.964 and Exh.961 respectively. The letters issued to service providers for monitoring the said telephone numbers and diverting the same to the police numbers are at Exh. 959 colly., Exh. 965 colly. and Exh.962 colly. respectively.

727. P.W.241-Mr.Param Bir Singh has corroborated the evidence of P.W.242 as far as the procedure adopted by P.W.242 for intercepting the telephone numbers mentioned herein above is concerned.

728. The incoming and outgoing calls of mobile number 9820704561 and 9819464530 were intercepted and recorded by P.W.242 in the office of A.T.S. Recording of these calls was also done on the hard disk of computer. The record was copied on compact disk and compact disks were handed over to the Investigating Officer under panchanama. At the same time the incoming and outgoing calls on telephone No. 0012012531824 were also intercepted on international gateways with the

help of service providers. I have already stated the service providers were

requested by the police vide Exh. 962 to provide monitoring facility for monitoring the calls of above-stated telephone numbers.

729. P.W.242 has stated that the total duration of recording of the talks was about twelve hours, thirty three minutes . It commenced at about 01.04 hours on 27th November, 2008 and was concluded at about 8.52 hours of 28th November, 2008. As stated by me earlier the recording was done on hard disk of computer. P.W.242 had thereafter copied the record on compact disk. All the compact disks were handed over to PI Mr.Shengale (P.W.270) who had visited office of A.T.S. to collect the disks. A panchanama in that regard is drawn which is produced at Exh.818. P.W.242 has identified his signature on the panchanama. The C.Ds. were sealed in his presence. They were shown to him in the court and he has identified all the C.Ds. He has also given evidence as to how the mistakes had been committed in recording the telephone numbers on the compact disk. Evidence in that regard has been discussed in detail by me herein above.

730. **P.W.270- Mr.Keshav Sakharam Shengale**, Police Inspector,

has also corroborated the evidence of P.W.242. He has stated that on 9th

January, 2009 he had visited office of A.T.S. at Byculla and had collected C.Ds. From PI Mr.Kadam and had sealed the same in the office of A.T.S. itself in presence of two panchas. He has identified his signature on the panchanama-Exh.818.

731. The prosecution has produced these C.Ds. in the court and has also produced transcription of conversation recorded by P.W.242.

732. Prosecution has examined **P.W.245-Mrs. Shalini Sanjay Sharma**, Police Inspector who has transcribed and has simultaneously translated the conversation from Punjabi to Hindi. Her mother tongue is Punjabi. She has experience of translating about 1500 to 3000 documents from Punjabi to Hindi . In this case also she had done transcription and translation on the request of P.I. Mr.Shengale. This work was carried out by her in a confidential room of DCB CID and she was assisted by staff of DCBCID. The transcription and translation was completed during the period between 27th April 2009 to 3rd August, 2009. Five books containing transcription have been produced in the court as Exh. 852B, Exh.853B,

Exh.854B, Exh.855B and Exh.856B . It is stated by this witness that

English talk was not translated into Hindi. Only Punjabi talk was translated into Hindi. It is stated by this witness that abbreviations T, TI, TII etc. refer to the persons who were receiving instructions and abbreviations UK, UKI, UKII, UKIII etc. refer to the persons who were issuing instructions.

733. As far as cross-examination of P.W.242 and P.W.245 is concerned, ld. Advocate Mr. Abbas Kazmi has extensively cross-examined the witnesses. It is stated by P.W.242 in his cross-examination that the information regarding first suspected telephone number was received in the midnight and the information regarding three other suspected numbers was received at about 3.00 a.m. of 27th November, 2008. It is admitted by him in his cross-examination that in his police statement he has not stated that the first call was intercepted at 01.04 hours on 27th November, 2008. He has further admitted that his notes submitted before Addl.C.P. Vide Exh. 955 , Exh.958, Exh.961 and Exh.964 did not bear date. He has also admitted that there was no prior approval of the competent authority. In fact it is the case of prosecution itself that the competent authority had granted sanction *ex post facto* . The witness has stated in his cross-examination that he could

hear only one conversation if two or more conversations were overlapping .

The witness has further admitted that talk No.29 of Art.853 (**transcription art.853B**) does not tally with any of the talks shown in the transcription of art.856 (**transcription art.856B**) .

734. As far as P.W.245-Mrs. Shalini Sanjay Sharma is concerned , she has admitted in her cross-examination that she could not follow meaning of some of the Punjabi words she had come across during the hearing of conversation and therefore, she had written those words verbatim in the transcription. There is nothing more in her cross-examination which can be discussed here. She has denied suggestion that the transcription and translation was not accurate.

735. Evidence of **P.W.241-Mr.Param Bir Singh** has been partially discussed while discussing evidence of P.W.242. Only part which remained to be stated here is that *ex post facto* orders were issued by the Addl.Chief Secretary, Home Department, Government of Maharashtra vide Exh.957, Exh.960, Exh.963 and Exh.966.

736. The Addl. Chief Secretary (Home) , Government of

Maharashtra **Mrs. Chitkala Zutshi** has also been examined by the prosecution as **P.W.253.** Exh.957, Exh.960, Exh.963 and Exh.966 were shown to this witness. It is stated by this witness that she had been authorized by the State Government to accord sanction u/s 5(2) of Indian Telegraph Act, 1885. She had granted permission for intercepting telephone Nos. 9910719424, 9820704561, 9819464530 and 0012012531824 on 4th December, 2008. The permission was granted to the Commissioner of Police, Mumbai and intimation was given to all the service providers. She has identified her signature on Exh. 957, Exh.960, Exh.963 and Exh.966. It is stated by this witness that the proposals received from P.W.241-Mr.Param Bir Singh were examined by her and she was convinced that interception of these telephone numbers was necessary. The proposals disclosed that these four numbers were allegedly used by the terrorists during the incident dated 26th November, 2008. She had granted sanction in exercise of her powers under sub-section (2) of Section 5 of Indian Telegraph Act 1885 and under Rule 419(A)(1)(ii) of Indian Telegraph Rules, 1951 as amended by the Rules of 1999.

737. P.W.243- Mr.Vinod Digarsingh Kapri and **P.W.244-**

Ms.Archana Rajendra Singh have been examined by the prosecution to establish the allegation against accused that the deceased accused had contacted India TV to convey their message to the Government. **P.W.243- Mr.Vinod Digarsingh Kapri** was working as Managing Editor of India TV since 2007. He was head of news operations . His office and studio, both are situated at Noida, U.P. On 26th November, 2008 at about 10.00 p.m.he was in the office. At that time a news was received that there had been an incident of gang war at Mumbai. Since the India TV channel is 24 hours channel, the incident which commenced on 26th November , 2008 at Mumbai, was being covered by this channel continuously. During the broadcasting of news at about 8.30 a.m. on 27th November, 2008, a call was received on India TV channel phone No. 9350593505 from a person who claimed to be a terrorist. P.W.243 had spoken to the said person on telephone. P.W.243 was informed that the said person was calling from Oberoi Hotel and his name was **Shahdullaha.** P.W.243 heard it to be **Fadullaha .** The channel decided to air the talk between the channel and the said person live. Since there was no such facility available on telephone No. 9350593505, the caller was called by the channel from land line

number-0120-4051000 on the basis of caller I.D. displayed earlier. The

caller ID of caller was 9769679723 . The said call went on for about 2 to 3 minuted. The second call was received from one Imran Babar calling from Nariman House . This call was also received on telephone number 9350593505. The channel had contacted the caller from telephone no. 0120-4051000. The conversation went on for about thirty minutes. The talk No.17 of art.853 was played in open court. The witness has identified the said conversation and has stated that voice of their one of the staff members namely Jacob was there in the conversation played in open court. This conversation was aired live on 27th November, 2008.

738. P.W.244- Ms.Archana Rajendra Singh is another employee of India TV. This witness has stated that she was in the studio with her anchor Mr.Manish Bajpaye. It is stated by this witness that the talk between the terrorist Imran and India TV was aired live during the period when she was in the studio on 27th November, 2008. Talk No.17 of art.853 was played before this witness also. She has identified the same and has also identified her voice in the said talk. She has further identified voice of P.W.243-Mr.Vinod Kapri.

739. As far as the transcription of conversation between the alleged handlers and the deceased accused who were allegedly present at Hotel Taj, Oberoi and Nariman House is concerned, the contents of the compact CD and transcription thereof will be discussed in the later part of the judgment when I begin appreciation of evidence of prosecution witnesses along with statement of accused No.1.

740. However, what is necessary to be stated here is that the prosecution case is that mobile No.9910719424 was used by the deceased accused who were at Hotel Taj for being in contact with the wanted accused/ handlers who according to the prosecution case were stationed somewhere in Pakistan. It is therefore necessary to see what evidence the prosecution has led to establish that the cell phone number 9910719424 was being operated from Hotel Taj.

741. Substance of evidence of P.W.190-Mr.Milind Ramchandra Kurade, API, has already been stated by me in earlier part of the judgment while discussing the evidence with respect to recovery of articles from

Hotel Taj. P.W.190 has stated in his evidence that the Nokia mobile phone -art.670 was recovered from bag- art.664 which was seized during the course of search of Golden Dragon Restaurant of Hotel Taj. There were in all two bags - art.663 and art.664. The Nokia phone art.670 was found in the bag -art.664.

742. P.W.267-Mr.Kundalik Yankatrao Nigade , Police Inspector, is the main Investigating Officer of C.R.No.242 of 2008 which was earlier being investigated by Colaba Police Station. This witness in his evidence has stated that investigation of this case was assigned to him as per orders passed by his superior officers and he took charge of investigation from PI Mr.Patil (P.W.234) on 6th December, 2008. C.R.Number of DCBCID of the same case is 194/08. It is also stated by this witness that ninety seven sealed packets were handed over to him by Mr.Patil when the investigation was taken over by him. These ninety seven sealed packets were in the custody of Colaba Police Station after being seized by various officers under various panchanamas drawn at hotel Taj details of which have also been stated by me in the earlier part of this judgment. This witness during the course of his evidence has stated that C.Ds. containing photographs of

accused No.1 when he was passing through the foot over bridge over

D.N.Road, CST was also taken charge by him under the panchanama Exh.1124 and the same was handed over to Mr.Badgujar (P.W.158) who was investigating C.R.No.187/08 of DCBCID (original CR No. 245/08 of Azad Maidan Police Station pertaining to the incident which had occurred inside Cama Hospital). He had also seized two hard disks from possession of PSI Mr.Dhemare (P.W.223) , Reader to D.C.P.Zone-I. These two hard disks were handed over to D.C.P. Zone-I by the officers of Hotel Taj. They were seized under panchanama-Exh.823. The details in respect of this part of evidence have also been discussed by me herein above.

743. As far as investigation of C.R.No.194/08 of DCB CID (pertaining to the incident in hotel Taj) is concerned, P.W.267 has stated that pistol art.946, five empties of AK-47, twelve rounds of 7.62 mm and two bayonets produced by Sunil Kudyadi (P.W.269), Security Officer of Hotel Taj were seized under panchanama Exh.1125. The witness has identified the magazines-art. 994 colly., art.995, art.996 and art.997. He has also identified ten live rounds and two empties of 7.62 mm and has stated that two live rounds might have been used by the Ballistic Expert for

test firing. The ten live rounds are art. 998 colly and two empties are

art.999 colly. The bayonets have also been identified by the witness as art.1000 and art.1001.

744. On 20th December, 2008 another security officer of Hotel Taj Mr. Bhirade (P.W.268) has produced one pistol with magazine and one more empty magazine before P.W.267. They were seized under pachanama Exh.752. The witness has identified art. 677 colly.- pistol and the magazine and has also identified single empty magazine -art.678.

745. On 2nd April, 2009 P.W.267 got two hand-grenades defused with the help of B.D.D.S. under the panchananama -Exh. 1126. As far as the mobile phones seized during investigation of Hotel Taj's case are concerned, it is stated by P.W.267 that two packets- part of 97 packets received from Colaba Police Station by DCBCID, contained two mobile phones. The mobile phones art.668 and art.670 were shown to the witness along with wrappers- art.669 and 671. The witness has identified both the mobile phones and has stated that both the phones were found loaded with Airtel mobile SIM card . IMEI No. of art. 668 was 353526/02/404945/1

and IMEI No. of art. 670 was 353526/02/584089/0. The SIM card numbers

of both the phones were 8991310000200898887 8H2 and H2 8991100808125172392 respectively. Cell numbers of the SIM cards were 9007625710 and 9910719424 respectively. After opening both the packets the SIM cards were separately sealed and mobile phones were separately sealed. The SIM cards along with wrappers were produced in the court and they were shown to the witness. He has identified both the SIM cards. It is stated by P.W.267 that after removal of SIM cards from the mobile phones he had requested the Manager of Bharti Airtel Ltd to give details of both the SIM cards vide his letter Exh. 1078. P.W.258- Mr.Sunil Subhaschandra Tiwari had provided the details of mobile cell No. 9910719424.

746. As far as GPS recovered during the course of investigation are concerned, they were handed over to PI Chavan for Investigation .

747. Evidence of **P.W.258-Mr.Sunil Subhaschandra Tiwari** reveals that the SIM card bearing cell No.9910719424 was issued from Delhi circle to one Suresh Prasad and SIM card of cell No. 9007625710 was

issued from Kolkata circle. The said phone was found to be idle . It has also come in the evidence of witnesses examined by the prosecution and the Investigating Officers that the said Suresh Prasad in whose name cell No. 9910719424 was issued could not be traced. The papers produced by him at the time of obtaining SIM card were found to be fake.

748. In this regard the prosecution has examined **P.W.590-Mr.Salil K.Saxena,** Officer of Bombay Suburban Electricity Supply (B.S.E.S.), Rajdhani Power Ltd., and **P.W.264-Mr.Kanu Gopal Mohanta**, Under Secretary, Ministry of Urban Development (Administration) , New Delhi. The Nodal Officer Mr.Sunil Tiwari (P.W.258) has produced the documents art-987 colly. which include the application submitted by Suresh Prasad for issuing SIM card for cell phone No.9910719424. It is stated by P.W.258 that the record received from Delhi office was handed over to Investigating Officer Mr. Nigade by him. He has also produced call data record of cell No.9910719424. It is stated by him that it bears signature of Mr. Rakesh Bakshi, Nodal Officer of Delhi Circle. P.W.258 is able to identify signature of Mr.Rakesh Bakshi because once upon he was working with Mr.Bakshi. It is also stated by P.W.258 that cell phone No.9910719424 was diverted to

police land line No. 02223053162 on the request of Addl.C.P. Mr.Param Bir Singh. The witness has produced the permission granted by the Addl.Chief Secretary Mrs.Chitkala Zutshi vide art.989. This permission was granted to intercept the said mobile number. It is this number which was used by the deceased accused who were at Hotel Taj, to contact the wanted accused who according to prosecution case were stationed somewhere in Pakistan.

749. As such prosecution has led evidence to establish that accused had carried mobile phones with them loaded with SIM cards and that one of such mobile was used by the deceased accused from Hotel Taj to contact the wanted/co-accused . Whether the prosecution has been able to establish this fact on the basis of above stated evidence will be stated later on when I appreciate evidence of witnesses.

750. The case of prosecution is that the deceased accused No.6-Abadul Reheman Chhota @ Saakib and No.7-Fahad Ullah and had contacted wanted accused from cell No.9820704561. It is also the case of prosecution that cell No.9820704561 was issued in the name of Mrs. Rita Agarwal by Vodafone . It is also the case of prosecution that Mrs.Rita

Agarwal was in Tiffin Restaurant at the time of incident. It is also the case of prosecution that there was indiscriminate firing in the hotel. As such it is the case of prosecution that Mrs.Rita Agarwal was died in the hotel Tiffin and her cell phone was used by the deceased accused by inserting the SIM card in their own cell phone. The details of the SIM card which was of Vodafone (earlier known as Orange) were obtained from the Company. [It is the case of prosecution that deceased Mrs.Rita Agarwal was at Hotel Oberoi on the night of incident and her SIM card was used by the terrorists in their cell phone.]

751. The evidence of P.W.226-Mr.Subalkar, PSI, has also been reproduced by me herein above. He had drawn inquest panchanama of one of the dead bodies of terrorists. A Nokia mobile phone model No.1200 bearing IMEI No.3535260259336207 was recovered from one of the trouser packets of the deceased. It was loaded with one Orange SIM card. It was seized under panchanama-Exh.790.

752. Prosecution has examied **P.W.236-Mr.Changdeo Haribhau Godse**, Asstt. Nodal Officer of Vodafone. It is stated by this witness that

each mobile equipment has got a unique number known as IMEI

(International Mobile Equipment Identity) number. Last digit number of the said number is always '**0**'. The last digit of the instrument may be from 1 to 9 but when the data is stored in the system pertaining to particular instrument the last digit is always shown as '0'. As such the data retrieved in respect of user of any cell phone would show the IMEI number and last digit thereof would be '0'. It is stated by this witness that according to the company record cell phone number 9820704561 was issued to one Ms.Rita Sanjay Agarwal. The original application and copies of documents submitted by Ms.Rita Sanjay Agarwal for obtaining the number were furnished to the police. They have been produced in court by the prosecution and they are at Exh.920 colly. The number of SIM card issued to Ms.Rita Sanjay Agarwal ws 8991200011481609060. The call data record of said number was also furnished to the police by P.W.236. The printouts of call data record are at Exh.921 colly. The record at page No.35 to 38 is relevant for the purpose of allegations against the accused.

753. It can be seen from the document **Exh.921 colly.** that telephone No.9820704561 was issued to Ms. Rita Agarwal when the company was

known as **Orange** in India. The telephone and SIM card number mentioned in the application tally with the evidence given by the witness. It can be seen from the printouts of call record that first there was an outgoing call made from mobile phone model-1200 of the accused by using SIM card of Rita Agarwal. The time of first ever call after putting Rita Agarwal's SIM card is recorded at 23.09.35. The details of this part of evidence i.e. call record and the conversation will be discussed in later part of the judgment when I appreciate the evidence with regard to allegation of conspiracy.

754. Apart from this, one more mobile was seized during the course of investigation of Oberoi Case. When the investigation was taken up by P.W.270-PI Mr.Shengale, he had opened two sealed packets out of the property seized during investigation. The two sealed packets containing mobile phones were opened to note down the SIM card details. The SIM cards were again sealed after noting down the details thereof. P.W.270 has identified the mobile phone art.1009. It is stated by him that the SIM card art.796 was removed from the mobile phone-art.1009 and SIM card art.-797 was removed from mobile phone-art.786.

755. As far as one more mobile phone seized from hotel Oberoi is concerned, it is the case of prosecution that the SIM card bearing cell No. 9769679723 was used in the said phone . This SIM card was issued to Ms. Lia Kristina Ringner who was staying in room No. 1856 of Hotel Oberoi. It is the case of prosecution that Ms.Lisa Ringner and friend suddenly left room of the hotel without collecting their belongings due to the incident of firing.

756. Prosecution has examined **P.W.250-Ms.Lisa Kristina Ringner** . This lady has stated in her evidence that she had left room No.1856 occupied by herself and her friend suddenly because of incident of firing and that she could not collect her belongings . She had stated that her cell phone was having cell phone No.9769679723.

757. P.W.236-Mr. Changdeo Godse has also produced the original application form and xerox copies of the documents accompanying the form which are at Exh.924 colly. P.W.250 Ms.Lisa Ringner has identified her signature on the application form which is part of Exh.924 colly. P.W.236 has also furnished call data record of the said cell phone to the police along

with his covering letter. The call data record and letter has been produced

in court at Exh.925 colly. This call data record is related to the alleged conversation between the accused at Hotel Oberoi and the staff members of NDTV who were sitting in the studio of NDTV at Noida, U.P. As stated earlier Ms. Lisa Ringner could not collect her belongings including the cell phone when she left the hotel room No.1856. It is the case of prosecution that the SIM card of Ms.Lisa Ringner was used by the accused in one of the Nokia phone carried along with them when they had come from Pakistan by sea. The evidence with regard to the IMEI number , call duration and other incidental issues will be discussed in the later part of the judgment.

758 There is one more telephone number which was used by the deceased accused who were allegedly involved in the incident at Nariman House. The said telephone Number is 9819464530. This cell phone number was issued to Mr.Gavriel Holtzberge by Vodafone. Mr.Gavriel Holtzberge is one of the persons who were killed by the accused at Nariman House. It is the case of prosecution that his SIM card was used by the accused for contacting their handlers/wanted accused who were allegedly stationed somewhere in Pakistan. P.W.236 has stated in his evidence that

the original application form of Mr.Gavriel Holtzberge is part of Exh.926 colly. which include zerox copies of the documents on the basis of which Mr.Gaviedl Holtzberge had applied for cell phone number. The original documents were furnished to the police by P.W.236 and they have been produced in the court. The call data record of this cell phone number was also furnished to the police by P.W.236 vide Exh.927 colly. According to this witness Exh.927 colly. includes covering letter, call data record and the certificate issued by the service provider. The call summary was prepared on the basis of call data record by P.W.236. The said summary has also been produced in the court at Exh.928 .

759. It is also stated by P.W.236 that cell phone No. 9819464530 (Mr.Gavriel Holtzberege) and cell phone No.9820704561 (Ms.Rita Agarwal) were monitored on the request of police. The lines of above stated two cell phone numbers were diverted to police land line Nos. 02223006174 and 02223006278 respectively.

760. As such what can be gathered from the evidence of Investigating Officers and the Nodal Officers of Airtel and Vodafone that

telephone No.9910719424 (Taj), 9820704561 (Oberoi) and 9819464530

(Nariman House) were monitored and diverted to police land line on the request of police. It also can be gathered that the conversation was heard and recorded by P.W.242- Mr.Nivruti Kadam. The recording was done on hard disks of computer . Compact disks were prepared from the hard disks and they were handed over to the Investigating Officers. Transcription and translation of the talk was done by Mrs.Shalini Sharam-P.W.245 . As stated earlier by me, the detail discussion ,consideration and appreciation of this part of evidence also will be done when the evidence as a whole is appreciated in the light of arguments submitted by both the sides.

761. The prosecution has also examined some witnesses on affidavits u/s 296 Cr.P.C. to establish that a particular deceased had died at a particular place during the course of incident. In this regard it may be noted here that some of the witnesses already examined in the court have given evidence about the place of death of some of the deceased including police officers. Since there was large scale killing, the dead bodies were removed to hospitals by police and members of the public as well. Even in some cases relatives of the deceased and the police did not know as to who had

brought dead body of particular person to particular hospital. As such the evidence recorded in open court of the witnesses do not mention about removal of all the dead bodies of the persons alleged to have been killed by the accused No.1 and the deceased nine accused.

762. As far as deceased from Sr.Nos. 21 to 29 except the deceased at Sr.No.26 and 29 (**Cama Out incident**) are concerned, evidence of the witnesses recorded in open court has already disclosed as to where a particular deceased was killed or injured . The said evidence is part of the evidence discussed by me in the foregoing paragraphs. Similarly, the evidence in respect of place of death of deceased at Sr.Nos.30 to 36 (**Cama In incident**) has also come on record in the evidence of witnesses already discussed herein above.

763. As regards **C.S.T. incident**, it may be mentioned here that evidence in respect of place of death of the deceased who were police officers or the deceased who were known to the police or the deceased who were accompanied by their relatives or friends at the time of incident, has come on record in oral evidence of witnesses recorded in open court.

However, most of the deceased who died on the spot or who were seriously injured and later on succumbed to injuries in the hospitals, were removed to the hospitals either by the police or by the public . As such the persons who carried the dead bodies or the injured to the hospitals were not knowing the deceased or the injured who died in the hospitals later on. The prosecution has therefore led evidence to establish place of death of the deceased in the form of affidavits of witnesses who had either seen the deceased at the places of alleged offences or who had carried dead bodies to the hospitals.

764. Similarly, in the case of incident at **Hotel Taj** also evidence of witnesses who had carried dead bodies or who had seen deceased at hotel Taj, has been adduced in the form of affidavits. It appears from the affidavits submitted by the prosecution that a large number of dead bodies at Hotel Taj were seen by the witness P.W.619- Mr.Purnanand Bhagatram Petwal who was working as Security Officer. Some of the dead bodies were either seen or taken to the hospitals by the other members of the staff of Hotel Taj. Prosecution has produced affidavits of these witnesses.

765. In the case of incident at **Hotel Oberoi** also the witnesses

whose affidavits have been produced in the court, had either seen the dead bodies at the hotel or had taken the dead bodies to the hospital. Some of the deceased were killed in presence of the witnesses already examined by the prosecution. Their evidence has been discussed by me herein above in foregoing paragraphs.

766. In the case of **Hotel Leopold** also majority of the dead bodies were sent at the hospital by P.W.533-Farzad Sheriyar Jehani, the owner of the hotel . His two affidavits have been produced by the prosecution. His first affidavit was in respect of loss suffered by him due to the incident and the second affidavit is in respect of names of the deceased.

767. As regards **Vile Parle Taxi Blast** is concerned, it may be noted here that the dead bodies were beyond recognition because of heavy impact of explosion. The dead bodies of deceased Mohd. Umar and Laxminarayan Goyal had been reduced to pieces of bones and flesh. Their identity could be established by the oral evidence already discussed by me. The D.N.A. report from Forensic Science Laboratory had established that only two persons had died in the said explosion.

768. In the case of **Mazgaon Taxi Blast,** the dead bodies of two female passengers Mrs. Zarina and Mrs.Reema had been identified by their relative P.W.176-Mohd. Rabiul Mohd.Kiramal Shaikh who had visited the hospital immediately after the incident. From the evidence of witnesses pertaining to Mazgaon incident it can be seen that the name of taxi driver was revealed to be Fulchandra Ramchandra Bind. Parts of his dead body were badly mutilated. They were handed over to his brother Mr.S.R.Bind (P.W.293).

769. In the case of **Nariman House,** the dead bodies of Mr.Salim Husain Harharwala and Mrs. Mehzabin @ Maria Salim Harharwala had been identified by their son P.W.206-Mr.Mohd. Salim Harharwala. As regards other dead bodies in the case of Nariman House also the prosecution has adduced evidence in the form of affidavits of witnesses u/s 296 Cr.P.C.

770. As such names of witnesses who had either carried dead bodies to the hospitals from the places of the alleged incidents or who had

seen the dead bodies at the said places, names of the deceased, name of the

place of incident and date can be put in a tabulated form as under :

TABLE NO.4:

LIST OF WITNESSES WHO CARRIED OR HAD SEEN DEAD BODIES OF THE DECEASED

1	2	3	4	5
Sr. No	**Name of the deceased**	**Name of witnesses who carried or had seen the dead bodies**	**Place of incident**	**Name of the hospitals & Date**
1	Salim Hussain Harharwala	Mr.Mohd. Salim Harharwala (PW 206)	Nariman House	St.George's hospital 26-11-2008
2	Mehzabin @ Maria Salim Harharwala	Mr.Mohd. Salim Harharwala (PW 206)	Nariman House	St.George's hospital 26-11-2008
3	Rivka Gavriel Holtzberg	Mr.Kishor Rajaram Jagdale (PW 627)	Nariman House	J.J.Hospital 28-11-2008
4	Rabbi Gavriel Noach Holtzberg	Mr.Sachin Shrikant Thik (PW 613)	Nariman House	J.J.Hospital 28-11-2008
5	Gajendra Singh	Mr.Vijay Madhavrao Kore (PW 630)	Nariman House	J.J.Hospital 28-11-2008
6	Ben Zion Chroman	Mr.Prashant Vithal Gardi (PW 629)	Nariman House	J.J.Hospital 29-11-2008
7	Norma Shvarzblat Robinovich	Mr.Prakash Manohar Tulaskar (PW 628)	Nariman House	J.J.Hospital 29-11-2008
8	Rajendrakumar Baburam Sharma	-	-	-

1	2	3	4	5
9	Yokevet Mosho Orpaz	Mr.Prakash Manohar Tulaskar (PW 628)	Nariman House	J.J.Hospital 29-11-2008
10	Subhash Vanmali Vaghela	Mr.Bharat Wanmani Waghela (PW 303)	Leopold	J.J.Hospital 27-11-2008
11	Pirpashi Mehboobali Shaikh	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
12	Shahabuddin Sirajuddin Khan	Mr.Lalu Manjiram Bhojane(PW 626)	Leopold	St.George's 26-11-2008
13	Harishbhai Durlabbhai Gohil	Mr.Tushar Bhanudas Gaikwad (PW 625)	Leopold	St.George's 26-11-2008
14	Hidayatullah Anwarali Kazi	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
15	Malyesh Manvendra Banarjee	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
16	Gourav Balchand Jain	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
17	P.K. Gopalkrishnan	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
18	Kamal Nanakram Motwani	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
19	Jurgen Hienrich Rudolf	Mr.Farzad Sheriyar Jehani (PW 533)	Leopold	St.George's/ G.T.Hospital 26&27-11 2008

1	2	3	4	5
20	Daphne Hilary Schmidt	Mr.Farzad Sheriyar Jehani (PW 533	Leopold	St.George's/ G.T.Hospital 26&27-11 2008
21	Hemant Kamlakar Karkare	Mr.Nithin Mathane (PW 130)	Cama Out	J.J.Hospital 26-11-2008
22	Ashok Marutirai Kamate	Mr.Nithin Mathane (PW 130)	Cama Out	Bombay Hospital 26-11-2008
23	Vijay Sahadev Salaskar	Mr.Shantilal Arujn Bhamre (PW 133)	Cama Out	G.T.Hospital 26-11-2008
24	Bapurao Sahebrao Durgude	Mr.Suresh Shantaram Kadam (PW 138)	Cama out	St.Georges 26-11-2008
25	Balasaheb @ Nana Chandrakant Bhosale	Mr.Arun Dada Jadhav (PW 136)	Cama Out	--- 26-11-2008
26	Arun Raghunath Chite	Mr.Ashok D. Khedkar (PW 654)	Cama Out	G.P.Hospital 27-11-2008
27	Jayawant Hanumant Patil	Mr.Arun Dada Jadhav (PW 136)	Cama Out	--- 26-11-2008
28	Yogesh Shivaji Patil	Mr.Arun Dada Jadhav (PW 136)	Cama Out	--- 26-11-2008
29	Surendrakumar Bindu Rama	Mr.Ashok D. Khedkar (PW 654)	Cama Out	G.P.Hospital 27-11-2008
30	Prakash Pandurang More	Mr.Sadanand Vasant Date (PW 118)	Cama In	--- 26-11-2008
31	Vijay Madhukar Khandekar	Mr.Sadanand Vasant Date (PW 118)	Cama In	--- 26-11-2008
32	Baban Balu Ughade	Mr.Raosaheb Chagdev Funde (PW 107)	Cama In	--- 26-11-2008
33	Bhanu Devu Narkar	Mr.Kailash C. Ghegadmal (PW 111)	Cama In	--- 26-11-2008

1	2	3	4	5
34	Thakur Budha Vaghela	Mr.Bharat Budhabhai Waghela(PW 103)	Cama In	G.T.Hospital 26-11-2008
35	Bhagan Gangaram Shinde	Mr.Bharat Budhabhai Waghela(PW 103)	Cama In	G.T.Hospital 26-11-2008
36	Shivashankar Nirant Gupta	Mr.Bharat Budhabhai Waghela(PW 103)	Cama In	---- 26-11-2008
37	T.Suda Hisashi	Mr.Sushil Atmaram Nagmote (PW 621)	Oberoi	Bhombay Hospital 26-11-2008
38	Murad Amarsi	Mr.Kripalsingh Sundersingh Maan **(PW 352- Panch witness)**	Oberoi	PW 352 had seen the dead body at Oberoi 28-11-2008
39	Loumiya Hiridaji Amarsi	Mr.Arjun Sakharam Sawant **(PW 355- Panch witness)**	Oberoi	PW 355 had seen the dead body at Oberoi 28-11-2008
40	Scherr Alan Michael	Mr.Kripalsingh Sundersingh Maan **(PW 352- Panch witness)**	Oberoi	PW 352 had seen the dead body at Oberoi 28-11-2008
41	Neomi Leiya Sher	Mr.Shivaji Shankar Pawar (PW 624)	Oberoi	J.J.Hospital 28-11-2008
42	Sandeep Kisan Jeswani	Mr.Abhimanyu Abhay Lodha **(PW 351- Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008
43	Lo Hawei Yen	Mrs.Abhita Ketan Chaudhary **(PW 358 – panch witness)**	Oberoi	PW 358 had seen the dead body at Oberoi 28-11-2008

1	2	3	4	5
44	Jhirachant Kanmani @ Jina	Mr.Sunil Atmaram Nagmote (PW 621)	Oberoi	---- 27-11-2008
45	Altino D' Lorenjo	Mr.Sunil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
46	Brett Gilbert Tailor	Mr.Sunil Atmaram Nagmote (PW 621)	Oberoi	---- 27-11-2008
47	Farukh Dinshaw	Mr.Sunil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
48	Reshama Sunil Parikh	Mr.Champala Raichandji Chouhan **(PW 365 – Panch witness)**	Oberoi	PW 365 had seen the dead body at Oberoi 28-11-2008
49	Sunil Shevantilal Parekh	Mr.Champala Raichandji Chouhan **(PW 365 – Panch witness)**	Oberoi	PW 365 had seen the dead body at Oberoi 28-11-2008
50	Ajit Shrichand Chabriya	Mr.Champala Raichandji Chouhan **(PW 365 – Panch witness)**	Oberoi	PW 365 had seen the dead body at Oberoi 28-11-2008
51	Sanjay Vijay Agarwal	Mr.Shrirang Dnyanu Jadhav (PW 623)	Oberoi	J.J.Hospital 28-11-2008
52	Rita Sanjay Agarwal	Mr.Ravindra Anant Chavan (PW 612)	Oberoi	---- 27-11-2008
53	Mohit Kanhaiyalal Harjani	Mr.Anant Kashiram Mandalik **(PW 353 – Panch witness)**	Oberoi	PW 353 had seen the dead body at Oberoi 28-11-2008
54	Monika Ajit Chabriya	Mr.Arjun Sakharam Sawan **(PW 355- Panch witness)**	Oberoi	PW 355 had seen the dead body at Oberoi 28-11-2008

1	2	3	4	5
55	Harsha Mohit Harjani	Ms.Richa Suhas Thakur **(PW 359 – panch witness)**	Oberoi	PW 359 had seen the dead body at Oberoi 28-11-2008
56	Ravi Dara	Mrs.Abhita Ketan Chaudhary (PW 358-Panch witness)	Oberoi	PW 358 had seen the dead body at Oberoi 28-11-2008
57	Uma Vinod Gark	Mrs.Abhita Ketan Chaudhary (PW 358-Panch witness)	Oberoi	PW 358 had seen the dead body at Oberoi 28-11-2008
58	Pankaj Somchand Shah	Mr.Abhimanyu Abhay Lodha **(PW 351-Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008
59	Ashok Kapoor	Mr.Abhimanyu Abhay Lodha **(PW 351-Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008
60	Anand Suryadatta Bhatt	Mr.Abhimanyu Abhay Lodha **(PW 351-Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008
61	Rohington Bajji Mallu	Mr.Abhimanyu Abhay Lodha **(PW 351-Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008
62	Kannubhai Zaverbhai Patel	Mr.Abhimanyu Abhay Lodha **(PW 351-Panch witness)**	Oberoi	PW 351 had seen the dead body at Oberoi 28-11-2008

1	2	3	4	5
63	Ami Bipinichandra Thaker	Mr.Sunil Atmaram Nagmote (PW 621)	Oberoi	---- 27-11-2008
64	Jordan Geigy Fernandise	Mr.Pradeep Rammurthy Bengalorkar (PW 212)	Oberoi	----- 27-11-2008
65	Neeta Prakash Gaikwad	Mr.Sushil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
66	Shaunak Jayawant Chemburkar	Mr.Gurumeetsingh Sarjansingh Lal (PW 622)	Oberoi	--- 26-11-2008
67	Wilson Baburao Mandalik	Mr.Sushil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
68	Sarjerao Sadashiv Bhosale	Mr.Sushil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
69	JasminMahendrasingh Burji	Mr.Sushil Atmaram Nagmote (PW 621)	Oberoi	---- 26-11-2008
70	Sanjy Sambhajirao Surve	Mr.Gurumeetsingh Sarjansingh Lal (PW 622)	Oberoi	---- 26-11-2008
71	Bimolchand Maibam	Mr.Sushil Atmaram Nagmote (PW 621	Oberoi	---- 26-11-2008
72	Mohabbat Umer Abdul Khalid	Mr.Shankar Chandrakant Tambe (PW 164) Mr.Ramchandra Rohidas Lotlikar (PW 167)	Vile Parle	--- 26 & 27-11-2008

1	2	3	4	5
73	Laxminarayan Goyal	Mr.Shankar Chandrakant Tambe (PW 164) Mr.Ramchandra Rohidas Lotlikar (PW 167)	Vile Parle	--- 26 & 27-11-2008
74	Mrs.Jarina Samsuddin Shaikh	Mr.Mohd. Rabiul Mohd. Kiramal Shaikh (PW 176) Mr.Abdul Salim Shaikh (PW 177)	Mazgaon	J.J.Hospital 27-1-2008
75	Fulchandra Ramchandra Bind		Mazgaon	
76	Mrs.Reema Mohamad Rabivul	Mr.Mohd. Rabiul Mohd. Kiramal Shaikh (PW 176) Mr.Abdul Salim Shaikh (PW 177)	Mazgaon	J.J.Hospital 27-1-2008
77	Shashank Chandrasen Shinde	Mr.Sudama Aba Pandarkar (PW 62)	C.S.T.	St.George's 26-11-2008
78	Aamina Begum Hamid Shaikh	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
79	Ashraf Ali Allahrakha Shaikh	Mr.Sandip Suryabhan Tayade (PW 653)	C.S.T.	St.George's 26-11-2008
80	Ajij Nabilal Rampure	Mr.Ankush Rambhau Ganjure (PW 78)	C.S.T.	St.George's 26-11-2008
81	Aakash Akhilesh Yadav	Mr.Suresh Narayan Pawar (PW 636)	C.S.T.	--- 26-11-2008
82	Mukesh Bhikaji Jadhav	Mr.Santosh Kalu Supe (PW 641)	C.S.T.	St.George's 26-11-2008

1	2	3	4	5
83	Sitaram Mallapa Sakhare	Mr.Santosh Kalu Supe (PW 641)	C.S.T.	St.George's 26-11-2008
84	Rahamtulla Ibrahim	Mr.Santosh Kalu Supe (PW 641)	C.S.T.	St.George's 26-11-2008
85	Mishrilal Mourya Shri Garib Mourya	Mr.Dashrath Vittal Kamble (PW 645)	C.S.T.	St.George's 26-11-2008
86	Vinod Madanlal Gupta	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
87	Sunil Ashok Thackare	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
88	Haji Ejaj Bhai Imamsaheb Dalal	Mr.Santosh Kalu Supe (PW 641)	C.S.T.	St.George's 26-11-2008
89	Mira Narayan Chattarji	Mr.Rajendra Ukha Jadhav (PW 642)	C.S.T.	St.George's 26-11-2008
90	Shirish Sawla Chari	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
91	Sushilkumar Vishwambhar Sharma	Mr.Santosh Yeshwant Gawade (PW 644)	C.S.T.	St.George's 26-11-2008
92	Murlidhar Laxman Choudhary	Mr.Rajesh Mahadev Shinde (PW 637)	C.S.T.	St.George's 26-11-2008
93	Ambadas Ramchandra Pawar	Mr.Sudama Aba Pandarkar (PW 62)	C.S.T.	--- 26-11-2008
94	Jaikumar Durairaj Nadar	Mr.Sadashiv Keshav Mandavkar (PW 650)	C.S.T.	St.George's 26-11-2008
95	Deepali Janardhan Chitekar	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
96	Raju Janardhan Chitekar	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008

1	2	3	4	5
97	Aditya Ashok Yadav	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
98	Isibul Raheman Faizuddin Raheman Shaikh	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
99	Prakash Janath Mandal	Mr.Baban Bhojraj More (PW 639)	C.S.T.	St.George's 26-11-2008
100	Harakha Lalji Solanki	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
101	Mohamed Amanat Mohamad Ali	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
102	Sarafraz Sallauddin Ansari	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
103	Ayub Yakub Qureshi	Mr.Sadashiv Keshav Mandavkar (PW 650)	C.S.T.	St.George's 26-11-2008
104	Afarin Shahadab Qureshi	Mrs.Nafisa Shadab Qureshi (PW 53)	C.S.T.	---- 26-11-2008
105	Avadesh Sudama Pandit	Mr.Sadashiv Keshav Mandavkar (PW 650)	C.S.T.	St.George's 26-11-2008
106	Chandulal Kashinath Tandel	Mr.Sudhakar Gopal Jadhav (PW 649)	C.S.T.	St.George's 26-11-2008
107	Manohar Sohani	Mr.Sudhakar Shrirang Mohite (PW 648)	C.S.T.	St.George's 26-11-2008
108	Mohamad Hussain Mohamad Alamgir Shaikh	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
109	Murtaza Ansari Sallauddin Ansari	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008

1	2	3	4	5
110	Mohamad Arif Mohamed Islam Ansari	Mr.Vishal Adinath Kute (PW 635)	C.S.T.	St.George's 26-11-2008
111	Mohamad Mukhtar Malik	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
112	Abbas Rajjab Ansari	Mr.Pradip Sampat Wagh (PW 634)	C.S.T.	St.George's 26-11-2008
113	Unknown Male person	Mr.Ajaykumar Ashok Kadam (PW 652)	C.S.T.	St.George's 26-11-2008
114	Mrs.Gangabai Baburao Kharatmol	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
115	Narul Islam Ajahar Mulla	Mr.Vijay Bhujang Dhavle (PW 651)	C.S.T.	St.George's 26-11-2008
116	Murgan Palaniya Pillai	Mr.Sadashiv Keshav Mandavkar (PW 650)	C.S.T.	St.George's 26-11-2008
117	Rakhila Abbas Ansari	Mr.Balkrishna Bahurao Naikwadi (PW 633)	C.S.T.	St.George's 26-11-2008
118	Nitesh Vijaykumar Sharma	Mr.Tamij Chabu Mallu (PW 647)	C.S.T.	St.George's 26-11-2008
119	Fatmabi Rehaman Shaikh	Mr.Hanumant Shankarrao Jadhav (PW 643)	C.S.T.	St.George's 26-11-2008
120	Meenu Arjun Asrani	Mr.Ajaykumar Ashok Kadam (PW 652)	C.S.T.	St.George's 26-11-2008
121	Mohamad Itihas Ansari	Mr.Satyavan Laxman Sakpal (PW 646)	C.S.T.	St.George's 26-11-2008
122	Mastan Munir Qureshi	Mr.Ramesh Laxman Jagtap (PW 640)	C.S.T.	J.J.Hospital 26-11-2008

1	2	3	4	5
123	M.V.Anish	Mr.Sadashiv Keshav Mandavkar (PW 650)	C.S.T.	J.J.Hospital 26-11-2008
124	Upendra Birju Yadav	Mr.Balkrishna Bahurao Naikwadi (PW 633)	C.S.T.	J.J.Hospital 26-11-2008
125	Unknown Male person	Mr.Balkrishna Bahurao Naikwadi (PW 633)	C.S.T.	J.J.Hospital 26-11-2008
126	Poonam Bharat Navadia	Mr.Balkrishna Bahurao Naikwadi (PW 633)	C.S.T.	J.J.Hospital 26-11-2008
127	Baichan Ramprasad Gupta	Mr.Dhaku Vittal Sawant (PW 638)	C.S.T.	St.George's 26-11-2008
128	Nathuni Parshuram Yadav	Mr.Nathuni Parshuram Yadav (PW 632)	C.S.T.	J.J.Hospital 26-11-2008
129	Amarchand Naran Solanki	Mr.Bhavesh Mahadeo Takalkar (PW 25) Mr.Chandrakant J. Jadhav (PW 42)	Kuber	J.J.Hospital 27-11-2008
130	Tukaram Gopal Ombale	Mr. Bhaskar Dattatray Kadam (PW 1) Mr. Hemant Anant Bavdhankar (PW 3) Mr. Vinod Pandurang Sawant (PW 31)	Vinoli	Hurkishandas Hospital 26-11-2008
131	Major Sandip Unnikrishnan	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
132	Rahul Subhash Shinde	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008

1	2	3	4	5
133	Zaheen Sayyed Nisar Ali Jafary Mateen	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
134	Andres Don Livera	Mr.Rajesh Raghunath Kasare (PW 614)	Taj	St.George's 27-11-2008
135	Gunjan Vishandas Narang	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
136	Vishandas Giridharidas Narang	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
137	Vijayrao Anandrao Banja	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
138	Sadanand Ratan Patil	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
139	Thomas Verghese	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 27-11-2008
140	Ravi Jagan Kunwar	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 27-11-2008
141	Boris Mario Do Rego	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
142	Satpakkam Rahmatulla Shaukatali	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 26-11-2008
143	Faustine Basil Martis	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
144	Kaizad Naushir Kamdin	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008
145	Neelam Vishandas Narang	Mr.Raghu Santoshlal Deora (PW 620)	Taj	--- 27-11-2008

1	2	3	4	5
146	Rupinder Devenersing Randhava	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
147	Eklak Ahmed Mustak Ahmed	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
148	Maksud Tabarakali Shaikh	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
149	Feroz Jamil Ahmed Khan	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
150	Teitel baum Aryeh Levish	Mr.Sukhdeo Anna Kadam (PW 615)	Taj	J.J.hospital 29-11-2008
151	Duglas Justin Markell	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
152	Chaitilal Gunish	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
153	Willem Jan Berbaers	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
154	Nitisingh Karamveer Kang	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
155	Samarveer Singh Karamveer Singh Kang	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008

1	2	3	4	5
156	Udaysingh Karamveer Singh Kang	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
157	Sabina Saigal Saikia	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
158	Hemlata Kashi Pillai	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
159	Rajiv Omprakash Sarswat	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
160	Gutam Devsingh Gosai	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
161	Rajan Eshwar Kamble	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
162	Burki Ralph Rainer Jachim	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
163	Hemant Pravin Talim	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
164	Shoeb Ahmed Shaikh	Mr.Purnand Bhagatram Petwal (PW 619)	Taj	--- 26-11-2008
165	Michael Stuart Moss	Mr.Gulab Pandharinath Nalavade(PW 632)	C.S.T./Taj	St.George's 26-11-2008
166	Elizabeth Russell	Mr.Gulab Pandharinath Nalavade(PW 632)	C.S.T./Taj	St.George's 26-11-2008

771. In this regard what is important to be noted here is that considering the nature of incident and large scale deaths caused within a very short span, it was obviously difficult for the investigating agencies to keep record of the persons who had carried dead bodies to the hospitals. It was also difficult for the investigating agencies to keep record as to in which vehicle or ambulance a particular dead body was taken to the hospital. Therefore, what the prosecution has done in this regard to establish the places of deaths, is the appropriate thing they could have done . I do not think that anything more than this could have been done by the investigating agencies at the time of incidents itself. It may be stated here that the prime concern of the authorities and the members of public who were involved in rescuing the injured or the persons trapped at particular places due to the incident, was to save their lives. It was difficult to maintain record of the deceased, injured and place of death immediately after the incident. It will also not be out of place to mention here that in these circumstances relatives of the deceased always press for early handing over of dead body to them after completing formalities by the police. The investigating officers also cannot afford to antagonize the public in the

name of detail formalities. They have to take care of emotional outburst of the people and in the process it becomes difficult to keep record of the facts immediately after the incident. These are the general difficulties investigating agencies and security agencies have to face in such cases. And therefore, this case was no exception to the same. The table No.4 herein above, by and large, cover all the relevant facts to establish the place of death of particular deceased. From the table No.4 what can be gathered is name of deceased, place of his/her death, name of the person who carried the deceased from the place of incident and name of the hospital.

772. It is the case of prosecution that most of the deceased had died due to firearm injuries. Some of the deceased had died due to blast injuries/ burn injuries. It is alleged by the prosecution that the blast injuries were caused due to explosion of hand grenades thrown by the accused No.1 and the deceased accused Nos. 1 to 9 at various places. To establish that the deceased had died due to haemorrhage and shock following firearm injuries or due to blast/burn injuries, prosecution had examined medical officers who had performed postmortem examinations on dead bodies. In some of the cases bullets were lodged in dead bodies and they were retrieved by the

medical officers during the course of postmortem examinations. Those

bullets were sealed in phials by the medical officers and they were either handed over to police or were directly forwarded to the Forensic Science Laboratory for examination. The bullets handed over to police were accompanied by covering letters of the concerned medical officers addressed to the Forensic Science Laboratory giving description of the bullets or foreign body retrieved from the dead body of particular deceased. Those bullets/deformed bullets or part of bullets were examined by the Forensic Science Laboratory.

773. In some cases Chemical Analyzers (Ballistic Experts of Forensic Science Laboratory) had been able to compare those bullets /deformed bullets or part of bullets with the test fired bullets of various weapons seized by the police during the course of investigation. It may be noted here that in some of the cases an independent charge has been framed against the accused No. for having caused death of a particular person at a particular place. These are the cases where the bullets retrieved from the dead bodies , according to prosecution case, had tallied with the test fired bullets of AK-47 rifle (art.10) allegedly used by the accused No.1.

Majority of the cases were having entry wounds and exit wounds. In some cases there were a large number of entry and exit wounds. In majority of the cases the entry wounds were on vital parts of the body i.e. chest, abdomen or back. Those entry wounds of bullets had damaged vital organs of the deceased and bullets had exited after travelling from various parts resulting into damage to the vital organs of the body. In some cases the deceased could have died instantly and in some cases the deceased might have died on their way to hospital. There are some cases where the medical officers had attempted to revive the seriously injured persons. In such cases the postmortem examination reports reveal that there was evidence of tracheotomy. However, in spite of the efforts made by medical officers, in most of such cases the injured had succumbed to injuries. Ultimately in such cases also the cause of death is stated to be haemorrhage and shock due to firearm injuries.

774. As far as the cases in which bullets were retrieved from the dead body and had tallied with the test fired bullets of particular arm, the said cases will be dealt with by me separately on individual basis to ascertain whether the accused No.1 is guilty of offence of murder

punishable u/s 302 of IPC independent of other charges. However, in all

other cases the name of deceased, place of death, name of hospital where postmortem examination was conducted, name of the medical officer who conducted postmortem examination , nature of injuries and cause of death can be summed up in a tabulated form as under :

TABLE NO.5 :

1	2	3	4	5	6	7	8
Sr. No	**Name of the deceased**	**Place of death**	**Date & Place of Post mortem examination**	**Name of the prosecution witness (Medical Officer) who had examined the dead body**	**Nature of injuries**	**Cause of death and Exh,number of P.M. notes**	**Foreign body, if any, retrieved from the dead body**
1	Salim Hussain Harharwala (A.D.R. NO. 52-08)	Nariman House	27-11-08 J.J.P.M.	Dr.Ganesh Niturkar **(PW 104)**	**1**. Firearm entry wound over lateral end of right eye-brow. The bullet had exited from medial end of left eyebrow.	Haemorrhage & Shock due to firearm injuries (Unnatural) **Ex.414**	-

1	2	3	4	5	6	7	8
2	Mehzabin @ Maria Salim Harharwala (A.D.R. NO. 51/08)	Nariman House	27-11-08 J.J.P.M.	Dr.V.S. Bandewar **(U/s 294 of Cr.P.C.)**	**1**. Firearm entry wound over left cheek. The bullet was found lodged in right chest wall. **2**. Firearm entry wound on back below tip of left shoulder. The bullet had exited from left side of back. **3**. Firearm entry wound on left side of back. The bullet had exited from left axilla	Haemorrhage & Shock due to firearm injuries (Unnatural) **Ex.1509**	Bullet preserved for Ballistic Expert

1	2	3	4	5	6	7	8
3	Rivka Gavriel Holtzberg (A.D.R. NO. 78/08)	Nariman House	30-11-08 J.J.P.M.	Dr.Ganesh Rathod **(U/s 294 of Cr.P.C.)**	**1**. Entry wound of bullet on left maxilla bone. **2**. Entry wound of bullet on right axilla medial border. **3**. Entry wound in abdomen. **4**. Entry wound below knee joint. There were correspon ding exit wounds to the entry wound Nos.2 and 4. Two bullets were embedded in the body. Not retrieved.	Haemorrhage & Shock due to firearm injuries (Unnatural) **Ex.1511**	-

1	2	3	4	5	6	7	8
4	Rabbi Gavriel Noach Holtzberg (A.D.R. NO.79/08	Nariman House	30-11-08 J.J.P.M.	Dr.S.S. Sonawane **(PW 113)**	About thirty entry wounds on various parts of body including vital parts like neck and chest. There were correspondin g exit wounds also. The same have been described in the P.M. notes Ex.457 colly.	Haemorrha ge & Shock due to firearm injuries (Unnatural) **Ex.457colly**	-
5	Gajendra Singh (A.D.R. NO.80/08	Nariman House	29-11-08 J.J.P.M.	Dr.S.M. Javale **(U/s 294 of Cr.P.C.)**	**1.** Bullet injury on left side chest region 2. Bullet injury on right side chest (exit) 3. Bullet injury on left side chest lower level. **4.** Bullet injury on Left side upper thigh. Bullet recovered from abdominal cavity	Death due to firearm injury (unnatural) **Ex.1507**	Bullet preserve d for B.E.

1	2	3	4	5	6	7	8
6	Ben Zion Chroman (A.D.R. NO.82/08	Nariman House	30-11-08 J.J.P.M.	Dr.Meshram **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on left side of chest 2. Firearm entry wound on right side of upper abdominal region. Only one firearm exit wound has been described in the P.M. No bullet has been retrieved	Haemorrhage & Shock due to firearm injuries (Unnatural) **Ex. 1510**	-
7	Norma Shvarzblat Robinovich (A.D.R. NO. 87/08)	Nariman House	30-11-08 J.J.P.M.	Dr.Bagul **(U/s 294 of Cr.P.C.)**	About thirteen entry wounds on various parts of body including vital part like neck. There are corresponding exit wounds also.	Death due to multiple firearm injuries with internal vital organ injuries (Unnatural) **Ex.1508**	-

1	2	3	4	5	6	7	8
8	Rajendra-kumar Baburam Sharma (A.D.R. NO. 211/08)	C.S.T./ Nriman House	27-11-08 Nair Hospital P.M.	Dr.S.C. Mohite **(PW 23)**	1. Entry wound on left side of neck 2. Entry wounds over upper and lower lateral quadrant of right buttock. 3. Entry wound over posterome dial aspect of left knee joint. There were correspon ding exit wounds also.	Shock and haemorrhage due to multiple firearm injuries (Unnatural) **Ex.470**	Pellet preserve d for B.E.
9	Yokevet Mosho Orpaz (A.D.R. NO. 88/08)	Nariman House	30-11-08 J.J.P.M.	Dr. Sonawane **(PW 113)**	About Thirteen entry wounds on various parts of body including vital parts like chest.	haemorrhage and shock due to multiple firearm injuries (Unnatural) **Ex.455**	-

1	2	3	4	5	6	7	8
	contd.. Yokevet Mosho Orpaz	-	-	-	There were eleven exit wounds. One opacity of bullet shape in left chest region indicating presence of bullet. Bullet not retrieved.	-	-
10	Subhash Vanmali Vaghela (A.D.R. NO. 53/08)	Leopold	27-11-08 J.J.P.M.	Dr.G. Niturkar **(P.W.104)**	**1**. Firearm entry wound on back left side **2.** Firearm entry wound back of left wrist. There were correspondi ng exit wounds also.	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.415**	-
11	Pirpasha Mehboobali Shaikh (A.D.R. NO. 54/08)	Leopold	27-11-08 J.J.P.M.	Dr.Chavan **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on parietal region of head and crushed the brain matter. There correspondi ng exit	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1513**	-

1	2	3	4	5	6	7	8
					wounds.		

1	2	3	4	5	6	7	8
12	Shahabuddin Sirajuddin Khan (A.D.R. NO. 55/08)	Leopold	27-11-08 St.George	Dr. Shinde **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on right side of forehead. 2. Firearm entry wound on left ear back over left mastoid. 3. Puncture wound of entry of firearm over left arm 4. Puncture wound of entry of firearm over left forearm. There was one exit wound and three deformed bullets	Death due to firearm injuries (Unnatural) **Ex.1514**	**1.** Anteriorly one side deformed lead bullet **2.** deformed lead bullet piece from left arm **3.** Deformed lead bullet piece from left forearm

1	2	3	4	5	6	7	8
					were retrieved.		

1	2	3	4	5	6	7	8
13	Harishbhai Durlabbhai Gohil (A.D.R. NO. 56/08)	Leopold	27-11-08 St.George	Dr.S.J. Khan **(U/s 294 of Cr.P.C.)**	Firearm entry wound on chest front midline and correspondin g exit wounds.	death due to fire arm injury (unnatural) **Ex.1516**	-
14	Hidayatullah Anwarali Kazi (A.D.R. NO. 57/08)	Leopold	27-11-08 Nair P.M.	Dr.Mohite (PW 23)	1. Lacerated wound over the right of chest region 2. Oval lacerated wound over the right infrascapular region(exit). 3. Elliptical incised wound and muscle deep over the right axillary region.	Shock and haemorrhage due to perforation of right lung in case of firearm injury (Unnatural) **Ex.474**	-
15	Malyesh Manvendra Banarjee (A.D.R. NO. 59/08)	Leopold	27-11-08 J.J.P.M.	Dr.Javale (PW 100)	1. Perforating wound on anterior upper thigh. 2. Perforating wound at post of right thigh gluteal	Shock due to perforating blast injury (Unnatural) **Ex.406**	-

1	2	3	4	5	6	7	8
					region. (Exit). There was fracture of right femur		

1	2	3	4	5	6	7	8
16	Gourav Balchand Jain (A.D.R. NO. 60/08)	Leopold	27-11-08 J.J.P.M.	Dr.Rathod **(U/s 294 of Cr.P.C.)**	1. Entry wound on forehead middle part with corresponding exit wound. And other minor injuries.	Head injury due to firearm injury (Unnatural) **Ex.1515**	-
17	P.K. Gopalkrishnan (A.D.R. NO. 102/08)	Leopold	27-11-08 G.T. Hospital	Dr.Bagul **(U/s 294 of Cr.P.C.)**	1. Entry wound on right parietal region penetrating skull and scalp with exit wound. And another bullet injury.	Haemorrhage shock due to firearm injuries (Unnatural) **Ex.1512**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
					Bullet retrieved from calf region.		

1	2	3	4	5	6	7	8
18	Kamal Nanakram Motwani (A.D.R. NO.103/08)	Leopold	---	---	---	---	---
19	Jurgen Hienrich Rudolf (A.D.R. NO. 3/09)	Leopold	---	---	---	---	---
20	Daphne Hilary Schmidt (A.D.R. NO. 4/09)	C.S.T./ Leopold	27-11-08 J.J.P.M.	Dr. Sonawane (PW 113)	1. Firearm entry wound on right side forehead. 2. Firearm entry on the right side of chest 3. Firearm	Haemorrhage and shock due to multiple firearm injuries (Unnatural) **Ex.444**	-

1	2	3	4	5	6	7	8
					entry wound on the right shoulder. There were correspon ding exit wounds also.		

1	2	3	4	5	6	7	8
21	Hemant Kamlakar Karkare (A.D.R. NO.117/08)	Cama Out	27-11-08 J.J.P.M.	Dr. Chikhlakar (PW 120)	Total five firearm entry wounds on shoulder blade top, region between neck and right shoulder and other injuries. There were three correspondi ng exit wounds and two deformed bullets	Haemorrhage and shock due to multiple firearm injuries (Unnatural) **Ex.495**	Bullets preserved for B.E.

1	2	3	4	5	6	7	8
					retrieved.		
22	Ashok Marutirai Kamate (A.D.R. NO.118/08)	Cama Out	27-11-08 J.J.P.M.	Dr. Chikhalkar (PW 120)	1. Firearm entry wound on left frontal and supraorbital region 2. Firearm entry wound on back of shoulder top	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.496**	Deformed bullet preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Ashok Marutirai Kamate	-	-	-	centrally between neck and right shoulder and other minor injuries. There was one corresponding exit wound and bullet was found embedded in right side of chest cavity. The same was retrieved.	-	-
23	Vijay Sahadev	Cama Out	27-11-08 J.J.P.M.	Dr. Niturkar	Four firearm entry wound	Haemorrhage and shock	Two bullets

1	2	3	4	5	6	7	8
	Salaskar (A.D.R. NO.121/08			(PW 104)	on various parts of body including vital parts like chest, right forearm and other minor injuries. Two corresponding exit wounds and two bullets were retrieved	due to firearm injuries (Unnatural) **Ex.422**	and metallic fragments preserved B.E.

1	2	3	4	5	6	7	8
24	Bapurao Sahebrao Durgude (A.D.R. NO. 129/08)	Cama Out	27-11-08 J.J.P.M.	Dr. Chikhalkar (P.W.120)	1. Firearm entry wound on chest anteriorly 18 cm. below shoulder blade. 2. Firearm entry wound on right side of chest. 3. Firearm	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.500**	Metallic particles preserved for B.E.

1	2	3	4	5	6	7	8
					entry wound on right arm and other minor injury. there were correspon ding exit wounds also.		
25	Balasaheb @ Nana Chandrakant Bhosale (A.D.R. NO. 126/08)	Cama Out	27-11-08 J.J.P.M.	Dr. Chikhalkar (PW 120)	1. Firearm entry wound over left temporo occipital	Haemorrhage and shock due to firearm injuries (Unnatural) (Ex.508)	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Balasaheb @ Nana Chandrakant Bhosale	-	-	-	region of head 2. Firearm entry wound near the left ear adjoining the exit wound of 1st entry wound. The bullet was found lodged at right	-	-

1	2	3	4	5	6	7	8
					frontal lobe of brain. It was retrieved. 3. Two firearm wounds on lower limbs.		
26	Arun Raghunath Chite (A.D.R. NO. 122/08)	Cama Out	27-11-08 J.J.P.M.	Dr.G.S. Chavan **(PW 599)**	Firearm entry wound on left 5th I.C.S. There was correspon ding exit wound	Haemorrhage and shock due to firearm injury (Unnatural) **Ex.1572**	-

1	2	3	4	5	6	7	8
27	Jayawant Hanumant Patil (A.D.R. NO.127/08	Cama Out	27-11-08 J.J.P.M.	Dr. Chikhalkar **(PW 120)**	1. Firearm entry wound on right temporo parietal region. 2. Firearm entry wound right buttock iliac region. 3. Bullet graze at three places on left side	Haemorrhage and shock due to firearm injury (Unnatural) **Ex. 497**	-

1	2	3	4	5	6	7	8
					of chest. Two corresponding exit wounds and other minor injuries.		
28	Yogesh Shivaji Patil (A.D.R. NO.128/08	Cama Out	27-11-08 J.J.P.M.	Dr.Sunanda Katke (PW 592)	1. Firearm entry wound on right side of face. 2. Firearm entry wound on right side of neck. Two corresponding exit wounds.	Death due to haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1542**	-

1	2	3	4	5	6	7	8
29	Surendra-kumar Bindu Rama (A.D.R. NO. 130/08)	Cama out	28-11-08 Nair P.M.	Dr. Mohite **(PW 23)**	1. An oval shape lacerated wound on left chest wall. 2. Fracture of 4th and 5th left ribs and infiltration of blood in	Shock and haemorrhage due to vital organ injury in a case of firearm injury (Unnatural) **Ex.475**	-

1	2	3	4	5	6	7	8
					surrounding tissue. 3. Oval shape lacerated wound on right chest wall.		
30	Prakash Pandurang More (A.D.R. NO. 124/08)	Cama In	27-11-08 J.J.P.M.	Dr. Chikhalkar **(PW 120)**	1. Firearm entry wound over right thigh anteriorly lateral part of upper region of right thigh. 2. Firearm entry wound on left buttock.	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.498**	Metallic particle preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Prakash Pandurang More	-	-	-	3. Firearm entry wound on left midthigh region posteriorly. 4. Firearm entry wound on right	-	-

1	2	3	4	5	6	7	8
					midthigh calf region posteriorly 5. Firearm entry wound on lower part of right arm just above right elbow. There were five exit wounds and other minor injuries		
31	Vijay Madhukar Khandekar (A.D.R. NO.123/08)	Cama In	27-11-08 J.J.P.M.	Dr. Chikhalkar **(PW 120)**	1. Firearm entry wound on neck. 2. Firearm entry wound on lacerated aspect of left thigh.	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.499**	Metallic fragment (deformed bullet) for B.E.

1	2	3	4	5	6	7	8
	contd.. Vijay Madhukar Khandekar				And other minor injuries. There was one corresponding exit wound and deformed bullet was found embedded within muscle, subcutaneous tissue beneath skin. Deformed bullet was retrieved		
32	Baban Balu Ughade (A.D.R. NO. 119/08)	Cama In	27-11-08 J.J.P.M.	Dr.K.S. Kalyankar **(PW 594)**	1. Firearm entry wound left side abdomen near umbilicus 2. Exit wound at gluteal region	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1553**	-

1	2	3	4	5	6	7	8
33	Bhanu Devu Narkar (A.D.R. NO.120/08)	Cama In	27-11-08 G.T..P.M.	Dr.Bagul (P.W.603)	1. Firearm entry wound right side abdomen 2. Exit wound at left side abdomen	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1584**	-
34	Thakur Budha Vaghela (A.D.R. NO.125/08)	Cama In	27-11-08 G.T. Hospital	Dr.Bagul **(P.W.603)**	1. Entry wound of bullet on right arm lateral posterior aspect and correspondin g exit wound at right side of chest lateral mild axillary line. Fracture of ribs. Fracture of vertebra	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1587**	-
35	Bhagan Gangaram Shinde (A.D.R. NO.131/08)	Cama In	27-11-08 G.T. Hospital	Dr.Bagul **(P.W.603)**	1. Bullet injury on right side of abdomen 5m away from umbilicus. Wound was found sutured.	Penetrating injury to abdomen with internal organ injuries with internal haemorrhage in a case grenade blast injury (Unnatural) **Ex.1586**	-

1	2	3	4	5	6	7	8
36	Shivshankar Nirant Gupta (A.D.R. NO. 132/08)	Cama In	27-11-08 G.T. Hospital	Dr.Bagul **(P.W.603)**	1. Bullet injury on the right elbow posterior aspect with crushed effect. Muscles were found crushed . Exit wound at right anterior elbow. 2. Bullet injury on right side abdomen lateral to midline. Bullet exited from posterior chest wall	Haemorrhage and shock due to firearm injuries (Unnatural) **Ex.1585**	-
37	T.Suda Hisashi (A.D.R. NO. 47/08)	Oberoi	27-11-08 J.J.P.M.	Dr.S.S. Sonawane **(PW 113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to multiple firearm injuries (Unnatural) Ex.448	-

1	2	3	4	5	6	7	8
38	Murad Amarsi (A.D.R. NO.54/08	Oberoi	28-11-08 Sion	Dr.R.C. Dere **(U/s 294 of Cr.P.C.)**	1. Entry wound below inferior angle of left scapula. Exit wound over anterior part of left axilla	Haemorrhage shock following firearm injuries (Unnatural) **Ex.1529**	-
39	Loumiya Hiridaji Amarsi (A.D.R. NO.58/08	Oberoi	28-11-08 Sion	Dr.R.C. Dere **(U/s 294 of Cr.P.C.)**	1. Punctured wound over right axilla. 2. Wound of entry at left radius. Bullet retrieved from lower part of radius. 3. Entry wound over left side iliac fossa. Bullet retrieved from pelvis. 4. Wound of entry over anterior part of thigh. Bullet retrieved from medial aspect of femur and other minor injuries	Haemorrhage shock following firearm injuries (Unnatural) **Ex.1530**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
40	Scherr Alan Michael (A.D.R. NO. 55/08)	Oberoi	30.11.08 J.J. P.M.	Dr. S.Javale **(PW-100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Fracture of skull bones and laceration of brain tissue due to fire arm (Unnatural) **(Ex.396)**	-
41	Neomi Leiya Sher (A.D.R. NO. 56/08)	Oberoi	-	-	---	--	--
42	Sandeep Kisan Jeswani (A.D.R. NO. 68/08)	Oberoi	29.11.08 J.J. P.M.	Dr. Bagul **(U/s 294 of Cr.P.C.)**	Three entry wounds and three exit wounds on various parts of the body.	Death due to firearm injuries (Unnatural) **(Ex.1537)**	--
43	Lo Hawei Yen (A.D.R. NO. 64/08)	Oberoi	30.11.08 J.J. P.M.	Dr. Javale **(P.W.100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Fracture skull bones and laceration of brain with abdominal injury due to fire arm (Unnatural) **(Ex.397)**	--

1	2	3	4	5	6	7	8
44	Jhirachant Kanmani @ Jina (A.D.R. NO.73/08)	Oberoi	28.11.08 J.J.P.M.	Dr. S. Kachare **(U/s 294 of Cr.P.C.)**	Two entry wounds. One on right forehead and other on left forehead. One lead bullet retrieved. One copper jacketed bullet retrieved.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1539)**	Two bullets preserved for B.E.
45	Altino D'Lorenjo (A.D.R. NO.82/08)	Oberoi	28.11.08 J.J. P.M.	Dr. G.S. Chavan **(U/s 294 of Cr.P.C.)**	1. Firearm wound of entry on the right side of face. 2. Glancing wound of firearm on right supra clavicular region. The bullet was retrieved from intra muscular region on back of left shoulder	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1528)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
46	Brett Gilbert Tailor (A.D.R. NO. 3/09)	Oberoi	27.11.08 J.J.P.M.	Dr. Tasgaonkar **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on left anterior axillary fold. 2. firearm entry wound on left side of chest. 3. Firearm entry wound on right inguinal region. Corresponding exit wounds were also found. There were other minor injuries	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1538)**	--
47	Farukh Dinshaw (A.D.R. NO. 48/08)	Oberoi	27.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.447)**	-

1	2	3	4	5	6	7	8
48	Reshma Sunil Parikh (A.D.R. NO.50/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Niturkar **(PW-104)**	1. Firearm entry wound at left supra clavicular fossa 1 cm. from route of neck. Corresponding exit wound was also found. And other minor injuries.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.417)**	--
49	Sunil Shevantilal Parekh (A.D.R. NO.51/08)	Oberoi	28.11.08 J.J. P.M.	Dr. Chavan **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on right check 2. Firearm entry wound on medial aspect of left forearm. 3. Firearm entry wound above popliteal fossa. 4. Firearm entry wound on right calf. The corresponding exit wounds were also found. Skull was found fractured.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1523)**	--

1	2	3	4	5	6	7	8
50	Ajit Shrichand Chabriya (A.D.R. NO. 52/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Tasgaonkar **(U/s 294 of Cr. P.C.)**	1. Firearm wound of entry on left knee. 2. Firearm wound of entry on right side of shoulder. 3. Firearm wound of entry on left hand dorsum. Corresponding exit wounds were also found	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1534)**	--
51	Sanjay Vijay Agarwal (A.D.R. NO. 53/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Tasgaonkar **(U/s 294 of Cr. P.C.)**	1. Firearm wound of entry on right side of back. 2. Firearm wound of exit left side of chest anteriorly.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1533)**	--

1	2	3	4	5	6	7	8
52	Rita Sanjay Agarwal (A.D.R. NO.57/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Chavan **(U/s 294 of Cr. P.C.)**	1. Firearm wound of entry over left forearm posterior aspect. 2. Firearm wound of entry on right posterior axillary line 20 cm below right shoulder. 3. Firearm entry wound at lower lateral quadrant. Corresponding exit wounds were also found. There were some lacerated wounds also.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1522)**	--
53	Mohit Kanhaiyalal Harjani (A.D.R. NO. 59/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Niturkar (P.W.104)	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.418)**	--

1	2	3	4	5	6	7	8
54	Monika Ajit Chabriya (A.D.R. NO.60/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Tasgaonkar **(U/s. 294 of Cr. P.C.)**	1. Firearm entry wound on right side of neck. 2. Firearm entry wound on left back. 3. Firearm entry wound on right thigh. Three corresponding exit wounds were also found.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1535)**	--
55	Harsha Mohit Harjani (A.D.R. NO.61/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Bagul **(U/s 294 of Cr. P.C.)**	1. Firearm entry wound over xiphisternum. 2. Entry wound over neck. Corresponding exit wounds were also found.	Death due to firearm injuries **(Ex.1519)**	--
56	Ravi Dara (A.D.R. NO.62/08)	Oberoi	29.11.08 J.J. P.M.	Dr. Javale **(PW-100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Fracture skull and laceration of brain due to fire arm (Unnatural) **(Ex.398)**	--

1	2	3	4	5	6	7	8
57	Uma Vinod Gark (A.D.R. NO.63/08)	Oberoi	29.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.453)**	Bullet preserved for B.E.
58	Pankaj Somchand Shah (A.D.R. NO.65/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Javale **(PW-100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Shock due to abdominal injury (Unnatural) **(Ex.402)**	--
59	Ashok Kapoor (A.D.R. NO.66/08)	Oberoi	29.11.08 J.J.P.M.	Dr. Sonawane (PW-113)	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.454)**	--

1	2	3	4	5	6	7	8
60	Anand Suryadatta Bhatt (A.D.R. NO.67/08)	Oberoi	29.11.08 J.J.P.M.	Dr. Chavan **(U/s 294 of Cr.P.C.)**	1. Circular wound 20 cm below right nipple 2. Circular wound 25 cm below left nipple. The injury No.2 communicate with injury No.1. There were multiple superficial punctured wounds at right forearm. Perforating wound at right forearm.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1536)**	--
61	Rohington Bajji Mallu (A.D.R. NO.69/08)	Oberoi	29.11.08 J.J.P.M.	Dr. Chavan **(U/s 294 of Cr. P.C.)**	1. Firearm entry wound over lateral aspect of right upper arm. 2. Firearm entry wound over the right	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1524)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Rohington Bajji Mallu	-	-	-	side of abdomen. 3. firearm entry wound over left side of abdomen. Two exit wounds correspondi ng to injury Nos.1 & 2 were noted. A bullet was found retained in front of body of L4 vertebra	-	-
62	Kannubhai Zaverbhai Patel (A.D.R. NO. 70/08)	Oberoi	--	--	--	--	--
63	Anil Bipinchandra Thaker (A.D.R. Nos. 00/08/ 74/08	Oberoi	28.11.08 J.J.P.M.	Dr. Niturkar **(PW-104)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.416)**	--

1	2	3	4	5	6	7	8
64	Jordan Geigy Fernandes (A.D.R. NO. 75/08)	Oberoi	28.11.08 J.J.P.M.	Dr. Chavan **(U/s. 294 of Cr. P.C.)**	1. Firearm entry wound on neck below mandible 2. crushed lacerated wound was noted due to firearm injury on right fronto temporo parietal region. 3. firearm wound of entry on back of anterior angle of the right scapula . 4. firearm exit wound on left shoulder.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1525)**	bullet preserved for B.E.
65	Neeta Prakash Gaikwad (A.D.R. NO.00/08 & 76/08	Oberoi	27.11.08 J.J.P.M.	Dr. Javale **(PW-100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Head injury (Perforation) due to blast (Unnatural) **(Ex.403)**	--

1	2	3	4	5	6	7	8
66	Shaunak Jaywant Chemburkar (A.D.R. NO. 77/08)	Oberoi	27.11.08 J.J. P.M.	Dr. Chavan **(U/s.294 of Cr. P.C.)**	1. Punctured lacerated wound over left femoral triangle area of thigh . 2. Contused lacerated wound on left supra-scapular region. 3. Four small lacerations surrounding injury No.2. 4. Small punctured laceration over left lower back. 5. Three abrasions over left side.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1526)**	--
67	Wilson Baburao Mandalik (A.D.R. NO. 00/08 & 78/08	Oberoi	27.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to multiple fire-arm injuries (Unnatural) **(Ex.445)**	--

1	2	3	4	5	6	7	8
68	Sarjerao Sadashiv Bhosale (A.D.R. NO.79/08	Oberoi	27.11.08 J.J.P.M.	Dr. Meshram **(U/s. 294 of Cr. P.C.)**	1. Firearm entry wound on right side of neck. 2. Firearm entry wound over left side of neck. 3. firearm entry wound on left side of chest anteriorly. 4. firearm entry wound on right side of back. Corresponding exit wounds were also found.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1527)**	--
69	Jasmin Mahendra singh Burji (A.D.R. NO.80/08	Oberoi	27.11.08 Rajawadi P.M.	Dr. Bagul **(U/s.294 of Cr. P.C.)**	1. Crushed left forearm injury with multiple lacerations. 2. Crushed left posterior elbow with muscles crushed. 3. Two injuries were noted on right abdomen midclavicular line. 4. Blast injury was noted on right hand. 5. Entry wound of bullet at left thigh region.	Haemorrhage & shock due to firearm & grenade injuries (Unnatural) **(Ex.1520)**	--

1	2	3	4	5	6	7	8
70	Sanjay Sambhajirao Surve (A.D.R. NO. 81/08	Oberoi	27.11.08 G.T. Hospital	Dr. Bagul **(U/s. 294 of Cr. P.C.)**	1. Bullet injury to left side of chest. 2. Bullet injury to left hand. 3. Bullet injury to right thigh. 4. Bullet injury to pelvic region. The corresponding exit wound were also found.	Haemorrhage & shock due to firearm injuries and perforating lungs and heart (Unnatural) **(Ex.1521)**	--
71	Bimolchand Maibam (A.D.R. NO. 00/08	Oberoi	28.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage & shock due to firearm injuries (Unnatural) **(Ex.451)**	--
72	Mohabbat Umer abdul Khalid (A.D.R. NO. 80/08)	Vile Parle	27.11.08 Cooper P.M.	Dr. Kachare **(PW-600)**	Head, neck and face were intact. Other limbs of the body were dislocated, fractured, ruptured or crushed.	Death due to Bomb Blast Explosion (Unnatural) **(Ex.1576)**	--

1	2	3	4	5	6	7	8
73	Laxminarayan Goyal (A.D.R. NO. 79/08)	Vile Parle	27.11.08 Cooper P.M.	Dr. Kachare **(PW-600)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Death due to Bomb Blast Explosion (Unnatural) **(Ex.1575)**	--
74	Mrs.Jarina Samsuddin Shaikh (A.D.R. NO. 93/08)	Mazgaon	27.11.08 J.J.P.M.	Dr. Javale **(PW-100)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Shock due to multiple injuries (Unnatural) **(Ex.404)**	--
75	Fulchand Ramchandra Bind (A.D.R. NO. 94/08)	Mazgaon	28.11.08 J.J. P.M.	Dr. N. Khan **(U/s.294 of Cr.P.C.)**	Most of the limbs were found mutilated	Death due to Bomb Blast injuries (Unnatural) **(Ex.1518)**	--
76	Mrs.Reema Mohamad Rabivul (A.D.R. NO. 95/08)	Mazgaon	28.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Heamorrhage and shock in a case of blast injuries (Unnatural) **(Ex.450)**	--

1	2	3	4	5	6	7	8
77	Shashank Chandrasen Shinde (A.D.R. NO.171/08	C.S.T.	27.11.08 J.J. P.M.	Dr. Katke **(PW-592)**	1. Firearm entry wound on left side of back, scapular region.. 2. firearm entry wound on left side of back laterally. 3. firearm entry wound on left elbow posteriorly. Corresponding exit wounds were also found.	Death due to haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1541)**	--
78	Aamina Begul Hamid Shaikh (A.D.R. NO.174/08	C.S.T.	27.11.08 K.E.M.	Dr. Walter Vaz **(PW-604)**	1. Punctured wound over the left side of nape of the neck. 2. Irregular torn laceration involving the bridge and the ala of nose on right side. 3. Irregular reddish impact abrasion over right side of forehead.	Massive Cranio-cerebral trauma as a result of rifled-bore gunshot injury. **(Ex.1590)**	--

1	2	3	4	5	6	7	8
79	Ashraf Ali Allaharakha Shaikh (A.D.R. NO. 175/08)	C.S.T.	27.11.08 J.J. P.M.	Dr. Javale **(PW-100)**	1. Superficial graze contusion over right chest 2. Two punctured marks over right chest. 3. C.L.W. at chin 4. Punctured marks at elbow.	Shock due to firearm injury (Unnatural) **(Ex.394)**	A piece of bullet preserved for B.E.
80	Ajij Nabilal Rampure (A.D.R. NO. 176/08)	C.S.T.	27.11.08 St. George	Dr. A. Shinde **(PW-595)**	1. Firearm entry wound on right side of chest. 2. Firearm exit wound on left side of chest.	Death due to firearm injury (Unnatural) **(Ex.1556)**	--
81	Akash Akhilesh Yadav (Originally registered as unknown male) (A.D.R. NO. 177/08)	C.S.T.	27-11-08 St.George	Dr.Shinde (PW 595)	1. Firearm entry wound on the head, back left side laterally 2. Four pallets recovered underneath scalp and four pallets recovered from brain	Death due to fire arm injury (Unnatural) **(Ex.1555)**	Eight pallets preserved for B.E.

1	2	3	4	5	6	7	8
82	Mukesh Bhikaji Jadhav (A.D.R. NO. 178/08	C.S.T.	27.11.08 J.J.P.M.	Dr. Ganesh Rathod **(PW-598)**	1. firearm entry wound on left side of chest. 2. Exit wound on left side of left scapula.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1565)**	--
83	Sitaram Mallapa Sakhare (A.D.R. NO. 179/08)	C.S.T.	27.11.08 J.J.P.M.	Dr. Tasgaonkar **(PW-83)**	1. Firearm entry wound on right side of chest. 2. Firearm entry wound on right arm medial aspect 3. Firearm entry wound on left arm laterally. 3. There were correspondi ng exit wounds also. 4. One bullet was retrieved from the muscles of right arm.	Death due to haemorrhage and shock du to firearm injuries (Unnatural) **(Ex.330)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
84	Rahimtulla Ibrahim (A.D.R. NO.180/08)	C.S.T.	27.11.08 J.J.P.M.	Dr. Sonawane **(PW-113)**	1. Firearm entry wound on right thigh. 2. The bullet had passed through skin subcutaneous tissue, femoral vessels, pelvis and was found lodged at left side of buttock	Haemorrhage and shock due to fire arm injury (Unnatural) **(Ex.441)**	Bullet preserved for B.E.
85	Mishrilal Mourya Shri Garib Mourya (A.D.R. NO.181/08)	C.S.T.	27.11.08 St. George	Dr.A. Shinde **(PW-595)**	1. Firearm entry wound on left side of face. 2. Firearm entry wound on right chest laterally 3. Firearm entry wound on right side chest lateral to Injury No.2. There were corresponding exit wounds also.	Death due to firearm injury (Unnatural) **(Ex.1558)**	Deformed copper pieces preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Mishrilal Mourya Shri Garib Mourya	-	-	-	Deformed copper pieces two in number were retrieved from right side chest cavity.	-	-
86	Vinod Madanlal Gupta (A.D.R. NO. 182/08)	C.S.T.	27.11.08 Nair P.M.	Dr. Mohite **(PW-23)**	1. An oval shaped wound over the lateral part of right pectoral region. 2. Bullet retrieved from left 4th intercostal space	Shock and haemorrhage as result of perforation of both lungs as result of firearm injuries (Unnatural) **(Ex.468)**	Bullet preserved for B.E.
87	Sunil Ashok Thackare (A.D.R. NO. 183/08)	C.S.T.	27.11.08 Nair P.M.	Dr. Mohite **(PW-23)**	1. Circular lacerated wound (entry wound) over chin . The wound is directed right laterally and downward. There was evidence of fracture of mandible	Shock and hemorrhage due to laceration of major blood vessels in neck in a case of firearm injury (Homicidal) **(Ex.476)**	--

1	2	3	4	5	6	7	8
	contd.. Sunil Ashok Thackare	-	-	-	2. Oval lacerated wound (exit wound) over base of neck. 3. Abrasion over left side of forehead	-	-
88	Haji Ejaj Bhai Imamsaheb Dalal (A.D.R. NO. 185/08)	C.S.T.	27.11.08 J.J. P.M.	Dr. Javale **(PW-100)**	1. Punctured wound over left chest. 2. Punctured wound at left axillary fold.	Shock due to fire arm injury (Unnatural) **(Ex.401)**	--
89	Mira Narayan Chattarji (A.D.R. NO. 186/08)	C.S.T.	27.11.08 J.J. P.M.	Dr. Javale **(PW-100)**	1. Large irregular wound over left pectoral area at axillary tail. Ribs and muscles were found fractured and contused	Shock due to laceration (Thoracic Trauma) (Unnatural) **(Ex.405)**	--

1	2	3	4	5	6	7	8
90	Shirish Sawla Chari (A.D.R. NO. 187/08	C.S.T.	27.11.08 K.E.M.	Dr. Balsara **(PW-593)**	1. Firearm entry wound oval shape at lateral end of left eyebrow. 2. Exit wound of spindle shape at upper back, left side of the neck	Shock and haemorrhage as a result of cranio-cerebral injuries allegedly sustained due to gun shot injury **(Ex.1545)**	--
91	Sushilkumar Vishwmbhar Sharma (A.D.R. NO.188/08)	C.S.T.	27.11.08 Nair P.M.	Dr. Mohite **(PW-23)**	1. Lacerated wound over the right chest region below midclavicular point 10 cm above the right nipple(Entry wound) 2. Elliptical lacerated wound over the right back region	Shock and haemorrhage due to perforation of right lung in case of firearm injury (Unnatural) **(Ex.477)**	--
92	Murlidhar Laxman Choudhary (A.D.R. NO. 189/08)	C.S.T.	27.11.08 J.J.P.M.	Dr. Rathod **(PW-598)**	1. Firearm entry wound on axillary line right side 2. Exit wound on left side in mid axillary line. 3. Entry wound on lateral aspect of right arm. 4. Exit wound on middle aspect on right arm.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1566)**	--

1	2	3	4	5	6	7	8
93	Ambadas Ramchandra Pawar (A.D.R. NO. 190/08)	C.S.T.	27.11.08 J.J. P.M.	Dr. Niturkar **(PW-104)**	1. Entry wound on occipital region left side. Bullet retrieved from right frontal lobe. The track of the bullet was lacerated and hammerrag ic.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.427)**	Bullet preserved for B.E.
94	Jaikumar Durairaj Nadar (A.D.R. NO. 191/08)	C.S.T.	28.11.08 K.E.M.	Dr. Balsara **(PW-593)**	1. Circular punctured entry wound anterior inner upper side of right thigh. 2. Oval punctured exit wound at the anterior outer upper side of right thigh	Shock and haemorrhage as a result of gun shot injuries, as alleged. **(Ex.1546)**	--

1	2	3	4	5	6	7	8
95	Deepali Janardhan Chitekar (A.D.R. NO. 192/08)	C.S.T.	27.11.08 K.E.M.	Dr. Walter Vaz **(PW-604)**	1. Dislocation of head of right humerus. 2. Multiple punctuated and irregular impact abrasions contusions and torn lacerations over left side of face, outer aspect of back of the left side of trunk, all around the left limb and over inner aspect of right thigh and all around right leg and foot.	Haemorrhage shock as a result of blast injuries to the left lung, spleen and both lower limbs. **(Ex.1591)**	Metallic splintersand small metallic balls preserved for B.E.

1	2	3	4	5	6	7	8
96	Raju Janardhan Chitekar (A.D.R. NO. 193/08)	C.S.T.	27.11.08 K.E.M.	Dr. Walter Vaz **(PW-604)**	1. Multiples small and larger abrasions contusions and lacerations along the left side of body. 2. Lacerations over the left side of head over left flank of trunk over the outer aspect of left buttock, thigh, knee joint, calf and heel. 3. Lacerations over right thigh left side of back of trunk and multiple small punctuate and irregular impact abrasions contusions and torn lacerations all around the left upper limb	Haemorrhagic shock as a result of blast injuries of the left lung and spleen, contributed to by rupture of the small intestine also due to blast injury **(Ex.1592)**	--

1	2	3	4	5	6	7	8
97	Aditya Ashok Yadav (A.D.R. NO. 194/08)	C.S.T.	27.11.08 K.E.M.	Dr. Walter Vaz **(PW-604)**	1. Firearm entry wound over the right side of back of the head in occipital region cranial cavity deep. 2. Firearm exit wound over fronto temporo parietal region	Extensive craniocerebral trauma as a result of rifled bore gunshot injury **(Ex.1593)**	--
98	Isibul Raheman Faizuddin Raheman Shaikh (A.D.R. NO. 195/08)	C.S.T.	27.11.08 K.E.M.	Dr. Balsara **(PW-593)**	1. Circular punctured firearm entry wound below the tip of 7^{th} cervical vertebra. Bullet was retrieved from sternocostal junction (anterior side of chest wall) . And other minor injuries.	Shock and haemorrhage contributed to by cardiac tamponade as a result of gun shot injury (Unnatural) **(Ex.1547)**	bullet preserved for B.E.

1	2	3	4	5	6	7	8
99	Prakash Janath Mandal (A.D.R. NO.196/08	C.S.T.	27.11.08 Nair P.M.	Dr.Mohite **(PW-23)**	1. Open skull vault fracture involving frontal parietal and occipital area with underline bones, dura and brain absent (multiple skull fractures involving base..	Instantaneous death due to cranio cerebral injury (Unnatural) **(Ex.478)**	--
100	Harakha Lalji Solanki (A.D.R. NO.198/08	C.S.T.	27.11.08 Nair P.M.	Dr.Mohite **(PW-23)**	1. Circular lacerated wound over right chest region below midclavicu lar point (Entry wound) directed towards back.	Shock and haemorrhage due to multiple injuries to the liver in case of firearm injury (Unnatural) **(Ex.479)**	--

1	2	3	4	5	6	7	8
101	Mohammed Amanat Mohammed Ali (A.D.R. NO.199/08)	C.S.T.	27.11.08 Nair Hospital	Dr. Mohite **(PW-23)**	1. Oval lacerated wound over posterior lateral aspect of right arm, fracture of humerus, the bullet had travelled through axillary muscles and had finally entered the thoracic cavity through right lateral wall. The bullet was retrieved from left side of chest beneath the skin in pectoral region	Shock and haemorrhage due to perforation of right lung in case of firearm injury (Unnatural) **(Ex.469)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
102	Sarfaraz Sallauddin Ansari (A.D.R. NO. 200/08)	C.S.T	27-11-08 K.E.M.	Dr. Balsara **(PW-593)**	1. Entry wound of bullet in the left posterior axillary line over the 11th rib resulting in fracture. The bullet had exited at 9th intercostal space. 2. Bullet entry wound at the upper lateral side of left thigh. The said bullet had exited at medial side and had again entered the medial side of right thigh and had exited from lateral side.	Haemorrhagic shock as a result of gun shot injuries as alleged **(Ex.1548)**	--
103	Ayub Yakub Qureshi (A.D.R. NO. 201/08)	C.S.T.	28-11-08 K.E.M.	Dr.Walter Vaz **(PW 604)**	1. Laceration over the right side of head in temporo parietal region(entry) and the exit wound over the left side of head just behind the tip of left mastoid bone just behind the left ear.	Traumaric Caraniocerebral injury as a result of rifled bore gunshot injury to the head **(Ex.1594)**	--

1	2	3	4	5	6	7	8
104	Afrain Shahadab Qureshi (A.D.R. NO.202/08	C.S.T.	27-11-08 K.E.M.	Dr.Walter Vaz **(PW 604)**	1. Spindle shape punctured wound over the right side of back of chest(entry) and spindle shape punctured wound over the left side of front of the chest(exit)	Haemorragic shock as a result of gunshot injury to the liver **(Ex.1595)**	--
105	Avadesh Sudama Pandit (A.D.R. NO.203/08)	C.S.T.	28-11-08 K.E.M.	Dr.Walter Vaz **(PW 604)**	1. Circular punctured wound over right flank of the chest(entry) and irregular lacerated wound over the lower part of back of the chest(exit)	Haemorragic shock as a result of rifled bore gunshot injury to the right lung, liver and spleen. **(Ex.1596)**	--
106	Chandulal Kashinath Tandel (A.D.R. NO.207/08)	C.S.T.	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Circular lacerated wound over right parietal region of scalp (entry) and oval lacerated wound over and upper lateral aspect of neck(exit).	Shock and haemorrhage due to injury to vital organs in a case of firearm injuries (Unnatural) **(Ex.471)**	--

1	2	3	4	5	6	7	8
	contd.. Chandulal Kashinath Tandel	-	-	-	2. Circular lacerated wound over nape of neck(Entry) and oval lacerated wound over inter scapular region of back(exit). 3. Circular lacerated wound over umbilical region(entry) and circular lacerated wound over left iliac region. 4. Circular lacerated wound on right gluteal region(entry) and oval laceratedwoun d over right iliac region. 5. Multiple abrasion on left supraclavicular region.	-	-

1	2	3	4	5	6	7	8
107	Manohar Sohani (A.D.R. NO.208/08	C.S.T.	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Circular lacerated wound over right scapula region(entry) and oval lacerated over right supra-clavicular region(exit)	Shock and haemorrhage due to perforation of right ling in case of firearm injury (Unnatural) **(Ex.480)**	--
108	Mohammed Hussain Moh. Alamgir Shaikh (A.D.R. NO.209/08)	C.S.T.	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Oval lacerated wound over left parietal region of scalp(entry) and circular wound over right occipital region (exit)	Cranio cerebral injury in a case of firearm injury (Unnatural) **(Ex.481)**	
109	Murtaza Ansari Sallauddin Ansari (A.D.R. NO.210/08)	C.S.T.	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Circular lacerated wound over left side of back(entry) and oval lacerated wound over left side of chest (exit). 2. Perforating lacerated wound on	Shock and haemorrhage due to laceration of heart in case of firearm injury (Unnatural) **(Ex.482)**	--

1	2	3	4	5	6	7	8
	contd.. Murtaza Ansari Sallauddin Ansari				flexor aspect of left forearm (re-entry wound) and perforating lacerated wound on extensor aspect of left forearm (re-exit wound). The bullet had entered the body from the back and had exited from the wound on the chest and had re-entered the forearm on flexor aspect and exited from extensor aspect		
110	Mohammed Arif Mohd. Islam Ansari (A.D.R. NO. 212/08)	C.S.T.	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Oval lacerated wound over left side of neck(entry) and oval lacerated wound over left temporal region (exit).	Cranio-cerebral injury in case of firearm injury (Unnatural) **(Ex.483)**	-

1	2	3	4	5	6	7	8
	contd.. Mohammed Arif Mohd. Islam Ansari	-	-	-	2. Circular lacerated wound over anterior and middle aspect of right thigh(entry) and oval lacerated wound over upper and lateral aspect of right thigh.(exit). 3. Oval lacerated wound over anterior and middle part of left thigh (entry) and oval lacerated wound over the middle and posterior aspect of thigh(exit)	-	-
111	Mohd. Mukhtar Malik (A.D.R. NO.214/08)	C.S.T.	27-11-08 K.E.M.	Dr. Balasar **(PW 593)**	1. Entry wound of bullet at the upper right back side over the scapular area and exit wound of bullet over the upper side of anterior axillary fold.	Shock and haemorrhage as a result of gun shot injury as alleged (Unnatural) **(Ex.1549)**	--

1	2	3	4	5	6	7	8
112	Abbas Rajjab Ansari (A.D.R. NO. 215/08	C.S.T.	27-11-08 J.J.P.M.	Dr. Niturkar **(PW 104)**	1. firearm entry wound over left side of chest and exit wound over supra lateral angle of right scapula. 2. Firearm entry wound over medial aspect of left arm and exit wound over lateral aspect of left arm. 3. Firearm entry wound over left 4th intercostal space. Bullet was retrieved from right pleural cavity. The entire track of bullet was lacerated and hamerrohages 4. firearm entry wound over lateral aspect of left thigh and exit wound over medial aspect of left thigh	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.425)**	Bullet preserved for B .E.

1	2	3	4	5	6	7	8
113	Unknown male person (ADR 216-08)	C.S.T.	27-11-08 Sion	Dr.Dere **(PW 602)**	1. Entry wound over posterior part of iliac fossa and exit wound just below the left nipple.	Haemorrhagic shock following firearm injuries (Unnatural) **(Ex.1582)**	
114	Mrs.Gangabai Baburao Kharatmol (A.D.R. NO.217/08	C.S.T.	27-11-08 K.E.M.	Dr.Balsara **(PW 593)**	1. Entry wound of bullet above the left hip and exit wound of bullet over right posterior axillary line. 2. Minor punctured wound over the left lower front of left thigh.	Shock and Haemorrhage as a result of gunshot injury **(Ex.1550)**	--
115	Narul Islam Ajahar Mulla (A.D.R. NO.218/08)	C.S.T.	27-11-08 K.E.M.	Dr.Walter Vaz **(PW 604)**	1. Circular punctured wound over posterior parietal region of the head. 2. Boggy swelling extending downwards along the outer aspect of the right side of chest.	Haemorrhage shock as a result of haemothorax with intra pulmonary haemorrages due to air blast injury **(Ex.1597)**	--

1	2	3	4	5	6	7	8
116	Murgan Palaniya Pillai (A.D.R. NO. 219/08	C.S.T.	28-11-08 K.E.M.	Dr.Walter Vaz **(PW 604)**	1. Multiple irregular punctuate abrasions, contusions and torn lacerations over the back of head, back and both sides of neck, back of both shoulders, the top of right shoulder all around the right upper limb	Traumatic craniocerebral injury as a result of solid blast **(Ex.1598)**	--
117	Rakhila Abbas Ansari (A.D.R. NO. 220/08)	C.S.T.	27-11-08 J.J.P.M.	Dr.Meshram **(PW 596)**	1. Firearm entry wound on right side of chest and exit wound on right side of back. 2. Firearm entry wound on right side of back and exit wound over right shoulder region anteriorly. 3. firearm entry wound on right side of buttock and exit wound over right iliac fossa region	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1561)**	--

1	2	3	4	5	6	7	8
118	Nitesh Vijaykumar Sharma (A.D.R. NO.221/08)	C.S.T.	27-11-08 J.J.P.M.	Dr. Sonawane **(PW 113)**	1. Firearm entry wound over back right side and exit wound below the left side nipple.	Haemorrhage and shock due to multiple firearm injuries (Unnatural) **(Ex.442)**	**--**
119	Fatmabi Rehman Shaikh (A.D.R. NO.222/08)	C.S.T.	27-11-08 Sion	Dr. Dere **(PW 602)**	1. Entry wound on left lumbar region and exit wound over superior part of right hip.	Haemorrhagic shock following firearm injury (Unnatural) **(Ex.1580)**	**--**
120	Meenu Arjun Asrani (A.D.R. NO.223/08)	C.S.T.	27.11.08 Sion	Dr. Dere **(PW 602)**	1. Entry wound over posterior part of shoulder (right scapular region) and exit wound over mid clavicular line.	Haemorrhage shock due to firearm injury (Unnatural) **(Ex.1581)**	--
121	Mohamad Ilias Ansari (A.D.R. NO.224/08)	C.S.T.	27.11.08 J.J.P.M.	Dr. Kalyankar **(PW 594)**	1. Firearm entry wound over right side chest and firearm exit wound over left posterior angle of axilla. 2. Firearm entry wound on left side chest and exit wound over left mid axillary line	Haemorrhage and shock due to fire arm injuries (Unnatural) **(Ex.1552)**	--

1	2	3	4	5	6	7	8
122	Mastan Munir Qureshi (A.D.R. NO. 225/08)	C.S.T.	27.11.08 J.J.P.M.	Dr. Chavan **(PW 599)**	1. Firearm entry wound on right abdominal wall and firearm exit wound on back, lateral to midline.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1570)**	--
123	M.V.Anish (A.D.R. NO. 227/08)	C.S.T.	28.11.08 J.J. P.M.	Dr. Petkar **(PW 597)**	1. Contused lacerated wound on right occipital region. 2. Contused lacerated wound on right temporal region 3. Contused lacerated wound on right mandible. Fracture of right mandible. Fracture of skull extending at base of middle cranial fossa.	Shock due to multiple injuries (Unnatural) **(Ex.1563)**	--

1	2	3	4	5	6	7	8
124	Upendra Birju Yadav (A.D.R. NO. 228/08)	C.S.T.	30-11-08 J.J.P.M.	Dr.Chavan **(PW 599)**	1. Firearm entry wound over posterior aspect of left upper thigh. The bullet had passed through the skin, gluteal muscles, pelvic tissues and had fragmented into multiple small fragments.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1571)**	--
125	Unknown male person (ADR 229-08)	C.S.T.	30-11-08 J.J.P.M.	Dr.Chavan **(PW 599)**	1. Extra dural Haematomo over right fronto temporo parietal region. The brain was found oedematous	Complications following head injury (Unnatural) **(Ex.1569)**	--
126	Poonam Bharat Navadia (A.D.R. NO. 230/08)	C.S.T.	1-12-08 J.J.P.M.	Dr. Sonawane **(PW 113)**	1. Firearm entry wound over forehead and exit wound over left frontal region. And other minor injuries.	Head injury with multiple injuries due to firearm and blast injuries (Unnatural) **(Ex..456)**	--

1	2	3	4	5	6	7	8
127	Baichand Ramprasad Gupta (A.D.R. NO.235/08	C.S.T.	8-12-08 J.J.P.M.	Dr. Meshram **(PW 596)**	1. Four punctured wounds over forehead. 2. Punctured wound on scalp and skull on fronto parietal region.	Complication following blast injury (Unnatural) **(Ex.1560)**	Metallic pellet preserved for B.E.
128	Nathuni Parshuram Yadav (A.D.R. NO.238/08	C.S.T.	14-12-08 & 15-12-08 J.J.P.M.	Dr.Chavan **(PW 599)**	1. Firearm entry wound on left parietal region and exit wound on right frontal area.	Complication following firearm injury (Unnatural) **(Ex.1573)**	
129	Amarchand Naran Solanki (A.D.R. NO.65/08)	Kuber	29-11-08 J.J.P.M.	Dr.Chavan **(PW 599)**	1. Chop wound over neck posterior area. On dissection it was found that the skin, subcutaneous tissue, bones, muscles, spinal cord showed sharp cut injury.	Shock due to multiple injuries (Unnatural) **(Ex.1568)**	--

1	2	3	4	5	6	7	8
	contd.. Amarchand Naran Solanki	-	-	-	2. Contusion over lateral aspect of left thigh. 3. Abrasion over right side of chest below nipple. 4. Abrasion over right side of chest 4 cm from the injury No.3.	-	-
130	Tukaram Gopal Ombale (A.D.R. NO. 64/08)	Vinoli	27-11-08 J.J.P.M.	Dr.Jawale **(PW 100)**	1. An oval wound at right chest 7 x 5 x cavity deep. The track was oblique, upwards upto left shoulder. Bullet was recovered from left shoulder . 2. Punctured wound 1 x 1 at left chest, track horizontal .	Shock due to firearm injuries **(Ex.390 colly)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Tukaram Gopal Ombale	-	-	-	3. Punctured wound on right pelvic area. 4. Incised wound on right arm posteriorly. 5. Two punctured wounds at right thigh posteriorly 6. Incised wound on right thigh	-	-
131	Major Sandip Unnikrishnan (A.D.R. NO. 101/08)	Taj	28-11-08 J.J.P.M.	Dr.Niturkar **(PW 104)**	1. Firearm entry wound situated along the lower boarder of right lower jaw and exit wound over left fronto temporal scalp. 2. Firearm entry wound over anterior aspect of right shoulder	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.424colly**	-

1	2	3	4	5	6	7	8
	contd.. Major Sandip Unnikrishnan	-	-	-	and exit wound over lateral aspect of right arm. 3. Firearm entry wound over lateral aspect of right elbow and exit wound over medial aspect of right elbow. Re- entry wound over right side of abdomen and exit wound on left side of abdomen. 4. Laceration over distal 1/3 of right forearm consistent with glancing bullet injury. 5. Firearm entry wound over lateral aspect of left thigh and exit wound over medial aspect of left thigh. 6. Firearm entry wound over lateral aspect of right thigh and exit wound over medial aspect of right thigh 7. Firearm entry wound over lateral aspect of right thigh and exit of wound over medial aspect of right thigh. 8. firearm entry wound over lateral aspect of right thigh. The bullet had passed through firearm exit wound of injury No.7. And other minor injuries.	-	-

1	2	3	4	5	6	7	8
132	Rahul Subhash Shinde (A.D.R. NO. 75/08)	Taj	28-11-08 J.J.P.M.	Dr. Bansode **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on anterior abdomen wall and the bullet was recovered from right posterior wall of right lumbar region. The bullet was found deformed and preserved.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1495)**	Bullet preserved from B.E.
133	Zaheen Sayyed Nisar Ali Jafary Mateen (A.D.R. NO. 58/08)	Taj	-	-	-	-	-
134	Andres Don Livera (A.D.R. NO. 61/08)	Taj	27-11-08 J.J.P.M.	Dr.Javale **(PW 100)**	1. Irregular wound at left temporal region involving pinna and cranial cavity deep.	Fracture skull bones with laceration and brain tissue with Haemorrhage due to firearm injuries (Unnatural) **(Ex.399)**	--

1	2	3	4	5	6	7	8
135	Gunjan Vishandas Narang (A.D.R. NO.62/08)	Taj	27-11-08 Nair P.M.	Dr. Mohite **(PW 23)**	1. Circular lacerated wound over the lateral aspect and middle part of right scapular region(entry). 2. Circular lacerated wound over lateral aspect and middle part of left arm (entry). 3. An oval lacerated wound over medial and middle part of left arm(exit). 4. Oval shape swelling over the left inguinal region 3 cm lateral to right pubic tubercle. Bullet was palpable beneath the swelling. Bullet was recovered and preserved.	Shock due to haemoperito -neum as result of injuries to vital organs in case of firearm injuries (Unnatural) **(Ex.465)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
136	Vishandas Girdharidas Narang (A.D.R. NO. 63/08)	Taj	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. An oval lacerated wound over left iliac region of abdomen. 2. Contused abrasion over left iliac region. The bullet was palpable beneath this injury and the same was recovered.	Shock and haemorrhage due to firearm injury (Unnatural) **(Ex.466)**	Bullet preserved for B.E.
137	Vijayrao Anandrao Banja (A.D.R. NO. 64/08)	Taj	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Circular lacerated wound over lateral aspect of right arm. 2. circular lacerated wound over anterior aspect of right arm. 3. Lacerated wound over flexor aspect of	Shock and haemorrhage due to multiple firearm injuries (Unnatural) **(Ex.472)**	--

1	2	3	4	5	6	7	8
	contd.. Vijayrao Anandrao Banja	-	-	-	right forearm. 4. Circular lacerated wound over dorsal aspect of right hand. 5. Lacerated wound over flexor aspect of right wrist joint. 6. Abrasion over right side of chest around the nipple. 7. Abrasion over left side of chest 4 cm below the nipple. 8. Circular lacerated wound over upper and outer quadrant of left buttock (entry) and oval lacerated wound over right side of abdomen in lumbar region (exit) 9. Oval lacerated wound over left side of back, scapular region (entry) and oval lacerated wound on left side of back scapular region 9 cm away from midline (exit)	-	-

1	2	3	4	5	6	7	8
138	Sadanand Ratan Patil (A.D.R. NO. 65/08)	Taj	27-11-08 J.J.P.M.	Dr.Chavan **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound on right side of chest and exit wound on left iliac fossa.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1494)**	--
139	Thomas Verghese (A.D.R. NO. 66/08)	Taj	27-11-08 J.J.P.M.	Dr.Gamme **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound over left thigh and exit wound over right inguinal region. 2. Firearm entry wound over left side of abdomen. One intact bullet retrieved from left side of abdominal cavity. 3. Firearm entry wound over right side abdomen. One deformed bullet retrieved from upper end of the injuries.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1490)**	

1	2	3	4	5	6	7	8
140	Ravi Jagan Kunwar (A.D.R. NO. 67/08)	Taj	27-11-08 Sion	Dr. Sarvandekar **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound over the nap of neck on right side and exit wound at over lateral aspect of nap of the neck on left side.	Haemorrhagic shock following firearm injury (Unnatural) **(Ex.1501)**	--
141	Boris Mario Do Rego (A.D.R. NO. 68/08)	Taj	27-11-08 Nair P.M.	Dr.Mohite **(PW 23)**	1. Circular lacerated wound over upper lateral quadrant of left gluteal region(entry) 2. An oval lacerated wound over left femoral triangle (Exit)	Shock and haemorrhage due to firearm injury involving left femoral vessels (Unnatural) **Ex.473**	--
142	Satpakkam Rahmatulla Shaukatali (A.D.R. NO. 69/08)	Taj	27-11-08 Sion	Dr. Sarvandekar **(U/s 294 of Cr.P.C.)**	1. Entry wound of chest medial to right nipple. 2. Exit wound below the nap of neck in the midline of back	Haemorrhagic shock following firearm injury (Unnatural) **(Ex.1502)**	--

1	2	3	4	5	6	7	8
143	Faustine Basil Martis (A.D.R. NO.70/08)	Taj	27-11-08 Sion	Dr. Sarvandekar **(U/s 294 of Cr.P.C.)**	1. Entry wound over the right jaw centrally placed, fractured underline bone. Bullet was retrieved from the muscles of neck	Haemorrhagic shock following firearm injury (Unnatural) **(Ex.1503)**	Bullet preserved for B.E.
144	Kaizad Naushir Kamdin (A.D.R. NO.71/08	Taj	27-11-08 J.J.P.M.	Dr.Sonawane **(PW 113)**	1. Firearm entry wound over left side at mandible below the ear lobe and exit wound at the femoral region behind the right ear. 2. Firearm entry wound	Haemorrhage and shock due to multiple firearm injuries (Unnatural) **(Ex.446colly)**	--

1	2	3	4	5	6	7	8
	contd.. Kaizad Naushir Kamdin	-	-	-	over the right iliac region and exit wound at the back side. 3. Firearm entry wound on the anterior aspect of thigh and exit wound at the back of thigh. 4. Firearm entry wound on right leg anterior below the knee joint and exit wound at back side of the leg. Fracture at upper tibia	-	-
145	Neelam Vishandas Narang (A.D.R. NO.72/08	Taj	27-11-08 Nair P.M.	Dr. Mohite **(PW 23)**	1. A circular lacerated wound over right chest	Shock and haemorrhage due to multiple injuries to the vital	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
	contd.. Neelam Vishandas Narang	-	-	-	(entry wound) and elliptical lacerated wound over intra scapular region(exit) 2. A circular lacerated wound over antero-medial aspect of right midthigh (entry). Elliptical lacerated wound over upper anterior aspect of right thigh. A deformed bullet was recovered from right upper anterior aspect of thigh.	organs in case of firearm injury (Unnatural) **(Ex.467)**	
146	Rupinder Devendrsingh Randhava (A.D.R. NO. 73/08)	Taj	27-11-08 Sion	Dr.Dere **(U/s 294 of Cr.P.C.)**	1. Two Entry wounds one immediately behind the right ear and other in front of right ear. Exit wound over the left side of neck. 2. Entry wound behind the left shoulder and exit wound over left side of chest.	Haemorrhage shock following gun shot injury **(Ex.1504)**	

1	2	3	4	5	6	7	8
147	Eklak Ahmed Mustak Ahmed (A.D.R. NO.76/08)	Taj	29-11-08 J.J.P.M.	Dr. Sonawane **(PW 113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to multiple firearm injury (Unnatural) **(Ex.452)**	-
148	Maksud Tabarakali Shaikh (A.D.R. NO.77/08)	Taj	29-11-08 J.J.P.M.	Dr.A.N. Chavan **(U/s 204 of Cr.P.C.)**	1. Bullet injury on right side of chest above nipple (entry). 2. Bullet entry on left side of scapula in upper region (exit). 3. Contusion right side anterior chest wall. 4. lacerated wound right side of chest in axillary line. 5. Contusion mark on right arm lateral aspect.	Haemorrhagic shock due to firearm injury (Unnatural) **(Ex.1486)**	--

1	2	3	4	5	6	7	8
149	Feroz Jamil Ahmed Khan (A.D.R. NO. 81/08)	Taj	29-11-08 J.J.P.M.	Dr. Bagul **(U/s 294 of Cr.P.C.)**	1. Bullet entry wound right shoulder. 2 Bullet exit wound right axilla. 3. Bullet entry wound right arm medially. 4. Bullet exit wound right arm lateral. 5. Bullet entry wound right side of post neck region . 6. Bullet exit wound right side of parietal region 7. Bullet entry wound right buttock upper region. 8. Bullet exit wound right side buttock region.	Death due to firearm injuries (Unnatural) **(Ex.1487)**	--
150	Teitel baum Aryeh Levish (A.D.R. NO. 86/08)	Taj	30-11-08 J.J.P.M.	Dr. Javale **(PW 100)**	1. Irregular round wound at left chest 2. Irregular round wound at left thigh. 3. Irregular wound at axilla 4. Laceration of right palm. 5 Multiple punctured wound over both thigh.	Shock due to firearm injuries **(Ex.400)**	--

1	2	3	4	5	6	7	8
151	Duglas Justin Markell (A.D.R. NO. 89/08)	Taj	30-11-08 J.J.P.M.	Dr. Bansode **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound above and lateral to the umbilicus. 2. Firearm entry wound above right knee joint on lateral surface of the thigh. 3. Firearm entry wound on left thigh anteriorly. 4. Firearm exit wound on posterior surface of left upper arm. 5. Firearm exit wound on medial aspect of right thigh 6. Firearm exit wound on left popliteal foosa 7. Glancing (guttering) firearm injury on left thigh 8. Abrasion on right forearm. Injury No.1 communicates to injury No.4. Injury No.2 communicates with Injury No.5. and injury No.3 communicates with injury No.6	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1492)**	

1	2	3	4	5	6	7	8
152	Chaitlal Gunish (A.D.R. NO. 90/08)	Taj	29-11-08 J.J.P.M.	Dr. Bansode **(U/s 294 of Cr.P.C.)**	1. Firearm wound of entry on right neck lateral aspect. 2. Firearm wound of exit on posterior aspect of left shoulder.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.1496)**	
153	Willem Jan Berbers (A.D.R. NO. 91/08)	Taj	30-11-08 J.J.P.M.	Dr. Kalyankar **(U/s 294 of Cr.P.C.)**	1. Firearm wound of entry on right mastoid region. The bullet was found lodged in scalp and bone on left frontal region. The bullet was retrieved. 2. Firearm wound of entry on right calf posteriorly. 3. Firearm wound of exit on right leg below knee joint.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1493)**	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
154	Nitisingh Karamveer Singh (A.D.R. NO. 94/08)	Taj	-	-	-	-	-
155	Samarveer Singh Karamveer Singh Kang (A.D.R. NO. 95/08)	Taj	29-11-08 J.J.P.M.	Dr. Niturkar **(PW 104)**	1. Deep burns seen all over body with destruction of skin, muscles, soft tissues and bones at places. 100% deep burns	Shock due to burns (Unnatural) **(Ex.419)**	Muscle mass and bone pieces for DNA
156	Udaysingh Karamveer Singh Kang (A.D.R. NO. 96/08)	Taj	29-11-08 J.J.P.M.	Dr.Bansode **(U/s 294 of Cr.P.C.)**	1. Deep burns over upper trunk anteriorly exposing ribs upto 8th level. Muscles and bones exposed. Deep burns on right arm, left arm, head, face and right thigh. Total deep burns approximately 50%	Shock due to burns **(Ex.1497)**	

1	2	3	4	5	6	7	8
157	Sabina Saigal Saikia (A.D.R. NO.98/08)	Taj	29-11-08 J.J.P.M.	Dr. Bansode **(U/s 294 of Cr.P.C.)**	1. Contusion over scalp vertex. 2. Laceration on left thigh (Muscle deep) 3. Contusion on back scapular region (Muscle deep) 4. Contusion on left leg posteriorly (Muscle deep)	Shock due to injuries (Unnatural) **(Ex.1498)**	-
158	Hemlata Kashi Pillai (A.D.R. NO.99/08)	Taj	29-11-08 J.J.P.M.	Dr. Niturkar **(PW 104)**	1. Superficial to deep burn injuries to the extent of 36%	Shock due to burns (Unnatural) **(Ex.420)**	-
159	Rajiv Omprakash Saraswat (A.D.R. NO.100/08)	Taj	-	-	-	-	-
160	Gautam Devsingh Gosai (A.D.R. NO.104/08)	Taj	28-11-08 J.J.P.M.	Dr. Sonawane **(PW 113)**	1. Firearm entry wound on right forearm anterior aspect and exit wound on right forearm at back side 2. Firearm entry wound on right buttock and exit from right thigh anterior aspect.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.449)**	-

1	2	3	4	5	6	7	8
161	Rajan Eshwar Kamble (A.D.R. NO. 105/08)	Taj	3-12-08 J.J.P.M.	Dr. Chikhalkar **(PW 120)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to firearm injuries (Unnatural) **(Ex.502)**	-
162	Burki Ralph Rainer Jachim (A.D.R. NO. 106/08)	Taj	27-11-08 Sion	Dr.Dere **(U/s 294 of Cr.P.C.)**	1. Contusion 20 x 10 cm x laterally over both ankles. 2. Abrasion on right elbow. 3. Abrasion over left hand 4. Fractures of both ankles joint. Fractures of lower 1/3 shaft left femur	Haemorrhagic shock following multiple injuries (Unnatural) **(Ex.1505)**	-

1	2	3	4	5	6	7	8
163	Hemant Pravin Talim (A.D.R. NO. 108/08)	Taj	5-12-08 J.J.P.M.	Dr. Sunanda Katke **(PW 592)**	1. Entry wound on right side of posteriorly. 2. Exit wound on right chest anteriorly. The patient was operated. There were sutured wounds when dead body was brought for post mortem examination.	Death due to complications of firearm injuries (Unnatural) **(Ex.1543)**	-
164	Shoeb Ahmed Shaikh (A.D.R. NO. 109/08)	Taj	27-11-08 St. George	Dr. Shinde **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound right abdomen. 2. Firearm entry wound right buttock. 3. Firearm exit wound on left abdomen. 4. Firearm exit wound on left abdomen front portion. 5. Firearm entry wound on right forearm. 6. Firearm exit wound on right forearm. 7. Firearm entry wound on left knee. 8. Firearm exit wound on left knee.	Death due to firearm injuries (Unnatural) **(Ex.1506)**	-

1	2	3	4	5	6	7	8
165	Michael Stuart Moss (A.D.R. NO.111/08	Taj	27-11-08 J.J.P.M.	Dr. Kalyankar **(U/s 294 of Cr.P.C.)**	1. Firearm entry wound of bullet on anterior part of abdomen 26 cm. below left nipple. Bullet retrieved from left lobe of liver.	Haemorrhage and shock due to firearm injury (Unnatural) **(Ex.1500)**	Bullet preserved for B.E.
166	Elizabeth Russell (A.D.R. NO.112/08	Taj	27-11-08 J.J.P.M.	Dr. Sonawnae **(PW 113)**	Details of injuries mentioned in the P.M. notes. Medical officer has given evidence regarding cause of death only.	Haemorrhage and shock due to multiple firearm injuries (Unnatural) **(Ex.443)**	-

775. In this regard it may be noted here that the postmortem examination reports and the evidence of medical officers can be categorized in following categories :

1) Medical officers who have been examined in court and have

given details of nature of injuries and cause of death ,

2) Medical officers who have been examined in court and have given evidence with regard to cause of death but in whose evidence the details of injuries have not been stated,

3) Medical officers whose postmortem notes have been admitted by the accused u/s 294 Cr.P.C.

776. It may further be stated here that the nature of injuries mentioned in Col.No.6 of table No.5 are only external injuries particularly describing entry and exit wounds. The damage caused to the vital parts of the body inside has not been extensively stated in Col.No.6. This method of putting the evidence with respect to cause of death in a condensed form has been adopted particularly because though in some cases postmortem notes have not been admitted by the defence and the medical officers have been examined in the court by prosecution, there does not appear to be serious challenge to the description of injuries mentioned in Col.No.17 of postmortem notes. It is therefore found not necessary to add few more pages to the judgment by describing injuries in detail.

777. In almost all cases injuries found on the dead bodies were ante-mortem. Some of the medical officers have been cross-examined by ld. Advocate Mr.Abbas Kazmi and some of the medical officers have been cross-examined by ld.Advocate Mr.Pawar for accused No.1. The cross-examination of these medical officers is limited to the extent of bullets or parts of bullets allegedly tallying with test fired bullets from AK-47 rifle (art.10) . It appears from the cross-examination of medical officers on behalf of accused No.1 that the attempt on the part of defence lawyers was only to dislodge the prosecution case that the bullets found in the dead body of particular deceased did not tally with the bullets test fired from art.10. As such briefly it can be stated here that the evidence of medical officers with respect to cause of death of 166 deceased has remained unchallenged. As stated earlier the individual cases where bullets retrieved from the dead bodies had allegedly tallied with the bullets test fired from the AK-47 rifle (art.10) will be dealt with by me separately.

778. However, before I deal with those individual cases, let me deal with the evidence concerning charge u/s 307 of IPC. The charge u/s 307 IPC was framed on the basis of injuries suffered by 238 persons who were

later on treated at various hospitals and were discharged. In some cases the injuries were of very very serious nature but one thing very apparent is that most of the injured had either firearm injuries or blast injuries. Prima facie it appeared to the court that had anyone of the injured died, the accused No.1 would have been guilty of offence of murder r.w. either Sec.34 or Sec. 109 of IPC. Accused No.2 and 3 also would have been guilty of murder r.w. Sec. 109 r.w. Sec.120B of IPC. This of course is subject to the proof of circumstances and the requisite intention. Whether the persons who suffered injuries were injured by the accused No.1 or one of the deceased accused No. 1 to 9 with intention to cause death or with intention to cause bodily injury and the bodily injury was sufficient to cause death in ordinary course of nature, will be discussed and decided in the later part of the judgment. For the time being what I intend to make part of this judgment is the names of injured persons, nature of injuries and the medical officers who had examined them and their opinion.

779. In this regard, I want to note here that the prosecution has not been able to examine some of the injured persons whose names have been mentioned in the charge No.26. The prosecution has been able to examine

only 111 witnesses out of 238 persons who had suffered injuries at various places of the alleged offences. In some cases medical officers who had examined the injured persons have also been examined and medical certificates have also been produced. Some of the witnesses have been examined in open Court. The witnesses who had been examined in open court had, according to prosecution case, seen either the accused No.1 or any of the deceased accused Nos. 1 to 9. There are large number of witnesses who had not seen any of the accused but had sustained injuries during the incidents. They were not aware as to who had fired or who had exploded bombs. What they knew was that they had suffered injuries and they were treated by the medical officers. Such witnesses, the ld. Spl.P.P. wanted to be examined as formal witnesses u/s 296 Cr.P.C. It was contended by the ld. Spl.P.P. that these witnesses will not be able to say anything else except the nature of injuries sustained by them and the place of incident. It was submitted that there are large number of such witnesses and that it will save lot of time of the court and expenses if such witnesses are allowed to be examined on affidavits u/s 296 Cr.P.C.

780. At the same time the medical officers who had examined such

injured persons were also proposed to be examined on affidavits. Few more witnesses like carriers of the articles to the Forensic Science Laboratory and carriers of dead bodies from the places of incidents to various hospitals were also proposed to be examined u/s 296 Cr.P.C. It was submitted by the ld. Spl.P.P. that this is a fit case in which this Court can take recourse to the provision of Sec.296 Cr.P.C. and save valuable time and money and also will save valuable time of the witnesses who are not necessarily from this city. After giving thoughtful consideration to the submissions made by ld. Spl.P.P. the Court had allowed the prayer. In view of sub-section 2 of Sec.296 Cr.P.C. an option was given to the ld. advocates for the accused to let the court know as to which witnesses are required to be cross-examined by them. Some of the witnesses were called for cross-examination on the prayer of defence advocates.

781. Coming back to the issue of names of the injured persons and the injuries suffered by them, it may be stated here even at the cost of repetition that the prosecution has been able to examine 110 injured persons. Some medical officers who had treated the injured have also been examined. There are large number of medical officers who had treated

more than one patient at a time. Their affidavits cover the evidence with respect to the treatment provided by them to the patients under their care. However, almost all such patients have not been examined. The evidence of medical officers with respect to the injured who have not been examined as witnesses, cannot be referred to, as it is of no use. It need not be stated here that unless the injured himself or somebody else who had seen the person receiving injuries, is examined, evidence of medical officer with respect to the nature of injuries and cause thereof, becomes redundant. Keeping all these things in mind I had taken a decision to prepare another table to indicate names of the injured, names of the hospitals where they were treated, nature of injuries, names of medical officers, their serial numbers as prosecution witnesses , summary of evidence of medical officers and the exhibit numbers of medical certificates, if any. The last column i.e. Col. No.6 pertaining to the medical officer, in some cases, is kept blank where the medical officer is not examined. The said table can be produced as under :

TABLE NO.6 :

1	2	3	4	5	6
Sr. No	**Name of the injured persons**	**Place of the incident**	**Nature of injury**	**Name of the Medical Officer**	**Evidence of Medical officer & Ex.No. of medical certificate**
1	Sudam Aba Pandarkar **(PW 62)**	C.S.T.	Bullet injury on chest. Bullet exited from the back	Dr.Dev.S. Saksena **(PW 553)**	Bullet injury on left chest with left haemothorax **(Ex.1431B)**
2	Jayprakash Sohanlal Phalore **(PW 518)**	C.S.T.	Gunshot injury with L.W. right thigh middle 1/3rd . O/E 20 cm x 4 cm open wound over right thigh	**Doctor not examined**	-
3	Balu Bandu More **(PW 517)**	C.S.T.	Bullet injury to right calf	**Doctor not examined**	-
4	Anilkumar Rajendra Yadav **(PW 506)**	C.S.T.	trauma to right inguinal region (10x4 cms) due to bullet injury	Dr.Hemant Bhandari **(PW 560)**	trauma to right inguinal region (10x4 cms) due to bullet injury
5	Murlidhar Chintu Zole **(PW 516)**	C.S.T.	Gun shot injury to right foot	**Doctor not examined**	-
6	Pandurang Subrao Patil **(PW 63)**	C.S.T.	Bullet had pierced his left thigh and had exited from anterior portion of left thigh and had again entered the right thigh and had exited from exterior portion of right thigh	Dr. Chitlangia **(PW 583)**	Bullet injury – by lateral thigh **(1461B)**
7	Ramji Yabad Napit **(PW 519)**	C.S.T.	1. Punctured wound just below right lateral malleolus 2. Punctured wound just below right medial malleolus.	**Doctor not examined**	-

1	2	3	4	5	6
8	Vishal Prakash Kardak **(PW 69)**	C.S.T.	Brushed injury on right side of head	Dr.Jaiswal **(PW 586)**	1. Laceration on right Temporal region of scalp subcutaneous, 5cm long (Ex.1466)
9	Shambunath Munai Yadav	C.S.T.	Injury on suprasternal notch	**Doctor not examined**	**-**
10	Kishor Vinayak Kale **(PW 56)**	C.S.T.	Injury on left ankle due to firing at C.S.T.	Dr.Basappa Natraj **(PW 587)**	1. Laceration on dorsum of left foot laterally 1 cm long subcutaneous. 2. Laceration on dorsum of left foot medially 1 cm. long subcutaneous **(Ex.1468)**
11	Ansarallh Saudarallh Baksh Mohd. Hanif **(PW 88)**	C.S.T.	Bullet injury on right leg below knee joint	Dr.Sonali Khairmode **(PW 94)**	1. Firearm entry wound on medial aspect of right leg. 2. Fracture on right fibula. Bullet was removed from right fibula (Ex.377)
12	Harshada Suhas Salaskar **(PW 89)**	C.S.T.	Bullet injury on left thigh. Bullet was retrieved by Medical officer at G.T.Hospital	Dr.Sonali Khairmode **(PW 94)**	1. Firearm entry wound over left gluteal region. No exit wound seen. (Ex.375)
13	Pappusingh Mannusingh **(PW 504)**	C.S.T.	Entry and exit wounds of 0.5 cm. and 0.8 cm. respectively antero medial and antero lateral aspect of left thigh.	Dr.Sonali Khairmode **(PW 94/565)**	Though Dr.Khairmode has been examined but she has not stated anything about the injury sustained by this witness

1	2	3	4	5	6
14	Poonamsingh Santoshsingh **(PW 64)**	C.S.T.	Bullet injury on back portion of right shoulder.	Dr.Harshal Gawai **(PW 588)**	1. Two lacerated wounds on left shoulder. 2. Two wounds on medial aspect of left thigh. 3. One abrasion over right lumber region. **(Ex.1475A)**
15	Niranjan Sadashiv Sardar (PW 87)	C.S.T.	Two bullets hits this witness	Dr.Harshal Gawai **(PW 588)**	1. Lacerated wound 2 cm below the pinna of left ear. 2. Fracture of mandible
16	Fakir Mohd. Abdul Gafoor **(PW 515)**	C.S.T.	Bullet injury on right leg.	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
17	Bharat Shyam Nawadia **(PW 524)**	C.S.T.	Bullet injury on right shoulder	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
18	Adhikrao Dyanu Kale **(PW 521)**	C.S.T.	Bullet injury on abdomen	Dr.Ravindra Sawant **(PW 585)**	Gun shot on abdomen. Injured was operated for exploratory laprotomy and ICD Insertion.
19	Alok Harilal Gupta **(PW 513)**	C.S.T	Bullet injury on left neck side	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness

1	2	3	4	5	6
20	Prashant Purnachandra Das **(PW 527)**	C.S.T	Bullet injury on right side of chest	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
21	Habibul Mohd. Sukurddin Khan **(PW 505)**	C.S.T	Bullet injury to multiple pin head and abrasion over chest, right lower limb and forehead	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
22	Nafisa Sadaf Qureshi **(PW 53)**	C.S.T.	Bullet injury on left leg	Dr.Harshal Gawai **(PW 588)**	1 Swelling and tenderness at left foot. 2. Entry wound at anterior aspect of left foot. 3. Exit wound at posterior aspect of left foot. **(Ex.1471)**
23	Lalji Jagannath Pandey **(PW 507)**	C.S.T.	Bullet injury on left forearm and left upper thigh	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
24	Ashok Bhimappa Renetala **(PW 512)**	C.S.T.	Blast shock wave injury to back and both ears	**Doctor not examined**	-
25	Vijaya Ramkomal Kushwah **(PW 523)**	C.S.T.	Bullet injury over left thigh	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness

1	2	3	4	5	6
26	Farooqi Nasiruddin Khaliluddin **(PW 52)**	C.S.T.	Blast injuries due to bomb explosion.	Dr.Harshal Gawai **(PW 588)**	1. Contused lacerated wound over right arm 2 cm x 1 cm 2. Abrasion over left side of chest and left leg. **(Ex.1477)**
27	Anilkumar Dyanoji Harkulkar **(PW 525)**	C.S.T.	Bullet injury over the nape of the neck	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
28	Uttam Vishnu Sasulkar **(PW 522)**	C.S.T.	Bullet injury over left thigh	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
29	Sanjay Nemchand Yadav **(PW 508)**	C.S.T.	Bullet injury over upper neck	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
30	Ratankumarji Kanhayaprasad Yadav **(PW 509)**	C.S.T.	Bullet injuries over right thigh	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
31	Sangita Niranjan Sardar **(PW 86)**	C.S.T.	Multiple injuries due to steel balls	Dr.Harshal Gawai **(PW 588)**	Multiple small injuries were found over the abdomen and right knee. **(Ex.1476)**

1	2	3	4	5	6
32	Vishveshwar Shishupal Pacharne **(PW 520)**	C.S.T.	Bullet injury on left thigh shrapnel injury as per left knee abrasion 1x 1cm	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
33	Bharat Ramchandra Bhosale **(PW 49)**	C.S.T.	Firearm injury on right upper arm	Dr.Harshal Gawai **(PW 588)**	1. Entry wound at lower end, anterior aspect of right arm. 2. Exit wound at lower end, posterior aspect of right arm. **(E.1470)**
34	Devika Natvarlal Rotawane **(PW 51)**	C.S.T.	Bullet hit on right leg of this witness	Dr.Harshal Gawai **(PW 588)**	1. Entry wound over anterior aspect of right leg 0.5 cm x 1 cm. 2. Exit wound over posterior aspect of right leg 1 cm x 1 cm. **(Ex.1473)**
35	Sadashiv Chandrakant Kolke **(PW 526)**	C.S.T.	Bullet injury over right side of neck	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
36	Ganpat Gangaram Shigwan **(PW 514)**	C.S.T.	Bullet injury on left side of abdomen	Dr.Harshal Gawai **(PW 588)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness

1	2	3	4	5	6
37	Ganesh Sitaram Sakhare **(PW 511)**	C.S.T.	Bullet injury on right arm	Dr.A.Y. Rangoonwala **(PW 580)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
38	Sadanand Vasant Date **(PW 118)**	Cama In	Injuries on right eye, left side of chest just below armpit, throat, right knee and left ankle due to the splinters and fragments of the bomb and other minor injuries.	**Doctor not examined**	-
39	Vijay Abaji Shinde **(PW 112)**	Cama In	Injuries on left knee joint and abdomen due to bomb explosion.	Dr.P.K. Munshi **(PW 564)**	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness
40	Vijay Tukaram Powar **(PW 469)**	Cama In	Blast injury on right shoulder, right Lower limb and right lower limb	Dr.H.B. Bhandari **(PW 560)**	Bullet and blast injury to right shoulder, right lower limb and left lower limb **(Ex.1438A)**
41	Mohan Dyanoba Shinde **(PW 471)**	Cama In	Bullet and blast injuries to left leg and left arm	Dr.B.S. Chitalangia **(PW 583)**	1. Open wound on medial aspect of right foot. 2. Open calcaneum fracture with shrapnel in situ **(Ex.1461C)**

1	2	3	4	5	6
42	Sachin Dadasaheb Tilekar **(PW 470)**	Cama In	Bullet and blast injuries on abdomen, face, wrist and thigh	Dr.P.K. Munshi **(PW 564)**	Bullet and blast injuries with multiple lacerated wounds over abdomen, face, wrist, hand and thigh. **(Ex.1442D)**
43	Vinay Chintaman Dandgawhal **(PW 472)**	Cama In	Bullet injury on back	Dr.R.N. Sharma **(PW 561)**	Firearm injury on back. **(Medial certificate not exhibited)**
44	Hirabai Vilas Jadhav **(PW 473)**	Cama In	Firearm injury on right wrist joint	Dr.R.N.Sharma **(PW 561)**	Firearm injury on right wrist joint. **(Medial certificate not exhibited)**
45	Chandrakant Dyandev Tikhe **(PW 109)**	Cama In	Particles of hand grenade hit on neck of this witness	Dr.A.M. Shaikh **(PW 559)**	Injury to right side of neck by splinter of hand grenade. **(Ex.1437A)**
46	Kailash Chandrakant Gegadmal **(PW 111)**	Cama In	Injuries on left chest and left thigh due to hand grenade explosion and other minor injuries	Dr.J.T. Sankpal **(PW 556)**	1. Firearm injury on left side of chest. 2. Abrasion over left side of chest below medial to left nipple 3. Abrasion over neck of fibula **(Ex.1434D)**
47	Harishchandra Sonu Shrivardhankar **(PW 106)**	Cama In	1. Bullet injury on back. 2. Two knife blows on neck and back	**Doctor not examined**	-

1	2	3	4	5	6
48	Arun Dada Jadhav **(PW 136)**	Cama Out	Bullet injury on my right elbow and left shoulder	Dr.Begani **(PW 584)**	1. Bullet injury on right elbow with right arm in traction. 2. Compound communited supracondylar fracture right humerus 3. CLW on left shoulder at the tip of acromion. 4. CLW on left shoulder over anterior border of deltoid 5. CLW on left shoulder over anterior axillary line at infra clavicular region. **(Ex.1462A)**
49	Maruti Mahadevrao Phad **(PW 139)**	Cama Out	1. Two bullet injuries hit on right hand of this witness. 2. Third bullet hit on left side of waist of this witness.	Dr.J.T. Sankpal **(PW 556)**	1. Partial amputation on right middle and ring finger.(Firearm) 2. Injury on buttock (Ex.1434A)
50	Mohd.Asif Abdul Gani Memon (PW 456)	Cama Out	Injuries on left thigh	Dr. Rangwala (PW 555)	Though the medical officer has been examined but he has not stated anything about the injury sustained by this witness. Certificate is also not produced.

1	2	3	4	5	6
51	Shankar Bhanusaheb Vhande **(PW 454)**	Cama Out	Injuries on left heel and right great toe.	Dr.Jyoti Rao **(PW 21)**	Doctor is examined . Nature of injuries not mentioned in the evidence. Certificate is also not produced.
52	Kalpanath Jitai Singh **(PW 457)**	Cama Out	Injury on left side of neck	Dr.J.T.Sankpal **(PW 556)**	CLW over left side of neck. (Ex.1434C)
53	Anil Mahadev Nirmal **(PW 453)**	Cama Out	Injuries on right hand fingers.	**Doctor not examined**	-
54	Prashant Sadashiv Koshti **(PW 455)**	Cama Out	Bullet injuries on left arm	Dr.J.T.Sankpal **(PW 556)**	Entry wound on upper 1/3 left arm and corresponding exit wound on the same arm **(Ex.1434B)**
55	Sanjay Yeshwant Govilkar **(PW 2)**	Vinoli	Firearm injury on right side of waist.	Dr.Bgagwat **(PW 8)** Dr.Jyoti Rao (PW 21)	Injury on right lion region **(Ex.115)**
56	Syam Sunder Choudhary **(PW 171)**	Vile Parle	Blast injury on right shoulder.	**Doctor not examined**	-
57	Balkrishna Ramchandra Bore **(PW 490)**	Vile Parle	Injury due to blast on face, eye leads, forehead, nose and ear.	Dr.U.A. Mohanrao **(PW 577)**	Doctor is examined. Nature of injuries not mentioned in the evidence. Certificate is also not produced.
58	Chandresh Harijwandas Vyas **(PW 452)**	Oberoi	Bullet injury on back side of hip and neck.	Dr.S.V.Modi **(PW 551)**	Bullet injury on left shoulder **(Ex.1429A)**

1	2	3	4	5	6
59	Apurva Natwarlal Parekh **(PW 447)**	Oberoi	Bullet injuries on back side of hip and neck.	Dr.Mrudul Barjatya **(PW 552)**	No injuries were found on his person. His affidavit appears to be copy paste of some other witness. This witness has not sustained any injury**(Ex.1430A)**
60	Dinaj Puranchand Sharm **(PW 448)**	Oberoi	Injury on left elbow and left arm.	Dr.Girish Talwadkar **(PW 569)**	Wounds and bleeding left elbow and left arm. Suturing done. **(Ex.1447B)**
61	Virendra Pitamber Semwal **(PW 451)**	Trident	Bullet injuries on right hand.	**Doctor not examined**	-
62	Joseph Joy Pultara **(PW 450)**	Trident	Bullet injury on right and left thigh.	Dr.S.S. Dalvi **(PW 562)**	Bullet injury on right hand and left thigh. Bullet was removed and wound debridement was done. **(Ex.1440F)**
63	Gangaram Suryabhan Borde **(PW 446)**	Trident	Bullet injuries on right calf.	Dr.S.S. Dalvi **(PW 562)**	Bullet injury on right calf **(Ex.1440E)**
64	Ranjit Jagganath Jadhav **(PW 449)**	Trident	Injuries on chest and lower limb.	Dr. Saksena **(PW 553)**	Blast injury to chest and lower limb. **(Ex.1431A)**
65	Nitin Digamber Kakade **(PW 493)**	Taj	Burn injuries on right hand, both ears and nasal aspect of face	**Doctor not examined**	-
66	Ashok Laxman Pawar **(PW 500)**	Taj	Inhalation injury	**Doctor not examined**	-
67	Arun Sarjerao Mane **(PW 501)**	Taj	Inhalation injury	**Doctor not examined**	-

1	2	3	4	5	6
68	Saudagar Nivruti Shinde **(PW 502)**	Taj	Smoke Inhalation.	**Doctor not examined**	-
69	Amit Raghunath Khetle **(PW 499)**	Taj	Firearm injury on right flank and right abdomen.	Dr.M.M. Begani **(PW 584)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced.
70	Shankar Shamrao Pawar **(PW 503)**	Taj	Firearm injuries on right hand and right knee	**Doctor not examined**	-
71	Sajesh Narayan Nair **(PW 497)**	Taj	Injury on right thigh. Firearm and blast injuries	Dr.M.G. Noriani **(PW 581)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced
72	Nitin Satishkumar Minocha **(PW 496)**	Taj	Firearm injury on left forearm and fracture of left ulna	Dr.M.G. Noriani **(PW 581)**	Gun shot injury on left forearm with fracture of left ulna. **(Ex.1459A)**
73	Adil Rohengtan Irani **(PW 188)**	Taj	Assaulted on back side by the two terrorists at Room No.632 of Hotel Taj	Dr.B.S. Chitlangia **(PW 583)**	CLW forehead and left thumb blunt trauma back and brush burns all over body. **(Ex.1461A)**
74	Ashish Ankush Patil **(PW 492)**	Taj	Firearm injuries on left leg	Dr.S.S. Dalvi **(PW 562)**	Swelling of left ankle **(Ex.1440B)**
75	Jagdish Waman Gujran **(PW 495)**	Taj	Firearm injury on right wrist and right knee	Dr.S.S. Dalvi **(PW 562)**	Gun shot injury on right arm and right knee **(Ex.1440C)**

1	2	3	4	5	6
76	K.R. Rammurthi **(PW 184)**	Taj	Assaulted by the terrorists at hotel Taj in Room No.632 and Room No.520.	**Doctor not examined**	-
77	Naushir Firz Sanjana **(PW 494)**	Taj	Gunshot injury on left leg.	**Doctor not examined**	-
78	Rakesh Harischandra Chawan **(PW 498)**	Taj	Firearm injuries on right buttock.	Dr.B.S. Chitlangia **(PW 583)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced.
79	Pravin Pandurang Sawant **(PW 474)**	Leopold	Firearm injury on right thigh.	Dr.M.M. Begani **(PW 584)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced
80	Nivruti Baburao Gavhane **(PW 489)**	Leopold	Firearm injury on left upper thigh and right thigh.	Dr.B.S. Chitlangia **(PW 583)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced
81	Ijaj Abdul Karupandan Kuddi **(PW 477)**	Leopold	Firearm injury on right hand.	Dr.Sonawali Khairmode **(PW 94/565)**	1. Abrasion over right palm 2. Entry and exit wound over right forearm **(Ex.1443A)**
82	Kunal Prakash Jaiswani **(PW 475)**	Leopold	Firearm injuries on left hand, right gluteal region and fracture of left femur	Dr.P.K. Munshi **(PW 564)**	Gunshot injuries on left hand, right gluteal region and fracture of left femur. **(Ex.1442A)**

1	2	3	4	5	6
83	Ramchandra Selumadhav Nair **(PW 480)**	Leopold	Firearm injury on right leg.	**Doctor not examined**	-
84	Bharat Sasuprasad Gujar **(PW 481)**	Leopold	Blast and firearm injuries on right hand, right leg.	**Doctor not examined**	-
85	Rasika Krushna Sawant **(PW 482)**	Leopold	Blast injuries on left and right leg.	**Doctor not examined**	-
86	Mohd. Parvez Aslam Ansari **(PW 483)**	Leopold	Firearm injury on right hand.	**Doctor not examined**	-
87	Fanishang Misha Bhishum **(PW 486)**	Leopold	Firearm injury on back.	Dr.V. Sequeira **(PW 570)**	Entry wound on right side near mid spine. Pallet removed. **(Ex.1448A)**
88	Manoj Bahadur Tahakur **(PW 485)**	Leopold	Firearm injury on left hand.	**Doctor not examined**	-
89	Ransale Gilbert Santhumayor **(PW 476)**	Leopold	Firearm injury on right side leg.	Dr.Hari Ram Jhunjhunwala **(PW 568)**	Gun shot injury fracture of right lower leg with entry wound antero-medially (2cm) exit wound postero-laterally at the junction of middle and lower 1/3 (8 cm x 5cm) **(Ex.1446A)**

1	2	3	4	5	6
90	Mohd. Ayub Mohd. Abdul Ansari **(PW 484)**	Leopold	Firearm injury on left side hand.	**Doctor not examined**	-
91	Prashant Vasant Tambe **(PW 488)**	Leopold	Injury on left side hand.	**Doctor not examined**	-
92	Naresh Mulchand Jumani **(PW 487)**	Leopold	Blast and firearm injuries on chest	**Doctor not examined**	-
93	Nilesh Mahendra Gandhi **(PW 478)**	Leopold	Firearm injury on left side leg.	Dr.Sonali Khairmode **(PW 94/565)**	1. Firearm injury on left thigh. 2. CLW on left lower limb foot. **(Ex.1443B)**
94	Prakash Satan Bharwani **(PW 479)**	Leopold	Firearm injuries on right hand and right side leg.	Dr.S.S. Vengsarkar **(PW 572)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced.
95	Prakash Rawji Surve **(PW 439)**	Nariman	Bullet injuries on right leg, below wrist	Dr.Sonali Khairmode **(PW 94/565)**	Firearm injury to right gluteal region **(Ex.1443C-1)**
96	Bablu Rajsingh Yallam **(PW 440)**	Nariman	Bullet injury on right leg	**Doctor not examined**	-
97	Sanjay Laxman Kattar **(PW 441)**	Nariman	Blast injuries on left hand finger, thumb and other part of the body	**Doctor not examined**	-

1	2	3	4	5	6
98	Vijay Ankush Phalke (PW 442)	Nariman	Bullet injuries on left leg and thigh.	**Doctor not examined**	-
99	Ashok Babu Sunnap (PW 443)	Nariman	Bullet injuries on abdomen	**Doctor not examined**	-
100	Pradosh Prakash Perekar **(PW 443)**	Nariman	Blast injuries on left leg	Dr.S.I.Khan **(PW 548)**	Details of injuries not mentioned by the doctor in his evidence. Injury certificate is not produced.
101	Anil Sakharam Varal **(PW 445)**	Nariman	Blast injuries on right side abdomen.	**Doctor not examined**	-
102	Mukhtar Shriniwas Shaikh **(PW 467)**	Mazgaon	Blast injuries on left leg.	**Doctor not examined**	-
103	Sanju Krishna Ghorphade **(PW 460)**	Mazgaon	Blast injuries on neck	**Doctor not examined**	-
104	Siddiqui Firoz Shaikh **(PW 462)**	Mazgaon	Blast injuries on hand, leg chest and abdomen	**Doctor not examined**	-
105	Heena China Shaikh **(PW 466)**	Mazgaon	Blast injuries on both legs, chest and face.	**Doctor not examined**	-
106	Manora Begum Ali Akbar Shaikh **(PW 461)**	Mazgaon	Blast injuries on left arm and backside of the body	**Doctor not examined**	-
107	Hawa Abdul Salim Shaikh **(PW 459)**	Mazgaon	Blast injuries on left leg and left hand.	**Doctor not examined**	-

1	2	3	4	5	6
108	Rahaman Ali Akbar Shaikh (PW 465)	Mazgaon	Blast injuries on both legs.	**Doctor not examined**	-
109	Manohara Begum Ali Ahmed Shaikh (PW 458)	Mazgaon	Blast injuries on hand	**Doctor not examined**	-
110	Kanhaikumar Harikishor Paswan **(PW 468)**	Mazgaon	Blast injuries on right hand and forehead.	Dr.M.E. Bansude **(PW 557)**	1. Partially healed lacerated wound on lateral aspect of little finger of right hand, oval shaped, 6.8 cm. below the tip of finger. 2. White glistering scar of size 0.3 cm x 0.2 cm., circular present on dorsal aspect of right index finger on dorsal phalanx. 3. Reddish pale coloured scar, wound is contracted, wound present on left side frontal eminence of forehead 4. White glistering , circular present on lateral aspect of left forearm near elbow joint. 10 cm. away and front of olecrenon process (Limb is extension position) 5. White glistering, circular, depressed scar present on lateral aspect of left forearm. 8.5 cm. front of olecrenon process (Limb in extension position). wound is 4.3 cm above the injury No.4. **(Ex.1435A)**

1	2	3	4	5	6
111	Shamim Rauf Shaikh **(PW 463)**	Mazgaon	Blast injuries on forehead, hand and leg.	Dr.M.E. Bansude **(PW 557)**	1. Abrasion on medial side of right index finger. 2. 0.2 x 0.2 cm. oval glistering, pale scar. 4.2 cm. above root of nose on midline of forehead. **(Ex.1435B)**

782. What can be seen from Col. No.4 of above stated table is that most of the injured had suffered bullet injuries. Some of them had suffered blast injuries. It can also be seen that the injuries mentioned by the witness/injured tally with the injuries mentioned by the medical officer. Whether evidence in respect of injuries sustained by the witnesses is to be accepted or otherwise will again be discussed in later part of the judgment. At the same time it will also be discussed whether prosecution has been able to prove requisite intention on the part of accused and the circumstances in which injuries were suffered by these injured persons. It is one of the essential ingredients of Sec.307 of IPC that there should be an intention which is required to be proved u/s 302 of IPC and at the same time prosecution is also under obligation to prove the circumstances to convince

the court that had any of the injured persons died, the accused would have been guilty of offence of murder. The acceptability of the evidence and burden of prosecution of proof of intention and circumstances will also be discussed in later part of the judgment. I may mention here that this part of the judgment is limited only to reproduce the evidence which has come on record without commenting on merits of the evidence. Therefore, I leave this part of evidence here only to discuss it in detail at an appropriate stage.

783. Now I shall deal with the individual cases wherein bullets were retrieved from dead bodies and were subjected to examination and comparison by the ballistic experts of Forensic Science Laboratory and where the experts have been able to identify the weapon from which the particular bullet was fired.

784. In the series of such six cases where bullets have been retrieved, the first case is of **Aakash Akhilesh Yadav**-ADR No.177/08 of C.S.T. Rly.Police Stn., the deceased who was aged about 5 to 6 years at the time of incident and an independent charge has been framed against the accused No.1 in respect of murder of Master Aakash Akhilesh Yadav in

addition to the charge of conspiracy and committing murders in furtherance of common intention. The deceased Master Aakash Akhilesh Yadav had died in the incident occurred at C.S.T. railway station. Exh.1281-A- the inquest panchanama on the dead body of Master Aakash Akhilesh Yadav was drawn in the presence of P.W.411- panch witness Mrs. Bimal Bawali. The dead body of deceased Master Aakash Akhilesh Yadav was handed over to his relative Mr.Kamlesh N.Yadav. Before that the dead body was subjected to postmortem examination which was conducted by P.W.595. The evidence of Medical Officer P.W.595- Dr. Ashok Gangaram Shinde discloses that pallets were found under the scalp during the course of postmortem examination. Four pallet pieces were sent for examination to the Chemical Analyzer . The C.A.'s report however does not confirm as to from which weapon the bullet was fired which was converted into pallets after hitting the skull and scalp. Though an independent charge has been framed in this regard against the accused No.1, it will not be possible for the prosecution to prove the independent charge u/s 302 IPC against the accused No.1 in respect of murder of Master Aakash Akhilesh Yadav in view of the report of C.A. and in view of the fact that there is no eyewitness who could say that the accused No.1 had fired at the deceased Master

Aakash Akhilesh Yadav.

785. The second case in this line is of **Sitaram Mallapa Sakhare** ADR No.179/08 whose dead body was found at C.S.T.railway station after the incident. It was taken to the hospital by P.W.641-Mr.Santosh Kalu Supe, Police Constable B.No. 3283. Inquest panchanama on the dead body of deceased Sitaram Mallapa Sakhare was drawn by P.W.95-Mr.Anil Shivram Karekar, PSI, vide Exh.330-A. P.W.95 was examined in open court and not on affidavit. P.W.95 in his evidence has stated that he had conducted two inquest panchanamas after the incident at C.S.T. railway station. One of the inquest panchanamas is Exh.330-A i.e. in respect of Sitaram Mallapa Sakhare. Dead body of Sitaram Mallapa Sakhare was handed over to P.W.337- Babasaheb Tukaram Sakhare, apparently relative of the deceased. However, before the body was handed over to P.W.337, it was subjected to postmortem examination by P.W.83-Dr.Vijay Nivrutti Tasgaonkar. The postmortem examination notes are at Exh.330. P.W.83 was examined in open Court on 25/6/2009. This witness in his evidence has stated that he had conducted postmortem examination of the deceased Sitaram Mallapa Sakhare. The dead body was referred to the hospital for

postmortem examination by Sub-Inspector of Police Mr. Karekar of C.S.T. railway police station . The dead body was brought to the hospital by Mr.Supe, Police Constable, B.No. 3283. Dr.(Ms.) S.R. Katke was also accompanying P.W.83 at the time of postmortem examination. Postmortem examination was done on 27/11/2008. Following external injuries were found on the dead body of deceased Sitaram Mallapa Sakhare :

1) Firearm entry wound on right side of chest 15 cms. below right axilla on anterior axillary line. It was measuring 3 cm x 2 cm. with inverted margins surrounded by abraded collor of 0.2 cm. No tattooing or singeing of hair was seen.

2) Firearm exit wound on left lateral side of chest 10 cm below left axilla on mid axillary line. Measuring 3.5 cm x 2.5 cm with inverted margins.

3) Firearm entry wound on right arm medial aspect, 5 cm above right elbow, circular. It was measuring 3 cm x 2 cm with inverted margins surrounded by 0.2 cm abraded collor. No tattooing or singeing of hair was seen.

4) Firearm entry wound on left arm laterally. Measuring 10 cm. below acromino clavicular region. It was measuring 1 cm dia.

inverted margins surrounded by 1 cm abraded collor. No tattooing or singeing of hair was seen.

5) Firearm exit wound on left arm medial aspect 15 cm below left axilla. Measuring 1.2 cm x 1.1 cm with inverted margins.

The internal examination of the dead body revealed that :

1) Bullet had perforated and had passed the skin and subcutaneous tissue of right side of chest in 6th intercostal space and had further perforated right lung interior lobe and had crossed mid line and had further perforated left lung upper lobe interior surface and also had perforated 4th intercostal space in left side of chest and had come out through external injury No.2. The direction of the bullet was from right to left. Passage of bullet was found haemorrhagic contused and lacerated.

2) Bullet had perforated and had passed the skin and subcutaneous tissue of right arm. The bullet had further perforated and fractured the right humerus bone in pieces. The bullet was found lodged in right arm muscle at posterior aspect. The bullet was retrieved from the said region. The direction of bullet

was anterior-posterior. The passage of bullet was found haemorrhagic lacerated and contused.

3) Bullet had perforated and had passed the skin and subcutaneous tissue of left arm lateral aspect and had further perforated muscles of left arm. The bullet had come out through external injury No.5. The direction of bullet was lateral to medial. The passage of bullet was found lacerated haemorrhagic and contused.

The cause of death is stated to be haemorrhage and shock due to firearm injuries. It is further stated by P.W.83 that a bullet was retrieved from the dead body of Sitaram Mallapa Sakhare. The bullet was sealed in a phial and was forwarded to Chemical Analyzer for examination. The office copies of forwarding letters have been produced by this witness at Exh.331 colly. A sealed packet bearing ADR No. 179/08- BL No. 1040-08/ Ex.1 was opened during the course of examination of this witness. It may be stated here that the BL number 1040-2008 is the number assigned by the F.S.L. to the particular case and Ex.1 is assigned by the laboratory for identification. The phial produced in the court contained one bullet. It was

shown to the witness. He has identified the phial-art. 292 and has also identified the bullet-art. 293. The Chemical Analyzer's report has been produced at Exh.292-A. P.W.79-Mr.Dilip Shivarjirao Mane, Sr.P.I. of C.S.T. Railway Police Station has stated that the bullet retrieved from the dead body of deceased Sitaram Mallapa Sakhae was forwarded to the Forensic Science Laboratory through P.W.438- Mr.Vilas Parab, Police Constable vide forwarding letter Exh.291-A. P.W.438 who had carried the articles to F.S.L. has stated in his evidence that the articles mentioned in the forwarding letter Exh.291 were carried by him to the F.S.L. on 12/12/2008. The Chemcial Analyzer -Mr.Gautam Ghadage (P.W.150) vide his report Exh.292 bearing letter No.BL 1040-2008 which is part of Exh.292 colly. has stated that the bullet- art.293 is a fired 7.62 mm short rifle copper jacketed bullet . Another Chemical Analyzer working in Ballistic Division of Forensic Science Laboratory Mr.Vasudev Vijay Patil who has been examined as P.W.157 and who had done the herculean job of comparison of various bullets seized from various places of offences has stated that the **bullet-art.293 tallied with the test fired bullet from art.10-AK-47 rifle.** Art.10 is the AK-47 rifle which was found at left side of Skoda car when the accused No.1 was apprehended at Vinoli (Girgaum)

Chowpaty. It has already come in the evidence that one AK-47 rifle was found at left side of the Scokda car . It has also come in the evidence of Prosecution Witness No.1-Mr.Bhaskar Kadam, PSI, P.W.2-Mr.Sanjay Govilkar, API, and P.W.3-Mr.Hemant Bavdhankar, API that the accused No.1 had fired at deceased Tukaram Ombale by means of AK-47 rifle which he was holding when he was occupying the left front seat of the Skoda car. The another AK-47 rifle which was found at the front leg space of the Skoda car and which has been produced in the court at art.12, was issued to Mr.Ashok Kamate from police armoury. Evidence of P.W.7-Mr.Arun Jande, ASI, has been recorded in that regard.

786. As such the prosecution has adduced evidence in respect of place of death of the deceased, the person who carried the dead body to the hospital, police officer who had conducted inquest panchanama, the medical officer who had performed postmortem examination, the police officer who had forwarded retrieved bullet to the F.S.L. and the person who carried the phial containing the said bullet to the C.A. The prosecution has also adduced evidence of Ballistic expert to substantiate their charge that the bullet retrieved from the dead body of deceased Sitaram Mallapa

Sakhare was fired from AK-47 rifle used by accused No.1 during the course of incident at C.S.T. railway station.

787. Now, I shall proceed to record evidence of other prosecution witnesses who have been examined to prove individual charge u/s 302 of IPC framed against the accused No.1. Before I proceed further, I find it necessary to state here that I will record my finding in respect of evidence of prosecution witnesses when I appreciate the evidence as a whole in later part of the judgment.

788. The third case of similar nature is of the deceased **Rahamtulla Ibrahim.** This man was also at the C.S.T. railway station at the time of incident. His dead body was carried to the hospital by P.W.641-Mr.Santosh Kalu Supe, Police Constable B.No. 3283. This witness in his evidence has stated that while he was on duty, he had removed two injured persons to St.George's Hospital from waiting hall of C.S.T.main line . One of the injured persons taken to St.George's Hospital was deceased Rahamtulla Ibrahim-ADR No. 180/08 of C.S.T.railway police station. Inquest panchanama on the dead body of this deceased was drawn by P.W.95-Mr.Anil Karekar, PSI, vide Exh. 380. P.W.95 is the same witness who had

drawn inquest panchanama on the dead body of Sitaram Mallapa Sakhare. The inquest panchanama is produced in the court by prosecution. After inquest panchanama the dead body of deceased Rahamuttal Ibrahim was subjected to postmortem examination by P.W.113-Dr.Sachin Shivaji Sonawane. P.W.113 in his evidence has stated that during the course of postmortem he found following internal and external injuries on the dead body :

> Firearm entry wound present on right thigh situated 10 cm below from anterior superior iliac spine on anterior aspect of size 2 cm x 2 cm circular. No tattooing, burning, blackening and singeing was seen. Abrasion collar of 0.1cm seen. On dissection it was found that the bullet had passed through skin, subcutaneous tissue, femoral vessel and pelvis. One deformed bullet was retrieved from left side of buttock lateral aspect.

In the opinion of P.W.113 the deceased had died due to haemorrhage and shock due to firearm injuries. According to him all the injuries were ante mortem and they were sufficient to cause death in the ordinary course of

nature. Postmortem notes have been produced in court at Exh.441 colly. It may be noted here that during the course of examination of injuries , a bullet was retrieved from left side of buttock lateral aspect. The said bullet was forwarded to the C.A. through the police under a forwarding letter. The witness has produced office copy of the forwarding letter. The office copy of forwarding letter is at Exh.441A. During the course of examination of this witness a sealed packet bearing FSL No. BL-1041-2008 containing Ex.1 was opened and Ex.1 of the container was shown to the witness. The Ex.1 is the number assigned by the laboratory to the bullet. The said bullet was numbered as art.329. Art.329 was shown to the witness and he has identified it to be the same bullet which was retrieved from the dead body of deceased Rahamtulla Ibrahim. W.79- Mr.Dilip Mane, Sr.P.I. , has stated in his evidence that the bullet retrieved from the dead body of deceased Rahamtulla Ibrahim was sent to C.A. under forwarding letter. Office copy of the forwarding letter is produced at Exh.293. The original letter was produced by the C.A. during the course of his evidence which has been exhibited as Exh.294A. The bullet was first examined by P.W.150- Mr.Ghadage and he had opined that it was copper jacketed bullet fired from 7.62 mm short rifle. This bullet was compared with the test fired bullets

from various weapons seized by the police during the course of investigation. The comparison was done by the Ballistic expert Mr. Vasudev Patil (P.W.157) . This witness in his evidence has stated that Ex.1 of BL No.1041- art. 329 tallied with the test fired bullets of art.10-AK-47 rifle. I have already stated that art.10 is the AK- 47 rifle which was seized from left side of Skoda car and which according to the prosecution was used by accused No.1 during the course of incident . The dead body of deceased Rahamtulla Ibrahim was handed over to P.W.325-Mr.Shaikh Mohd. Rahamtulla.

789. The deceased **Vinod Madanlal Gupta**-ADR No. 182/08 had also died at C.S.T. railway station. His dead body was carried to the hospital by P.W. 635- Mr. Vishal Adinath Kute, Police Constable, B.No. 944. Inquest panchanama on his dead body was drawn by P.W.92-Mr.Kisan Govind Gavit, Sr.Police Inspector, vide Exh.371. Inquest Panchanama-Exh.371 is also produced in the court. Inquest panchanama was drawn at St.George's Hospital. Postmortem examination was conducted by P.W.23-Dr.Shailesh Mohite at postmortem centre of Nair Hospital. According to P.W.23 deceased Vinod Gupta had suffered

external injury of the following nature :

> An oval lacerated wound of size 1.5 cm x 1cm inverted margins seen over the lateral part of right pectoral region, 10 cm below right acromion process. An elliptical abrasion collar brownish black in colour was seen around the central aperture. The size of wound was 0.1 cm to 0.2 cm in thickness. No evidence of burning, blackening, tattooing and singeing of hair was seen. **(Entry wound)**. The wound was directed to left and backward.

In the opinion of P.W.23 this injury was ante mortem and was sufficient to cause death in ordinary course of nature. On internal examination of the dead body P.W.23 had found following injuries:

1) An oval lacerated wound of diameter 1.5 cm x 1 cm and evidence of infiltration of blood seen in right 4th intercostal space area of 8 cm x 6 cm along midclavicular line on right chest wall.

2) Evidence of bullet in inner aspect of 4th intercostal space

of chest wall along anterior axillary line with infiltration of blood in surrounding tissue. On removing the bullet there was a circular lacerated wound of diameter 0.6 cm and fracture of upper border of 5th rib.

3) **Right lung and Pleura** :- a) evidence of blood 1.5 lit. in right pleural cavity. b) Evidence of circular lacerated wound of size 0.8 cm and seen over anterior aspect of upper lobe of right lung and pleura beneath the entry wound of chest. c) A circular lacerated wound of size 0.8 cm of medial aspect of upper lobe right lung.

4) **Left lung and pleura**:- a) Evidence of circular lacerated wound of size 0.8 cm seen over the lateral aspect of upper lobe of left lung and pleura over lying wound of left chest wall and 1.5 lit of blood in left pleural cavity.

5) **Heart with pericardium**:- Evidence of multiple lacerations of pericardium and both atria

The tract of wound was as under :

Right chest wall 4th intercostal space – anterior aspect of upper

lobe of right lung – medial aspect of upper lobe of right lung through both ateria – medial aspect of upper lobe of left lung – lateral aspect of upper lobe left lung- left chest wall inner aspect of 4th intercostal space along anterior axillary line.

The description of bullet was given as under:

Tip-pointed, length- 3cm, diameter at base 0.6 cm multiple vertical markings were area seen over the bullet,jacket was intact, lead core was seen at the base.

790. P.W.23-Dr.Mohite had opined that the deceased Vinod Gupta had died due to shock and haemorrhage as a result of perforation of both the lungs as a result of firearm injuries. He has identified his signature on the postmortem notes -Exh.468. It can be seen from the evidence of this witness that during the course of internal examination of the dead body a bullet was retrieved from fourth inter coastal space of chest wall along anterior axillary line. The bullet was sent to F.S.L. for examination through the Investigating Officer. P.W.23 has produced office copies of forwarding letter at Exh.468 colly. The witness has also identified bullet-art.338 to be

same which was forwarded to the ballistic expert in a plastic container -art.337. P.W.79-Mr.Dilip Mane, the then Sr.Inspector of Police of C.S.T. Railway Police Station has stated in his evidence that the bullet recovered from the dead body of Vinod Gupta was forwarded to the C.A. under forwarding letter copy of which is produced at Exh.309. The C.A.report is at Exh.310. The original forwarding letter is produced in Court by P.W.150- Mr.Ghadage, the C.A. The bullet art.-338 was received by P.W.150 in the laboratory and it was examined by him. P.W.150 in his evidence has stated that the bullet-art.338 was a deformed copper jacketed bullet having rifling marks. F.S.L. had assigned case No.1043-08 to the said bullet. The bullet was further examined by P.W.157 and was compared with the test fired bullets from various weapons seized by the police. P.W.157 had opined that the bullet-art.338 was fired from AK-47 rifle (art.10) It is further stated by P.W.157 that the comparison was done under comparison microscope and that crime bullet i.e. art.338 tallied with the test fired bullet in respect of number and width of land and grooves, direction and extent of twist of rifling and the characteristic striations observed on the land and grooves impression. The dead body of deceased Vinod Gupta was handed over to P.W.334-Mr.Natraj Patiraj Nirankari.

791. At this stage it may be noted here that comparison of almost all bullets compared by this witness or any other ballistic expert, is done on the basis of twist of rifling and characteristic striations observed on land and grooves impression .

792. The next case where the bullet retrieved from the dead body had tallied with the test fired bullet is of the deceased **Ambadas Ramchandra Pawar**. It has come in the evidence of P.W.62-Mr.Sudama Aba Pandarkar that his rifle was taken by deceased Ambadas Pawar and Ambadas Pawar had fired one round at the accused . He had seen one of the accused shorter compared to the other accused, firing from AK-47 rifle. In the meantime police officer Mr.Shashank Shinde and deceased Ambadas Pawar had proceeded towards platform No.7 through the platform No.6 of C.S.T.railway station. It is also stated by this witness that he had sustained one bullet injury and at the same time police officer Mr.Shashank Shinde and Police Constable Mr.Abadas Pawar had also sustained bullet injuries. He had seen Police Officer Mr.Shashank Shinde and Police constable Mr.Ambadas Pawar falling down due to bullet injuries. Deceased Ambadas Pawar however, could not survive the injuries and succumbed to the

injuries. Inquest panchanama on his dead body was drawn by P.W.96-Mr.Pandurang Shankar Bhangare, API, vide Exh.382 and his dead body was examined by medical Officer P.W.104-Dr.Ganesh Niturkar. P.W.104 in his evidence has stated that he had conducted postmortem examination on dead body of deceased **Ambadas Pawar** on 27/11/2008 and he found following injury on his dead body.

> Firearm entry wound on occipital region left side, size 2 cm diameter, circular inverted margins with 0.1 cm abrasion collar at places. No tattooing, burning, blackening or singeing was seen. On dissection a bullet had passed through scalp occipital bone with punched – in appearance. Occipital lobe was lacerated and haemorrhagic. There was corresponding internal injury in the form haemorrhage on occipital lobe of 5 cm x 6 cm. Red in colour.

793. It is further stated by this witness that the injury was ante mortem and was sufficient to cause death in ordinary course of nature. During the course of postmortem examination of the dead body one bullet

was retrieved from the said injury i.e. right frontal lobe. The tract was found lacerated and haemorrhagic. The said bullet was sent to Chemical Analyzer through police under forwarding letters Exh. 428 colly. The articles received from the C.A. were deposited by prosecution in the court. The bullets retrieved from the dead body of Ambadas Pawar and other deceased whose dead bodies were examined by this witness, were shown to him. He had identified the bullet **art. 308** to be the same which was retrieved from the dead body of Ambadas Pawar. He has also identified the bottle-**art.307** to be the same bottle in which the bullet-art.308 was sealed. He has identified his signature on the label of glass bottle.

794. As far as cross-examination with respect to this part of evidence is concerned, this witness has admitted that he had identified the bullet on the basis of his signature on the label affixed to the bottle. There is nothing more in the cross-examination pertaining to this part of evidence.

795. P.W79-Mr.Dilip Mane, Dilip Mane , Sr.P.I. has stated that the bullet retrieved from the dead body of deceased Ambadas Ramhcandra Pawar was forwarded to the F.S.L. Office copy of the same is produced at

Exh. 297 and C.A.report is produced at Exh.298. P.W.150-Mr.Gautam Ghadage had received the said bullet in the forensic laboratory for examination and it was examined by him. This witness in his evidence has stated that the bullet -art.308 (Ex.1 BL No.1044-2008) is a deformed copper jacketed bullet fired from 7.62 mm short rifle. He has identified his signature on the C.A. report which is part of **Exh.298** colly. P.W.157-Mr.Vasudev Patil who is another Ballistic Expert , has stated in his evidence that comparison of bullet with test fired bullet showed that the **art.308** was fired from art.10. The comparison of this bullet was also done in the manner stated by this witness for comparison of bullets in the preceding paragraphs. It is clear that his opinion is based on the characteristic features particularly striations on the bullet. As far as cross-examination of P.W.157 is concerned, there is general cross-examination and there is no specific question pertaining to art.308. The witness has been cross-examined with regard to his knowledge in respect of AK-47 rifle. He is also cross-examined with regard to seals found on the packets received from police. P.W.157 has categorically stated that he had personally checked the seals. He has also stated that the articles were kept in the strong room after opening the same . He was unable to tell in the cross-examination as to

where the cartridges examined by him might have been manufactured. Similar other questions were asked to this witnesses in the cross-examination which in my opinion ,do not in any manner, create doubt about the opinion of this witness with respect to the bullet retrieved from the dead body of deceased Ambadas Pawar and other details which have been recorded by me herein above. The witness had clarified to the defence lawyer Mr Abbas Kazmi during the course of cross-examination that if the bullet is not required for comparison and if the weapon is to be checked whether the same was in working condition or otherwise, then the firing is done in a pipe. Sometimes the firing is done in a pipe to check whether the live cartridges seized during the course of investigation were really live or otherwise. Some randomly selected cartridges are test fired in the pipe. As already stated by me, there is no specific question regarding art,308.

796. The next such case where bullet is alleged to have been tallied with the test fired bullet from the weapon allegedly carried by accused No1 is the case of deceased **Abbas Rajab Ansari** who had died at C.S.T. railway station. The dead body of Abbas Rajab Ansari was taken from C.S.T. railway station to St.George's Hospital in an ambulance by P.W.634-

Mr.Pradip Sampat Wagh, Police Constable, B.No. 62. Abbas Ansari was decleared dead before admission. The inquest panchanama on the dead body of deceased Abbas Ansari was drawn by P.W.85-Mr.Vishwasrao Nanabhau Mudavadkar, Police Sub-Inspector, vide Exh.362. Postmortem examination on the dead body of Abbas Rajab Ansari was conducted by P.W.104-Dr.Ganesh Niturkar.

797. P.W.104 in his evidence has stated that he had examined the dead body of Abbas Ansari on 27.11.2008 and he had found following injuries on the dead body:

1) Firearm **entry wound** of size 1 cm x 1 cm situated over left side of chest, 2 cm above and lateral to left nipple with inverted margins. No burning, blackening or tattooing was seen . On dissection, it was found that a bullet had passed through skin, intercostal muscles, pericardium, heart, upper lobe of right lung and had exited through firearm exit wound of size 2 cm x 2 cm situated over superolateral angle of right scapula with everted margins. Entire tract was lacerated and

haemorrhagic.

2) Firearm **entry wound** of size 1 cm x 1 cm situated over medial aspect of left arm, 5 cm below axilla. No burning, blackening or tattooing was seen. Margins inverted. On dissection, bullet passed through skin, upper part of humerus of left side and exited through firearm **exit wound** of size 2 cm x 2 cm situated over lateral aspect of left arm, 6 cm below tip of shoulder with everted margins. Entire tract was lacerated and haemorrhagic.

3) Firearm **entry wound** of size 1 cm x 0.5 cm situated over left fourth intercostal space in anterior axillary line with inverted margins. No burning, blackening or tattooing was seen. On dissection a bullet appeared to have passed through skin, intercostal muscles, lower lobe of left lung and lower lobe of right lung.

4) Firearm **entry wound** of size 2 cm x 2 cm situated over

lateral aspect of left thigh, 20 cm below inguinal ring and 18 cm above knee. Margins inverted. No blackening seen. On dissection it was observed that a bullet passed through skin, middle third of left femur and had exited through firearm exit wound of size 3 cm x 2 cm situated over medial aspect of left thigh in its middle third. Entire tract was lacerated and haemorrhagic. Fractures of left humerus and left femur was seen.

Pericardial sac was found lacerated. Firearm injury was seen over anterior and posterior surface of left ventricle corresponding to injury No.1 mentioned hereinabove.

798. It is further stated by this witness that all the injuries were ante mortem and were sufficient to cause death in ordinary course of nature. The deceased, according to this witness had died due to haemorrhage and shock following firearm injuries. The witness has further stated that one bullet was retrieved from right pleural cavity of the dead body. Entire tract was found lacerated and haemorrhagic . The bullet so retrieved was sealed and was handed over to police for being sent to C.A. The office copies of letters

requesting the C.A. to examine the bullet and blood sample are produced at Exh.426 colly. The packet bearing lab No. BL 1051/08 Ex.A was opened in court. P.W.104 had identified the bullet art.306 to be the same retrieved from the dead body of Abbas Ansari. He had also identified the glass bottle-art.305 in which the bullet-art.306 was kept.

799. P.W.79- Mr.Dilip Mane, Sr.P.I. has stated that blood sample and bullet retrieved from the dead body of Abbas Ansri was forwarded to the C.A. under the police covering letter office copy of which is produced at Exh.303. The C.A. reports are produced at Exh.304 colly.

800. P.W.150-Mr.Ghadage had received the bullet-art306 for examination in the office of F.S.L. He has produced the original letter received from the Sr.Inspector of Police . The original letter addressed to the F.S.L. by the Sr.Inspector of Police is exhibited as Exh.303-A colly. along with the letters of medical officer. The report submitted by P.W.150 is part of Exh.304 colly. Exh.304 includes the report in respect of blood sample also. P.W.150 in his evidence has stated that the bullet-art. 306

(Ex.1 of BL No.1051-08) was a deformed copper jacketed bullet fired from 7.62 mm short rifle. It has rifling marks . The bullet-art.306 was further examined by P.W.157 and it was compared with test fired bullets. This bullet tallied with the test fired bullets from AK-47 rifle-art.10 and as such P.W.157 had come to the conclusion that art.306 was fired from art.10.

801. Before I proceed further to reproduce the evidence of witnesses pertaining to inquest panchanamas and postmortem examinations of dead bodies of police officer who had died at Badruddin Tayyabji Road, I find it necessary to state here that in most of the cases of C.S.T.railway station where bullets were forwarded to the C.A. by P.W.79-Mr.Dilip Mane, the then Sr.P.I. of C.S.T. railway police station, the Sr.P.I. had produced office copies of forwarding letters of police. The original letters had been produced by the C.A. when he was examined as witness. The original letters of medical officers addressed to the FSL requesting examination of retrieved bullets forwarded through police also form part of the original letters addressed to the F.S.L. by the Sr.P.I. Though the reports of F.S.L. were exhibited during the course of recording of evidence of P.W.79, they were in fact proved only when P.W.150- Mr.Ghadge was examined and he

had identified his signatures on the reports. The bullets forwarded to the C.A. and the containers in which the bullets were forwarded, were shown to the medical officers and the C.A. The police officers who had forwarded the bullets to the C.A. had no occasion to see the bullets because the phials/ containers were sealed by the medical officers. In almost all cases the medical officers and the C.A. have identified the bullets and containers. In cross-examination it was admitted by some of the medical officers that they had been able to identify the bullets on the basis of their signature on the container. This part of cross-examination may form part of my further judgment when I appreciate the evidence in detail. However, it will not be out of place to mention here for the time being that this part of cross-examination in no way create doubt about genuineness of the evidence of prosecution witnesses. There is no other way for the medical officers to identify the bullets except the contemporaneous record prepared while sealing the bullets. It is difficult for any medical officer or for that matter any person to identify such a tiny article after few months. It is also worth noting that no identification mark can be given to the bullets or cartridges by the medical officers because any scratch mark or even mark with ball pen may change opinion of ballistic expert with regard to the bullet and

empty cartridge. Precisely for this reason the medical officers do not give any identification mark to the empty cartridge case, bullet or the live cartridge. Therefore it could not be expected from the medical officers to identify the bullets without there being any contemporaneous record shown to him. There is no reason to disbelieve the evidence of medical officers with regard to their signatures on the phials in which the bullets were sealed by them. With this I now proceed to consider evidence of the panch witnesses who had drawn inquest panchanamas and the medical officers who had performed postmortem examination on the dead bodies of police officers who had died during the alleged incident at Baddrudin Tayyabji Road near the Corporation Bank ATM Centre.

802. It has already been stated by me in the earlier part of the judgment that dead bodies of police officers Mr.Hemant Karkare, Mr.Ashok Kamate and Mr.Vijay Salaskar and dead bodies of police constables/Head Constable Mr.Balasaheb @ Nana Chandrakant Bhosale, Mr.Arun Raghunath Chite, Mr.Jaywant Hanumant Patil and Mr.Yogesh Shivaji Patil were taken to various hospitals by the police officers or policemen who had reached the spot after the incident. Head Constable Mr.Arun Dada Jadhav

who has been examined as P.W.136 was badly injured and he had pretended to be dead while he was sitting in rear seat of the vehicle.

803. As far as inquest panchanamas of dead bodies of the deceased police officers and policemen are concerned, the inquest panchanama on dead body of Mr.Hemant Karkare was drawn vide **Exh. 516** by P.W.127-Mr.Babasaheb Krishna Desai, PSI on 27.11.2008. Postmortem examination was done by P.W.120-Dr. Bhalchandra Chikhalkar . In all there were five firearm entry wounds found on shoulder blade top, region between neck and right shoulder. There were three corresponding exit wounds. Two deformed bullets were retrieved. P.W.120 had opined that the deceased had died due to haemorrhage and shock due to multiple firearm injuries. P.W.120-Dr.Chikhalkar has submitted his opinion vide postmortem notes Exh. **495.** The bullets retrieved from the dead body were sent to the ballistic expert. The comparison did not lead to any conclusive opinion whether the bullets tallied with the test fired bullets from the weapon held by the accused No.1 or the deceased accused No.1-Abu Ismail.

804. Similarly, inquest panchanama of dead body of Mr.Vijay

Salaskar was drawn by P.W.372 vide **Exh.1242A** and the dead body was sent for postmortem examination. The postmortem examination was conducted by P.W.104-Dr. Ganesh Niturkar. There were four firearm entry wounds on various parts of dead body including vital parts like chest, right forearm. There were other minor injuries. Two corresponding exit wounds were also noticed. It was opined by P.W.104 that the deceased had died due to haemorrhage and shock following firearm injuries. Two bullets were retrieved from the dead body of Mr.Vijay Salaskar during the course of postmortem examination. They were sent to ballistic expert for examination. The comparison did not lead to any conclusive opinion.

805. It is in the case of deceased Mr.Ashok Kamate that the bullet retrieved from his body had tallied with the test fired bullet from the AK-47 rifle held by deceased accused No.1-Abu Ismail. In this regard it may be noted here that the prosecution case as well as the evidence of witnesses show that the accused No.1 and the deceased accused accused No.1-Abu Ismail both had fired at police Qualis vehicle when it was passing from near the ATM Centre of Corporation Bank.

806. The inquest panchanama of dead body of Mr.Ashok Kamate was done by P.W.370-Mr.Aditya Doitari Nandi vide **Exh.1240-A** and the body was sent to medical officer for postmortem examination. During the course of postmortem examination Dr.Bhalchandra Chikhalkar (P.W.120) had found following external injuries on the dead body of Mr.Ashok Kamate :

1) Total five firearm wounds of **entry** were found on shoulder blade top between neck and right shoulder. Out of these five entry wounds four **entry** wounds were in one line - dimensions from medial to lateral area 1.2 c.m. x 1.2 c.m. x 1.5 cm x 1.5 cm diameters semi circular and one firearm **entry** wound was just behind these injuries. Dimension of said injury was 2 cm in circular. No singeing, blackening or tattooing was seen.

Tract – Five haemorrhagic lacerated tracts from these entry wounds through thoracic and abdominal cavity region, damaging right and left lung, heart diaphragm liver with corresponding three exit wounds- one on right side of chest, infra clavicular region of dimension 3 cm x 2 cm, second wound of exit through right shoulder top, anteriorly of

1 cm x 1 cm diameter, and third wound of exit on right side of chest supra mammary region of dimension 2 cm x 1 cm diameter semi circular. All **exit wounds** had everted margins. One haemorrhagic lacerated tract was through right lung and a deformed bullet was found within right lung lower lobe. One more tract through right lung right chamber of heart, liver and a bullet was retrieved just above right kidney which was preserved for Ballistic expert.

2) Contusion on forehead (abraded contusion) 2 cm x 1 cm (right).

3) Contusion on face, left infra orbital region 4 cm x 2 cm.

4) Bullet graze (glancing injury) right lateral side of neck 3 cm x 2 cm.

5) Two abrasions on right side of chest 2 cm x 2 cm & 1 cm x 1 cm.

6) Multiple small punctuate abrasions on left arm, shoulder to elbow over iliac of 16 cm x 6 cm.

7) Two abrasions on upper chest right side, one over clavicle and second over supra clavicular region of size 3 cm x 2 cm and 3

cm x 3 cm respectively.

The internal injuries have been described by P.W.120 as under:

1) Fracture of 1st, 4th and 5th ribs right side.

2) Fracture of right clavicle

3) Fracture of sternum

4) Puncture of trachea

5) Right and left lung, heart, liver, punctured and lacerated with haemorrhagic lacerated tract.

6) Blood in thoracic and peritoneal cavity found in 2000 cc

It is stated by the doctor that all the external injuries were ante mortem and were sufficient to cause death in the ordinary course of nature. During the course of postmortem examination one bullet was found embedded in right cavity of chest. The same was retrieved and was forwarded to the ballistic expert for his opinion. The postmortem notes are at **Exh.496**. The forwarding letters to the Ballistic Expert are at **Exh.496A colly.** The bullet sent to the ballistic expert and thereafter deposited in the court was shown to this witness. He has identified the glass bottle **art.390** to be the same in which the bullet was sealed. The bullet has been produced at **art.391.** P.W.157-Mr. Vasudev Patil , Asstt. Chemical Analyzer in his evidence has

stated that the bullet art.391 was 7.62 mm short rifle bullet and had tallied with the test fired bullet from the AK-47 rifle art.427. As such in the opinion of ballistic expert the bullet retrieved from the body of deceased Mr.Ashok Kamate was fired from **art.427** which was held by the deceased accused No.1-Abu Ismail.

807. In the case of deceased Tukaram Ombale (Sr.No.130 in the list of deceased), the bullet retrieved from his body was found to be one fired from AK-47 rifle held by accused No.1. It has also been stated that the deceased Tukaram Ombale had sustained bullet injury when he had attempted to catch hold of accused No.1 while he was getting out of Skoda car at Vinoli Chowpaty. Police officer Mr.Sanjay Govilkar (P.W.2) was also injured in the said incident. Both of them were removed to hospital. Deceased Tukaram Ombale however, unfortunately succumbed to the injury at Hurkisondas Hospital. The inquest panchanama on the dead body of Tukaram Ombale was conducted by P.W.15-Mr.Rajan Umakant Vasaikar (panch witness) and P.W.24-Mr.Sanjay Laxman Gaikwad, vide Exh.102 and the dead body was sent to medical officer for postmortem examination. The dead body of Mr.Tukaram Ombale was examined by Dr.Sunil Jawale

who has been examined as P.W.100. It is stated by P.W.100 that during the course of examination of dead body of deceased Tukaram Ombale on 27/11/2008, he had found following external injuries :

1) An oval wound at right chest measuring 7 cm x 5 cm x cavity deep.

On opening the track it was found oblique upwards and upto left side of shoulder. Bullet was recovered from left shoulder. The bullet had destructed the right lung, trachea, bronchus and oesophagus and neck structures. The wound and track was found congested an oedematous.

2) Punctured wound 1 cm x 1 cm at left chest. The track was found horizontal. On dissection of tract, it was found that the vertebra was fractured. The tract was contused. There was infiltration staining. Margins were found inwardly drawn.

3) Punctured wound at right pelvic area 1 cm x 1 cm, margin contused inwardly drawn.

4) Incised wound at right arm. Posteriorly. 7 x 2 x 1 cm, margin regular and oedematous.

5) A wound at left forearm. Perforating. Communicated tract at

posterior. margin irregular.

6) Graze abraded contusion at right iliac crest 3 cm x 2 cm.

7) Two punctured wounds at right thigh posteriorly 1 cm x 1 cm each. Margin outwardly drawn. Track was communicating to injury No.3

8) Incised wound right thigh lower 3rd 4 cm x 1 cm x 1 cm

All the above stated injuries were found reddish and oedematous. All the injuries were anti mortem. There was compound fracture of right femur.

808. During the course of internal examination P.W.100-Dr.Jawale found following internal injuries.

Right side 3rd and 4th ribs were found fractured in fragments. Inwardly drawn. Laceration of lungs and mediastaium., bronchus and neck vessels. A track of wide diameter was found oblique upto left shoulder with oedematous margin. There was laceration of lung tissues corresponding external Injury No.1. The Thoracic vertebra was found damaged completely.

809. One deformed coin of Rs.2/- denomination was recovered from

right thigh. One more bullet was recovered from the dead body. The doctor was unable to state as to what was length of the said bullet . As stated earlier one bullet was retrieved from external injury No.1 stated above. The external injury No.1 was on the right chest cavity deep and its tract was oblique upwards and upto to left side of shoulder. The bullet was recovered from left shoulder. As such the bullet had entered from the right chest and was found embedded in the left shoulder. The doctor, after examination of the dead body externally and internally, had come to the conclusion that the deceased had died due to shock following firearm injuries. The postmortem notes have been produced at **Exh. 390 colly.** It is stated by the doctor that the external injury Nos. 1 to 3 were sufficient to cause death in ordinary course of the nature. Both the bullets and deformed coin recovered during the course of postmortem examination were sealed in a bottle and it was handed over to police vide forwarding letter addressed to the Chemical Analyzer. Office copies of the forwarding letters were produced by P.W.100 at **Exh.391** and **Exh.392.** The articles produced by the police after examination by C.A. were opened during the course of evidence of this witness and they were shown to the witness. The witness had stated that plastic jar-**art.298** is the same jar in which the bullets **art. 295** and **art.296**

and the deformed coin -**art.297** were sealed by him. The jar was handed over to police. The description of articles was mentioned on the labels affixed to the jar. P.W.100 has stated that the description on the labels is in his handwriting and it bears his signature. He has identified his signature as **Exh.393.** The jar was sent to the C.A. and ballistic expert by the police. P.W.157-Mr.Vasudev Patil who was working as Ballistic Expert in the office of FSL and had examined the bullets art.295 and art.296 has opined that the bullets tallied with the test fired bullet from AK-47 rifle art.10. Art.10 has been identified by the eye-witnesses to be the same AK-47 rifle which was held by accused No.1 . As such in the opinion of ballistic expert the bullets retrieved from dead body of Tukaram Ombale were fired from AK-47 rifle-art.10.

810. It can be seen from the table No.6 above that the injured at Sr.No.15- P.W.87-Niranjan Sadashiv Sardar had sustained two bullet injuries. He was examined by P.W.588- Dr.Gavai. P.W.87 had sustained lacerated wounds 2 cm below the pinna of left ear and fracture of mandible There is minor discrepancy in the evidence vis-a-vis the evidence of his wife P.W.86-Mrs.Sangita Niranjan Sardar. I have already stated that the

discrepancy is of very minor nature and does need any serious consideration. But what is important to be noted here is that though it is the case of prosecution that bullets shot at P.W.87 were fired by accused No.1 and they had tallied with the test fired bullets from AK-47 rifle-art.10 held by accused No.1, the evidence adduced by the prosecution in this regard cannot be considered inasmuch as the doctor has been put in the category of formal witness. Unless the said doctor was examined in open court and unless he had seen the phials in which the bullet was sealed by him, the court cannot give finding that the bullet which had reached the C.A. was the same bullet which was retrieved from the injury sustained by P.W.87.

811. P.W.94-Dr.Sonali Khairmode had examined the injured Harshada Salaskar, P.W.89. Evidence of P.W.89 has already been summed up by me while summing up the evidence of C.S.T. railway station incident. P.W.94-Dr.Khairmode has stated that there was firearm entry wound over left gluteal region and that there was no exist wound. The bullet was retrieved after the patient was admitted for further treatment in ward No.8. This bullet was sealed in a phial and was handed over to police with forwarding letter **Exh.376**. The injury certificate is produced at **Exh.375**

The witness has identified her signature on both the exhibits. The bullet was forwarded to the C.A. by Sr.Inspector of Police of C.S.T. railway police station and it was examined by the ballistic experts P.W.150-Mr.Ghadage and P.W.157- Mr.Vasudev Patil. It is stated by P.W.150 that art.477 was 7.62 mm short rifle copper jacketed bullet. It is stated by P.W. 157 the bullet tallied with the test fired bullet from art.10-AK 47 rifle. Art.10 has been identified by the witnesses to be the same rifle which was held by accused No.1. Opinion of P.W.150 is at **Exh.206 colly (part).**

812. Similarly. P.W.88- Mr.Ansar Alabaksh Mohd.Hanif Saudagar was also examined by the same doctor i.e. P.W.94-Sonali Dr.Khairmode. During the course of examination of injured P.W.88. the doctor had noticed firearm entry wound on middle aspect of right leg and there was fracture of right fibula. A bullet was retrieved from right fibula. The injury certificate is at **Exh.377** and office copy of forwarding letter is at **Exh.378**. The bullet is **art.479** and the container is **art.480**. The witness has identified her signature on both the exhibits. The bullet was forwarded to the C.A. by Sr.Inspector of Police of C.S.T. railway police station and it was examined by the ballistic expert P.W.150-Mr.Ghadage. It is stated by P.W.150 that

art.479 was 7.62 mm short rifle copper jacketed bullet. It is stated by P.W. 157 that the bullet tallied with the test fired bullet from art.10-AK 47 rifle. Art.10-AK 47 rifle has been identified by the witnesses to be the same rifle which was held by accused No.1. Opinion of P.W.150 is at **Exh.314.**

813. The evidence of prosecution witnesses so far discussed by me mainly pertain to the testimony eye-witnesses, witnesses who arrived on the spot after the incident, witnesses who carried the injured persons / dead bodies to the hospitals, panch witnesses of inquest panchanamas, medical officers, panch witnesses to the spot panchanamas including seizure and recovery and other incidental witnesses. It can be seen from the evidence of panch witnesses and police officers who had drawn various panchanamas that large number of empty cartridge cases, live cartridges cases, explosive substances, live RDX bombs and hand-grenades and other articles were seized from various sites of the incidents. Most of the articles were sent to the Forensic Science Laboratory, Kalina , Mumbai for examination and opinion of the experts. The arms and ammunition were examined by the ballistic experts. The explosive substances were examined by the C.A. working in a separate division of FSL. Ballistic experts' opinion was also

sought by the police as to whether the empties found on various sites tallied amongst themselves and also as to from which weapon a particular empty cartridge case was fired. In this regard detail evidence of police officers and the C.A. is being discussed herein after.

814. The first ever incident reported to the police was of C.S.T. railway station. It has been stated by me earlier that panchanamas-Exh.257 and Exh.259 were drawn at C.S.T. railway station by Police Officer Mr.Dilip Gore (P.W.73), in presence of panch witnesses P.W.70-Mr.Chandrakant Sarnobat and P.W.71- Indrajit Chandrashekhar Singh. The investigation of Crime No.155/08 registered at C.S.T. railway police station was transferred to Anti Terrorist Squad (A.T.S.). A fresh crime was registered in the office of A.T.S. vide CR No.20/08. The articles seized by C.S.T.railway police under panchanamas **Exh.257** and **Exh.259** were collected by A.T.S. from C.S.T. railway police station. Those articles were forwarded to the FSL by P.W.81-Mr.Sanjiv Tonpi, Police Inspector attached to A.T.S. under forwarding letter **Exh.320.** The articles were examined by the C.A. Mr.Ghadage who has been examined as P.W.150. His report in that regard is at **Exh.321**. The report was received by Police Inspector

Mr.Gangawane-P.W.149, when the matter was transferred from A.T.S. to DCBCID.

815. At this stage I may mention here that I proposed to draw separate tables to show :

1) Number and nature of firearms recovered by police.
2) Number and description of empty cartridge cases recovered by police.
3) Number and description of live cartridge cases recovered by police.
4) Description of explosive material recovered by police, further indicating the panchanamas and its exhibit numbers under which the particular article was recovered or seized, article number given by the court, exhibit number assigned to the particular article by the FSL and opinion of the C.A.

This method is adopted so that whole evidence can be summed up in a methodical manner and will be easy and convenient to understand.

816. Reverting back to the seizure of articles at **C.S.T. railway station**, it may be stated here that the articles seized under two separate panchanamas i.e. **Exh.257** and **Exh.259**, were forwarded to the forensic

laboratory under the same forwarding letter i.e. **Exh.320A**. The articles were received by the laboratory clerk Mr.Khavnekar in presence of Asstt.Chemical Analyzer Mr.Ghadage. P.W.150- Mr.Gautam Ghadage in his evidence has stated that these articles were received in the laboratory through API Mr. Sunil Rangrao Patil. API Mr.Patil has been examined as P.W.82. P.W.150-Mr.Ghadage has further stated that 20 (twenty) sealed parcels were received under the forwarding letter **Exh.320A**. The articles were deposited in the laboratory by P.W.82 and they were received by the clerk Mr.Khavanekar. The sealed parcels were opened and entries were taken in the concerned register. Exhibit numbers were given to the sealed parcels. Case number given to all the articles received under **Exh.320A** was laboratory case **No.BL-1014-08**. The articles were exhibited by laboratory as Exh.1 to Exh.20. P.W.82-Mr.Sunil Rangrao Patil, API, has also corroborated the evidence given by P.W.81- Mr.Sanjiv Tonpi, PI, ATS and P.W.150-Mr.Ghadage. P.W.150 had examined the articles and had given his opinion-**Exh.321**. P.W.150 has identified his signature on the opinion-**Exh.321**.

817. The articles seized under panchanama (**Exh.486**) during the

course of investigation of the incident at Badruddin Tayyabji Road which is labelled as **Cama (In)** case by the police, were sent to the C.A. by P.I.Mr.Pravin Kuyeskar (P.W.129) under forwarding letter **Exh.520** (office copy of the letter, original is marked **Exh.608**) . It is stated by P.W.129 that 56 sealed packets out of 75 sealed packets collected from Azad Maidan Police Station pertaining to CR No. 245/08 of Azad Maidan Police Station were sent to F.S.L. through PSI Mr.Shaikh of DCBCID(P.W.143). P.W. 151-Mr.Shamsunder Munj, Asstt.Chemical Analyzer in his evidence has stated that on 3/12/2008 PI Mr.Shaikh had visited FSL and had deposited 53 parcels wrapped in brown paper and three parcels wrapped in plastic. They were received by P.W.151. The articles were opened in the laboratory and entries were taken in the relevant register. Exhibit numbers were given to the articles as per usual practice of the laboratory. This case was labelled as case **No. BL-990-C-08**. The opinion in respect of articles is at **Exh.609**. P.W.151 had identified his signature on the opinion/examination report.

818. Few other articles including clothes of the deceased police officers were sent to the C.A. by police officer Mr. Ravindra Badgujar (P.W.158) under forwarding letter **Exh.610**. The details of contents of this

letter are not being discussed because the ld. Spl.P.P. had not relied upon the evidence pertaining to the examination of clothes of the deceased police officers. Report in respect of these articles was submitted by P.W.151 vide Exh.611. P.W.151 had identified his signature on the report Exh.611.

819. The incident of Cama hospital which is labelled as **Cama (Out)** case by the police, was registered as C.R.No.246/08 of Azad Maidan P.Stn. After transfer of this case to DCBCID it was registered as CR No.188/08 by DCBCID. The articles seized during the course of panchanamas **Exh.524** (seizure of articles from backside of Cama hospital, ATM Centre of Corporation Bank, Honda City Car, gate of St.Xavier's college and Metro Junction) & **Exh.529 (**in respect of Qualis vehicle) were forwarded to the FSL by Police Inspector Mr.Abdulrauf Shaikh (P.W.143) under forwarding letter Exh.551-A. Sixty parcels were sent to the F.S.L. Office copy of the forwarding letter is at Exh.551. Original copy of forwarding letter has been produced by the prosecution during the course of recording of evidence of P.W.151-Mr.Munj. The original forwarding letter is at Exh.551A. The opinion of C.A. is at Exh.553. P.W.151-Mr.Munj has identified his signature on the opinion. These articles were carried to the

laboratory by P.W.143 personally. It is stated by P.W.143 that the articles forwarded under forwarding letter Exh.551A , office copy of which has been produced at Exh.551 colly., included the articles seized by Marine Drive Police Station during the course of panchanama(Exh.529) of Qualis Vehicle at Barrister Rajani Patel Marg. It may be noted here that the panchanama of Qualis Vehicle is part of investigation of CR No.246 of 2008 of Azad Maidan Police Station. Since the articles seized by Marine Drive Police station had seal of said police station, P.W.143 had sent specimen seals of both the police stations i.e. Azad Maidan Police Station and Marine Drive Police Station so that officers of FSL can verify the seals on the articles received by them. The opinion in respect of articles received under forwarding letter Exh.551colly. was submitted by P.W.151 vide Exh.553.

820. As stated earlier the offence in respect of incident of Vinoli Chaupaty was registered at D.B.Marg Police Station vide C.R.No.305/08. The articles seized during the course of panchanama of spot at Vinoli Chaupaty by P.W.31-Mr.Vinod Sawant, P.I., in presence of panch witness P.W.10-Mr.Shashikant Pawar and one more panch witness namely

Mr.Mahendra Sabale were handed over to Mr.Marde (P.W.48) of DCB CID when the case was transferred to DCBCID. These articles were forwarded to FSL by Mr.Marde. The office copy of forwarding letter which is produced at Exh.346. The articles were received by the receiving clerk Mr.Khavnekar in the FSL. These articles were carried to the FSL by PSI Mr.Naik. PSI Mr.Naik has been examined as PW 430 (on affidavit) . P.W.48- Mr.Marde, PI, has stated in his evidence that the articles were forwarded to the FSL. His evidence is corroborated by P.W.430 who has stated that the articles were deposited in the office of FSL by him as directed by P.W.48-Mr.Marde. The articles were in sealed condition. They were received by the laboratory after checking the seals. P.W.157-Mr.Vasudev Patil , Asstt.Chemical Analyzer of FSL has stated that 44 sealed parcels, four sealed plastic parcels, one sealed bottle and one unsealed parcels were received in the office of FSL on 3/12/2008 under the covering letter Exh.346A (original of Exh.346). Acknowledgment was given by Mr.Khavnekar . The seals were verified after they were found in accordance with the specimen seals printed in the letter Exh. 346A. All the parcels were opened and exhibit numbers were given to the articles. Case number assigned to these parcels by FSL is BL 990A-2008. These articles

were examined by P.W.157 and he has given his opinion vide Exh. 347. P.W.157 has identified his signature on the opinion Exh.347.

821. In this regard it may be noted here that the case of prosecution is that the accused No.1 and the deceased accused No.1-Abu Ismail had entered C.S.T.railway station and after committing alleged criminal acts at C.S.T. railway station , they had proceeded to Badruddin Tayyabji Road. Later on they had entered Cama Hospital. After killing some police officers and employee of Cama Hospital , they had come out on Badruddin Tayyabji Road near A.T.M. Centre of Corporation Bank. They had allegedly killed police officer Mr.Durgude and also killed three police officers and four police constables in Qualis vehicle and thereafter they had proceeded to Barrister Rajani Patel Marg and robbed Skoda car from possession of Mr.Sharan Aarsa. It is the same Skoda car which was intercepted at Vinoli Chaupaty and in the incident of Chaupaty deceased accused No.1 Abu Ismail was eliminated by the police and accused No.1 was apprehended on the spot. As such the prosecution case is that the accused No.1 and deceased accused No.1-Abu Ismail had fired from two AK-47 rifles at C.S.T. railway station, Badruddin Tayyabji Road, Cama Hospital, Metro

Junction and Vinoli Chaupaty. It is also the case of prosecution that deceased accused No.1-Abu Ismail left his AK-47 rifle in the qualis vehicle at Barrister Rajani Patel Marg and picked up AK-47 rifle of Mr.Ashok Kamate which was in the said vehicle. The said AK-47 rifle of Mr.Kamate could not be used by deceased accused No.1 as he was killed by the police at Vinoli Chowpaty before he could handle the AK-47 rifle of Mr.Ashok Kamate which he had kept in leg space while driving the Skoda car. In brief, what can be stated here is that according to prosecution case the empties found at the above stated place where the offence was committed by accused No.1 and deceased accused No.1-Abu Ismail, were the empty cartridge cases of cartridges fired from AK-47 rifle art.10 and AK-47 rifle art.427. The Chemical Analyzers were therefore requested by the police to let them know as to whether the empties found at the above stated places tallied among themselves and if they tallied with the test fired empties from these two weapons. The C.A. were also requested to give opinion whether the live cartridges seized by the police were actually live or otherwise. As already stated by me, I proposed to sum-up this evidence in the form of table so that it can be easily comprehended and conveniently understood. The tables proposed to be inserted in the judgment cover all the weapons

allegedly used by the accused No.1 and the deceased accused Nos. 1 to 9, all the empties seized at various places and all the live cartridge cases seized at various places including Hotel Taj, Oberoi, Leopold and Nariman House. These tables would be inserted in the later part of the judgment after I sum-up evidence of witnesses who had forwarded articles seized at Hotel Taj, Oberoi, Leopold and Nariman House to the FSL.

822. As regards cross-examination of the witnesses P.W. 82, P.W.129, P.W.143 and P.W.158 is concerned, none of the advocates for accused have cross-examined this witness on the point of transportation of articles from the custody of Police Officer Mr.Tonapi to the FSL. P.W.129-has also not been cross-examined in this regard. Only one suggestion is put to him that he was deposing false that the articles were sent to FSL and it was further suggested to him that the forwarding letter was a fabricated documents. P.W.129 has denied both the suggestions. As far as P.W.158-Mr. Badgujar is concerned, he had forwarded certain articles to FSL on 9.1.2009 under forwarding letter Exh.610. This witness has also not been cross-examined on this point. In fact cross-examination of this witness was not necessary inasmuch as the ld. Spl.P.P. himself did not want to rely upon

the result of analysis of the articles carried by this witness mainly because they were clothes of the injured or deceased police officers. The ld. Spl.P.P. had made a statement during the course of evidence that he did not want to rely upon that part of evidence. Therefore, evidence of forensic expert also is not recorded in detail as far as the clothes of the deceased and injured police officers and the other deceased persons and injured witnesses are concerned.

823. P.W.143-Mr.Abdulrauf Shaikh has been cross-examined by ld. Advocate Mr.Abbas Kazmi for accused No.1 to a considerable length. The cross-examination of this witness was mainly with a view to question the legality of officers of Azad Maidan Police Station continuing to take part in the investigation of C.R.No.245/08 C.R.No.246/08 ,Cama Hospital (In & Out) incidents, after the investigation was handed over to DCBCID. I do not that think this part of cross-examination needs much attention of the court inasmuch as I am of the clear view that there is nothing illegal if the officers belonging to a particular police station assist the officers of crime branch of officers of any other police station in the investigation of any case particularly when the investigation is voluminous . The witness has

admitted that some of the articles were forwarded to the C.A. by Azad Maidan Police station even after the case was assigned to Crime Branch. In this regard it may be mentioned here that some of the bullets retrieved from the dead bodies and blood samples were forwarded to Azad Maidan police station by the medical officers because the medical officers did not know that the case had been assigned to DCBCID. Since the dead bodies were received from Azad Maidan Police Station, it was but natural that the bullets and blood samples would be sent to Azad Maidan Police Station.

824. There is further cross-examination of this witness in respect of seizure of a compact disk from the possession of P.W.66-Mr. Sandeep Khiratkar, PI of R.P.F. In this regard it may be mentioned here that the C.D. which was prepared from the D.V.R. of C.S.T.railway station containing visuals captured by six cameras was handed over to P.W.143 by Mr.Khiratkar . The plastic cover of the said C.D. was of Moser Bear Brand. The C.D. produced in the court is of Sony make. P.W.66- Mr.Khiratkar had stated in is evidence that he copied the visuals on C.D. of Moser Bear Brand. I think this mistake has been committed by the witness because the plastic cover in which the C.D. was kept , was of Moser Bear Branch. I do

not see any faul play and nothing of that sort has been brought on record in the cross-examination also.

825. As far as cross-examination of P.W.81- Mr.Sanjiv Tonapi is concerned, similar type of questions have been put to him also to demonstrate that once the investigation was taken by ATS from C.S.T. railway police station, C.S.T. railway police could not have taken part in the investigation. I have already indicated that I do not subscribe the view of ld.Advocate Mr.Kazmi and therefore, I am not inclined to give much attention to this part of cross-examination. As far as P.W.48-Mr.Marde is concerned, he has not been cross-examined with regard to the articles sent by him to the F.S.L.

826. The articles seized during the course of investigation of C.R.No.241/08 (Nariman House case) of Colaba Police Station which was later on registered as CR No.197/08 by DCBCID, were sent to FSL under forwarding letter **Exh.842** by Asstt. Police Inspector Mr.Vijay Shinde - P.W.271 on 30/12/2008. The articles were received in the office of FSL by its Clerk Mr.Khavanekar. The entries were taken in the relevant register

and all the articles were assigned Lab Case No. BL 1123-08 . The articles were received by Mr.Khavanekar in presence of P.W.150- Mr.Gautam Ghadge. P.W.271- Mr.Vijay Shinde in his evidence has stated that **37** sealed packets were received by him from PI Patil of Colaba Police Station when the charge of C.R.No.241/08 of Colaba Police Station was handed over to him. The said articles were deposited in the office of FSL on 30/12/2008 under forwarding letter Exh.842. He has stated that the articles were handed over to Mr.Khavnekar and that the letter Exh.842 bears acknowledgment of Mr.Khavnekar in token of having received the said articles. Five more sealed packets containing articles seized by Colaba Police Station during investigation of the same case were forwarded to FSL along with Police Constable Mr.Dhundale on 15/1/2009 under forwarding letter **Exh.683**. P.W.271 has identified his signature on Exh.683 also. The articles forwarded under Exh.683 were for obtaining DNA reports . The said exhibit and report of FSL will be referred to by me in the later part of the judgment when I consider other DNA reports.

827. P.W.150-Mr.Gautam Ghadge in his evidence has stated that on 30/12/08 his office had received a letter from Sr.P.I. of DCBCID alongwith

certain articles to be examined in the laboratory. The articles were received by office clerk M.Khavnekar and they were handed over to P.W.150. The witness has identified the forwarding letter Exh.842 and has stated that all the articles were in sealed condition and seals were intact. The articles were kept in strong room. Exhibit numbers were given to those articles by the FSL. According to this witness the exhibit No. 1 to 38 were assigned to the articles received under the letter **Exh.842.** Those articles were examined by P.W.150 and opinion was given vide **Exh.843.** Most of the articles including the rifles have been identified by this witness during the course of his evidence. All the sealed packets produced by prosecution concerning forwarding letter Exh.842 were opened. The contents thereof were shown to the witness. At this stage it may be noted here that some of the articles are in group like a group of empties or a group of live cartridge cases. Such articles are taken collectively e.g. art.725 colly. or art.726 colly. and so on . Similar method was adopted while recording evidence of two other ballistic experts i.e. P.W.151 and P.W.157.

828. The articles seized during the course of investigation of C.R.No.242/08 (Hotel Taj Case) of Colaba police station were sent to FSL

by the I.O. Mr. Nigade. At present I will be referring to those articles only which are mainly concerned with the ballistic experts and the opinion with respect to it given by either of the three witnesses i.e P.W.150-Mr.Gautam Ghadge, P.W.151- Mr.Shamsundar Munj and P.W.157-Mr.Vasudev Patil. P.W.267- Mr.Nigade is the police officer who had taken over the investigation of C.R.No.242/08 of Colaba Police Station from PI Mr.Patil P.W.234. The charge was handed over to Mr.Nigade on 6th December, 2008. Mr.Nigade had collected **97** sealed packets from Mr.Patil while taking charge of the said case. Apart from these articles, other articles recovered during the course of investigation were also sent to FSL by Mr.Nigade. The two other articles which are important to be noted are two 7.62 mm pistols recovered during the course of renovation of Hotel Taj. One pistol was recovered by P.W.269-Mr.Sunil Kudiyadi. The same has been identified as **art.946** and the other 7.62 mm with empty magazine recovered by Security officer of Hotel Taj Mr.Bhirade (PW.268). That pistol is identified as art.**677 colly**. The evidence of P.W.269- Mr.Sunil Kudyadi and P.W.268- Mr Bhirade has already been discussed by me in earlier paragraphs.

829. P.W.267- PI Mr.Nigade has further stated in his evidence that articles seized during the course of investigation were forwarded to C.A. from time to time under various forwarding letters. The articles concerning ballistic were forwarded to the C.A. under forwarding letter Exh.893, 895 897 and 902. These articles were carried to the FSL by PSI Mr. Haribhau Jadhav whose evidence has been tendered by way of affidavit. He is P.W.436. This witness has given details of forwarding letters and number of sealed articles deposited with the FSL by him. It is stated by him that the articles under outward letter No. 1906, 442, 1071 and 164 of DCB CID were deposited in FSL by him on 23.12.2008, 24.2.2009, 29.12.2008 and 16.1.2009 respectively. Evidence of P.W.267 and P.W.436 has been corroborated by the evidence of P.W.157- Mr. Vasudev Patil who was working as Asstt.Chemical Analyzer in FSL. P.W.157 has stated that on 23.12.2008 he had received letter Exh.893, on 242.2.2009 he had received letter Exh.895, on 30.12.2008 he had received letter Exh.897 and on 16.1.09 he had received letter Exh.902. These exhibits are the same letters which are referred as Outward No. 1906, 442, 1071 and 164 by P.W.436.

830. It is stated by P.W.157 that the articles received under letter

Exh.893 were in sealed condition. It is seen from his evidence that the articles received under letter No.893 were assigned lab case No.BL 1095-08. Similarly, the articles received under letter Exh.895 were also in sealed condition and they were assigned lab Case No. BL-139-09. Articles received under Exh.897 were also in sealed condition and they were assigned Lab Case No.BL 1122-08. Articles received under letter Exh.902 were also in sealed condition and the were assigned lab Case No. BL 41-09. The articles received under these four forwarding letters were examined by this witness and he had given his opinion vide **Exh.894, Exh.896**, **Exh.898** and **Exh.903** respectively. As already stated by me, I propose to mention details of these articles and opinion of C.A. in a tabular form and therefore at this stage I am not referring details of the articles.

831. I now proceed to discuss the evidence regarding articles seized during the course of investigation of CR No.240/08 (Hotel Leopold Case) of Colaba Police Station , which was later on converted in CR No.193/08 pf DCBCID. The articles seized during the course of investigation at Hotel Leopold were forwarded to the FSL by Police Inspector Mr.Chaudhary who investigated the case after the case was transferred from Colaba Police

Station to DCBCID. The articles were forwarded to FSL under forwarding letter **Exh.904**. The articles were carried to FSL by PSI Mr.Nikam. Mr.Nikam has been examined as P.W.434 on affidavit. It is stated by P.W.434 in his affidavit that on 24.12.08 he had carried 25 articles to FSL in sealed condition as directed by PI Mr.Chaudhary.

832. P.W. 266-Mr.Damodar Chaudhary , PI, has stated in his evidence that articles were carried by P.W.434 under forwarding letter **Exh**.**904.** These articles were examined by P.W.157 and he has submitted his report vide **Exh.905**. He has identified his signature on the opinion/examination report. The details of report are being incorporated in the table which will be inserted herein after.

833. The articles seized during the course of investigation of CR No.231/08 of Marine Drive Police Station (Hotel Oberoi & Hotel Trident Case) which was converted in to CR No. 191/08 of DCBCID, were also forwarded to FSL on various dates. Some of the articles were sent to FSL by police officer Mr.Dahingade of Marine Drive Police Station as the case was originally being investigated by Marine Drive Police Station. Rest of

the articles were sent to FSL by I.O. Mr.Shengale (P.W.270) on 30.12.2008. The prosecution has not examined the police officer Mr.Dahingade. However, Police Constable Mr.Ravindra Appaji Bhosale, PC No.10602 has been examined on affidavit as P.W.427. He has stated in his affidavit that the articles handed over to him by Mr.Dahingade were delivered in the office of FSL by him. In his affidavit he has also referred to Outward No.7812/08. Outward No.7812/08 is of the **Exh. 831, 834 and 838**. These three documents had been exhibited during the course of evidence of P.W.151 who was working as C.A. in FSL, Mumbai. P.W.151 has stated in his evidence that he had received articles mentioned in **Exh.831** on 11.12.08. Acknowledgment in respect of receipt of the articles was given by the office clerk Mr.Khavnekar. All the articles were in sealed packets. After opening the sealed packets the articles were given exhibit numbers and lab case No.BL 1026-08. Similarly, he had also received articles under **Exh.832 and Exh.834**. These articles were given exhibit numbers and lab case No. BL 1027-08 was assigned to the articles received under Exh. 832 and lab case No. BL 1059-08 was assigned to the articles received under **Exh.834**. Apart from these articles other articles including two AK 47 rifles and two pistols were sent to FSL by the Investigating Officer P.W.270-

Mr.Shengale. P.W.270 has stated in his evidence that the articles seized during the course of investigation were sent to FSL. He has identified his signature on the forwarding letter **Exh.839.** These articles were received in the office of FSL by Mr.Khavnekar in the presence of Asstt.Chemical Analyzer P.W.150-Mr.Gautam Ghadge. It is stated by P.W.150 that on 30.12.08 he had received 30 sealed parcels through Sr.PI of DCBCID. The parcels were in sealed condition . They were opened by P.W.150 personally and entries in respect of all the articles received by him were taken in the concerned register. Exhibit numbers were also given to the articles. The articles were exhibited as Ex.No.1 to 30 by the FSL. The lab number assigned to these articles was BL 1119-08. The articles were examined by this witness and he had given his opinion vide Exh.841. The witness had identified his signature on the opinion-**Exh.841**. P.W.150 during the course of his examination-in-chief has pointed out that there was some typing mistake at page No.6 of his report. Four empties Exh.15A to 15D were stated to be fired from rifle Exh.1- art.12. It may be noted here that the art.12 is the AK-47 rifle which was seized from leg space of Skoda car at Chowpaty which belonged to the deceased police officer Mr.Ashok Kamate. However, after going through his original notes-Exh.840, the witness has

stated that the empties received by him under Exh.15A to 15D bearing BL No. 1119-08 were tallying amongst themselves and were fired from 7.62 mm short assault rifle other than the rifle seized by D.B.Marg police station at Girgaum Chowpaty. They were also not fired either from art.765 or from art.768 , the AK 47 rifles recovered from Hotel Oberoi. The details of other articles mentioned in the report will form part of the table which I am proposing to insert herein after.

834. From the evidence of panch witnesses and police officers involved in search and seizure at various places of offences and from the evidence of carriers who had carried seized articles to the FSL and the officers who forwarded articles to the FSL and from the evidence of CA P.W.150-Mr.Gautam Ghadge, P.W.151- Mr.Shamsunder Munj and P.W.157-Mr.Vasudev Patil it can be stated briefly that **eleven AK-47** rifles were seized by the police during the course of investigation. Even at the cost of repetition it may be stated here that **two** AK-47 rifles were seized at Girgaum Chowpaty one of them was seized from accused No.1 (art.10) and the other was seized from leg space of skoda car (art.12). **One** AK-47 rifle was seized from police Qualis vehicle .At this stage it may be stated here

that the AK-47 rifle seized from the police vehicle belonged to deceased accused No.1-Abu Ismail. He had left the same in the police vehicle and had picked up AK-47 rifle belonging to Mr.Ashok Kamate. The said AK-47 rifle was later on seized from leg space of Skoda car. It has been identified by P.W.7- Mr.Jande to be the same AK-47 rifle which was issued to Mr.Ashok Kamate from police armoury. **Four** AK-47 rifles were recovered from Hotel Taj. **Two AK-47** rifles were seized from Nariman House and **two AK-47** rifles were recovered from Hotel Oberoi. As such the details of such recovery of AK-47 rifles can be summed up as under :

Table No.7

1) **Art.10 – AK 47 rifle (Accused Kasab) (BL 990A/08 Ex.2)** -- It was found to be in working condition. It was used for firing before the same was received in the laboratory. This rifle was found on left side of the car at Chaupathy when accused No.1 was apprehended. It was seized under **spot panchanama Ex.80 dt.26th and 27th November 2008**. Panchanama was drawn by Mr.Vinod Sawant, PI **(PW 31)** in presence of panch witness Mr.Shashikant Pawar**(PW 10).**

2) **Art.12 – AK 47 rifle(Deceased Ashok Kamate) (BL 990A/08 Ex.1)**-- It was found to be in working condition. It was used for firing before the same was received in the laboratory. This rifle was found in the leg

space of driving seat of the said car. It was seized under **spot panchanama Ex.80 dt.26th and 27th November 2008**. Panchanama was drawn by Mr.Vinod Sawant, PI **(PW 31)** in presence of panch witness Mr.Shashikant Pawar **(PW 10).**

3) **Art.427 – AK 47 rifle (Deceased accused Abu Ismail) (BL 990A/08 Ex.7)** - It was found to be in working condition. It was used for firing before the same was received in the laboratory. This rifle was found on left front seat of the Qualis vehicle. It was seized under **spot panchanama Ex.529 dt.27th November 2008** by PSI Mr.Sanjay Chavan **(PW 135)** in presence of Panch witness Mr.Santosh Hari Pawar **(PW 134).**

4) **Art.681 – AK 47 rifle** (**BL 1095-08 Ex.1**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.681 produced by Mr.Anil Jakhar **(C.W.3)** before Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania **(PW 195).**

5) **Art.682 – AK 47 rifle** (**BL 1095-08 Ex.2**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.682 produced by Mr.Anil Jakhar **(C.W.3)** before PW Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was

seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania **(PW 195)**.

6) **Art.683 – AK 47 rifle** (**BL 1095-08 Ex.3**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.683 produced by Mr.Anil Jakhar **(C.W.3)** before Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania **(PW.195).**

7) **Art.684 – AK 47 rifle** (**BL 1095-08 Ex.4**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.684 produced by Mr.Anil Jakhar **(C.W.3)** before Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania **(PW 195)**.

8) **Art.694 – AK 47 rifle** **(BL 1123/08 Ex.1**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art. 694 produced by Mr.Pavitar Prashant **(C.W.4)** before Mr.Maniksingh P. Patil, PI **(PW 234)** and it was seized under **panchanama Ex.771 dt.29th November 2008** in presence of panch witness Mr.Sagar Prem Singh **(PW 203).**

9) **Art.695 – AK 47 rifle (BL 1123/08 Ex.2**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art. 694 produced by Mr.Pavitar Prashant **(C.W.4)** before Mr.Maniksingh P. Patil, PI **(PW 234)** and it was seized under **panchanama Ex.771 dt.29th November 2008** in presence of panch witness Mr.Sagar Prem Singh **(PW 203).**

10) **Art.765 – AK 47 rifle (BL 1119-08 Ex.1)** – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.765 lying near the dead bodies of one of the deceased accused on 18th floor of New Hotel Oberoi. It was seized at the time of **inquest panchanama(Ex.790)** of the dead body on **28th November 2008** drawn by PSI Mr.Santosh Subalkar **(PW 226)**

11) **Art.768 – AK 47 rifle (BL 1119-08 Ex.2**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.765 lying near the dead bodies of one of the deceased accused on 18th floor of New Hotel Oberoi. It was seized at the time of **inquest panchanama(Ex.790) of the dead body on 28th November 2008.**

835. Similarly, police had also recovered **ten 7.62 mm/.30"pistols** from various places during the course of investigation. **Two** pistols were

recovered at Girgaum Chowpaty one each belonging to accused No.1 and the deceased accused No.1-Abu Ismail . **Two** pistols were recovered from Nariman house , **two** were recovered from Hotel Oberoi and **four** were recovered from Hotel Taj. The details of place of recovery and brief opinion of the ballistic experts with regard to these pistols can be summed up as under :

Table No.8

1) **Art.14 – 9 mm 7.62/.30" pistol** (**BL 990A/08 Ex.3**) -It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.14 was found lying on the road on right side of the Skoda car. It was seized under **spot panchanama Ex.80 dt.26th and 27th November 2008**. Panchanama was drawn by Mr.Vinod Sawant, PI **(PW 31)** in presence of panch witness Mr.Shashikant Pawar **(PW 10).**

2) **Art.16 – 9 mm 7.62 /.30" pistol** (**BL 990A/08 Ex.4**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.14 was found lying on the road on right side of the Skoda car. It was seized under **spot panchanama Ex.80 dt.26th and 27th November 2008**. Panchanama was drawn by Mr.Vinod Sawant, PI **(PW 31)** in presence of panch witness Mr.Shashikant Pawar **(PW 10).**

3) **Art.686 – Pistol (BL 1095/08 Ex.6)** – It was found to be in working condition. It was used for firing before the same was received in the laboratory. This pistol produced by Mr.Anil Jakhar (**C.W.3)** before Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania **(PW 195)**.

4) **Art.507 colly – Pistol with magazine** (**BL 1095-08 Ex.5**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. This pistol produced by **M**r.Anil Jakhar **(C.W.3)** before Mr.Rahulkumar D. Naik, PSI **(PW 196)** and it was seized under **panchanama Ex.760 dt.29th November 2008** in presence of panch witness Mr.Raj A. Sarkania**(PW 195)**.

5) **Art.696 – Pistol (BL 1123/08 Ex.3)** - It was found to be in working condition. It was used for firing before the same was received in the laboratory. This pistol produced by **(C.W.4)** Mr.Pavitar Prashant before Mr.Maniksingh P. Patil, PI **(PW 234)** and it was seized under **panchanama Ex.771 dt.29th November 2008** in presence of panch witness Mr.Sagar Prem Singh**(PW 203)**.

6) **Art.697 – Pistol (BL 1123/08 Ex.4)** - It was found to be in working condition. It was used for firing

before the same was received in the laboratory. This pistol produced by Mr.Pavitar Prashant **(C.W.4)** before Mr.Maniksingh P. Patil, PI **(PW 234)** and it was seized under **panchanama Ex.771 dt.29th November 2008** in presence of panch witness Mr.Sagar Prem Singh**(PW 203)**.

7) **Art.773 – Pistol (BL 1119/08 Ex.3)** – It was found to be in working condition. It was used for firing before the same was received in the laboratory. This pistol was lying near the dead bodies of one of the deceased accused on 18th floor of New Hotel Oberoi. It was seized at the time of i**nquest panchanama(Ex.790)** of the dead body **on 28th November 2008** drawn by Mr.Santosh Subalkar, PSI **(PW 226)**.

8) **Art.896 – 7.62/.30" pistol** (**BL 1119/08 Ex.4A)** – It was found to be in working condition. It was used for firing before the same was received in the laboratory. Art.896 produced by NSG Commandos Mr.Teli and Mr.Das. NSG Commandos brought this article from 18th floor of Hotel Oberoi. It was seized under **panchanama Ex.1030 dt.29th November 2008.** Panchanama was drawn by Mr.Sudhir Garud,PSI **(PW 220)** in presence of panch witness Mr.Santosh Pawar **(PW 134)**

9) **Art.946 – Pistol (BL 1122/08 Ex.1)** – It was found to be in working condition. It was used for firing before the same was received in the laboratory. During

the course of renovation of Wasabi restaurant, **PW 269** Mr.Sunil Kudyadi had recovered Art.946 from the debris. He had handed over this article to Mr.Nigade **(PW 267)**. It was seized under **panchanama Ex.1125 dt.18th December 2008.**

10) **Art.677 colly – Pistol with magazine** (**BL 1122/08 Ex.2**) – It was found to be in working condition. It was used for firing before the same was received in the laboratory. At the time of renovation of Wasabi restaurant, **PW 268**- Mr.Ajay R. Bhirade had recovered Art.677 colly from the debris. Art.677 colly were handed over to police by Security Officer Mr.Birhade **(PW 268)**. They were seized under **panchanama Ex.752 dt.30 November 2008.**

836. In this regard it will not be out of place to mention here that the case of prosecution is that each of the accused carried one AK-47 rifle each and one 7.62 mm/30' pistol each. The evidence of prosecution witnesses including panch witnesses and ballistic experts would show that all the AK-47 rifles and pistols have been recovered by the police during the course of investigation. The details of which have been stated by me herein above.

837. At this stage it may also be noted that the BL number mentioned in the details of AK-47 rifles and 7.62 mm/.30" pistols, is the

laboratory case number assigned to particular article. Exhibit number mentioned along with the laboratory case number is the exhibit number assigned to that particular article by the laboratory. As far as possible this court has given its independent article number to each and every article. It is only in the matter of empties and cartridges where empties and cartridges were produced in group, that the court has not been able to assign independent article number to each and every cartridge cases and empties. They have been assigned numbers collectively. However, to maintain the individual identity of the empties recovered from various spots, exhibit numbers assigned to those empties by the laboratory have been recorded in the evidence of ballistic experts i.e. P.W.150, P.W.151 and P.W.157. To continue with regard to seizure of arms and ammunition, it may be stated here that police had recovered around **370 empty cartridge cases fired from 7.62 mm short rifle cartridges.** These empties of short rifle cartridge cases are mostly fired from the ten weapons belonging to the accused No.1 and the deceased accused Nos. 1 to 9. There was only one AK-47 rifle (short rifle) which has been used by the police during the course of whole incident. The said rifle was held by the deceased police officer Mr.Ashok Kamate. The reports submitted by the ballistic experts show that only three

empties of the cartridge cases fired from the AK-47 rifle art.12 have been recovered by the police. One of them was recovered at Badruddin Tayyabji Road and two of them were recovered from police qualis vehicle. Rest of the empties are therefore obviously fired from the AK-47 rifle held by accused No.1 and deceased accused Nos. 1 to 9. Evidence of P.W.150, P.W.151 and P.W.157 in this regard has been recorded in detail. There are few empties which could not be compared as they were not fit for comparison. In addition to this, there are few empties in respect of which opinion has been given by the ballistic experts but the prosecution has not adduced any evidence as from which place those particular empties had been recovered. The ballistic experts have given opinion that they were fired from the weapons held by the accused. The Court, therefore, will not take those empties into consideration. Such empties are very few in numbers. The opinion given by the ballistic experts will clearly indicate that the7.62 mm empties recovered at CST railway station, Cama hospital (In & out), Badruddin Tayyabji Road, Metro Junction and Vinoli Chowpaty were fired either from AK-47 rifle held by accused No.1(art.10) or from AK-47 rifle held by deceased accused No.1-Abu Ismail (art.427).

838. The 7.62 mm empties found at Hotel Leopold and Hotel Taj were fired either from the weapon i.e. AK-47 rifle-art.681, art.682, art.683 and art.684. Similarly, 7.62 mm short rifle empties recovered from Nariman House were fired from either of the two AK-47 rifles i.e. art.694 or art.695. 7.62 mm short rifle empties recovered from Oberoi Hotel were fired from either of the two AK-47 rifles i.e. art.765 or art.768.

839. The evidence of prosecution witnesses i.e. panch witnesses and police officers will clearly indicate that AK-47 rifles art. 681, art. 682, art. 683 and art.684 were recovered from hotel Taj. The evidence further clearly indicates that AK-47 rifles art.694 and art.695 were recovered from Nariman House. It is further abundantly clear that art. 765 and art.768 were recovered from Hotel Oberoi.

840. The total numbers of empties including 9 mm empties recovered from various places and the opinion of ballistic experts is proposed to be summed-up in a table. However, before I state the evidence in summary in a tabular form, I may mention here that all the AK-47 rifles recovered by the police were sent to FSL under various forwarding letters.

Similarly, 7.62 mm/30' pistols recovered by the police were also sent to the FSL. The comparison is done by ballistic experts on the basis of test fired empties from various weapons and opinion in details have been recorded by them. Their evidence in the court has also been recorded in detail with respect to almost all the articles examined by them. **The summary of total number of empties, their place of seizure, exhibit numbers of panchanama and opinion of the ballistic experts can be put in a tabular form as under** :

Table No.9

1	2	3	4	5
Sr. No	**Art.No./Lab No./Lab Ex.number**	**Total number of empties and their descriptions**	**Place of seizure and Panchanama Ex.No.**	**Opinion of C.A. (Ballistic Expert)**
1	Art.41colly (BL 990A/08 Ex.12A & 12B)	Two 9 mm empties	Seized in front of Cafe Ideal Choupathy under the **panchanama Ex.80**	These two empties tallied amongst themselves and also tallied with the empties of test fired cartridges from the pistol Art.18 used by PW 1.
2	Art.43colly (BL 990A/08 Ex.13A & 13B)	Two 9 mm empties	found on road on rear side of car and seized under **panchanama Ex.80**	These two empties tallied amongst themselves and also tallied with the empties of test fired cartridges from Art.29 service pistol of PW 3 Mr.Bhavdhankar

1	2	3	4	5
3	Art.51 colly (BL 990A/08 Ex.14A & 14B)	Two 7.62 mm / .30" empties	Seized from near the right front door of Skoda Car at Choupathy under **panchanama Ex.80**	These two empties tallied amongst themselves and also tallied with the empties of cartridges test fired from the pistol **Art.14- Pistol**
4	Art.77 colly (BL 990A/08 Ex.15A to 15H)	Eight 7.62 mm empties	Seized from near the left side of Skoda car at Choupathy under **panchanama Ex.80**	These empties tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle**
5	Art.221colly (BL 1014/08 Ex.1A to 1G)	Seven 7.62 mm short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.1B, 1D, 1E, 1F and 1G tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10-AK 47 rifle.** Art.1A and 1C tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427-AK 47 rifle**.
6	Art.223colly (BL 1014-08 Ex.2A to 2F)	Six 7.62 short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.2A, 2B, 2D, 2E and 2F tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10-AK 47 rifle.** Ex.2C tallied with the empties of cartridges test fired from **Art.427 AK 47 rifle.**

1	2	3	4	5
7	Art.225colly (BL 1014-08 Ex.3A to 3C	Three 7.62 short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.3A & 3B tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10-AK 47 rifle.** Ex.3C tallied with the empties of cartridges test fired from **Art.427 AK 47 rifle.**
8	Art.231 colly (BL 1014-08 Ex.5A-1 to 5A-44)	Forty four 7.62 mm short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.5A5, 5A7, 5A10, 5A12, 5A15, 5A16, 5A18, 5A20, 5A21, 5A22, 5A27, 5A28, 5A29, 5A33, 5A34, 5A36, 5A38, 5A39, 5A41, 5A43 and 5A44 tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle** Ex.5A1, 5A4, 5A6, 5A8, 5A9, 5A11, 5A13, 5A14, 5A17, 5A19, 5A23 to 5A26, 5A 30 to 5A32, 5A35, 5A37, 5A40 and 5A42 tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle**
9	Art.235 colly (BL 1014-08 Ex.6A to 6H)	Eight 7.62 short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.6A, 6E, 6F, 6G & 6H tallied amongst themselves and also tallied with the empties of cartridges test fired from Art.10- AK 47 rifle Ex.6A, 6C & 6D tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427- AK 47 rifle**

1	2	3	4	5
10	Art.237colly (BL 1014-08 Ex.7A to 7F)	Six 7.62 mm short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.7A,7C,7E & 7F tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.7B & 7D tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.**
11	Art.243colly (BL 1014-08 Ex.9A to 9P)	Sixteen 7.62 mm short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.9A,9C,9F,9L to 9O tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.9B,9D,9E,9G,9H,9I,9J,9K & 9P tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.**
12	Art.245 (BL 1014-08 Ex.10)	One 7.62 mm short rifle empty	Recovered at C.S.T. under **panchanama Ex.257**	Ex.10 tallied with the empties cartridges test fired from **Art.10 – AK 47 rifle**
13	Art.254colly (BL 1014-08 Ex.11A to 11E)	Five 7.62 mm short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.11A, 11B & 11C tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.11D & 11E tallied amongst themselves and also tallied with the empties of cartridges test fired from Art.427- AK 47 rifle.

1	2	3	4	5
14	Art.256colly (BL 1014-08 Ex.12A to 12C)	Three 7.62 short rifle empties	Recovered at C.S.T. under **panchanama Ex.257**	Ex.12A & 12B tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.12C tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.**
15	Art.260 colly (BL 1014-08 Ex.14A to 14M)	Thirteen 7.62 mm short rifle empties	**Recovered at C.S.T. under panchanama Ex.259**	Ex.14C to 14F & Ex.14I to 14M tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.14A, 14B, 14G & 14H tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.**
16	Art.352 colly (BL 990C-08 Ex.3A to 3C)	Three .38" revolver empties	Recovered at Cama Hospital (In) under **panchanama Ex.486**	Ex.3A to 3C tallied amongst themselves and also tallied with the empties of test fired cartridges from the **revolver Art.346**
17	Art.399 colly (BL 990B-08 Ex.10A to 10L)	Twelve 7.62 mm short rifle empties	These empties were found in bushes on the opposite side of ATM and seized under **panchanama Ex.524** (Cama Out)	Ex.10E, 10F,10G, 10H, 10I 10K & 10L tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.** Ex.10A, 10B, 10C & 10D tallied amongst themselves and also tallied with the empties of

1	2	3	4	5
	contd.. Art.399 colly	--	--	cartridges test fired from **Art.10- AK 47 rifle.** Ex.10J tallied with the empties of cartridges test fired from **Art.12- AK 47 rifle.**
18	Art.411 colly (BL 990B-08 Ex.12A to 12C)	Three 7.62 mm short rifle empties	Recovered under **panchanama Ex.524** (Cama Out)	Ex.12B & 12C tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427- AK 47 rifle.** Ex.12A tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.**
19	Art.419 colly (BL 990B-08 Ex.13A & 13B)	Two 7.62 mm short rifle empties	Recovered under **panchanama Ex.524 (Cama Out)**	Ex.13A & 13B tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427- AK 47 rifle.**
20	Art.423colly (BL 990B-08 Ex.14A & 14B)	Two 7.62 mm short rifle empties and two broken pieces of copper jackets	Recovered under **panchanama Ex.524 (Cama Out)**	Ex.14A & 14B tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.**
21	Art.451 colly (BL 990B-08 Ex.30A1 to 30A4)	Four 7.62 short rifle empties	Two empties were found in the front leg space and two empties were found in the space of middle portion of Qualis police vehicle. Seized under **panchanama Ex.529**	Ex.30A1, 30A2 tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.** Ex.30A3 & 30A4 tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.12- AK 47 rifle.**

1	2	3	4	5
22	Art.455 colly. (BL 990B-08 Ex.24A & 24B	Two 7.62 mm short rifle empties	These empties found in leg space of middle seat of Qualis Vehicle. They were seized under **panchanama Ex.529**	Ex.24A & 24B tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.10- AK 47 rifle.**
23	Art.511 colly (BL 990B-08 Ex.20A to 20C)	Three 7.62 mm short rifle empties	--	Ex.20A tallied with the empties of cartridges test fired from **Art.10 – AK 47 rifle.** Ex.20B & 20C tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.12 – AK 47 rifle.**
24	Art.528colly (BL 990C-08 Ex.4A to 4O)	Fifteen 9 mm empties	--	Ex.4A, 4E, 4H, 4I, 4K, 4L, 4M & 4O fired from one single 9 mm pistol/ carbine. Ex.4B, 4C, 4D, 4F, 4G, 4J, 4N fired from one single another 9 mm pistol/ carbine.
25	Art.529colly (BL 990C-08 Ex.5A to 5C)	Three 7.62 mm short rifle empties	--	Ex.5A to 5C tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.427 – AK 47 rifle.**
26	Art.624 colly (BL 1102-08 Ex.7A to 7V)	Twenty two 7.62 mm short rifle empties	Recovered at Leopold hotel under **panchanama Ex.732**	Ex.7A, 7V & 7D tallied amongst themselves and also tallied with the empties cartridges test fired from **Art.682 – AK 47 rifle.** Ex.7U, 7F, 7P, 7T, 7I, 7E, 7N, 7O, 7J, 7Q, 7G, 7L, 7C, 7B, 7K, 7M, 7R, 7H & 7S tallied amongst themselves and also tallied with the empties cartridges test fired from **Art.684 – AK 47 rifle.**

1	2	3	4	5
27	Art.626 colly (BL 1102-08 Ex.8A to 8O)	Seventeen 7.62 mm short rifle empties	Recovered at Leopold hotel under **panchanama Ex.732**	Ex.8A, 8E, 8C, 8G, 8I, 8J, 8H, 8M, 8N & 8L tallied amongst themselves and also tallied with the empties cartridges test fired from **Art.682 – AK 47 rifle.** Ex.8Q, 8K, 8F, 8D, 8P, 8B & 8O tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.684 – AK 47 rifle.**
28	Art.656colly (BL 41-09 Ex.16A to 16G)	Seven 7.62 mm short rifle empties	Marcos commando handed over to the police at Hotel Taj under **panchanama Ex.744**	Ex.16A, 16B, 16E & 16F tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.682 – AK 47 rifle.** Ex.16C, 16D & 16G tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.684 – AK 47 rifle.**
29	Art.660 colly (BL 1095-08 Ex.18A1 to 18A161)	161 9mm empties	Recovered at Hotel Taj under **panchanama Ex.746**	Ex.18A1 to 18A161 9 mm pistol/carbine cartridge cases.
30	Art.661 colly (BL 1095-08 Ex.17A to 17R)	Eighteen 7.62 mm short rifle empties	Recovered on the ground floor of Hotel Taj and seized under **panchanama Ex.746**	**Ex.17R not suitable for comparison**. Ex.17B, 17C, 17D, 17E, 17F & 17G tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.682 – AK 47 rifle.** Ex.17H & 17J tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.683 – AK 47 rifle.**

1	2	3	4	5
	contd.. Art.661 colly	---	---	Ex.17A, 17L, 17M, 17N 17O, 17P, 17Q & 17K tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.684 – AK 47 rifle**
31	Art.674 (BL 1095-08 Ex.14)	One 7.62 mm/.30" pistol empty	Recovered at Hotel Taj under **panchanama Ex.750**	Ex.14 tallied with the empties of cartridges test fired from **Art.686 – AK 47 rifle**
32	Art.675 (BL 1095-08 Ex.15A & 15B)	Two 9 mm empties	Recovered at Hotel Taj under **panchanama Ex.751**	Ex.15A & 15B fired 9 mm pistol/carbine cartridge cases.
33	Art.676 (BL 1095-08 Ex.15C)	One 7.62 mm short rifle empty	Recovered at Hotel Taj under **panchanama Ex.751**	Ex.15C tallied with the empties of cartridges test fired from **Art.681-AK 47 rifle**
34	Art.679 colly (BL 1095-08 Ex.16A to 16G)	Seven 7.62 mm short rifle empties	These empties were found in crystal hall near the metal box and seized under **panchanama Ex.757**	Ex.16A, 16B, 16C & 16D tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.682 – AK 47 rifle.** Ex.16E tallied with the empties cartridges test fired from **Art.683 – AK 47 rifle.** Ex.16F & 16G tallied amongst themselves and also tallied with the empties of cartridges test fired from **Art.684 – AK 47 rifle.**

1	2	3	4	5
35	Art.688A (BL 1095-08 Ex.10A)	One 7.62 mm short rifle empty	C.W.3 handed over to the Colaba P.Stn. before PW 196 and seized under **panchanama Ex.760**	Ex.10A tallied with the empty cartridge test fired from **Art.682 – AK 47 rifle.**
36	Art.718 colly (BL 1123-08) (Ex.5B1 to 5B40)	Forty 9 mm empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.5B1 to 5B4 fired 9 mm pistol cartridge cases.
37	Art.725 colly (BL 1123-08 Ex.6A to 6P)	Sixteen 9 mm empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.6A to 6D are fired 9 mm pistol cartridge cases.
38	Art.726 colly (BL 1123-08 Ex.6B1 to 6B22 and Ex.6C)	Twenty three 7.62 mm short rifle empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.6B1 to 6B22 tallied amongst themselves and also tallied with the empties cartridges fired from **Art.694 – AK 47 rifle.** Ex.6C fired 5.56 mm rifle cartridge case
39	Art.731 colly (BL 1123-08 Ex.7A to 7A28)	Twenty eight 9 mm empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.7A1 to Ex.7A28 are fired 9 mm pistol cartridge cases.

1	2	3	4	5
40	Art.748 colly (BL 1123-08 Ex.11A)	Fifty nine 7.62 mm short rifle empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.11A1 to 11A6, 11A9 to 11A11, 11A13 to 11A19 and 11A21 to 11A58 tallied amongst themselves and also tallied with empties cartridges fired from **Art.694 – AK 47 rifle.** Ex.11A1, 11A3, 11A7, 11A8, 11A12 & 11A20 tallied amongst themselves and also tallied with empties cartridges fired from **Art.695 – AK 47 rifle.**
41	Art.749 colly (BL 1123-08 Ex.11B1 11B149 Ex.11C1 & 11C2)	One hundred and forty nine 9 mm empties Two 7.62mm/.30" pistol	Recovered at Nariman house under **panchanama Ex.774**	Ex.11B1 to 11B149 are fired 9 mm pistol cartridge cases. Ex.11C1 & 11C2 tallied amongst themselves and also tallied with the empties cartridges fired from **Art.697 - Pistol**
42	Art.751colly (BL 1123-08 Ex.12A1 to 12A12)	Twelve 9 mm empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.12A1 to 12A12 fired 9 mm pistol cartridge cases.
43	Art.752 colly (BL 1123-08 Ex12B)	Five 7.62 mm short rifle empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.12B1, 12B3, 12B4 tallied amongst themselves and also tallied with empties of cartridges fired from **Art.694- AK 47 rifle** Ex.12B2 & 12B5 tallied amongst themselves and also tallied with empties cartridges fired from **Art.695- AK 47 rifle**

1	2	3	4	5
44	Art.755 colly (BL 1123-08 Ex.13A1 to 13A5)	Five 9 mm empties	Recovered at Nariman house under **panchanama Ex.774**	Ex.13A1 to 13A5 fired 9 mm pistol cartridge cases.
45	Art.780 colly (BL 1119-08 Ex.8A & 8B)	Two 7.62 mm short rifle empties	Recovered at Hotel Oberoi under **panchanama Ex.790**	Ex.8A & 8B tallied amongst themselves and also tallied with the empties of cartridges fired from **Art.765 – AK 47 rifle.**
46	Art.812 colly (BL 1119-08 Ex.9A1 to 9A54)	Fifty four 9 mm empties	Recovered at Hotel Oberoi under **panchanama Ex.804**	Ex.9A1 to 9A54 are fired 9 mm pistol cartridge cases
47	Art.837 colly (BL 1119-08 Ex.12A to 12K)	Eleven 7.62 mm short rifle empties	Recovered at Hotel Oberoi under **panchanama Ex.804**	Ex.12A, 12D, 12E, 12F, 12G, 12H, 12I and 12J tallied amongst themselves and also tallied with the empties cartridges fired from **Art.765 – AK 47 rifle.** Ex.12B, 12C & 12K tallied amongst themselves and also tallied with the empties cartridges fired from **Art.768 – AK 47 rifle.**
48	Art.839 colly (BL 1119-08 Ex.13A & 13B)	Two 5.56 mm empties	Recovered at Hotel Oberoi under **panchanama Ex.804**	Ex.13A & 13B fired 5.56 mm rifle cartridge cases
49	Art.841 (BL 1119-08 Ex.14)	One 7.62 mm short rifle empty	Recovered at Hotel Oberoi under **panchanama Ex.804**	Ex.14 tallied with empties of cartridge fired from **Art.765 – AK 47 rifle**

1	2	3	4	5
50	Art.843 colly (BL 1119-08 Ex.15A to 15D)	Four 7.62 mm short rifle empties	Recovered at Hotel Oberoi under **panchanama Ex.804**	No opinion is given regarding association with any weapon
51	Art 845 (BL 1119-08 Ex.16)	One 7.62/.30" empty	Recovered at Hotel Oberoi under **panchanama Ex.804**	Ex.16 tallied with empties cartridges fired from **Art.773 – Pistol**
52	Art.850 (BL 1119-08 Ex.11B)	One 7.62 mm short rifle empty	Recovered at Hotel Oberoi under **panchanama Ex.804**	**Not suitable for comparison**
53	Art.869 colly (BL 1026-08 Ex.1A & 1B)	Two 7.62 mm short rifle empties	--	Ex.1A & 1B fired 7.62 mm short rifle cartridge cases
54	Art.872 colly (BL 1026-08 Ex.3A & 3B)	Two 7.62 mm short rifle empties	--	Ex.3A & 3B fired 7.62 mm short rifle cartridge cases.
55	Art.881 colly (BL 1059-08 Ex.1A to 1J)	Ten 9 mm empties	--	Ex.1A to 1J fired 9 mm pistol cartridge cases
56	Art.882 colly (BL 1059-08 Ex.2A to 2I)	Nine 9 mm empties	--	Ex.2A to 2I fired 9 mm pistol cartridge cases
57	Art.883 colly (BL 1059-08 Ex.3A to 3M)	Thirteen 9 mm empties	--	Ex.3A to 3M fired 9 mm pistol cartridge cases
58	Art.895 (BL 1084-08 Ex.1F)	One 7.62 mm short rifle empty	--	Ex.1F fired 7.62 mm short rifle cartridge case
59	Art.903A colly (BL 1119-08 Ex.19A to 19H)	Eight 9 mm empties	NSG Commandos Mr.Teli and Mr.Das has produced these articles before police and seized under **panchanama Ex.1030**	Ex.19A to 19H fired 9 mm pistol cartridge cases

1	2	3	4	5
60	Art.904 colly (BL 1119-08 Ex.20A to 20D)	Four 7.62 mm short rifle empties	--	Ex.20A to 20D tallied amongst themselves and also tallied with empties of cartridges fired from **Art.765 – AK 47 rifle.**
61	Art.906 colly (BL 1119-08 Ex.22A to 22D)	Four 7.62 mm short rifle empties	--	Ex.22A to 22D tallied amongst themselves and also tallied with empties of cartridges fired from **Art.765 – AK 47 rifle.**
62	Art.907 colly (BL 1119-08 Ex.23A & 23B)	Two 7.62 mm short rifle empties	--	Ex.23A & 23B tallied amongst themselves and also tallied with empties of cartridges fired from **Art.765 – AK 47 rifle.**
63	Art.909colly (BL 1119-08 Ex.25A to 25C)	Three 9 mm empties	--	Ex.25A to 25C fired 9 mm pistol cartridge cases.
64	Art.930 colly (BL 1067-08 Ex.1A to 1D)	Four 7.62 mm short rifle empties	--	Ex.1A to 1D tallied amongst themselves and also tallied with the empties cartridges fired from **Art.684 – AK 47 rifle.**
65	Art.931 colly (BL 1067-08 Ex.1E & 1F)	Two 7.62 mm short rifle empties	--	Ex.1E & 1F tallied amongst themselves and also tallied with the empties of cartridges fired from **Art.684 – AK 47 rifle.**
66	Art.932 (BL 1067-08 Ex.1G	One 7.62 mm short rifle empty	--	Ex.1G tallied with the empties cartridges fired from **Art.684 – AK 47 rifle.**

1	2	3	4	5
67	Art.933 colly (BL 1067-08 Ex.1H to 1T)	Thirteen 9 mm empties	--	Ex.1H to 1T fired 9 mm pistol cartridge cases.
68	Art.934 (BL 1067-08 Ex.1U)	One 12 bore shotgun empty	--	Ex.1U fired 12 bore shotgun cartridge case.
69	Art.941 (BL 1068-08 Ex.1A)	One 7.62 mm short rifle empty	--	Ex.1A fired 7.62 mm short rifle cartridge case
70	Art.942 (BL 1068-08 Ex.1B)	One 9 mm empty	--	Ex.1A fired 9 mm pistol cartridge case
71	Art.944 (BL 1095-08 Ex.6A)	One 7.62 mm/.30" pistol empty	--	Ex.6A tallied with empty of cartridge fired from **Art.507 - Pistol**
72	Art.945 (BL 1095-08 Ex.6B)	One 7.62 mm/.30" pistol empty	--	**Not suitable for comparison**
73	Art.947 (BL 41-09) (Ex.17A)	One 7.62 mm short rifle empty	--	Ex.17A tallied with empty of cartridge fired from **Art.681- AK 47 rifle**

841. From the above table it can be seen that the ballistic experts had assigned a lab case number to the articles received by them from time to time. Particular BL number mentioned in col.No.2 above indicates lab number assigned to particular article. There may be more than one articles of same lab number if they are received under one and the same forwarding

letter from the police. However, exhibit number to the particular article given by the lab is distinctly meant for that article only. Exhibit number mentioned in the bracket below the lab number in col.No.2 above, indicates exhibit number assigned to particular article by the lab. Here I may state that where large number of empties and cartridges have been produced in the court, the court has not assigned separate article number to those empties or cartridges. The exhibit numbers given by the ballistic experts have been maintained with a view that no mistake is committed in recording evidence of ballistic expert and also with a view to save the time of the court.

842. The prosecution has examined in all three ballistic experts i.e. P.W.150-Mr.Gautam Ghadage, P.W.151-Mr.Shamsunder Munj and P.W.157-Mr.Vasudev Patil . The opinion recorded in lab case BL No.990A-08, 1102-08, 41-09, 1095-08 was given by P.W.157 vide Exh. Nos. 347, 905, 903 and 894 respectively. P.W.157 has identified his signature on the opinion/examination reports submitted in the Court. Opinion recorded in lab case No. BL 990C-08, BL 990B-08, BL 1026-08, BL 1064-08 and BL 1059-09 were recorded by P.W.151-Mr.Shamsunder

Munj vide Exh. 609, Exh.553, Exh.831A , Exh.838A and 834A respectively. The opinion in lab case No.BL 1014-08, BL 1123-08 and BL 1119-08 has been recorded by P.W.150-Mr.Gautam Ghadage vide **Exh.321, Exh.843 and Exh.841** respectively. P.W.150 and P.W.151 have identified their signatures on the opinion/examination reports given by them.

843. What is important to be noted here is that a large number of 9 mm empties have been recovered by the police as can be seen from the table above. Weapons from which 9 mm cartridge cases were fired in such a large number, have not been produced in the court. What the court can presume from the totality of the evidence is that 9mm firearms might have been used by the Commandos and that the large number of empties produced in the court not showing any association with any weapon produced in the court, must be empties of cartridge cases fired by Commandos. It appears, for security reasons the weapons of Commandos were not seized and they have not been produced in the Court. It is precisely for this reason that NSG Commandos had challenged the order of this Court before the Hon'ble High Court when the Commandos were called as witnesses. The evidence of Commandos was recorded to a limited extent

following the order of Hon'ble High Court.

844. As far as live cartridges seized from various places by the police during investigation are concerned, a summary of such seizure also can be put up in a tabular form so that the same will be easy to comprehend and understand. **The details of live cartridges seized by police from various places and from the police officers who were involved in the operation can be stated in a tabular form as under** :

Table No.10

1	2	3	4	5
Sr. No.	**Nature of cartridge cases & B.L. Number**	**Recovered at (Panchanama Ex.No. & Opinion (Ex.No).**	**Description of cartridge cases produced in the court & Art.Numbers**	**Opinion of the C.A. / PW No.**
1	Seven cartridges (BL 990A/08 Ex.6B)	Choupati **Ex.110/ Opinion -Ex.347**	5 live – Art.21 colly 2 empties – Art.22 colly 2 bullets – Art.23 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing/**PW 157**
2	Seven cartridges (BL 990A/08 Ex.5B)	Choupati **Panchanama Ex.110/ Opinion -Ex.347**	5 live – Art.31 colly 2 empties – Art.32 colly 2 bullets – Art.33 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing/**PW 157**

1	2	3	4	5
3	Six cartridges (BL 990A-08 Ex.7)	Girgaon Choupati **Panchanama Ex.80 Opinion -Ex.347**	4 live – Art.47 colly. 2 empties – Art.48 colly. 2 bullets – Art.49 colly. **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing/**PW 157**
4	Seven cartridges (BL 990A/08 Ex.8)	Girgaon Choupati **Panchanama Ex.80 Opinion -Ex.347**	5 live – Art.57 colly 2 empties – Art.58 colly 2 bullets – Art.59 colly **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing /**PW 157**
5	Twenty four cartridges (BL 990A/08 Ex.10)	Girgaon Choupati **Panchanama Ex.80 Opinion -Ex.347**	20 live – Art.73 colly 4 empties – Art.74 colly 4 bullets – Art.75 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing /**PW 157**
6	Twenty one cartridges (BL 990A/08 Ex.11)	Girgaon Choupati **Panchanama Ex.80 Opinion -Ex.347**	19 live – Art.88 colly 2 empties – Art.89 colly 2 bullets – Art.90 colly **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing /**PW 157**
7	Twenty six cartridges (BL 990A/08 Ex.9)	Girgaon Choupati **Panchanama Ex.80 Opinion -Ex.347**	18 live – Art.160 colly 8 empties – Art.161 colly **(8 were test fired in pipe) (7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing/**PW 157**
8	Eighteen cartridges (BL 1014/08 Ex.8A)	C.S.T. **Panchanama Ex.257 Opinion-Ex.321**	16 live – Art.240 colly 2 empties – Art.241 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing/ **PW 150**

1	2	3	4	5
9	Three cartridges (BL 990C/08 Ex.2)	Cama Hospital (In) **Panchanama Ex.486 Opinion-Ex.609**	1 live – Art.348 2 empties – Art.349 colly 2 bullets – Art.350 colly **(.38" revolver)**	Randomly selected cartridge cases were found to be live on test firing **/ PW 151**
10	Ten cartridges (BL 990B/08 Ex.4A)	Cama Out **Panchanama Ex.529 Opinion Ex.553**	8 live – Art.431 colly 2 empties – Art.432 colly 2 bullets – Art.433 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
11	Thirteen cartridges (BL 990B/08 Ex.5A)	Cama Out **Panchanama Ex.529 Opinion Ex.553**	11 live – Art.435 colly 2 empties – Art.436 colly 2 bullets – Art.437 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
12	Twelve cartridges (BL 990B/08 Ex.9A)	Cama Out **Panchanama Ex.529 Opinion Ex.553**	10 live – Art.440 colly 2 empties – Art.441 colly 2 bullets – Art.442 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing // **PW 151**
13	Twenty seven cartridges (BL 990B/08 Ex.6B)	Cama Out **Panchanama Ex.529 Opinion Ex.553**	25 live – Art.445 colly 2 empties – Art.446 colly 2 bullets – Art.447 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
14	Eight cartridges (BL 990B/08 Ex.16)	Cama Out **Panchanama Ex.529 Opinion Ex.553**	6 live – Art.484 colly 2 empties – Art.485 colly 2 bullets – Art.486 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
15	Ten cartridges (BL 990B/08 Ex.17)	**Cama Out Opinion Ex.553**	8 live – Art.487 colly 2 empties – Art.488 colly 2 bullets – Art.489 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**

1	2	3	4	5
16	Ten cartridges (BL 990B/08 Ex.18)	**Cama Out Panchanama Ex.1411A Opinion Ex.553**	8 live – Art.490 colly 2 empties – Art.491 colly 2 bullets – Art.492 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing/ **PW 151**
17	Nine cartridges (BL 990B/08 Ex.19)	**Cama Out Opinion Ex.553**	7 live – Art.493 colly 2 bullets – Art.494 colly 2 empties – Art.495 colly **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
18	Twenty eight cartridges (BL 990B/08 Ex.22B)	**Cama Out Opinion Ex.553**	26 live – Art.497 colly 2 bullets – Art.498 colly 2 empties – Art.499 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
19	Twenty three cartridges (BL 990B/08 Ex.23)	**Cama Out Opinion Ex.553**	20 live – Art.500 colly 2 bullets – Art.501 colly 3 empties – Art.502 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
20	Four cartridges (BL 990B/08 Ex.21B)	**Cama Out Opinion Ex.553**	2 live – Art.504 colly 2 bullets – Art.505 colly 2 empties – Art.506 colly **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 151**
21	Seven cartridges (BL 1102/08 Ex.1)	**Hotel Leopold Panchanama Ex.732 Opinion Ex.905**	6 live – Art. 612 colly 1 empty – Art.613 **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
22	Seven cartridges (BL 1102/08 Ex.2)	**Hotel Leopold Panchanama Ex.732 Opinion Ex.905**	6 live – Art.619 colly 1 empty – Art.620 **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**

1	2	3	4	5
23	Fourteen cartridges (BL 41/09 Ex.2)	Marcos were handed over these articles & seized under **panchama Ex.744 Opinion Ex.903**	13 live – Art.647 colly 1 empty – Art.647A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
24	Thirty cartridges (BL 41/09 Ex.4)	**Panchanama Ex.744 Opinion Ex.903**	28 live – Art. 648 colly 2 empties – Art.648A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
25	Thirty cartridges (BL 41/09 Ex.6	**Panchanama Ex.744 Opinion Ex.903**	29 live – Art.649 colly 1 empty – Art.649A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
26	Twenty three cartridges (BL 41/09 Ex.8)	**Panchanama Ex.744 Opinion Ex.903**	22 live – Art.650 colly 1 empty – Art.650A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
27	Thirty cartridges (BL 41/08 Ex.10)	**Panchanama Ex.744 Opinion Ex.903**	29 live – Art.651 colly 1 empty – Art. 651A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
28	Thirty cartridges (BL 41/08 Ex.12)	**Panchanama Ex.744 Opinion Ex.903**	29 live – Art.652 colly 1 empty – Art.652A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**

1	2	3	4	5
29	One hundred and thirty two cartridges (BL 41/08 Ex.13)	**Panchanama Ex.744 Opinion Ex.903**	121 live – Art.654colly 11 empties – Art.654A **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
30	One hundred cartridges (BL 1122/08 Ex.4)	Hotel Taj **Panchanama Ex.749 Opinion Ex.898**	95 live – Art.665 colly 5 empties – Art.666 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 157**
31	Thirty eight cartridges (BL 1123/08 Ex.20)	**Nariman House Panchanama Ex.771 Opinion Ex.843**	35 live) 3 empties) Art.703 colly 3 bullets) **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing **/ PW 150**
32	One hundred and ninety two cartridges	**Panchanama Ex.771 Opinion Ex.843**	188 live) 4 empties) Art.704 colly 4 bullets) **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**
33	Fourteen cartridges (BL 1123/08 Ex.22)	**Nariman House Panchanama Ex.771 Opinion Ex.843**	13 live) 1 empty) Art.706 colly 1 bullet) **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**
34	Seven cartridges (BL 1119/08 Ex.7)	**Hotel Oberoi Panchanama Ex.790 Opinion Ex.841**	6 live - Art.777 colly 1 empty – Art.778 1 bullet - Art.779 **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**

1	2	3	4	5
35	Fifty four cartridges (BL 1119/08 Ex.18A to 18F)	**Hotel Oberoi Panchanama Ex.804 Opinion Ex.841**	47 live – Art.818 colly 7 empties – Art.819 colly 8 bullets – Art.820 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**
36	One cartridge (BL 1119/08 Ex.11A)	**Hotel Oberoi Panchanama Ex.849 Opinion Ex.841**	1 live – Art.849 **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**
37	Nine cartridges (BL 1119/08 Ex.4C1)	NSG Commando Mr.Teli & Mr.Das handed over these articles. **Panchanama Ex.1030 Opinion Ex.841**	8 live – Art.898A colly 1 empty – Art.898B 1 bullet – Art.898C **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **PW 150**
38	Four cartridges (BL 1119/08 Ex.4C2)	**Hotel Oberoi Panchanama Ex.1030 Opinion Ex.841**	3 live – Art.899A colly 1 empty – Art.899B 1 bullet – Art.899C **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 150)**
39	Three cartridges (BL 1119/08 Ex.4C3 to 4C5)	**Panchanama Ex.1030 Opinion Ex.841**	3 live – Art.900 colly **(7.62 mm short rifle)**	Not suitable for comparison **/ (PW 150)**
40	Sixteen cartridges (BL 1119/08 Ex.4D)	**Hotel Oberoi Panchanama Ex.1030 Opinion Ex.841**	13 live – Art.901A colly 3 empties–Art.901B colly 3 bullets- Art.901C colly **(7.62 mm/.30" pistol)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 150)**

1	2	3	4	5
41	Twelve cartridges (BL 1119/08 Ex.27A)	**Hotel Oberoi Opinion Ex.841**	11 live – Art.911A colly 1 empty- Art.911B 1 bullet – Art.911C **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 150)**
42	Eight cartridges (BL 1119/08 Ex.27B)	**Oberoi Opinion Ex.841**	7 live – Art.912A colly 1 empty – Art.912B 1 bullet – Art.912 C **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 150)**
43	Two cartridges (BL 1123/08 Ex.27B)	**Nariman House Opinion Ex.843**	1 live – Art.916A 1 empty – Art.916B 1 bullet – Art.916C **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 150)**
44	Three cartridges (BL 1067/08 Ex.2)	**Hotel Taj Opinion Ex.873**	1 live – Art.935A 2 empties – Art.935B **(9 mm pistol)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 157)**
45	Twelve cartridges (BL 1122/08 Ex.10)	**Hotel Taj Panchanama Ex.1125 Opinion Ex.898**	10 live – Art.998 colly 2 empties – Art.999 colly **(7.62 mm short rifle)**	Randomly selected cartridge cases were found to be live on test firing / **(PW 157)**

845. From the table No.10 above it can be seen that most of the 7.62 mm short rifle cartridge cases recovered by the police were live. Randomly selected cartridge cases from each lot were found to be live and therefore the C.A./Ballistic Expert has given opinion that they were live cartridges.

As far as 9 mm cartridges are concerned, some of the cartridges belong to the weapons used by the police officers . It can be seen from the table No.10 that from each and every group of live cartridges C.A. had used two to four cartridges for test firing or to ascertain whether the cartridges were live or otherwise. The empties of test fired or fired cartridges and bullets thereof have also been produced. In some cases only empties have been produced as the firing was done in a pipe and therefore, bullet could not be recovered. It has come in the evidence of C.A. that test firing in pipe is done when the bullet of a particular cartridge case is not needed for comparison with other bullet or may be a crime bullet . The BL number in col.No.2 of the table mentioning the lab number and exhibit number indicates the identity number of the particular article. It can be seen that around **850** live 7.62 mm cartridges were seized by the police from various places. Some of the live cartridges were recovered from the magazines found at various places. The magazines have also been seized by the police under various panchanamas. **The details of the magazines seized by the police can be stated in a tabulated form as under :**

Table No.11

1	2	3	4	5
Sr. No.	**Art.No./Lab No./Lab Ex.number**	**Total number of magazines and their descriptions**	**Place of seizure and Panchanama Ex.No.**	**Opinion of C.A. (Ballistic Expert)**
1	Art.20 (BL 990A/08 Ex.6A)	One 9 mm pistol magazine	**Choupathy.** Seized under **panchanama Ex.80.**	Ex.6A could easily sit in the butt stock cavity of 9 mm **pistol Art.18.**
2	Art.30 (BL 990A/08 Ex.5A)	One 9 mm pistol magazine	**Choupathy.** Seized under **panchanama Ex.80.**	Ex.5A could easily sit in the butt stock cavity of 9 mm **pistol Art.29.**
3	Art.36A (BL 990/A-08 Ex.19)	One 7.62 mm short rifle magazine bearing No.94/3	**Choupathy.** Seized under **panchanama Ex.80.**	Ex.19 could easily sit in the magazine cavity of 7.62 mm assault rifle **Art.12(Ex.1) and Art.10(Ex.2)**
4	Art.36B colly (BL 990/A-08 of Ex.20A & 20B)	Two 7.62 mm short rifle magazine bearing Nos.94/1 & 94/4	**Choupathy.** Seized under **panchanama Ex.80.**	Ex.20A & 20B could easily sit in the magazine cavity of 7.62 mm assault rifle **Art.12(Ex.1) and Art.10(Ex.2)**
5	Art.45 (BL 990/A-08 of Ex.17)	One 9 mm pistol magazine attached to Art.14	**Choupathy.** Seized under **panchanama Ex.80.**	Ex.17 could easily sit in the magazine cavity of 7.62mm/.30"pistols **Art.14(Ex.3) and Art.16(Ex.4)**
6	Art.55 (BL990/A-08 Ex.18)	One 7.62mm /.30" pistol magazine found in the black pouch Art.53	**Choupathy**. Seized under **panchanama Ex.80.**	Ex.18 could easily sit in the magazine cavity of 7.62mm/.30"pistols **Art.14(Ex.3) and Art.16(Ex.4)**
7	Art.71 colly (BL 990A/08 Ex.21A & 21B)	Two 7.62 mm short rifle magazines attached to Art.10	**Choupathy**. Seized under **panchanama Ex.80.**	Ex.21A & 21B could easily sit in the magazine cavity of 7.62 mm assault rifle **Art.12(Ex.1) and Art.10(Ex.2)**

1	2	3	4	5
8	Art.86 colly (BL 990A/08 Ex.22A to 22C)	Three 7.62mm /.30" pistol magazines	**Choupathy**. Seized under **panchanama Ex.80.**	Ex.22A to 22C could easily sit in the magazines cavity of 7.62mm/.30"pistols **Art.14(Ex.3) and Art.16(Ex.4)**
9	Art.227colly (BL 1014/08 Ex.4A to 4D)	Four 7.62 mm short rifle magazines	**C.S.T**. Seized under **panchnama Ex.257**	Ex.4A to 4D were the magazines of 7.62 mm/ copy of Soviet assault rifles.
10	Art.239 (BL 1014/08 Ex.8B)	One 7.62 mm short rifle magazine	**C.S.T** Seized under **panchnama Ex.257**	Ex.8B was the magazine of 7.62 mm/ copy of Soviet assault rifle.
11	Art.253 colly (BL 1014/08 Ex.11F to 11I)	Four 7.62 mm short rifle magazines	**C.S.T** Seized under **panchnama Ex.257**	Ex.11F to 11I were the magazines of 7.62 mm/ copy of Soviet assault rifles.
12	Art.258 colly (BL 1014/08 Ex.13A & 13B)	Two 7.62 mm short rifle magazines	**C.S.T**. Seized under **panchnama Ex.257**	Ex.13A & 13B were the magazines of 7.62 mm/ copy of Soviet assault rifles.
13	Art.428 (BL 990B/08 Ex.7)	One 7.62 mm short rifle magazine attached to Art.427	**Cama out.** Seized under **panchanama Ex.529**	--
14	Part of Art.430 colly (BL 990B/08 Ex.4)	One 9 mm pistol magazine	**Cama out.** Seized under **panchanama Ex.529**	--
15	Part of Art.434 colly (BL 990B/08 Ex.5)	One 9 mm pistol magazine	**Cama out.** Seized under **panchanama Ex.529**	--
16	Part of Art.439 colly (BL 990B/08 Ex.9)	One 9 mm pistol magazine	**Cama out.** Seized under **panchanama Ex.529**	--

1	2	3	4	5
17	Part of Art.444 colly (BL 990B/08 Ex.6A)	One magazine of carbine	**Cama out**. Seized under **panchanama Ex.529**	--
18	Art.496 (BL 990B/08 Ex.22A)	One 7.62 mm assault rifle magazine	**Cama Out.**	Ex.22A was the empty magazine of 7.62 mm assault rifle having capacity of 30 rounds
19	Art.503 (BL 990B/08 Ex.21A)	One magazine of pistol	**Cama Out.**	Ex.21A was 7.62(.30") magazine.
20	Part of Art.508 colly (BL 1095/08 Ex.5A)	One 7.62 mm/.30" pistol magazine	**Hotel Taj.**	Ex.5A could easily sit in the butt stock cavity of the 7.62 mm/30" **pistol Art.507**
21	Art.513 (BL 990B/08 Ex.25)	One 9 mm pistol magazine	**Cama Out**	Ex.513 could easily sit in the butt stock cavity of 9 mm **caliber pistol Art.326**
22	Art.515 colly (BL 990B/08 Ex.26A & 26B)	Two 7.62 mm assault rifle magazine	**Cama Out**	Ex.26A & 26B were the empty magazines of 7.62 mm assault rifle having capacity of 30 rounds
23	Art.608 colly (BL 1102/08 Ex.3A & 3B)	Two 7.62 mm assault rifle magazines	**Hotel Leopold Panchanama Ex.732**	Ex.3A & 3B could easily sit in the magazine cavity of 7.62 mm assault **rifles like Ex.1 to 4(Art.681 to 684) of BL 1095-08**
24	Art.610colly (BL 1102/08 Ex.4A & 4B)	Two 7.62 mm assault rifle magazines	**Hotel Leopold Panchanama Ex.732**	Ex.4A & 4B could easily sit in the magazine cavity of 7.62 mm assault **rifles like Ex.1 to 4(Art.681 to 684) of BL 1095-08**

1	2	3	4	5
25	Art.646colly (BL 41/09 Ex.1A,1B,3,5, 7,9 & 11)	Seven 7.62 mm short rifle empty magazines	**Marcos were handed over to the police and seized under panchanama Ex.744**	Ex.1A,1B,3,5,7,9 & 11 could easily sit in the magazine cavity of the 7.62 mm assault rifles in **Ex.1 to 4 (Art.681 to 684 of BL 1095-08)**
26	Art.672colly (BL 1095-08 Ex.12A & 12B)	Two empty rifle magazines	**Hotel Taj Panchanama Ex.750**	Ex.12A & 12B could easily sit in the magazine cavity of the 7.62 mm assault rifle in **Ex.1 to 4 (Art.681 to 684 of BL 1095-08)**
27	Art.673colly (BL 1095-08 Ex.13A & 13B)	Two empty rifle magazines	**Hotel Taj Panchanama Ex.750**	Ex.13A & 13B could easily sit in the magazine cavity of the 7.62 mm assault rifle in **Ex.1 to 4 (Art.681 to 684 of BL 1095-08)**
28	Part of Art.677 colly BL 1122/08 Ex.2)	One 7.62mm/ .30" pistol magazine	Art.677 colly were found on debris and seized under **panchanama Ex.752**	---
29	Art.678 colly (BL 1122/08 Ex.3)	One empty pistol magazine	Art.678 found on debris and seized under **panchanama Ex.752**	Ex.3 empty magazine of 7.62 mm/.30" pistol having capacity to accommodate about eight bottle neck shaped 7.62 mm/.30" pistol cartridges.
30	Art.685 colly (BL 1095/08 Ex.4A,7A,7B, 7C,8A,8B,8C, 9A & 9B)	Nine AK-47 rifle magazines	Art.685colly had produced by C.W.3 and seized under **panchanama Ex.760**	Ex.4A,7A,7B,7C,8A,8B, 8C,9A & 9B could easily sit in the magazine cavity of the 7.62 mm assault rifle in **Ex.1 to 4 (Art.681 to 684 of BL 1095-08)**

1	2	3	4	5
31	Art.686A (BL 1095/08 Ex.6)	One pistol magazine	C.W.3 has produced Art.686A. Seized under **panchanama Ex.760**	**---**
32	Art.691 colly (BL 139/08 Ex.2A & 2C)	Two carbine magazines	Hotel Taj. Seized under **panchanama Ex.763**	Ex.2A & 2C could easily sit in the magazine cavity of 9 mm carbine
33	Art.699 colly (BL 1123/08 Ex.14A,14B, 15A,15B,16A, 16B,17,18,19 & 23A to 23G)	Sixteen AK-47 rifle magazines	C.W.4 had handed over Art.699 colly to Colaba P.Stn. Seized under **panchanama Ex.771**	Ex.14A,14B,15A,15B, 16A,16B,17,18,19 and 23A to 23G were readily sitting into magazine cavity of the 7.62 mm (short) assault **rifles Ex.1(Art.694) Ex.2 (Art.695) of BL 1123/08**
34	Art.707 colly (BL 1123/08 Ex.24A & 24B)	Two pistol magazines	**Panchanama Ex.771**	Ex.24A & 24B were readily sitting into magazine cavity of **pistols Art.696(Ex.3) and Art.697(Ex.4) of BL 1123/08**
35	Part of Art.745 colly (BL 1123/08 Ex.9A)	One empty pistol magazine	**Panchanama Ex.774**	Ex.9A was readily sit into the magazine cavity of **pistols Art.696 (Ex.3) and Art.697 (Ex.4) of BL 1123/08**
36	Art.771 colly (BL 1119/08 Ex.5A & 5B)	Two empty rifle magazines	Hotel Oberoi **Panchanama Ex.790**	Ex.5A & 5B were readily sitting into magazine cavity of the 7.62 mm (short) assault **rifles Art.694(Ex.1) and Art.695(Ex.2)**
37	Art.775 colly (BL 1119/08 Ex.6A & 6B)	Two pistol magazines	Hotel Oberoi **Panchanama Ex.790**	Ex.6A & 6B were readily sitting into magazine cavity of the 7.62 mm/.30" **pistols Art.773(Ex.3) & Art.896 (Ex.4A) of BL 1119/08**

1	2	3	4	5
38	Art.810 colly (BL 1119/08 Ex.17A to 17F)	Six AK-47 rifle magazines	**Hotel Oberoi** Panchanama **Ex.804**	Ex.17A to 17F were readily sitting into magazine cavity of the 7.62 mm (short) assault **rifles Art.694(Ex.1) and Art.695(Ex.2)**
39	Art.891 colly (BL 1084/08 Ex.1A & 1B)	Two empty magazines	**Hotel Oberoi**	Ex.1A & 1B – magazines of 7.62 mm/copy of soviet assault rifles
40	Art.902 colly (BL 1119/08 Ex.4E & 4F)	Two empty magazines of rifles	NSG Commando Mr.Teli and Mr.Das had produced Art.902 colly. Seized under **panchanama Ex.1030**	Ex.4E & 4F were readily sitting into magazine cavity of the 7.62 mm (short) assault **rifles Art.694(Ex.1) and Art.695(Ex.2)**
41	Art.903 colly (BL 1119/08 Ex.4G & 4H)	Two empty magazines of pistols	**Hotel Oberoi Panchanama Ex.1030**	Ex.4G & 4H were readily sitting into magazine cavity of the 7.62 mm/.30" **pistols Art.773(Ex.3) & Art.896 (Ex.4A) of BL 1119/08**
42	Art.910 colly (BL 1119/08 Ex.26A & 26B)	Two empty magazines of rifles	**Hotel Oberoi**	Ex.26A & 26B were readily sitting into magazine cavity of the 7.62 mm (short) assault **rifles Art.694(Ex.1) and Art.695(Ex.2)**
43	Art.915 colly (BL 1123/08 Ex.27A)	One pistol magazine	**Hotel Oberoi**	Ex.27A was readily sit into the magazine cavity of **pistols Art.696 (Ex.3) and Art.697 (Ex.4) of BL 1123/08**
44	Art.994 colly (BL 1122/08 Ex.6A & 6B)	Two empty magazines of rifles	**Hotel Taj** PW 269 had produced Art.994 and seized under **panchanama Ex.1125**	Ex.6A & 6B were empty magazines of 7.62 mm (AK 47/copy of soviet) assault rifles having capacity to accommodate about thirty 7.62 mm short rifle cartridges.

1	2	3	4	5
45	Art.995 (BL 1122/08 Ex.7)	One empty magazine of rifle	**Hotel Taj** PW 269 had produced Art.995 and seized under **panchanama Ex.1125**	Ex.7 was empty magazines of 7.62 mm (AK 47/copy of soviet) assault rifles having capacity to accommodate about thirty 7.62 mm short rifle cartridges.
46	Art.996 (BL 1122/08 Ex.8)	One empty magazine of rifle	**Hotel Taj** PW 269 had produced Art.996 and seized under **panchanama Ex.1125**	Ex.8 was empty magazines of 7.62 mm (AK 47/copy of soviet) assault rifles having capacity to accommodate about thirty 7.62 mm short rifle cartridges.
47	Art.997 (BL 1122/08 Ex.9)	One empty magazine of rifle	**Hotel Taj** PW 269 had produced Art.997 and seized under **panchanama Ex.1125**	Ex.9 was empty magazines of 7.62 mm (AK 47/copy of soviet) assault rifles having capacity to accommodate about thirty 7.62 mm short rifle cartridges.

846. It is stated by C.A. that almost all 7.62 mm magazines recovered were easily sitting in the magazine cavity of 7.62 mm short rifles recovered by the police. In fact this evidence does not assume much importance as any 7.62 mm magazines can easily sit in the magazine cavity of any 7.62 mm short rifle.

847. As far as cross-examination of P.W.150, P.W.151 and P.W.157 is concerned, all the three witnesses have been cross-examined at length by the ld. Advocate Mr.Kazmi for accused No.1. P.W.150 in his cross-examination has admitted that the magazines are not manufactured for a particular weapon but they are manufactured for a particular type of weapon. This cross-examination is not necessary to be discussed in detail as I have already indicated that sitting of a particular magazine in magazine cavity of a particular weapon by itself does not prove that the magazine was used in that weapon. That may be one of the circumstances coupled with other evidence produced by the prosecution to prove that the magazine was used for a particular weapon. Ld. Advocate Mr.Kazmi had attempted to put a question mark before competence of this witness to be a ballistic expert . It was suggested to him that some of the empties and bullets received by P.W.150 were examined by P.W.157 for comparison indicating that P.W.150 was not competent to examine those bullets and empties. This suggestion was denied by the witnesses. The witness has denied that he was not sufficiently trained to undertake the work of comparison of bullets and empties. It is a matter of fact that this witness was not directly appointed as assistant chemical analyzer. He has attained position of assistant chemical

analyzer during the course of his job in F.S.L. He was originally appointed as Scientific Assistant in the year 1986 and was promoted as assistant chemical analyzer in the year 2008. As such it can be seen that promotion was given to this witness only after experience of 22 years in the FSL. It need not be stated here that Scientific Assistants are supposed to assist C.A. in their job . In view of this, it may also be noted here that this witness was holding additional charge of Assistant Chemical Analyzer in addition to his original posting as Scientific Assistant during the period between 1992 to 2008. He had examined arms and ammunition in about 5000 cases while working in ballistic department of laboratory. As such in my view this witness had sufficient experience and was fit to be an expert in the field of ballistic. One mistake has been committed by this witness in his opinion which had been referred to by me in the earlier part of the judgment. Some of the empties found at the places other than the places allegedly visited by the accused No.1 and the deceased accused No.1, were examined by this witness and by mistake he had stated that some of the empties had been fired from one of the weapons seized at Vinoli Chowpaty. The witness had produced his hand-written note Exh.840 and had clarified that it was a typing mistake . It was stated by this witness that those empties were not

fired from either of the weapons seized at Vinoli Chowpaty. In earlier part of cross-examination this witness has stated that all the articles were received in sealed condition and he had verified the seals on the parcels from the specimen seals forwarded by the police. It is a fact that the witness had not produced register in which the entry in respect of details of articles were recorded. That by itself, will not falsify the evidence of this witness that the articles in fact were received and they were entered in the register. This witness has admitted that there are many copies of AK 47 rifle available in the market which have 7.62 mm bore . This part of cross-examination also does not help the defence in any manner as it has never been the area of examination whether the Ten AK-47 rifles allegedly used by the accused No.1 and the deceased accused Nos. 1 to 9 were original or copies. There is no dispute that 7.62 mm short rifle cartridges can be fired from any 7.62 mm short rifle. The nomenclature is not important. They are called AK47 because originally 7.62 mm short rifle was brain child of **Avtomat Mikhail** and automatic model AK 47 stands for **Avtomat Kalashnikova** . The witness has admitted that if there is any short rifle in the armoury of police, bore of the same can be 7.62 mm. It may however be noted that no suggestion was put to any police officer during the course of

recording of evidence that there had been large scale firing from the side of police from short rifles. Therefore, this cross-examination in fact does not help the accused in any manner. On the contrary ld. advocate Mr.Kazmi had always been critical of the police and had made attempts during the course of cross-examination to demonstrate that the police had failed whenever the occasion had arisen.

848. P.W.151 has been cross-examined on the issue of powder range. His cross-examination on that point is not necessary to be discussed particularly when the prosecution has not led any evidence to prove as to what was the range of firing. Though the ballistic experts had given opinion after examination of clothes of the deceased or injured , the ld. Spl.P.P. has chosen not to take details of that particular part of opinion. It appears that the ld. Spl.P.P. was of the view that there was ample evidence in the form of direct and circumstantial evidence and therefore this evidence of minor nature, he did not think to be necessary to be taken on record. The other part of cross-examination of this witness is more or less similar to the cross-examination of P.W.150 .

849. As far as cross-examination of P.W.157 is concerned, the first 3-4 paragraphs of his cross-examination are mainly devoted to small mistakes committed by him in mentioning dates of receipt of articles in the laboratory. This witness has admitted that he has identified the articles in the court on the basis of stickers affixed to the articles by the laboratory bearing BL case number. This witness has denied the suggestion that Mr.Ghadage - P.W.150 was not competent to compare the bullets and empties and therefore, they were assigned to P.W.157 for comparison. The witness had voluntarily stated that the comparison was done by him because the bullet and empty in one case is necessary to compare with other case as required by the police. Rest of the cross-examination of this witness is not very important and does not create any doubt about competence of this witness or genuineness of the evidence given by him in the court.

850. Here I may wind up the evidence of C.A. attached to ballistic division of FSL and proceed to discuss evidence in respect of alleged explosive material seized by the police. While summing up the evidence of police officers and panch witnesses , it has been stated by me at relevant places as to how and where the live RDX bombs and hand-grenades were

recovered . I have also stated as to how they were defused and remnants thereof were seized and handed over to the concerned police officers. As far as RDX bombs are concerned, it may be stated here , even for the sake of repetition, that one live bomb was recovered at CST railway station, one live bomb was recovered near Hotel Gokul and one live bomb was recovered near hotel Taj. All the three bombs were defused by the C.W.No.5 Sr.PI of BDDS Mr.Anthony and remnants were handed over to the police. The evidence of police officers who had seized the remnants and sealed them has also been discussed by me at the relevant places. Since large number of explosive material and residues of explosives were seized by the police from various places, it will be apt to sum-up the evidence already recorded and opinion given by the C.A. in a tabular form. The articles were carried to the laboratory by P.W.432 , P.W.82-, P.W.143-, P.W.436, P.W.429, P.W.271, and P.W.428.

851. P.W.429 and P.W.436 have been examined by prosecution u/s 296 Cr.P.C. Their affidavits containing details of articles carried by them to the laboratory have been submitted by the prosecution. Before inserting summary of evidence of various prosecution witnesses and the opinion of

expert witnesses, I may briefly sum-up the evidence of P.W.172-Mr.Sandeep Oudumbar Chetti who had examined majority of the explosive articles.

852. P.W.172 in his evidence has stated that he has done his M.Sc. in Analytical Chemistry in the year 2000 from Pune University and has joined as Asstt.Chemical Analyzer at FSL, Mumbai in the month of September, 2005. He was working in General Analytical and Instrumentation Division of FSL, Mumbai. Material containing explosives are referred to the said division of FSL. As far as experience is concerned, it is stated by this witness that he had examined explosive material in more than 200 cases so far. He has given evidence in about seventy cases including the cases under NDPS Act. It is stated by this witness that the articles forwarded to FSL under forwarding letter **Exh.702** were received in the laboratory and those articles were given lab number as M-464-08. Exhibit numbers showing individual identity of the articles were assigned to each article received under the said letter. The opinion of this witness in respect of articles mentioned in the letter Exh.702 is at **Exh.703.** The witness has identified his signature on the opinion **Exh.703**. It may be

stated here that the articles under Exh.702 forwarded to the Laboratory pertain to C.R.No.464/08 (Vile Parle taxi blast case).

853. Similarly, the articles received under forwarding letter **Exh.322A** were assigned lab case No.M-488-08. The opinion was given vide examination report- **Exh.323.** Some of the articles were received by the analytical division from the ballistic division under letter **Exh.704** of ballistic division. The report in respect of those articles was given under **Exh.705**.

854. It has further been stated by P.W.172 that on 23/12/2008 few more articles were received under forwarding letter **Exh.706.** These articles were assigned lab case No. M-516-08. The report in respect of these articles was submitted vide **Exh.707.**

855. The articles received under forwarding letter Exh.322A pertain to CR No.155/08 of CST railway station, articles forwarded under Exh.706 pertain to CR No.242/08 of Colaba Police Station (hotel Taj case).

856. On December 31, 2008 few more articles were received by P.W.172 under **Exh.708.** The opinion in respect of these articles was given vide **Exh.709.** P.W.172-Mr.Chetti has identified his signature on the opinion. On 4/2/2009 some articles were received from ballistic division under **Exh.710**. The opinion in respect of these articles is at **Exh.552.** On 6/4/2009 the laboratory had received few more articles under forwarding letter **Exh.711.** The articles were assigned lab case No.M-55-09 and they were examined by P.W.172. P.W.172 has submitted his opinion vide **Exh.712.** He has identified the articles shown to him in the court which were returned to police by him after examination thereof. The articles forwarded to the Laboratory under Exh.711 pertains to CR No.242/08 of Colaba Police Station (Hotel Taj case).

857. **P.W.247-MrRajendra Ramchandra Mavle** has been examined by he prosecution to bring on record evidence in respect of foam pieces found affixed to various RDX bombs recovered from different places of offences. The foam pieces were received in the forensic physics division not directly from the police but other divisions of F.S.L. where the articles were originally received from the police. From the evidence of this witness

it can be seen that most of the foam pieces were received by him under internal notes of the other divisions. After examining the foam pieces this witness has opined that after examination of thickness it was found that the foam pieces were similar in hue (appearance). The foam pieces were also examined in differential thermal analyzer and it was found that they were similar in thermal characteristic. The witness has taken photographs of the foam pieces without microscope and under the microscope also. After examination of foam pieces with naked eyes and under microscope and after carrying out various tests mentioned by him herein above, this witness had come to the conclusion that the source of all the foam pieces was the same.

858. This witness was cross-examined at length by ld Advocate Mr.Kazmi particularly with regard to the measurements of foam pieces produced in the court. Admittedly there is some variance in the measurement but that is negligible. I do not think that it was necessary for Mr.Kazmi to unnecessarily tax the witness to such an extent without getting any result of the said cross-examination. I remember that in spite of repeated suggestions from the court to avoid such useless cross-

examination, ld. Advocate Mr.Kazmi continued to do so. Probably it was an attempt on the part of ld.Advocate Mr.Kazmi to show that the report has been submitted without examination of foam pieces. Mr.Kazmi has given suggestion to the witness that he had not drawn any sample from the foam pieces and no comparison was done as stated by the witness. This suggestion has been denied by the witness. The witness however, honestly admitted that he did not remember exact measurement of the foam pieces. He has also admitted that he had identified foam pieces on the basis of lab numbers assigned to the foam pieces. The witness has further admitted that the opinion given by him in respect of source of foam pieces is not like an opinion of ballistic expert of DNA expert. In this regard it may be mentioned here that it being an opinion and evidence of an expert, it will be decided by the court as to what extent the evidence given by the expert, assist the court in evaluating prosecution evidence. It also may be noted here that the court is not bound by the opinion given by the expert as the court can differ from the opinion given by the expert if there are sound reasons to do so. **Summing-up oral evidence of P.W.172 and P.W.247, I shall now insert table showing panch witnesses, police officers, carriers and opinion of these two witnesses in a tabulated form as under :**

Table No.12

1	2	3	4	5
Sr. No.	**Description of suspected articles/ Place of seizure and the officer or panch of panchanama**	**Description of articles seized after defusing the suspected explosive articles**	**Prosecution witness who carried the articles to the FSL**	**Prosecution witness No./ Exhibit No. of the written opinion/Opinion of the C.A.**
1	Soil collected from the deck. **Kuber boat / PW 41 Panchanama Ex.182**	Soil sample collected from the deck **(DNA 433B/08 Ex.77 / M 3/09)– Art.197**	PW 432 – Mr.B.B. Mandre	**PW- 237/ Ex.206** RDX (Cyclonite), petroleum hydrocarbon oil and charcoal are detected in **Ex.77(Art.197)**
2	Six pieces of the foam of pink colour seized from the boat **Kuber boat PW 42 Panchanama Ex.182**	Six pieces of the foam of pink colour **(DNA 433B/08 Ex.75 / M 3/09)– Art.202 colly**	**PW 432 – Mr.B.B. Mandre**	**PW- 237/Ex.206** RDX (Cyclonite), petroleum hydrocarbon oil and charcoal are detected in **Ex.75(Art.202)**
3	Sample of Soil / **C.S.T. P.W.70 / Panchanama Ex.257**	Clay Sample **(BL 1014/08 Ex.17) Art.229**	**PW 82 Mr.Sunil R. Patil**	**PW-172/Ex.705** Trinitrotoluene (TNT) and nitrite radical (post explosion residue) were detected in **Ex.17 (Art.229)** Trinitrotoluene (TNT) is used as highly explosive.
4	Sample of Soil / **C.S.T. P.W.70 / Panchanama Ex.257**	Residue collected from the place of explosion **(BL 1014/08 Ex.18) - Art.233**	**PW 82 Mr.Sunil R. Patil**	**PW-172/Ex.705** Trinitrotoluene (TNT) and nitrite radical (post explosion residue) were detected in **Ex.18 (Art.233)** Trinitrotoluene (TNT) is used as highly explosive.

1	2	3	4	5
5	Safety Pin **CST/ PW-70/ Panchanama Ex.257**	Safety Pin **(BL 1014/08 Ex.19) (Art. 247)**	**PW 82 Mr.Sunil R. Patil**	**PW-172/Ex.705** Nitrite radical (post explosion residues) was detected in **Ex.19 (Art.247)**
6	Safety Pin **CST PW-71/ Panchanama Ex.259**	Safety Pin **(BL 1014/08 Ex.20) (Art.264)**	**PW 82 Mr.Sunil R. Patil**	**PW-172/Ex.705** Nitrite radical (post explosion residues) was detected in **Ex.20 (Art.264)**
7	Two detonators **CST/ PW-74/ Panchanama Ex.269**	One Detonator **(Art.266)** One Detonator **(M 495/08Ex.1) - Art.269**	**Carrier not examined**	**PW-237/ Ex.327A No opinion given by C.A. regarding Art.266** RDX (Cyclonite), lead and nitrite (post explosion residue) were detected in **Ex.1 (Art.269).**
8	One cortex wire and white substance **CST/ PW-74/ Panchanama Ex.269**	One cortex wire and white powder **(M-495/08 Ex.4) - Art.274 colly.**	**Carrier not examined**	**PW-237/Ex.327-A** PETN (Pentaerythritol tetranitrate) is detected in **Ex.4 (Art.274 colly.)**
9	Two hand grenades **CST/ PW-70 / Panchanama Ex.257**	Detonator wire **(M 488/08 Ex.3) - Art.279**	**PW 82 Mr.Sunil R. Patil**	**PW-172/Ex.323** Nitrite radical was detected on **Ex.3 (Art.279)**
10	One tin box of ash colour weighing about 1.42 kg with lock and pink foam pieces were found affixed to the said tin box (container) **CST/ PW-74 / Panchanama Ex.269**	Tin container with a lock **(Art.285 colly.)** Eight pink colour foam pieces **(Art.286 colly.) (M-494/08 Ex.1)**	**Carrier not examined**	**PW-237/ Ex.325-A** RDX (Cyclonite) petroleum hydrocarbon oil and charcoal were detected in **Ex.1 (Art.285 colly. and Art.286 colly.)**

1	2	3	4	5
11	Electric circuit with one timer / **CST/ PW-74/ Panchanama Ex.269**	Electric circuit **(M-494/08 Ex.2 - Art.288**	**Carrier not examined**	**PW-237/Ex.325A** Traces of RDX (Cyclonite) were detected in **Ex.2 (Art.288)**
12	Two batteries /**CST/ PW-74/ Panchanama Ex.269**	Two batteries **(M-494/08 Ex.3/1 & 3/2) - Art.290 colly.**	**Carrier not examined**	**PW-237/Ex.325-A** Traces of RDX (Cyclonite) were detected in **Ex.3/1 & 3/2 (Art.290 colly)**
13	One pink colour foam piece found in rexine bag (Art.356) / Cama in /**PW-115, Panchanama Ex.486**	A foam piece of pink colour **(BL 990C/08 Ex.53 - Art.366**	**PW- 143 PI Shaikh**	**See Note below**
14	Small melted pieces of plastic were found on the road. **Cama Out / PW 131/Panchanama Ex.524**	Blue coloured plastic pieces **(BL 990B/08 Ex.38) – Art.414 colly**	**PW- 143 PI Shaikh**	**PW 172 Ex.552** RDX and Nitrite radial (Post explosion residue) found on **Ex.38 (Art.414colly)**
15	Metal box wrapped in a pink foam **Hotel Taj(Gokul) PW 182 / Panchanama Ex.736**	Blackish stained pinkish foam, papers and blackish material in blackish stained metallic container with lock **(M- 516 -08 Ex.1) – Art.552 colly**	**PW 436 Haribhau Dnyanoba Jadhav**	**See note below**

1	2	3	4	5
16	Metal box wrapped in a pink foam **Hotel Taj PW 182 / Panchanama Ex.736**	Blackish stained pinkish foam, blackish material lock and two keys, plastic papers and folder having printed label 'PRIORITY CLUB REWARDS' in a blackish stained metallic container **(M- 516 -08 Ex.3) – Art.553 colly**	**PW 436 Haribhau Dnyanoba Jadhav**	**See note below**
17	One detonator **Taj(Gokul)/ PW-182, Panchanama Ex.736**	Yellow fuse wire **(M-516/08 Ex.5/1) - Art.554/1)**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Penta erythritol tetranitrate (PETN) is detected in **Ex.5/1 (Art.554/1)**
18	One timer **Taj(Gokul)/PW-182, Panchanama Ex.736**	Black stained electrical circuit alongwith electrical wires **(M-516/08 Ex.5/2) – Art.554/2**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Cyclonite (RDX) was detected in / on **Ex.5/2 (Art.554/2)**
19	Two batteries **Taj(Gokul)/ PW-182, Panchanama Ex.736**	Two batteries having printed label 'DURACELL' **(M-516/08 Ex.5/3) – Art.554/3**	**PW-436 Haribhau Dnyanoba Jadhav**	**No opinion of C.A**
20	One detonator **Hotel Taj PW-182, Panchanama Ex.736**	Yellow fuse wire **(ML 516/08 Ex.6/1 – Art.555/1**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Penta erythritol tetranitrate (PETN) is detected in **Ex.6/1 (Art.555/1)**

1	2	3	4	5
21	One timer **Hotel Taj PW-182, Panchanama Ex.736**	Black stained electrical circuit alongwith electrical wire **(ML 516/08 Ex.6/2 – Art.555/2**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Cyclonite (RDX) was detected in / on **Ex.6/2 (Art.555/2)**
22	Two batteries **Taj/ PW-182, Panchanama Ex.736**	Two battery cells having printed label 'DURACELL' **(ML 516/08 Ex.6/3 – Art.555/3**	**PW-436 Haribhau Dnyanoba Jadhav**	**No Opinion of C.A.**
23	Plastic toy **Taj (Gokul)**	Black stained plastic toy (Duck) **M-516/08 Ex.7 - Art.556**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Cyclonite (RDX) was detected in / on **Ex.7 (Art.556)**
24	Metal box containing pipe / **Taj/ PW-193, Panchanama Ex.757**	Plastic papers in a metallic container **M-516/08 Ex.8 - Art.557**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/Ex.707** Cyclonite (RDX) was detected in / on **Ex.8 (Art.557)**
25	One grenade pin / **Taj /PW-187, Panchanama Ex.746**	Grenade pin **M-516/08 Ex.9 - Art.558**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/ Ex.707** Nitrite (post explosion residues) was detected on **Ex.9 (Art.558)**
26	Sample of explosive materials of 8 kg. / **Taj /PW-182, Panchanama Ex.736**	Blackish mass with metallic balls **M-516/08 Ex.2 - Art.559**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/ Ex.707** Cyclonite (RDX), petroleum hydrocarbon ol and charcoal are detected in **Ex.2 (Art.559)**

1	2	3	4	5
27	Sample of Explosive materials of 8 kg./ Taj/ **PW-182, Panchanama Ex.736**	Blackish mass with metallic balls **M-516/08 Ex.4 - Art.560**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW-172/ Ex.707** Cyclonite (RDX), petroleum hydrocarbonol and charcoal are detected in **Ex.4 (Art.560)**
28	Four defused detonators alongwith electrical wires	Four defused detonators alongwith electrical wires **(M-532/09 Ex.1) – Art.561 colly**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW 172 Ex.709** RDX (Cyclonite) and lead, nitrite radial (Post explosion residues) were detected in **Ex.1 (Art.561 colly)**
29	Sand	Sand **(M-532/09 Ex.2) - Art.562**	**PW-436 Haribhau Dnyanoba Jadhav**	**PW 172 Ex.709** RDX (Cyclonite) and lead, nitrite radial (Post explosion residues) were detected in **Ex.2 (Art.562)**

1	2	3	4	5
30	Five hand grenades Hotel Taj **PW-186, Panchanama Ex.744**	**1)** Plastic shell of hand grenade having printed mark "AGRESHD Gr 69" **(M155/09 Ex.1) - Art.563** Detonator's cap of hand grenade **(M155/09 Ex.2) - Art.564** Brownish sticky mass **(M155/09 Ex.3) - Art.565** Metallic clip of hand grenade **(M155/09 Ex.4) - Art.566** Metallic pin of hand grenade **(M155/09 Ex.5) - Art.567** Cap of hand grenade **(M- 155/09 Ex.6) - Art.568** Sand and earth **(M- 155/09 Ex.7) - Art.569** **2)** Plastic shell of hand grenade **(M- 155/09 Ex.8) - Art.570** Detonator's cap of hand grenade **(M- 155/09 Ex.9) - Art.571** Brownish sticky mass **(M- 155/09 Ex.10) - Art.572** Metallic clip of hand grenade **(M- 155/09 Ex.11) - Art.573** Metallic pin of hand grenade **(M- 155/09 Ex.12) - Art.574** Cap of hand grenade **(M- 155/09 Ex.13) – Art.575** Sand and earth **(M- 155/09 Ex.14) - Art.576**	**PW 437 Mr.Pandurang R. Ghuge**	**PW-172/ Ex.712** Pentaerythritol tetranitrate (PETN) was detected in **Ex.1 to Ex.3 (Art.563 to Art.565)** Nitrite radical was detected in **Ex.4 to Ex.7 (Arts. 566 to 569)** PETN was detected in/on **Ex.8 to 10 (Arts. 570 to 572)** Nitrite radical was detected in / on **Ex.11 to 14 (Arts. 573 to 576)**

1	2	3	4	5
	contd...	**3)** Plastic shell of hand grenade having printed mark "AGRESHD Gr 69" **(M- 155/09 Ex.15) - Art.577** Detonator's cap of hand grenade **(M 155/09 Ex.16) - Art.578** Brownish sticky mass **(M 155/09 Ex.17) - Art.579** Metallic clip of hand grenade **(M155/09 Ex.18) - Art.580** Metallic pin of hand grenade **(M155/09 Ex.19) - Art.581** Cap of hand grenade **(M- 155/09 Ex.20) - Art.582** Sand and earth **(M- 155/09 Ex.21) - Art.583**		PETN was detected in/on **Ex.15 to 20 (Arts. 577 to 582)** Nitrite radical was detected in / on **Ex.21 (Arts. 583)**
		4) Plastic shell of hand grenade having printed mark "ARGES Hd Gr 69" **(M- 155/09 Ex.22) - Art.584** Detonator's cap of hand grenade **(M- 155/09 Ex.23) - Art.585** Brownish sticky mass **(M- 155/09 Ex.24) - Art.586** Metallic clip of hand grenade **(M- 155/09 Ex.25) - Art.587** Metallic pin of hand grenade **(M- 155/09 Ex.26) - Art.588** Cap of hand grenade **(M- 155/09 Ex.27) – Art.589** Sand and earth **(M- 155/09 Ex.28) - Art.590**		PETN was detected in/on **Ex.22 to 24 (Arts. 584 to 586)** Nitrite radical was detected in / on **Ex.25 to 28 (Arts. 587 to 590)**

1	2	3	4	5
	contd..	**5)** Plastic shell of hand grenade **(M- 155/09 Ex.29) - Art.591** White powder **(M- 155/09 Ex.30) - Art.592** Metallic clip of hand grenade **(M- 155/09 Ex.31) - Art.593** Metallic pin of hand grenade **(M- 155/09 Ex.32) - Art.594** Cap of hand grenade **(M- 155/09 Ex.33) - Art.595** Sand and earth **(M- 155/09 Ex.34) - Art.596**		Cyclonite (RDX) was detected in / on **Ex.29,30 and 33 (Arts. 591, 592 and 595)** Nitrite radical was detected in / on **Ex.31,32 and 34 (Arts.593,594 and 596)**
31	Badge and Key Mazgaon Blast **PW-178, Panchanama Ex.726**	Badge and Key **(M-473/08 -Ex.1) Art.597**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.1 (Art.597)**
32	Metallic plate containing details of CNG kit of motor vehicle No. MH-01-J-508 Mazgaon Blast **PW-178, Panchanama Ex.726**	Metallic plate **(M-473/08 Ex.2) – Art.598**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.2 (Art.598)**

1	2	3	4	5
33	One broken piece of bumper Mazgaon Blast **PW-178, Panchanama Ex.726**	One broken piece of bumper **(M -473/08 Ex.6) – Art.599**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.6 (Art.599)**
34	One broken piece of bumper Mazgaon Blast **PW-178, Panchanama Ex.726**	One broken piece of bumper **(M -473/08 Ex.8) – Art.600**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.8 (Art.600)**
35	Broken tin sheet Mazgaon Blast **PW-178, Panchanama Ex.726**	Broken tin sheet **(M -473/08 Ex.7) – Art.601**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.7 (Art.601)**

1	2	3	4	5
36	Sample of Soil Mazgaon Blast **PW-178, Panchanama Ex.726**	Sample of soil **(M -473/08 Ex.4) – Art.602**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.4 (Art.602)**
37	Broken piece of part of taxi Mazgaon Blast **PW-178, Panchanama Ex.726**	Broken piece of part of taxi **(M -473/08 Ex.5) – Art.603**	**PW 429 Mr.Sadashiv R.Nikam**	**PW-237, Ex.856** RDX (Cyclonite), Petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on **Ex.5 (Art.603)**
38	Duracell batteries, Nokia charger, Airphones, Nail cutter, dates and almonds packets and misc. articles **Hotel Taj PW 186 Panchanama Ex.744**	Duracell batteries, Nokia charger, Airphones, Nail cutter, dates and almonds packets and misc. articles **(DNA 105/09 Ex.1) - Part of Art.657 colly**	**PW 267 Mr.Nigade**	**See note below**
39	One green colour metal clip **Nariman House PW 204 Panchanama Ex.774**	One green colour metal clip **(BL 1123/08 Ex.5C) Art.719**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.5C (Art.719)**

1	2	3	4	5
40	One metal spring with clip holder **Nariman House PW 204 Panchanama Ex.774**	One metal spring with clip holder **(BL 1123/08 Ex.5D) Art.720**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.5D (Art.720)**
41	One battery with cover **Nariman House PW 204 Panchanama Ex.774**	One battery with cover **(BL 1123/08 Ex.5E) Art.721**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.5E (Art.721)**
42	One metal cap **Nariman House PW 204 Panchanama Ex.774**	One metal cap **(BL 1123/08 Ex.5F) Art.722**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.5F (Art.722)**
43	One metal cylinder **Nariman House PW 204 Panchanama Ex.774**	One metal cylinder **(BL 1123/08 Ex.5G) Art.723**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.5G (Art.723)**
44	Three aluminum clips **Nariman House PW 204 Panchanama Ex.774**	Three aluminum clips **(BL 1123/08 Ex.6D) Art.727colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.6D (Art.727colly)**
45	Four circular metal rings **Nariman House PW 204 Panchanama Ex.774**	Four circular metal rings **(BL 1123/08 Ex.6E) Art.728colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.6E (Art.728colly)**

1	2	3	4	5
46	Two metal tubes **Nariman House PW 204 Panchanama Ex.774**	Two metal tubes **(BL 1123/08 Ex.6F) Art.729colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.6F (Art.729)colly**
47	One metal cap **Nariman House PW 204 Panchanama Ex.774**	One metal cap **(BL 1123/08 Ex.6G) Art.730**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.6G (Art.730)**
48	Three aluminum clips **Nariman House PW 204 Panchanama Ex.774**	Three aluminum clips **(BL 1123/08 Ex.7B) Art.732 colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.7B (Art.732colly)**
49	Two metal spring clip holders **Nariman House PW 204 Panchanama Ex.774**	Two metal spring clip holders **(BL 1123/08 Ex.7C) Art.733colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.7C (Art.733colly)**
50	Two metal clips **Nariman House PW 204 Panchanama Ex.774**	Two metal clips **(BL 1123/08 Ex.7D) Art.734colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.7D (Art.734 colly)**
51	Two rounded pins **Nariman House PW 204 Panchanama Ex.774**	Two rounded pins **(BL 1123/08 Ex.7E) Art.735colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.7E (Art.735 colly)**

1	2	3	4	5
52	One aluminum wire with covering with metal **Nariman House PW 204 Panchanama Ex.774**	One aluminum wire with covering with metal **(BL 1123/08 Ex.7F) Art.736colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.7F (Art.736 colly)**
53	Three aluminum clips **Nariman House PW 204 Panchanama Ex.774**	Three aluminum clips **(BL 1123/08 Ex.32A) Art.737colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.32A (Art.737 colly)**
54	Three metal clips **Nariman House PW 204 Panchanama Ex.774**	Three metal clips **(BL 1123/08 Ex.32B) Art.738colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.32B (Art.738 colly)**
55	Three busted gas cells **Nariman House PW 204 Panchanama Ex.774**	Three busted gas cells **(BL 1123/08 Ex.32C) Art.739colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite), Nitrite, Potassium, aluminum radicals and charcoal were detected on **Ex.32C (Art.739 colly)**
56	One aluminum metal cylinder **Nariman House PW 204 Panchanama Ex.774**	One aluminum metal cylinder **(BL 1123/08 Ex.32D) Art.740colly**	**PW 271 Mr.Vijay Shinde**	Nitrite, Potassium, aluminum radicals and charcoal and Capsiacinoids were detected on **Ex.32D (Art.740 colly)**

1	2	3	4	5
57	Three aluminum nuts **Nariman House PW 204 Panchanama Ex.774**	Three aluminum nuts **(BL 1123/08 Ex.32F) Art.742colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex.32F (Art.742 colly)**
58	One aluminum clip and two metal twisted clips **Nariman House PW 204 Panchanama Ex.774**	One aluminum clip and two metal twisted clips **(BL 1123/08 Ex.12C & 12D) Art.753colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 12C & 12D (Part of Art.753 colly)**
59	One black nut **Nariman House PW 204 Panchanama Ex.774**	One black nut **(BL 1123/08 Ex.12E) Art.754**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 12E (Art.754)**
60	One spring having aluminum cover **Nariman House PW 204 Panchanama Ex.774**	One spring having aluminum cover **(BL 1123/08 Ex.13C) Art.756**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 13C (Art.756)**
61	Two green colour metal clips **Nariman House PW 204 Panchanama Ex.774**	Two green colour metal clips **(BL 1123/08 Ex.13D) Art.757 colly**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 13D (Art.757 colly)**
62	One green colour aluminum clip **Nariman House PW 204 Panchanama Ex.774**	One green colour aluminum clip **(BL 1123/08 Ex.13E) Art.758**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 13E (Art.758)**

1	2	3	4	5
63	One aluminum clip holder **Nariman House PW 204 Panchanama Ex.774**	One aluminum clip holder **(BL 1123/08 Ex.13F) Art.759**	**PW 271 Mr.Vijay Shinde**	RDX (Cyclonite) is detected on **Ex. 13F (Art.759)**
64	Two busted tear gas cells **Nariman House PW 204 Panchanama Ex.774**	Two busted tear gas cells **(BL 1123/08 Ex.13B) Art.760colly**	**PW 271 Mr.Vijay Shinde**	Nitrite, Potassium, aluminum radicals and charcoal were detected on **Ex.13B (Art.760 colly)**
65	Four hand grenade clips **Hotel Oberoi PW 216 Panchanama Ex.804**	Four hand grenade clips **(M – 530/08 Ex.3) – Art.831 colly**	**PW 428 Mr.Rajendra M.Machinder**	Nitrite(Post explosion residues) were detected on **Ex.3 (Art.831 colly)**
66	Two springs **Hotel Oberoi PW 216 Panchanama Ex.804**	Two springs **(M – 530/08 Ex.1) – Art.833 colly**	**PW 428 Mr.Rajendra M.Machinder**	Nitrite(Post explosion residues) were detected on **Ex.1 (Art.833 colly)**
67	Two hand grenade pins **Hotel Oberoi PW 216 Panchanama Ex.804**	Two hand grenade pins **(M – 530/08 Ex.2) – Art.835 colly**	**PW 428 Mr.Rajendra M.Machinder**	Nitrite(Post explosion residues) were detected on **Ex.2 (Art.835 colly)**

1	2	3	4	5
68	One explosive powder mixed with steel ball (bearings) weighing about 7 kgs. CST **PW-74 Panchanama Ex.269**	Polythene bag containing blackish powder **(M-494/08 Ex.4 -Art.980** Polythene bag containing blackish powder **(M-494/08 Ex.5 -Art.981**	**Carrier not examined**	**PW-237/ Ex.325A** RDX (Cyclonite), petroleum hydrocarbon oil and charcoal are detected in **Exhs.4 and 5 (Art.980 & 981)**

859. I have already stated that in the opinion of P.W.247 the source of all the foam pieces was same. As far as use of explosives in the articles seized by the police is concerned, it can be seen from the table No.12 that Cyclonite commonly known as RDX and petroleum hydrocarbon oil and charcoal were used in RDX bomb. It can also be seen that RDX was found on foam pieces also. RDX was further found on detonators . As far as safety pins of hand-grenades are concerned, the C.A. has stated that nitrite **radicals** (post explosion residues) were found on safety pins. Penta erythritol tetranitrate was found in cortex wire. Residue of RDX were found on the battery attached to the bomb. It is stated by P.W.172-Mr.Chetti in his evidence that RDX (cyclonite), petroleum

hydrocarbon oil are highly explosive materials. In his opinion TNT is also highly explosive material. It may be stated here that Pentaerythritol Tetranitrate (PETN) is commonly used industrially in the manufacture of detonating fuse and therapeutically as a vasodilator. As such uniformity can be found in the material used in the bombs and the hand-grenades. Uniformity has also been reported by the experts in the foam pieces. The prosecution case is of conspiracy. The prosecution case is that all the ten accused (accused No.1 and deceased accused Nos. 1 to 9) had entered India under common criminal conspiracy with similar type of weapons, ammunition and explosive materials. Further discussion in this regard can be found in the later part of the judgment when I appreciate the evidence to find out whether the charge of conspiracy has been proved or not.

860. It is also the case of prosecution that DNA of some of the deceased accused tallied with DNA of sweat found on some of the articles seized from boat Kuber. DNA of accused No.1 tallied with the DNA sweat found on one of the jackets. As can be seen from the analysis of evidence of various witnesses that four deceased accused i.e. accused No.4- ,No.5-, No.8 and No.9- were eliminated at hotel Taj. Deceased accused No.6 and 7

were eliminated at hotel Oberoi, deceased accused No.2 and 3 were eliminated by NSG Commandos at Nariman House . The deceased accused No.1 was killed by police officers of DB Marg Police Station when there was an encounter between the accused No.1 and the deceased accused No.1 on one hand and the police on other hand at Vinoli Chowpaty. Dead bodies of all the deceased accused were subjected to postmortem examination. The postmortem notes prepared by P.W.23-Dr.Mohite in respect of dead body of deceased accused No.1 have been extensively discussed by me at the initial stage of discussion of evidence of prosecution witnesses. Now , I shall proceed to look into the evidence of medical officers who had performed postmortem examination on the dead bodies of other eight deceased accused.

861. Before I deal with the DNA profiles obtained by the C.A. and matching thereof, it would be appropriate to deal with the postmortem examination reports of the deceased accused Nos. 1 to 9. As far as postmortem examination of deceased accused No.1-Abu Ismail is concerned, same has been referred in earlier part of the judgment while discussing the evidence of witnesses pertaining to the incident of Vinoli

Chowpaty. Dead body of the deceased accused No.1-Abu Ismail was examined by P.W.23-Dr.Mohite. His evidence has also been discussed in detail. As far as other eight deceased accused are concerned, **four** dead bodies were taken out from Hotel Taj, **two** from Nariman house and **two** from Hotel oberoi. Almost all the dead bodies were sent to medical officers for postmortem examination without there being names of the deceased persons in the request letters as the names of the deceased were not known to the police at that time. It appears that names of the deceased were assigned to the dead bodies on the basis of confession made by accused No.1 before P.W.188-Smt.Rama Vijay Sawant-Wagule, Addl.Chief Metropolitan Magistrate, Mumbai. **Table No.13** given below indicates details about dead bodies as to the place where they were found, names of the deceased and ADR numbers.

Table No.13

Sr.No.	**Name of the deceased accused**	**A.D.R.Nos.**	**Place where the dead bodies were found**
1	Ismail Khan @ Abu Ismail	63/08	Vinoly Chaupathy
2	Imran Babar @ Abu Aakasha	84/08	Nariman House
3	Nasir @ Abu Umar	85/08	Nariman House

Sr.No.	Name of the deceased accused	A.D.R.Nos.	Place where the dead bodies were found
4	Nazir @ Abu Umer	97/08	Hotel Taj
5	Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji	93/08	Hotel Taj
6	Abdul Rehman Chhota @ Saakib	72/08	Hotel Oberoi
7	Fahad Ullah	71/08	Hotel Oberoi
8	Javed @ Abu Ali	92/08	Hotel Taj
9	Shoaib @ Abu Soheb	83/08	Hotel Taj

862. The postmortem reports of dead bodies bearing ADR No.83/08, 71/08, 72/08, 92/08, 93/08 and 97/08 have been admitted by the defence. The prosecution has therefore not examined the concerned medical officers . The contents of these postmortem examination reports can be read in evidence u/s 294 of Cr.P.C. in view of the judgment of **Hon'ble Bombay High Court reported at 1983 Cr.L.J.487.** The postmortem on dead bodies of deceased bearing ADR No. 84/08 and 85/08 was conducted by P.W.113-Dr.Sachin Sonawane. The medical officers have in detail stated the nature of injuries sustained by the deceased in col.17 of the postmortem notes. In the opinion of medical officers the deceased accused had died due to firearm injuries and burn injuries. The cause of death stated in the concluding part

of the postmortem examination report is that the deceased had died due to haemorrhage and shock due to firearm injuries. Some of the deceased had also sustained burn injuries. As such, in some cases the cause of death was only firearm injuries and in some cases cause of death is stated to be firearm injuries and burn injuries.

863. The postmortem notes in respect of postmortem examination of above stated deceased accused are at **Exh.1491** (ADR No.83/08), **Exh.1531** (ADR No.71/08), **Exh.1532** (ADR No.72/08) , **Exh.1488** (ADR No.92/08), **Exh.1489** (ADR No.93/08) , **Exh.1695** (ADR No.97/08), **Exh.458 colly**. (ADR No.84/08) and **Exh.459 colly.** (ADR No.85/08).

864. As far as cross-examination of P.W.113 is concerned, there is no challenge to the contents of postmortem notes **Exh.458 colly**. **and 459 colly**. as far as preservation of certain parts of body for DNA finger printing analysis is concerned. Other six postmortem notes have been admitted u/s 294 Cr.P.C. Therefore, the contents thereof can be read in evidence. In almost all cases some parts of the dead bodies like sternum, muscle or hair were preserved by the medical officers for DNA analysis. The articles were

forwarded to the C.A. for preparing DNA profile and the C.A. was also requested to give his opinion whether the DNA profile obtained from the parts of dead bodies of deceased accused could match with the DNA profile of the sweats found on articles seized from boat Kuber which included one scarf also.

865. It appears from the evidence of P.W.163-Mr.Shrikant Hanumantrao Lade that DNA profile of only six accused could match with some of the articles found on boat Kuber. Accused No.1-Ajmal Kasab and deceased accused No.1-Abu Ismail are included in the said six accused. As far as accused No.1 is concerned, his blood was collected by P.W.90-Dr.Baban Shinde. P.W.90 has identified accused No.1 to be the same person whose blood was collected by him on 8/12/2008 at Nagpada police hospital. The blood was collected in four vials each vial contained 1.5 cc blood. The blood was sent for DNA finger printing through Police Naik No.3468. P.W.431-Mr.Bhausaheb Jadhav who has been examined u/s 296 Cr.P.C. has stated that he had carried articles to FSL on 8/12/08 as directed by P.W.48-Mr.Marde. P.W.48 in his evidence has stated that accused No.1 was taken to Nagpada Police Hospital for collecting blood samples and the

sealed containers were forwarded to FSL on 8.12.2008. He has identified his signature on the forwarding letter addressed to Nagpada Police Hospital. It is at **Exh.351**. P.W.48 has also identified his signature on the office copies of letters addressed to the FSL by Police Surgeon. Those letters are at **Exh.352 colly**.

866. P.W.163-Mr.Lade has stated in his evidence that he was working as Asstt.Chemical Analyzer since nineteen years at Forensic Science Laboratory. He is M.Sc. in Biochemistry. Apart from his speciality in Biochemistry and Genetic Engineering, he had also taken training for DNA finger printing diagnosis at Hyderabad. He is working in DNA department of FSL since 2007. It is stated by this witness that on 8/12/2008 one sealed plastic container and one sealed envelope was received from Sr.PI of D.B.Marg Police Station. The original letter of Sr.P.I.of D.B.Marg Police Station is produced at **Exh. 352A.** There was blood in vials and FTA card which was received by this witness for DNA profiling. The control DNA profile was prepared by him by using two methods i.e. AmpFISTER identifiler PCR amplification kit and AmpFISTR Y filer PCR amplification kit. The DNA profile is produced at **Exh.354.** It bears signature of

P.W.163. DNA profile of the articles seized from boat Kuber and forwarded to FSL were also obtained by this witness. It is stated by him that DNA extracted from sweat detected on **Exh.30- jacket of accused No.1-Ajmal Kasab** (**part of art.186 colly.**) and DNA of blood, opinion in respect of which has been recorded in DNA profile-**Exh.354** were identical and from one and the same source of male origin. The DNA profiles matched with the maternal and paternal alleles in the source of blood. The said report is produced at **Exh.205-F.**

867. The muscle piece, scalp hair and blood sample preserved by P.W.23-Dr.Mohite under P.M.notes **Exh.122** of deceased accused No.1-Abu Ismail were forwarded to the FSL through P.N.No.3468-Mr. Bhausaheb Jadhav who has been examined as P.W.431 (on affidavit) . The DNA profiles were obtained from these parts of bodies by adopting both the methods stated by P.W.163. The said control DNA profile is at **Exh.217**. It is stated by P.W.163 that the DNA profile of sweat detected on blanket-**Exh.13** (**part of 184 colly.**) and DNA profile of muscle and hair (Exh.217) of the deceased accused No.1-Abu Ismail were identical and from one and the same source of male origin. The DNA profiles matched with maternal

and paternal alleles in the source of blood. The DNA finger print report is given by this witness at **Exh.205-B.**

868. It is further stated by P.W.163 that he had obtained control DNA of sternum and buccal swab of the deceased in ADR No.83/08 , control DNA of muscle and sternum of the deceased in ADR No.92/08 and control DNA of muscle and tooth of the deceased in ADR No.97/08. These preserved limbs of dead bodies were received by this witness under covering letter **Exh.671 colly.** It may be noted that there is no challenge to this part of evidence of the witness P.W.163 and therefore the evidence of police officer and carriers is not required to be discussed. P.W.163 in his evidence has further stated that DNA extracted from sweat detected on **Exh.25-handkerchief** (**scarf-art.206**) and DNA of muscle and sternum of deceased-ADR No.92/08 were identical and were from one and the same source of male origin. The DNA profiles matched with the maternal and paternal alleles in the source of blood. The said report is submitted this witness at **Exh.205-C.**

869. P.W.163 has further stated that the DNA of sweat detected on

Exh.26- Israeli cap (part of art.187 colly.) and DNA of tooth pulp o deceased in ADR No.72/08 were identical and were from one and the same source of male origin. The DNA profile matched with the maternal and paternal alleles in the source of blood. The report is produced at **Exh.205-D**.

870. The witness has further stated that DNA extracted from sweat detected on **Exh.29** (**monkey cap-part of art.187 colly.**) and DNA of muscle and tooth of the deceased in ADR No. 97/08 were identical and were from one and the same source of male origin. The DNA matched with the maternal and paternal alleles in the source of blood. The report of same is produced at **Exh. 205-E**.

871. It is further stated by P.W.163 that DNA profile extracted from sweat detected on **Exh.40-jacket** (**part of art.186 colly.**) and DNA profile of muscle of the deceased in ADR No.93 were identical and were from one and the same source of male origin. The DNA profile matched with the maternal and paternal alleles in the source of blood. The report is produced at **Exh.205-G.**

872. As such it can be seen from the evidence of P.W.163 as discussed above that DNA of the deceased accused No.1-Abu Ismail, deceased accused No.8-Javed @Abu Ali, deceased accused No.6-Abadul Reheman Chhota @ Shaikh, deceased accused No.4-Nazir @ Abu Umer and deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada , have matched with the DNA of sweat found on some other articles seized from the boat Kuber. The DNA profile of blood of accused No.1-Ajmal Kasam had matched with DNA profile of sweat extracted from one of the jackets found on boat Kuber.

873. As far as cross-examination of P.W.163 is concerned, in the first place ld. Advocate Mr.Kazmi had tried to challenge the competence of this witness. The witness has admitted in his cross-examination that he did not read the journal Forensic Science International Genetics and A.R.S. Technique. He has however clarified that he read the periodicals available in the lab. He has admitted that he had not heard names of the scientists Mr.Dan Frumkin, Mr.Vladimir Kremlev, Mr.Gail Javitt and Dr.Maicheal Baden mentioned to him by ld.Advocate Mr.Kazmi. The witness also did not know whether these scientists are considered to be experts in the filed of

DNA. The witness has also admitted in his cross-examination that he had not followed R.F.L.P. and L.L. testing method. He has denied that it is possible to fabricate DNA evidence. It is admitted by this witness that crime scene could be engineered by any science graduate . He did not agree that purified DNA can be smeared all over any surface. He also did not agree that original DNA from the blood and saliva sample can be eliminated by using a standard piece of lab equipment called centrifuge. The witness agreed that artificial DNA can be produced and can be applied in crime scene. He further agreed that it is not possible to distinguish between artificial DNA and natural DNA . Though certain admissions have been made by PW.163 with regard to possibility of planting of DNA, there is no evidence or nothing in the cross-examination of any other witness to suggest that something was planted on boat Kuber to create DNA which would match with DNA obtained from the body parts of the deceased accused. The evidence of P.W.163 can be summed up in a tabular form as under :

TABLE NO.14 :

1	2	3	4	5	6
Sr. No.	**Name of the deceased accused and A.D.R. No.**	**Samples preserved during P.M. Examination & used for obtaining Control D.N.A. / P.W.No. of Medical Officer**	**Article seized during investigation and the place of seizure**	**Name of the witnesses who carried articles to the FSL**	**Opinion of C.A. Mr. Lade (PW 163)**
1	Deceased Accused No.1 **Abu Ismail (A.D.R. 63/08)** Forwarding letter of police – **(Ex.216)**	**1**. Muscle piece **2**. scalp hair **3**. blood sample **PW 23 – P.M.Ex.122)**	Blanket **(Part of Art.184 colly) Kuber boat (Panchanama Ex.182)**	**Mr. Bhausaheb Laxman Jadhav (PW 431)**	**Control DNA** of sample (column No.3) was obtained as stated in **Ex.217 (DNA 429/08**). DNA profile of Sweat detected on Ex.13(part of Art.184 colly) Blanket and DNA profile of Muscle and hair of Abu Ismail (DNA 429/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205B)**

1	2	3	4	5	6
2	Deceased Accused No. 8 **Javed @ Abu Ali (A.D.R.92/08)** Forwarding letter of Medical Officer **(Part of Ex.671 colly)**	**1**. Sternum (Bone piece) **2**. 3rd Molar **3**. Muscle piece **(P.M. Notes Ex.1488 admitted by defence under section 294 of Cr.P.C.)**	One Hankerchief **(Art.206) Kuber boat (Panchana ma Ex.182)**	**--**	**Control DNA** of sample (column No.3) was obtained as stated in **Part of Ex. 672 colly (DNA 438/08**). DNA profile of Sweat detected on Ex.25 (Art.206) Handkerchief and DNA profile of Muscle and sternum of Javed @ Abu Ali (DNA 438/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205C)**
3	Deceased Accused No.6 **Abdul Rehman Chhota (A.D.R.No.72 /08)** Forwarding letter of police- **Ex. 665 colly**	**1**. Sternum **2.** Molar tooth **3**. Hair **(P.M. Notes Ex.1532 admitted by defence under section 294 of Cr.P.C.)**	Israeli cap **(Part of Art.187 colly. Kuber boat (Panchana ma Ex.182)**	**Mr.Ravindra A. Bhosale (PW 427)**	**Control DNA** of sample (column No.3) was obtained as stated in **Ex.667 (DNA 453/08**). DNA profile of Sweat detected on Ex.26(part of Art.187 colly) Israeli cap and

1	2	3	4	5	6
	contd.. ADR 72/08	**--**	**--**	**--**	DNA profile of tooth pulp of Abdul Rehman Chhota (DNA 453/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205D)**
4	Deceased Accused No.4 **Nazir @ Abu Umer (A.D.R. No.97/08)** Forwarding letter of Medical officer **(Part of Ex.671 colly)**	**1**. Muscle tissue **2**. Three teeth **3**. Bone piece **(P.M. notes not exhibited in the court)**	Monkey cap **(Part of Art.187 colly. Kuber boat (Panchanama Ex.182)**	**--**	**Control DNA** of sample (column No.3) was obtained as stated in **Part of Ex.672 colly (DNA 434/08**). DNA profile of Sweat detected on Ex.29(part of Art.187 colly) Monkey cap and DNA profile of muscle and tooth of Nazir @ Abu Umer (DNA 434/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205E)**

1	2	3	4	5	6
5	Accused No.1 **Ajmal Amir Kasab** Forwarding letter of police- **Ex. 352 colly**	**1**. Blood of accd. Ajmal Amir Kasab	Jacket **(Part of Art.186 colly. Kuber boat (Panchanama Ex.182)**	**Mr. Bhausaheb L. Jadhav (PW 431)**	**Control DNA** of sample (column No.3) was obtained as stated in **Ex.354 (DNA 462/08)**. DNA profile of Sweat detected on Ex.30(part of Art.186 colly) Jacket and DNA profile of blood of Ajmal Amir Kasab (DNA 462/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205F)**
6	Deceased Accused No.5 **Abdul Rehman Bada (A.D.R.No.93/08)** Forwarding letter of Medical Officer **(Ex.674)**	**1**. sternum **2.** muscle piece **3**. 3rd molar tooth **(P.M. Notes Ex.1489 admitted by defence under section 294 of Cr.P.C.)**	Jacket (**Part of Art.186 colly Kuber boat (Panchanama Ex.182)**	--	**Control DNA** of sample (column No.3) was obtained as stated in **Ex.675 (DNA 436/08)**. DNA profile of Sweat detected on Ex.40(part of Art.186 colly) Jacket and DNA profile of muscle of Abdul Rehman Bada (DNA 436/08) are identical & from one and the same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood **(DNA 433B/08 Ex.205G)**

874. The prosecution has also examined **Mr.Harshal Sudhakar Chendvankar**, Mortuary Assistant of J.J.Morgue (J.J.Hospital) as **P.W.263**. This witness in his evidence has stated that he maintains record of dead bodies received in the mortuary. He states that there are two separate registers, one in respect of dead bodies received directly in the J.J.Mortuary and other for dead bodies received from other hospitals. It is stated by this witness that eight dead bodies were received by J.J.Mortuary on 29/11/2008. One dead body which was earlier preserved at Nair Hospital Mortuary was brought to J.J.Mortuary on 6/12/2008. Token number is applied to each and every dead body. The ADR numbers are recorded on the basis of information supplied by the police. The eight dead bodies were admitted to J.J.Mortuary on 29/11/2008 without names and addresses as the names and addresses thereof were not intimated by the police to the Mortuary Assistant. The names of dead bodies were disclosed to him on 5/1/2009 when he received a letter intimating him that an identification parade of dead bodies would be held on 6/1/2009. The witness has produced that letter at **art.991.** Names of the deceased were noted down in the record on the basis of **art.991**. The entry in respect of 9th dead body received from Nair hospital Mortuary was made in the separate

register maintained for dead bodies received from other hospitals. Both the registers were produced in the Court at **art.992** and **art.993**. Zerox copies of the relevant pages of both the registers were taken on record as **art.992-A** and **art.993-A.** The original registers were returned to the witness-P.W.263 with a direction to keep the same in safe custody until further orders of the Court. The details of eight dead bodies received by P.W.263 on 29/11/2008 recorded in the records of J.J.Mortuary are as under :

Sr.No.	Body Nos./Token Nos.	Name of the deceased
801	24	Fadaullah
801A	25	Abadul Rehman Chota
804	33	Abu Sohel
817	122	Nasir @ Abu Umar
818	140	Babar Imran @Abu Akasha
819	48	Nazir @ Abu Umer
820	01	Javed @ Abu Ali
821	44	Hafiz Arshad @ Abdul Rehman Bada

It is further stated by P.W.263 that entry of dead body received from Nair Hospital was made at Sr.No.55 and token number was A D 8. The name of the said deceased as Abu Ismail.

875. From the cross-examination of this witness it appears that there are some ready made token numbers which are applied to the dead bodies

preserved in the mortuary. As such it is not necessary that more than one dead bodies brought at one and the same time in the mortuary should get the serial token number. Any token number available from the lot of aluminum token can be applied to any dead body. There is nothing more in the cross-examination of this witness.

876. With summing up all the evidence in respect of elimination of the deceased accused, their DNA reports and matching thereof with DNA profiles obtained from certain articles allegedly used by the accused, I may now proceed further to look into the evidence of P.W.218 who had recorded confession of accused No.1 u/s 164 Cr.P.C.

877. **P.W.218-Smt.Rama Vijay Sawant-Wagule** has stated in her evidence that she was appointed as Civil Judge, Junior Division and Judicial Magistrate, First Class on 9th October,1990. She was promoted as Metropolitan Magistrate ,Mumbai on 19th September, 1996. She was further promoted as Addl. Chief Metropolitan Magistrate in the month of November, 2006.

878. P.W.218 has identified accused No.1 to be the same person who was produced before her on 18/2/2009 for recording his confession. He was produced in her chamber for the first time on 17/2/2009 at about 10.45 a.m. From the papers placed before her, it was disclosed to her that the ld. Chief Metropolitan Magistrate had assigned work of recording confession to P.W.218. P.W.218 therefore, took all the necessary precautions to see that the police officers are kept away from her chamber when she talked to the accused No.1. It may be stated here itself that one police personnel by name Mr.Talekar was present on 17/2/2009 and on subsequent dates also when the confession of accused No.1 was recorded by P.W.218. This fact is necessary to be stated here itself because it has been vehemently argued on behalf of accused No.1 that the confession was not voluntary one and the presence of this police constable by itself has vitiated the whole procedure of recording of confession. The arguments submitted on behalf of accused No.1 in this behalf will be discussed by me at an appropriate stage however, this factual situation has not been denied by the prosecution also. One thing more needed to be mentioned here is that the said police personnel was working as personal orderly of P.W.218 and was in a police uniform.

879. P.W.218 has stated in her evidence that there was no police officer when she introduced herself to the accused No.1 and informed him that he was no more in police custody and he was at liberty to refuse to give any confession. P.W.218 had ascertained whether the accused No.1 had any complaint against police and she was satisfied that there was no complaint of any nature against police. The accused No.1 was thereafter given 24 hrs. time to reflect. He was again produced on 18/2/2009 at 11.00 a.m. He was not in handcuffs and he was produced from judicial custody as he was remanded to judicial custody after initial proceeding on 17/2/2009. On 18/2/2009 also no police officers was present in the chamber when the accused No.1 was produced to give confession before P.W.218. P.W.218 has stated that she had spoken to the accused No.1 in Hindi during the course of proceedings. On 18/2/2009 also accused No.1 was made aware that P.W.218 did not belong to police department and that she was a Magistrate . The accused No.1 had followed the same. He had again stated before P.W.218 that he had no complaint against the police. Such a question was put to him specifically by P.W.218. He was again asked whether he was willing to give confession. The accused No.1 had replied in affirmative. During the course of further proceedings the ld. Magistrate had

recorded personal details of the accused including his place of residence, his place of education and had also asked the accused No.1 as to why did he want to confess. This obviously was asked to ascertain whether the confession was being made voluntarily or otherwise. The accused No.1 had stated before P.W.218 that he wanted to confess crime so that other should get inspiration from his confession . P.W.218 had again ascertained from accused No.1 whether there was any force or promise which had been working upon him to give confession. The accused No.1 had replied in negative. He was also made aware of the fact that he was not under obligation to confess and that if he gave any confession ,same could be used against him.

880. P.W.218 had noticed two injuries on wrist of accused No.1 and had enquired from him as to how did he sustain those injuries. Accused No.1 had informed to P.W.218 that he had sustained bullet injuries during the incident dt. 26/11/2008 . Despite this P.W.218 gave another 48 hours time to the accused No.1 to reflect and he was remanded to judicial custody. He was directed to be produced before P.W.218 on 20/2/2009 at 11.00 a.m. The proceedings dated 17/2/2009 and 18/2/2009 were reduced to writing.

The original record was produced before me vide **Exh.808** and **Exh.809** respectively.

881. Accused No.1 was again produced before P.W.218 on 20/2/2009 in her chamber from judicial custody. All the police officers were directed to leave the chamber. The ld. Magistrate had again enquired from the accused No.1 whether 48 hrs. time was sufficient for him to reflect. The accused No.1 replied in affirmative. P.W.218 therefore, decided to record his confession. However,before recording statement of accused No.1, she had again verified from the accused whether any investigating officer met him in the jail or whether he had been influenced by any police officer. She had also enquired whether any threat, allurement or any promise was given to him. The accused No.1 replied in negative. He was again informed that he was not under obligation to give confession and that if he gave confession, the same could be used against him as evidence. The accused No.1 had told P.W.218 that he had followed everything and that he was ready to give confession. P.W.218 was satisfied that the accused No.1 was voluntarily giving his confession and therefore she told him to start narrating. The statement was recorded in Hindi mixed with Urdu and it

was reduced to writing by the typist Mr.Kadam. The recording of statement could not be completed on 20/2/2009. The accused No.1 was therefore directed to be produced on 21/2/2009. His further confession was recorded on 21/2/2009. Similar procedure was adopted while recording further confession of the accused No.1 on 21/2/2009. The confession was completed at about 4.30 p.m. on 21/2/2009. The proceedings dated 20/2/2009 and 21/2/2009 have been produced in the court at **Exh. 810** and **Exh.811** respectively. The whole record was signed by P.W.218. Signatures and thumb impressions of accused No.1 were taken wherever it was necessary. The certificate in the form No.I, II and III were issued by P.W.218. The certificate Nos. I and III are in the handwriting of P.W.218 herself. All the certificates were signed by this witness and after conclusion of confession of accused No.1, he was remanded to judicial custody. The confession was sealed in a cover and it was forwarded to the ld.Addl Chief Metropolitan Magistrate, 37th Court, Esplanade,Mumbai. The certificate Nos.I, II and III issued by P.W.218 can be reproduced as under :

CERTIFICATE -I

Certified that the above confession was recorded in my presence and hearing and the record contains a full and true

account of the statement made by accused.

Sd/-
Mrs. R.V.Sawant-Wagule
Addl.Chief Metropolitan Magistrate
3rd Court, Esplanade, Mumbai
21/2/2009.

CERTIFICATE-II

I have explained to Mohd.Ajmal Amir Kasab @ Abu Mujahid that he is not bound to make confession and that, if he done so any confession he may make may be used as evidence against him and I believe that his confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him.

Sd/-
Mrs. R.V.Sawant-Wagule
Addl.Chief Metropolitan Magistrate
3rd Court, Esplanade, Mumbai
21/2/2009.

CARTIFICATE-III

I certify that on the following ground, I believe that the

confession is genuine:

i) Because the questions explained to him and he has given reply of each and every question freely.

ii) Where the time was required he asked the same freely without hesitation and then himself explained the events.

iii) During the recording of confession he was calm and stable.

I had taken the following precautions to remove the accused from the influence of police.

i) I inform him that he is no more in police custody and I am not concerned with the police investigating his case.

ii) I have put him in the custody of my court's staff during the recording of confession.

iii) I had given him sufficient time for reflection.

I had given him 72 hours time for reflection before the confession.

Sd/-
Mrs. R.V.Sawant-Wagule
Addl.Chief Metropolitan Magistrate
3rd Court, Esplanade, Mumbai
21/2/2009.

882. P.W.218 was cross-examined by ld.Advocate Mr.Kazmi at

length. P.W.218 in her cross-examination has stated that the charge-sheet had not been filed when the confession of accused No.1 was being recorded. Though P.W.218 has stated that the accused No.1 was produced before her without handcuffs on 17/2/2009, she had not made any note in writing thereof. She has denied that the police officers of Local Armed Force who had produced the accused before P.W.218 were used by crime branch to intimidate and to extend threats to the accused No.1. P.W.218 had also denied that the accused No.1 was not conversant with Hindi. She has admitted that the questions put to the accused and answers given by him on 17/2/2009 have not been recorded in question and answer form in the record of 17/2/2009. She has denied suggestion that accused No.1 was not willing to give confession on 18/2/2009 and therefore, she had adjourned the proceedings till 20/2/2009 so that the confession could be extracted from accused No.1 on next date. She has also denied that the accused No.1 was under constant pressure of police. She was aware that according to Criminal Manual issued by the Hon'ble High Court, confessions are to be recorded in open court during working hours. The police constable who was present in the chamber on 17/2/2009 & 18/2/2009 was in plain clothes however, the police constable who was present on 20th and 21st February,

2009 was in police uniform. P.W.218 had made it clear that the said police constable was attached to the court and was not part of the investigating team. P.W.218 had not verified whether any lawyer had appeared for accused No.1 during remand proceedings before the Magistrate. The witness has further stated that the accused No.1 was offered free legal aid and he was on 18/2/2009 asked whether he wanted a lawyer. The accused No.1 did not want any lawyer and therefore free legal aid was not provided to him. She has further denied that the confession was not read over to the accused. P.W.218 has admitted that certificate No.II on page 41 of the confession was typed first and certificate Nos.I & III were written by her after taking out copy of certificate No.II. As such it is admitted position that the certificate No.II was prepared first before preparing certificate No.I & III. For the time being let it be stated here that it hardly makes any difference if one of the certificates is typed and two other certificates are written in hand after the print of one of the certificates is taken out. In this regard one may refer to **para-18 of Chapter I of Criminal Manual** where guidelines for recording confession are issued by the Hon'ble High Court in consultation with the Government. It is clearly stated that Certificate No.I

and III shall be in handwriting of the Magistrate. There is no such mandate as far as certificate No.II is concerned. The ld. Magistrate could have written certificate No.II also in her own handwriting. However, by writing certificate Nos. I & III in her own handwriting what she has done is absolutely in accordance with the law. In fact she had followed instruction/guidelines scrupulously and no fault can be found with the ld. Magistrate (P.W.218) in this regard.

883. A question was put to the witness which in fact I was not inclined to allow but it has been allowed and is recorded in question and answer form. The ld. Advocate Mr.Aazmi for accused No.2 had asked P.W.218 whether there could be some exaggeration in confession as the accused No.1 had no remorse or repentance for the alleged crime. The ld.Magistrate has replied the said question in negative. In fact the ld. Magistrate would not know whether there could be any exaggeration in the statement. What P.W.218 was supposed to find out whether the statement was being made voluntarily or not. If some exaggeration , at all are made by the accused, the recording judicial officer is not supposed to take same. Moreover, it is not the duty of the recording officer to see whether a

particular portion is exaggeration. P.W.218 had done her job in accordance with the law and she was not supposed to exceed her jurisdiction in recording statement of the accused No.1. P.W.218 has also admitted that she had not received any application from the accused himself wanting to make a confession before a Magistrate. The witness has denied that she had not satisfied herself regarding willingness of the accused No.1when the accused No.1 was ready to make a confession before her. She has also denied that the questions put by her to the accused were not sufficient to find out whether the confession was being given voluntarily or otherwise. She has further denied that she had recorded statement of accused No.1 mechanically.

884. During the course of recording of confession of accused No.1, accused No.1 had disclosed his name, place of birth and date of birth. He had stated that his date of birth is 13th September, 1987 and that he was resident of village Faridkot, Tal. Dipalpur Dist.Okara, Punjab (Pakistan). He had given details of his parents and other relatives in the introductory part of his confession and has further stated that he left school in the year 2000. In the year 2001 he had come to stay at Lahore along with his father

and uncle Gulam Rasool. His father and uncle left Lahore in the year 2005 and the accused No.1 was staying alone in a room on rental basis. He used to visit his native place intermittently. However, there was a quarrel between accused No.1 and his father over the amount of income of accused. The accused No.1 therefore left the rental house and started staying at Dargah of Ali Hajveri at Lahore. He came into contact with one Shafiq who got a job for accused No.1 at Welcome Tent Service, Rawalpindi Road. The accused No.1 came into contact with Mujjafar Lal Khan while working at Welcome Tent Service . Both of them left Lahore for Rawalpindi in the year 2007 in search of a better job. They started staying on rental basis at Bangash Colony. During this period they came into contact with the persons belonging Lashkar-e-Taiba. They also started visiting camps of Jamat-Ul-Dawa. It is stated by accused No.1 that Lashkar-e-Taiba came to be known as Jamat-Ul-Dawa after the ban on Lashkar-e-Taiba in the year 2002.

885. Accused No.1 has further stated that it is in the month of December, 2007 that both of them had visited office of Lashkar-e-Taiba at Raja Bazar, Rawalpindi. Both of them made their intention clear to the

persons of Lashkar-e-Taiba that accused No.1 and Mujjafar Lal Khan wanted to join Jihad. Both of them were therefore asked to visit the office of Lashkar-e-Taiba next day with their baggage. The accused No.1 and Mujjafar Lal Khan accordingly visited the said office on next day. From there, they were sent to Muridake. After bus journey of six hours they reached Muridake and visited camp of Lashkar-e-Taiba for Daura-e-Sufa training. Both of them were allowed entry in the camp after their personal search. They were given training of 21 days along with other trainees. In all there were thirty trainees during the course of said training. Accused No.1 had stated that first of all they were converted to Ahale Hadis from Sunni. During the initial training they had undergone physical training as well as heard discourses on Jihad. During the course of said training wanted accused No.8-Abu Fahad Ullah and wanted accused No.13-Abu Mufti Saeed were trainers of accused No.1, Mujjafar Lal Khan and others. This training went on from December, 2007 to January,2008. During the course of said training the trainees were introduced to the wanted accused No. 1-Hafeez Mohammas Saeed @ Hafiz @ Hafiz Saab, wanted accused No.2-Zaki-Ur-Rehaman Lakhvi, wanted accused No.3-Abu Hamza, wanted accused No.4-Abu Al Kama @ Amjid, wanted accused No.6-Mujja Mil @

Yusuf and wanted accused No.18-Abu Umar Saeed. Accused No.1 had further stated that the wanted accused No.1- Hafeez Mohammas Saeed @ Hafiz @ Hafiz Saab had told all the trainees that they had to fight for liberating Kashmir and that time was ripe for Jihad. It was also said by wanted accused No.2- Zaki-Ur-Rehaman Lakhvi that their community had been fighting for Kashmir since last fifteen years and that despite continuous fight of fifteen years, Indian Government was not liberating Kashmir and that therefore, they had to fight war to acquire Kashmir. All the trainees had agreed to fight a war for Kashmir. Accused No.1 had further stated that the wanted accused No.4-Abu Al Kama @ Amjid had told the trainees that most of the big cities of India were on the target and that whoever dies in the war will go to heaven. All the trainees expressed their willingness to fight a war and thereafter they were selected for the training known as Daura-e-Aam. The said training had taken place at Mansera Markaz Aksa. The accused No.1 and others after twelve hours bus journey had reached the area of Mansera. After their verification they were allowed entry in the camp and they were take to the place known as Buttal,. From there they had to walk for about thirty minutes to a hilly place.

886. It is stated by accused No.1 that the said training went on for 21 days. During the said training accused No.1 and others had undergone physical exercise, running , mountaineering and they were also trained in dismantling , assembling fire arms like AK-47 rifle. They were also trained in firing. Accused No.1 had referred AK-47 rifle as 'Klashan' during the course of his confession. When the ld. Magistrate asked him 'what was the meaning of Klashan ?' , accused No.1 had told that he meant to say AK-47 rifle. During the course of said training of 21 days, elder brother of Mujjafar Lal Khan had visited the place and had taken away his brother from the said training. Accused No.1 engaged himself in the service of senior members of the organization. During the period when the accused No.1 was engaged in the service of senior members of organization, other persons were undergoing training under the supervision of wanted accused No.9-Abu Abdul Rehman, wanted accused No.10-Abu Anas, wanted accused No.11-Abu Bashir and wanted accused No.15-Yusuf. Thereafter the trainer of accused No.1 Abu Abdul Rehman i.e. wanted accused No.9 had sent the accused No.1 and others to Okara for a training known as Daura-e-Khas. From there they were sent to Mujjafarabad where they were supposed to undergo training. Accused No.1 had stated before the ld.

Magistrate that he referred to Mujjafarabad which is situated in Pak Occupied Kashmir. The place known as Markaz Aksa was the place where the accused No.1 and others were supposed to take training. The training was imparted to them at a hilly area known as Chelabandi. This training went on during the period of May, 2008 and July,2008 for about two and half months. During this training the trainees were trained to be a strong Jihadi. They were trained in firing, assembling firearms. They were also trained for rocket launchers and use of hand-grenades . Training was imparted to them in respect of satellite phone, G.P.S. and map reading. To make them physically strong, they were trained to remain hungry for 60 continuous hrs. and during the said period they were supposed to climb mountains with heavy load on their back. The accused No.1 had stated before the Magistrate that the said training was very rigorous and that ten of the Mujaheeds could not sustain the said training and deserted the training camp. This training was imparted to accused No.1 and others by wanted accused No.28-Abu Mavia and wanted accused No.31-Abu Hanjla. During the said training one unknown person had visited the training camp. Accused No.1 had stated that the said person had hugged the wanted accused No.1- Hafeez Mohammas Saeed @ Hafiz @ Hafiz Saab and

wanted accused No.2- Zaki-Ur-Rehaman Lakhvi. The wanted accused No.28- Abu Mavia and wanted accused No.31-Abu Hanjla had saluted the said unknown person like army persons. The accused No.1 and others were told that he was Major General Sahab. This Major General Sahab is shown as wanted accused No.20 in the charge-sheet and the charge. Accused No.1 and others were also told that their trainers were deputies of the said Major General Sahab. The wanted accused No.20- Major General Sahab had enquired from accused No.1 and others regarding training and he had also enquired whether they had any complaint in respect of the training. He was talking to the trainees for about one hour and thereafter he left the training camp.

887. After this training accused No.1 was given Rs.1300/- by wanted accused No.28-Abu Mavia and was told to visit his native place . He was further directed that after visiting his native place he had to return to the office of wanted accused No.1-Aamir Hafiz Saeed known as Baitul Mujahidin . Accused No.1, after staying his native place for about one week, returned to the office of wanted accused No.1 in the month of July,2008. He was thereafter taken to selection point near Sewai Nala.

There were about 20 to 22 trainees who had taken part in the selection process. Apart from wanted accused No.1, wanted accused No.3-Abu Hamza, wanted accused No.6-Mujja Mil @ Yusuf and wanted accused No.28-Abu Mavia were present at the selection point. Wanted accused No.5-Abu Kaahfa and wanted accused No.4-Abu Al Kama were also present. A C.D. was played on laptop to show the accused No.1 and others as to how Fidaeen attack was carried out at Kashmir. They were also told as to how such attacks are carried out. The selected persons were given alias names by wanted accused No.1. Alias name of accused No.1 was Abu Mujahid. The others who were present at the time of this naming ceremony, were deceased accused No.2-Imran Babar, deceased accused No.3-Nasir, deceased accused No.4-Nazir, deceased accused No.5-Hafiz Arshad, deceased accused No.6-Abdul Rehman Chota and deceased accused No.9-Shoaib. One more trainee from Rawalpindi was present. His alias name was Abu Dajana. Similar other alias names were given to other trainees also. IN all fifteen selected trainees were sent for Daura-e-Ribat training at Muridake. During the said training the trainees were trained to collect intelligence, misguide the target, keep watch on the target, chase the target and other tactics. Wanted accused No.5-Abu Kaahfa and wanted accused

No.34- Abu Imran were their trainers during the said training of Daura-e-Ribat. During this training also Major General Sahab (wanted accused no.20) had visited their camp and had appreciated the trainees.

888. Accused No.1 had further stated that after this training they were taken to Karachi. Their staying arrangement was made in a place at Ajijabad Mohalla in Karachi. Thirteen trainees were taken to a creek for marine training. During marine training they were trained to reach maps, to judge depth of sea, use of GPS and they were also trained to spread fish net in the sea. Accused No.1 had clarified to the Magistrate that tranining for spreading fish net was given with a view to disguise themselves as fishermen. After marine training they were again brought to the office of wanted accused No.1 known as Baitul Mujahid. After about three days six of the trainees were sent for Fidaeen attack on Kashmir. However other three i.e. Ismail Khan, Fahad Ullah and Javed were admitted in the group of accused No.1. They were named as Abu Ismail (deceased accused No.1), Abu Fahad Ullah (deceased accused No.7) and Abu Ali (deceased accused No.8) and the accused No.1 and others were told that those three trainees had already undergone the training given by other Mujahid.

889. It was on 13th day of Ramjan that the wanted accused Nos.1, 2, 3, 4, 5,6 and 18 called the accused No.1 and other trainees at the office of wanted accused No.1 at Baitul Mujahid. The wanted accused No.1 addressed all the trainees and told them that time was ripe for Jihad and that they had to take decision as to how and in what manner India should be attacked. The wanted accused No.2 thereafter said that it would be advisable to attack Mumbai because the financial position of India is strong due to Mumbai only. The trainees were also told that since they had take marine training, they will have to reach Mumbai by sea. In the mean time waned accused No.20 also reached there and he took test of all the trainees in respect of AK-47 rifle training.

890. It is stated by accused No.1 before the ld.Magistrate that the accused No.1 was declared to be the best amongst all and his work was appreciated by the Major General Sahab- wanted accused No.20. Thereafter wanted accused No.5-Abu Kaahfa introduced Zarar Shah to all the trainees and stated that he was Chief of media wing of Lashkar-e-Taiba.

891. All the ten Mujahid selected for attacking India were divided

into five pairs (baddiya). The five pairs described by accused No.1 in his confession before the ld. Magistrate are as under :

(1) Accused No.1 Ajmal Kasab- deceased accused No.1-Abu Ismail

(2) Deceased accused No.2-Imran Babar and deceased accused No.3-Nasir

(3) Deceased accused No.4-Nazir Ahemad and deceased accused No.9- Shoaib

(4) Deceased No.5.Hafiz Arshad @Hayaji. and deceased accused No.8- Javed

(5) Deceased accused No.6 -Abadul Reheman Chhota and deceased accused No.7-Fahad Ullah

All the trainees were also told that after sailing from Karachi they had to hijack one Indian boat and that they had to reach India by the said hijacked boat. They were instructed to attack the places frequently visited by foreigner tourists. They were specifically told that they had to attack V.T. (C.S.T.) Station, Malabar Hill, Hotel Taj, Leopold, Oberoi and Nariman House. They were further specifically told that while carrying out the attack they had to see that they selectively kill Americans, British and Israeli as these people had committed lot of atrocities of Muslims. Further instructions were given that while firing at V.T. they had to take care that they had to ascertain as to how many Muslims are in the crowd. However,

they were further instructed that they had to fire without any discrimination at V.T. but as far as hotels were concerned, they had to take care that no Muslim was killed. The deceased accused were instructed to attack Hotel Taj and Oberoi and were also told that they should cause large scale damage to the hotels by setting fire at various places. Instructions were also issued for installation of RDX bomb at various places. It was decided that the attack would be carried out around 7.30 p.m. so that large number of people could be killed during the peak hours.

892. The accused No.1 further states in his confession that it was decided that accused No. 1 and the deceased accused No.1-Abu Ismail would fire indiscriminately a CST and kill passengers in a large scale and that thereafter they would proceed to Malabar Hill and again start firing at Malabar Hill. Deceased accused No5-Hafiz Arshad and deceased accused No.8-Javed were directed to go to Taj. Deceased accused No.6-Abadul Rehman Chhota and deceased accused No.7-Fahad Ullah were to attack hotel Oberoi. Deceased accused No.2-Imran Babar and deceased accused No.3-Nasir @ Abu Umar were to attack Nariman House and deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib were

to attack Leopold and thereafter they were to join at hotel Taj. It was also decided that the accused No.1 would install a bomb below taxi driver's seat while proceeding to CST and deceased accused No.4-Nazir would install RDX bomb below taxi driver's seat while proceeding to hotel Leopold. It was further decided that the deceased accused No.8-Javed would also install a bomb below taxi driver's seat while proceeding to hotel Taj. It was decided that RDX bomb would be planted near the places of attack.

893. It is further stated by accused No.1 that it was specifically decided that the pairs of deceased accused who would be attacking Nariman House , Hotel Oberoi and Taj, would establish contact with media and would falsely declare that they had kept some persons as hostage and they would challenge the government of India to liberate Kashmir. They would misguide the media that they were Indian Muslims and they would further disclose higher number of terrorists to provoke terror amongst the people. Thereafter some CDs were played on laptop by the wanted accused Zarar Shah and the maps were shown to the accused No.1 and the deceased accused No.1 to 9. The accused No.1 was specifically shown the places like CST , Malabar Hill and roads leading to CST and Malabar Hill. They were

also shown few sketch maps and were told that these maps were prepared by one Sabuddin Ahemad and Fahim Ansari of Indian origin. They were also told that Sabuddin and Fahim Ansari were in judicial custody in connection with an incident of firing at Rampur Police Camp. Accused No.1 has specifically stated in his confession at page 24 that the wanted accused No. Kaahfa had specifically shown a road from Badhwar Park to VT and thereafter from VT to Malabar Hill and had also told the accused as to how much time it would take to reach Malabar Hill. On 15th day of Ramjan they were taken to Hilly area of Mujjafarabad and they were again imparted training of firing and they were asked to practice the same. They were also trained to prepare tiffin bomb and install timer on the bomb. On the same night they returned back to the head office of Lashkar-e-Taiba i.e.Baitul Mujahid. All of them were directed to cut their hair and they were further directed to get their beard shaved. New clothes, shoes and socks were purchased for all them. They were also given watches with setting of Indian Time. Photographs of accused No.1 and of deceased accused Nos.1 to 9 were taken. Identity cards were given to accused No.1 and deceased accused Nos.1 to 9 with Indian names and purportedly issued by Arunodaya Degree College, Bangalore. The identity card given to accused No.1 was

purportedly issued in the name of Samir Chaudhary son of Dinesh Chaudhary. Identity card given to deceased accused No.1 was issued in the name of Naresh Verma son of Vilas Verma. Similarly, the identity cards issued to other deceased accused were also in the Hindu names. The accused were also told to tie sacred threads around their wrist before landing at Badhawar Park. They were also trained to dismantle and assemble the speed boat. Further, they were also instructed as to how the sea valve of the boat could be removed. The training in respect of **latitude and longitude** was also given to them.

894. On 20th day of Ramjan wanted accused No.2 had visited the place where the accused No.1 and the deceased accused Nos. 1 to 9 were temporarily accommodated before they could proceed to attack India and had told them that the plan had been kept in abeyance for sometime. Since they could not proceed according to the schedule, they had to celebrate Ramjan Id in the same house at Ajijabad Mohalla in Karachi. During this period they were trained as to how bomb could be installed below driver's seat in a running taxi.

895. It is on 21/11/2008 that the accused No.1 and the deceased accused Nos.1 to 9 were brought to another house situated near a creek. Wanted accused No.2-Zaki-Ur-Rehman, wanted accused No.7-Zarar Shah, wanted accused No.3-Abu Hamza, wanted accused No.5-Abu Kaahfa , Nasir and Nazir Ahmed were already present in the said house. The deceased accused No.1-Abu Ismail was named as Chief of the Mission. Arms and ammunition kept in the said house were given in charge of the deceased accused No.1. The deceased accused No.1 was also told as to how the arms and ammunition were to be distributed amongst the ten accused including the deceased accused No.1 himself. The accused No.1 and the deceased accused No.1 were given Rs.10,800/- which they equally shared. Similar amount was given to other accused also. The wanted accused No.7-Zarar Shah had given one mobile to each of the accused. The accused were told that Indian SIM cards had been installed in all the mobile phones and that they would start functioning as soon as they enter Bombay water. They were instructed to start mobile only after reaching Mumbai. The accused No.1 and others were also told by wanted accused No.2 that Zarar Shah (wanted accused No.7) had fed one number in the mobile phone and that if

the accused No.1 and the nine deceased accused wanted to contact their handlers or co-conspirators, they would be required to press the green button.

896. Accused No.1 has further stated in his confession before the ld.Magistrate that the deceased accused No.1 was given certain phone numbers by the wanted accused No.2 and he was given one satellite phone also. The details of latitude and longitude were also written down by the deceased accused No.1 in one diary. The wanted accused No.2-Zaki-Ur-Rehaman Lakhvi thereafter left the said place. The deceased accused No.1 thereafter distributed the arms and ammunition amongst the ten accused including deceased accused No.1 himself in the following manner. Each of the accused was given :

one AK-47 rifle, eight magazines, 240 rounds, 8 hand-grenades, one bayonet , one pistol, three pistol magazines, 21 pistol rounds, water bottle, One kg. raisin, one head phone, three 9 volt batteries and charger.

897. It is further stated by accused No.1 in his confession that each

one of them was given a separate sack containing RDX bomb of eight kg. which looked like a tiffin box. Each pair of the accused was given one GPS. Thereafter all the accused had installed two loaded magazines on their respective AK-47 rifle. Two magazines were attached together by means of adhesive tape. They had also loaded their pistols with seven rounds each. Each one of them was given one big haversack to put their arms and ammunition. The haversacks containing arms and ammunition and small sack containing RDX bomb each were kept in the vehicle of Lashkar-e-Taiba. Deceased accused No.1 asked them to keep in the pocket the identity cards bearing Hindu names.

898. It is on 22/11/2008 at about 6.00 a.m. that all the accused proceeded to the creek after offering Namaz. The wanted accused No.2-Zaki-Ur-Rehman told them that wanted accused No.1 Hafeez Mohammad Saeed had taken lot of pains on this mission and that this mission was necessarily to be a successful one. He told all the accused that it should not happen that wanted accused No.1 should feel ashamed by any omission or frustration of the plan. The accused were told that it was their responsibility to see that the mission should be a great success. They were also told that

electronic mail would be sent to challenge the Indian Government . At this stage the maps prepared by Sabauddin and Fahim Ansari (accused No.3 and accused No.2 respectively) were handed over to each pair. The sketch maps containing road maps of CST and Malbar Hills was kept by deceased accused No.1 with him. All of them were told that they had to tear off the maps after reaching their destination. The deceased accused No.1 was told that before leaving Indian boat proposed to be hijacked by them, they should remove the sea valve of the said boat so that it would sink in the sea. At about 9.00 p.m. they boarded a ship known as Al-Husaini. There were seven persons in the ship including wanted accused No.16-Mursheed, wanted accused No.17-Aakib and wanted accused No.19-Usman. All of them belonged to Lashkar-e-Taiba. The wanted accused No.16 had handed over haversacks containing arms and ammunition and the sack containing bomb to each of the accused. The deceased accused No.1 was also given charge of one speed boat, life saving jackets, blankets, ration like rice, flour, oil, pickle, milk powder, match box, detergent powder, tissue papers, cold drinks, dental cream, spray paint, towels, shaving kit, tooth brush etc. On the night of 22/11/2008 all the accused and other seven persons were on Al-Husaini boat . On 23/11/2008 at about 12.00 noon the boat sailed for about

half an hour and thereafter they had spotted an India boat called Kuber which was hijacked by the wanted accused No.17-Aakib and wanted accused No.19-Usman . There were five crew members on the boat Kuber. Four of them were forcibly transferred to Al-Husaini and the navigator of the boat Amarchand Solanki was allowed to remain on Boat Kuber. He was left there to assit the accused in navigating the boat to Indian water. The diesel containers on boat Al-Husaini were also transferred to boat Kuber. The four persons who were transferred to boat Al-Husaini were kept hostage there. The articles meant for the accused No.1 and the deceased accused Nos. 1 to 9 including their arms and ammunition were transferred to boat Kuber. In accordance to the plan journey of these ten terrorists started towards Indian waters. During the course of their journey, they were keeping watch on the situation. Duties were assigned to each of the accused so that they could alternatively keep watch and also take rest. They tied hands and legs of the navigator and only took his assistance in navigating the boat. The boat was being navigated by the deceased accused No.1 and the deceased accused No.8-Javed. The accused No.1 and the deceased accused Nos.1 to 9 had maintained contacts with the waned accused No.3-Abu Hamza through satellite phone. The navigator was being given food

intermittently because they wanted his help to reach Mumbai.

899. It is on 26/11/2008 at about 11.00 a.m. that the deceased accused No.1 gave red and pink threads to all the accused to tied on their writs. The boat reached near Mumbai water around 4.00 p.m. The accused No.1 and deceased accused Nos. 1 to 9 could see tall buildings of Mumbai. The wanted accused No.3-Abu Hamza was informed that they had reached Mumbai. After consulting Abu Hamza on phone accused No.1 advised deceased accused No.1 that best option to them was to eliminate the navigator of boat Kuber Amarchand Solanki. Accordingly accused No.1 with the help of deceased accused No.9-Shoaib and deceased accused No.3-Nasir cut throat of Amarchand Solanki in the engine room. In the meantime other accused started inflating the inflatable boat and the said boat was brought down in the sea after assembling the same. They changed their clothes which were purchased for them from Karachi market. They had also put on life saving jackets and water proof trousers. Their old and used clothes were left in the boat Kuber. All the haversacks containing arms and ammunition and sacks containing bombs were also transferred to the speed boat (inflatable boat). In the meantime they had seen one boat

approaching their boat from opposite direction. The accused No.1 suspected it to be a naval boat and therefore they immediately left the boat Kuber and jumped into inflatable boat and started their journey towards Mumbai. It is in this process that the deceased accused No.1 forgot to remove the sea valve of boat Kuber and had also forgotten his satellite phone on boat Kuber itself. After navigating for about one and half hour, the speed boat was brought to the seashore. The accused No.1 and the deceased accused No.1 got out of the boat with their haversacks and the sacks containing bombs. They removed their life saving jackets and water proof trousers and put on shoes. The other accused also got down from the boat. While the accused No.1 and the deceased accused No.1 were proceeding towards the road, they were confronted by one of the persons to find out reason for their presence near seashore at odd hours. The accused No.1 told the said person that they were students. There was minor verbal quarrel between the accused on one hand and the said person on the other hand. Thereafter the accused No.1 and deceased accused No.1 proceeded to the road and hired a taxi . They reached C.S.T. within 15 to 20 minutes. But before reaching C.S.T. railway station the accused No.1 had installed a RDX bomb below the driver's seat after adjusting the bomb he had adjusted

the timer in such a manner that the bomb would explode only after one hour and fifteen minutes. After entering CST railway station the accused No.1 was not satisfied with the crowd on the station. He thought it was lesser then what was shown to him when the CD was played before him by Zarar Shah. The deceased accused No.1 therefore tried to contact wanted accused No.3-Abu Hamza but could not contact him because of lack of network. The deceased accused also could not contact anybody from his phone. Both the phones were kept with him by the deceased accused No.1. Thereafter they proceeded further inside the station. According to the plan deceased accused No.1 had installed timer on a bomb carried by him. This work of installation of batteries and timer was done by deceased accused No.1 near the public toilet. After installation of timer and battery the bomb was kept in luggage of the passengers. It is at this point of time that the deceased accused No.1 and the accused No.1 decided to open fire.

900. First of all, the deceased accused No.1 had thrown one hand grenade on the passengers and thereafter both the accused started firing from their AK-47 rifles indiscriminately. After sometime one more hand-grenade was thrown by the deceased accused No.1 and both of them again

continued to fire and killed large number of persons at CST railway station. The people who were injured and who had not sustained any injuries started running out of the station due to fear. In the meantime police started firing at the accused however accused No.1 and the deceased accused No.1 retaliated. Some of the policemen were killed by them and thereafter both the accused had come out of the CST railway station from bridge (which has been referred to as foot over bridge.) The accused No.1 had emptied about six magazines due to indiscriminate firing he had indulged in at CST railway station. As soon as they landed in one of the lanes from the said bridge, they had attempted to open one of the cars as they had seen many cars parked in the said lane. They could not open any car and therefore, they proceeded further in the said lane and started firing. In the meantime police had also reached and they started firing at the accused. Accused No.1 and the deceased accused No.1 therefore though that they should enter the adjoining building and shall fire at the police from the terrace of the building. They though that by means of hand-grenades and firing from AK47 they would eliminate police officials.

901. Therefore, they had entered the building by jumping over the

main gate. It is stated by accused No.1 that the police had followed them. There was exchange of fire between the police and accused in the said building. The accused No.1 and the deceased accused No.1 could succeed in killing some police officers who had followed them. After killing the police officers they had come down from terrace. At this point of time they came to know that the building was a hospital. They could hear that some women and children were crying in the rooms. Accused No.1 and the deceased accused No.1 therefore decided to enter the rooms and kill some of the women and children. However, they could not succeed as all the rooms were found closed from inside. Since they could not enter any of the rooms, they came out of the hospital to go to their last target. While they were outside the hospital and were taking position just near the wall, they had seen one policeman on the road. Accused No.1 had fired at the said policeman and killed him. In the meantime they had also seen one car with red beacon coming out of the said lane. Accused No.1 and the deceased accused No1 started firing at the said vehicle. The deceased accused No.1 had thrown one hand grenade on the said vehicle. However, when they tried to open the said vehicle, they found that the driver was dead and the car was locked from inside. Still they tried to open the car but could not

succeed.

902. In the meantime one car with Amber light was seen by them approaching to them from the said lane. Accused No.1 and the deceased accused No.1 therefore immediately took shelter behind bushes on the footpath . As soon as the said vehicle came near the bushes, accused No.1 and the deceased accused started firing at the vehicle. There was cross-fire from the vehicle also. Accused No.1 had sustained injuries on his both the hands due to firing from the said vehicle. After sometime there was no firing from the said vehicle. The accused No.1 and the deceased accused No.1 therefore went near the said vehicle and found that there were policemen in the said vehicle and that they were dead. Both of them tried to open backside door of the vehicle but could not succeed. The deceased accused No.1 opened the door from the driver's side and accused No.1 opened the left front door. The dead bodies of three police officers were taken out of the vehicle and were thrown on the road. The deceased accused No.1 picked up one AK-47 rifle which was lying in the said vehicle and left his rifle in the vehicle as he had already exhausted magazines attached to his AK-47 rifle. The deceased accused No.1 occupied driver's

seat and the accused No.1 occupied front left seat. Both of them thereafter left the said lane in the said police vehicle. It may be noted here that it is the same police vehicle which is referred to as police **Qualis** vehicle in the evidence of witnesses discussed by me herein above.

903. It is stated by accused No.1 that while they were proceeding further in the said vehicle, they had seen that there was a large number of policemen and public at one square (at one road junction). The deceased accused No.1 had fired at the police and public while driving the vehicle. In the meantime left tire of the police vehicle got punctured. Despite that deceased accused No.1 continued to accelerate speed of the vehicle. After sometime one car was spotted by the deceased accused No.1 and the accused No.1. Accused No.1 fired in air and stopped the said car. The driver of the said car was forcibly pulled out from the car. Two other passengers, a male and a female, had also left the car. The deceased accused No.1 occupied the driver's seat and accused No.1 occupied the front left seat of the car.

904. It is at this point of time that the accused No.1 asked the

deceased accused No.1 as to where they were to proceed. The deceased accused No.1 replied that they were to go to Malabar Hill. The accused No.1 has further stated that he therefore, inquired from deceased accused No.1 as to exactly which place they had to go at Malabar Hill. The deceased accused No.1 told him that he would come to know that only after reaching Malabar Hill. Accused No.1 has further stated in his confession that they could not reach Malabar Hill and were intercepted by police at a road adjoining sea (Marine Drive). It was impossible to drag or dislodge the barricades installed by the police on the road by the car. The deceased accused No.1 kept headlights on and also started wipers and water spray and tried to take 'U' turn from the place little earlier, from the barricades. However, he could not turn the vehicle as there was road divider. The car hit the road divider and had come to stand still. Since the police approached the car, both the accused raised their hands to pretend that they had surrendered. Despite that police continued to reach near the car. The deceased accused No.1 tried to pick up AK-47 rifle kept in his leg space but he could not do so. He therefore started firing at the police by means of his pistol. Accused No.1 also, sensing danger, opened left door and picked up his AK-47 rifle. Police tried to snatch away his rifle and there was a

scuffle between the accused No.1 and the police. During he scuffle the accused No.1 pulled trigger of his rifle . It is stated by him that the bullet hit police officer who had held his AK 47 rifle. Due to bullet injury the police officer collapsed on the road. Immediately thereafter he was assaulted by the policemen by means of sticks and was disarmed and was apprehended. The deceased accused No.1 was also seen by him and he could see that deceased accused No.1 was also injured by the police and was apprehended. The accused No.1 and the deceased accused No.1 thereafter immediately taken to hospital in an ambulance. The deceased accused No.1-Abu Ismail was declared dead. The accused No.1 was admitted for treatment. He was interrogated by the police. It was stated by him before the ld. Magistrate that he disclosed his name, address and other details to the police. He also disclosed to the police as to how did he reached Mumbai along with his other associates.

905. This is the detail confession of accused No.1 recorded by the Ld. Magistrate during the period between 17/2/2009 and 21/2/2009. On 17.2.2009 it was only preliminary when the accused No.1 was given 24 hours time for reflection. On 18.2.2009 the accused No.1 was questioned by

the ld. Magistrate to ascertain whether he was voluntarily ready to give confession. 48 (Forty eight) hours time was given to him for reflection. The accused No.1 was produced before the ld. Magistrate again on 20.2.2009 The ld. Magistrate has recorded in her noting that forty eight hours time for further reflection was given because 19th February was holiday. The accused No.1 was produced before the ld. Magistrate on 20.2.2009. Part of his confession was recorded on 20th February, 2009 and rest of his statement was recorded on 21st February,2009. As such his confession was concluded on 21.2.2009.

906. Apart from the confession made before the ld. Magistrate during the course of investigation, the accused No.1 had also made a detail statement before the court on 20th July, 2009. In fact when the court resumed work on 20.7.2009 and the accused No.1 was brought from the custody, he had a brief conversation with his advocate Mr. Kazmi and thereafter he told the court that he wanted to plead guilty. Since there was no bar for recording plea at any stage of the trial, I proceeded to record his plea. While recording his plea the accused No.1 had made a very lengthy and detail statement which continued for the whole day. The statement runs

into about 28 pages. It is at **Exh.531** and **531A.** Exh. 531 is the statement made by accused No.1 on 20.7.2009 and Exh.531A is the additional statement made by him on 21.7.2009.

907. A question had arisen before the court, after completion of the statement as to whether the accused No.1 could be convicted of all the charges framed against him on the basis of his detail statement/plea. The ld. Spl.P.P. had submitted that plea of accused No.1 might not be accepted because he had not confessed to all the charges framed against him. Ld. Advocate Mr.Kazmi had submitted that the plea might not be accepted and it might be rejected and that the trial might proceed further. The ld.Advocate Mr.Kazmi had also submitted that the statement of the accused could not form part of record of the case and that it need to be removed from the record. It was also submitted that it could not be considered for any purpose. After hearing both the sides, I had passed order on 23/7/2009 operative part of which can be reproduced as under :

ORDER

Statement of accused No.1 recorded on 20th July, 2009 (Exh.531) and his additional statement recorded on 21st July, 2009(Ex.531A) shall form part of the record and shall remain on

record. They will be considered by the court at an appropriate stage. The trial to proceed further. The prosecution is directed to produce next witness at 2.30 p.m. today.

23rd July, 2009 *Sd/-*

23.7.09/27.7.09
M.L.Tahaliyani
Addl.Sessions Judge,
Gr.Mumbai.

908. When the prosecution evidence was closed and the stage for recording statement of accused u/s 313 Cr.P.C. had reached, the issue for consideration before me was as to what is the effect of statement made by the accused No.1 on 20.7.2009 and 21.7.2009. No doubt, the court had taken a view that the statement did not amount to confession of all the charges framed against the accused No.1 and therefore the trial of accused No.1 could not come to an end. However, in my considered opinion certain admissions made by the accused No.1 in the said statement could be used against him. At present I do not want to give any reasoned opinion on this aspect. However, for the time being it may be noted here that the admissions made by the accused in the said statement were put to him while recording his statement u/s 313 Cr.P.C. The accused No.1 had generally

stated that he had given that statement under police pressure. Whether the admissions made by the accused No.1 could be used against him or not will be a matter of discussion in the later part of the judgment. At this stage let me briefly state as to what admissions had been made by the accused No.1 in his statement dated 20.7.2009 and 21.7.2009.

909. In his statements accused No.1 had admitted that :

1) They were in all ten persons including accused No.1 himself.

2) Abu Hamza, Abu Kaahfa ,and Zaki-Ur-Rehman had come to see them off at Karachi.

3) He knew names of nine deceased accused which he has stated in his statement.

4) He had given details as to how he and others travelled upto Al-Husaini and as to how they hijacked boat Kuber.

5) He has stated that there were seven persons on the Al-Husaini boat. He had disclosed names of three of them

i.e. Murshad, Aakib and Usman and had stated that Murshad was the boss.

6) The accused No.1 has further admitted to have hijacked the boat Kuber and had further admitted that the articles were transferred from Al-Husaini to Boat Kuber.

7) He had also made mention of inflatable boat & other articles.

8) He had further mentioned that there were five persons on boat Kuber and Amarchand Solanki was the navigator and that four of them were transferred to Al-Husaini.

9) In his further statement accused No.1 had admitted that there .were 10 persons including him and 11th person was the navigator Amarchand Solanki.

10) He has further stated that Abu Ismail was navigating the Kuber boat with the assistance of Amarchand Solanki by using GPS.

11) He has also admitted the fact of they had been keeping watch around the boat alternatively.

12) He had admitted killing of Amarchand . He has not admitted that deceased Amarchand was killed by accused No.1. He has stated that he had seen Abu Umer holding a rope and Sohaib was holding a knife indicating thereby that deceased accused Sohaib had killed the navigator.

13) Accused No.1 has admitted that each of the ten bags contained one AK-47 rilfe, one pistol and eight hand-grenade. He has admitted the prosecution story regarding bombs and has further admitted that there was one mobile set of Nokia make in each of the bag . There is further admission regarding hand-grenades made in China of different shapes.

14) The accused No.1 has admitted that the ten accused were in five pairs and each pair was carrying one GPS. The accused No.1 has admitted that he and deceased accused No.1-Abu Ismail had travelled to CST in a taxi. He has not admitted that he had planted bomb below the driver's seat in the taxi.

15) Accused No.1 has also admitted that the deceased accused No.1 had thrown hand grenades in the first instance at CST and that both of them had fired at the passengers. He has also admitted that after firing in the

main hall, they had proceeded to the second hall. He has further admitted the encounter between the deceased accused No.1 and the police at CST. There was exchange of fire between the police and accused No.1 also.

16) He has admitted their entry in Badruddin Tayyabji Road and has further admitted that the C.C.T.V. visuals shown in the court to a witness were correct record of his photo seen in the visuals.

17) He has further admitted firing in the B.T.Road and his entry in the Cama Hospital along with deceased accused No.1.

18) He has also admitted evidence given by the witnesses regarding their confinement in the bathroom.

19) The accused No.1 has further admitted that there was a person who was reluctant to cooperate with the accused and he was injured. Accused No.1 had seen the said person in a pool of blood. It is stated by accused No.1 that the said person has been examined as a witness in this Court. It may be noted here that the said person is P.W.106-Mr.Harishchandra Shrivardhankar.

20) The accused No.1 has further admitted their entry on the terrace of a building and encounter with police when police had arrived on 6th floor. After sometime they left Cama Hospital.

21) He has also admitted the incident of Badruddin Tayyabji Road involving two vehicles including one of police officers'.

22) The accused No.1 has admitted of having taken away police vehicle after removing deceased police officers from the said vehicle. The accused No.1 has further admitted of having robbed Skoda vehicle. The incident narrated by the witness Mr.Sharan Aarsa (P.W.144) regarding the key of the car has also been admitted by the accused No.1 in his statement. Accused No.1 has further admitted their interception by police.

23) He has also admitted that the deceased accused No.1 had tried to take 'U' turn when they were intercepted by the police. He has also admitted that they were taken to hospital.

24) As far as the training at Pakistan is concerned, he has admitted that he was staying with Mujjafar Lal Khan at

Rawalpindi and that he and Mujjafar Lal Khan had gone to the office of Mujahideen.

25) He has admitted his training at Muridake and Mansera.

26) He has further admitted his visit to village Buttal for training. He has named three trainers Abu Anas, Abu Bashir and Abdul Rehman.

27) Accused No1 has admitted that he had taken training at Mujjabarabad in Azad Kashmir and he has also admitted to have gone Sawai Nala.

28) After completion of training he was allowed to go to his native place at Faridkot and was directed to return to the office of Sayyad Bhai.

29) After about ten days of his return, Sayyad Bhai and Abu Hamja had visited the office for selection of 15 boys. Their selection was done at a selection point. In the evening they were again brought to the office of Sayyad Bhai .

30) Accused No.1 has also admitted to have taken marine training at Karachi seashore. It is admitted by him that he and other trainees were trained to spread

fish net in the sea.

31) Accused No.1 has admitted to have seen some movies and pictures of C.S.T. on laptop of Abu Hamza. It is further admitted by him that the scheduled programme of attack was delayed and that they were informed accordingly. The accused No.1 has further admitted that arms and ammunitions were given to them to put the same in their bags and those bags were transported to the seashore in a separate vehicle. Later on the arms & ammunition also were transferred to boat Al-Husaini before the accused No.1 and others had reached there.

910. These are some of the admissions made by accused No.1 in his statement. It will have to be seen as to what is the effect of these admissions on totality of the evidence and whether they can be taken into consideration against the accused No.1 u/s 21 of the Evidence Act. In fact, in the first place it will have to be examined , since the statement of accused No.1 has not been accepted as confession, as to whether the admissions made by the accused No.1 can be said to be proved against him u/s 21 of the Evidence Act and what is the effect thereof individually, cumulatively and read with other evidence adduced by the prosecution.

911. Apart from the confession of accused No.1 and admissions made by him on 20th and 21st July, 2009, what is left out to be noted down now is the summing up of evidence adduced by the prosecution in respect of recovery of haversacks which I may refer in detail in the charge of conspiracy or at some other appropriate place.

912. The summing up of the evidence would show that the prosecution relies upon the evidence of eye-witnesses ,confession of accused No.1 recorded by P.W.218-Mr.Sawant-Wagule, evidence of Investigating Officers, evidence of panch witnesses in respect of recovery of arms and ammunition from various places, evidence of ballistic experts, evidence of medical officers, evidence of DNA experts and also evidence in respect of call records of the mobile phones and the data retrieved from the GPS. The prosecution also relies upon the admissions made by the accused No.1 before this Court.

ANALYSIS OF EVIDENCE AND FINDINGS:

913. It can be seen that in all 197 points have arisen for my determination. Instead of dealing with each point chronologically, it would

be convenient and appropriate to deal with in the first instance, the point in respect of murders alleged to be committed by the accused No.1 individually and the accused No.1 and the deceased accused No.1 in furtherance of their common intention. Point No.10 reads as under :

> **"10. Does the prosecution prove that the below mentioned 166 persons in col.No.2 of Table No.2 had died at the places mentioned in column No.3 due to the injuries shown against their names in column No.4 ?"**

As such what the court is now required to examine whether the prosecution has led sufficient evidence to establish that the deceased mentioned in col.No.2 of the table No.2 had died at the places mentioned in col.No.3 due to the injuries mentioned in col.No.4 of the said table. In this regard I will first evaluate evidence of witnesses examined by the prosecution to establish that the particular deceased had died at a particular place.

914. Since the casualties were heavy and since a lot of witnesses have been examined by the prosecution u/s 296 Cr.P.C. by adducing their evidence on affidavits, it was found apt to prepare summary of the evidence in a tabular form and that summary is at **Table No.4** herein above. In all there were **164** deaths at Hotel Taj, Oberoi, Nariman Houses, Hotel

Leopold, CST railway station, Western Express Highway, Vile Parle and Bombay Port Trust, Mazgaon. One death was reported to have been caused in boat Kuber i.e. death of the navigator Amarchand Solanki and one death was reported to be caused at Vinoli Chowpaty i.e. of Tukaram Ombale. As far as death of Amarchand Solanki is concerned, his case will be dealt with separately. Similarly, the cases of deceased who had been proved to have been killed by the accused No.1 by firing from his AK-47 rifle, will also be dealt with separately. Such cases are at Sr.Nos.81- Aakash Akhilesh Yadav, Sr.No.83-Sitaram Mallapa Sakhare, Sr.No.84-Rahamtulla Ibrahim, Sr.No. 86-Vinod Madanlal Gupta, Sr.No.93-Ambadas Ramchandra Pawar, Sr.No.112-Abbas Rajjab Ansari, Sr.No.129-Amarchand Naran Solanki and Sr.No.130-Tukaram Gopal Ombale (**total 8 persons**) in table No.2. At the same time it may also be noted that the case of deceased at Sr.No.22-Mr.Ashok Marutirao Kamate also will be dealt with separately because according to the prosecution he died due to firing on the part of deceased accused No.1-Abu Ismail from his Ak-47 rifle -**Art.427.**

915. Before I deal with the details of table No.4 particularly col.No.4, it is necessary to be noted here that considering suddenness of the incidents and the places of incidents, it was neither expected nor it was

possible that the deceased must have necessarily been taken to hospitals either by their relatives or the police. Some of the deceased were taken to hospitals by the public also . However, majority of the deceased were taken to the hospitals by the police. Majority of the persons have died at C.S.T. railway station, Hotle Oberoi and Hotel Taj. As far as victims of C.S.T.M. incident are concerned, majority of the deceased were taken to the hospitals by the police. Similarly, in the case of Hotel Taj and Oberoi, majority of the deceased were taken to the hospitals by police and staff members of the hotels. There are few cases in which the deceased had either died on their way to the hospitals or they died during the course of treatment. However, there are very few such cases. Most of the persons had died on the spot because of nature of bullet injuries. It is possible that some of the deceased might have died on the spot not instantly but after lapse of some time of sustaining either bullet injury or hand-grenade fragment injury. At this stage it will not be out of place to mention that it hardly makes any difference whether the deceased had died instantly or he died after sometime of sustaining the injury. The accused cannot take defence that had the injured persons been taken to hospital immediately, they could have been saved . What the prosecution is required to prove is whether there was intention to

cause death or intention to cause bodily injury which was sufficient to cause death in ordinary course of nature. As already stated, the defence that the deceased could have been saved had there been immediate treatment, is not open to the accused. Therefore, it cannot be an area of examination as to whether the deceased were immediately taken to the hospital or they were taken after lapse of sometime. In the peculiar circumstances in which the police and public were caught due to the sudden attack simultaneously at various locations, it was possible that some of the deceased might have died after lapse of sometime of sustaining the injuries. That is neither the area of consideration nor it is an issue which can help the accused in any manner. Therefore,what I am required to examine is whether the prosecution has been able to establish that the deceased whose names are mentioned in col.No.2 of Table No.2 had died at the places mentioned in col.No.3 of table No.2. In this regard I have gone through the affidavits of witnesses filed by the prosecution u/s 296 Cr.P.C. and oral evidence of some of the witnesses.

916. As far as removal of dead bodies of the deceased at Sr.No. 21-Mr.Hemant Karkare, Sr.No.22-Mr.Ashok Kamate and Sr.No.23-Mr.Vijay

Salaskar from the spot is concerned, the oral evidence of witnesses in this regard had already been recorded before the prosecution filed affidavits of witnesses u/s 296 Cr.P.C. It is in the evidence of P.W.130-Mr.Nitin Mathne, PC 970793, that he had seen Mr.Hemant Karkare, Mr.Kamate and Mr.Salaskar in injured condition lying on Badruddin Tayyabji Road in front of ATM Centre, Corporation Bank and that all of them had bleeding injury. He has also stated that they were removed to different hospitals in police vehicles. The prosecution has therefore, proved that the deceased at Srs. Nos. 21, 22 and 23 had died at Badruddin Tayyabji Road, Cama (Out) case.

917. As far as the deceased at Sr.No. 25-Mr.Balasaheb Bhosale, Sr.No.27-Mr.Jayawant Hanumant Patil and Sr.No. 28-Mr.Yogesh Shivaji Patil are concerned, it has come in the evidence of P.W.136-Mr.Arun Dada Jadhav that they had died in the incident which had occurred at Badruddin Tayyabji Road outside Cama Hospital. The prosecution has therefore proved that the deceased at Sr.Nos.25, 27 and 28 had died at the places mentioned against their names in col.No.3 of table No.2. The prosecution has also proved that the deceased at Sr.No.24-Mr.Durgude had died at Mahapalika road near Badruddin Tayyabji Road. His dead body was

carried to the hospital by P.W.138-Mr.Suresh Kadam. P.W.138 is also an eye-witness to the incident.

918. Similarly, there is oral evidence in respect of removal of dead body of deceased at Sr.No.129-Amarchand Solanki, the navigator, from boat Kuber. There are more than one witnesses who have stated that dead body of Amarchand Solanki was found in engine room of boat Kuber. It was seen by the police officer (P.W.42-Chandrakant Jadhav) who had recorded statement of the accused u/s 27 of the Evidence Act. The dead body was also seen by the officer who had drawn panchanama of the boat. The said dead body was identified by the son of deceased Amarchand Solanki. He has been examined as P.W. 606 and has stated that he was given custody of dead body of his father. The prosecution has therefore established that the deceased at Sr.No.129-Amarchand Solanki had died at the place mentioned in col.No.3 of table No.2.

919. There is oral evidence in respect of removal of dead body of deceased at Sr.No.130-Mr.Tukaram Ombale. P.W.1-Mr.Bhaskar Kadam, PSI, P.W.2-Mr.Sanjay Govilkar, API , P.W.3-Mr.Hemant Bavdhankar, API,

and other witnesses have stated in so many words that deceased Tukaram Ombale had died at Vinoli Chowpaty. The prosecution has therefore established that the deceased Tukaram Ombale had died at the place mentioned in col.3 against his name in table No.2.

920. P.W.212-Mr.Pradeep Bengalorkar , staff member of hotel Oberoi has stated that the deceased at Sr.No.64-Jordan Fernandise had died at Hotel Oberoi. As far as other deceased are concerned, I have gone through the evidence of witnesses submitted u/s 296 Cr.P.C. Most of the deceased were carried to the hospital by the police officers. Some of them were carried to the hospitals by staff members of the place where they had died. The affidavits filed by the prosecution clearly establish that the deceased in col.No.2 of table No.2 had died at the places mentioned against their names in col.No.3. Moreover, there is no challenge to this fact in the cross-examination of any of the witnesses. The witnesses who have been examined by filing affidavits u/s 296 Cr.P.C., have not been cross-examined. As such it can safely be said that the defence has no serious dispute with the fact that the deceased mentioned in col.No.2 of table No.2 had died at the places mentioned against their respective names in col.No.3

of table No.2.

921. The second part of the same point i.e. point No.10 is whether the prosecution has been able to establish that the deceased from Sr.Nos. 1 to 166 had died due to the injuries mentioned in col.No.4 of table No.2. If one goes to table No.2 of the judgment, it will be obvious that majority of the deceased had died due to haemorrhage and shock followed by firearm injuries. Some of the deceased had died either due to burn injuries or blast injuries. It may be noted here that burn injuries are also caused either due to proximity of the blast or due to the fact that the accused had set on fire certain places at hotel Oberoi and hotel Taj. It has come in the evidence of P.W.212-Mr.Pradeep Bengalorkar who was working as staff member of hotel Oberoi that in fact two accused who had attacked hotel Oberoi, had directed the staff members of the hotel itself to pour liquor on the furniture and had asked them to set the furniture on fire. The cases other than the deceased who had died due to firearm injuries are at Sr.No.35, 58, 73, 74, 75, 76, 89, 95, 115, 116, 127, 154, 156, 157, 158, and 159. In this regard what is pertinent to note here is that the deceased at sr.No.72-Mohabbat Umer Abdul Khalid and deceased at Sr.No.73-Laxminarayan Goyal had

died due to bomb blast in a taxi at Vile Parle. The deceased at Sr.No.74, 75 and 76 had died due to bomb blast in a taxi at the Bombay Port Trust, Mazgaon, Mumbai. For ready reference, it may be mentioned here that according to prosecution case the bomb in a taxi was planted by accused No.1 which had exploded at Vile Parle, and the bomb in a taxi was planted by deceased accused No. 4 and 9 which exploded at Bombay Port Trust, Mazgaon. The detail evidence of the witnesses in this regard has already been summed up by me earlier.

922. The other deceased who are shown to have died due to blast injuries at CST railway station have mainly died due to the explosion of hand-grenades . The deceased at Sr.Nos. 154,155, 156 ,157 and others who had died due to burn injuries at hotel Taj were mainly due to the fire set on by the deceased accused.

923. To summarize the evidence in respect of nature of injuries sustained by 166 deceased persons and cause of their death, I have prepared a table which has been inserted above at **Table No.5.** The details recorded of the deceased at Sr.No.72,73,74,75 & 76 would show that the deceased

had died due to haemorrhage and shock due to blast injuries. The exhibit numbers of their postmortem notes have been stated in col.No.7 of Table No.5. The details of the injuries found on their limbs have been stated in col.No.6. It can be noted here that initially the police of Vile Parle Police Station had registered three deaths following the blast in the taxi at Vile Parle at Western Express Highway in front of City Swan Club. However, the DNA of limbs collected from the spot revealed that there were only two persons who lost their lives in the blast i.e. the deceased at Sr.No.72-Mohabbat Umer Abdul Khalid, driver of the taxi and Sr.No.73-Laxminarayan Goyal. In the case of Mazgaon taxi blast, the deceased at Sr.No.75-Fulchandra Bind was driving the taxi. Most of his limbs were found mutilated . The deceased at Sr.No. 74-Mrs.Jarina Shaikh and deceased at Sr.No.76-Mrs.Reema Rabivul were travelling in the said taxi and were about to make payment of taxi charges when the bomb exploded. Both of them had died due to multiple injuries. The medical officers examined by the prosecution in this regard have given only cause of death. The details of injuries have not been taken in the evidence of medical offices examined by the prosecution. However, in this regard also it may be noted that the defence has not challenged the cause of death of these five

persons nor the defence has challenged cause of death of other persons who had died due to blast injuries. As far as the deaths of other deceased, except those limited cases where bullets have been retrieved from dead bodies and opinion is given by ballistic expert, in most of the cases cause of death has not been challenged seriously by the defence though the suggestion had been put to the medical officers to the effect that they had given evidence at the instance of police. There is no reason to disbelieve evidence of medical officers who have been examined in the court and also of those who have given their evidence in the form of affidavits u/s 296 of Cr.P.C. I have not reproduced the whole of the text of evidence of medical officers purposely as same would have increased the length of judgment without achieving any fruitful purpose. I have therefore noted down the nature of injuries in col.6 of table No.5 and cause of death recorded by the medical officers is stated in col.No.7 against name of each of the deceased.

924. The cases which are proposed to be dealt with separately are the cases in which bullets had been retrieved during the course of postmortem examination and the said bullets have tallied with the test fired bullets from art.10-AK 47 rifle which was seized from the possession of

accused No.1 at Vinoli Chowpaty. In all other cases, there are firearm entry wounds and exit wounds. In almost all cases the deceased had died due to haemorrhage and shock due to firearm injuries. Exhibit numbers of postmortem notes have also been mentioned in col.No.7 of table No.5. Names of doctors who had examined the dead bodies and their witness number has been mentioned in col.No.5. As such the table No.5 gives the over all picture of (1) names of the deceased, (2) their place of death, (3) place and date of postmortem examination, (4) name of the medical officer who had examined the dead body and (5) nature of injuries and cause of death. Foreign body, if any, retrieved from the dead body, has been recorded in col.No.8 of table No. 5.

925. **I have therefore come to the conclusion that the prosecution has proved beyond reasonable doubt that the deceased mentioned in col.No.2 in table No.2 had died at the places mentioned in col. No.3 against their names due to the injuries mentioned in col.No.4 of of table No.2. My answer to the point No.10 is therefore affirmative.**

926. Before I proceed to examine whether the above mentioned 166

persons were killed by accused No.1 and the deceased accused No.1 to 9, let me first take up one of the points concerning offence punishable u/s 307 of IPC. The **point No.56** is being taken up for analysis at this stage itself because the intention of the accused, sharing of the intention and abetment part of the offence might be covered in a common discussion. Point No.56 is purely based on factual position of the injuries sustained to the persons at Sr.Nos. 1 to 130 in table No.3. The Point No.56 is as under:-

> **56. Does the prosecution prove that the accused No.1 or deceased accused No.1-Abu Ismail had caused injuries of the nature mentioned in col.5 to the persons mentioned in Col. No.3 at Sr Nos. 1 to 130 at the places mentioned in Col.No.4 of the table No.3 ?**

The prosecution has not been able to examine all the witnesses who had suffered injuries during the course of various incidents. The prosecution has examined only 111 injured persons out of which the witnesses at **Sr.No. 1 to 57 in table No.6** are the persons who had suffered injuries during the incident at CST railway station, Cama Hospital, outside Cama Hospital , Vinoli Chowpaty and Vile Parle. Few of such witnesses have been examined in open court. However, majority of such witnesses have been

examined u/s 296 of Cr.P.C. Their affidavits of evidence have been taken on record because all of such witnesses whose affidavits have been produced, had no occasion either to see the accused No.1 or the deceased accused No.1. Their evidence was limited to the extent of nature of injuries sustained by them and the places where they were injured. The witnesses at Sr.Nos. 1 to 57 in table No.6 have been examined as P.W.Nos.62, 518, 517, 506, 516, 63, 519, 69, 510, 56, 88, 89, 504, 64, 87, 515, 524, 521, 513, 527, 505, 53, 507, 512, 523, 52, 525, 522, 508, 509, 86, 520, 49, 51, 526, 514, 511, 118, 112, 469, 471, 470, 472, 473, 109, 111, 106, 136, 139, 456, 454, 457, 453, 455, 2, 171 and 490 respectively. The evidence of witnesses given on affidavits discloses the nature of injuries sustained by them. At this stage it is necessary to be stated here that some of the affidavits are very lengthy and cover the area of evidence **not** permissible u/s 296 of Cr.P.C. I have therefore considered only limited portion of the evidence which pertains to the nature of injuries sustained by these witnesses. It was made clear to the ld. Spl.P.P. also that though some of the affidavits are beyond the purview of Sec.296 CR.P.C., the Court will consider only that part of affidavits which fall within the category of evidence of formal character. The ld. Spl.P.P. Mr.Nikam in all fairness agreed to the same and had

submitted that only purpose of filing such affidavits was to bring on record evidence of these witnesses in respect of injuries sustained by them. Even the prosecution did not want to go beyond that limit. But inadvertently in some of the affidavits some more facts have been stated which are ignored by me. I have already reproduced my reasoned order under which the prosecution was granted permission to file such affidavits. Therefore, I am not going into details of those reasons repeatedly.

927. The nature of injuries stated to have been sustained by the prosecution witnesses whose names and serial numbers as prosecution witnesses appear in col.No.2 of table No.6, have been mentioned in col.No.4 . If one goes to col. No.4 of table No.6, it will be seen that most of the witnesses have stated on affidavits that they had sustained bullet injuries. The nature of injuries , in majority of the cases , are due to gun shots. There are few cases like the case of P.W.52 & 86 and few others that the injuries are due to explosion. These witnesses have stated that they had sustained injuries due to bomb explosion or due to steel balls. The result is same i.e. the injuries were caused to these witnesses due to explosion of hand grenade. The oral evidence of these witnesses at Sr.Nos. 1 to 57 had

been, in majority of the cases, corroborated by the medical evidence. In some cases the prosecution has not been able to examine the medical officers. There is one other category of cases in which the medical officers who had examined the injured persons, have been examined but, may be due to oversight or inadvertence, they had not given evidence in respect of the injured examined by them. These facts have been clearly stated in col.No.6 in table No.6. Col.No.3 of table No.6 discloses the place of incident stated by the witnesses in their affidavits, col.No.5 discloses the name and P.W.number of the medical officers who had examined the injured and col.No.6 discloses the opinion given by the medical officer.

928. The question which comes for consideration is whether the evidence of the injured persons without the support of evidence of medical officer can be believed or not. The answer obviously is in affirmative. Eyewitness version can be believed even in the absence of corroborative medical evidence. There is no reason to disbelieve oral evidence of the witnesses who have categorically stated as to nature of injuries sustained by them and have further stated as to the place of incident. I do not think that any lengthy discussion is necessary on this issue. The table No.6 graphically

gives picture of the oral evidence of the witnesses, place of incident, name of the medical officers, injuries sustained by the injured and corroborative evidence of medical officers. I have therefore come to the conclusion that the prosecution has been able to prove that the injured at sr.Nos. 1 to 57 in table No.6 had sustained injuries of the nature mentioned in col.No.4 at the place mentioned in col.No.3 of table No.6.

929. What is now necessary to be examined is whether it was accused No.1 and the deceased accused No.1-Abu Ismail, who were responsible for the said injuries. The answer to this portion of point No.56 will be recorded when I evaluate evidence with respect to presence of accused No.1 and the deceased accused No.1 at the places mentioned in col. No.3. The evaluation of evidence in this regard with respect to charge u/s 302 and 307 IPC will be common in nature. Before I proceed further, it is also necessary to be noted here that some of the witnesses whose names appear in col. No.2 of table No.6 have been examined in open court and they were subjected to cross-examination. Few of the witnesses who were examined on affidavits were called on the prayer of ld.advocate for the accused and they were also subjected to cross-examination. The evidence of

P.W.62-Mr.Sudama Aba Pandarkar, P.W.63-Pandurang Subrao Patil, P.W.69-Mr.Vishal Prakash Kardak, P.W.56-Mr.Kishor Vinayak Kale, P.W.89-Ms.Harshada Salaskar, P.W.64-Smt.Poonam Santosh Singh, P.W.87-Mr.Niranjan Sadashiv Sardar, P.W.53-Ms.Nafisa Sadab Qureshi, P.W.52-Farooqui Nasiruddin Khaliluddin, P.W.86-Smt.Sangeeta Niranjan Sardar, P.W.49-Mr.Bharat Ramchandra Bhosale, P.W.51-Ms.Devika Natwarlal Rotavan, P.W.118- Mr.Sadanand Date, P.W.112-Mr.Vijay Abaji Shinde, P.W.109-Mr.Chandrakan Tikhe, P.W.111-Mr.Kailash Ghegadmal, P.W.106-Mr.Harishchandra Shrivardhankar, P.W.136-Mr.Arun Dada Jadhav, P.W.2-Mr.Sanjay Govilkar and P.W.171-Mr.Shyamsunder Rambharat Chaudhary has been summed up by me while summing-up evidence of prosecution witnesses examined in the court. The evidence of these injured persons is not only pertaining to the injuries sustained by them but also pertains to the incident witnessed by them. They are therefore witnesses to the incident. Their evidence has been summed-up by me but the evaluation of evidence is necessary to decide the **point No.11** and **point No.57** which is pertaining to the intention of the accused No.1 and the deceased accused No.1 and the circumstances in which the injuries were alleged to have been caused to the injured persons. While evaluating the

said evidence, coupled with the evidence adduced by the prosecution by way of confession of accused No.1 and the admissions made by the accused No.1 in the court, will answer the remaining part of point No.56 and also will answer point no.57. At the same time we may get answer for point No.11 and point No.12 also. Point Nos.11,12 and 57 can be reproduced as under:

11. Does the prosecution prove that either accused No.1 or deceased accused No.1-Abu Ismail had caused injuries described in col. No.4 to the deceased from Sr.No.77 to 128,30 to 36, 21 to 29, 72 and 73 in table No.2 except the deceased at Sr.Nos.81,83, 84, 86, 93 and 112 for which the accused No.1 has been charged separately and points for determination have also been framed separately ?

12. Does the prosecution prove that the injuries mentioned in col.No.4 were caused to the deceased mentioned at Sr.No. 77 to 128, 30 to 36, 21 to 29,72 and 73 in col.No.3 of the table No.2 except the deceased at Sr.Nos.81,83, 84, 86, 93 and 112 for which the accused No.1 has been charged separately and points for determination have also been framed separately, either by accused No.1 or by the deceased accused No.1-Abu

Ismail with intention to cause death or bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?

57. Does the prosecution prove that the accused No.1 or deceased accused No.1-Abu Ismail had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons, they would have been guilty of offence of murder ?

930. Before I start evaluating that part of evidence including confession of the accused No.1 and the admissions made by him, it is necessary to see as to what the prosecution is required to prove to establish the charge u/s 302 and 307 of IPC . It is also necessary to see as to what evidence prosecution is required to adduce to establish the common intention. At the same time it will not be unappropriate at this stage itself to refer to the judgments of Hon'ble Supreme Court laying down guiding principles to be borne in mind while considering a retracted confessions.

931. It has already been stated that the accused No.1 had retracted his confession vide **Exh.518**. He has stated in his retraction that the confession was taken by coercion and it was not voluntary and true confession of the accused No.1.

932. The ld. Spl.P.P.Mr.Nikam has submitted that the evidence of prosecution witnesses examined to establish involvement of accused No.1 and the deceased accused No.1-Abu Ismail in the incident at CST railway station, Badruddin Tayyabji Road (Cama Out), Cama Hospital (Cama In), Metro Junction and Vinoli Chowpaty is sufficient to establish the charge u/s 302 IPC independently against the accused No.1 and u/s 302 r.w. 34 and u/s 307 r.w. 34 of IPC against the accused No.1. It is submitted by the ld. Spl.P.P. that confession of accused No.1 is an additional evidence as far as the above stated incidents are concerned. The confession of accused No.1 with respect to other incidents where deceased accused Nos. 2 to 9 had died i.e. Hotel Taj, Oberoi, Nariman House and Leopold hotel is the prime evidence on which the prosecution is banking upon. The ld. Spl.P.P.has submitted that the confession of accused No.1 is corroborated by the other evidence adduced by the prosecution. The evidence has sufficient

corroboration to establish that what is stated in the confession by accused No.1 is true and correct.

933. Before I deal with the facts, as already stated, let me see as to what is the law on the point of murder, attempt to murder, retracted confession and the common intention. As far as offence of murder punishable u/s 302 IPC is concerned, the present case, as can be seen from the points which had arisen for my determination, may either fall under **clause 1stly** or **clause 3rdly** of Sec.300 of IPC. As far as clause 1stly is concerned, what the prosecution is required to prove is the factum of homicide and intention on the part of accused to cause death. Clause 3rdly however, is little broader as compared to clause 1stly. It cover cases where there was an intention to cause bodily injury and bodily injury intended to be caused was sufficient to cause death in ordinary course of the nature. The **Hon'ble Supreme Court in the case reported at Virsa Singh Vs. State of Punjab reported at 1958 Cr.L.J.-818** while dealing with the case covered under clause 3rdly, has stated at **para-12** and **para-13** as under :

> "**12**. To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300

"thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be 'proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective

> inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

It is thus clear what the prosecution is required to prove that either there was an intention on the part of accused to cause death or there was an intention to cause bodily injury and that bodily injury intended to be caused was sufficient to cause death in ordinary course of the nature. It is not incumbent on the part of prosecution to prove that the accused knew that bodily injury intended to be caused was sufficient to cause death in ordinary course of the nature.

934. As far as offence punishable u/s 307 IPC is concerned, I may refer to the case in the matter of **Liyakat Mian and Ors. Vs. State of Bihar, reported at AIR 1973 Supreme Court 807** . In the said case, the accused had, during the course of dacoity, fired a gun shot at one of the witnesses causing injuries on abdomen and left arm. A charge u/s 307 IPC was framed and he was convicted for the said office in addition to the

offence of dacoity. While dealing with the charge u/s 307 of IPC the Hon'ble Supreme Court has said at **para-8** of the judgment :

> " .....Now by this act of shooting at Burhan Mahaton from such close quarters, had Jashim Mian caused Burhan Mohaton's death, then, he would certainly have been guilty of murder. His guilt is thus quite clearly established on the plain language of S.307 and on the reasonable consequences which must be assumed to flow from the act of shooting indulged in by him. Knowledge to this effect can legitimately be imputed to him."

935. In addition to these observations made by the Hon'ble Supreme Court, what may be noted is that for the offence punishable u/s 307 IPC the nature of injury is not that important as the intention is and the circumstances under which the injury has been caused. In a particular case it is possible that the injury might not be on the vital part but the intention of the accused and the circumstances are such, that if victim dies, the accused could be guilty of murder. Therefore, I may not attach much importance to the nature of injuries sustained by the injured persons in the present case. Considering the circumstances in which the offence is alleged to have been committed, to my mind, the intention of the accused and the circumstances in which the offence is committed are of paramount importance to

determine whether the accused No.1 is guilty of the offence punishable u/s 307 of I.P.C. and u/s 307 r/w 34 of I.P.C. I am supported in my view by the judgment of **Hon'ble Supreme Court in the case of State of M.P. Vs. Kashiram & Ors. reported at 2009 Cri.L.J. 1530**. The Hon'ble Supreme Court at **para Nos. 10, 11 and 12** of the said judgment has said :

> "**10**. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily Injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
>
> **11**. This position was highlighted in State of Maharashtra v. Balram Bama Patil and Ors. (1983 (2) SCC 28), Girija Shanker v. State of Uttar Pradesh (2004 (3) SCC 793), R. Parkash v. State of Karnataka (JT 2004 (2) SC 348) and State of Madhya Pradesh v. Saleem alias Chamaru and Anr. [2005 (5) SCC 554].
>
> **12**. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would

> depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury."

936. As far as common intention is concerned, the law has been clearly laid down by the Hon'ble Supreme Court in the recent judgment in the matter of **Chaman and Anr. Vs.State of Uttaranchal reported at 2009 Cri.L.J. 978** where the Hon'ble Supreme Court in **para-6** has said :

> **"6.** Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or

> circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar v. State of Punjab (AIR 1977 SC 109), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

937. The ld. Spl.P.P.Mr.Nikam has relied upon the judgment of **Hon'ble Supreme Court reported at 1994 Cri.L.J. 3071(1)** in support of his argument that the whole prosecution case is established on the basis of evidence of eyewitnesses and the detail confession by accused No.1 before the ld. Metropolitan Magistrate (P.W.218) . It is submitted by Mr.Nikam that though the confession has been retracted, it is generally corroborated by other evidence adduced by the prosecution. It is further stated that there is

nothing in the cross-examination to doubt voluntariness of the confession of accused No.1. He has mainly relied upon **para-32** of the said judgment which runs as under :

> "**32**------- The rule of prudence namely requiring corroboration does not mean that each and every circumstance mentioned in the confessions with regard to the participation of the accused in the crime must be separately and independently corroborated. It is sufficient if there is general corroboration of the important incidents, just like in the case of an approver's evidence and it is not necessary that the corroborative evidence itself should be sufficient for conviction. It may not be necessary to refer to remaining aspects governing the use of retracted confession for the purposes of this case. Suffice it to say that it is also laid down that it is not illegal to base a conviction on an uncorroborated confession of an accused person but as a rule of prudence which has sanctified itself to the rule of law, the Courts do look for corroboration before acting upon and accepting the retracted confession and what amount of corroboration would be necessary in a case would be a question of fact to be determined in the light of the circumstances of the case. (See Balbir Singh v. State of Punjab, AIR 1957 SC 216, Sarwan Singh Rattan Singh's case (AIR 1957 SC 637) (supra), Ediga Anamma v. State of Andhra Pradesh, AIR 1974 SC 799 and State of Uttar Pradesh, v. Boota Singh, AIR 1978 SC 1770)."

938. As far as the law on the point of retraction of confession is

concerned, I may also refer to the judgment of **Hon'ble Supreme Court in the matter of Sarwan Singh Rattan Singh Vs. State of Punjab & Harbans Singh Bhan Singh Vs. State of Punjab reported at 1957 Cri.L.J. 1014 (Vol.58, C.N.397)(1).** The portion of **para-10 and 11** relevant for our purpose can be reproduced as under :

> **"10 ---------** Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.
>
> ---------- Prima facie whether or not the confession is voluntary would be a question of fact and we would be reluctant to interfere with a finding on such a question of fact unless we are satisfied that the impugned finding has been reached without applying the true and relevant legal tests in the matter.
>
> ---------- However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded.

> **11**. There is, besides, another fact which is equally fatal to the prosecution case. Even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case."

939. Subject of retraction of confession has been discussed in detail in the judgment in the matter of **Parmanand Pegu Vs. State of Assam reported at 2004 Cri.L.J. 4197** . I may reproduce part of **para 17** of the judgment as under :

> "**18** ---------- The law on the subject of retracted confession has been succinctly laid down by a three Judge bench of this Court in Subramania Goundan v. State of Madras ((1958) SCR 428) which lays down:
>
> "The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the Court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts, and circumstances

surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being In re : Kesava Pillai (ILR 53 Mad 160 : AIR 1929 Mad 837) (B) that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this Court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated, one of the latest cases being Balbir Singh v. State of Punjab (S) AIR 1957 SC 216(C), but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession." (Emphasis supplied)

I may also refer **para-19** of the said judgment which runs as under:

19. In Pyare Lal, supra the same principle in regard to the evidentiary value of retracted confession has been

reiterated. Subba Rao, J. speaking for a four Judge Bench, stated the legal position thus:

"A retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a Court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only, a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a Court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars....."
By the use of the expression 'corroboration of material particulars' the Court has not laid down any proposition contrary to what has been clarified in Subramania Goundan's case (supra) as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan's case." (Emphasis supplied)

940. On the same subject the Hon'ble Supreme Court in the

judgment in the matter of **Shankaria Vs. State of Rajasthan reported at 1978 Cri.L.J. 1251(1)** has stated at **para-22** as under :

> "**22**.....It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under S. 164, Cr. P. C.. the Court must apply a double test:-
>
> (1) Whether the confession was perfectly voluntary ?
>
> (2) If so, whether it is true and trustworthy ?
>
> Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in S. 24, Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must before acting upon the confession, reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even, so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the

> evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

941. On the point of as to what kind of corroboration is necessary to rely upon the retracted confession, one may also refer to the judgment in the matter of **Subramania Goundan Vs. The State of Madras reported at 1958 Cri.L.J. 238 where His Lordship Justice Govind Menon** has said at **para-14:**

> ".....Not frequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and, therefore, it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the court must feel that the reason given for the retraction in the case of a confession are untrue."

942. It is thus clear from the above cited judgments that whether the confession is voluntary or otherwise, is to be decided on the facts of each case independently and no hard and fast rule can be laid down for the same. It is further clear to us that the retracted confession does not require

corroboration in material particulars. What is required to be established by the prosecution is the corroboration generally available in the evidence adduced by the prosecution. For that the court may be required to compare the confession with the evidence adduced by the prosecution in the nature of oral evidence, documentary evidence or technical evidence.

943. While appreciating the evidence of eyewitnesses one more issue which may come up for discussion is the identification parade because it was vehemently argued before me on behalf of accused No.1 that the test identification parades were, in the first place, delayed for unreasonably long time. Secondly, proper procedure, as laid down in Criminal Manual, was not followed by the Spl.Executive Officer. Thirdly, it was also argued that the photograph of the accused No.1 was published on TV and in almost all newspapers continuously for a few weeks and therefore the witnesses must have seen photograph of the accused No.1 on number of occasions. It was contended that since it was widely published with photograph of the accused No.1 that it was accused No.1 who was responsible for massacre at CST railway station and other places, the witnesses were determined to identify the person whose photograph was seen by them. In this regard I

may refer to the judgment of **Hon'ble Kerala High Court in the matter of Chandran and another Vs. State of Kerala reported at 1986 Cri.L.J. 1865 (1)** where it is stated in **para-22** of the judgment :

> **"22**. A Division Bench of this Court in the Judgment in R.T.1/1983 and Cri. Appeals 161 and 163 of 1983 has culled out the principles deducible from the above decisions (See 1984 Ker LT (Short Notes) 31). We respectfully agree with the same. Substantive evidence of identification of an accused is the evidence given and identification made by a witness in Court. If an accused is known to a witness it would be a futile exercise to put him up for identification. If, however, an accused is not previously known to a witness, the investigating agency has to consider whether test identification parade should be arranged. Such a step has dual significance. It furnishes to the investigating agency an assurance that the investigation is proceeding on correct lines. It also furnishes corroboration of the evidence to be given by the witness in Court at the trial stage. It is thus important both for the investigating agency and for the accused. It would also be fair to the witness concerned as there may be a chance of his memory fading. Nevertheless, the result of test identification parade is not substantive evidence in law. When a stranger witness makes identification of an accused in Court, the Court, by way of caution or prudence, seeks some assurance before accepting the identification as correct. That assurance would be available from the positive result of test identification

> parade. Successful identification parade renders it safe for the court to act upon the identification made in Court. However, it cannot be said that absence of test identification parade is fatal in all cases. Assurance could be available from other sources and circumstances. It cannot be laid down as a principle of law that after lapse of a period, witness, would, in no case, be able to identify a person whom he had seen for the first time earlier. Witness might have had a fair opportunity of seeing the accused, of noting his features and appearance. There might have been something in the context, manner and circumstances of the meeting which would render it easy for the appearance of the accused to fix itself in the memory of the witness; something might have taken place shortly thereafter which would have enabled the witness to recollect the prior meeting and the person concerned. Presence of these features may also lend assurance to the court in acting on the identification made in court by a witness even in the absence of a test identification parade. The circumstances mentioned above are only illustrative and not exhaustive. Whether there are circumstances lending assurance to the conscience of the court in a given case would depend on examination of the facts and circumstances obtaining in that case."
>
> (*Emphasis supplied*)

943A. It is clear from the said judgment that the evidence in respect of test identification parade is not a substantive evidence. Substantive

evidence is the evidence given by the witness before the Court. Identification of the accused before Court is the only substantive evidence. The evidence of a witness that he had identified the accused during identification parade does not establish identity of accused during trial. The witness has to identify the accused in the Court to establish identity of the accused. Identification parade, as it is by now very well settled , is the step in the direction of investigation. It is mainly meant for Investigating officers to assure themselves that they are on the right track in their investigation and that they have apprehended right person. The suspect apprehended by the police is subjected to identification parade only with a view to ascertain whether the suspicion of the police is true or otherwise. It is generally used as corroborates piece of evidence.

944. Before I proceed to consider the evidence of eye-witnesses, panch witnesses and opinion of ballistic experts in respect of the incident where the accused No.1 and the deceased accused No.1 were directly involved, let me state here that during the course of appreciation of evidence I may also consider the admissions made by the accused No.1 in his statement before the Court on 20th and 21st July, 2009. During the course of

arguments a question had arisen whether the admissions made by the accused No.1 in his plea can be used against him. As far as proof of admissions u/s 21 of the Evidence Act is concerned, no further proof is required because the alleged admissions have been made before the Court. The only thing which I need to consider is whether these admissions can be used against the accused. After having carefully examined the law on the issue, I had come to the conclusion that the admissions made by the accused in his statement plea can be used against him. Therefore, he was given an opportunity to explain those admissions when his statement u/s 313 Cr.P.C. was recorded. The accused No.1, while giving his statement u/s 313 Cr.P.C., has stated that his confession as well as his statement before the Court were due to the pressure created on him by the police. Whether the confession of accused recorded by P.W.218 and the admissions made by the accused before me were voluntary or otherwise, is a matter of appreciation which I may embark upon later on. For the time being I am just reproducing some of the judgments which support my view that admissions made by the accused in his statement can be used against him. I will also be reproducing few of the judgments in which it was held that confession or admission is not necessarily to be accepted as a whole. The judge has

discretion to accept a part of confession or admission and to reject rest of it. What is necessary is that whole of the confession or admission shall be before the Court for determining as to which part is to be accepted and which part is to be rejected. The court has discretion to reject the part which in the opinion of the court is false or influenced by some extraneous reason and is not voluntary.

945. Two judgments on the point of admission are reported at **1972 Cri.L.J. (Supreme Court)11 in the matter of Kanda Padayachi Vs. State of Tamil Nadu** and **2006 Cri.L.J. 723 (Himachal Pradesh High Court) in the matter of Chhabu Ram Vs. State of H.P**. In the case reported at 1972 Cri.L.J. page-11, the Hon'ble Supreme Court at **para-13** has said as under :

> "**13**. It is true that in Queen-Empress v. Nana, (1889) ILR 14 Bom 260 (FB) the Bombay High Court, following Stephen's definition of confession, held that a statement suggesting the inference that the prisoner had committed the crime would amount to confession. Such a definition would no longer be accepted in the light of Pakala Narayana Swami's case 66 Ind App 66 : (AIR 1939 PC 47) and the approval of that decision by this Court in Palvinder Kaur's case. In State of U.P. v. Deoman

Upadhyaya 1961-1 SCR 14 at. p. 21 : (AIR 1960 SC 1125) Shah, J. as he then was) referred to a confession as a statement made by a person "stating or suggesting the inference that he had committed a crime". From that isolated observation, it is difficult to say whether he widened the definition than the one given by the Privy Council. But he did not include in the expression 'confession' an admission of a fact, however incriminating which by itself would not be enough to prove the guilt of the crime in question, although it might, together with the other evidence on record, lead to the conclusion of the guilt of the accused person. In a later case of A. Nagesia v. State of Bihar, AIR 1966 SC 119 at p. 123 Bachawat, J., after referring to Lord Atkin's observations in Pakala Narayana Swami's case and their approval in Palvinder Kaur's case, 1953 SCR 94 : (AIR 1952 SC 354) defined a confession as "an admission of the offence by a person charged with the offence". It is thus clear that an admission of a fact however incriminating, but not by itself establishing the guilt of the maker of such admission, would not amount to confession within the meaning of Sections 24 to 26 of the Evidence Act."

946. In the case reported at 2006 Cri.L.J.723 the Hon'ble Himachal Pradesh High Court has said in **para-13** and **14** as under :

"13. The above discussed evidence, when seen in the light of the admission, made by the appellant in the

statement, recorded after framing of the charge, in my view establishes the charge against the appellant to the hilt. As already noticed, while summing up the facts, the appellant stated in the statement recorded at the time when the charge was read out and explained to him that the prosecutrix had forced him to commit sexual intercourse with her and at that time he was under the influence of Devta (the village deity). Even independent of the aforesaid admission, the charge is established beyond reasonable doubt against the appellant by the above discussed evidence of the prosecution.

14. The statement made by the appellant at the time when the charge was read out and explained to him, has been used as admission in spite of the appellant's having claimed therein that he was forced to have the sexual intercourse, because this explanation, which appears to be exculpatory, is in the first instance not true, as evidence hereinabove is contrary to the plea. And, secondly, even if true, it does not take away his act out of the purview of Section 376 of the Indian Penal Code, because the prosecutrix was below 16 years of age at the time of the commission of the crime. Therefore, this part of his statement cannot be said to be exculpatory and consequently, it cannot be said that the statement has not been taken into account as a whole and exculpatory part of it has been excluded."

947. As far as acceptance of confession or admission in part and

rejection of rest of the part is concerned, I am supported in my view by three judgments of the Hon'ble Supreme Court. The first judgment which I want to refer is in the matter of **Nishi Kant Jha Vs. State of Bihar reported at 1968 Cri.L.J.(Supreme Court) 671**. The Hon'ble Supreme Court at **para-15** has said as under :

> **"15**. It was contended before us by learned counsel for the appellant that if the statement is to be considered at all, it must be taken as a whole and the court could not act upon one portion of it while rejecting the other. Counsel sought to rely on three judgement s of this, court in aid of his contention that a statement which contains any admission or confession must be considered as a whole and the court is not free to accept one part while rejecting the rest. In our view, the proposition stated so widely cannot be accepted. As Taylor puts it in his Law of Evidence (11th edition) Article 725 at page 502 that with regard to the general law of admissions, the first important rule is that
>
> "the whole statement containing the admissions must be taken together; for though some part of it may be favourable to the party, and the object is only to ascertain what he has conceded against himself, and what may therefore be presumed to be true, yet unless the whole is received, the true meaning of the part, which is evidence against him, cannot be ascertained. But though the whole of what he said at the same time, and relating to the same

> subject, must be given in evidence, it does not follow that all the parts of the statement should be regarded as equally deserving of credit; but the jury must consider, under the circumstances, how much of the entire statement they deem worthy of belief, including as well the facts asserted by the party in his own favour as those making against him."....

In the same judgment after having observed as stated in para-15, the Hon'ble Supreme Court, while coming to the conclusion of the judgment has said at **para-23** as under :

> **"23**.....In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

This judgment of Hon'ble Supreme Court was referred in the case of **Bhagwan Singh Rana Vs. The State of Haryana reported at 1976 Cri.L.J. (Supreme Court)1379** and in the case of **Keshoram Bora Vs. The State of Assam reported at 1978 Cri.L.J. (Supreme Court) 1089 (1)**.

In the case reported at **Cri.L.J.1976- 1379** the Hon'ble Supreme Court at

para-6 has said as under :

> **"6**. It has also been argued by Mr. Ramamurthy that the courts below erred in accepting those parts of the statements of the appellant in Exs. PB and PC which were inculpatory and in rejecting those parts which were exculpatory, and that, in doing so, the courts lost sight of the requirement of the law that such statements should either be accepted as a whole, or not at all. For this proposition our attention has been invited to Hanumant v. State of Madhya Pradesh, 1952 SCR 1091 : (AIR, 1952 SC 343) and Palvinder Kaur v. State of Punjab. 1953 SCR 94 : (AIR 1952 SC 354). The law on the point has however been laid down by this Court in Nishi Kant Jha v. State of Bihar. (1969) 2 SCR 1033 : (AIR 1969 SC 422) in which the two cases cited by Mr. Ramamurthy have been considered. After referring to Taylor's Law of Evidence and Roscoe's Criminal Evidence this Court has held that it is permissible to believe one part of a confessional statement, and to disbelieve another, and that it is enough if the whole of the confession is tendered in evidence so that it may be open to the court to reject the exculpatory part and to take inculpatory part into consideration if there is other evidence to prove its correctness...."

In the case reported at **1978 Cri.L.J. 1089 (1)** similar observations were made at **para-7** of the judgment which reads as under :

> **"7**.....It is submitted that an admission can be taken

> either as a whole or not at all. It is well settled that where a confession or an admission is separable there can be no objection to taking one part into consideration which appears to be true and reject the other part which is false. In the case of Nishi Kant Jha v. State of Bihar, (1969) 2 SCR 1033: (AIR 19-69 SC 422) this Court observed as follows, (at p. 430 of AIR):
>
> "In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."
>
> (Emphasis supplied)

948. The reading of these three judgments makes it absolutely clear that it is not necessary either whole of the confession or admission should be either/accepted or whole of the same shall be rejected. What is clear to me from the above stated three judgments is that considering the other evidence and circumstances,the Court may in its discretion decide as to which part of the confession or admission is voluntary and which part of the confession is not voluntary or not true and accordingly may take decision for acceptance of part of it and rejection of rest of it.

949. These judgments are being cited at this stage itself because when the evidence of eyewitness is appreciated and experts' evidence is taken in to consideration, I may also consider the confession of accused and admissions made by him. In that event a question would arise before me whether part of the confession can be rejected. The law on the point has been cited here itself to make it clear that the court has discretion to accept part of the confession or admission and reject rest of it.

950. The ld. Spl.P.P.Mr.Nikam during the course of his arguments has submitted that the prosecution has examined few of the witnesses who were present at C.S.T. railway station at the time of incident. Majority of the witnesses examined by the prosecution are police officers belonging to Government Railway Police or Railway Protection Force. It is submitted by the ld. Spl.P.P. that there is consistency in the evidence of almost all the witnesses. The time of explosion and place from where the accused No.1 and deceased accused No.1 started firing is almost similar in the evidence of all the witnesses who had seen the accused No.1 and deceased accused No.1 in the main hall. It is further submitted by ld. Spl.P.P. in his arguments that he might initially refer to the plea/statement made by the accused No.1 on

20th July, 2009 in respect of his presence at C.S.T. railway station . I would not prefer to take that approach for appreciation of evidence particularly when the eyewitnesses are available and when the prosecution relies upon their evidence. The proper course for the court is to appreciate the evidence of witnesses in respect of incident at CST railway station, Cama (In & Out), Barrister Rajani Patel Road and Vinoli Chowpaty. To examine the evidence of eyewitnesses it would not be correct approach to take support from the admissions made by the accused and confessional statement of the accused.

951. The evidence of prosecution witnesses in respect of incident at CST railway station and other incidents where the accused No.1 and deceased accused No.1-Abu Ismail were directly involved, has already been summed up by me in the earlier part of judgment and it is not necessary to reproduce the said evidence. What is necessary to be seen at this stage is whether in the cross-examination of these witnesses any doubt about correctness of the evidence has been created or whether there are major contradictions or omissions inter se evidence of witnesses which may create doubt about correctness of evidence of particular witness. The court

will also examine whether there are major contradictions and omissions in the previous statements of the witnesses recorded by the police. I will take up evidence of these witnesses in the order same has been summed up by me earlier.

952. At the initial stage of summing-up evidence of prosecution witnesses of C.S.T.railway station incident, I had taken up evidence of P.W.50-Mr.Natwarlal Gigaji Rotawan and P.W.51-Ms.Devika Natwarlal Rotawan. Both the witnesses have identified the accused No.1 and have described as to how the accused No.1 and his associate had taken part in the incident and how they had indulged in to indiscriminate firing and lobbing of hand-grenades. I have already stated that there is nothing in the cross-examination of P.W.50 which may create doubt about his evidence. I have also stated that the ld.advocate for the accused had targeted this witness to demonstrate weakness of the police which is obviously not helping the accused in any manner. As far as P.W.51 is concerned, she has not been cross-examined at all . However, the ld.Advocate Mr.Pawar during the course of his arguments had submitted that P.W.51 was a child witness and therefore her evidence has to be evaluated with great care and caution. I am

in full agreement with ld.Advocate Mr.Pawar that evidence of child witness has to be examined carefully as there are always chances of the child being tutored. Ld.Advocate Mr.Pawar had also invited my attention to the fact that P.W.51 had not taken part in the identification parade. For this reason also her evidence, according to Mr.Pawar, needed to be rejected. There are many other witnesses who have identified the accused No.1 to be one of the two persons who had indulged into indiscriminate firing at C.S.T.railway station but had not taken part in the identification parades. I will not accept the arguments that the evidence of such witnesses should be thrown away only because they did not take part in the test identification parades. As can be seen from the observation in the case of **Chandran and another Vs. State of Kerala reported at 1986 Cri.L.J. 1865 (1)** , the act of test identification parade is a step in the direction of investigation and there is no rule of law that evidence of witness who did not take part in the test identification parade shall be thrown away on that count itself. The evidence before the Court is substantive evidence. The evidence given by this girl (PW 51) has not been challenged and therefore there is no reason to disbelieve her evidence. There are no inherent contradictions in her examination-in-chief which may create doubt about her evidence. The only thing which I found

in her examination-in-chief is that the incident has not been narrated by this girl in the order seen by her. She had narrated the incident of receiving bullet injury first and had identified the accused No.1 later on. Only because the incident has not been narrated in orderly manner it cannot be said that the witness had no opportunity to see the accused No.1. Since there is no cross-examination and even suggestion to the witness that she had not seen the accused No.1 and that she had been tutored either by her parents or by police to give evidence, I do not find any reason to reject evidence of P.W.51.

953. As far as other witnesses are concerned i.e. P.W.52, P.W.53, P.W.87, P.W.88, P.W.89, P.W.64, P.W.56, P.W.69, P.W.63, P.W.55, P.W.49, P.W.60, P.W.58, P.W.62 , P.W.68, P.W.66, P.W.59, P.W.54, P.W.65, P.W.61 and P.W.102, what can be seen from cross-examination of these witnesses is that there are some infirmities in the evidence of these witnesses. But it can be seen that none of the infirmities go to the root of the case to make me disbelieve the evidence of any of the witnesses. It may be noted here that accused were not known to the witnesses at all. No doubt the incident had occurred suddenly and there may be some injured persons

who could not have seen the accused, that by itself cannot be a reason to come to the conclusion that none of the witnesses could have seen the accused. No doubt, most of the witnesses have described the accused No.1 as a shorter fellow and his associate as taller fellow. A lot of issue had been made of this description also to advance the argument that the witnesses had been tutored to describe the two accused as shorter and taller (*Butka & Lamboo*). In this regard it may be mentioned here that description given by the witnesses would clearly show that height of the accused No.1 was much lesser than the height of his associate -deceased accused No.1-Abu Ismail. Since there was noticeable difference in height of the accused No.1 and the deceased accused No.1, it was but natural that the witnesses described them as *Butka & Lamboo* . In day to day life also when we see shorter fellow we call him *Butka* and therefore description given by the witnesses cannot be said to be unnatural.

954. No doubt some of the witnesses have not taken part in the test identification parade and they have identified the accused in the court. I have already stated that the witness who had not taken part in the identification parade cannot be condemned for that reason only. The

identification parade is for the purpose of deciding whether the investigation was on right track and whether the police had apprehended a right person. The identification parade is not primarily meant for corroboration of substantive evidence of the witnesses given in the court.

955. Ld. Advocate Mr.Pawar in his written arguments has taken lot of pains to highlight omissions and contradictions in the evidence of witnesses. But let me stated here that in majority of the cases the omissions have come on record because they have been admitted to have omitted to be stated in the police statement. Other omissions have not been proved because no such questions were put to the Investigating Officers. The omissions which have come on record are of very minor nature. I may state few of the omissions highlighted by Ld.Advocate Mr.Pawar in his arguments and the improbabilities on which Mr.Pawar wanted to bank upon are :

1) P.W.51 has stated that she was brought to the court by her father P.W.50.
2) P.W.52 had stated that he had told police that accused No.1 was firing for fifteen minutes.
3) P.W.52 had not stated before the police that the accused

No.1 was in joyous mood when he was firing in the main hall.

4) P.W.52 was not able to state as to what was the Islamic date on the date of incident though he had stated that he had come to say Alvida to his brother-in-law who was to leave for Haj.

5) P.W.52 was not able to say as to how many hand grenades were thrown.

6) P.W.53 has stated before the police that accused No.1 and his companion had been proceeding towards local line while firing at the passengers in main hall. He was unable to assign any reason as to why this fact has not been recorded in his police statement.

These are some of the omissions and contradictions of the series of such omissions cited in the written arguments. I need not reproduce all of them because to my mind all of them are of very minor nature and some of them are not even proved though the arguments are based upon these omissions. It may be stated here that no arguments can be entertained on the basis of omissions in the earlier statement which are not proved by cross-examining the concerned police officer. The omissions, even if proved, would not have been of much importance.

956. In fact the incident of CST railway station has been so clearly described by P.W.49-Mr.Bharat Bhosale, P.W.60-Ms.Geetanjali Gurav, P.W.58-Mr.Manmath Nardele, P.W.62-Mr.Sudama Aba Pandarkar, P.W.68-Mr.Kirankumar Bhosale, P.W.66-Mr.Sandeep Khiratkar, P.W.59-Mr.Harshad Punju Patil and P.W.54-Mr.Jillu Yadav that there is no necessity for court to examine evidence of any other witness. In my view evidence of these witnesses is so clear , unambiguous and clinching that the evidence clinches the whole issue of presence of accused No.1 at CST railway station main hall and incident of firing and lobbing of hand grenades. Apart from evidence of these witnesses, evidence of two photographers P.W.61-Mr.Sabastian D'souza and P.W.102-Mr.Sriram Vernekar is also absolutely free from any blemish. These witnesses are absolutely independent witnesses, they had nothing to do with the police and there was no reason for them to make any false statement. In fact, to my mind the two photographers P.W.61-Mr.Sabastian Barnal D 'Souza and P.W.102-Mr.Sriram Ramakant Vernekar are the star witnesses of the incident at C.S.T.railway station. These are the two witnesses who had purposefully followed the accused No.1 and the deceased accused No.1 and had been very curious to see their faces and movements minutely so that

they could take their photographs at various places. It is in these circumstances that these two witnesses had every opportunity to memorize faces and physics of the accused No.1 and the deceased accused No.1. In respect of other witnesses who had suffered injuries or who had seen the accused No.1 and deceased accused No.1 firing the throwing hand grenades, one may argue that the witnesses were taken by surprise and it was possible that they might not have opportunity to see the accused properly. However, the court has accepted evidence of those witnesses also. But as stated earlier, the strongest evidence in the form of eyewitnesses is the evidence of P.W.61 and P.W.102. Though they had not taken part in the identification parade, their evidence inspired so much confidence in the mind of the court that the court did not see any reason to exclude even a small portion of their evidence. Similarly, the evidence of P.W.65-Mr.Vishnu Zende who was on the mezzanine floor in the announcement room, is also free from any doubt. In fact this witness had a better view of the waiting hall of local railway station. I have personally seen the location of announcement room and I am of the view that P.W.65 is the witness who could have seen the accused better than any other witness.

957. It is well known that CST railway station is very well lit as there are number of high power bulbs installed in the roof and other prime spots of the station. The light at CST railway station during the course of night is as good as day light and it could not have been difficult for any witness to note features of the accused No.1 and his associate, the deceased accused No.1.

958. In my view there is no reason to disbelieve evidence of any of the witnesses examined by the prosecution in this regard. It may be noted here that an issue has been raised in respect of identification parades i.e. independent panch witnesses have not been examined. In my view it should not be fatal to the prosecution inasmuch as the Special Executive Officer himself is an independent person and is not part of the police machinery. He is appointed by the Government of Maharashtra for holding identification parades and recording dying declarations. This arrangement of appointment of Spl. Executive officers is made only with a view to provide independent persons to the police for recording parade memos and recording dying declarations. This also helps in avoiding appearance of judicial officers in the court . The Hon'ble High Court has also discouraged

judicial officers taking part in the investigation. The guidelines issued by the Hon'ble High Court for holding identification parades clearly state that two independent panch witnesses shall be called by the Special Executive Officer. The Spl.Executive officer Mr.Vichare who has been examined as P.W.265, has clearly stated that during the course of identification parades held by him two independent panch witnesses were present. The witnesses who have identified the accused No.1 in the identification parades are P.W.49, P.W.68, P.W.66, P.W.55, P.W.58, P.W.54,P.W.62, P.W.59 and P.W.57 with respect to the incident at C.S.T. railway station. Some of the witnesses have also stated in their evidence that panch witnesses were present . Moreover, there is no suggestion in the cross-examination that the panch witnesses were not present during the course of identification parade. On the contrary, so many questions have been asked in the cross-examination to show irregularities committed by the S.E.O. in respect of role of panch witnesses in the identification parade. So what is clear from the evidence of P.W.265 is that two independent panch witnesses were present during the course of identification parades. It is a fact that none of the panch witnesses has been examined as a witness in the court. The ld. Spl. has relied upon judgment of **Hon'ble Bombay High Court in**

Cri.Appeal No.655/2000 Rajesh Vs. State of Maharashtra and has pointed out that in the said case also panch witness was not examined and the identification parade during the course of investigation was accepted by the court on the basis of evidence given by the S.E.O. As such non-examination of independent panch witness shall not be the reason to discard evidence of eyewitness. The same view is taken by the Hon'ble High Court in another case. The said case is reported at **2009 All M.R. (Cri) 864** P.W.265 has stated that the accused No.1 was identified during the course of identification parade held pending investigation. I have carefully gone through the cross-examination of P.W.265 . Some of the admissions made by P.W.265 of which the ld. advocate Mr.Pawar for the accused No.1 wanted to take advantage are as under:

1) Panch witnesses had not put date below their signatures.

2) P.W.265 had not asked the accused No.1 whether he wanted his lawyer to remain present at the time of identification.

3) Two of the panch witnesses of all the panch witnesses who had participated in various identification parades, were not knowing Marathi (the memorandum of identification parades are written in Marathi)

4) The last notes of memorandums were written outside the prison premises.

5) No acknowledgment was taken from the I.O. in token of investigating officer having received the identification memorandums.

6) The accused No.1 was wearing the same clothes on 27th & 28th December, 2008 when various identification parades were held.

7) The accused No.1 was standing in between dummy Nos. 3 and 4 in five identification parades out of eleven.

959. In this regard it is sufficient to be stated here that P.W.265-Mr.Vichare, Spl.E.O. has stated that the accused No.1 was given an option at the time of each and every identification parade to change his position amongst the dummies and to change his clothes. He refused to opt for change of clothes or change of his position amongst the dummies. Therefore, this admission on the part of P.W.265 does not help the accused No.1 in any manner. As such I have come to the conclusion that on the basis of evidence of eye-witnesses the prosecution has proved beyond all reasonable doubts that accused No.1 along with his one associate had

entered CST railway station from the entry which is by the side of public toilet, he and his associate fired and lobbed hand-grenades in waiting hall of main line, they killed many persons and had injured many of them. Thereafter they proceeded further in the common passage where they killed police officer Mr.Shashikant Shinde , book stall owner and others. They had also fired at police station in which one of the police officer was injured, After that both of them had gone to waiting hall of local railway station and exited from foot over bridge via platform No.1.

960. As far as evidence of the witnesses with regard to they witnessing photographs on television and in news papers is concerned, though most of the witnesses have stated that they had no occasion to see the photographs of accused No.1, I am not inclined to believe that part of evidence. In my opinion most of the witnesses must have seen the photographs of accused No.1 on television or in the news papers. The point which needs to be considered is whether the same has vitiated substantive evidence of the witnesses given in the court. In the first place it may be stated here that the photographs were not purposely shown to the witnesses. They were so widely published that a large number of population all over

the world must have seen the photograph of accused No.1. Secondly, there is nothing in the cross examination to show that it is because of photographs that the witnesses have identified the accused No.1. Most of the witnesses have seen the accused No.1 from very close quarters during incident. Therefore, they had sufficient opportunity to remember face and physic of the accused No.1.

961. I will also not attach much importance to the C.T.T.V. footage of which C.D. was produced in the court because visuals are of very very poor quality. At the same time in view of the oral evidence of P.W.61 Mr.Sabastian D'souza and P.W.102 Mr.Sriram Vernekar, I do not think it necessary to refer to the photographs snapped by these two photographers and produced in the court. Since the witnesses have seen the accused No.1 in the light which was equivalent to floodlight, there is hardly any scope for considering the evidence which can be termed as of secondary nature. The memory cards were not seized during investigation. They were produced before the court during the evidence of these witnesses by the witnesses themselves. The safe custody of memory cards and the question of tampering with the records are necessary points to be answered if those

photographs are to be taken into consideration. However, to my mind, there is no necessity to go into the details thereof because there is more than ample evidence to prove the presence of accused at C.S.T. Railway Station and the role of accused No.1 and his associate in the firing and explosion of hand grenades.

962. As far as identity of the deceased accused No.1 Abu Ismail is concerned, the dead body of said deceased was identified by P.W.55 Mr.Dhananjay Gawali and P.W.58 Mr.Manmath Nardale during the course of investigation. Both the witnesses and the Special Executive Officer P.W.251 Mr.Navinchandra Kandalkar and Mortury Assistant P.W.263 Mr.Harshal Chendvankar have given evidence in that regard. Though the dead bodies were preserved, the prosecution had not made any attempt to get the dead bodies identified during the course of trial. Therefore, to my mind, that part of evidence can be accepted only to establish that one dead body was identified by the two witnesses during identification parade of dead bodies.

963. As far as cross examination of PW 251 Mr.Kandalkar, the

Special Executive Officer is concerned, I do not see anything in the cross examination to doubt that one dead body was identified by P.W. 55 and P.W. 58.

964. I will also not give importance to the identification of dead body of deceased accused No.1 on the basis of identity card Art.61 because the quality of photograph on the identity card is also very poor.

965. The identity of deceased accused No.1 could be established on the basis of confession of the accused No.1 and his statement before the court Ex.531 corroborated by other evidence adduced by the prosecution. It is not necessary that each and every statement in the confession shall be independently corroborated. General corroboration inspires confidence.

966. At this stage, I find it necessary to be noted here that I will record my reasons for accepting the confession of the accused No.1 to be voluntary and true at later stage. Suffice to mention here that the major portion of his confession is found to be voluntary and true. Only very little portion of his confession is found to be not acceptable which I will be

stating at a later stage. The accused No.1 in his confession dt.20th February 2008 Ex.810 has stated that the deceased accused No.1 Abu Ismail was inducted in the team as five out of thirteen trainees were deputed for fidaeen attack at Kashmir. The deceased accused No.1 was inducted alongwith two others i.e. deceased accused Nos.7 & 8. The accused No.1 has further stated that out of five pairs of the accused, first pair was of the accused No.1 and the deceased accused No.1. He is also narrated as to how the accused No.1 and deceased accused No.1 reached C.S.T.M. from Badhwar Park and has to how they had thrown hand grenades and had fired indiscriminately at the passengers. The accused No.1 has further narrated as to how they went out of C.S.T.M. and reached Vinoly Chaupathy where they were intercepted by the police. This confession of the accused No.1 in respect of role of the deceased accused No.1 Abu Ismail is generally corroborated by the evidence of eye witnesses and is further corroborated by the recovery of weapons and opinion of Ballistic Experts. Therefore, in my view, the identity of the deceased accused No.1 is established on the basis of confession of the accused No.1. It is further confirmed by the admission of accused No.1 before this court when he had opened his statement with the words “Myself and Abu Ismail both had done firing on public at C.S.T. by

means of guns which have been produced in the court. We continued to fire. Abu Ismail was throwing grenades also". As such, in my view, the identity of deceased accused no.1 is established by confession and admission of the accused No.1.

967. Apart from the eye witnesses version the prosecution has also adduced the evidence in the form of seizure of empty cartridge cases of 7.62 mm short rifles and empty magazines of 7.62 mm short rifles. It is the case of prosecution that the accused No.1 and the nine deceased accused were carrying one 7.62 mm short rifle each and they were also carrying large number of live cartridges. The accused No.1 in his confession has given the details of arms and ammunitions carried by them and as to how they were distributed amongst themselves.

968. The prosecution has examined P.W.70 Mr.Sarnobat and PW No.73 PI Mr.Gore to establish as to how many empty cartridge cases and empty magazines were seized from the spot at C.S.T. during the course of panchanama. Both the witnesses have also stated that they had collected samples of clay from the pits allegedly created because of explosion of hand

grenades.

969. I have also reproduced evidence of the police officers who had forwarded the articles to the laboratory. The evidence of carrier of articles to the laboratory has also been discussed in detail. The prosecution has examined three Ballistic experts i.e. P.W.150, 151 and 157. On the basis of evidence of police officers, panch witnesses, carriers and the Ballistic Experts, I have prepared a table to show the summary of evidence of these witnesses in respect of recovered empty cartridge cases. The said table is inserted in the Judgment as Table No.9. Similarly a table of live cartridges is inserted as Table No.10. The details showing recovery of rifle and pistol magazines is Table No.11 and details of explosive seized by the police and the opinion of the experts is in Table No.12. All these tables have already been inserted in the Judgment hereinabove. It can be seen from the Table No.9 that more than one hundred empty cartridge cases were seized during the panchanamas Ex.257 and Ex.259 drawn by Police Inspector Mr.Gore in presence of panch witnesses. The details are in Col.No.3 of the table. If one goes through Col.No.5 of the table, it can be seen that almost all empties recovered at C.S.T. had tallied with either test fire cartridge cases

from AK 47 rifle (Art.10) or test fired cartridge cases from AK 47 rifle (Art.427). At this stage it may be noted that AK-47 rifle is normally called as 7.62 mm short rifle by the experts.

970. The rifle Art.10 was carried by accused No.1 and rifle Art.427 was carried by the deceased accused No.1. Rifle Art.10 was seized under the panchanama Ex.80 at Chaupathy. The PW 1,2 & 3 are the eye witnesses and PW No.10 Mr.Pawar is the panch witnesses in whose presence rifle Art.10 was seized after interception of the accd.No.1 and the deceased accused No.1. The rifle has been identified by most of the witnesses to be belonging to accused No.1. The rifle Art.427 was seized from Qualis vehicle. It has come in the evidence that the deceased Ashok Kamate was carrying AK 47 rifle when he was travelling in Qualis vehicle alongwith other officers. There is sufficient evidence to prove that the said rifle was found in leg space of Skoda vehicle and there is more than sufficient evidence to prove that Art.427 was recovered from Qualis vehicle at Barrister Rajani Patel Road. The whole sequence of facts narrated by the witnesses will lead to only one conclusion that the deceased accused No.1 had left rifle Art.427 in Qualis vehicle and picked up rifle (Art.12) of

deceased Mr.Kamate which was later on seized from leg space of Skoda vehicle.

971. As such there is more than sufficient evidence to establish that all the empty cartridge cases recovered by the police from C.S.T. were fired from either of the rifles carried by accused No.1 and the deceased accused No.1.

972. The Table No.10 would show that live cartridges recovered under panchanamas Ex.257 and Ex.259 were randomly checked and they were found to be live. All the live cartridges seized by the police at C.S.T. were 7.62 mm live cartridges. The Table No.11 shows the seizure of empty magazines of 7.62 mm rifles.

973. The sample soil seized from C.S.T. under panchanama Ex.257 contained TNT. It is stated by the expert i.e. PW 172 that TNT is highly explosive substance. The safety pins of hand grenades contained nitrite radical (post explosion residues)

974. As such the prosecution has proved beyond reasonable doubt that accused No.1 and deceased accused No.1 had used 7.62 mm rifles Art.10 and Art.427 respectively at the time of commission of offence at C.S.T. Since there is more than sufficient evidence to connect both the weapons with accused No.1 and deceased accused No.1, it can safely be said that the victims who died at C.S.T. were killed by either accused No.1 or by deceased accused No.1. The evidence of eye witnesses coupled with recovery of the articles mentioned hereinabove proves this particular fact beyond reasonable doubt. It is nobody's case that there was anybody else who had also indulged into the similar type of firing. It is also not the case of accused that the police at C.S.T. were carrying 7.62 short mm rifles. The evidence discloses that the police officials were carrying 9 mm pistols , 303 rifles and carbines. 7.62 mm cartridge cannot be fired from any of these weapons. Therefore, it is the accused No.1 and deceased accused No.1 who had 7.62 mm rifles. They are, therefore, responsible for massacre at C.S.T.

975. Apart from the evidence in the form of eye-witness version and recovery of empty cartridge cases tallying with 7.62 mm short rifle carried by the accused No.1 and the deceased accused No.1, there is evidence in the

form of confession of accused No.1 and admission made by him before this Court on 20th and 21st July, 2009 when he wanted to plead guilty. In his confessional statement the accused No.1 has clearly stated that the accused No.1 himself and the deceased accused No.1-Abu Ismail had fired at the passengers in the waiting hall of CST railway station. He has also admitted that the deceased accused No.1 had thrown hand-grenades. Accused No.1 has further stated that due to firing, people started running helter-skelter and within a few minutes the waiting hall was empty. He has admitted to have faced firing on the part of police and has described as to how both of them had gone out of the CST railway station via foot over bridge. The accused No.1 has admitted that he had emptied six magazines at CST railway station while firing at the passengers. In his statement before me also accused No.1 has admitted this fact. He has also admitted that the pictures shown in CD is correct record of the incident of CST railway station. Though the visuals have been rejected by me as they were very blurred, but in view of the statement made by accused No.1 who himself has identified his photo in the CCTV visuals, there is no harm to accept the same to that extent. In any event the evidence adduced by the prosecution in the form of CCTV visuals hardly makes any difference to the case of prosecution inasmuch as there is

other overwhelming evidence in the form of evidence of eye-witnesses , recovery of large number of empties of fired cartridge cases of 7.62 mm short rifle of the accused No.1 and the deceased accused No.1.The confession of the accused No.1 and his statement is additional evidence which reinforce the prosecution case as far as firing at CST railway station is concerned.

976. As already stated by me, there was nobody else who was holding 7.62 mm short rifle. The evidence is strong enough to come to the conclusion that the deaths at CST railway station had been caused either by the accused No.1 or by the deceased accused No.1. Some of the cases in which bullets were retrieved from dead bodies of the deceased and those bullets had tallied with the bullets test fired from rifle of accused No.1 have been dealt with under independent charge.

977. Thus the prosecution has established beyond reasonable doubts that the either accused No.1 or the deceased accused No.1 had caused injuries to the deceased at Sr.No.77 to 128 of Table No.2 except the deceased at Sr.No.83, 84, 86, 93 and 112 whose cases will be considered

separately.

978. As far as point No.12 i.e. intention part of the offence and sharing thereof by the accused No.1 and deceased accused No.1 is concerned, I will be considered that aspect at later stage. At this stage let me examine the remaining part of Point No.11 where I have to give finding whether the prosecution has proved that the deceased at Sr.No.30 to 36, 21 to 29, 72 and 73 in Table No.2 were also injured either by accused No.1 or the deceased accused No.1. As far as place of the incident is concerned, a finding in that regard has already been recorded. Finding with respect to nature of injuries has also been recorded.

979. According to prosecution case the deceased at Sr.No.30 & 31 had died in the incident of 6th floor of Cama Hospital. The deceased at Sr.No.32 and 33 had died at the gate of Cama Hospital and the deceased at Sr.No.34,35 and 36 had died at Badruddin Tayabaji Road. The place of death of the deceased is shown as Cama In in the Table No.2 for the sake of convenience and brevity.

980. The prosecution has examined PW 101 Mrs.Anjali Kulathe, PW 103 Mr.Bharat Waghela, PW 105 Mr.Sandeep Waghela, PW 106 - Mr. Harishchandra Shrivardhankar, PW 107 Mr.Raosaheb Funde, PW 108 Mr.Thomas Uledhar, PW 109 Mr.Chandrakant Tikhe, PW 111 Mr.Kailash Ghegadmal, PW 112 Mr.Vijay Abaji Shinde, PW 118 Mr.Sadanand Date to establish that the accused No.1 and deceased accd.No1 Abu Ismail had caused deaths of deceased at Sr.No.30 to 36. The evidence of these witnesses has already been stated by me in detail. However, to recapitulate it may be stated that PW 101 Mrs.Anjali Kulthe had seen the accused No.1 and deceased accused No.1 entering the building and firing from the gate towards Cama Hospital. She has identified the accused No.1 in the court. She had seen two persons including accused No.1 and the taller person climbing steel gate of the hospital situated on back side. PW 103 Mr.Bharat Waghela and PW 105 Mr.Sandeep Waghela both have narrated the incident which occurred at Badruddin Tayabji Road. Both of them had stated as to how the accused No.1 and his associate had been firing. PW 103 had seen the accused No.1 firing at Gupta Bhelwala i.e. deceased at Sr.No.36. He had seen the said Gupta collapsing on the spot due to bullet shot. He had also seen accused No.1 firing at his brother's house. He had carried his

brother in an injured condition to G.T.Hospital, where his brother was declared dead. His brother's name is at Sr.No.34 in Table No.2. This witness has also stated about arrival of dead body of Bhagan Shinde at G.T.Hospital who was declared dead before admission. It has come in the evidence that Bhagan Shinde was present in the lane when the accused No.1 and his associate was started firing. This witness has identified the photograph of deceased accused No.1 on the identity card Art.61. PW 105 had also seen the accused No.1 firing at Gupta Bhelwala. He had identified accused No.1 in TIP dt.27th December 2008. As far as the entry of accused No.1 and deceased accused No.1 in Cama Hospital and death of two security guards at the gate of Cama Hospital is concerned, we may refer to the evidence of PW 112 who had seen the two dead bodies at the gate of the hospital when he had gone to the hospital after receiving the message of incident of firing. These two dead bodies belonged to the deceased at Sr.No.32 Baban Ughade and deceased at Sr.No.33 Bhanu Narkar. PW 111 Mr.Kailash Ghegadmal has also stated that he had seen the deceased at Sr.No.32 and 33 near the entrance of the hospital. PW 111 knew both the deceased because PW 111 himself was employee of Cama Hospital. Even if one enters Hospital premises from backside, there is only one entrance to

enter the building. The circumstances clearly establish that the deceased at Sr.No.32 & 33 were shot by either the accused No.1 or the deceased accused No.1. From the evidence of witnesses it is not possible to lead to any other conclusion. Either accused No.1 or the deceased accused No.1 must have shot dead the deceased at Sr.No.32 & 33 at entrance of building of Cama Hospital.

981. As far as death of deceased at Sr.No.30 Prakash More and deceased at Sr.No.31 Vijay Khandekar is concerned, we may refer the evidence of PW 112. He has stated in his evidence that the team of police officers led by Addl.C.P. Mr.Date had reached 6th floor of Cama Hospital. He has also narrated the incident of exchange of fire between the attackers and the police . This witness however, has not been able to see the attackers. Similarly PW 118 had also not seen the attackers. However, the other witnesses who were present in the wards of the hospital have seen the accused No.1 and the deceased accused No.1 very closely. The prosecution wanted to establish the presence of accused No.1 and deceased accused No.1 on the basis of evidence of PW 106, PW 107, PW 108 and PW 109. Accused No.1 had been identified by PW 107 and PW 108 to be the same

person who had entered the hospital and who had confined PW 107 and others in the bathroom. PW 107 has even seen the accused No.1 firing at the deceased at Sr.No. 32 Mr.Ughade. He has identified accused No.1 during the course of his evidence. The PW 109 is an employee of Cama Hospital who had described as to how the incident at 6th floor had occurred and how there was exchange of fire between the police and the two accused. This witness has identified the accused No.1 to be the same one out of the two accused. This witness has identified accused No.1 in the identification parade dt.27th December 2008. The accused No.1 has been identified by PW 111 Mr.Kailash Ghegadmal who was also present on 6th floor of Cama Hospital when the incident had occurred. The accd.No.1 was identified by this witness in the identification parade. PW 111 had no occasion to see the associate of accused No.1. The PW 108 and PW 123 have stated as to how both the witnesses and their friend Mr.Soman and PW 107 were confined in the bathroom by the accused No.1. The witness No.108 and 123 have identified the accused No.1 to be one of the two persons who had entered Cama Hospital and had confined four persons including these two witnesses in the bathroom. PW No.106 Harischandra Shrivardhankar was proceeding to C.S.T. from Metro Junction. He had entered Cama Hospital because had

learnt that there was an incident of firing at C.S.T. Rly.Stn. The Cama Hospital is in between Metro Junction and C.S.T. on Mahapalika Road. It can be seen from evidence of this witness that the accused No.1 and deceased accused No.1 had already entered Cama Hopsital before his arrival. There was complete silence when this witness entered in the hospital. He was assaulted by the deceased accused No.1 Abu Ismail. He had identified his photograph on the identity card Art.61. At this stage, I may state that identity card has been proved to be seized from clothes of the deceased accused No.1 at Nair Hospital. The question of identity of the deceased accused No. 1 on the basis of photograph had already been discussed by me. I will not attach much importance to the identification of the deceased accused No.1 on the basis of photograph. Almost all witnesses who have identified the photograph have casually seen the identity card before deposing that the photograph belonged to the deceased accused No.1. It appears to me that it was set in their mind that unless they identify the photograph the accused might go in punished. Here the duty of court comes into play. The evidence of any witness cannot be rejected only because a smaller portion thereof has been found to be not correct or false. In this regard I may refer to the Judgment of **Hon'ble Supreme Court in the matter of Jayaseelan v. State of Tamil Nadu**

reported at 2009 CRI. L. J. 1758 where it is stated in **para-5** of the judgment:

> **"5**. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See Nisar Ali v. The State of Uttar Pradesh [AIR 1957 SC 366]. In a given case,

it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurucharan Singh and Anr. v. State of Punjab [AIR 1956 SC 460]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh [1972 (3) SCC 751] and Ugar Ahir and Ors. v. The State of Bihar [AIR 1965 SC 277]. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing

essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh [AIR 1954 SC 15] and Balaka Singh and Ors. v. The State of Punjab [1975 (4) SCC 511]. As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. [1981 (2) SCC 75x2], nor- @page-CriLJ1761 mal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be.

Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. [2002 (6) SCC 81] and in Sucha Singh v. State of Punjab [2003 (7) SCC 643]. It was further illuminated in the Zahira H. Sheikh v. State of Gujarat [2004 (4) SCC 158], Ram Udgar Singh v. State of Bihar [2004(10) SCC 443], Gorle S. Naidu v. State of Andhra Pradesh [2003 (12) SCC 449], Gubbala Venugopalswamy v. State of Andhra Pradesh [2004 (10) SCC 120] and in Syed Ibrahim v. State of A.P. (2006(10)SCC 601)".

982. The court has to make an honest attempt to disengage the truth from falsehood and to separate the grain from chaff. In an effort in this direction I have carefully examined the evidence of witnesses in this regard and have come to the conclusion that only because the identification by photograph is rejected the whole of the evidence of such witnesses cannot be discarded. Most of the witnesses are found to be truthful in all material particulars. As far as identity of the deceased accused No.1 is concerned, I have already discussed while considering the evidence of witnesses of C.S.T. And I have come to the conclusion that the identity of deceased accused No.1 has been established on the basis of confession of accused No.1 recorded by the Magistrate and statement of accused No.1 recorded by me. A major portion of his statement/plea has been treated to be admission under section 21 of Evidence Act.

983. The evidence of witnesses of **Cama In** incident has been assailed by Ld.Adv.Mr.Pawar by pointing out certain discrepancies in evidence of witnesses. I have gone through the written arguments of Mr.Pawar which are in quite detail. However, I do not find anything of the sort which needs serious consideration because there are no serious

infirmities in the evidence of these witnesses. The minor discrepancies and contradictions inter se are bound to occur as the incident was so unexpected and so terrifying that it is unwise to expect narration of incident from the witnesses with mathematical precision. Though the two witnesses describing the same incident were at one and the same place, it will be injustice on the witnesses to discard their evidence because their evidence does not tally at few places. It is well known that the reaction of each and every witness after particular incident is not necessarily the same. The different witnesses react differently and therefore, memorizing the incident by the witnesses and reproducing the same at the later stage cannot be expected to be the same or similar. I do not think that any of the arguments submitted on behalf of accused No.1 by Ld.Adv.Mr. Pawar create doubt about genuineness and correctness of the witnesses pertaining to Cama In incident. In my view their evidence, except the identification of the deceased accused No.1 on the basis of photograph, has to be accepted in toto.

984. The closer scrutiny of the witnesses who were present outside at Cama Hospital and B.T.Road and witnesses who had seen the accused

No.1 in Cama Hospital alongwith his associate coupled with confession of accused No.1 and the admission made by him before me would prove beyond all reasonable doubt that the accused No.1 and the deceased accused No.1 had fired at the deceased at Sr.No.34, 35 and 36 in B.T.Road and they had fired at deceased at Sr.No.32 and 33 within the premises of Cama Hospital and they had also fired and thrown hand grenades at deceased at Sr.No.30 and 31 at 6th floor of Cama Hospital.

985. Apart from the oral evidence of the witnesses, the prosecution has also recovered empty cartridge cases from the spot under the panchanamas **Ex.486** and **Ex.424.** The evidence of panch witnesses and police officers who disclosed that firing was done by the accused No.1 and deceased accused No.1 from the terrace on 6th floor of Cama Hospital. They had also lobbed hand grenades on police party with resulted in death of the deceased at Sr.No.30 & 31. The evidence of PW 118 Mr.Sadanand Date who was working as Addl.C.P. and heading the police team at that time has also described the incident in detail. However, since he was left alone on 6th floor and himself was badly injured and since he had taken position in one of the corners he could not see faces of the two persons who had been firing

from terrace of the building. He has therefore, not been able to identify the accused No.1. His evidence in fact has graphically described the whole incident of 6th floor. Unfortunately majority of his team members suffered major injuries and two of them had died. Otherwise the accused No.1 and deceased accused No.1 were in fact in a landlocked situation and could have been caught on the terrace itself had the police reinforcement reached 6th floor within time.

986. The presence of the witnesses in B.T.Road and Cama Hospital is found to be absolutely natural. The PW 103, PW 105 are residents of B.T.Road and therefore, they were naturally present there. PW 101 was working as Staff Nurse at Cama hospital. PW 106 had entered Cama Hospital after learning that there was incident of firing at C.S.T. The incident of firing at C.S.T. had already discussed by me hereinabove. PW 107 is employee of Cama Hospital. PW 109 and PW 111 are also employee of Cama Hospital. PW 108 and PW 123 had visited Cama Hospital because wife of PW 123 was admitted in the hospital.

987. As such I do not see any scope for doubting evidence of these

witnesses. The prosecution has therefore, established that accused No.1 and deceased accused No.1 had caused injuries described in Col.No.4 to the deceased at Sr.No.30 to 36 in Table No.2.

988. Reverting back to point No.11, it can be seen is that the court has now to consider whether the injuries described in Col.No.4 of the table were caused to against the names of deceased at Sr.No.21 to 29 were caused to them by the accused No.1 or the deceased accused No.1. In this regard the prosecution has examined the complainant in Crime No.188 Mr.Nitin Mathane as PW 130. He was working under the deceased Mr.Hemant Karkare. Summary of his evidence would show that he is not eye witness to the incident. The star witnesses of the incident which took place near ATM of Corporation Bank in which deceased at Sr.No.21 to 29 were killed are PW 136 Mr.Arun Dada Jadhav and PW 139 Mr.Maruti Phad. The evidence of these witnesses has also been summed up when the evidence of other witnesses had been discussed by me earlier. However, it need to be stated here that Arun Dada Jadhav was working under the deceased Mr.Salaskar and was travelling in the same Qualis vehicle in which the deceased No.21, 22, 23, 25, 27 and 28 were killed. PW 139- Mr.Maruti Phad was the

driver of Government Car assigned to Mr.Bhushan Gagrani, the Secretary to Govt. of Maharashtra in Medical Education Department. PW 139 was staying in High Rise Building, Govt. Staff Quarters situated at B.T.Road. He used to park the vehicle of PW 140 - Mr.Gagrani in premises of High Rise Building due to paucity of parking space in Yashodhan Building where he was assigned govt. quarters. PW 139 was proceeding to Yashodhan building in the staff car of Mr.Gagrani as he was called to reach Yashodhan in view of urgent meeting at Mantralaya following the terror attack. His evidence is corroborated by PW 140 Mr.Gagrani. PW 136 and PW 139 appeared to have seen the accd.No1 and deceased accused No.1 very closely. The evidence PW 136 and PW 139 has been reproduced earlier in detail. The PW 139 had seen both the accused firing on his vehicle. One of the bullet had pierced front wind screen of his car and hit his right hand. Other bullet had hit him on his waist. He was taken to G.T. Hospital for treatment where his statement was recorded. He lost one of his fingers due to bullet injury. He had identified the accused No.1 in TI parade dt.27th December 2008 and had identified dead body of lamboo (taller) accused at J.J.Mortury. He had identified accused No.1 in court also. This witness has described as to how he pretended himself to be dead and as to how he

locked his vehicle from inside. He has described the accused as Butka and Lamboo respectively. It appears from the evidence that he had seen the accused from a very short distance. He had also seen them firing at police vehicle. However, the distance at that time was about 150' between his car and the police vehicle.

989. As far as witness No.136 is concerned, he has described the whole incident including removal of dead bodies of three officers from police vehicle and hijacking of the vehicle by the accused No.1 and deceased accused No.1. The witness has also identified accused No.1 to be the same shorter fellow. He had identified dead body of the deceased accused No.1 in the mortury. The PW 139 had also identified dead body of the deceased accused No.1.

990. The PW 136 was rescued by PW 137 Mr.Sanjay Dattatray Amrute, who was Sr.P.I. of Marin Drive P.Stn. The Qualis vehicle was left by accused No.1 and deceased accused No.1 at Barrister Rajani Patel Road within the jurisdiction of Marin Drive P.Stn. It is very clear from the evidence of PW 136 that the accused No.1 and deceased accused No.1 had

fired at police vehicle from a very short distance . It is also clear from his evidence that three injured officers were removed from the vehicle and vehicle was taken away. This witness has also stated that the deceased at Sr.No.25,27 & 28 who were with him in the Qualis vehicle were injured badly because of firing on the part of both the accused. PW 137 has stated that when he reached near the vehicle of Barrister Rajani Patel Road, he had seen PW 136 on the rear portion of vehicle. He had also seen three other policemen on the rear seat. They were badly injured. The Control Room was informed and ambulance was called. PW 136 and three other injured policemen were taken to the hospital. It has come in the evidence that the said three policemen who are shown as deceased at Sr.No.25 - Balasaheb Nana Bhosale, Sr.No.27- Jaywant Patil and Sr.No. 28- Yogesh Patil were declared dead due to firearm injuries.

991. The Ld.Spl.P.P. has submitted that there is no reason to disbelieve the evidence of these two witnesses and the other two witnesses i.e. PW 138 Mr.Suresh Shantaram Kadam and PW 128 Mr.Thorawade. Mr.Suresh Shantaram Kadam who was a police constable attached to Azad Maidan P.Stn. and Mr.Thorawade, Sr.P.I. of Azad Maidan P.Stn. have seen

the incident from the bus stop opposite St. Xavier's collage. They had also seen the accused No.1 and deceased accused No.1 firing at the police officer Mr.Durgude who was at Mahapalika Road. His dead body was removed from Mahapalika Road by one of the policemen.

992. The evidence of these witnesses has been assailed by Ld.Adv.Mr.Pawar. A reference has been made of one Bollaro vehicle. It is true that the police officers have not been able to explain as to how the vehicle had reached back side of Cama Hospital. However, that by itself is no reason to discard the evidence of prosecution witnesses in respect of the incident. Mr.Tilekar who was working under Mr.Sadanand Date (PW 118) had come out of Cama Hospital in an injured condition from the back side. At that time gate was broken open by the police officials to rescue Mr.Tilekar. It is at this point of time that one Bollaro vehicle was also taken out of Cama Hospital. No evidence has come as to how the Bollaro vehicle had reached there. This however, does not affect the prosecution case adversely in any manner. Mr.Tilekar in fact was present on 6th floor of Cama Hospital when there was exchange of fire between police and the accused. He has been examined u/s 296 of Cr.P.C. However, his affidavit

has been considered to the extent of injuries sustained by him. Rest of the evidence is not considered because the same could not be of formal nature. The incident of 6th floor is proved by evidence of other witnesses including evidence of Mr.Sadanand Date.

993. The evidence of PW 136 and 139 has also been assailed by Ld.Adv.Mr.Pawar by citing some improbabilities. It was submitted that it was not possible for PW 139 to take his vehicle in reverse direction because he was not able to see from the rear wind screen as he was in ducked down position. No doubt it was the difficult job but was not impossible. Moreover, PW 139 had not taken his vehicle in reverse direction for few meters or a longer distance. It was a matter of few feet. An experienced driver with knowledge of topography can do this work without looking at the reverse direction. Moreover, there are mirrors on both the sides of vehicles which help the driver to have a rear view of the vehicle. It may also be noted that PW 139 was staying in the nearby building and must have been well acquainted with the topography of the area. As far as evidence of PW 136 is concerned, the same has also been assailed on the basis of some small discrepancies here and there. I have no reason to disbelieve the

evidence of PW 136 except his version that the accused No.1 had opened burst fire by means of AK 47 rifle in Qualis vehicle also. It is strange that this part of evidence has come in the cross examination without even defence lawyer asking any question on the issue. I think the PW 136 wanted to sensationalise his evidence in presence of media persons. I do not think that the evidence given by him that accused No.1 had opened burst firing in Qualis vehicle is true and correct. It is obvious exaggeration and cannot be believed. Rest of the evidence is believable.

994. Apart from the evidence of P.W.136, P.W.139, 138 and 128, there is evidence in the form of confession of accused No.1 recorded by the Magistrate (P.W.218). The accused No.1 in his confession has stated that after getting out of C.S.T. railway station accused No.1 and the deceased accused No.1 had entered a lane and thereafter they had entered a building, there was exchange of fire between them and the police, they had thrown hand-grenades and had killed policemen. Accused No.1 has also stated that it was a hospital. He has further stated that after coming out of the hospital they had fired on the vehicle with red beacon and that they had also fired at police vehicle. Accused No.1 has further stated that they had

concealed themselves behind bushes when they were firing at the police vehicle. Accused No.1 has further stated that dead bodies of the police officers were thrown out of the vehicle and the vehicle was taken away by the accused No.1 and the deceased accused No.1. The deceased accused No.1 was driving the said vehicle with one hand and at the same time he was firing from his rifle while proceeding further in the said vehicle. Accused No.1 has also stated that deceased accused No.1 had fired at a junction (referred to as Metro Junction in this judgment,) where a large crowd was seen by them. As such there is sufficient evidence in the form of eye-witnesses and confession of accused No.1 to prove the incident inside Cama Hospital and outside Cama Hospital.

995. Apart from this evidence there is evidence in respect of seizure of empty cartridge cases . The details in that respect have been stated in **table No.9** of the judgment. The police had seized twelve empty cartridge cases near the bushes were the accused No.1 and the deceased accused No.1 had concealed themselves and had fired at police. Seven of the empties had tallied with the test fired empty cartridge cases test fired from art.427 belonging to deceased accused No.1. Four of the empties had

tallied amongst themselves and had tallied with the empty cartridge cases test fired from art.10-AK 47 rifle belonging to accused No.1. One empty had tallied with the empty of cartridge test fired from art.12 belonging to Shri Ashok Kamate. It has also come in the evidence that deceased Shri Ashok Kamate was travelling with other two police officers in the same police Qualis vehicle. Other three empties at Sr.No.18 in the table were also seized under panchanama Exh.524. Two of them were fired from the rifle of deceased accused No.1 and the third one was fired from the rifle of accused No.1. Similarly, there are series of other empties mentioned in the said table which have tallied with the test fired empties fired from rifles of accused No.1 and the deceased accused No.1. The details can be found at Sr.Nos. 19, 20, 21 and 22 of table No.9.

996. It will also not be out of place to mention here that one bullet was found embedded in right cavity chest of the deceased Shri Ashok Kamate (Page 924 of the judgment). The said bullet has been produced in court at art.311. The said bullet had been examined by the ballistic expert P.W.157-Mr.Vasudev Patil. In his opinion the said bullet had tallied with the test fired bullet from AK-47 rifle-art.427. It has been stated by me in so

many words earlier that art.427 was the rifle originally carried by the deceased accused No.1 and left in the police Qualis vehicle. It was seized under the panchanama of the said vehicle . It is thus clear that the firing on the part of deceased accused No.1 had killed the deceased Shri Ashok Kamate. This is an additional evidence to establish presence of accused No.1 and the deceased accused No.1 in and outside Cama Hospital and firing on their part.

997. The prosecution has therefore established that the injuries described in col.No.4 of table No.2 against the name of deceased at Sr.Nos. 30 to 36, 21, 23, 24, 25, 27 and 28 were caused either by the accused No.1 or the deceased accused No.1. The prosecution has also established that the injuries to the deceased at Sr.No.22-Shri Ashok Kamate was caused by the deceased accused No.1. Some of the injuries to deceased at Sr.No.22-Shri Ashok Kamate could also have been caused by the accused No.1 also as there were in all five firearms entry wounds on the dead body. This is in addition to one bullet injury definitely caused by the deceased accused No.1. The said bullet injury itself was sufficient to cause death in ordinary course of nature.

998. As far as the deceased at Sr.No. 26-Arun Raghunath Chite and 29-Surendrakumar Bindu Rama are concerned, it may be noted here that it is stated by P.W.654-Mr.Ashok Khedkar, API, that both the dead bodies were taken to G.T.Hospital from Metro Junction by him. The details thereof are mentioned at Sr.No.26 and 29 in table No.4. It can be seen from table No.5 where the evidence of medical officer has been summed -up by me, that the deceased at Sr.No.26-Arun Raghunath Chite had received firearm entry wound on left 5th intercoastal space and there was corresponding exit wound. The deceased had died due to haemorrhage and shock due to firearm injuries. The postmortem report is at **Exh. 1572.** The deceased at Sr.No.29-Surendrakumar Bindu Rama had sustained an oval shaped lacerated wound on left chest wall. There was fracture of 4th and 5th left ribs and there was oval shaped lacerated wound on right chest wall. The deceased had died due to shock and haemorrhage due to injury to vital organs in a case of firearm injury. Postmortem examination report is at **Exh. 475**. The presence of accused No.1 and the deceased accused No.1 at Metro Junction has been established. There is no parallel story of the nature that somebody else had fired at the deceased at Sr.No. 26 and 29. It is thus clear that it is due to fire on the part of accused No.1 and the deceased

accused No.1 that the deceased at Sr.No.26 and 29 had died due to firearm injuries.

999. As far as death of deceased at Sr.No.72-Mohabbat Umer Abdul Khalid and Sr.No.73-Laxminarayan Goyal is concerned, both of them had died due to blast injuries. I have read the evidence of witnesses in respect of the said incident. The prosecution has adduced sufficient evidence to establish that the deceased at Sr.No.72 was the driver of the taxi No- MH-01-G-7792. The evidence of P.W.168-Mrs.Usha Sharad Chaudhary, sister-in-law of deceased at Sr.73 clearly show that the deceased Laxminarayn Goyal was travelling in the said taxi. The question which remains to be examined is whether it is proved by the prosecution that either accused No.1 or the deceased accused No.1 had planted the RDX bomb in the said taxi. As far as nature of the bomb is concerned, the articles seized from the spot were sent to the C.A. and C.A. report has been produced in the Court. The expert has also been examined as a witness. The details have been stated by me in earlier part of the judgment. It is also stated by me that limbs of human bodies examined by the DNA expert established that there were two deaths only though Vile Parle police had earlier registered three

deaths. But it was later on evident from the DNA report that there were only two deaths in the said explosion. The severity of the explosion could be judged by the fact that head of one of the dead bodies was thrown far away in the basement of City Swan Club. What further requires to be seen is that the accused No.1 in his confession before the ld. Magistrate has stated that while the accused No.1 and the deceased accused No.1 were travelling to CST railway station from the seashore, the deceased accused No.1 had engaged the taxi driver in dialogues and during the same period accused No.1 had installed two nine volts batteries on the RDX bomb and connected the same with timer. The timer was fixed for one hour and fifteen minutes. As such the bomb could blast after one hour and fifteen minutes from the time of installation. According to the evidence of P.W.164-Mr.Shankar Chandrakant Tambe, ASI, the crime was reported to him at about 23 hrs. He was patrolling within the jurisdiction of Vile Parle Police Station when he received message from control room that there had been a bomb explosion in a taxi at western express highway. The taxi number was MH-01-G-7792. P.W.166-Mr.Mohak Keshav Velankar has stated that the panchanama had commenced at about 00.30 hrs. and concluded at 03.45 hrs. of 27/11/2008. It means the incident had occurred a few minutes

before 11 O' clock and the panchanama was drawn after about one hour. The accused No.1 in his confession has sated that accused No.1 and his nine associates had reached Mumbai seashore at about 9.00 p.m. It took them for about 15 to 20 minutes to reach CST railway station. It means by 9.30 p.m. they must have reached CST railway station and during the said period of 15 to 20 minutes bomb was installed in the taxi. The evidence given by P.W.164 -ASI Mr.Tambe and confession of accused No.1 clearly show that the bomb which had exploded at Vile Parle was the same bomb which was installed by accused No.1 in the taxi. I may also refer to the evidence of Mrs. Usha Chaudhary , sister-in-law of the deceased Laxminarayan Goyal , who has been examined as P.W.168. It is clearly stated in her evidence that she had received a phone call from the deceased Laxminarayan Goyal that he was heading for Charkop, Kandivali in a taxi due to the incident of firing at CST. It has come in the evidence that deceased Advocate Laxminarayan Goyal could not board the train because of the incident at CST. In fact he was to return Hyderabad after finishing his work at Mumbai. P.W.169-Mr.Irshad Ahmed Shaikh has stated that the deceased Umar Shaikh was driver of the taxi No.MH-01-G-7792. He was friend of P.W.169. At about 10.00 p.m. of 26/11/2008 P.W.169 had a telephonic talk with the deceased

Umar Shaikh. P.W.169 was told by the deceased that he was driving taxi to Kandivali as the taxi had been hired by one passenger.

1000. As such the circumstantial evidence is so clinching and corroborates confession of accused No.1 that the bomb had been installed in the taxi by accused No.1. The explosion of bomb had resulted in death of the deceased at Sr.No.72 and 73. It is thus proved by the prosecution beyond reasonable doubt that the injuries described in col.No.4 had been caused to the deceased at Sr.No.77 to 128 , 30 to 36, 21 to 29, 72 and 73 in table No.2 either by the accused No.1 or by the deceased accused No.1. It is of course excluding the cases of deceased at Sr.No. 81, 83, 84,86,93 and 112 whose cases are being dealt with by me on individual basis because according to prosecution case the bullets found in the dead bodies of these deceased had tallied with the bullet test fired from the art.10-AK 47 rifle of accused No.1. **My answer to point No.11 is therefore affirmative**.

1001. As far as **point No.12** is concerned, what the court is required to examine is whether there was intention on the part of accused No.1 and the deceased accused No.1 to cause death of the deceased mentioned in

point No.11. I think that no elaborate discussion is needed on this point. The description of the incident given by the witnesses clearly indicate that there was intention on the part of accused No.1 and the deceased accused No.1 to kill the deceased mentioned in point No.11. Even if for the sake of arguments, cases of some of the deceased is not covered by clause *firstly*, the same can be squarely covered by clause *thirdly* of Sec.300 of IPC. When the accused No.1 and the deceased accused No.1 had indulged into indiscriminate firing, it was obvious that there was intention to cause death or there was intention to cause bodily injury. The bodily injuries were sufficient to cause death in ordinary course of nature has been established by the evidence of medical officers. The case of **Virsa Singh V. State of Punjab, reported at 1958 CR.L.J. 818** cited supra is very clear that it is not necessary for the prosecution to establish that the accused knew that the intended injury was sufficient to cause death. It is sufficient if the prosecution establishes that the intended injury was sufficient to cause death in ordinary course of nature. The inquiry is purely objective and not subjective. **My answer to point No.12 is therefore affirmative.**

1002. The accused No.1 and the deceased accused No.1 shared each

others intention can also be gathered from the evidence and confession of accused No.1.The answer to **point No.13 has necessarily to be in affirmative inasmuch as accused No.1** in his confession has clearly stated that they were to kill passengers at CST railway station.. The firing from AK-47 rifles indiscriminately by both of them together and supporting each other at the time of incident clearly establish that they were sharing each others intention. It has been stated by the accused No.1 in his confession as well as by the witnesses that the deceased accused No.1 had thrown a hand-grenade and thereafter accused No.1 had started indiscriminate firing. After that, one more hand-grenade was thrown by the deceased accused No.1 and both of them had fired at the passengers in waiting hall of main line. Thereafter they had proceeded further. It has come in the evidence that one of the accused had entered common passage from the side of platform No.8 and the other accused had entered from the side of taxi stand. While coming from the side of taxi stand they had fired at police station in which the police officer was injured. The said police officer has given evidence as well as the lady police Commando Ms. Geetanjali Gurav (PW 60) has also given the evidence. Evidence of P.W.61-Mr.Sabastian D'souza and P.W.102-Mr.Sriram Vernekar, photographers , would also clearly show

that both the accused were together and they had never parted from each other . There was exchange of fire between the accused No.1 and deceased accused No.1 on one hand and police and RPF Jawans on other hand. Both of them had gone together out of the railway station from the foot over bridge. Both of them had indulged into firing at Badruddin Tayyabji Road, Both of them entered Cama hospital together, both of them had been on the terrace of the hospital and thereafter both of them together came out of the hospital and fired at P.W.139-MrMaruti Phad. Thereafter both of them had fired at police vehicle. It has come in the confession of accused No.1 that deceased accused No.1 had fired while he was driving the Qualis vehicle from a Chowk (Metro junction). Therefore, the deaths caused at metro junction were also in furtherance of common intention of both the accused. As such the accused No.1 and the deceased accused No.1 had shared each others intention at the time of causing deaths of deceased at Sr.No.77 to 128, 30 to 36, 21 to 29 and 72 & 73. My affirmative answer to point No.12 coupled with my finding on point No.11 and point No.13 clearly show that the accused No.1 is guilty of the offence punishable u/s 302 r/w 34 of I.P.C. having caused death of the deceased at Sr.Nos. 77 to 128, 30 to 36, 21 to 29 and 72 & 73 in furtherance of common intention of accused No.1 and the

deceased accused No.1.

1003. It is obvious from the discussion of evidence in respect of above stated deaths that except death of deceased Ashok Kamate, prosecution has not been able to establish exclusively as to whose bullet had caused death of which of the deceased. It was not even necessary for the prosecution and not possible also. Sec.34 IPC is very clear in this regard and in the circumstances of the present case , the case of accused No.1 is squarely covered by Sec.34 of IPC though the prosecution has not established that the particular deceased had died due to bullet injury caused by the particular accused . It need not be repeated that in the circumstances it was not possible for any of the witness to tell the court as to whose bullet had hit which of the deceased. Since powerful weapons like AK-47 rifles were used in the commission of the crime, most of the bullets had exited from the bodies of the deceased. There were entry wounds and exit wounds on most of the dead bodies. The case of the accused therefore can be safely convicted for the offence punishable u/s 302 r.w. 34 of IPC for having caused deaths of deceased at Sr.Nos. 77 to 128, 30 to 36, 21 to 29, 72 and 73. I am supported in my view, as far as finding on Sec.34 is concerned, by

the judgment of **Hon'ble Supreme Court in the matter of Ram Deo Kahar Vs. State of Bihar reported at 2009 Cr.L.J. 1715.** In **para Nos. 16, 17 & 18** the Hon'ble Supreme Court has said :

> **"16**. The question which now arises for consideration is as to whether appellants can be said to have formed a common intention. Indisputably, they came together. They were also searching for one Patali. The very fact that all of them came heavily armed and that too with many firearms clearly goes to show that a common intention was formed to commit a murder.
>
> **17**. Only because they did not find Patali and instead committed the murder of Mauji Yadav by itself may not be sufficient to arrive at a conclusion that they had no intention to commit any offence of causing murder. Furthermore, whether they had the requisite intention or not must also be judged from the surrounding circumstances. Admittedly, Upendra Kahar (Accused No.1) fired a shot on exhortation by Ramdeo Kahar (Accused No. 4). It has furthermore been proved that both Accused No. 4 and Accused No. 5 used the weapons in their hands in foiling the attempts of Ragho Yadav (P.W. 7) and Anil Yadav (P.W. 6) to come to the place of occurrence to help the deceased.
>
> **18**. Shiv Shankar Paswan (Accused No. 5) was carrying a Gadasa; he had given a Gadasa blow on the head of Anil Yadav, a vital part of his body. All of them also left the

> place of occurrence together; they fired shot together at random so as to prevent the prosecution witnesses to chase them. Common intention of the appellants, in our Opinion, had, thus, been proved. Even otherwise, common intention may develop suddenly at the spot. In this case, the genesis of the occurrence has been proved. The motive for commission of the offence has sufficiently been established. The law does not state that there has to be a long interval of time between the formation of the common intention and the doing of the act. The prosecution also is not required to adduce direct evidence as regards formation of common intention. Thus, it must be inferred from the surrounding circumstances."

1004. As far as point No.57 is concerned, it is very obvious from the above discussion that had any of the injured died, the accused No.1 would have been guilty of offence punishable u/s 302 r.w. 34 of IPC. The Hon'ble Supreme Court in the judgment reported at **2009 Cri.L.J. 1530** cited supra, has clearly stated that the determinative factor in the case u/s 307 IPC is intention which is to be coupled with some overt act. It is not necessary that bodily injury capable of causing death should have in fact been caused. The Section makes a distinction between act of the accused and its result. The Hon'ble Supreme Court has stated that the court has to see whether the act,

irrespective of its result, was done with the intention of knowledge and under circumstances mentioned in the Section. The circumstances under which the accused No.1 and the deceased accused No.1 had indiscriminately fired at passengers and their intention which has already been proved, would have clearly brought the act of accused No.1 within the purview of Sec.302 of IPC had any of the injured died of the injuries. **Therefore my answer to Point No.57 is also in affirmative.**

1005. The **Point No.58**, runs as under :

> **"58. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail shared each other's intention while causing injuries to the said persons ?**

I have already given my finding that the accused No.1 and deceased accused No.1 had shared each others intention. I have already enumerated the circumstances which clearly indicate sharing of intention on the part of accused No.1 and deceased accused No.1. Therefore no further discussion is necessary on this issue.

1006. As such my answers to Point Nos. **10, 11, 12, 13, 56** and **57** are

affirmative. Offences punishable u/s 302 r.w. Sec.34 and u/s307 r.w. 34 of IPC are clearly established against the accused No.1.

1007. Now I shall deal with **point No.15 and 16** which run as under :

> **"15. Does the prosecution prove that deceased Tukaram Ombale (Sr.No.130), had died due to firearm injuries ?**
>
> **16. Does the prosecution prove that accused No.1 had caused firearm injuries to the deceased Tukaram Ombale (deceased at Sr.No.130) with intention to cause death or with intention to cause bodily injuries and that bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?**"

As far as **point No.15** is concerned, I may directly go to the evidence of medical officer (P.W.100) who had performed postmortem examination on dead body of the deceased. That part of the evidence has already been discussed by me at **page No.95, 96 and 97** of the judgment. P.W.100-Dr.Sunil Mohandrao Jawale in his evidence has stated nature of injuries found on the dead body of deceased Tukaram Ombale. The major injuries were external injuries No.1 and 2. The first external injury was on right

chest and the second injury was on left chest. The bullet was retrieved from left shoulder while examining the first injury. As such the bullet had travelled upto left shoulder after entering from the right chest. The cause of death is stated to be shock following firearm injuries. The postmortem notes are at Exh. 390 colly. The bullets retrieved from the dead body of the deceased Tukaram Omable were forwarded to the C.A. through the police. I have already discussed the evidence about forwarding letters and other formalities to be completed by the medical officer and police officers in my judgment at **page 928**. What is necessary to be repeated here is that P.W.100 has identified the jar-art.298 in which the bullets art.295 and 296 and deformed coin retrieved from the dead body of Tukaram Ombale were preserved. He has identified his signature on the label of the said jar indicating that it was sealed by him. P.W.156-Mr. Vasudeo Patil, Ballistic Expert, who had examined the bullets art. 295 and 296 has opined that both the bullets tallied with the test fired bullets from art.10. Art.10 is proved to be the AK-47 rifle carried by accused No.1.

1008. P.W.100-Dr.Sunil Jawale has been cross-examined by ld. advocate Mr.Kazmi for accused No.1 at length. The witness in his cross-

examination has admitted that there were at least four firearms injuries on the dead body as there were clear four entry wounds and two exit wounds. The other injuries according to this witness could be attributed to fracture of bones. He has admitted that two bullets were recovered from the dead body. He was also examined to find out as to how many postmortem examinations were performed by him on the same day. The ld. advocate had made an attempt to demonstrate that the witness had not examined the dead body of deceased Tukaram Ombale. However, I do not find anything in the cross-examination to accept that contention. As such the prosecution has proved that the deceased Tukaram Ombale (Sr.No.130) had died due to firearm injuries.

1009. The next point is whether the said injuries were caused by the accused No.1. In this regard I have also discussed in detail the evidence of P.W.1-Mr.Bhaskar Kadam, P.W.2-Mr.Sanjay Govilkar and P.W.3-Mr.Hemant Bavdhankar at **page Nos. 476 to 493** of the judgment. These witnesses have identified accused No.1 and have stated that he had fired at the deceased Tukaram Ombale. P.W.2-Mr.Sanjay Govilkar in his cross-examination has admitted that there was scuffle between the accused No.1

on one hand and P.W.2 himself and deceased Tukaram Ombale on other hand. There are few more questions in the cross-examination to discredit the witness and to create doubt about preservation of weapon after the incident. However, I do not see any substance in the cross-examination to doubt evidence of these three witnesses. Apart from the evidence of these three witnesses, there is evidence of medical officers and ballistic expert. There is evidence of police officer and carrier who carried articles to the FSL. The investigating officer has stated that all the articles seized during the course of investigation were sent to ballistic expert. The ballistic expert has opined that art.295 and 296 were fired from AK-47 rifle-art.10. The medical officer P.W.100 has identified both the bullets art.295 and 296. As such prosecution has established that P.W.1, P.W.2 and P.W.3 had seen the accused No.1 firing at the deceased Tukaram Ombale. The Medical Officer has established that deceased Tukaram Ombale had died due to firearm injuries. The evidence of ballistic expert has established that the bullets retrieved from the dead body were fired from art.10-AK 47 rifle.

1010. As far as intention part of the offence is concerned , it is abundantly clear that there was intention on the part of accused No.1 to

cause death of deceased Tukaram Ombale. I do not think there is any scope to consider whether the case is covered by clause *thirdly* of Section 300. Even for the sake of arguments it is accepted that there was no intention to cause death, the case squarely is covered by clause *firstly* of Sec.300. As such the prosecution has proved homicidal death. The prosecution has proved that the homicide was committed by accused No.1. The prosecution has also proved culpability of accused No.1 which falls under clause *firstly* of Sec.300 of IPC. However, the accused No.1 in his confession before the Magistrate has also confessed to have fired at the policemen. My answer to **point No.16 is therefore affirmative.** The accused No. 1 is found guilty of offence punishable u/s 302 IPC for having caused death of deceased Tukaram Ombale.

1011. Point Nos.38 and 39 are in respect of independent charge against the accused No.1 for having caused death of deceased at Sr.No.81-Aakash Akhilesh Yadav. **Point No.38** and **39** run as under :

> **"38. Does the prosecution prove that deceased at Sr No.81-Aakash Akhilesh Yadav had died due to firearm injury ?**
>
> **"39. Does the prosecution prove that the said**

firearm injury was caused by accused No.1 Mohd. Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient, in ordinary course of nature to cause death?

I have discussed evidence in detail on page 892 and 893 with regard to deceased at Sr.No.81. In the case of deceased at Sr.No.81, there is no eye-witness to say that the deceased Aakash Akhilesh Yadav was shot at by the accused No.1. The report of C.A. does not confirm that the bullet retrieved from the scalp of the deceased during postmortem examination tallied with the test fired bullet from art.10. As such in this case, the prosecution though had been able to prove that the deceased Aakash Akhilesh Yadav had died due to firearm injuries, the evidence of medical officer is very clear in this regard. The prosecution has not been able to prove that the firearm injuries were caused by the accused No.1. Therefore, the question of intention part of the offence does not arise. **My answer to point No.38 is in affirmative.** However, considering the other evidence on record which has been discussed in detail pertaining to the incident at CST railway station, it is absolutely clear that deaths at CST had been caused either by the accused No.1 or by the deceased accused No.1. I have also found that both of them

shared each others intention. The deceased Aakash Akhilesh Yadav was killed in the incident at CST and he died due to firearm injuries. Eight pallets were recovered from the dead body. Since they could be compared with the test fired bullets, it was difficult to give finding as to which of the two accused had killed him. However, it is absolutely safe to say that he was killed either by the accused No.1 or deceased accused No.1. Therefore the accused No.1 can safely be convicted for the offence punishable u/s 302 r.w.34 IPC for having caused death of deceased Aakash Akhilesh Yadav. **Point No.39 is answered accordingly**.

1012. The next such case is at Sr.No.83-Sitaram Mallappa Sakhare. **Point No.41 & 42** concerning to this case run as under :

> **"41. Does the prosecution prove that deceased at Sr.No.83-Sitaram Mallappa Sakhare had died due to firearm injury ?"**
>
> **42. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd.Ajmal Kasab with intention to cause death or with intention to cause bodily injury and that the bodily injury intended to be caused was sufficient in ordinary course of nature, to cause death ?"**

The evidence in respect of death of Sitaram Mallappa Sakhare has been discussed at **page No.894 to 900.** The dead body was taken to hospital by PC No.3283. Inquest panchanama on the dead body was drawn by PSI Karekar (P.W.95). The inquest panchanama is at Exh.338. The dead body was handed over to P.W.337. However, before handing over the dead body, same was subjected to postmortem examination. The postmortem examination was done by P.W.83-Dr.Vijay Tasgaonkar. The postmortem notes are at Exh.330. According to the medical officer there were in all five external injuries including entry and exit wounds of firearms. During the course of postmortem examination one bullet was found lodged in right arm muscle at posterior aspect. The bullet was retrieved and was forwarded to FSL. The medical officer P.W.83-Dr.Vijay Tasgaonkar has identified the phial art.292 and bullet art.293 and had stated that the bullet was sealed in he phial art.292. P.W.79-PI Mane of CST railway police station has stated that the bullet was forwarded to the laboratory by him. P.W.150-Mr.Guatam Ghadage is the ballistic expert who has given evidence that the bullet art.293 was 7.62 short rifle cuprojacketed bullet. P.W.157-Mr.Vasudev Patil, another ballistic expert has stated that the bullet art.293 was tallied with the test fired bullet from art.10.

1013. P.W.83 has further stated that the deceased had died due to haemorrhage and shock due to firearm injuries. As far as cross-examination of P.W.83 is concerned, he has admitted that he has not recorded time of postmortem examination. He has denied the suggestion that it was recorded in the inquest panchanama itself that a bullet was found lodged in the dead body. The witness has admitted that it was possible that he might not have identified the bullet had it been mixed up with other bullets. In this regard it may be noted here that this part of cross-examination of the witness does not help the accused in any manner. Even if the ballistic expert is not able to identify the bullet earlier compared by him, it could not be said that the bullet was not the same if there is other evidence to prove the same. There is sufficient evidence in the form of oral evidence of medical officer, forwarding letter, evidence of I.O. and police officer who carried the jar to the FSL. As such the prosecution has been able to establish that deceased Sitaram Mallappa Sakhare had died due to firearm injuries. Since the bullet retrieved from the dead body tallied with the firearm carried by accused No.1, it can safely be said that it was due to firing on the part of accused No.1 that Sitaram Mallappa Sakhare was killed at CST. The intention of the accused No.1 clearly established. In my view the same is not necessary to

be considered again and again. Finding given by this court with regard to the intention of the accused No.1 and the deceased accused No.1 is applicable to all similarly situated cases. In my opinion the accused No.1 needs to be convicted for the offence punishable u/s 302 IPC having intentionally caused death of Sitaram Mallappa Sakhare. I therefore answer **point Nos. 41 and 42 in affirmative.**

1014. **Point No.44 & 45** run as under :

> **"44. Does the prosecution prove that deceased at Sr.No.84-Rahemtullah Shaikh Ibrahim had died due to firearm injury ?**
>
> **45. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd.Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient in ordinary course of nature, to cause death ?"**

As far as case of deceased at Sr.No. 84 is concerned, there is no serious dispute from the side of accused that he had died due to firearm injuries. Moreover, P.W.113-Dr.Shivaji Sonawane has clearly stated in his evidence that deceased Rahemtullah Shaikh Ibrahim had died due to haemorrhage and shock due to firearm injury. There is no scope for doubting his

evidence. His evidence has been discussed by me in detail at page No.900 and 901 of the judgment. **I therefore answer point No.44 in affirmative.**

1015. P.W.113 in his evidence has stated that a deformed bullet was retrieved from left side of buttock lateral aspect. The said bullet was forwarded to the CA through police under forwarding letter Exh.441A. The ballistic expert's report is at Exh.1041. The evidence of witnesses discussed by me at page 901 and 902 of the judgment will clearly show that the bullet was properly preserved and it was forwarded to the FSL without there being any chance to tamper with the evidence. The ballistic expert has opined that art.329-bullet had tallied with the test fired bullets from art.10-AK47 rifle. Art.329 is the bullet retrieved from the dead body of Rahemtullah Shaikh. The same has been identified by the medical officer P.W.113 also. The evidence in respect of seizure of art.10 from the possession of accused No.1 has also been discussed in detail. As such the prosecution has proved that the firearm injury-entry wound on left thigh of the deceased was caused by accused No.1. The intention of accused No.1 is absolutely clear . He wanted to kill the passengers at CST railway station . That is abundantly made clear by his confession and the admissions made

before the Court. As such my finding to **point No.45 is in affirmative**.

1016 The next case is of Vinod Madanlal Gupta , the deceased at Sr.No.86. The point Nos. 47 and 48 run as under :

> **"47. Does the prosecution prove that deceased at Sr.No.86-Vinod Madanlal Gupta had died due to firearm injury ?**
>
> **48. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd.Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient in ordinary course of nature, to cause death ?"**

This deceased had also died at CST railway station. The evidence of witnesses who had deposed about inquest panchanama and postmortem examination has been discussed in detail from **page 903 to page No.908.** It has also been discussed in detail as to how the bullet art. 338 was preserved and was sent to FSL. The medical officer P.W.23-Dr.Mohite has described the injuries on the dead body of deceased and has opined that the deceased had died due to shock and haemorrhage as a result of perforation of both the lungs as a result of firearm injuries. During the course of postmortem

examination a bullet in inner aspect of intercostal space of chest wall along anterior axillary line was found. The same was retrieved. Postmortem notes are at Exh.468. The bullet was sent to FSL for examination through the Investigating Officer. The bullet art.338 has been identified by the medical officer P.W.23. P.W.79-Mr.Dilip Mane, has stated that the bullet was forwarded to FSL. It was received by P.W.150, the ballistic expert. It was compared with test fired bullets by P.W.157. He has opined that the bullet art.338 had tallied with the test fired bullets from art.10-AK 47 rifle. According to this witness the comparison was done under comparison microscope. The bullet art.338 had tallied with the test fired bullets from art.10 in respect of its number and width of land and grooves, direction and extent of twist of rifling and the characteristic striations observed on the lands and grooves impressions.

1017. **At this stage it may be stated here that almost all the bullets have been compared in the similar manner by the ballistic expert. Therefore, the manner of comparison is not necessary to repeated again and again.** On the basis of opinion of ballistic expert and other evidence adduced by the prosecution it is proved beyond reasonable

doubt that the deceased at Sr.No. 86-Vinod Madanlal Gupta had died due to firearm injury and that the firearm injury was caused by accused No.1. The intention is also proved by the prosecution beyond reasonable doubt. The accused No.1 is therefore, found guilty of the offence punishable u/s 302 of IPC for having caused death of deceased Vinod Gupta at CST, Mumbai. I therefore, answer **point No.47 and 48 in affirmative.**

1018. Point No.50 and 51 pertain to death of deceased Ambadas Ramchanda Pawar-Sr.No.93. Point No.50 and 51 read as under:

> **"50. Does the prosecution prove that deceased at Sr.No.93-Ambadas Ramchandra Pawar had died due to firearm injury ?**
>
> **51. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd.Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient in ordinary course of nature, to cause death ?"**

The evidence of witnesses in respect of this deceased has been summed up at page No.908 to 912. The evidence of witnesses in this regard is similar to

that of witnesses in earlier cases. The medical officer who conducted postmortem examination is examined at P.W.104-Dr.Ganesh Niturkar. It is stated by P.W.104 that firearm entry wound was found on occipital region left side and on dissection of bullet, it had passed through scalp occipital boned with punched in appearance. The bullet was sent to the FSL under forwarding letter Exh.428. The bullet art.308 has been identified by this witness to be the same which was retrieved from the dead body of Ambadas Pawar. He has also identified the bottle in which the bullet was sealed. He however has honestly admitted that he had identified the bottle on the basis of his signature on the label. I do not think that this part of cross-examination creates any doubt about evidence of this witness. I do no see any other material on the basis of which the witness could have identified the bottle. It was but natural that he could identify the bottle on the basis of his signature. The bullet-art.308 was compared by P.W.157 with the test fired bullets. P.W.157 has stated that art.308 was fired from art.10-AK 47 rifle. I have recorded my reason at **page 912** as to why the evidence of P.W.157 is acceptable to the Court. I do not think that any further discussion is necessary in this regard. On the basis of it it can be stated that deceased Ambadas Pawar had died due to firearm injury and that the said

injury was caused by accused No.1 with intention to cause death of deceased Ambadas Pawar. **My answer to Point Nos. 50 and 51 is therefore in affirmative.**

1019. The next such case is of Abbas Rajjab Ansari at Sr.No.112. He was also killed at CST. Point No.53 and 54 with regard to this case read as under :

> **"53. Does the prosecution prove that deceased at Sr.No.112-Abbas Rajjab Ansari had died due to firearm injury ?**
>
> **54. Does the prosecution prove that the said firearm injury was caused by accused No.1-Mohd.Ajmal Kasab with intention to cause death or bodily injury and that the bodily injury intended to be caused was sufficient in ordinary course of nature, to cause death ?"**

Deceased Abbas Ansari was taken to Sr.George's Hospital in ambulance by P.W.634-Pradeep Wagh, Police Constable. Inquest panchanama was drawn by P.W.85-Vishwasrao Mudavadkar, PSI , vide Exh.362. Postmortem examination was conducted by P.W.104-Dr.Niturkar. There were in all

four wounds on the dead body. According to P.W.104 the injuries were ante-mortem and were sufficient to cause death in ordinary course of nature and that the deceased had died due to haemorrhage and shock due to firearm injuries. One bullet was retrieved from right pleural cavity of dead body . It was sent to CA. P.W.79-Mr.Dilip Mane has stated that the bullet was sent to CA by him under forwarding letter. Postmortem notes are at Exh. 425 colly. P.W.157, the ballistic expert had done comparison of the bullet. In his opinion it was fired from art.10. As such the deceased Abbas Rajjab Ansari had died due to firearm injuries and at least one of the injuries was caused to the deceased by accused No.1. The comparison of bullet with test fired bullets from AK-47 rifle of accused No.1 would clearly establish that it was accused No.1 who had shot at deceased Abbas Rajjab Ansari. The intention was same i.e. to kill the persons at CST railway station. **As such my answer to point No.53 and 54 is in affirmative.**

1020. As far as death of deceased at Sr.129-Amarchand Naran Solanki , the navigator of boat Kuber is concerned, he died due to shock due to multiple injury. **Point No.6** in respect of this case of deceased Amarchand Solanki reads as under :

6. Does the prosecution prove that the deceased Amarchand Solanki had died due to slitting of his throat ?

The major injury which resulted in his death was chop wound over neck posterior area. On dissection of skin it was found that subcutaneous tissues, muscles, bones, spinal cord showed sharp cut injury with infiltration in the surrounding tissues. Apart from this major injury there were three other minor injuries which did not appear to be fatal injuries. These injuries are mentioned in col.No.6 of table No.5 against the name of deceased Amarchand Solanki at Sr.No.129 As far as cause of death of the deceased is concerned, there does not appear to be any dispute of any nature . Though P.W.599 -Dr.Gajanan Chavan has been cross-examined, his cross-examination is limited to the nature of injuries. The suggestion that postmortem notes have been manipulated is denied by this witness. There is no reason to doubt the evidence given by P.W.599. The postmortem report is at **Exh.1568. The point No.6 can therefore be answered in affirmative**. The prosecution has proved that the deceased Amarchand Solanki had died due to slitting of his throat.

1021. The next point in respect of case of deceased Amarchand

Solanki is point No.7 which reads as under :

> **'7. Does the prosecution prove that the accused No.1 had inflicted cut on throat of deceased Amarchand Solanki ?'**

A difficulty may arise to determine the point No.7 because it is on the basis of alleged statement made by the accused No.1 leading to recovery of dead body of deceased Amarchand Solanki. Therefore , this is very delicate piece of evidence and has to be examined very carefully. Otherwise also the evidence in respect of recovery of certain articles on the basis of statement of accused is an exception to the general rule laid down u/s 25 and 26 of the Evidence Act. This exception is obvious because the recovery of certain articles on the basis of statement of accused, may be a confession, lends support to the correctness and voluntariness of the statement of accused. Before I advert to the evidence of witnesses with regard to the alleged recovery of dead body, what is necessary to be stated here is that the panchanama under which the alleged statement was made, was concluded at about 14.15 hrs. on 27.11.2008 and the panchanama in respect of recovery of dead body was concluded at about 2.00 a.m. of 28.11.2008. There was a gap between the two panchanamas because after the first panchanama

recording statement of the accused No.1 it took some time to locate the boat in which the dead body was found. The staff members of Nair hospital have been cross-examined at a considerable length by the ld. advocate Mr.Kazmi for accused No.1 to demonstrate that the accused No.1 was in fact discharged in the morning of 27th November, 2008 and that the record was manipulated to show his discharge in the evening of 27/11/2008. I have carefully gone through that part of cross-examination. In my view the police custody need not necessarily be after arrest of the accused in particular crime. It is sufficient to prove that the accused was physically in police custody when the statement leading to certain recovery was made by him. From the evidence of prosecution witnesses pertaining to the incident of Vinoli Chowpaty and evidence of the witnesses who had taken the accused No.1 and the deceased accused No.1 to the Nair Hospital and also from the evidence of staff members and medical officers of Nair Hospital , it will be clear that accused No.1 was in custody of police since the time he was apprehended at Vinoli Chowpaty.

1022. What is important to be examined is that the statement made by the accused No.1 which led to the police to recover dead body of deceased

Amarchand Solanki in boat Kuber. For that I will have to carefully examine the evidence of P.W.42- Police Officer Mr. Chandrakant Jabardast Jadhav who had recorded statement of accused No.1 and P.W.25-Mr.Bhavesh Takalkar who was called to participate as panch for the panchanama. P.W.42 has stated in his evidence that during the course of interrogation accused No.1 made a statement that he would show the place in the boat where he had concealed the dead body of the navigator (Nakva), satellite phone , GPS and a notebook. P.W.25, the panch witness has stated that the accused No.1 had made a statement before the police that he would show the satellite phone, GPS and a notebook and the place where he had concealed the dead body of Nakva. It is therefore the case of prosecution that the dead body of the navigator was concealed in the boat and the place where it was concealed was shown to the police by accused No.1. The first panchanama which contains memorandum of statement of accused No.1 as Exh.136.

1023. Now let met reproduce statement of the accused No.1 recorded in Hindi in panchanama Exh.136. It reads as under :

(I would show the boat and the place where the dead body of Navigator , satellite phone, G.P.S., note book were concealed)

1024. In the first place it can be seen that the statement of accused No.1 recorded verbatim under Exh.136 does not disclose that accused No.1 had said that he himself had concealed the dead body. What he has stated is that he would show the place where the dead body was concealed. It is not that he had admitted that he had himself concealed the dead body. Secondly, when this statement was made by the accused No.1, the accused No.1 was at Nair Hospital and location of boat was not known to the police. From the evidence of P.W.3, P.W.48, P.W.42 and P.W.26 what can be gathered is that a message was given to control room by Mr.Marde that the boat was to be located in the sea. The said boat was located by P.W.26 and it was anchored at Sassoon Docks. What can further be seen from the evidence of P.W.42 is that since the location of the boat was not known, the panch witness P.W.25- Mr.Takalkar was allowed to go with the instruction

that he would be called again when the boat was located. The panch witness was called again when the boat was located by P.W.26 and intimation was given to the police. It can be seen from the evidence of P.W.42 and P.W.47 that the police officers of Yellow Gate Police Station were present near the boat when the accused No.1 was taken to the said boat by the officers of D.B.Marg police station along with the panch witness Mr.Takalkar. As such the boat was not located when the help of accused No.1. The boat was located with the help of coast guards and was brought to the Sassoon docks. The prosecution has not examined any witness who had anchored the boat at Sassoon Docks. The prosecution has not excluded the possibility of anybody else visiting the boat or entering the boat before P.W.42 along with panch witnesses and the accused no.1 had entered the said boat. In the circumstances it can not be said that till that time location of the dead body was exclusively within the knowledge of accused No.1 . It was incumbent on the part of prosecution to examine the witness to inspire confidence in the mind of court that except bringing the boat to seashore, nothing else was done by anybody with respect to the said boat. The court cannot just presume that the officers of Yellow gate police station had not entered the said boat till P.W.42 along with panch witnesses and the accused

No.1 had reached there.

1025. P.W.42 at page -312 in para 9 of his evidence has stated that they reached Sassoon Dock at 00.00 hrs. The police officer Mr.Baviskar of Police Launch Aboli and his staff members were present at Sassoon Doks. Officers of coast guards were also present. As such the possibility of somebody else entering the boat cannot be ruled out and further possibility of preparing statement of the accused No.1 in panchanama Ex.136 on the basis of what was seen in the boat also cannot be ruled out. All these possibilities were to be excluded by the prosecution by leading cogent evidence in this regard particularly when the prosecution is banking upon the statement of accused No.1 leading to recovery of dead body, there being no other evidence to connect the accused No.1 with the death of Amarchand Solanki, except his confession. Prosecution evidence must inspire confidence in the mind of court and should have been implicitly believable to come to the conclusion that the police officers or coast guards officers did not know that there was dead body in the engine room of the boat before it was shown to the police by accused No.1. The circumstances under which the boat was located and anchored at Sasoon Dock, were necessary to be

placed before the Court by cogent evidence excluding possibility of Yellow Gate Police officers entering the boat. In the absence of such evidence, I find it highly risky to come to the conclusion that the statement under panchanama had led to the recovery of dead body of deceased Amarchand Solanki. There is sufficient material to believe otherwise and cannot be said that location of the dead body was not known to the police before arrival of the accused in engine room. Therefore, it cannot be said that the dead body was discovered at the instance of accused No.1. At the most what can be said is that the accused No.1 knew that dead body was in the engine room.

1026. However , there is confession of accused No.1 made before the ld. Magistrate that it is he who had inflicted cut on the neck of deceased Amarchand Solanki. I have discussed the circumstances in which the confession was recorded and the care taken by the ld. Magistrate while recording confession. The confession is found to be voluntary and true and therefore, though the evidence adduced by the prosecution in respect of discovery of the dead body at the instance of accused No.1 has been rejected, I do not find any hesitation in holding that the confession of accused No.1 coupled with recovery of dead body from Kuber boat, is

sufficient material to concluded that accused No.1 had committed murder of the deceased Amarchand Solanki. The accused No.1 himself had suggested that it would be wise to eliminate the deceased Amarchand Solanki and therefore intention of accused No.1 was very clear.

1027. In this regard it may be noted that the prosecution has examined P.W.589-Mr.Shashi Bhushan, to prove that the sanction u/s 188 Cr.P.C. was granted for offence committed by accused No.1 on boat Kuber. Sec. 188 of Cr.P.C. runs as under :

> 188. Offence committed outside India-When an offence is committed outside India -
> (a) by a citizen of India, whether on the high seas or elsewhere; or
> (b) by a person, not being such citizen, on any ship or aircraft registered in India,
> he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found :
> Provided that, notwithstanding anything in any of the preceding sections of this Chapter , no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

It is clear from the prosecution case and the evidence that the offence was

committed by a person not being citizen of India on a ship registered in India. The accused No.1 is not an Indian however, the shop /boat Kuber was registered at Probander Port. The evidence of the above officer and the documents in that regard have already come on record. It is established beyond reasonable doubt that the boat Kuber was registered at Porbandar port which is in India. Therefore, this court has jurisdiction to try the said offence. However the said offence could not be tried without previous sanction of the Central Government.

1028. P.W.589 in his evidence has stated that he has retired as Joint Secretary, Home Department, Government of India. A proposal was received from Government of Maharashtra in the month of February, 2009 when this officer was working as Joint Secretary, Home Department, Government of India. The said proposal is at **art. 1012**. After scrutiny of the proposal he found that there was a prima facie case to prosecute the accused for the offence committed outside India and the offence committed at high sea. Therefore, the proposal was placed before the Union Home Ministry. After getting approval by Secretary of Home Ministry, P.W.589 had granted sanction for prosecution of accused No.1 mentioned in the said

proposal. The sanction was granted on behalf of Government of India. The sanction and forwarding letter to the Government of Maharashtra are at **Exh.1482 colly.** He has denied suggestion of ld. advocate for the accused that he has not applied his mind before placing the papers for grant of sanction from the Central Government. Though the proposal was in respect arrested accused No. 1 to 3, deceased accused Nos. 1 to 9 and other wanted accused, the sanction was granted by the Government in respect with the accused except who are dead. As such sanction was granted for trying the case against accused No.1 for the offence punishable u/s 302 IPC committed on a ship registered in India. In my opinion a valid sanction has been granted by the Central Government . All the facts constituting offence u/s 302 IPC have been proved against accused No.1. He is therefore found guilty of the offence punishable u/s 302 IPC for having committed murder of deceased Amarchand Solanki. I therefore answer **point No.7 in affirmative.**

1029. Before I deal with the involvement of deceased accused No.2 to 9, in the offences committed at Hotel Taj, Oberoi , Nariman House and Leopold, it will be convenient to deal with the points which involve the role

of accused No.1 and deceased accused No.1. This is particularly because the Court has already given findings on certain issues which may come up for consideration in other points also. As such it will not be necessary for the court to give fresh finding on the issues which had been part of the other points on which findings are already given. In this regard it will be appropriate to deal with the points which are under **5th head i.e. assault or use of criminal force against public servants**. at **page 155** onwards of the judgment.

1030. Point No.76 is in respect of injuries sustained by the public servants. The said point runs as under :

> **76. Does the prosecution prove that accused No.1 & deceased accused No.1-Abu Ismail at C.S.T. Rly. Station had voluntarily caused grievous hurt to (1) Bharat Ramchandra Bhosale, A.P.I., G.R.P., (2) Pandurang Subrao Patil, A.S.I., G.R.I.,(3) Sudam Abasaheb Pandarkar,A.S.I., G.R.P., (4) Adhikrao Dyanu Kale, P.C. G.R.P.(5) Vishveshwar Shishupal Pacharne, Home Guard,**

(6) Uttam Vishnu Sasulkar, Home Guard, (7) Ramji Yabad Napit, A.S.I., R.P.F. (8) Parasnath Ramsoman Giri, Hawaldar , R.P.F., (9) Firozkhan Khusnurkhan Ghauri, Constable, R.P.F., (10) Ashok Shivram Patil, Security Guard, B.M.C., (11) Balu Bandu More, P.C., Mumbai Police, (12) Murlidhar Chintu Zole, H.C. Mumbai Police,(13) Vishal Prakash Kardak, Khalasi,Central Rly. (14) Kishor Vinayak Kale, Khalasi, Central Rly., (15) Shambunath Munai Yadav, Booking Clerk, Central Rly., (16) Ashok Bhimappa Renetala, Booking Clerk, Central Rly. (**at Sr.Nos.87, 9, 2, 36, 86, 63, 13, 10, 11, 109, 6, 8, 14, 16, 15, and 54 in the table No.3**)?

The public servants mentioned in the said point are at Sr.Nos. 87, 9, 2, 36, 86, 63, 13, 10, 11, 109, 6, 8, 14, 16,15 and 54 of table No.3.

1031. From the above point it can be seen that what the court is required to decide is whether the accused No.1 or the deceased accused No.1 had voluntarily caused grievous hurt to the said public servants

mentioned in point No.76 except the public servants at Sr.No. 10-Parasnath Ramsoman Giri, Hawaldar, RPF, Sr.No.11-Firozkhan Khusnurkhan Ghauri,Constable , RPF and Sr.No.109-Ashok Shivram Patil, Security Guard, BMC. In this regard **Table No.6** has been inserted in the judgment to show as to the details of evidence adduced by the prosecution which include names of the injured persons, place of the incident, nature of injuries stated by the witness in their evidence, name of the medical officers who had examined the injured persons and nature of the injuries found during the course of medical examination. The table No.6 also includes the witness number of the injured persons as per record of the court, witness number of the medical officer as per court record and the exhibit number of medical certificates in the case where such certificates have been produced in the court. It can be seen from the table No.6 that in some of the cases though the injured persons have been examined as witnesses in the court or their evidence has been tendered u/s 296 Cr.P.C., the medical officers who had examined those witnesses, have not been examined in the court. I have already recorded my opinion that the medical evidence is a evidence of corroborative nature and that only because the medical officers concerned had not been examined, evidence of witnesses who were injured during the

course of incident cannot be rejected. It is also noted by me that many of such witnesses were not even cross-examined by the defence. I have also reproduced my order under which the prosecution was permitted to adduce evidence of such witnesses u/s 296 of Cr.P.C. Considering the nature of other serious offences alleged to have been committed by the accused and considering the volume of work and the time and money which might have been involved in recording of evidence of injured persons, the prosecution was permitted to give evidence of some of the witnesses u/s 296 Cr.P.C. because their evidence was considered to be of formal character. The detail order, as already stated, incorporating all the reasons and case laws on the point, has been reproduced by me from page No.204 to 227 of the judgment.

1032. The table No.6 would show that the injured at Sr.Nos. 2, 6, 8, 13, 14, 15, 16, 54,63, 86 and 87 have been examined as P.W.Nos. 62-Sudam Aba Pandarkar, 517-Balu Bandu More, 516-Murlidhar Chintu Zole, 519-Ramji Yabad Napit, 69-Vishal Prakash Kardak, 510-Shambhunath Munai Yadav, 56-Kishor Vinayak Kale, 512-Ashok Bhimappa Renetala, 522-Uttam Vishnu Sasulkar, 520-Vishveshwar Shishupal Pacharne and 49-Bharat Ramchandra Bhosale. This can be seen from table No.6 of the

judgment in which the details of evidence have been recorded. It can be seen that almost all the witnesses who have been examined by the prosecution out of the witnesses mentioned in Table No.6, had sustained bullet injuries or blast injuries. There are only one or two witnesses who had sustained blast injuries. Otherwise, almost all the witnesses have sustained gun shot injuries. Fortunately they were taken to the hospitals within a reasonable time and were saved because of treatment. Court has already given finding while considering the charge u/s 307 IPC that these persons were injured by either accused No.1 or deceased accused No.1. Therefore no further discussion is required in this regard. I have therefore come to the conclusion that the prosecution has proved beyond reasonable doubt that the P.W.No. 62, 517, 516, 519, 69, 510, 56, 512, 522,520, and 49 had sustained hurt due to firing and hand grenades blasts on the part of accused No.1 and the deceased accused No.1. It is obvious that the act on the part of accused No.1 and the deceased accused No.1 was voluntary.

1033. Though the prosecution has proved that the witnesses mentioned in point No.76 had sustained injuries and the injuries were caused by either accused No.1 or the deceased accused No.1, it is not proved

beyond reasonable doubt that all the injuries fell under any of the categories mentioned in Sec.320 of IPC. Therefore, what the prosecution has established is that accused No.1 and the deceased accused No.1 had voluntarily caused hurts to the witnesses mentioned in point No.76. **Point No.76 is therefore answered accordingly**.

1034. **Point No.77** runs as under :

> **77. Does the prosecution prove that above said sixteen persons were discharging their duties as public servants ?**

In this regard it is sufficient to mention here that most of the witnesses were either railway employees or are RPF Jawans and police employees. The railway employees were at railway station by nature of their duty. Similarly, RPF Jawans and GRP Police were on duty at railway station as usually large number of RPF jawans and GRP police are on duty at railway station. Even if it is assumed for the sake of arguments that some of the Jawans might be there beyond duty hours, it cannot be said that they were not discharging their duty as public servants. A public servant called for discharging duty beyond office hours also is stated to be on duty. **Point**

No.77 is therefore answered in affirmative.

1035. Point No.78 runs as under :

78. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the injuries to the said persons with intention to prevent or deter the said public servants from discharging their duties as public servants ?

It is proved from the acts of accused No.1 and the deceased accused No.1 that they did not want the policemen, RPF Jawans and railway employees to come in their way of causing deaths of passengers at railway station as per their assignment. It is therefore, obvious that their intention was to prevent or deter the public servants from discharging their duty. **Point No.78 is therefore answered in affirmative.**

1036. Point No.79 runs as under :

79. Does the prosecution prove that accused No.1 &deceased accused No.1-Abu Ismail shared each others intention ?

Finding on this point has already been given by me while discussing other points. **My answer to point No.79 is also in affirmative.**

1037. Point No. 81 and Point No.86 involve a similar issue and therefore they are being taken for consideration together. Point No.81 runs as under :

> **81. Does the prosecution prove that the accused No.1 and deceased accused No1- Abu Ismail at Cama Hospital & Albless Hospital, Mumbai, had voluntarily caused grievous hurt to (1) Sadanand Vasant Date, Addl. Commissioner of Police,(2) Vijay Abaji Shinde, A.P.I., Mumbai Police, (3) Vijay Tukaram Powar, A.P.I.,Mumbai Police, (4) Mohan Dyanoba Shinde, H.C., Mumbai Police, (5) Sachin Dadasaheb Tilekar, P.C., Mumbai Police, (6) Vinayak Chintaman Dandgawhal, P.C., Mumbai Police, (7)Chandrakant Dyandev Tikhe, Generator Operater, Cama & Albless Hospital, (8) Hirabai Vilas Jadhav, Staff, Cama & Albless**

Hospital, (9) Kailash Chandrabhan Ghegadmal, Security Guard, Cama & Albless Hospital (at **Sr.No.110, 111, 112, 113, 114, 115, 117, 116 & 118 of table No.3**) ?

Point No.86 runs as under :

86. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail at Badruddin Tayyabji Road had voluntarily caused hurt to (1) Arun Dada Jadhav, P.N., Mumbai Police, (2) Shankar Bhausaheb Vhande, P.C., Mumbai Police, (3) Maruti Madhavrao Phad, Driver, G.T.S. (**at Sr.No.120, 123 & 121 of table No.3**)?

The public servants mentioned in Point No.81 were allegedly injured at Cama Hospital (Cama In case) and the injured mentioned in Point No.86 were the public servants who were allegedly injured outside Cama Hospital (Cama Out case). The prosecution has examined the injured public servants mentioned in Point No.81 above as P.W.118, 112, 469, 471, 470, 472, 109 , 473 and 111 respectively. P.W.118 was working as Addl. Commissioner of

Police and his evidence has already been discussed in detail for the charges u/s 302 and 307 IPC against the accused No.1 and deceased accused No.1. P.W.118 has stated that he reached on 6th floor of Cama Hospital because he had come to know that terrorists had entered Cama Hospital. P.W.118 has given detail evidence as to how the encounter took place between the accused No.1 and the deceased accused No.1 on one hand and the police officials headed by P.W.118 on the other hand. P.W.112 was accompanying P.W.118 and other police officials who had gone to 6th floor of Cama Hospital to nab the terrorists. He was also on duty as A.P.I. He was injured in the incident. He had sustained injuries due to fragments of exploded hand grenades. His statement was recorded at Bombay Hospital. His statement was treated as FIR. His clothes were seized by the police during investigation. As far as P.W.469-Mr.Vijay Tukaram Power, P.W.470-Mr.Sachin Tilekar, P.W.471-Mohan Dyanoba Shinde and P.W.472-Mr.Vinay Chintaman Dandgawal are concerned, they were also members of the police team headed by P.W.118 and obviously they were on duty at that time. These witnesses have stated in their evidence that they had gone to 6th floor of Cama Hospital to take part in anti-terrorists operation. P.W.469 had sustained bullet and blast injuries on his right shoulder. Similarly,

P.W.470 was also working as policemen and on the date of incident he was working as wireless operator on the vehicle of P.W.118. He had accompanied P.W.118 on 6th floor of Cama Hospital. He had sustained bullet injuries to his abdomen, face, wrist and thigh. P.W.471 was also a policeman. He had also sustained blast injury on his left leg and left arm during the incident occurred at Cama hospital.

1038. P.W.472 -Mr.Vinay Dandgawal has stated in his evidence that he was working as police constable attached to Azad Maidan Police Station and while he was proceeding to the office of DCP Zone-I he had sustained bullet injury on his back. P.W.473-Smt.Hirabai Vilas Jadhav was working as 'Aaya ' at Kama Hospital when the accused No.1 and deceased accused No.1 had fired from back side gate towards the hospital. This witness had suffered injury on her right wrist joint. As far as cross-examination of the witnesses P.W.112 and P.W.118 is concerned, I found nothing in their cross-examination to disbelieve any part of their evidence. As far as examination of P.W.109 is concerned, evidence of this witness has also been discussed in detail in the earlier paras of the judgment. P.W.111 was working as watchman of Cama Hospital and he had accompanied police

party to the 6th floor. He had received injuries on his left chest and left thigh due to hand-grenade explosion. He had also sustained other minor injuries in the incident of Cama Hospital. This hospital is run by the Government and therefore, this witness was also discharging his duty as a public servant.

1039. As far as P.W.109 -Chandrakant Tikhe is concerned, it has already come in the evidence that his witness was discharging his duty on terrace of Cama hospital. He was supposed to take care of some electrical installation on the terrace of Cama Hospital. It is P.W.109 who was made shield by the accused and deceased accused No.1 to fire at the police officers on 6th floor. This witness has further admitted the intervention and instruction from P.W.118 could save him though in fact he was standing between the accused No.1 and deceased accused No.1 on one hand and police on the other hand when the exchange of fire was about to start.

1040. P.W.136-Arun Dada Jadhav has given his evidence in detail about the incident involving death of three senior police officers. P.W.136 was also on duty as policeman. P.W.139-Maruti Phad was a driver on the

vehicle of Mr.Bhushan Gagarani (P. W.140). He had come out of High Rise building in the car of Mr.Gagarani to reach Yashodhan building where Mr.Gagarani had given government accommodation. P.W.139 was called by Mr.Gagrani as Mr.Gagrani wanted to go to Mantralaya to attend an urgent meeting following the terror attack. Obviously therefore, this witness was also on duty as public servant.

1041. It has come in earlier part of judgment that this witness had sustained injuries due to firing on the part of accused No.1 and deceased accused No.1 or due to explosion of hand-grenades thrown by the said accused. All of them had sustained grievous hurt. However, no evidence is led to prove that all the injuries were of grievous nature and they were covered by any of the categories mentioned in Sec.320 of IPC. In the circumstances what the prosecution has been able to establish is that the accused No.1 and the deceased accused No.1 had voluntarily caused hurt to the witnesses mentioned in Point No.81 and Point No.86. Both the points are therefore, answered accordingly.

1042. As far as point No. 82 :

82. Does the prosecution prove that the said nine persons were discharging their duties as public servants ?

and point No.87

87. Does the prosecution prove that the above said three persons were discharging their duties as public servants ?

are concerned, it is obvious that all the government servants were discharging their duties as public servants and therefore point Nos. 82 and 87 are therefore answered in affirmative.

1043. By now it is also more than obvious that the accused No.1 and the deceased accused No.1 had voluntarily caused hurt to the public servants with intention to deter or prevent them from discharging their duties as public servants. Therefore **Point No.83-**

83. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the said injuries to the said public servants with intention to prevent

or deter them from discharging their duties as public servants ?

and Point No.88 -

88. Does the prosecution prove accused No.1 &deceased accused No.1-Abu Ismail caused the said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?

are also answered in affirmative .

1044. It is also obvious that accused No.1 and the deceased accused No.1 shared each others intention. **Point No.84-**

84. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail shared each others intention ?

and Point No. 89-

89. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail shared each others intention ?

are therefore answered in affirmative. **Prosecution has therefore been able to establish that the accused No.1 has committed the offence punishable u/s 332 r.w 34 of IPC.**

1045. Now let me answer the point No.91, 92 and 93, 94, which run as under :

91. Does the prosecution prove that the accused No.1 and deceased accused No.1- Abu Ismail at N.S.Purandare Marg, Girgaum Chowpaty, Mumbai, voluntarily caused grievous hurt to Sanjay Yeshwant Govilkar, A.P.I., Mumbai (at Sr.No.127 of table No.3) ?

92. Does the prosecution prove that said Sanjay Yeshwant Govilkar was discharging his duty as public servant ?

93. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail caused the said injury to the said public

servant with intention to prevent or deter him from discharging his duty as public servant ?

94. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail shared each others intention ?

1046. To answer these point one has to refer to the evidence of witnesses pertaining to the incident of Girgaom Chowpaty. The said evidence has been discussed at more than one place in the earlier part of the judgment. It is abundantly clear from the evidence that P.W.2-Mr.Sanjay Govilkar , whose name appeared at sr.No.127 of table of the table No.3 of the judgment was present on the spot. He was accompanied by deceased Tukaram Ombale when the accused No.1 had fired at them from AK-47 rifle. This witness was injured in this incident as he had sustained firearm injury. He was taken to Hurkisondas Hospital and was treated. His statement was recorded. His clothes were also seized by the police. Prosecution however, had not led any evidence as whether the injury was of nature covered by Sec.320 of IPC. I have therefore come to the conclusion

that the prosecution has proved that the accused No.1 had voluntarily caused hurt to P.W.2 at Girgaum Chawpaty. **Point 91 is answered accordingly.**

1047. As far as **Point no.92** is concerned, it is obvious that P.W.2 was discharging his duty as police officer. **Point No.92 is therefore answered in affirmative.**

1048. It is clear that the accused No.1 had caused hurt to P.W.2 with a view to prevent or deter him from discharging his duty. **Point No.93 is therefore answered in affirmative as against accused No.1.**

1049 Point no.94 does not survive as it was the accused No.1 who had fired at P.W.2. Point No.94 is answered accordingly. **As such the accused No.1 is found guilty of offence punishable u/s 332 IPC and u/s 333 of IPC.**

1050. It can be seen from the above discussion that so far I have considered only those points in which there is direct involvement of the accused No.1 and the deceased accused No.1. The point No.113 is also of

the similar nature which has come under **6th head i.e. Wrongful Confinement**. I therefore, proceed to decide the said point. Point No.113 runs as under :

113. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the deceased accused No.1-Abu Ismail on 26/11/2008 at Cama Hospital & Albless Hospital had wrongfully confined (1) Timesh Narsing Chinekar, (P.W.123) (2) Soman Dulal Ghosh, (3) Thomas Sidhappa Uledar (P.W.108) and (4) Ravsaheb Changdev Funde (P.W.107) ?

To prove the said charge prosecution has examined P.W.123-Mr.Timesh Narsing Chinnekar, P.W.108-Mr.Thomas Sidhappa Uledhar and P.W.107-Raosaheb Changdev Funde. While narrating the incident as to when they had first received information of arrival of terrorists at Cama Hospital and as to how they had concealed themselves in the wards, these witnesses have

also stated as to how they were confined in the bathroom by the accused No.1. The evidence of P.W.123, P.W.108 and P.W.107 is very clear on this point. Soman Ghosh has not been examined. However, it has come in the evidence of P.W.123, P.W.108 and P.W.107 that Soman Ghosh was also confined in the bathroom along with them. As far as P.W.107 is concerned, he was hiding in one of the wards behind a clothes drying racks. He was taken to the bathroom and was confined along with P.W. No.123 ,P.W.108 and Soman Ghosh. There is consistency in the evidence of these witnesses on this point also. I have gone through the cross-examination of these witnesses. Though an attempt was made by the defence lawyer that accused No.1 was not responsible for confinement of these witnesses in the bathroom, nothing has come in the cross-examination which may impeach the credibility of these witnesses with regard to this incident. In fact the court has accepted their evidence as a whole and therefore, point No.13 will have to be answered in affirmative. It is therefore, established by the prosecution that accused No.1 is found guilty of the offence punishable u/s 342 r.w.34 of IPC.

1051. Another incident directly involving the accused No.1 and the

deceased accused No.1 is the offence of mischief committed at CST railway station. This point is framed under **8th head - Mischief**. Point No.131 runs as under :

> **131. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail on 26th November, 2008 at C.S.T. Railway Station had committed mischief by explosive substances intending or knowing it to be likely that they would thereby cause destruction of railway station which was ordinarily used as human dwelling and the place for storing property ?**

To prove this charge what the prosecution is required to prove is that the railway station was ordinarily being used as human dwelling and the place for storing property, that mischief was committed either by accused No.1 and by the deceased accused No.1 and that mischief was committed by explosive substance and further that the intention was to cause destruction to the railway station. There is no dispute that the railway station is ordinarily used as human dwelling and place for storing property. Sufficient evidence has come in the oral testimony of eyewitness and the panch witnesses that

damage was caused to CST railway station. The evidence of these witnesses has been discussed in detail and no further discussion on this issue is necessary.

1052. As far as intention part of offence is concerned, what appear to me is that intention of accused was not to cause destruction to the railway property. When they had fired from 7.62 mm rifle and had lobbed hand grenades , their intention was to kill the passengers. However, it can safely be inferred from the circumstances and evidence that the accused knew that by indulging into indiscriminate firing from a powerful weapon like 7.62 mm rifle and by throwing hand grenades, they were likely to cause destruction to the railway station. Therefore, in my view the charge u/s 436 of IPC for the offence of mischief is also proved. **My answer to point No.131 is in affirmative.**

1053. In this regard it may be noted that though no separate charge for the offence punishable u/s 436 r.w. 34 of IPC has been framed against the accused No.1, he can be convicted for the said offence as no prejudice is being caused to him. The charge u/s 436 r.w. 120B r.w 109 of IPC has been

framed against the accused. As far as abetment is concerned, the role of the accused No.1 will have to be examined with regard to the alleged mischief committed at the places other than the places where accused No.1 was involved with the deceased accused No.1. Direct involvement of accused No.1 along with deceased accused No.1 is proved for the offence of mischief at CST railway station. He needs to be convicted for the said offence also though no separate charge has framed for that. I have already stated that the accused No.1 has also been put up on sufficient notice of the allegations against him with respect to the charge of mischief itself and the conviction will cause no prejudice to the accused No.1. **The accused No.1 is therefore, found guilty of the offence punishable u/s 436 r.w. 34 of IPC.**

1054. The accused No.1 and the deceased accused No.1 are also alleged to be directly involved in the offence under Railways Act, 1989. Point No. 181 and Point No.183 which have come under head **14th - <u>Offence under Railways Act</u>** - run as under :

> **181. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in furtherance of their common intention on 26th November,**

2008 at C.S.T. Railway Station caused damage or destruction to the property of railways by lobbing hand grenades and by indiscriminate firing ?

183. Does the prosecution prove that the accused No.1 and deceased accused No.1-Abu Ismail in furtherance of their common intention on the same date, at the same time and place at C.S.T. Railway Station unlawfully threw or struck against, into or upon any rolling stock forming part of train anything like wood or stone, any other matter with intention or with knowledge that they were likely to endanger the safety of any person being in or upon such rolling stock ?

In fact the facts required to prove the charge of mischief u/s 436 ofIPC are more or less similar to prove the charge for the offence punishable u/s151 of Railways Act. The only additional thing required to be proved is that the property destroyed was the property of railway. What is property of railway

is described in Sub-section 2 of Sec.151. The railway station building and other installations are included in the property of railway. It is obvious from the facts collected to prove the offence punishable u/s 436 IPC that damage was caused to the railway property, pits were created because of explosion of handgrenades , walls were damaged because of firing of powerful cartridges like 7.62 mm cartridges. The prosecution, in addition to the eyewitness and panch witnesses has also examined P.W.536-Mr.Ashok Ramrao Gungaonkar, who was working as Senior Section Engineer at CST railway station. P.W.536 has stated in his evidence that the railway had suffered loss of Rs. 2,40,000/- due to indiscriminate firing at CST railway station. To my mind all the ingredients of the offence punishable u/s 151 are proved by the prosecution. **My answer to point No.181 is in affirmative**. The accused No.1 is found guilty of the offence punishable u/s 151 of Railways Act r.w. 34 of IPC.

1055. As far as Point No.183 is concerned, I have gone through the evidence of witnesses examined by the prosecution pertaining to the incident at CST railway station. There is no evidence that either the accused No.1 or the deceased accused No.1 had mercilessly hurt or had attempted to

hurt any passenger travelling by rolling stock. In my opinion the charge u/s 152 of Railways Act must therefore fail. **My answer to point No.183 is therefore, in negative**.

1056. Point No.184 pertains to the act of endangering safety of the persons travelling on rolling stock or upon railways. The said point runs as under :

> **184. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail in furtherance of their common intention on the same date, time and at same place at C.S.T. Railway Station had endangered or caused to be endangered the safety of persons travelling on any rolling stock upon railways ?**

The 'railway station' has been defined u/s 2 (31) of the Railways Act. The definition is as under :

> ' railway means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes

(a) --

(b) --

(c) --

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses institutes, hospitals,water works and water supply installations staff dwellings and any other works constructed for the purpose of , or in connection with, railway;

If one goes through the definition of railway, it will be clear that the waiting hall of main line and local line as well as the passage in between both the waiting halls are covered by the definition of 'railway'. The evidence of prosecution witnesses has been accepted to the extent that accused No.1 and the deceased accused No.1 had committed large number of murders. They had caused injuries to large number of persons including government servants. It is therefore obvious that accused No.1 and the deceased accused No.1 in furtherance of their common intention and by unlawful act had endangered safety of passengers travelling on train. From the definition of 'railway' it is clear that the persons present in the waiting hall can be called as persons travelling on or upon any railway. The charge for the offence punishable u/s 153 is therefore proved. **My finding to point No.184 is therefore in affirmative.** Accused no.1 is guilty for the offence punishable

u/s 153 r.w. 34 of IPC.

1057. So far most of the points directly involving accused No.1 and deceased accused No.1 have been considered and findings have also been given. It can be seen from the police charge-sheet and the evidence adduced by the prosecution that large number of persons were killed at Hotel Taj and Oberoi. The deceased accused No.2 and No.3 who had allegedly attacked Nariman House had also killed as many as seven persons. The deceased accused Nos. 4 and 9 who had first gone to hotel Leopold and thereafter had joined the two other deceased accused (deceased accused No.5 and 8) had killed 10 persons at hotel Leopold and deceased accused Nos. 4, 5, 8 and 9 had killed 36 persons at Hotel Taj. The deceased accused No.6 and 7 had killed as many as 35 persons at Hotel Oberio/Trident. It also can be seen that according to prosecution case three persons were killed in a bomb blast at Mazgaon which bomb was allegedly planted in the taxi by the deceased accused Nos. 4 and 9. It also can be seen from the evidence that there are no eyewitness who could tell the court as to which of the accused had killed which of the deceased. The whole case pertaining to deaths at Hotel Taj, Oberoi, Nariman House, Leopold and Mazgaon is mainly based on

confession of the accused No.1 and other evidence in the form of recovery of firearms, ammunition and explosives collected by the police from the places of incidents. The evidence also includes finding of dead bodies of the deceased accused at above stated places. Since the only source to get names of the deceased accused is the confession of accused No.1 made before the ld Magistrate (P.W.218) and admissions made by the accused before this court, it is necessary to refer to the confession of the accused No.1 and his statement recorded by me on 20th and 21st July, 2009. Before I proceed further to ascertain names of the deceased accused who had entered the places mentioned above, it will be necessary to say, a few words about confession of the accused No.1 recorded by P.W.218. The confession of accused No.1 has been referred to by me in earlier part of the judgment at various places and I have said that the confession of the accused is found to be voluntary and true. I have also cited certain judgments on the point as to what extent retracted confession of the accused can form basis of conviction of the accused. As far as accused No.1 is concerned, it is sufficient to note here that retracted confession of accused No.1 supported by general corroboration from other evidence, is sufficient to hold him guilty of the offences he is charged with. At the same time, as far as deceased accused

Nos.1 to 9 are concerned, their role can be determined from other evidence adduced by the prosecution. Their role also can be ascertained from the confession of accused No.1. Their names and which of the accused was assigned a particular job, could be ascertained from the confession of accused No.1 recorded by P.W.218.

1058. As stated earlier, let me record my reasons as to why did I find confession of accused No.1 to be voluntary and true. In the first place let it be stated here that the confession was retracted for the first time when the accused was provided Advocate Mr.Abbas Kazmi to defend him. Contents of retraction statement have also been reproduced by me in earlier portion of the judgment. What can be stated here is that though the accused No.1 has stated in his retraction statement that he was coerced to give the confession, no circumstances are mentioned in the retraction statement as to how could he say that the confession was under coercion or was under police pressure. Secondly, it may be noted that the ld. Magistrate who has been examined as P.W.218, has taken extraordinary care to see that the accused No.1 was free from police influence, if any. The ld. Magistrate had given more than prescribed time to the accused No.1 to reflect. The

Criminal Manual states that the accused should be given ordinarily not less than 24 hrs. time for reflection. In the present case the accused was given not only first 24 hrs. but he was again given 48 hrs. time to reflect. It may be noted that 24 hrs. time is also not a hard and fast rule. What is stated in the Criminal Manual is **'ordinarily it should not be less than 24 hrs'**. time.' Therefore, it can be said that in the given case reflection time could be less than 24 hrs. also. However, the Magistrate was conscious of the fact that the accused was produced before her not from judicial custody but from police custody. And therefore, she has rightly given extra time to the accused to reflect and she had on each and every occasion when the accused was produced before her, had asked him whether he had any complaint against police. The accused No.1 was repeatedly made aware of the fact that if he gave any confession it can be used against him as an evidence. The confession of the accused has been recorded in the language known to the accused. The ld. Magistrate has also taken care that as far as possible she has used the same words which had been stated by the accused No.1 while giving confession. Wherever the ld. Magistrate was not clear about the meaning of a particular word, she had sought explanation from the accused No.1 in that regard also. Therefore, in my view there is no scope

for doubting the voluntariness of the confession of accused No.1. The retraction is only for the sake of retraction and in my view there is no substance in the retraction of accused. However, since the law on the point is very well settled, that prudence requires that the court should not ordinarily base conviction on the basis of retracted confessions, though it is not a rule of law, but by series of judgments of the Hon'ble Supreme Court it has become as good as rule of law and court shall ordinarily look for corroboration in such matters.

1059. The truthfulness of the confession of accused can be verified from other evidence adduced by the prosecution. In the present case if one goes to the confession of accused No.1 and the evidence adduced by the prosecution, it can be seen that the confession of accused No.1 gets corroboration from almost all pieces of evidence adduced by the prosecution. Therefore, there is no reason to doubt the truthfulness of the confession of accused No.1. With this finding, let me proceed to determine the role of other deceased accused in the whole incident. **The role of the deceased accused is necessary to determine because the accused No.1 is not only facing the charge of conspiracy and the charge of substantive**

offences allegedly committed by him, but he is also facing charge of abetment for abetting the offences committed by the deceased accused. Therefore, unless, it is determined by the court, as to what offences had been committed by the deceased accused, it will be difficult to give finding on the role of accused No.1 as well as the accused Nos. 2 and 3 in respect of alleged abetment. With this I take-up for determination point No.18 as under. Point No.18 which runs as under :

18. **Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib@ Abu Soheb had caused injuries described in column No.4 to the deceased at Sr.Nos. 10 to 20 in the table No.2?**

In this regard it may be stated here that while deciding point No.10, I have already stated that the deceased at 10 to 20 had died in or near Hotel Leopold. The question which now needs to be determined is whether the injuries described in col. No.4 of table No.2 were caused to the deceased at Sr.No. 10 to 20 by deceased accused Nos. 4-Nazir @ Abu Umer and No.9-Shoaib @ Abu Soheb. First of all, I may refer to confession of accused

No.1 where he has stated at **page -21** that five pairs of ten accused were made and that deceased accused Nazir @ Abu Umer and deceased accused Shoaib @ Abu Soheb were part of one and the same pair. He has also stated in his confession that the deceased accused No.4 and 9 would first to go to Hotel Leopold and open fire and thereafter they would join accused No.5 and 8 at hotel Taj. It is also stated by accused No.1 that the deceased accused No.4 and 9 would install bomb below the driver's seat while proceeding to hotel Leopold. Accused No.1 in his statement before me, though has avoided to give details as particularly as he has given in his confession before the ld. Magistrate, has admitted that he knew the names of other nine accused. He has stated that he did not know the nine persons personally but he knew their names which he could tell the court. He has specifically named the deceased accused Nos. 1 to 9. He has also stated their alias names. As far as confession is concerned, he has vividly described as to how the training was imparted to the accused No.1 himself and other trainees. He has also stated at **page -19** of the confession that after intensive training, thirteen trainees (Mujahideens) were selected and they were also given marine training. Accused No.1 has further described as to how six of thirteen trainees were sent for a Fidaeen attack at Kashmir. He

has further stated that deceased accused No1-Abu Ismail, deceased accused no.7 and deceased accused No.8 inducted in the team because the team was short of three MuJahideens. The three Mujahideens inducted later on , had also undergone the training like accused No.1 and others. Therefore, it can safely be said that the deceased accused No.4 and 9 had proceeded to hotel Leopold as stated by accused No.1 in his confession.

1060. Apart from this there is evidence of Police officer who had described the incident at Hotel Leopold. There is also evidence of one eye-witness i.e. P.W.181- Mr.Sachin Sorte. In addition to this ,there is evidence of panchas and police officers in respect of recovery of empty cartridge cases and evidence of ballistic expert regarding comparison of empty cartridge cases with the weapon allegedly held by the deceased accused No.4 and 9. Two AK-47 rifles held by accused No.4 and 9 were recovered at Hotel Taj as according to the prosecution case the deceased accused No.4 and 9 after indiscriminate firing at Hotel Leopold had proceeded to hotel Taj. The evidence in this regard is discussed in detail from **page 607 to 614** of the judgment. P.W.179-Mr.Sudhakar Dattu Deshmukh who was attached to Colaba police station as Sub-Inspector, had rushed to the spot after the

incident. He has stated that Police Naik Mr.Sawant who was on duty on mobile van of Colaba police station had sustained bullet injury and therefore he was sent hospital for medical treatment. P.W.181 has identified dead body of one of the two persons who had fired at Hotel Leopold and had also fired at a shop called Benetton of India Pvt.Ltd. P.W.181 was working as watchman in the said shop. The said shop was situated opposite Hotel Leopold. Therefore P.W.181 had occasion to see the persons who had indulged into firing. P.W.180-Mr.Vinod Waghela, is the panch witness in whose presence various articles were recovered from the spot. He has identified those articles including empties and magazines. As far as opinion of ballistic expert is concerned, it has come in the evidence that out of twenty two 7.62 mm. short rifle empties recovered under panchanama **Exh.732**, nineteen empties had tallied with the empties of test fired cartridge cases of AK-47 rifle -**art.684** and three empties had tallied with empties of test fired cartridge cases of AK-47 rifle **art.682.** Similarly, there was another group of seventeen empties. Some of which had tallied with the empties of test fired cartridge cases of AK-47 rifle art.682 and some of them had tallied with the empties of cartridges test fired from AK-47 rifle -art. 684. The details thereof are recorded at Sr.No.26 and 27 of table No.9. As

far as recovery of two AK-47 rifles art.682 and 684 is concerned, I shall discuss the same while dealing with the case of Hotel Taj. Suffice it to say that these two rifles and dead bodies of deceased accused Nos. 4 and 9 were found at Hotel Taj. It has also come in the evidence that the deceased at Sr.Nos.10 to 20 had died due to firearm injuries. The recovery of large number of empties of art.682 and 684 and recovery of dead bodies of deceased accused No.4 and 9 at hotel Taj and further recovery of rifles art.682 and 684 would undoubtedly connect the deceased accused No.4 and 9 with death of the deceased at Sr.No. 10 to 20 of table No.2. I have therefore come to the conclusion that deceased accused No.4 and 9 had caused death of the deceased at Sr.No.10 to 20 in table No.2 . **My answer to point No.18 is therefore in affirmative**.

1061. Point No.19 which runs as under :

19. Does the prosecution prove that deceased accused Nos.No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb had caused those injuries to the deceased at Sr.No.10 to 20 with intention to cause death or with intention to cause bodily injuries and that the bodily

injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?

Point No.19 would not detain me for a long time as from the description of incident given by the witnesses, it can be said that there could not be any other intention on the part of deceased accused No. 4 and 9 except to cause death of the persons present inside and outside Hotel Leopold. Even if the case of deceased accused No.4 and 9 is not covered by clause *firstly* of Sec.300 of IPC, there should not be any doubt to say that it was covered by clause *thirdly* of Sec.300. My answer to **point No.19 is therefore, in affirmative.**

1062. As regards point No.20, which reads as under :

20. Does the prosecution prove that the deceased accused No. 4 and No.9 had shared each others intention at the time of causing death of the deceased at Sr.No. 10 to 20 ?

it can be stated here that when both the accused had travelled together from Badhwar Park to hotel Leopold and had indulged firing at the hotel, would clearly indicate that they had shared each others intention. P.W.181 as

clearly stated that there two persons who had indulged into firing together. **Point No.20 is therefore answered in affirmative**.

1063. In view of the fact that deceased accused No. 4 and 9 had visited hotel Taj after committing offence at Hotel Leopold, it will be appropriate to decide point No.30 which runs as under :

30. Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer, No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, No.8-Javed @ Abu Ali and No.9-Shoaib @ Abu Soheb had caused injuries mentioned in col. No.4 to the deceased at Sr.Nos.131 to 166 in table No.2 ?

According to prosecution case the deceased at Sr.No.131 to 166 in table No.2 were killed at Hotel Taj by the deceased accused Nos. 4, 5, 8 and 9. As far as deceased accused Nos. 4 and 9 are concerned, I have already referred to the confession of accused No.1 which clearly indicates that these two accused had gone to hotel Leopold and thereafter to hotel Taj. Similar is the

case with regard to the deceased accused No.5 and 8 whose names have been clearly stated by the accused No.1 repeatedly in his confession. Deceased accused No.5 and 8 were part of the same pair. Both of them were present when the naming ceremony had taken place at the training camp. Accused No.1 has clearly stated that apart from the accused who would be travelling in a taxi to CST and Leopold, the other accused would have to install RDX bomb near the places of their proposed attack. The evidence of prosecution witnesses with regard to the incident of Hotel Taj has been discussed from **page 624 to 662** of the judgment. P.W.182-Mr.Prakash Bhoite is the police officer who was attached to Colaba Police Station at the time of incident. He had rushed to hotel Taj after getting information regarding the incident of attack. He is the officer who had detected two live RDX bombs, one near hotel Taj and another near hotel Gokul. He had lodged complaint of the incident vide **Exh. 735** and proforma FIR was taken as **Exh.735A**. Similarly, he had also collected remnants of the defused bombs from the officers of BDDS. Court Witness No.5- Mr.Anthony has described as to how the bombs were defused. His evidence is at page 628 of the judgment. P.W.184-Mr.K.R.Ramamoorthy, P.W.188- Mr.Adil Irani and P.W.224- Mr.Sunil Jadhav had described as to

how they were detained by the four accused in room No.632 and as to how they were taken to room No.520. The witnesses have in detail described as to how they were tortured by the four accused. It is further described by them that due to smoke in the hotel , the said four accused had left the room No.520. It appears from the circumstances that in the event of these witnesses showing resistance, there were all chances of their being killed by the accused. All the witnesses were taken hostages in room No.632 and thereafter they were taken to room No.520.

1064. P.W.224- Mr.Sunil Jadhav had identified two dead bodies at the mortuary during the course of identification parade. In his further evidence this witness has stated that the two persons identified by him were shown in the CCTV visuals of hotle Taj. In this regard it may be stated here that evidence of P.W. 235-Mr.Prakash Shukla, the Senior Vice President and Chief Information Officer of hotel Taj Group was recorded. This witness had handed over two hard disks of Hotel Taj on which the visuals recorded by DVR were stored. These two hard disks were handed over to the reader of DCP Zone-I. Both the hard disks are produced in court at **art.859 and 860.** P.W.223- Mr.Santosh Shivdas Dhemare who was working with DCP

Zone -I has stated that two hard disks were handed over to him by P.W.235. It is further stated by this witness that these two hard disks were given by him to the Investigating Officer Mr.Nigade in presence of two panch witnesses. Prosecution has also examined the panch witness in whose presence various articles were recovered from hotel Taj . Prosecution has also examined the panch witness P.W.186 -Mr.Nishant Gaikwad in whose presence Marcos (Marine Commandos) had handed over certain articles including five hand grenades to the police . It may be stated here that before arrival of NSG Commandos Marcos were requested to flush out the terrorists from hotel Taj. After arrival of NSG Commandos, Marcos were discharged from their duty. However, during the course of operation whatever was recovered by Marcos was handed over to the police. Apart from seizure of articles from Marcos, some articles were handed over to police by Cap. Anil Jakhad of NSG. It has come in the evidence that after the operation was over articles mentioned at **page 647 and 648** of the judgment, were handed over to the police by Cap. Anil Jakhad. They were seized by the police. Panchanama in respect of these articles was drawn by P.W.196. Independent panch witness Mr. Raj Sarkania (P.W.195) was present when the panchanama Exh.760 was drawn in respect of seizure of

articles produced by the NSG Commando. In addition to this seizure, some articles were recovered during the course of removal of debris and renovation of hotel . It can specifically be stated here that two pistols of 7.62/30" were handed over to police by staff members of hotel Taj during the court of investigation. Cap. Anil Jakhad had handed over four AK-47 rifles to the police . He had also handed over two pistols, one Nokia phone with Airtel SIM card and one GPS containing three batteries. The evidence in respect of recovery of various articles at hotel Taj has been discussed at length from **page No.650** onwards of the judgment.

1065. Apart from the evidence given by Mr.K.R.Ramamoorthy, Mr.Adil Irani and Mr.Sunil Jadhav and recovery of arms and ammunitions, prosecution has also adduced evidence in respect of recovery of four dead bodies of the deceased accused from Hotel Taj. P.W.27-Mr. Subhash Warang, API, who was involved in the investigation of Vinoli Chowpaty case, was also directed to go to hotel Taj following the incident of attack. During the course of his duty he was directed to draw inquest panchanama of dead body lying in Wasabi Restaurant. According to this witness dead body was of a male in the age group of 20 to 22 years. The dead body was

sent to J.J.Mortuary for postmortem examination. Before that inquest panchanama was drawn in presence of two panchas. The inquest panchanama is at **Exh.1015**. The postmortem notes -Exh.1488 have been admitted u/s 294 Cr.P.C. It is opined by the medical officer that the deceased had died due to firearm and burn injures. The prosecution has also examined P.W.263-Mr.Chendvankar , Mortuary Assistant of J.J.Mortuary to establish that he had received eight dead bodies from police following the attack dated 26.11.2008. This witness has also given evidence that 9th dead body was received from Nair Hospital. He has produced original register and token numbers of the dead bodies. His evidence has already been discussed by me in detail wherein it is stated that the token numbers were given to dead bodies not serially . There are ready made token numbers and any token is tagged to any of the dead bodies to be preserved in the mortuary. The witness has stated that it is not necessary that two dead bodies received by the hospital at one and the same time shall get token number serially. As already stated there are ready made token numbers and any token can be applied to any dead body.

1066. P.W.207-Mr.Sanatan Gaikwad had drawn inquest panchanama

in respect of dead body which was later on numbered as ADR No. 83/08 of Colaba Police Station. It is stated by this witness that when he was on duty outside hotel Taj on the night of 28th and 29th November, 2008, a dead body had fallen down from hotel Taj on P.Ramchandani Marg. He had drawn inquest panchanama of the dead body . It is at **Exh. 779**. According to this witness there were firearm injuries on the dead body. It is the case of prosecution that this dead body belonged to deceased Shoaib @ Abu Soheb. I have already stated that the dead bodies were identified by the Investigating officers on the basis of statement given by the accused No.1 and accordingly names were recorded in the mortuary. The medical officer Mr.Kalyankar has stated that the deceased had died due to haemorrhage and shock due to firearm injuries associated with 40% superficial deep thermal burns. The inquest panchanamas of dead body of the deceased accused Nazir @ Abu Umer and deceased accused Hafiz Arshad were drawn by P.W.400-Mr.Dilip Sankpal. Dead bodies of these two deceased accused were taken to hospital by P.W.616-Sanjay Sarand and P.W.617-Mr.Sunil Dupate respectively. The dead body of deceased Javed @ Abu Ali was taken to hospital by P.W.618-Mr.Sanjay Mahadik. The dead body of deceased Nazir was examined by .P.W.113-Dr. Sonawane. It is stated by

him that the deceased had died due to haemorrhage and shock due to firearm injuries with burns. Dead body of accused Hafiz Arshad was examined by Dr.Bagul. The postmortem notes are admitted u/s 294 CR.P.C. It is stated by Dr.Bagul in the postmortem report that the deceased had died due to firearm injuries with burn. The postmortem examination report of deceased Hafiz Arshad is at Exh.1489. The postmortem examination report of deceased Nazir @Abu Umer is at **Exh.1695.**

1067. As such what can be seen from the above stated evidence is that dead bodies of deceased accused Nos. 4,5,8 and 9 were collected from hotel Taj. The prosecution has not examined the NSG Commandos who had allegedly eliminated the four deceased accused at Hotel Taj. I was in fact inclined to summon the concerned NSG Commandos to take their evidence in this regard. I had in fact issued summons to three of the Commandos. The order of this court was however challenged before the Hon'ble High Court. The Hon'ble High Court directed the evidence of three Commandos summoned by the Court to be recorded to a very limited extent. Accordingly evidence of these Commandos was recorded to the limited extent permitted by the Hon'ble High Court.

1068. As such there is confession of accused No.1 to establish that these four accused had gone to hotel Taj. The recovery of four unknown dead bodies and their death due to firearm injuries and burn injuries can be an additional evidence to say that these four dead bodies belonged to the deceased four accused named by the accused No.1 in his confession to be the accused who were to attack hotel Leopold and hotel Taj.

1069. I have already come to the conclusion that the deceased at Sr.No. 131 to 166 in table No.2 have died due to injuries mentioned against their name in col.No.4. Most of them have died due to firearm injuries and few of them had died due to shock due to burn injuries. The eyewitnesses examined by the prosecution who were confined in room No.632 and were later on taken to room No.520 have clearly stated that the four accused were carrying AK-47 rifles. Four AK-47 rifles described at Sr.Nos. 4, 5,6 and 7 in table No.7 are proved to have been recovered from hotel Taj. It can therefore be said these four AK-47 rifles were used by the said four deceased accused. It is nobody's case that AK-47 rifles were had been planted. One of the strongest circumstance is that all the four accused were seen carrying AK-47 rifles by the witnesses in room No.632 and 520. The

AK-47 rifles have been seized by the police. During the course of panchanama empty cartridge cases were also seized by the police from the hotel or they were produced before the police by the Commandos. For this I may again refer to table No.9. It can be seen from table No.9 that seven 7.62 mm short rifle empties were seized under panchanama Exh.744 at hotel Taj. The evidence in that regard is discussed in detail by me in earlier part of the judgment. What is necessary to be stated here is that out of seven empties-art.656 colly., recovered under panchanama Exh.744, four empties had tallied with the empties of cartridge cases test fired from AK-47 rifle art. 682 and three empties had tallied with the empties of cartridge cases test fired from AK-47 rifle art.684. In this regard one may refer to Sr.No.28 table No.9. Similarly, some of the empties have tallied with empties of cartridge cases test fired from art.683 and some of the empties have tallied with the empties of cartridge cases test fired from art.684. Sr.No.31 to 35 from table No.9 can be referred in this regard. As such these are the strong circumstances to show that these four weapons were used at hotel Taj. There is one more circumstance to establish presence of deceased accused Nos. 4,5,8 and 9 at Hotel Taj which is available in the transcription of the alleged conversation between the deceased accused and the co-conspirators on

mobile phone. I will be referring to that part of evidence at a later stage when I deal with the charge of conspiracy. However, for the time being it can be stated here that names of all the four accused have figured in the said telephonic talk.

1070. The question which now needs to be determined is whether the deceased at Sr.nos. 131 to 166 were killed by the deceased accused Nos. 4,5,8 and 9. Though there is no direct evidence, there are strong circumstances mentioned above to come to the conclusion that the deceased at Sr.No. 131 to 166 had been killed by the deceased accused Nos. 4,5,8 and 9 at hotel Taj. **My answer to point No.30 is therefore in affirmative.**

1071. Point No.31 refers to the intention of accused named in point No.30. Point No.31 runs as under :

> **31. Does the prosecution prove that the injuries to the said deceased at Sr.No.131 to 166 were caused by the deceased accused No.4-Nazir @ Abu Umer, No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, No. 8-Javed @ Abu Ali and No.9-Shoaib @ Abu Soheb with intention**

to cause death or with intention to cause bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?

The intention of accused was absolutely clear that, either they wanted to cause death of deceased persons or wanted to cause bodily injuries to the deceased and the bodily injuries were sufficient to cause death in ordinary course of nature. The medical officers who had conducted postmortem examinations of the deceased, have stated in their evidence that the injury was sufficient in ordinary course of nature to cause death. In his confession accused No.1 has clearly stated that all the accused had come to kill the persons en mass at the places assigned to them. It has also come in his confession that Hotel Taj was assigned to the accused Nos. 4,5,8 and 9 when the accused No.1 and the deceased accused Nos. 1 to 9 were given their assignment after conclusion of training at Pakistan. **My answer to point No.31 is also in affirmative for the reasons stated above**.

1072. Let me now examine the case of Mazgaon Taxi blast . Point Nos. 26, 27 and 28 are in respect of the said case. Point Nos.26, 27 and 28

run as under :

26. **Does the prosecution prove that the deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9- Shoaib @ Abu Soheb had planted bomb in the taxi bearing registration No.MH-01-J-5308 and explosion of said bomb had resulted in injuries mentioned in col. No. 4 to the deceased at Sr.Nos. 74 to 76 in table No.2 ?**

27. **Does the prosecution prove that the deceased accused No. 4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb caused injuries to the deceased at Sr.No. 74 to 76 with intention to cause their death or with intention to cause bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?**

28. **Does the prosecution prove that the deceased accused No. 4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @Abu Soheb had shared each others intention at the time of**

committing murders of the deceased
at Sr.No.74 to 76 in table No.2 ?

The deceased at Sr.Nos. 74, 75 and 76 had died in the said incident. I have already given a finding that deceased at Sr.No.74 to 76 had died due to blast injuries at Mazgaon. According to prosecution case the deceased accused No. 4-Nazir @ Abu Umer and No.9- Shoaib @ Abu Soheb had travelled to Leopold Hotel from Badhwar Park in the taxi bearing No. MH-01-J-5308. The deceased at Sr.No.Fulchandra Ramchandra Bind was driving the said taxi. Deceased at Sr.No.74-Mrs. Jarina and deceased at Sr.No.76-Mrs.Reema were passengers of the said taxi. The said taxi was hired by deceased at Sr.No.74 and 76 from Dongari and they wanted to go to B.P.T. Mazgaon. They had safely travelled upto Mazgaon. The bomb had exploded when they were paying taxi charges to the deceased at Sr.No.75 who was driving the taxi. The said taxi was earlier hired by Mr.Wasim Ahmed Bashiruddin Shaikh from near Leopold Hotel. He left the taxi at Dongari and from there it was hired by deceased at Sr.No.74 and 76. The deceased at Sr.No.74 -Mrs.Jarina was the mother-in-law of the deceased at Sr.No.76. It has come in the evidence that son of deceased had come to see them off at Dongari. Both the ladies wanted to go to the place of Mrs.Jarina

as there was no sufficient place at the residence of Mrs.Reema. As already stated that the taxi blast took place when both had reached Mazgaon and when they were about to pay taxi charges. Panchanama of the spot was drawn by Byculla Police. The deceased at Sr.No.74 and 76 were taken to the hospital. However, they could not survived. The medical officer P.W.100 - Dr. Sunil Jawale had opined that the deceased at Sr.No.74 and 76 had died due to haemorrhage and shock due to blast injuries. The postmortem notes have been brought on record at Exh.404 and Exh.405. The postmortem notes of deceased Fulchandra Bind have been admitted u/s 294 Cr.P.C. Postmortem was conducted by P.W.594-Dr.Kiran Kalyankar. He has opined that the deceased Fulchandra had died due to blast injuries.

1073. The evidence with regard to Mazgaon Taxi Blast Case has been discussed by me in detail earlier also and it does not require further discussion. What is the area of examination now is whether it is deceased accused Nos. 4 and 9 who had planted bomb in the taxi. The articles collected from the spot during the course of panchanama were sent to the chemical analyzer for analysis. Details of these articles are in table No.12 of the judgment. The articles seized from the spot included broken tin sheet,

sample of soil and broken pieces of taxi. They are article **601, 602** and **603** respectively. They were seized under panchanama Exh.726 by P.W.178-Mr.Dilip Wagaskar. The articles were carried to the laboratory by P.W.429-Mr.Sadashiv Nikam. The opinion is given by ballistic expert P.W. 237-Mr. Sanjay Prabhavale. He has opined that RDX (Cyclonite), petroleum hydrocarbon oil and nitrite (post explosion residue) were detected on all the three articles. It is therefore clear that it was RDX bomb. Accused No.1 in his confession has stated that one RDX bomb each was given to all the ten accused. The accused No.1 has further stated that the deceased accused No.4 was to plant a bomb in the taxi when the deceased accused No. 4 and 9 would be travelling from Badhawar park to hotel Leopold. From the circumstance brought on record it can safely be said that the taxi No. MH-01-J-5308 was hired by P.W.225-Mr.Wasim Shaikh from hotel Leopold. to Dongari. From there the same taxi was hired by the deceased at Sr.No. 74 and 76 and which had exploded at Mazgaon. If one goes through the evidence of P.W.225, it can be seen that he had seen two persons getting out of taxi hurriedly and giving note of Rs.100 to the taxi driver. Those two persons had not bothered to collect back the balance amount. As such prosecution has proved that installation of bomb on the part of deceased

accused Nazir had caused death of deceased at Sr.No.74 to 76. The intention part of deceased accused No.4 was absolutely clear and does not require any discussion. Both the deceased accused No.4 and 9 had obviously shared each others intention. **My answers to point Nos. 26 to 28 are therefore, in affirmative.**

1074. It can be seen from the above discussion that out of the ten accused, accused No.1 and the deceased accused No.1 had proceeded to CST railway station, accused No.4,5,8 and 9 had gone to hotel Taj. It is the case of prosecution that accused No.2-Imran Babar @ Abu Aakasha and No.3-Nasir @ Abu Umar had attacked Nariman House . Point Nos. 22, 23 and 24 are in respect of Nariman House. They run as under :

22. Does the prosecution prove that deceased accused Nos.2-Imran Babar @ Abu Aakasha and deceased accused No.3-Nasir @ Abu Umar had caused injuries mentioned in col. No. 4 to the deceased at Sr.No.1 to 9 in table No.2?

23. Does the prosecution prove that the deceased accused Nos.2-Imran Babar @ Abu Aakasha and deceased

accused No.3-Nasir @ Abu Umar had caused those injuries to the deceased at Sr.No.1 to 9 with intention to cause death or bodily injuries and that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?

24. Does the prosecution prove that the deceased accused No.2 and No.3 had shared each others intention at the time of causing death of deceased at Sr.No.1 to 9 in table No.2 ?

As far as death of deceased at Sr.No.1 to 9 in table No.2 is concerned, it has already been decided that they had died due to injuries mentioned against their names in col.No.6 of table No.5 at the places mentioned in col.No.3. The deceased at Sr.No.1 to 9 had died due to firearm injuries. The evidence in this regard has been discussed by me from page No.663 to 684. From summing up of the evidence it can be seen that P.W.201-Mr.Kamal Singh had seen two persons in the landing area between the 2nd and 3rd floor of Nariman House. Thereafter he had also seen two persons firing at him. In the cross-examination this witness has admitted that there was no

watchman when he entered the building . He has further admitted that he had gone to give statement to the police on call given by the police. It was therefore suggested to this witness that he had not seen the incident of firing at Nariman House. I have carefully examined the evidence the evidence of this witness. I do not see anything doubtful in his evidence to come to the conclusion that he had seen two persons . He had seen two persons entering Nariman House and also had seen them firing later on. I do not think that this witness was able to identify the said two persons. The evidence of P.W.206- Mr.Harharwala is limited to the extent of death of his parents due to gun shots from Nariman House. Evidence of P.W.204-Mr.Shripat Hate, panch witness and P.W.205-Mr.Shirish Desai, PI, is in respect of seizure of articles from Nariman House and surrounding area. P.W. 239- Mr.Kazi Zakir Hussain has described in detail as to how firing had started and as to how he and other servant Ms.Sandra had been hiding in the kitchen during the course of incident. The witness has further described as to how he went up stairs and brought child Moshe from the drawing room. This witness had also not seen the persons who had indulged into firing at Nariman house. However, from the evidence of witnesses it is established that two persons had entered Nariman House and they had indulged into firing. NSG

Commandos had undertaken operation at Nariman House also. Major Pavitar Prashant has been examined as Court witness. He had produced articles collected from Nariman House after operation was over. The articles were seized by police. He had produced two AK-47 rifles, sixteen magazines of AK-47 rifle, four pistol magazines and many other articles including three Nokia phones and a Motorola phone. The confession of accused No.1 clearly show that it is deceased accused No. 2 and 3 who had gone to Nariman House as per planned attack. The accused No.1 in his confession at **page 23** has stated that accused No.2 and 3 were to attack Nariman House as per the terms of conspiracy. The recording of telephonic talks which will be discussed later on, also show that the deceased accused Nos.2 and 3 were involved in the incident at Nariman House. In view of the finding of the court that deceased at Sr.No.1 to 9 had died in the incident at Nariman House, and in view of the evidence led by the prosecution to establish the fact that it is deceased accused No.2 and 3 who had caused death of deceased at Sr.No.1 to 9, it can be safely said that deceased accused No. 2 and 3 had caused injuries to the deceased at Sr.No. 1 to 9 mentioned in table No.2. Injuries caused to them are stated to be sufficient to cause death in ordinary course of nature. Intention of accused No.2 and 3 in fact

was very clear that they wanted to kill the persons.

1075. It can also be seen from table No.7 that AK-47 rifles art. 694 and 695 were amongst the articles produced by Major Pavitar Prashant before P.W.234-Mr.Maniksingh Patil. They were seized under panchanama Exh.771. It is also stated by me while summing up evidence that twenty three 7.62 mm short rifle empties and another fifty nine 7.62 mm short rifle empties were recovered under panchanama **Exh.774** from Nariman House. They are **art. 726 colly**. and **art.748 colly.** Out of twenty three empties collected under the panchanama, twenty two empties had tallied amongst themselves and had tallied with the empties of cartridge cases fired from **art.694**-AK-47 rifle. Out of another lot of fifty nine empties, six empties had tallied with the empties of test fired cartridges of AK 47 rifle **art.695** and fifty three empties had tallied amongst themselves and had also tallied with the empties of cartridge cases fired from AK-47 rifle art. 694. There was another group of five empties i.e. art.**752 colly**., out of which three empties had tallied with empties of cartridge cases test fired from art.694 and two tallied with empties of cartridge cases test fired from art.695. As such almost all cartridge cases of 7.62 mm short rifle had either tallied with

the art.694 or art.695. The dead bodies of deceased accused No.2- Imran Babr and deceased accused No.3-Nasir @ Abu Umar were examined by P.W.113-Dr.Sachin Sonawane . It is stated by him that both of them had died due to haemorrhage and shock due to multiple firearm injuries. Postmortem examination reports in respect of both the accused have been produced at Exh. 458 colly. and Exh.459 colly. As such the deceased accused Nos.2 & 3 had died in an encounter at Nariman House. They are responsible for deaths caused at Nariman House. They had committed this offence in furtherance of their common intention. **Therefore my answers to point Nos. 22 and 23 are in affirmative**. **Answer to point No.24 is necessarily to be in affirmative because it is abundantly clear that the deceased accused No. 2 and 3 had gone together at Nariman House . The eye-witness has specifically stated that he had seen two persons together on the floor.**

1076. Now let me proceed to consider the point No.34 to 36 pertaining to the offence punishable u/s 302 of IPC arising out of the incident at hotel Oberoi. Point Nos.34, 35 and 36 run as under :

34. Does the prosecution prove that the deceased accused No. 6- Abadul Reheman Chhota @ Saakib and deceased accused No.7- Fahad Ullah, had caused injuries mentioned in col. No.4 to the deceased victims at Sr.No. 37 to 71 in table No.2 ?

35. Does the prosecution prove that the deceased accused No. 6- Abadul Reheman Chhota @ Saakib and deceased accused No.7- Fahad Ullah had caused above injuries to the deceased at Sr.No.37 to 71 with intention to cause death or with intention to cause bodily injuries & that the bodily injuries intended to be caused were sufficient, in ordinary course of nature, to cause death ?

36. Does the prosecution prove that deceased accused No.6 and No.7 had shared each others intention at the time of causing death of deceased at Sr.Nos. 37 to 71 mentioned in table No.2 ?

As far as death of deceased at Sr.No.37 to 71 in table No.2 is concerned, Court has already come to the conclusion that deceased at sr.No. 37 to 71

had died due to injuries mentioned in col.No.4 of table No.2 at the places mentioned in col.No.3 of the said table. As far as role of accused No. 6-Abadul Reheman Chhota @ Saakib and No.7-Fahad Ullah is concerned, Court will again have to go back to the confession of accused No.1. Reasoning for accepting presence of accused No. 6 and 7 at hotel Oberoi will be the same as in the case of acceptance of presence of other accused at Nariman House, Hotel Taj and Hotel Leopold. It has come in the evidence of P.W.28-Mr.Bharat Tamore that he had seen inflatable boat and he had also seen ten persons in the boat. He had further seen the boat proceeding towards Nariman point. The boat was spotted at Nariman point by P.W.29-Mr.Prashant Dhanu. The incident at Hotel Trident/Oberoi has been described by the witness who had been working in Hotel Oberoi. The star witnesses in this case P.W.238-Mr.Siddharth Umashankar, P.W.215-Mr.Rajesh Kadam. P.W.212-Mr.Pradeep Banglorkar have described in detail as to how there was an incident of firing at Kandhar and Tiffin Restaurants in Oberoi and as to how two persons had indulged into indiscriminate firing and had further asked staff members to set furniture on fire. P.W.212 himself had seen the deceased Mr.Jorden being killed in his presence. Deceased Jorden is shown in the list of deceased at Sr.No.64.

The witness has further described as to how he could escape from the clutches of deceased accused Nos.6 & 7. P.W.215 who was working as Asstt. Security officer has in detail described as to how the operation was carried out by the NSG Commandos. This witness had assisted the NSG Commandos during the course of whole operation. The incident at Oberoi went on for quite a long time and ultimately both the deceased accused were killed on 18th floor of Hotel Oberoi. Cap. Sharma has also been examined as Court witness but his evidence is kept confidential as per directions of the Hon'ble High Court. The detail evidence in fact is given by P.W.215-M.Rajesh Kadam. The evidence of witnesses pertaining to the incident at Hotel Oberoi has been described by me from page No.685 to 712 which includes recovery of arms and ammunition from the hotel. It also includes production of certain articles by NSG Commandos at Marine Drive police station. The inquest panchanamas and panchanama in respect of spot on 18th floor would show that AK-47 rifle art.765 was seized from near a dead body of a deceased accused on 18th floor and another AK-47 rifle -art.768 was seized from near dead body of another deceased accused. Inquest panchanamas of dead bodies were drawn on 18th floor itself and dead bodies were sent for postmortem examination. The postmortem

examination reports are admitted u/s 294 Cr.P.C. They are at Exh. 1532 and 1531 respectively. Both the deceased accused had died due to haemorrhage and shock due to firearm injuries. Obviously they were eliminated by the NSG Commandos but not before they had killed a large number of persons mentioned in table No.2. As far as death of the deceased at Sr .Nol. 37 to 71 are concerned, I have already given a finding that they had died due to firearm injuries at hotel Oberoi. As regards role of deceased accused No.6 and 7 in the whole incident, it can be seen from the confession of accused No.1 that accused No.6 and 7 had gone to hotel Oberoi after alighting from the inflatable boat at Nariman Point. Names of both the accused have figured in the telephonic talk recorded by the police during the course of incident. It is therefore conclusively established that the accused No.6 and 7 were involved in the incident of firing at hotel Oberoi. The empty cartridge cases recovered at Hotel Oberoi had tallied with either art. 765 or art.768. Art.765 and art.768 are AK-47 rifles recovered from near the dead bodies of deceased accused Nos. 6 & 7 on 18th floor of hotel Oberoi. The details of all the empties can be found in table No.9 of the judgment. It therefore can be said that deceased accused No.6 and 7 had caused injuries to the deceased mentioned at sr.No. 37 to 71 of table No.2. The injuries caused to these

deceased were sufficient to cause death in ordinary course of nature. This has been stated by the medical officers. The intention of accused was very clear from the manner in which they had indulged into firing, and from the confession given by accused No.1. Since both the accused were together and fought till the end of their lives with NSG Commandos, it is apparent that they had shared each others intention. **Point nos. 34, 35 and 36 are therefore answered in affirmative**.

1077. As such the points which have arisen for determination of culpability of the deceased accused Nos. 2 to 10 for the offence of murders in respect of the incidents of Hotel Leopold, Hotel Taj, Mazgaon Taxi Blast, Nariman House and Hotel Oberoi/Trident have been answered. T**he points involving culpability of accused Nos. 1, 2 and 3 in respect of offence of abetment by conspiracy are yet to be decided because the court has not yet decided the issue of conspiracy itself.**

1078. Since the presence of accused Nos 4 and 9 has been established at hotel Leopold and Taj and it has also been established that the accused Nos. 4 and 9 had travelled by the taxi which was later on hired by P.W.225

from near hotel Leopold to go upto Dongari and since it is the case of prosecution that the injured at Sr.No. 185 to 212 and injured at Sr.Nos. 220 to 238 had been injured in the incident of firing at hotel Leopold and RDX bomb blast at Mazgaon, it will be appropriate to decide point nos..60, 61, and 62 which run as under :

60. Does the prosecution prove that deceased accused No.4-Nazir @ Abu Umer and deceased accused No.9-Shoaib @ Abu Soheb, had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 185 to 212, 220 to 238 at the places mentioned in Col. No.4 of the table No.3 ?

61. Does the prosecution prove that the deceased accused No.4 and No.9 had caused the said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons, and had the accused Nos.4 & 9 been alive they would have been guilty of offence of murder ?

62. Does the prosecution prove that the deceased accused No.4 and No.9 shared each other's intention while causing injuries to the said persons?

1079. In this regard as stated earlier, the presence of deceased accused No.4 and deceased accused No.9 at Hotel Leopold has been established at It has also been established that the deceased accused Nos. 4 and 9 had travelled by taxi No. MH-01-J-5308 from Badhwar Park to Hotel Leopold and since it has also been established that these two accused were responsible for deaths at hotel Leopold and B.P.T., Mazgaon, it may not be difficult to answer point Nos.60,61 and 62. Prosecution has not examined all the injured of the incident of Hotel Leopold and Mazgaon blast. Prosecution has examined the injured at Sr.Nos. 185, 186, 192, 193, 197, 198, 200,201, 203, 205, 206, 207, 208, 210, 211 and 212 in respect of the incident of hotel Leopold and injured at Sr.Nos. 221, 223, 224, 226, 227, 229, 230, 231 237 and 238 in respect of bomb blast at Mazgaon. These injured have been examined as P.W.Nos.474, 489, 477, 475, 480, 481, 482, 483,486, 485, 476, 484, 488, 487, 478, 479, 467, 460, 462, 466, 461, 459, 465, 458, 468 AND 463 respectively. Most of these witnesses have been

examined on affidavits and they have not been subjected to any cross-examination. Their evidence was taken u/s 296 Cr.P.C. Ld. Advocate Mr.Pawar for accused No.1 had no objection for taking evidence of these witnesses u/s 296 Cr.P.C. Considering the nature of other charges levelled against the accused, it was felt that this charge is comparatively of lesser serious nature and considering volume of evidence, the evidence of the witnesses in respect of injuries sustained by them, could be taken u/s 296 Cr.P.C. After hearing both the sides a reasoned order was passed by me for taking such affidavits on record. It was obvious that the intention part of the offence was to be proved by other evidence and not by the evidence of witnesses who have been examined u/s 296 Cr.P.C. The affidavits have been taken into consideration to the extend of injuries sustained by the witness at the places. Other parts of the affidavits have been discarded. Therefore, no prejudice was being caused to either of the accused by taking these affidavits on record. Since none of the witnesses have been cross-examined and since prosecution has established by their evidence that the witnesses had sustained injuries of the nature mentioned in col. No.4 of table No.6, it can safely be said that they had sustained these injuries. It may be noted that in some of the cases even medical officers have also been

examined who have corroborated evidence of the injured witnesses. The medical officers who had examined the injured persons at various government hospitals have also been examined u/s 296 CR.P.C. and medical certificates have also been produced. The name of medical officer concerned is stated in col.No.5 of table No.6 and evidence regarding injuries sustained by the injured is stated in col.No.6. The exhibit numbers of medical certificates concerned, are also stated below the nature of injuries recorded by the medical officer in col.No.6. As such what can be seen from table No.6 is that P.W.Nos. 474, 489, 477, 475, 480, 481, 482, 483,486, 485, 476, 484, 488, 487, 478, 479, 467, 460, 462, 466, 461, 459, 465, 458, 468 AND 463 had sustained injuries of the nature mentioned in col.No.4 of table No.6 at Hotel Leopold and Mazgaon. Their evidence has been corroborated, in some cases, by the evidence of medical officers mentioned in col.No.5. Summary of evidence of medical officers has been mentioned in col.No.6. **It is therefore proved by the prosecution beyond reasonable doubt that accused No.4 and 9 had caused injuries of the nature mentioned in col.No.5 to the persons at Sr.No. 79 to 94 (Hotel Leopold)and 102 to 111 (Mazgaon Taxi blast) of table No.6 at the place mentioned in Col.No.3**.

1080. There are similar points in respect of involvement of deceased accused Nos. 4,5,8 and 9 in respect of offence of attempt to commit murders at hotel Taj. The said points are at Sr.No.64, 65 & 66 which run as under :

64. Does the prosecution prove that deceased accused No.5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased accused No.8-Javed @ Abu Ali and deceased 4-Nazir @ Abu Umer deceased No.9-Shoaib @ Abu Soheb had caused injuries of the nature mentioned in Col. No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 155 to 184 at the places mentioned in Col.No.4 of the table No.3 ?

65. Does the prosecution prove that the deceased accused No.5 , No.8, No.4 and No. 9 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons, and had the accused Nos.4,5,8 & 9 been alive they would have been guilty of offence of murder ?

66. Does the prosecution prove that the deceased accused No.5 ,No.8 No.4 & No.9 shared each other's Intention while causing injuries to the said persons?

It can be seen from table No.6 that the prosecution has not been able to examine all the injured alleged to have sustained injuries at hotel Taj. Prosecution has been able to examine the injured at Sr.Nos. 156 to 161 , 167 to 170, 172, 176, 183 and 184. The presence of deceased accused Nos. 4,5,8 and 9 has been established and finding in this regard has been given while examining the point involving these four deceased accused in the offence of murders at hotel Taj. Therefore, the evidence brought on record by the prosecution to establish presence of these four accused at hotel Taj need not be repeated. As far as the nature of injuries caused to the witnesses is concerned, P.W. 184, the injured at Sr.No.176, P.W.188, the injured at Sr.No.169 have been examined in open court and other witnesses have been examined on affidavits. As far as witnesses examined on affidavits u/s 296 Cr.P.C. is concerned, there is no cross-examination of these witnesses. The evidence of P.W.184-Mr.K.R.Ramamoorthy and P.W.188-Mr.Adil Irani, has already been discussed by me while summing up evidence of witnesses pertaining to the incident at Hotel Taj. It has come in the evidence P.W.184

that when he was sitting in room No.632 of the hotel on the night of 26.11.2008 , he received a call from service room that there was an emergency and he should take care of himself. He switched on television and he could see as to what was happening at hotel Leopold, Taj and Oberoi. After witnessing the images on television this witness became restless. The hotel management had also suspended electronic media channels to be relayed on television sets. The witness has graphically described as to how at about 11.15 p.m. two persons had entered his room. He has further explained as to how they had assaulted him. This witness has stated about two more terrorists joining the earlier two terrorists. The witness also states about the said persons establishing contact on telephone with somebody and talking to them. The evidence of this witness is corroborated by the evidence of P.W.188-Mr.Adil Irani on all material particulars . The witness has also described as to how they were taken to room No.520 and then as to how he himself and others who were kept hostage could escape from the said room.

1081. As far as cross-examination of P.W.184 is concerned, there is no cross-examination on behalf of any of the accused. Similarly, P.W.188

who has corroborated evidence of P.W.184 has further stated about the accused person speaking to his wife when his mobile phone had rung. The said phone was snatched away by the accused and they had told wife of P.W.188 that

(Ask them to stop operation otherwise we will cause disaster.) They had also been asking caste of wife of P.W.188. During the course of conversation on phone with other side, one of the four accused had told his other three associates to throw hand grenades and set the hotel on fire. It has also been stated by P.W.188 that while the accused had been talking on telephone with somebody on the other side, they had told the person on other side that five persons had been kept hostage and that one of the hostage appeared to be a rich man. They wanted instructions as to what further steps needed to be taken with regard to the hostage. After some time, smoke entered the room and the accused left the said room. It therefore can safely be said that grenades had been lobbed by the other three accused as per instructions given by one of the accused. It is in these circumstances, to my mind, that the accused were compelled to leave the room No.520. Otherwise it was possible that they would have kept P.W.184, P.W.188 and others as hostage in the room.

1082. It can be seen from the evidence of P.W.184 that four staff members including P.W.184 were kept hostage along with P.W.188. As such there were in all five hostage. Sunil Jadhav, one of the staff members of hotel Taj was also one of the hostages. Mr.Sunil Jadhav has also been examined as P.W.224. He, more or less, has narrated the incident in the similar manner. Evidence of P.W.184, 188 has been corroborated by P.W.224. During the course of recording of evidence of P.W.224 CCTV visuals recorded on the hard disks of DVR of Taj Hotel were also played. The CD which was played in the court is marked **art. 863.** P.W.224 in his evidence has stated that the dead bodies identified by him at mortuary belonged to the persons seen in the visuals. One of them was wearing black T-shirt and the other was wearing gray T-shirt at the time of incident. As far as cross-examination of P.W.224 is concerned, ld. Advocate Mr.Kazmi has cross-examined this witness at length in respect of the whole incident of hotel Taj. But I do not see anything in the cross-examination which can be considered to be fatal to the prosecution. The witness appeared to be 100% truthful. At the same time P.W.184 and P.W.188 are also truthful witnesses. There is no reason to doubt evidence of any of these three witnesses.

1083. As regards the injuries sustained by P.W.184 and P,W.188, it may be stated here that both the witnesses have described in their evidence as to how they were assaulted. They were given blows on their back by the deceased accused persons. The medical officer who had examined P.W.188 has stated that there was CLW on forehead and left thumb, blunt trauma on back and brush burns all over body. The medical certificate is at **Exh. 1461A.** The medical officer who had examined P.W.184 has not been examined as witness in the court. However, P.W.184 has stated that he was assaulted by the accused. But the nature of injuries and the manner in which P.W.184 and P.W.188 were assaulted, do not show that the deceased accused had any intention to cause death of any of the five hostages or they had intention to cause bodily injury of the nature sufficient to cause death. It is possible that intention could have been developed later on but as can be seen from the sequence of events described by me herein above, three of the four accused were compelled to leave the room because their fourth associate had already started exploding hand grenades and smoke had started entering the room No.520. P.W. 188, P.W.224 and other staff members had jumped out of the windows by taking help of room curtains and other linens available in the room. As far as P.W.184 is concerned, he

could come out of the room later on and appeared to have been rescued by fire brigade personnel.

1084. However, the details of other persons who were injured at Hotel Taj had sustained firearm injuries can be seen from table No.6. Most of them have been examined under section 296 of Cr.P.C. Had any of the persons who were injured by firearm shots or gun shots died and had any of the deceased caught alive, they would have been found guilty of offence of attempt to commit murder punishable u/s 307 of IPC.

1085. Similarly, intention was there when the deceased accused No.4 and 9 had indulged in to firing at hotel Leopold and had installed bomb in the taxi. The accused No.4 and 9 had shared each others intention at hotel Leopold and while installing bomb in the taxi. Accused Nos. 4, 5,8 and 9 had shared one another's intention while indulging into firing and explosion of bombs at hotel Taj. Therefore, **my answer to point Nos.61, 62, 64, 65 and 66 are in affirmative.**

1086. Point No.68 pertains to the injured at Sr.No.213 to 219 in table

No.3. These injured had sustained bullet or blast injuries in the incident of Nariman House. Four of them had sustained bullet injury and two of them had sustained blast injuries. Presence of deceased accused Nos. 2 and 3 at Nariman House has also been established . It has already been found by the court that the prosecution has led sufficient evidence that deceased accused No.2 and 3 were the two persons who had attacked Nariman House. The point No.68 runs as under :

68. Does the prosecution prove that deceased accused No.2-Imran Babar @ Abu Aakasha & deceased accused No.3-Nasir @ Abu Umar, had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col.No.3 at Sr.Nos. 213 to 219 at the places mentioned in Col.No.4 of the table No.3 ?

The prosecution has examined injured at Sr.No.213 to 219 as P.W.439 to 445. P.W.439, 440, 442, 443 had sustained bullet injuries which they have described in their affidavits. Summary of their evidence in respect of nature of injuries has been stated in col.No.4 of table No.6. P.W. 441, 444 and 445 had sustained blast injuries. Injuries have been described by these witnesses

in their affidavits. As such there is oral evidence of these seven witnesses. Dr.Sonali Khairmode -P.W.94 had examined P.W.439. She has stated in her evidence that there was firearm injury to right gluteal region. The medical certificate is at **Exh.1443C-1**. The medical officers in respect of other injured persons injured in the incident of Nariman house have not been examined. Corroboration of oral evidence by medical officer's evidence is not a condition precedent for accepting oral evidence of the injured. These witnesses have not been cross-examined and I do not see any reason to disbelieve their evidence. **I have therefore come to the conclusion that the deceased accused No.2 and 3 had caused injuries of the nature mentioned in col.No.5 to the persons named in col.No.3 at Sr.No. 213 to 219 of table No.2. Point no.68 is therefore answered in affirmative**.

1087. The answers to point No.69 and 70 which run as under :

69. Does the prosecution prove that the deceased accused No.2 and No.3 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons,and had the accused Nos.2 & 3 been alive

they would have been guilty of offence of murder ?

70. Does the prosecution prove that the deceased accused No.2 and No.3 had shared each other's intention while causing injuries to the said persons?

are necessarily to be in affirmative because no other conclusion can be drawn except the fact that deceased accused Nos. 2 and 3 had intended to kill these persons or had intended to cause them bodily injury . Prosecution has proved that the bodily injuries were of the nature which could have caused death in ordinary course of nature. Moreover, in the case of offence u/s 307 IPC, nature of injury is not a determining factor. I have already stated that intention of the accused is a determining factor in the case u/s 307 of IPC. Therefore, had any of these witnesses died and had any of the deceased accused No.2 and 3 alive, the deceased accused Nos.2 & 3 would have been guilty of offence of murder. **My answer to point Nos. 69 is therefore in affirmative**. **Point No.70 is also in affirmative.**

1088. Point Nos. 72, 73 and 74 run as under :

72. Does the prosecution prove that deceased accused No.6 -Abadul

Reheman Chhota @ Saakib and deceased accused No.7-Fahad Ullah,had caused injuries of the nature mentioned in Col.No.5 to the persons mentioned in Col. No.3 at Sr.Nos.131 to 154 at the places mentioned in Col.No.4 of the table No.3 ?

73. Does the prosecution prove that the deceased accused No.6 & No.7 had caused said injuries to the said persons with such intention or knowledge and under such circumstances that had they caused death of any of the said persons,and had the deceased accused Nos.6 & 7 been alive they would have been guilty of offence of murder ?

74. Does the prosecution prove that the deceased accused No.6 and No.7 had shared each other's intention while causing injuries to the said persons?

These three points pertain to the incident at Hotel Oberoi. According to prosecution case persons named at Sr.No.131 to 154 had sustained injuries

of the nature mentioned in col.No.5 of table No.3. Prosecution has examined the injured at Sr.No. 132, 133, 136, 147, 148, 150 and 152 at P.W. 452, 447, 448, 451,450, 446 and 449 respectively. It can be seen from table No.6 that the witnesses examined by the prosecution had sustained bullet injuries or blast injuries. In some of the cases evidence is corroborated by the evidence of medical officers. The corroborative evidence has been summed up in col.No.6 of table No.6. Name of medical officer has been stated in col. No.5. Exhibit number of medical certificate is also stated in col.No.6 of table No.6. Presence of deceased accused No. 6 and 7 at Hotel Oberoi/Trident has already been established .This evidence has been discussed in detail by the court while considering involvement of the deceased accused Nos. 6 and 7 in the incident of massacre at hotel Oberoi and Trident. Therefore, no further discussion is needed on this point. From the evidence adduced by the prosecution witnesses, nature of the injuries and the way the offence had been committed by the deceased accused , it is abundantly clear that had any of injured witness died and had the deceased accused Nos.6 & 7 been alive, they would have been guilty of offence of murder. It is needless to say that deceased accused Nos.6 and 7 had shared each others intention as both of them had been together till they

were eliminated by the NSG Commandos on 18th floor of Hotel Oberoi. **Point Nos. 72, 73 and 74 are therefore answered in affirmative.**

1089. Apart from the offence of murder and attempt to commit murder, the accused No.1 and the deceased accd.No1. were allegedly involved in the offence of causing grievous hurt to the public servants at the places where they had committed other offences. Some of such points with regard to the alleged injuries to the public servants have already been considered by me and the points so considered have been answered. In the series of such points the next point which arises for consideration is **point No.96** which runs as under:

> **96. Does the prosecution prove that the deceased accused No.6-Abadul Reheman Chhota @Saakib and deceased accused No.7-Fahad Ullah at Hotel Oberoi and Trident had voluntarily caused grievous hurt to (1) Anil Bhaskar Kolhe, A.S.I.,S.R.P.F., (2) Ranjeet Jagganath Jadhav, P.C., S.R.P.F.,(3) Capt.A. K. Sing, N.S.G.,(4) Commando Manish, N.S.G., (at Sr.No. 151, 152, 153, 154 of the table No.3**) ?

Out of the injured public servants mentioned in point No.96, the prosecution has examined only one injured public servant i.e. Mr.Ranjeet Jagannath

Jadhav as PW No.449. He had allegedly sustained a bullet injury. This witness in his evidence has stated that he was attached to State Reserve Police Force, Group-I and he was on duty at Oberoi hotel on the night of 26th November 2008. On account of indiscriminate firing at Oberoi, he had sustained injuries on his chest and lower limb. He was admitted in Bombay Hospital on the same day and was discharged on 27th December 2008. He was examined by **PW No.553**. The Medical Officer PW 553 has stated in his evidence that a blast injury was found on chest and lower limb of PW 449. The Medical certificate is at **Ex.1431A**. It is thus clear from the evidence of these two witnesses that PW 449 had sustained injuries on his chest and lower limb and he was unable to follow his ordinary pursuits for more than twenty one days from the date of injury. The injury caused to PW 449 therefore, falls under Clause *Eighthly* of Section 320 of I.P.C. As such it was a grievous hurt. The presence of deceased accused Nos.6 & 7 and firing on their part has already been established at Hotel Oberoi. Their involvement is also established. It can therefore, be concluded that the deceased accused Nos.6 & 7 had voluntarily caused grievous hurt to PW 449. **The point No.96 is therefore, answered accordingly.**

1090. The **point Nos.97,98 and 99** run as under:

> **97. Does the prosecution prove that the above said four persons were discharging their duties as public servants ?**
>
> **98. Does the prosecution prove that the deceased accused No.6 and deceased accused No.7 caused said injuries to the said public servants with intention to prevent or deter them from discharging their duties as public servants ?**
>
> **99. Does the prosecution prove that the deceased accused No.6 and deceased accused No.7 had shared each others intention ?**

It is very clear from his evidence that he was discharging his duty as public servant. The intention of the deceased accused was obviously to prevent or deter public servant including PW 449 from discharging their duties as such public servant. Both the deceased accused shared each others intention. The answer to Point No.97,98 and 99 is as under:-

> **'The prosecution has established that the deceased accused Nos.6 & 7 had caused grievous hurt to PW 449, who was a public servant discharging his duty, with intention to prevent or deter him from discharging his**

duty. Both of them had shared each others intention.'

1091. The Point Nos.101,102,103,104,106,107,108 and 109 can be decided by common discussion. It can be seen from the above points that they involve the deceased accused Nos.4 & 9 as far as incident of Hotel Leopold is concerned. The points further involve the deceased accused Nos.4, 5, 8 and 9 as far as incident at Hotel Taj is concerned. The prosecution has examined injured at Sr.No.185 and 186 as PW Nos.474 and 489. PW 474- Pravin Sawant was working as Police Naik and was on duty near Hotel Leopold. He has stated that due to indiscriminate firing he had sustained injuries on right side thigh. He was examined by Dr.Begani and was discharged from Bombay Hospital on 15th December 2008. Though the affidavit of Dr.Begani **(PW 584)** is tendered, the nature of injury is not mentioned. The certificate is also not produced. It is therefore not proved that the injury sustained by PW 474 was of grievous nature. Since he was discharged from the hospital within twenty one days, his injury will not fall under the category of the injuries covered by clause *Eighthly* of Section 320 of I.P.C. PW 489 Mr.Nivruti Gavane was working as Police Driver on tourism mobile van. He had sustained injury on his left upper thigh and on

right thigh . He was admitted to Bombay Hospital. The place of incident was Leopold Hotel. He was examined by Dr.Chitlangia(PW 583). The details of injury have not come in the evidence of Medical officer. However, from the evidence of PW 489 it can be seen that he was discharged from the hospital on 28th December 2008. As such he was unable to follow ordinary pursuits for more than twenty one days. He had therefore, suffered an injury of grievous nature.

1092. As far as point No.106 is concerned, the prosecution has examined injured at Sr.Nos.156, 157, 158, 159, 160 and 161 as PW Nos. 493, 500, 501, 502, 499 and 503 respectively. I have gone through the evidence of these witnesses. Except PW 499 all other witnesses had sustained simple hurts. The nature of injuries mentioned in their evidence do not fall under any of the categories of grievous hurt. Only PW 499 had suffered firearm injury on his right abdomen. There is no supporting medical evidence. However, his oral evidence to the effect that he was discharged on 27th December 2008 cannot be rejected. It therefore, follows that he had suffered grievous hurt.

1093. All of them were working as policemen including the PW Nos.474 and 489 mentioned in Point No.101. The intention of the deceased accused was clear that they wanted to injure the public servants to prevent or deter them from discharging their duties. Firing on the part of deceased accused Nos.4,5,8 and 9 at Hotel Leopold and Hotel Taj had been proved. **It therefore, can be concluded that the deceased accused had voluntarily caused grievous hurt to two policemen and had voluntarily caused hurt to the other policemen mentioned hereinabove. The point Nos.101,102,103,106,107 and 108 are answered accordingly.** The deceased accused had committed offences punishable under section 332 and 333 of I.P.C.

1094. As such most of the points with regard to the offence of murder, attempt to commit murder, voluntarily causing hurt to public servants, wrongful confinement, mischief and offences under Railways Act have been answered. Few more points of similar nature are yet to be determined.

1095. Let me proceed to determine **Point No.111** which runs as

under:

> **111**. **Does the prosecution prove that the accused No.1 along with nine deceased accused in pursuance of the said conspiracy and in furtherance of common intention of accused No.1 and the nine deceased accused during the period between 23rd November, 2008 to 26th November 2008 wrongfully confined Amarchand Naran Solanki** at **Indian Marine Vessel Kuber** ?

Except the conspiracy part of it, it can safely be concluded on the basis of evidence discussed already that the deceased Amarchand Solanki was confined on boat Kuber by the accused No.1 and the deceased accused Nos.1 to 9. The evidence in this regard had been discussed when a charge with respect to murder of Amarchand Solanki was decided. It has already come on record that Amarchand Solanki was navigator of Boat Kuber. There were other four sailors on the boat who were taken hostage by other conspirators on boat Al-Hussaini. It also appears on the evidence that they probably might have been killed by the associates of accused No.1 and the deceased accused Nos.1 to 9. As far as Amarchand Solanki is concerned his hands were tied and he was blind folded. He was compelled to sit in the Engine room and was ultimately killed. The boat Kuber was registered at Porbandar Port in Gujrat. The Central Government has granted sanction for

trying the offences committed on a ship registered in India and offences committed outside India. As far as conspiracy part is concerned the same will be considered later on. **The rest of the portion of Point No.111 is answered in affirmative.** The Point No.112 also will be considered later on.

1096. The **point No.115** which runs as under:

> **115**. Does the prosecution prove that the deceased accused No.6 &7 in pursuance of the said conspiracy and in furtherance of common intention of deceased accused No. 6 and 7 during the period between 26th November, 2008 to 29th November,2008 at **Hotel Oberoi and Trident** had wrongfully confined
> (1) Pradeep Rammurti Benglurkar,(P.W.212),
> (2) Ketan Jayantilal Desai,
> (3) Apurva Natwarlal Parekh, (Sr.No.133)
> (4) Siddharth Rajkumar Tyagi, (Sr.No.135)
> (5) Amardeep Harkishan Sethi, (Sr.No.134) and
> (6) Chandresh Harjivandas Vyas (Sr.No. 132) ?

The role of deceased accused Nos.6 & 7 in the incident of Hotel Oberoi has already been proved and the same has been discussed while deciding other points regarding the incident of Hotel Oberoi and Trident. As far as Point

No.115 is concerned, the prosecution has examined PW 212 Mr. Pradeep Rammurti Benglurkar. His evidence has also been summed up by me in detail. He had seen both the deceased accused at Oberoi. It can be seen from his evidence that the deceased accused wanted to know the place where the V.I.Ps had been staying. The deceased accused Nos.6 & 7 therefore, kept Mr. Benglurkar in the confinement and wanted him to show the place where V.I.Ps had been staying in the said hotel. However, Mr.Benglurkar has stated in para No.4 of his evidence that he had escaped from the custody of deceased accused Nos.6 & 7 and had gone to report the matter to the Manager Mr.Pavanjit Singh in basement area of Hotel Oberoi and Trident. The witness has been cross examined by Ld.Adv.Mr.Kazmi. There is no challenge to his evidence that he was wrongfully confined by the deceased accused Nos.6 & 7. **As such point No.115 is answered in affirmative except the conspiracy part of it.**

1097. Similarly **point No.117 can be answered in the affirmative** on the basis of evidence of PW No.239. **Point No.117** runs as under:-

> **117. Does the prosecution prove that the deceased accused No.2 & No.3 in furtherance of the said criminal conspiracy and in furtherance of**

common intention of deceased accused No.2 and 3 during the period between 26th November to 20th November, 2008 at Nariman House,Colaba, Mumbai, had wrongfully confined (1) Rivaka Gabriel Holtzberg, (2) Rabai Gabrial Noh Holtzberg (at Sr.No.3 and 4 of table No.2) ?

The evidence of PW 239 has been discussed by me in detail while summing up the evidence of prosecution witness. This witness was working as a servant of Gavriel family at Nariman Hosue. This witness and the other servant Ms.Sandra were coming down from the building Nariman House to retire in their rest room at ground floor. At that time PW 239 had seen two persons on the stair case. He had also seen them firing. The PW 239 however, could escape the bullet shot. From the evidence of this witness, it is very clear that the Gavriel family was kept hostage before they were killed at Nariman Hosue. **The point No.117 is therefore, answered in affirmative except the conspiracy part of it.**

1098. As far as point No.119 is concerned, the evidence of PW No.184- Mr.Ramamoorthy and PW 188 Mr.Adil Irani has been discussed at length on more than two occasions in this judgment. Similarly the evidence of P.W.224 - Mr.Jadhav has also been discussed. It is clear from the

evidence of these three witnesses that they were kept hostage in Room No.632 and later on in Room No.520 of Hotel Taj. The deceased accused Nos.4,5,8 and 9 had therefore, committed offence of wrongful confinement at Hotel Taj. Point No.121 and 123 are connected to point No.111. Point No.111 is already answered in affirmative where the court has given the finding that the deceased Amarchand Solanki was confinement on boat Kuber by the accused No.1 and deceased accused Nos.1 to 9. The point No.121 is with regard to the aggravated form of offence of confinement i.e. when the confinement is for more than three days, such offence is punishable under section 343 of I.P.C. It is proved by the prosecution beyond all reasonable doubt that deceased Amarchand was confined on boat Kuber. What can be seen from confession of accused No.1 that boat Kuber was hijacked in the morning of 23rd November 2008 and the deceased Amarchand Solanki was killed in the evening of 26th November 2008. The confession of accused No.1 is generally corroborated by other evidence adduced by the prosecution. The recovery of dead body from the boat on 27th November 2008 corroborates the confession given by the accused No.1. **It is therefore, proved that the deceased Amarchand Solanki was confined on boat Kuber for more than three days.** The

sanction is required for the offence committed outside India on a ship registered in India. Such a sanction has been granted by the Central Government. It is at **Ex.1482.** The evidence of PW 589 Mr.Shashi Bhushan, Joint Secretary of Central Government and the evidence with regard to sanction has already been discussed. No further discussion is required on this point. **The point No.121 is answered in affirmative except conspiracy part of it.**

1099. The prosecution has alleged that the deceased Amarchand Solanki was abducted from the place where boat Kuber was hijacked to the Mumbai waters in order that the said Amarchand might be killed. The **point No.123** runs as under**:**

> **123. Does the prosecution prove that accused No.1 & the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the nine deceased accused had abducted Amarchand Naran Solanki in order that the said Amarchand Naran Solanki might be murdered ?**

1100. As far as first part of the offence punishable under Section 364

is concerned, the same is established by the confession of accused No.1 corroborated by recovery of dead body of deceased Amarchand Sloanki from boat Kuber. It can be seen from the evidence of PW 43 Mr.Vinod Masani that boat 'Kuber' and boat 'Maa', both had left for fishing in high seas. They were supposed to return within a period of fortnight. However, the boat Kuber did not return. It can further be seen that PW 43 came to know about the whereabouts of his boat Kuber from Mumbai Police. It is therefore, obvious that the boat was not supposed to come to Mumbai waters. It was supposed to return to Porbandar Port after fishing. As such it is proved that the deceased Amarchand Solanki was compelled to move from one place and was compelled to go to another place. The ingredients of Section 362 which defines abduction are therefore, fulfilled. It is further clear from the confession of accused No.1 that the deceased Amarchand Solanki was allowed to remain on boat Kuber by the co- conspirators because they wanted the deceased Amarchand to guide the accused No.1 and the deceased accused Nos.1 to 9 to navigate the boat. The intention of the accused No.1 and deceased accused Nos.1 to 9 was very clear from the beginning. Considering the nature of offences they have committed and the way they had entered Mumbai by sea route, it was obvious that they would

not have left any person alive who had witnessed their activities on the high seas. It is not that the intention had developed later on. The intention was there from beginning and therefore, ingredients of the offence punishable under section 364 are completed. **My answer to point No.123 is in affirmative except the conspiracy part of the same**.

1101. As far as offence of mischief is concerned, point No.131 and 132 pertaining to the incident at C.S.T. have already been decided. Let me therefore, proceed to decide the similar points in respect of the incidents at Hotel Taj, Hotel Oberoi and Nariman House. They are **point Nos.133,135 and 137**. The said points run as under:

> **133. Does the prosecution prove that the deceased accused Nos. 4, 5,8 and 9 in pursuance of the said criminal conspiracy during the period between 26th and 29th November, 2008 at Hotel Taj had committed mischief by fire and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?**
>
> **135. Does the prosecution prove that the deceased accused Nos. 6 and 7 in pursuance of the said criminal conspiracy during the period between 26th and 29th**

November, 2008 at Hotel Oberoi had committed mischief by fire and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?

137. Does the prosecution prove that the deceased accused No.2 and 3 in pursuance of the said criminal conspiracy during the period between 26th November, 2008 and 29th November 2008 at Nariman House Mumbai,committed mischief by fire and by explosive substances intending or knowing it to be likely that they would thereby cause destruction of the said building which was ordinarily used as human dwelling and a place for storing property ?

1102. As far as the presence of accused Nos.4,5,8 and 9 and their involvement in the incident at Hotel Taj is concerned, the same is proved beyond reasonable doubt. The offences of murder, attempt to commit murder, causing hurt to public servants and other offences are proved. As far as offence of mischief is concerned, it has also come in the evidence of PW 188 that one of the accused had directed other three accused to throw hand grenades and set the property on fire. It can therefore, safely be said that mischief by fire was committed by deceased accused Nos.4,5,8 and 9 at Hotel Taj. PW 601 Mr.Vidyadhar Vaidya, who was working as General

Manager(Human Resources) at Hotel Taj has stated that the hotel had suffered loss to the extent of Rs.114 coror due to the incident of terror attack. There is no challenged to this evidence. The witness has not been cross examined. **The point No133 is answered in affirmative except conspiracy part of it which will be answered later on.**

1103. Similarly point No.135 also can be answered in **affirmative** except conspiracy part of it**.** PW 528 - Mr.Devendra Bharma has stated in his evidence that the hotel had suffered loss to the extent of Rs.40,40,00000/- . The witnesses have stated that there was continuous firing and lobbing of hand grenades. The witness Mr. Benglurkar has also stated that the accused had fired indiscriminately at restaurant Kandhar and restaurant Tiffin. Moreover there is no challenged to the evidence of PW 528.

1104. As far as point No137 is concerned, it may be stated here that the incidents which had occurred in the vicinity of Nariman House have also been covered in the case of Nariman House and the place of offence is stated as Nariman House. It has come in the evidence that there was bomb

explosion near the petrol pump situated in the vicinity of Nariman House. One wall was destroyed due to the explosion. The panch witness PW 204 Mr.Shripat Hate has also stated about the destruction of wall. It has come in the evidence of panch witness that a substantial portion of Nariman House was found damaged. There were holes of bullet shots. As such the mischief was committed by explosives. The involvement of deceased accused Nos.2 & 3 has already been proved **The point No.137 is therefore, answered in affirmative except conspiracy part of it.**

1105. Let me now consider the case of robbery of Skoda car. The point Nos.139, 140, 142 and 144 are necessary to be decided here. The conspiracy and abatement part thereof can be decided later on. **Point No.139, 140, 142 and 144** run as under:

> **139. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail on 27th November, 2008 at about 00.15 hrs. at Barrister Rajani Patel Marg, Mumbai. wrongfully restrained Shri Sharan Ramesh Aarsa (P.W.144), Shri Sameet Vijay Ajgaonkar(P.W.147) and Mrs. Megha Sameet Ajgaonkar ?**
>
> **140. Does the prosecution prove that accused**

No.1 and the deceased accused No.1-Abu Ismail had shared each others intention ?

142. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail in pursuance of the said criminal conspiracy and in furtherance of common intention of accused No.1 and the deceased accused No.1-Abu Ismail had committed robbery in respect of the Skoda car bearing registration No.- MH-02-JP-1276 belonging to Shri Ramesh Aarsa ?

144. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail at the time of committing the said robbery had used deadly weapons like AK-47 rifles and had attempted to cause death or grievous hurt to Shri Sharan Ramesh Aarsa, Shri Sameet Vijay Ajgaonkar and Mrs.Megha Sameet Ajgaonkar ?

The evidence of PW 144 - Mr.Sharan Arasa and PW 147 - Mr. Samit Ajgaonkar is relevant in this regard. It has already come in evidence that they had been proceeding to Inox Multiplex situated at Nariman Point near Vidhan Bhavan to pick up their friend Mr.Umashankar. The evidence of these two witnesses has been discussed in detail by me while summing up the prosecution evidence. Both the witnesses have identified accused No.1 and have clearly stated that the Skoda car bearing registration No.MH-O2-

JP-1276 was forcibly taken away by the accused No.1 and his associate. The accused had also fired in air before approaching the witnesses. To prove an offence of robbery, the prosecution has to prove that the theft was committed and that while committing the theft or while carrying away the property, the offender had voluntarily caused or attempted to cause any person in fear of death or hurt or on wrongful restraint or fear of instant death or instant hurt or instant wrongful restraint. The car was stolen away by the accused No.1 and deceased accused No.1. Accused had also fired one round in air. Both of them were carrying AK-47 rifles. It is therefore, obvious that the witnesses were put under fear of instant death or instant hurt. The cross examination by Ld.Adv.Mr.Kazmi was mainly directed to show that there was nobody in the Qualis vehicle in which accused No.1 and deceased accused No.1 had travelled upto Barrister Rajani Patel Marg. It may be stated here that this Qualis vehicle was hijacked from Badruddin Tayabji Road by the accused No.1 and the deceased accused No.1. The PW No.136 Arun Dada Jadhav was in rear side of the vehicle when the accused No.1 and deceased accused No1 had driven the said vehicle upto Barrister Rajani Patel Marg. As such PW 136 was the eye witness to the whole incident. An attempt was made to show that PW 136 was not in the rear

side of Qualis vehicle which was standing few feet away from the Skoda Car. That contention has not been accepted by the court. However, as far as this incident is concerned, PW 136 has not stated anything about the incident. The evidence of PW 144 and PW 147 is found to be true and correct. The PW 147 has been cross examined at length regarding telephone number of Mr. Siddharth Umashankar and telephone number of PW 147. An attempt was made to show that the oral evidence regarding PW 147 receiving calls from PW 238 Mr.Sidharth Umashankar is not correct. However, it has nothing to do with the incident. There is no reason for these witnesses to give false evidence particularly when they have not given any evidence against either of the accused in respect of major incidents, the accused No.1 and deceased accused No.1 were allegedly involved in. As such the offence of robbery was committed by accused No.1 and deceased accused No.1 in furtherance of their common intention, **the accused No.1 is therefore, guilty of offence punishable under section 392 r/w 34 of I.P.C. The point No.142 is answered accordingly.**

1106. The accused No.1 and deceased accused No.1 both had used deadly weapons like AK-47 rifles at the time of committing the said offence

of robbery. **The accused No.1 is therefore, committed offence Under section 397 of I.P.C. The point No.144 is answered accordingly.**

1107. The accused No.1 and deceased accused No.1 had obviously obstructed PW 144 and PW 147 and also wife of PW 147 from proceeding in the direction in which they had right to proceed. The offence of wrongful restraint r/w 34 is proved. **My answers to point Nos.139 and 140 are in affirmative**. **The accused No.1 is found guilty of the offence punishable under section 342 r/w 34 of I.P.C.**

1108. Before I proceed to consider the charges under Arms Act, Explosives Act and Explosive Substances Act, let me consider the charge under Prevention of Damages to Public Property Act 1984. The **Point No.178** runs as under:

> **178. Does the prosecution prove that accused No.1 and the deceased accused Nos. 1, 2, 3,4, 5, 8 & 9 during the period between 26th November, 2008 and 29th November, 2008 committed mischief by lobbing hand grenades and by exploding explosive substance and caused damage to public property namely signals , telecommunication system and electronic items at C.S.T. Rly. Station, B.M.C. Road, Opposite C.S.T.,**

part of 5th floor and door of conference hall at 6th floor of Cama Hospital, the shutter of Corporation Bank A.T.M., at Badruddin Tayabji Road, police vehicles -Qualis bearing registration No.MH-01-BA-569, Bolero bearing registration No. MH-01-SA-3561, Maharashtra Government Honda City Car bearing No.MH-01-ZA-102 part of road on Western Express Highway, Police Jeep No. MH-01-SA-170 at Hotel Taj, part of B.M.C.Road near Nariman House and near Indian Oil Petrol Pump and Police Vehicle No. MH-01-SA-3722 at Hotel Leopold ?

1109. Section 4 is punishing section for causing damage to the public property by explosive substances. The offence of mischief has been defined under 'Indian Penal Code' Mischief causing damage to public property has been defined under section 3 of the Act. The public property has been defined under section 2 (b) of the Act. It includes movable or immovable property and machinery owned by or in the possession of or under the control of the Central Government or any State Government or any Local Authority.....

1110. In the present case point No.178 refers to the damage caused to Cama Hospital, Badruddin Tayabji Road, Honda City Car of Mr.Bhushan Gagrani, Police Jeep No.MH-01-SA-170, police vehicle No.MH-01-SA-

3722 and other police vehicles mentioned in the said point. The prosecution has examined PW 530 to establish the damage caused to the police vehicles. It is to the extent of about Rs. Seventy five thousand.. PW 531 has been examined to prove the damage caused to Cama and Albless Hospital. The damage caused to the hospital was estimated to the extent of Rs.3,15,840/-. Damage caused to the electrical installations at Cama Hospital is stated to be Rs.50,000/- by PW 532. Damage caused to the tourism vehicle of police is stated to be around Rs.8,000/- by PW 534. Damage caused to Honda City Car of Government is stated to be Rs.52,000/- by PW No.529. The Western Express Highway belongs to Mumbai Metropolitan Region Development Authority. This is a local authority. The property belonging M.M.R.D.A. therefore, falls under the category of public property. Damage caused to the public road at Western Express Highway belonging to M.M.R.D.A. due to bomb explosion in the taxi is stated to be Rs.6,000/- by PW 535. Damage caused to C.S.T. Railway Station is stated to be Rs.2,40,000/- by PW 536. There is no cross examination of these witnesses. **The point No.178 is answered in affirmative.**

1111. As far as point No.179 is concerned, though there may not be intention on the part of accused No.1 and the deceased accused Nos.1 to 9 to cause damage to the public property, the knowledge can be attributed to them. **Therefore**, **answer to point No.179 is also in affirmative**.

1112. Before I proceed to consider the charges under Arms Act, let it be made clear that the court has been considering the involvement of deceased accused Nos. 2 to 9 in detail on all the alleged offences and court will be considering their involvement in the offences under Arms Act and other points yet to be decided, because ultimately the court has to find out whether the accused Nos.1,2 & 3 are guilty of abatement by conspiracy of the offences committed by the deceased accused. Of course, the conspiracy will have to be proved by the prosecution to prove the abatement by conspiracy. But at the same time it cannot be ignored that it is necessary to give a finding whether the particular offence has been committed by the deceased accused or not. I now proceed to consider the points involving the offences under Arms Act. The point Nos.145, 147 and 149 are directly in respect of the involvement of accused No.1 in the offences under Arms Act. The point No.145 pertains to acquisition and possession of firearm without

licence. Point No.147 pertains to acquisition and possession of prohibited firearm arms. Point No.149 pertains to use of prohibited arms. The said three points can be reproduced as under:

> **145. Does the prosecution prove that the accused No.1 in pursuance of the said criminal conspiracy on 26th November, 2008 and 27th November, 2008 at (1) C. S. T. Rly. Station, (2) Cama and Albless Hospital (In), (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction (4) Opp.Mittal Tower B wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg, Mumbai and (5) Opp. Ideal Café, underneath of foot over bridge,N. S. Purandare Marg North Bound Vehicular Road, Girgaum Chowpaty,Mumbai was in possession of a pistol,AK-47 rifle and ammunition without valid licence in contravention of provision of Sec.3 of Arms Act ?**

> **147. Does the prosecution prove that accused No.1 during the same period had acquired and possessed prohibited firearm AK-47 rifle and ammunitions at (1) C. S. T. Rly.Station, (2) Cama and Albless Hospital (In), (3) Badruddin Tayabji Marg, Northern Side of Cama and Albless Hospital,ATM Centre of Corporation Bank and Metro Cinema Junction (4) Opp. Mittal Tower B wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg,Mumbai and (5) Opp. Ideal Café, underneath of foot over bridge, N. S. Purandare Marg North Bound Vehicular Road,**

Girgaum Chowpaty, Mumbai in contravention of provision of Sec.7 of the Arms Act ?

149. Does the prosecution prove that the accused No.1 at the above mentioned places had used the said prohibited arms in contravention of provision of Sec.7of the Arms Act ?

1113. At the initial stage, let it be stated here that AK-47 rifle falls under the category of prohibited arm because it is so designed that if the pressure is applied to the trigger it continues to discharge bullets unless the pressure is removed or unless the magazine is emptied.

1114. There is ample evidence which has been discussed hereinabove to prove that the accused No.1 was in possession of a firearm without licence. Since he had possessed AK-47 rifle, he was in possession of prohibited firearm. It has come in the evidence of so many witnesses and court has also given finding that a large number of victims had died due to firing on the part of Accused No.1 from AK-47 rifle possessed by him. Therefore, it is obvious that a prohibited firearm was used by accused No.1. The accused No.1 has therefore, contravened the provisions of Section 3 and 7 of The Arms Act. The contravention of section 3 of The Arms Act is

punishable under section 25 (1B) (a) of The Arms Act. Contravention of Section 7 and use of prohibited arms and ammunition is punishable under section 27 (2) of The Arms Act.

1115. Section 39 of the Arms Act requires that no prosecution shall be instituted against any persons in respect of any offence under section 3 without previous sanction of the District Magistrate. The prosecution has examined PW 257 Mr.Vijayasingh Jadhv, who has stated that he was working as Dy. Commissioner of Police and by virtue of Government Notification he had been empowered to grant sanction for instituting prosecution under The Arms Act. He was empowered exercise powers of District Magistrate under the said Act. On receipt of report from the Asstt. Commissioner of Police Mr.Durafe which is at **Ex.1072** and after having gone through the report and after having satisfying himself that accused No.1 had contravene provisions of Section 3 of the Arms Act. He had accorded sanction for instituting prosecution against him vide **Ex.1073**. He has identified his signature on the sanction. There is no cross examination of this witness by any of the accused.

1116. As such the accused No.1 is found guilty of the offence under section 25(1B) (a) r/w section 3 of The Arms Act and he is also found guilty of the offence punishable under section 27 (2) r/w 7 of The Arms Act. The point Nos.145, 147 and 149 are answered accordingly.

1117. As far as point No.151 is concerned, the sanction could not have been granted against the deceased accused. The Point No.151 does not survive.

1118. However, deceased accused Nos.1 to 9 had definitely committed offence punishable under section 27 of the Arms Act by acquiring, possessing and using prohibited firearm i.e. AK-47 rifle. The evidence in this regard has been discussed in detail while considering other points. As such no separate discussion is needed on these two points. **Point No.153 and 155 are answered in affirmative.** As already stated by me the conspiracy part of these offences will be discussed later on.

1119. There is one more head of points for determination which pertains to the offences under Explosives Act and Explosive Substances

Act. Before I proceed to examine the evidence adduced by the prosecution pertaining to these offences, it may be noted here that Section 7 lays down some restriction on trial of offences under Explosive Substances Act. It say 'No court shall proceed to the trial of any person for an offence against this act except with the consent of District Magistrate'. The offences under Explosive Substances Act are alleged to be committed within the Jurisdiction of District Magistrate of Mumbai City and District Magistrate of Mumbai Suburban District. The prosecution has examined both the District Magistrates. PW 248 Mrs.Idzes Kundan was working as Collector and District Magistrate of Mumbai City. She was Competent Authority under section 7 of Explosive Substances Act. On 21st February 2009 she had accorded consent for prosecution of accused No.1 vide Consent letter **Ex.1020**. In the cross examination, she had denied the suggestion that her consent was faulty because report submitted by the police was not supported by the relevant documents. In her examination-in-chief, she has elaborately mentioned about the documents placed before her by the police. After going through her evidence, I have come to the conclusion that no fault can be found in the consent letter **Ex.1020.**

1120. The prosecution has also examined PW 249 Mr.Vishwas Patil. He has also given similar Consent vide **Ex.1025**. In the cross examination by Ld.Adv.Mr. Kazmi an issue was made whether it was consent or sanction. I do not think that making issue out of such silly things can help the accused. Even in courts, some time due to inadvertence we mention 'sanction' instead of 'consent' or mention 'consent' in place of 'sanction'. There is nothing in the cross examination to find fault with the evidence of this witness. This witness was District Magistrate of Mumbai Suburban District and he had granted consent for prosecution of accused No.1 in connection with the Bomb explosion at Western Express Highway which comes within the jurisdiction of District Magistrate of Mumbai Suburban District.

1121. The accused No.1 and the deceased accused Nos.1 to 9 are alleged to have committed the offences punishable under section 9-B(b) of Explosives Act. What is punishable under this section is the contravention of rules framed Under section 5 or the conditions of licence, if any. Rule 5 of The Explosive Rules says that no persons shall import, export, transport, manufacture, possess, use or sell an explosive which is not an authorised

explosives. The following two points have been framed for determination in this regard - **Point Nos.166 & 168** are being reproduced.

> **166. Does the prosecution prove that accused No.1 and the deceased nine accused during the period between 26th November,2008 and 29th November, 2008 in contravention of the rules made under Explosives Act,1984, without license imported,possessed, used and transported explosives at C.S.T. Mumbai,Cama Hospital, Badruddein Tayabji Road, N.S.Purandare Road, Western Express Highway, B.P.T., Mazgaon, Hotel Taj,Hotel Oberoi, Trident,Nariman House and Hotel Leopold ?**
>
> **168. Does the prosecution prove that accused No.1 and deceased accused No.1-Abu Ismail during the period between 26th and 27th November, 2008 in contravention of rules made under the Explosives Act, 1984, had imported, possessed,used and transported explosives at C.S.T. Mumbai, Cama Hospital, Badruddein Tayabji Road, N.S.Purandare Road,Western Express Highway ?**

1122. It is obvious from the above discussion that the accused NO.1 and deceased accused Nos.1 to 9 had possessed and transported unauthorize explosives. **The point NO.166 is therefore, answered in affirmative.**

1123. As far as point No.168 is concerned, it is covered by point No.166. Therefore, the same is also answered in **affirmative**. The culpability of deceased accused Nos.1 to 9, as stated repeatedly, is necessary to be determined to examine the object and the scope of conspiracy alleged by the prosecution. **The accused No.1 is therefore, found guilty of the offence punishable u/s 9-B(b) of Explosives Act.**

1124. The point No.170 is with regard to the offence punishable under section 3 of Explosive Substances Act. **Point No.170** runs as under:-

> **170. Does the prosecution prove that accused No.1 and the deceased accused No.1-Abu Ismail on the night of 26th and 27th November, 2008 at Western Express Highway, Opposite City Swan Club,Vile Parle (East), unlawfully and maliciously caused explosion by planting I.E.D.laden bomb in Motor Taxi No.MH-01-G-7792 of a nature likely to endanger life and to cause serious injury to the property ?**

1125. The reading of this point itself will shows that the evidence with regard to this point has been extensively discussed in earlier portion of the Judgment. The court has discussed the role of accused No.1 and the deceased accused No.1 in planting an RDX bomb in Taxi No.MH-01-G-

7792. The court has also given a finding that the taxi driver and advocate Mr.Goyal died due to the explosion in the said taxi. The bomb had exploded at Western Express Highway in front of City Swan Club, Western Express Highway, Mumbai. The panchanama of the spot was drawn and articles found on the spot were seized. It has come in the evidence of PW 173 Mr.Dilip Kale that the articles seized during the course of investigation of Vile Parle Blast Case were sent to the Forensic Science Laboratory through Mrs.Mausmi Patil under forwarding letter **Ex.702.** The PW 172 has stated that the articles under Ex.702 were received in the laboratory and opinion was given vide **Ex.703**. It has come in the evidence of the witness that RDX (Cyclonite), Petroleum Hydrocarbon oil and nitrite (post explosion residue) were detected on Ex.1,2 & 3 and Ex.5 to 36 mentioned in the examination report **Ex.703**. The articles on which RDX was found are mostly part of the taxi and clothes of the deceased. The RDX is included in the special category in the Explosive Substance by the definition under section 2 of The Explosive Substances Act. Section 3 provides for punishment for causing explosion likely to endanger life or property. Section 3(b) provides for punishment for causing explosion by special category explosive. The punishment provided for the same is death or

rigorous imprisonment for life and fine. From the evidence in detail discussed while discussing the evidence of C.S.T. incident, evidence of taxi owner, evidence of friend of deceased taxi driver and sister-in-law of deceased Adv.Mr.Goyal, the court had concluded that the bomb was planted in the taxi by accused No.1. It was also concluded that while the accused No.1 was planting bomb below the driver's seat, the deceased accused No.1 had engaged the driver in a dialogue. As such it can safely be concluded that the accused No.1 and deceased accused No.1 had unlawfully and maliciously caused an explosion by means of special category of explosives. The explosion was of a nature likely to endanger life or caused serious injury to property. **My answer to point No.170 is in affirmative. The accused No.1 is therefore, found guilty of the offence punishable u/s 3(b) of Explosive Substances Act.**

1126. **Point No.172** runs as under:

> **172. Does the prosecution prove that the accused No.1 and the deceased accused No.1-Abu Ismail on 26th November, 2008 at about 22.15 hrs. at C.S.T. Rly.Station unlawfully and maliciously caused explosion by lobbing hand grenades of a nature likely to endanger human life and cause serious injury to the property ?**

To determine this point no separate discussion is needed It has been stated in so many words earlier that accused No.1 and deceased accused No.1 had caused explosions by lobbing hand grenades at main waiting hall of C.S.T. Trinitrotoluene (TNT) and nitrite radical (post explosion residues) were detected in the sample soil collected from the spot of the explosion. TNT also special category of explosives. **The accused No.1 and has therefore, committed offence punishable under Section 3(b) of Explosives Act r/w 34 of the I.P.C. My answer to Point No.172 is in affirmative.**

1127. **Point No.174** runs as under:-

> **174. Does the prosecution prove that the accused No.1 and the deceased accused No.1-Abu Ismail in between 26th November, 2008 at about 22.20 hrs. and 27th November, 2008 at about 00.15 hrs. at Cama and Albless Hospital unlawfully and maliciously caused explosion by lobbing hand grenades of a nature likely to endanger human life and cause serious injury to the property ?**

I have gone through the evidence and I find that there is one report of Chemical Analyser which is exhibited as **Ex.552**. It has come in the panchanama **Ex.524** that bluish coloured plastic pieces were seized from the place where the explosion was caused by deceased accused No.1 when

PW 139 Mr.Maruti Phad was taking out his car from High Rise building. These bluish coloured plastic pieces were sent to Laboratory by the Investigating officer. The laboratory report discloses that RDX (Cyclonite) and nitrite radical (Post explosion residue) were detected in the said plastic pieces. The RDX is a special category of explosive. **The accused No.1 has therefore, committed offence punishable under 3(d) of The Explosive Substances Act r/w 34 of I.P.C. My answer to point No.174 is in affirmative.**

1128. The **point No.176** is in respect of planting of RDX bomb at C.S.T. Railway Station by the deceased accused No.1. While discussing the evidence in respect of the incident of C.S.T., I had stated that one bag was found in the luggage of passengers in the adjoining room of court hall of Metropolitan Magistrate, C.S.T. Railway Station. Since it was suspected article, the B.D.D.S. officers were called. It was found to be explosive material. On defusing the bomb by CW No.5 Mr.Anthony, it was found that it was RDX bomb. A large quantity of RDX, detonators, batteries and other articles were seized under the panchanama by PW 74 Mr.Yeram. The articles so seized were handed over ATS officer Mr.Tonpi, as the

investigation of C.S.T. case was first transferred to ATS and thereafter it was transferred to Crime Branch. While the articles were in custody of ATS they were sent to F.S.L. This part of evidence has been discussed in detail. The RDX was found in the explosive material recovered after defusing the bomb. The sample thereof has been produced in the court. The whole quantity of the explosive was also produced. The same has been returned to the police and they have permitted to destroy the same. The detail discussion on all these points which is part of earlier portion of the Judgment would clearly show that the deceased accused No.1 in furtherance of common intention of accused No.1 and deceased accused NO.1 had planted the said bomb. As such an attempt was made to cause explosion by means of special category of explosive. **The accused No.1 has therefore, committed offence punishable under section 4 of Explosive Substances Act r/w 34 of IPC.**

1129. The accused No.1 and deceased accused Nos.1 to 9 had allegedly entered into India without valid passport or visa or travel documents. The accused No.1 and nine deceased accused are alleged to have committed the offence punishable under Section 3(3) of Passport

(Entry into India) Act 1920. The Central Government is empowered under section 3(1) to make rules requiring that persons entering India shall be in possession of passport and for matters ancillary or incidental to that purpose. The Central Government has framed rules called The Passport (Entry into India) Rules 1950. Rule 3 of the said rules states that no person shall enter India by water, land or air unless he is in possession of a valid passport. Sub Section 3 of Section 3 of the Act punishes the contravention of said rule. Obviously accused No.1 and deceased accused Nos.1 to 9 had no passport and travel documents. The accused No.1 and deceased accd.Nos.1 to 9 had therefore contravened the rules framed by Central Government. **The accused No.1 is therefore, found guilty of the offence punishable under section 3(3) of Passport (Entry into India) Act 1920.**

1130. A charge for the offence punishable under section 14 of the Foreigners Act has also been framed. The accused No.1 and deceased accused Nos.1 to 9 have allegedly contravened the Foreigners order 1948. In as much as accused No.1 and deceased accused Nos.1 to 9 had entered India from a place otherwise than the port or other place of entry on the border of India appointed by the Registration Officer for the foreigners.

The contravention of the order is punishable under section 14 of The Foreigners Act 1946. It has come in the evidence that accused No.1 and the deceased accused Nos.1 to 9 had landed at Badhwar Park, Seashore. The said place is not meant for the entry of foreigners. It is neither the port nor the place of entry appointed by the Registration Officer. **The accused No.1 is therefore, guilty of section 14 of the Foreigners Act.**

1131. The accused No.1 and deceased accused Nos.1 to 9 had allegedly smuggled into India arms and ammunitions which they knew or had reasoned to believe to be confiscated under Section 111 of The Customs Act. The offence is punishable under section 135 of Customs Act. One who evades duty or prohibition is guilty of the offence punishable under section 135 of Customs Act. It need not be stated here that there was a prohibition on import of arms and ammunitions. The question of, therefore, evasion of duty does not arise. It is obviously a case of evasion of prohibition. What is liable to be confiscated is mentioned in Section 111 of the Act. The goods which are imported by sea or air at any place other than customs port or customs airport are liable to confiscated. The prohibited goods are also liable to be confiscated. Accused No.1 and deceased accused Nos.1 to 9

had unloaded arms and ammunitions at Badhwar Park Seashore which is admittedly not a customs port or a customs airport. At the same time they had imported prohibited goods, therefore, the goods imported by them were liable to be confiscated. In fact the question of mental state of the accused may not come up for consideration in this case, as the case of accused is covered by Section 135(1)(a) of the Act. In any event, even if that is required, there is presumption under section 138A of the Act regarding culpable mental state. The presumption can be rebutted by the accused by a proof that there was no culpable mental state. In the present case presumption can be drawn safely even if it is applicable. There is no rebuttal of the presumption. As such the accused No.1 and the deceased accused Nos.1 to 9 had smuggled into India prohibited goods. A sanction has been granted by the Competent Authority. The prosecution has examined PW 256 Mr.Shoba Ram, who was working as Commissioner of Customs during the period between 2006 to 2009. A proposal for grant of sanction was received from the Addl. C.P. On the basis of papers placed before this witness alongwith the proposal, he had accorded sanction **Ex.1069**. In the cross examination by Ld.Adv.Mr.Kazmi, it is admitted by this witness that the names of deceased accused had also included in the list

of accused against whom sanction has been granted. He had denied that the sanction has been granted mechanically. I have gone through the sanction **Ex.1069**. It is a matter of fact that the names of deceased accused and wanted accused are mentioned in the sanction letter. But that by itself, does not vitiate the sanction accorded for prosecution of accused No.1. So long as to papers pertaining to involvement of accused No.1 are properly examined, I do not think that court can find any fault with the evidence of PW 256. As such the cognizance of the offence has been taken by the court only after sanction of the Competent Authority. As such the technical aspect of the case is also proved by the prosecution. **The accused No.1 is therefore, found guilty of the offence punishable under section 135(1) (a) (i) of The Customs Act.**

1132. Majority of the charges framed against the accused No.1 and charges in which the accused No.1 is found guilty with the help of Sec.34 of IPC,have been considered by me as against the accused No.1. The case of accused No.2 and accused No.3 , I propose to take after consideration of all the charges against the accused No.1.

1133. The major charge against accused No.1 is of conspiracy and waging war . However, before I take up the charge of conspiracy for consideration, it is necessary that certain part of evidence which I had not discussed earlier and I had also stated that same will be discussed later on, needs to be discussed here. It is the case of prosecution that five Nokia mobile phones produced in the court as **art.No. 668, art. 786, art. 670 and art.701 colly. (two mobile phones**) were exported from China to Pakistan. The prosecution in this regard has examined P.W.155-Ms.Mary Lozanco and P.W.209-Mr.Bhabajit Nandi. Both of them have given evidence on the basis of data base of Nokia. It has come in the evidence that data base can be accessed by the authorized person with a password. A question may be raised as to how an evidence based on data base can be accepted unless the person directly concerned with maintaining the data is examined. In this connection instead of placing more reliance on the evidence of officers of Nokia, what is important to be noted is that these five phones have been found in possession of the deceased accused. The accused No.1 in his confession has stated that they were given one mobile phone each. Therefore, there is no scope to doubt that five mobile phones produced in the court were brought by the accused along with them when they arrived

from Karachi to Mumbai. Art.701 colly- two Nokia mobiles were recovered from Nariman House, art.668 was recovered from hotel Taj, art. 786 and art.670 were recovered from 18th floor of hotel Oberoi where both the deceased No.6 and 7 were found dead. The evidence in detail in respect of seizure of these mobile phones has been stated by me while summing up of the evidence of witnesses pertaining to the search and seizure of articles at various places. I have personally checked the IMEI number of above

stated mobile phones which are as under :

1) art.701colly. - 353526025828739 (Nariman House)
(Two Nokia phones))
- 353526025842235

2) art.668 - 353526024049451 (Hotel Taj)

3) art.786 - 353526025933620 (Hotel Obeoi)

4) art.670 - 353526025840890 (Hotel Oberoi)

1134. In this regard it also may be noted here that importance of the IMEI number arises out of the fact that service provider can also provide IMEI number of the handset used for making or receiving a particular call. The call data record produced by the prosecution shows IMEI number of the handset used for remaining in contact with the co-conspirators who were

outside India. The SIM cards allegedly used by the accused who were at Hotel Oberoi and Nariman house belonged to deceased Rita Agarwal and deceased Mr.Gavriel respectively. It is the case of prosecution that SIM card of deceased Rita Agarwal's mobile phone was removed and it was used by the deceased accused No.6 and 7 at hotel Oberoi. Similarly, SIM card of mobile phone of deceased Mr.Gavriel was also removed by deceased accused No.2 and 3 at Nariman House and it was used in their phone. The evidence of witnesses particularly the Nodal officers of Vodaphone and Airtel has been discussed by me in earlier part of the judgment. It is established by the prosecution that telephone No. 9820704561 was issued to deceased Rita Agarwal and telephone No. 9819464530 was issued to Mr.Gavriel. As far as the third telephone No. i.e. 9910719424 is concerned, the same was issued to one Suresh Prasad of Delhi. It was Airtel SIM card. The investigation revealed that the said Suresh Prasad was not traceable. Investigation also revealed that he had obtained the SIM card on the basis of fake documents. The prosecution has examined host of witnesses to establish this particular fact. Officers from Home Ministry of Central Government, Electricity Supplier and other department have been examined in the court to establish that the supporting documents produced

by the said Suresh Prasad were zerox copies of forged documents. Though it has not been established by the prosecution as to how that SIM card came to be possessed by the accused, the fact remains that SIM card of that particular number was in the mobile phone seized from Nariman house. Above stated three telephone numbers i.e. telephone number of deceased Rita, Mr.Gavriel and the third issued in the name of Suresh Prasad have been used by the accused from Hotel Oberoi, Nariman House and Hotel Taj respectively to establish contact with the co-conspirators and also to establish contact with the media persons. The prosecution has also examined the officers of India TV Channel who had occasion to talk to the accused and the said talk has also been recorded.

1135. It has been stated in the earlier part of the judgment that the conversation between the accused at hotel Oberoi, Taj and Nariman House on the one hand and the co-conspirators on the other hand has been recorded. The conversation between the accused and media persons has also been recorded. The transcription has been produced in the court. Compact disks containing record of conversation have also been produced in the court. Before I deal with the talks between the accused on one side

and their co-conspirators on other side, it may also be recalled here that the court has recorded evidence of P.W.156-Mr.Nizar Al Sharif. I do not intend to repeat his evidence here. The DID numbers issued by him, PC2 phone account and common client accounts have also been mentioned in the earlier part of the judgment. What can be repeated here is that the Caller ID of Callphonex at that time was **2012531824** . The call data record produced by the prosecution in respect of telephone No. 9820704561 would show that contact was established with the co-conspirators for the first time from this SIM card of deceased Rita Agarwal on 26/11/2008 at about 23:9:35. The contact was established on DID No. 43720880768. It has come in the evidence of P.W.156-Mr.Nizar Al Sharif that this was one of the DID numbers issued by him when so called Kharaksingh had opened account for availing VOIP facility. The time mentioned in the call data record of the Vodaphone is Indian standard time. The call logs have also been produced by P.W.156 at **Exh.615.** If the call data of Vodaphone is tallied with call data record produced by P.W.156, it can be seen that one of the DID (Direct Inward Dialing) numbers mentioned by me herein above, was accessed from the telephone number of deceased Rita Agarwal on 26.11.2008 at 17.38 hrs. If this appears to be GMT time and if it is converted into Indian

standard time, it will come to 23.07 hrs. As such there is hardly difference of few minutes. I wanted to make one thing clear that P.W.156 in his evidence has stated that the time recorded in his call logs is eastern standard time . However, that does not appear to be the correct evidence . If the time converter is used and time recorded in Vodaphone call data record is converted by GMT, call log record of Callphonex and Vodaphone in respect of telephone number 9820704561 tallies. At this stage it may also be noted that SIM card numbers taken out from the mobiles of the victims and SIM card issued in the name of Suresh Prasad were used only for limited purpose to let co-conspirators know telephone number of the accused here in Mumbai. The co-conspirators were thereafter supposed to contact them on VOIP. It is not necessary to be stated here that VOIP service is so cheaper that they could afford to speak for hours together without much spending. Similarly call record of other two mobile phones also tally with the call logs record produced by P.W.156.

1136. It is thus established by the prosecution that VOIP service obtained by so called Kharak Singh was used by the co-conspirators of accused No.1 and deceased accused Nos. 1 to 9. The first payment made by

Kharak Singh was of $ 250 through moneygram from Pakistan . The payment was received from one Mr.Mohammed Isfaq on 27th October, 2008 The second payment was of US $229 received through Western Union on 25th October, 2008. The details of it have been discussed by me earlier. The prosecution therefore alleges that co-conspirators/ handlers were situated somewhere at Pakistan and were in touch with the deceased accused Nos. 2 to 9. It may be noted here that in the case of VOIP service it is difficult to find out as to from which place DID number was used. As such it is difficult for the prosecution to establish, on the basis of direct evidence, that co-conspirators were in Pakistan. However, on the basis of circumstances prosecution could convince the court that handlers/ co-conspirators were based in Pakistan. The confession of accused No.1 itself is a strongest piece of evidence for the prosecution to show that the co-conspirators were stationed in Pakistan. The accused No.1 and the deceased nine accused were given instructions regarding use of phones. The accused No.1 has in detail stated in his confession as to how he was trained at various places in Pakistan and Mujjafarabad in Pak Occupied Kashmir. Therefore, it can safely be said that co-conspirators were based in Pakistan. The confession of the accused No.1 which is found to be

voluntary and true, vividly depicts the manner in which he was taken from one place to another for various types of training. The accused No.1 and the deceased accused Nos. 1 to 9 were even shown video recording of various places planned to be attacked. They were also given one telephone instrument each and were told that the telephone instruments contain one SIM card each of Indian company and that the telephone numbers would start working as soon as accused No.1 and deceased accused Nos.1 to 9 reach Indian waters. It is another thing that those SIM cards did not work except the one SIM card used by deceased accused No.4,5,8 and 9 at Hotel Taj. The accused No.1 has stated names of deceased accused Nos.1 to 9 in his confession. He has further admitted in his plea before me that he knew names of deceased accused Nos. 1 to 9 though he has schemingly avoided to mention that the deceased accused Nos.1 to 9 had also been part of the same team and that they were working under the instructions from one and the same organization. It has also been stated by accused No.1 in his confession and it is corroborated by other evidence that accused No.1 and deceased accused Nos.1 to 9 had travelled from Karachi to Mumbai and they were brought to Karachi seashore by the wanted accused whose names have appeared in the confession of accused No.1. It is thus clear that the

accused No.1 and the deceased accused Nos. 1 to 9 had sailed from Karachi to Mumbai. The confession of accused No.1, as stated earlier, is corroborated by the evidence adduced by the prosecution. There is mention of telephones in the confession of accused No.1. This part of confession of accused No.1 is corroborated by the fact that the deceased accused who had taken position at Hotel Oberoi, Taj and Nariman House, had contacted their handlers. In the circumstances, no other inference can be drawn except the fact that the handlers/co-conspirators were stationed in Pakistan, names of deceased accused Nos. 2 to 9 have been figured in the talks recorded by the Investigating Officers and produced in Court. From those talks it is clear that the confession made by accused No.1 with regard to names of the deceased accused is corroborated by this evidence also. As such, I have no hesitation to come to the conclusion that the co-conspirators were stationed in Pakistan . Though it is difficult to get direct evidence as to from where the DID numbers were used through VOIP, there are very very strong circumstances to come to the conclusion that the VOIP service was acquired by the co-conspirators and the same was used for contacting the deceased accused Nos.2 to 9 in Mumbai during the course of attack.

1137. As far as admissibility of the call data record is concerned, it may be stated here that Nodal officers are appointed by the telephone service providers as per the guidelines issued by the Telephone Regulatory Authority. Secondly, this issue was examined by the **Hon'ble Supreme Court in the matter of State (N.C.P. ,Delhi) Vs.Navjot Sandhu** reported at **2005 Cri.L.J.3950**. Similar situation was prevailing in that case also. Therefore I am referring to that particular case. In that case also two witnesses were examined , one from Airtel and other from Essar . It was argued before the Hon'ble Supreme Court that the call data records were not proved in accordance with the law. It was also argued that the witnesses examined by the prosecution were not technical persons and were not acquainted with the functioning of computers. The Honb'le Supreme Court has observed -

> "The learned senior counsel Mr. Shanti Bhushan then contended that the witnesses examined were not technical persons acquainted with the functioning of the computers, nor they do have personal knowledge of the details stored in the servers of the computers. We do not find substance in this argument. Both the witnesses were responsible officials of the concerned Companies who deposed to the fact that they were the printouts obtained from the

> computer records. In fact the evidence of PW35 shows that he is fairly familiar with the computer system and its output. If there was some questioning vis-a-vis specific details or specific suggestion of fabrication of printouts, it would have been obligatory on the part of the prosecution to call a technical expert directly in the know of things."

1138. P.W.236-Mr.Changdeo Haribhau Godse, in the present case has stated that call data is recorded in the main server automatically. Data of incoming and outgoing call is recorded in the main server. The C.D.R. includes calling numbers, call number, date and time. call duration, IMSI number , IMEI number as well as I.D.numbers. This witness has not only produced the documents of the SIM Card details, but has also produced call data record. Call data record of phone No. 9819464530 is part of **Exh 927** colly. The call data record of telephone number 9820704561 is part of **Exh.921** colly. In the cross-examination this witness has stated that it was his duty to provide call data to any law enforcement authority though he was not concerned with account or technical department of the company. What is important to be noted in the evidence of this witness is that the last digit of IMEI number is the software number and it is always '0' of all GSM operators. It is clarified by this witness that telephone equipment might be

having IMEI with any last digit number from 1 to 9 but the system will produce the last digit as '0' only. This evidence is taken in the testimony of this witness because in almost all the print outs of C.D.Rs., last digit of IMEI number is '0'. As such what is important is the earlier digits and not the last digit because the system generates last digit as '0' only irrespective of the last digit of IMEI number of a particular handset.

1139. From the call data record of phone No. 9819464530 it can be seen that after establishing contacts with the co-conspirators and even for establishing contact with them, deceased accused Nos. 2 and 3 (Nariman House) had used handset bearing IMEI No. 353526025842235. The IMEI number of the handset in which SIM card No.9820704561 belonging to deceased Rita Agarwal, was used from Hotel Oberoi was 353526025933620. The IMEI number of the phone used from Hotel Taj has not been displayed in the printouts by the Airtel . However, the two IMEI numbers of the phones used from Hotel Oberoi and Nariman House have figured in the document Exh.606 produced by P.W.155-Ms.Mary Lozanco, IMEI number of mobile phone used from Oberoi has figured as it is in the call data record. However, the IMEI number of handset used from

Nariman House is figured little differently as compared to the call data record. The difference is only in the last digit. The last digit in the Exh.606 -document produced by P.W.155 is '5' whereas the last digit in the printout is '0'. The evidence of Nodal Officer Mr.Godse who has been examined as P.W.236 is very important in this regard. He has clearly stated that the system always generates the last digit as '0'. Therefore, the actual last digit of the handsets is not generated by the system when printouts of database record are taken out. Though P.W.155 has been cross-examined at length by ld. Advocate Mr.Kazmi for the accused No.1, it is not suggested that the database record is manipulated or fabricated. What is suggested is that the witness was deposing false. It was also suggested to the witness that she was not authorized to give evidence and that she was deposing at the instance of F.B.I. This suggestion is denied by the witness. The witness has admitted that she had no first hand knowledge of the transaction in question but what is important to note is that there is no challenge to the document Exh.606 which is taken out from the database of Nokia. It may be noted that the document contains IMEI numbers of five instruments seized by the police. I have personally checked the IMEI number of all the five instruments. It has also been stated by me that three telephone numbers

were intercepted on the basis of some source information. P.W.242-Mr.Nivrutti Kadam had intercepted these three telephone numbers and had also intercepted the telephone No.0012012531824 from international gateway.

1140. Before I proceed to examine the recording and transcription of the talks , I may mention here that I have already summed up evidence of P.W.258-Mr.Sunil Tiwari who was working as Nodal Officer with Airtel at the relevant time. He has produced call data record of telephone No. 9910719424 . He has also given details of SIM cards. This call data record was received by P.W.258 from Delhi office signed by Nodal Officer of Delhi Circle Cap. Rakesh Bakshi. He has identified his signature. Call data record is at **Exh.1079.** Objection of Ld.Advocate Mr.Kazmi was recorded. I have already stated that printouts of Airtel do not show the IMEI number of the handset in which the SIM card was used . The application form and other documents submitted by Suresh Prasad have also been discussed earlier and it has been stated that the police could not trace the said Suresh Prasad. All the documents accompanying the application were found bogus. As far as interception is concerned, as stated earlier, it was based on some

source information. P.W.242 who was attached to Anti Terrorists Squad and was working in technical wing of ATS, had recorded conversation on these four telephone numbers after obtaining permission from ATS Chief Mr.Param Bir Singh. Evidence of this witness has also been discussed earlier. However, at this stage it is necessary to be stated here that M.Param Bir Singh had taken charge of ATS temporarily immediately after death of Mr.Hemant Karkare in the incident involving police Qualis vehicle. Proposals for interception were placed before Mr.Param Bir Sing (P.W.241) by P.W.242. The proposals were approved and interception had begun. Statutory approval was granted by the competent authority Mrs.Chitkala Zutshi (P.W.253).

1141. This witness (P.W.253) in her evidence has stated that on receiving proposals through Commissioner of Police , she had granted permission to intercept the above stated four telephone numbers. She had signed the said proposals which were placed before her in token of having approved the proposals. The proposals are at **Exh. 1047, Exh.1048, Exh.1049 and Exh.1050.** It is stated by this witness that she had been authorized by the State Government to accord sanction u/s 5(2) of Indian

Telegraph Act, 1885. In exercise of her powers she had accorded sanction on 4/12/2008. Section 5(2) of the India Telegraph Act,1885 runs as under :

> **"5(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by an telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order.**
>
> **Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."**

P.W.253 has denied suggestion that the sanction was granted mechanically.

She has admitted that she had not maintained any personal notes of interactions with the Investigating Officer. She had also not maintained any minutes of meetings with the Investigating officer. She had also not prepared any minutes of the meetings with the ministers. She has denied that she did not apply her mind. In my opinion, there is nothing in the cross-examination of this witness to doubt her testimony. Similarly, there is nothing in the cross-examination of P.W.241-Mr.Param Bir Singh. On the contrary cross-examination of this witness elaborates the examination-in-chief itself. It does not create any dent in the examination-in-chief of this witness.

1142. Now let me proceed to evaluate evidence of P.W.242-Mr.Nivrutti Kadam who had intercepted and recorded the conversation. His evidence has also been stated earlier in detail. I will only refer to the cross-examination by Mr.Kazmi . The witness has admitted in his cross-examination that he had not put date below the notes prepared by him for being placed before P.W.241-Mr.Param Bir Singh, the Chief of A.T.S. He has admitted that there was no prior approval of the competent authority. It is stated by him that in urgent cases conversation can be intercepted in

anticipation of approval. The rule framed by the Central Government in exercise of its powers u/s 7 of Indian Telegraph Act provided for interception of calls without prior approval if obtaining prior directions for interception of message or class of messages is not feasible for operational reasons. **Rule 419-A (1) of the Indian Telegraph Rules, 1951** reads as under :

> "Directions for interception of any messages or class of messages under sub-secton (2) of Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the said Act) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India.....
> the required interception of any message of class of messages shall be carried out with the prior approval of the Head or the second senior most officer of the authorized security i.e. Law Enforcement Agency at the Central Level and the officers authorized in this behalf, not below the rank of Inspector General of Police, at the State level but the concerned competent authority shall be informed of such interceptions by the approving authority within three working days and that such interceptions shall be got confirmed by the concerned competent authority within a period of seven working days. If the confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease and the same message or class of messages shall not be intercepted

> thereafter without the prior approval of the Union Home Secretary or the State Home Secretary, as the case may be."

It is thus clear from the above stated rule that in emergent cases officer not below the rank of Inspector General or Police can grant approval for interception. As already stated by me Mr.Param Bir Singh was holding temporary charge of the post of Chief of A.T.S. He as such was holding the post not below the rank of Inspector General of Police . Therefore, in my opinion the interception approved by him was not illegal. It is very obvious from the facts of the case that it was an emergent case and obtaining prior directions was not feasible. It was necessary for the I.O. / Police to record what was being interacted between the attackers and the conspirators. As such it was not feasible to obtain prior permission of the competent authority. However, the competent authority should have been informed within three days. It appears to me that information was not given to the competent authority within three days. However, it is a kind of irregularity and does not vitiate the collection of evidence. Moreover, the Hon'ble Supreme Court in the case of **Navjyot Sandhu has observed at para -15 under the head 'Call records, approval and authenticity' and has referred to the case of R.M.Malkani Vs. State of Maharashtra (1973) 1**

S.C.Cases 471:

"The legal position regarding the question of admissibility of the tape recorded conversation illegally collected or obtained is no longer res integra in view of the decision of this Court in R.M. Malkani v. State of Maharashtra [(1973) 1 SCC 471]. In that case, the Court clarified that a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible as res gestae under Section 7 of the Evidence Act. Adverting to the argument that Section 25 of the Indian Telegraph Act was contravened the learned Judges held that there was no violation. At the same time, the question of admissibility of evidence illegally obtained was discussed. The law was laid down as follows (Para 24) :

.....There is warrant for the proposition that even if evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See Jones v. Owen (1870) 34 JP 759. The Judicial Committee in Kumar, Son of Kanju v. R [1955 1 All ER. 236] dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that

> the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence."

In the present case interception was over by the time information wsas given to the competent authority. It is not the case that interception went on beyond three days and that the competent authority was purposely not approached to get approval. It can be a procedural delay in government work and may amount to irregularity and not illegality.

1143. The cross-examination of P.W.242 at para 56 is important. Before I refer to the cross-examination, I may state here that art.853 was the CD on which the conversation pertaining to telephone No. 9819464530 had copied. **Exh,853B** is the transcription of the conversation. **Art.856** is the CD on which the talks from Airtel Gateway were recorded. **art.856B** is the transcription of the said talk. It was asked by ld.Advocate Mr.Kazmi to the witness whether the talk No.29 of art.853 tallies with any of the talks recorded on CD art. 856. The answer was in negative. This question was

based on the fact that all the incoming calls must have come from common gateway. The witness however has clarified that majority of the calls were received through Airtel gateway. It is stated by him that **talk No.29** on art.853 a transcription of which is produced at **art.853B** might have entered from some other gateway. It is well known that there are more than one gateways for international calls to enter. Some of the companies have even no gateway. They hire gateway of other company. Therefore,it is possible that the talk No.29 on **art.853,** the transcription of which is at **art.853B,** might have entered from some other gateway. Otherwise the evidence of this witness is trustworthy and there is no scope to doubt his evidence. The details of his evidence are not necessary to be reproduced as the details have already been given in earlier part of the judgment.

1144. Before I proceed to look into the conversation between the accused who had struck terror at Nariman House, Oberoi and Taj on one hand and their co-conspirators on other hand, what can be noted from the printouts of call data records is that most of the incoming calls from the co-conspirators are from telephone No. 0012012531824 and most of the outgoing calls made from the three local mobile telephone numbers (Rital

Agarwal, Gavriel and said Suresh Prasad) were destined to either of the Austrian DID numbers given by Callphonex on the account of Kharak Singh. It is therefore, established that the VOIP service provided to the said Kharak Singh by Callphonex was used for outgoing calls made by the handlers to the attackers and DID numbers were used for receiving incoming calls by the handlers/co-conspirators. The incoming calls on DID numbers are seen to be of very short duration whereas the outgoing calls from common number (0012012531824) are lengthy. It can be seen from the call data records that most of the calls from the handlers to the strikers had been from VOIP No. 2012531 1824. 001 is the country code of U.S.A.

1145. I now advert to the transcription of the talk. I have already referred to the cross-examination of witness Mrs. Shalini Sharma. Though her knowledge with regard to translation work is attempted to be challenged, in my opinion the witness was competent to translate the conversation and transcribe the same. Her mother tongue is Punjabi. The accused and co-conspirators had been in conversation in Urdu mixed with Punjabi. Their accent was Punjabi. Therefore, they must be from Punjab province of Pakistan. Even I was able to understand the talk without

referring to the transcription. Therefore, in my opinion even if there are few minor mistakes here and there in the transcription, substance of the transcription is not changed.

1146. In this regard, in the first place, I may refer to the evidence of P.W.243-Mr.Kapri. His evidence and evidence of P.W.242 has already been discussed while summing up evidence of prosecution. From the evidence of this witness it appears that the telephone No.9350593505 of India TV is always displayed on the screen so that anyone who wants to contact the channel can call on the said number. It has come in the evidence of P.W.243 that a call was received on 27-11-2008 at 8.30 a.m. from one person who identified himself to be Imran on the said telephone number. The caller ID of the caller was displayed. P.W.243 has further stated that one of the staff members of India TV had called the said person on the caller ID displayed on their telephone. The said phone call was made from land line number of India being No. 0120-4051000. P.W.243 was unable to remember the number called. He however, remembered that the talk went on for about thirty minutes. P.W.244- Ms.Archana had also spoken to the person called during the said period of thirty minutes. **Talk No.17** of **art.**

853 (C.D.) the transcription of which is produced at **Exh.989** (in the book **Ex.853A**) was played in open Court . The witness has identified voice of his colleague Mr.Jacob . He has identified his own voice also and further identified voice of Ms. Archana (P.W.244). It is stated by this witness that the conversation between the staff of India TV and said Imran was aired live on 27.11.2008.

1147. In this regard it may be noted here that from the transcription of the talk, it appears that the deceased accused No.2 and 3 who were at Nariman House had been receiving instructions from their co-conspirators to establish contact with media persons and to give message to the government. She had therefore, contacted India TV to air what they wanted to say. If one goes through the call data record of telephone No.9819464530 which is at **Exh. 927 colly.,** it can be seen that telephone No.9819464530 was busy with telephone No.01204051000 (India TV) during the period between 16 hrs. of 27/11/2008 to 16.52 hrs. of 27/11/2008. Therefore, there is corroboration to the oral evidence of P.W.243. Moreover P.W.244 -Ms.Archana has also identified her voice in the said conversation.

1148. Now, let me advert to the said conversation. From the transcription of said talk which is at **Exh.989** , it can be seen that accused by name Imran was in Nariman House. He posed himself to be from Hyderabad (Dakkhan). He also told the media person that the government has been harassing Muslims. The said Imran had extensive talk with the media persons and it was alleged that the Muslims were being harassed in this country. It can further be seen from the transcription of **art.853-Exh.984,** that there is one **talk No.7** recorded between 14.35 hrs. to 15.04 hrs. During the said talk, it appears that certain instructions were being issued to the deceased accused Nos. 2 and 3 to keep Israeli persons as hostage at Nariman House and place demands before the Government. The instructions given to them were to demand that all the Muslims shall be released from prisons, Muslim States be handed over to Muslims, military and para-military forces be withdrawn from Kashmir instructions be given to Israel that they should not commit atrocities on Muslims of Palestine . It further appears from the transcription that the co-conspirator who was issuing instructions to the deceased accused, was constantly watching television and intimated the deceased accused Nos. 2 and 3 that there was bomb blast at Hotel Oberoi. Accused No. 2 and 3 on their part had

intimated to their co-conspirators that the accused Nos. 2 and 3 were calling from phone No.9819464530.

1149. The ld. Spl.P.P. Mr.Nikam has also relied upon **talk No.1** of the art. 853 transcription of which is at **art.853D**. I have gone through the talk No.1. It appears from the said talk that accused had been talking to somebody who was trying to get Israeli hostages released . However, the said person has not been produced as a witness . The court, in fact had repeatedly asked the ld. Spl.P.P. as to why the said person who has been referred to as Mr.Levy, has not been produced in the court. I do not think that the court can draw any conclusion that Mr.Levy had been in touch with the deceased accused Nos.2 & 3 simply on the basis of certain talks which have been recorded. Mr.Levy is stated to be Israeli diplomat. With regard to other talks also prosecution has adduced evidence that VOIP service provided in the name of so called Kharak Singh was used. The prosecution has further adduced evidence that email ID of said Kharak Singh was Kharak-telco@yahoo.com. Prosecution has further adduced evidence of P.W.159-Mr.Mukund Gopal Pawar that this ID was accessed from various I.Ps. The ten I.P. addresses mentioned in the evidence of P.W.159 at page

1145 of the evidence were traced by this witness to know graphically locations of these I.P. addresses. The witness Mr.Mukund Pawar was attached to Cyber Crime Investigation Cell of DCBCID. It is stated by this witness that the geographical location of the I.P.addresses was traced and printouts were taken which are at **Exh.645 colly**. From the contents of Exh.645 colly. it can further be seen that most of the locations of the I.P. addresses from which email account of Kharak Singh was accessed, were located in Pakistan. There were some proxy I.Ps. also. The prosecution has also adduced oral evidence of P.W.156-Mr.Nizar Al Sharif to show that first payment was received through moneygram from Pakistan.

1150. I am not going to give much importance to talk No.1 particularly when there is no explanation on the part of prosecution as to why the said Mr.Levy has not been examined and who was Mr.Levy. Before I proceed further, I may mention here for ready reference that telephone No. 9819464530 was issued in the name of Mr.Gavriel. P.W.236-Mr.Changdeo Godse, the Nodal Officer of Vodafone has given detail evidence in this regard and has also produced documentary evidence containing photograph of Mr.Gavriel. It may be noted here that Mr.Gavriel

was one of the deceased who were killed by the deceased accused Nos.2 and 3 at Nariman House. SIM card of Mr.Gavriel was used by the accused No. 2 & 3 for talking to the co-conspirator.

1151. The ld. Spl.P.P. has rightly stated that in one of the talks it has come that the co-conspirators had been telling the deceased accused Nos. 2 and 3 that they should tell the press that this was only trailer and whole film would follow later on and that government of India should take note of it. The ld. Spl.P.P. has also invited my attention to **talk No.14 -Exh.985** which is recorded during the period between 15.35 to 15.43. The call data record also shows that VOIP No.0012012531824 was busy with telephone No. 9819464530 . It can further be seen that in fact mobile phone which is part of art.701 colly. and which bears IMEI No. 353526025842235 was used during the course of majority of calls after the said equipment was taken over by accused No.2 and 3 from Mr.Gavriel. It may be noted here that though the last digit IMEI number of said telephone equipment is '5', he printout would show '0' . P.W.236-Mr.Changdeo Godse has explained that the system always generates last digit as '0'. Last digit of the equipment may be any digit in between 1 to 9 but the system will

necessarily generate '0' only. It therefore can safely be said that the deceased accused No, 2 and 3 were in contact with their co-conspirators on telephone (talk No.14 -Exh.985). Again there was talk between the same person called Mr.Levy and deceased accused No.2 and 3. Identity of this person is not disclosed to the court. There is reference of one Mr.Levy in this talk also. There is reference to police also. However, neither Mr.Levy nor that police officer is produced before the court. The prosecution could have produced Mr.Levy or the translator who was allegedly explaining to the deceased accused Nos. 2 and 3 as to what Mr.Levy wanted to say. The speech of Mr.Levy is in English and there appear to be involvement of one translator. I am not going to give much importance to the talk though the ld. Spl.P.P. has made much capital of it. The reason is that it is not that the said Mr.Levy was not known to the prosecution or was some unknown person. The prosecution could have even verified as to who was the translator who was mediating between the deceased accused No.2 and 3 and Mr.Levy. Moreover, the prosecution has also not produced printouts of telephone number from which Mr.Levy and the translator had been talking to the deceased accused No.2 and 3. This being the quality of evidence, Court cannot attach any importance to that part of talk recorded by P.W.242-

Mr.Nivrutti Kadam.

1152. The ld. Spl.P.P. has thereafter invited my attention to **talk No.19 -Exh.987**. This talk is mainly referred to by Mr.Nikam to establish that name of one of the two accused at Nariman House was Imran Babar. There is corresponding entry in the call data record **Exh,927** which discloses that during that period telephone No. 9819464530 was engaged with phone No. 9350593505. It has come in the evidence of P.W.243-Mr.Vinod Kapri that phone No.9350593505 was telephone number of India TV available to the viewers. This part of talk corroborates confession of accused No.1 that deceased Imran had gone to Nariman house.

1153. Thereafter the ld. Spl.P.P. had taken me to **talk No.18-Exh.988.** This part was recorded at 16.50 to 17.01 hrs. It can be gathered from this part that the deceased Norma and others were kept hostages in Nariman House. The co-conspirators referred to as handlers by the ld. Spl.P.P. wanted the lady to mediate between Indian Government and the co-conspirators. Thereafter Mr.Nikam has taken me to talk No.17. I have already referred to talk No.17. However, the emphasis is laid on the speech

allegedly made by the co-conspirators on telephone to the effect that they were ready to have an encounter with Commandos. They were even prepared to teach a lesson to Commandos and Army. This particular portion is brought to my notice to substantiate the arguments that the deceased accused No.1 to 9 & wanted accused had conspired to wage war and had also waged war against Government of India. The talk further discloses that co-conspirators had intended to cause disaffection amongst a particular community against India . It is also seen from **talk No.28-Exh.991** that name of the other accused was Umar. This Umar is accused No.3-Nasir @ Abu Umar as per the police charge. He is deceased accused No.3.

1154. In brief what can be seen from record of telephonic conversation at Nariman House, Taj and Oberoi is that the deceased accused No.2 to 10 had been receiving instructions from their co-conspirators. If one goes through the **talk No.12** on telephone No. 9820704561, which is part of contents of **CD -art. 854** and transcription of which is produced at **Exh. 854B** , it can be seen that the deceased accused No.7-Fahad Ullah who was involved in the incident of Hotel Oberoi, was given instruction that he

was not supposed to be arrested in any circumstances. When the operation was about to end and when the deceased accused No.7 had intimated his co-conspirators that he was caught in a bathroom and it was difficult for him to come out, he was told by his co-conspirators that he has to fight till the end. He was also told that he should be careful that he is not made unconscious by any chemical bomb and thereafter arrested. Moral boosting was given to him that the war was to continue and there would be no solution without war. He was further directed to open burst firing on both the sides of corridors after coming out of the room and try to see that he caused maximum casualties, a great loss to NSG. It was also directed that he should empty all his magazines and at the end he was told that the success lied in dying and not in being arrested. He was further directed to keep his mobile phone on and keep it in the front trouser pocket so that if any thing went wrong, his co-conspirators would come to know from the noise which they might receive through the mobile phone of the deceased accused No.7.

1155. It can also been seen from **talk No.11** that deceased Abadul Reheman (deceased accused No.6) was with the deceased accused No.7 in Hotel Oberoi. The co-conspirators were earlier informed by the deceased

accused No.7 that he (deceased accused No.6) was dead . The deceased accused No.7 had also informed the co-conspirators that security forces had installed guns and that as soon as the deceased accused No.6 went out of the room, he was killed. In this regard it may be noted here that dead bodies of both the deceased accused Nos.6 & 7 were found on 18th floor of the hotel. This particular portion of the talk gives corroboration to the evidence of P.W.215-Mr.Rajesh Ganpat Kadam who has stated that one of the accused was eliminated on 18th floor of the hotel and operation was suspended at about 7.00 p.m. on 27/11/2008. This part of evidence can be found on page No.1477 where the witness No.215 has stated that he had heard terrorist writhing in pain and that he realized that the terrorist had sustained bullet injury due to firing on the part of NSG Commandos. As such the talk recorded by P.W.242-Mr.Nivrutti Kadam in respect of telephone No.9820704561 (Hotel Oberoi) shows that deceased accused No. 6 and 7 were constantly receiving instructions from their co-conspirators and moral boosting was being given to them that they had to fight till the end of their lives. They were not supposed to be arrested at any cost. It may be noted that the co-conspirators had even taken precaution to tell the deceased accused Nos. 6 and 7 that the security forces might try to make them

unconscious by some type of bomb and might be arrest them. The recording also discloses that the deceased accused No.6 and 7 were involved in the incident of hotel Oberoi. This part of evidence gives corroboration to the confession of accused No.1 recorded by P.W.218.

1156. Further corroboration is available in the evidence of P.W.215-MR.Rajesh Kadam and in the printouts of call data record of phone No. 9820704561. The call data record **Exh.921 colly**. shows that this telephone number was accessed by VOIP common client No.012012531824 at 20.19 hrs. and 20.30 hrs. on 27.11.2008. Thereafter the equipment had not been used. The evidence of P.W.215 and NSG Commando Cap. Ramesh Kumar Sharma discloses that the second terrorist was eliminated in the morning of 28.11.2008. The totality of circumstances show that the deceased terrorist eliminated in the morning of 28/11/2008 was deceased accused No.7-Fahad Ullah. I have already discussed the evidence in respect of inquest panchanama and recovery of weapons from 18th floor of Oberoi Hotel. These panchanamas were drawn by Mr.Patankar (P.W.211) and Mr.Sobalkar (P.W.226) whose evidence has been discussed earlier in detail. The print outs of call record of telephone No. 9820704561 (of deceased

Ms.Rita Agarwal) show that the instrument used for being in contact with the co-conspirators was bearing IMEI No.353526025933620.

1157. It can be seen from summing-up of evidence and earlier discussion on other points that the telephone equipment art.786 bearing above stated IMEI number was seized from 18th floor of Hotel Oberoi. As such there is sufficient material to show that deceased Fahad Ullah and deceased Abadul Reheman were involved in the incident of Hotel Oberoi. There is sufficient material to show that they were in touch with their co-conspirators through VOIP service facility on account of Kharak Singh.

1158. The telephone SIM card issued in the name of Suresh Prasad was used by the accused who were involved in the incident at hotel Taj. As far as call data record of telephone No. 9910719424 is concerned, the Airtel had not been able to provide IMEI number in the call data record. However, from the telephone number of called and calling parties it can be seen that this telephone number was also in constant touch with telephone No. 0012012531824 of Callphonex . This SIM card was seized by the police from one of the telephone instruments seized from hotel Taj. The

conversation between the accused and their co-conspirators would show that the recording had begun at about 1.00 a.m of 27/11/2008 and it ended at about 10.20 a.m. on 27/11/08. That the accused in Hotel Taj were intimated by their co-conspirators that ATS Chief had been killed. In this regard it may be noted here that late Mr.Hemant Karkare, ATS Chief was killed in the incident of Badruddin Tayyabji Road. The said news was flashed on most of the television channels. It appears that the co-conspirators were watching television continuously and had been instructing the accused on the basis of news available on the Indian T.V.channels. What is most important to be noted is that when one of the accused involved in the incident of Hotel Taj was on line with co-conspirators, he wanted to know the telephone number on which the co-conspirator could be contacted. The telephone number given to the accused was 0043720880764. It may be noted that this is one of the Austrian DID numbers given to the said Kharak Singh by Callphonex . This has come in the evidence of P.W.156 Mr.Nizar Al Sharif who is owner of Callphonex. It can also be seen from the talk that a large scale destruction was caused by the accused as per instructions given by their co-conspirators. It further shows that the deceased accused Nos. 4,5,8 and 9 were in touch with their co-conspirators even when P.W.184-

Mr.K.R.Ramamoorthy, P.W.188-Mr.Adil Irani, Mr.Sanjay Jadhav and two others were in their custody and they were kept hostage in one of the rooms at Hotel Taj.

1159. From the detail discussion of conversation between the deceased accused involved in the incidents at Hotel Taj, Hotel Oberoi and Nariman House with their co-conspirators, inquest panchanamas of dead bodies of deceased accused, and postmortem examination reports, it can be seen that confession of accused No.1 with regard to involvement of deceased accused Nos. 2 to 9 in these three incidents is substantially corroborated. Prosecution has also adduced most reliable evidence in the form of DNA to establish that DNA of some of the deceased accused had matched with DNA of sweat found on some of the articles including blankets recovered from boat Kuber. DNA matching could not be established in respect of all the accused because the DNA could not be retrieved from other articles . No fault can be found with the investigating agency. Moreover, the confession of accused No.1 can be accepted if it is generally corroborated by other evidence. As such I have come to the conclusion that there is no scope to doubt that the names mentioned by

accused No.1 of the deceased accused Nos. 1 to 9 are true and correct. As such the accused No.1 and the deceased accused Nos. 1 to 9 were involved in the manner alleged by the prosecution in various offences from the night of 26/11/2008 onwards.

1160. Apart from use of inter net telephony , the accused No.1 and the deceased accused Nos. 1 to 9 are alleged to have used GPS and satellite phone. It has come in summing up evidence that police had seized in all six devices including one satellite phone under various panchanamas. The details of seized GPS and satellite can be reproduced as under :

1	**2**	**3**	**4**	**5**
Sr. No.	**Art.Nos.**	**Panchanama dt. & Ex.No.**	**Nam of the the police officers/Panch witness**	**Place of Recovery**
1	Art.No.147 (Q.119)	27-11-08 (Ex.138)	1) Mr.Bhavesh Takalkar (PW 25) – **Panch** 2) Mr.Chandrakant Jadhav (PW 42) – **Police officer**	Kuber
72	Art.No.149 (Q.120)	27-11-08 (Ex.138)	1) Mr.Bhavesh Takalkar (PW 25) – **Panch** 2) Mr.Chandrakant Jadhav (PW 42) – **Police officer**	Kuber
3	Q.121	29-11-08 (Ex.771)	1) Mr.Sagar Prem Singh (PW 203) - **Panch**	Nariman House
4	Q.122	29-11-08 (Ex.1030)	1) Mr.Santosh Pawar (PW 134) **Panch** 2) Mr.Sudhir Garud (PW 220) **Police Officer**	Oberoi

1	2	3	4	5
5	Q.123	29-11-08 (Ex.760)	1) Mr.Raj Sarkania (PW 195)- **Panch** 2) Mr.Rahul Naik (PW 196) - **Police Officer** **(PW 234 Mr.Mainksingh Patil opened sealed packet on 30-11-2008 for inspection in presence of panchas. Resealing panchanama is at Ex.912)**	Taj
6	Q.124	29-11-08 (Ex.749)	1) Ishwar Kolekar (PW 189) - **Panch** 2) Mr.Milind Kurde (PW 190) **Police officer.** **(PW 234 Mr.Mainksingh Patil opened sealed packet on 30-11-2008 for inspection in presence of panchas. Resealing panchanama is at Ex.912)**	Taj

1161. It can be seen from the above table that two devices i.e. one GPS and one satellite phone were seized from Boat Kuber. They are given art. No. 149 and art.147 respectively. No.Q119 to Q124 are the numbers assigned by expert who had retrieved data from the GPS. The GPS were examined by P.W.152-Mr.Daniel Jackson who was working as Electronic Technician in F.B.I. Laboratory. He has done his B.Sc. in Computer Science from Park College. He joined Federal Bureau of Investigation in the year 1992 as Electronic Technician. At present he is working as Electronic Engineer /Forensic Examiner, FBI. This witness has further undergone training in respect of preparation of evidence in forensic cases. He has experience of examining over 1000 electronic devices in FBI laboratory.

He is particularly specialized in mobile , GPS devices and I-pods. In the present case he had examined one satellite phone and five GPS devices. During the course of recording of his evidence all the devices were shown to him . It is stated by him that identity number Q.119 to Q.124 are assigned by the laboratory. It is stated by this witness that examination of devices commenced on 11/2/2009 and it was concluded on 18/2/2009. According to this witness no data could be retrieved from GPS Q.121 and Q.122 because the data was found deleted because of depletion of battery. Data could be retrieved from the GPS Q.120. It may be noted that it is same device which was seized from Boat Kuber and and which was given art.No.149 in the court. After retrieval of data, maps were prepared with the help of software GARMIN on the basis of way points retrieved from the GPS Q.120. The maps have been produced by the witness in the Court. They are at page 429 of his report. The document containing his reports are at Exh.601. Similarly, way points were also retrieved from the device Q.123 and Q.124 and maps were prepared with the help of GARMIN software. It is further stated by this witness that the way points retrieved from GPS device Q.120 (art.149) show that the way points between Karachi and Mumbai were saved on the device. The route shown at page 36 of annexure shows the

intermediate way points were stored by the user and these waypoints are in between Karachi and Mumbai. The first way point is in ocean of gulf of Karachi and the last way point is in Mumbai. Page 38 of his report shows the track back route from Mumbai to Gulf of Karachi. The way points are shown as OCEN1 to OCENA. OCEN1 is the coast of Pakistan and OCENA is the coast of Mumbai. In this regard it may be noted that intermediate way points of Mumbai to Karachi, Karachi to Mumbai are saved as JALA1, JALA2 etc. It can be seen from the evidence of this witness that the way points retrieved from GPS Q.124 showed locations of Mumbai City.

1162. The prosecution in this regard has also examined one more witness to prove the contents saved in the device. He is P.W.161-Mr.Sandeep Shivangi. He had retired as a Chief Officer from Merchant Navy and at present he is working as Professor (Nautical Officer) in Lalbahadur Shastri College for Advance Maritime Studies and Research. He was invited by DCBCID on 24.2.2009 and was requested to plot way points on the printed map. Such printed maps are available in the market. Page 3 and 54 of Exh.61 of the report submitted by P.W.152 were shown to

this witness. The way points JALA1, JALA2, JALA3 and JALA4 were plotted by this witness on a printed map by means of parallel ruler .The map on which way points were plotted by this witness were also shown to him. He has identified his handwriting and has stated that the map bears his signature. The said map is at Exh.651. According to this witness he had plotted way points No. JALA3 and JALA4 on one more map also to have a closer view of the way points. The another map is at Exh.652. The way points described as OCENS1 , OCENS2, OCENS3 and OCENSA had also been plotted on the map Exh. 651. According to this witness JALA way point shows the route from Gujarat to South Bombay.

1163. As such summary of evidence of P.W.161 is that way points to Mumbai and Karachi were saved in the device (GPS) to guide the accused No.1 and deceased accused Nos. 1 to 9 in navigating the boat upto Mumbai. The case of prosecution is that the accused No.1 and deceased accused No. 1 to 9 had sailed in a small boat Al-Husaini and from Al-Husaini they were transferred to boat Kuber after hijacking the said boat n high seas. It is in this background that this evidence assumes importance. Both the witnesses P.W.152 and P.W.161 have been cross-examined extensively by ld.advocate

Mr.Kazmi for accused No.1. As far as cross examination of P.W.152 is concerned, it is admitted by this witness that he has not done Master's degree in computer science. If one goes through the cross-examination of this witness, it would be seen that what the witness has stated in examination-in-chief has been fortified by his answers in the cross-examination. He has specifically stated that software GARMIN was used to explore the data from these devices. The data from Q.119 was manually transferred . No software was required to retrieve the data from art. Q.119. Art.Q.119 is a THURIA made satellite . The witness was unable to tell as to what is the origin of THURIA satellite phone.

1164. Similarly, in the cross-examination of P.W.161 also there is nothing to doubt the correctness of his evidence. On the contrary the witness has cemented his earlier evidence given in examination-in-chief.

1165. It is therefore, established from the evidence of these two witnesses that the accused had GPS devices on which way points from Karachi to Mumbai were saved. This is one more important evidence adduced by the prosecution to establish that the accused No.1 and deceased

accused Nos. 1to 9 had come from Karachi to Mumbai by sea route. The accused wanted to be in contact with their co-conspirators while they were on their way to Mumbai from Karachi. It has also come in the confession of accused No.1 that THURIA satellite phone was used by them. It has further come in the confession of accused No.1 that THURIA satellite phone could not be picked up by deceased accused No.1-Abu Ismail because they had seen one boat which they suspected to be a naval boat and therefore they immediately jumped into inflatable boat and left boat Kuber .

1166. With this now I shall proceed to consider the charge of conspiracy. The accused No.1, 2 and 3 are facing charge of conspiracy punishable u/s 120B of IPC for having conspired with the deceased accused Nos.1 to 9 and wanted accused Nos.1 to 35 to commit various offences mentioned by me in Charge No.1.

1167. Apart from the use of GPS and THURIA satellite phone, one more thing needs to be mentioned here is that accused No.1 and nine deceased accused were found in possession of similar type of haversacks . Police however had recovered only nine haversacks during the course of

investigation. As far as accused No.1 and deceased accused No.1 are concerned, **one haversack** left at CST was seized under panchanama **Exh.257** and **another haversack** left on terrace of Cama Hospital was seized under **panchanama Exh.486. Four haversacks** were seized from Hotel Taj, **one haversack** was seized from hotel Oberoi, **two haversacks** were seized from the articles recovered from Nariman house. Prosecution has led this evidence to show uniformity of articles carried by the accused and to show that all of them were part of same conspiracy. It will be appropriate to state in a tabular form as to which of the haversacks was recovered from which place. The table showing place of recovery of haversacks, their article numbers etc is as under :

1	**2**	**3**	**4**	**5**
Sr. No.	**Art.Nos.**	**Panchanama dt. & Ex.No.**	**Nam of the the police officers/Panch witness**	**Place of Recovery**
1	Art.No.219	27-11-08 (Ex.257)	1) Mr.Chandrakant Sarnobat (PW 70)- **Panch** 2) Mr.Dilip Gore(PW 73) -**PI**	C.S.T
2	Art.No.356	27-11-08 (Ex.486)	1) Mr.Nazimuddin Shaikh (PW 115) - **Panch**	Cama In
3	Art.No.659	27-11-08 (Ex.744)	1) Mr.Nishant Gaikwad (PW 186) – **Panch** 2) Mr.Dinesh Kadam (PW199) **Police Officer**	Taj
4	Art.No.663	29-11-08 (Ex.749)	1) Ishwar Kolekar (PW 189) - **Panch** 2) Mr.Milind Kurde (PW 190) **Police officer.**	Taj

1	2	3	4	5
5	Art.No.664	29-11-08 (Ex.749)	1) Ishwar Kolekar (PW 189) - **Panch** 2) Mr.Milind Kurde (PW 190) **Police officer.**	Taj
6	Art.No.689	17-12-08 (Ex.763)	1) Mr.Anil Padaghe (PW 197) - **Panch** 2) Mr.Anil Dhole (PW 198) - **Police officer**	Taj
7	Art.No.814	28-11-08 (Ex.804)	1) Mr.Bhupendra Dhamankar (PW 216) – **Panch** 2) Mr.Kiran Kale (PW 217) - **Police officer**	Oberoi
8	Art.No.949	29-11-08 (Ex.911)	1) Maniksing Patil (PW 234) - **Police Officer**	Nariman House
9	Art.No.950	29-11-08 (Ex.911)	1) Maniksing Patil (PW 234) - **Police Officer**	Nariman House

1168. There was another uniformity that is in respect of recovery of identity cards. The prosecution has examined P.W.19- Mr.G.Radhakrishnan Subramania to show that the identity cards seized during the course of investigation were never issued by Arunodaya Degree College. The prosecution has also examined P.W.67- Mrs.Usha Shivakumar who has stated that accused No.1 had never stayed at the address mentioned in the identity card found in his possession. A summary of seized identity cards can be stated in a tabular form as under:

1	2	3	4	5
Sr. No.	**Art.Nos.**	**Panchanama dt. & Ex.No.**	**Nam of the the police officers/Panch witness**	**Place of Recovery**
1	Art.No.61	27-11-08 **(Ex.80)**	1) Mr.Shashikant Pawar (PW 10) - **Panch** 2) Mr.Vinod Sawant (PW 31) - **Police officer**	Vinoli
2	Art.No.104	27-11-08 **(Ex.99)**	1) Mr.Shivaji Shivekar (PW 14) – **Panch** 2) Mr.Subhash Warang (PW 27) – **Police officer**	Vinoli
3	Art.No.123	29-11-08 **(Ex.749)**	1) Ishwar Kolekar (PW 189) - **Panch** 2) Mr.Milind Kurde (PW 190) **Police officer.**	Taj (Colaba P.Stn.)
4	Art.No.126	28-11-08 **(Ex.790)**	1) Mr.Edewin Saldana (PW 210) – **Panch**	Oberoi
5	Art.No.127	29-11-08 **(Ex.771)**	1) Mr.Sagar Prem Singh (PW 203) - **Panch**	Nariman House
6	Art.No.128	29-11-08 **(Ex.1220A)**	1) Mr.Hemant Solanki (PW 350) **- Panch**	Nariman House
7	Art.No.130	29-11-08 **(Ex.1030)**	1) Mr.Santosh Pawar (PW 134) **Panch** 2) Mr.Sudhir Garud (PW 220) **Police Officer**	Oberoi (Marin Drive P.Stn.)

1169. Incidentally it may be noted here that accused No.1 in his confession before the ld. Addl.Chief Metropolitan Magistrate has stated that their photographs were taken to prepare identity cards when the conspiracy was in the advanced stage. They were given identity cards one each to be possessed by them. They were also given threads to be tied around their wrists.

1170. Before I deal with the charge of conspiracy let me be very clear as to what is the law on the point. **The Hon'ble Supreme Court in the case of State Vs.Nalini reported at 1999 S.C.cases (Criminal) 691 : 1999 Cri.L.J. S.C.** has at **para 583** said :

> "Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.
>
> 1. Under Section 120-A, IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means over act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in case is did all the accused have the intention and did they agree that the crime be committed it would not be enough for the office of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.
>
> 2. Acts subsequent to the achieving of the object of

conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enroles. There may be a kind of umbrella-spoke enrolment, where a single person at the center does the enrolling and all the other members are unknown to each other, though - they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummations of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the Court has to guard itself against the danger of unfairness the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is

otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time but may be reached by successive actions evidencing their joining of the conspiracy.

9.It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a

joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy not does it change the status of the other conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the objects of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

1171. The Honble S.C, in the case of **Yashpal Mittal Vs.State of Punjab** reported at **2001 S.C.Cases (Criminal : 2001 Cri.L.J. (S.C.)** has at **para 9 said-**

> "9. The offence of criminal conspiracy under S. 120-A is a distinct offence introduced for the first time in 1913 in Chap. V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them
>
> must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when

> they are associated with the object of the conspiracy. The significance of criminal conspiracy under S. 120-A is brought out pithily by this Court in E. G. Barsay v. The State of Bombay (1962) 2 SCR 195 at p. 229: (AIR 1961 SC 1762 at p. 1778) thus:"The gist of the offence Is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S. 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable". We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy."

1172. The ld. Spl.P.P.has cited two recent judgments of Hon'ble Supreme Court to support his contention that accused No.1,2 and 3 and deceased accused Nos.1 to 9 along with wanted accused had conspired to commit offences mentioned in Charge No.1. At this stage it may be noted

that though names of 35 wanted accused appear in the chargesheet and papers accompanying the chargesheet, and though the court, while framing the charge has mentioned names of those 35 wanted accused also to be the co-conspirators, what can be seen from the evidence adduced before the court is that names of only some of the 35 accused have come in the evidence i.e. in the form of confession of accused No.1. It is therefore, obvious that there is no evidence on record to show that except those whose names have been mentioned by the accused No.1 in his confession, were part of the conspiracy. As such names of those wanted accused who have not been referred to anywhere in the evidence ,are required to be excluded. The accused No.1 while giving his plea being recorded in the midst of trial has clearly mentioned names of nine deceased accused. Though he has stated in his statement before me that he did not know the said nine deceased accused, he has admitted that they had accompanied him when they travelled from Pakistan to Mumbai. As far as law on the point of retracted confession and admission is concerned, I have referred some of the judgments of Hon'ble Supreme Court which make absolutely clear that retracted confession can be relied upon if it gets general corroboration from the other evidence adduced by the prosecution. I have also come to the

conclusion that part of confession or admission can be accepted and part of the same can be rejected for the reasons to be recorded. What is necessary is that the whole of the statement labelled as admission or confession should be before the Court. The principle of *falsus in uno falsus in omnibus* will not be applicable to the confession and admission also. It is not the law that if the part of admission or the confession is found to be false, whole of the same has to be rejected. It is the duty of the court to separate the grain from the chaff and in the process it is possible that part of the confession or some part of the statement may not be acceptable to the Court. There are various reasons that some accused purposely introduce some part which within their knowledge is false. It is the duty of the court to find out which portion is false or introduced by the accused purposely knowing it to be false. . The court cannot act mechanically while considering confession or admission of the accused. With this let me now proceed to cite judgments on which the ld. Spl.P.P. relies .

1173. The ld. Spl.P.P. had mainly relied upon the judgments reported at -

1) 2003 S.C.Cases (Cri.)2033 Nazir Khan & Ors. Vs. State of Delhi:2003 Cri.L.J.5021

2) 2005 Cri.L.J. 3950 Navjot Sandhu Vs.State of Punjab: 2005 Cri.L.J. 3950.

3) 2001 S.C.Cases (Cri) Firojuddin Vs.State of Kerala 1341: 2001 Cri.L.J.4215

1174. Before I reproduce the relevant portion of the judgment relied upon by the ld. Spl.P.P., it may be stated here that it was argued on behalf of the State that the statement made by wanted accused in presence of accused No.1 and others which finds place in the confession of accused No.1, can be relevant evidence in view of the provisions of Sec.10 of the Evidence Act. In this regard what the ld. Spl.P.P. wanted to rely upon is the statement made by one of the wanted accused that the the sketch maps of the locations to be attacked were prepared by Faeem Ansari and Sabuddin . This is to prove the involvement of accused No.2 and 3 in the case of conspiracy.

1175. The Ld.Spl.P.P. has relied upon the judgment **in the matter of Firozuddin Vs State of Kerala** reported at **2001(Cri.L.J.4215). Para 26**

of the said Judgment runs as under:

> **26**. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said :
>
> "Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States 13 F. 2d 961, 967 (2d Cir, 1926)."
>
> 27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their conferers.

The Ld.Spl.P.P. has invited my attention to Section 10 of the Evidence Act .

Section 10 the Evidence Act runs as under:--

> **“10. Things said or done by conspirator in reference to common design** -

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the 11[Government of India]

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected in Calcutta for a like object D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta , and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it."

This obviously is a rule of evidence against the general rule of hearsay.

1176. The case **reported at 2003 Cri.L.J.5021** is relied upon in support of the contention that the essential ingredient of offence of conspiracy is agreement to commit an offence. It is not necessary that there should be some overt act on the part of the accused. The Ld.Spl.P.P. has relied on para 14 of the said judgment which runs as under:-

> **"14**. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A, then in that even mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the

> fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in Section 120-B (See S. C. Bahri v. State of Bihar (AIR 1994 SC 2420).) 1994 AIR SCW 3420 : 1994 Cri LJ 3271"

1177. The judgment **reported at 2005 Cri.L.J.3950** in the matter of **Navjot Sandu** has been relied upon in support of the contention that conspiracy is a continuing offence . The Ld.Spl.P.P.Mr.Nikam has relied upon paragraph No.12 of the said judgment. The portion which is relied upon runs as under:-

> **"12**. Conspiracy
>
> As conspiracy is the primary charge against the accused, we shall now advert to the law of conspiracy - its definition, essential features and proof. Section 120-A of IPC defines criminal conspiracy. It says: "when two or more persons agree to do or cause to be done (i) an illegal act or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. Section 120-B prescribes the punishment to be imposed on a party to a criminal conspiracy. As pointed out by Subba Rao, J in Major E.G. Barsay v. State of Bombay (AIR 1961 SC 1762) : 1961 Cri LJ 828

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para 31

"the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts".

Under section 43 of the IPC, an act would be illegal if it is an offence or if it is prohibited by law. Section 120-A and 120-B were brought on the statute book by way of amendment to IPC in 1913. The Statement of Objects and Reasons to the amending Act reveals that the underlying purpose was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means punishable under law. This definition is almost similar to the definition of conspiracy, which we find in Halsbury's Laws of England. The definition given therein is :

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied or in part express and in part implied..... and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be"

(Emphasis supplied).

1178. Apart from the portion relied upon by Ld.Spl.P.P.Mr.Nikam, it may be stated here that I have gone through the full text of the judgment. After having gone through the full text of the judgment, I am of the view that --

1) Gist of the conspiracy is in the agreement.

2) Conspiracy can be proved from inferences.

a) inferences must be founded on solid facts

b) each and every incrementing circumstance on the basis of which inferences are to be drawn must be clearly established by the reliable evidence.

c) It is necessary to prove that there was something more than merely a passive attitude towards an existing conspiracy

d) Rule laid down in Section 10 of Evidence Act is applicable to the cases of conspiracy.

3) Direct evidence may not be available in all cases.

4) Overt act or presence of the accused is not necessary to be proved. It is sufficient if the knowledge and subscription to the agreement is proved.

5) It is not necessary that all the conspirators must know each and every detail of the conspiracy.

6) It is not necessary that all the conspirators should participate from the inception to the end of conspiracy.

1179. Apart from this what is important to be noted is that and for that I may quote a small portion of **para 12** of the judgment in the matter of **Navjot Sandu** which runs as under:-

> "Earlier to the introduction of Section 120-A and B, conspiracy per se was not an offence under the Indian Penal Code except in respect of the offence mentioned in Section 121-A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under clause secondly of Section 107 of IPC. The punishment therefor is provided under various sections viz. Section 108 to 117. Whereas under Section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under Section 107 requires the commission of some act or illegal omission pursuant to the conspiracy. A charge under Section 107/109 should therefore be in combination with a substantive offence, whereas the charge under Section 120-A/120-B could be an independent charge".(Emphasis supplied)

As such offence punishable under section 120-B is in independent charge. It is immaterial whether any offence had been committed pursuant to the conspiracy or otherwise. The accused who has committed offence in pursuance of the conspiracy can be held guilty additionally for the offences committed by him. If the offences are committed in pursuance of the conspiracy, the conspirators can be held guilty for abating the offence by conspiracy in view of the provisions contained in clause seco*ndly* of Section 107 of I.P.C.

1180. As such briefly stated, the accused who are proved to be part of the conspiracy can be held guilty for the offence punishable under section 120-B of I.P.C. irrespective of the fact whether the offence or illegal act or the act which is not illegal by illegal means has been committed or not. The accused who commits offence in pursuance of the conspiracy is to be held guilty for the substantive offence committed by him. The conspirators can be held guilty of the offence of abatement if the offence is committed in pursuance of the conspiracy.

1181. Conspiracy is a continuing offence and continues to be

committed so long as the combination persists. This point is being considered because the conspiracy was initiated in Pakistan. As alleged by the prosecution the conspiracy began with training of accused No.1 and others at various training camps. It is possible that it could be little even before that. The question of jurisdiction to try the offence has therefore arisen before me. The Ld.Spl.P.P. had rightly answered the query of the court that since offence of conspiracy is a continuing offence and it continuous to be committed till it is terminated by completion of the offence or abandonment of the conspiracy. It could also be terminated due to frustration of conspiracy.

1182. In the present case I have already given a finding that the accused No.1 and nine deceased accused started their journey from Karachi to Mumbai to mount terror attack on Mumbai. It can be seen from the finding of this court that the conspiracy continued till the accused No.1 and the deceased accused Nos.1 to 9 landed at fishermen colony (Badhwar Park), Cuff Parade, Mumbai from inflatable boat and attacked the places assigned to them. As such the conspiracy continued on Indian waters and Indian land. Therefore, this court has jurisdiction to try the offence of

conspiracy framed against the accused Nos.1,2 & 3.

1183. After having briefly stated the law on conspiracy and my views which are based on the law laid down by the Hon'ble Supreme Court in various judgments, let me briefly state the evidence on which the prosecution relies upon to prove the charge of conspiracy as against accused No.1. For the time being I will be considering the case of accused No.1 separately from the case of accused Nos.2 & 3 because the case of accused Nos.2 & 3 is based on absolutely different type of evidence. I am of the view that if the case of accused Nos.1,2 & 3 is considered together there are chances of serious prejudice being caused to the accused Nos.2 & 3.

1184. THE EVIDENCE RELIED UPON BY THE PROSECUTION AGAINST THE ACCUSED NO.1 TO PROVE THE CHARGE OF CONSPIRACY.

1) Five Nokia phones were acquired by the conspirators to remain in contact with the attackers/conspirators during the course of the attack.

2) A Yamaha Outboard Machine was imported from Japan.

3) VOIP services were availed from the Callphonex. Five DID Austrian numbers were also obtained from Callphonex.

4) The accused No.1 and the nine deceased accused were given training at various training camps at Pakistan as well as at Muzaffarabad in Pakistan Occupied Kashmir.

5) During the course of training, the accused No.1 and the nine deceased accused were not only physically trained but time and again it was impressed upon them that they had to fight to liberate Kashmir and that one who participates in the *jung* (battle) would get *Jannath (*Heaven).

6) The wanted accused Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 18, 20, 27, 28, 31, 34, and 35 had been constantly supervising and imparting training to the accused No.1 and the deceased accused Nos.1 to 9.

7) Out of fifteen trained Mujahidins, two had left the training and five were sent to Kashmir for attack . As such the conspirators were left with only seven trainees. To make the figure ten, the deceased accused No.1,7 & 8 had been inducted in the group.

8) The wanted accused No.1,2,3,4,5,6 & 7 have played a vital role during the course of training. The wanted accused Nos.1 & 2 have been keeping watch and supervising the training. The wanted accused No.20 -Major General Saheb had also visited training camp to see that the training was going on properly and to ensure that there was no failure of any sort in carrying out the conspiracy.

9) The accused No.1 and deceased accused No.1 to 9 were also given marine training.

10) They were trained to operate G.P.S. and satellite phone

11) They were kept in a house in a Ajijabad Mohalla of Karchi secretly.

12) Brand new clothes were bought for the ten attackers.

13) Fake identity cards purported to be issued by Arunodaya Degree Collage, Bangalore were prepared for the ten attackers.

14) Each of the attackers was given one haver sack containing hand grenades and live cartridges.

15) Haver sacks also contained dry fruits.

16) Each of the attackers was given one 7.62 short rifle(AK-47), live cartridges, magazines, one 7.62 mm/.30" pistol and cartridges.

17) Each one of them was given hand grenades which they had carried in their haver sacks.

18) Each one of them was given one RDX bomb to be exploded at various places.

19) They were trained to install RDX bomb below driver's seat in taxis which they would be hiring from Badhwar Park to reach the place assigned to them for the attack.

20) During the course of training, a definite assignment was given to each one of them, and ten accused were divided into five pairs.

21) The boat Kuber registered in India was hijacked.

22) The navigator of the boat was purposely kept alive till the boat entered Indian waters.

23) The navigator was killed to eliminate the piece of evidence.

24) The accused No.1 and the deceased nine accused were told to remove sea valve of the boat so that it sank in the water.

25) The accused No.1 and deceased accused Nos.1 to 9 and the wanted accused whose names have appeared in the confession of accused No.1 and whose names have already been stated by me in point No.6 above had planned to kill large number of persons at various places in Mumbai.

26) They had also planned to resist and fight with security forces.

27) They had further planned to keep the people hostage and destroy property by explosion.

28) They had also planned to commit offences under Foreigner's Act, Passport (Entry into India) Act 1920, Explosives Act, Explosive Substances Act, offences under Railways Act, offence punishable under section 135 of Customs Act.

1185. It is submitted by the Ld.Spl.P.P. that to prove the charge of conspiracy against accused No.1,2 & 3, the prosecution has laid sufficient evidence in the form of confession of accused No.1 and the evidence corroborating the confessional statements made by accused No.1 in his confession before the Ld.Magistrate. The ld.Advocate Mr.Pawar on the other hand has submitted that there is no evidence at all against the accused No.1 to involve him in the offence of conspiracy and waging war. It is submitted by Mr.Pawar that the accused No.1 has been made a scape goat as he was found wandering by the police. As stated by the accused No.1 before the Court, Mr.Pawar has contended , that the accused No.1 was picked up by the police much earlier to the incident. It is further submitted that the police have implicated accused No.1 to present bold faces before the public and hide their own weaknesses. The alleged confession of

accused No.1 recorded by P.W.218, according to Mr.Pawar, is totally false and extracted from the accused No.1. Mr.Pawar has vehemently contended that not only the prosecution has miserable failed to prove independent charges against the accused No.1, but the evidence of prosecution with respect to conspiracy also suffers from severe infirmities and court may not rely upon such weak and manipulated evidence. As stated earlier by me, Mr.Pawar had invited my attention to various discrepancies in the evidence of eyewitnesses and omissions in their previous statements. It is submitted that the omissions in previous statements of the witnesses are strong indication of the fact that the case against accused No.1 is manipulated and fabricated. As far as arguments in respect of individual incidents are concerned, the ld. Advocate Mr.Pawar's arguments are taken care of by me at the relevant places. His arguments with regard to conspiracy will also be taken care during the course of discussion herein after.

1186. As far as Law on the point of confession is concerned the same has already been discussed by me in earlier part of the Judgment. To state it briefly again, I may say that the confession of the accused can form basis of the conviction but in a case of retracted confession, the prosecution is under

obligation to lay evidence which might generally corroborate the confession of the accused.

1187. In the present case, the confession of accused No.1 recorded by PW 218 is found to be voluntary and true except a very small portion which is concerning the mention of names of the accused Nos. 2 and 3 by one of the co-conspirators before the accused No.1 and the deceased accused.

1188. I may mention here that even an accused facing trial alone can be held guilty of offence of conspiracy if court finds that he was party to the agreement with some known or unknown accused. In a case of conspiracy where all other accused are acquitted except one and no other accused was alleged to be part of the conspiracy, the court will not be able to convict one of the accused after acquitting rest of the co-accused. However, if it is alleged that the conspiracy was hatched not only by the one or more accused facing the trial but there were some more persons who were part of the conspiracy but are not before the court, then court can legally convict one of the accused and acquit rest of the accused who were not found to be part

of the conspiracy. It therefore, follows that a solitary accused can be charged for and convicted for the offence of conspiracy, if it is shown that there were some other accused known (wanted) and unknown persons who were part of the conspiracy.

1189. If one goes through the confession of accused No.1 recorded by PW No.218, it can be seen that the accused No.1 had given vivid and graphic description of the training he and others had undergone. He has described each and every step of conspiracy in detail. The detail description given by the accused No.1 involving himself at each and every step of conspiracy and also involving deceased accused Nos.1 to 9 and the wanted accused Nos. 1,2,3,4,5,6,7,8,9,10,11,13,15,18,20,27,28,31, 34, and 35 gets corroboration from various pieces of evidence adduced by the prosecution. In fact the whole of the confession of accused No.1 is corroborated by the independent evidence adduced by the prosecution. As far as role of accused Nos.2 & 3 is concerned, the accused No.1 in his confession has stated that wanted accused No.6 Abu Khaffa had shown the maps prepared by Fahim and Sabauddin. It is further stated by him that the maps were actually given to the ten attackers and that the map showing

various locations of Mumbai including Malbar Hill was given to the deceased accused No.1. This portion of confession of the accused No.1, involving accused Nos.2 & 3 has to be dealt with separately. Rest of the statement has been corroborated by cogent and trustworthy evidence. The role of wanted accused Nos. 1,2,3,4,5,6,7,8,9,10,11,13,15,18,20,27,28,31, 34, and 35 can be ascertained from the confession of the accused No.1. As already stated by me each and every statement made in the confession is not required to be corroborated by independent evidence if the same is to be used against the accused himself.. General corroboration is sufficient to accept the contents of confession true and correct. The reading of confession of accused No.1 makes it absolutely clear that he has described each and every thing in detail before the Ld.Magistrate.

1190. The Ld.Adv.for accused No.1 has argued that the confession is manipulated and fabricated document and has further argued that the accused has been made a scapegoat in this case by police to hide the failures on the part of police on night of 26th and 27th November 2008. It is submitted by Mr.Pawar that the accused No.1 has nothing to do with the conspiracy and the commission of offences alleged against him. I am not

inclined to accept the arguments of Mr.Pawar. The details of the conspiracy disclosed by the accused No.1 in his confession inspire confidence because he has meticulously stated each and every thing in detail. It could be argued on behalf of accused No.1 that the statement was influenced by the police pressure. However, such an argument must necessarily fail because accused No.1 had more than sufficient opportunity before the Ld.Magistrate to make grievance. The Ld.Magistrate has taken all necessary precautions to see that the accused No.1 was free from police influence, if any.

1191. The evidence adduced by the prosecution which has been discussed by me in detail while considering the points for determination would show that majority of the facts stated by accused No.1 in his confession have been corroborated by the independent evidence. Few of the facts which corroborate confession of the accused No.1can be stated in brief as under:-

1) The prosecution has successfully established that the conspirators had availed VOIP services of Callphonex. The owner of Callphonex PW No.156 Mr.Nisar Al Sharif has specifically stated as to how VOIP services were made

available to the person who had opened account in the name of Kharak Singh.

2) Five Austrian DID numbers were also obtained. The evidence given by PW 156 is abundantly clear on this point.

3) Call Data Record produced in respect of Telephone Nos.9819464530, 9810719424, 9820704561 and the evidence of witnesses in that regard clearly established that these telephone numbers were engaged with Telephone No.(VOIP) 0012012531824 of Callphonex. This number belongs to the Service Provider and whenever VOIP calls were made by the user VOIP, this number was being recorded in the Call Data Record.

4) It can also be seen from Call Data Record that the Austrian DID numbers were called by the accused from Nariman House, Hotel Oberoi and Hotel Taj.

5) The evidence given by PW 30 of Yamaha Corporation corroborates the confession of accused No.1 that they had an inflatable boat with

them to travel upto Seashore of Mumbai.

6) The seizure of ten AK 47 rifles, ten pistols, nine haver sacks, a large number of 7.62 mm empties, a large number of 7.62 mm live cartridges, 7.62 mm magazines and other material from the places of offence.

7) Three live RDX bombs were recovered by police, two from near the hotel Taj and one at C.S.T. railway station. The foam pieces in which the bombs were wrapped have been reported to be from one and the same source. It means one big sheet of foam was used for cutting the same into pieces and to cover the RDX bombs by means of foam pieces.

8) RDX (cyclonite) was detected in various articles sent to the laboratory.

9) PETN, TNT and Nitrite (post explosion residue) were also detected on various articles examined by the Chemical analyser.

10) Large number of empties were recovered from various places of the offences. The empties

recovered from the places where the accused No.1 and deceased accused NO.1 were involved had mostly tallied with the empties of test fired cartridge cases from the AK-47 rifles (Art.10 & 427) held by accused No.1 and the deceased accused No.1. The empties recovered from other places of offences like Taj, Oberoi, Nariman House and Leopold had tallied with the empties of test fired cartridge cases from the rifles held by the deceased accused Nos. 1 to 9. The comparison of empties was scientifically done. There is no scope to doubt the evidence given by Ballistic Experts. The empties found at Taj tallied with the weapons held by deceased accused Nos.4,5,8 & 9. The empties found at Leopold hotel tallied with the weapons held by deceased accused Nos.4 & 9. The empties found at Hotel Oberoi had tallied with the empties of test fired cartridge cases of the weapons held by accused Nos.6 & 7. As such the confession given by the accused No.1 is substantially corroborated. The statement given by the accused No.1 in his confession that the particular accused were destined to particular place as per the conspiracy

is proved to be absolutely true and correct by

independent evidence.

11) A large number of live cartridges seized by the police were found to be 7.62 mm short rifle cartridges and were found to be live.

12) Similar type of black pouches and haversacks were held by accused No.1 and deceased accused Nos.1 to 9.

13) The articles seized from boat Kuber have also corroborated the confession made by the accused No.1.

14) All the accused had travelled together in boat Kuber has been established by matching of DNA profiles of some of the accused with DNA profiles of sweat found on some of the articles used by the accused on boat Kuber.

15) The blankets found on boat Kuber were absolutely similar and appeared to be purchased from one and the same place at one and the same time.

16) The bomb had exploded at Vile Parle and Mazgaon as per the instructions given to the accused No.1 and deceased accused Nos.1 to 9.

17) A large number of consumable and perishable articles were found to be made in Pakistan. Even Atta(wheat flower) was found to be made in Pakistan.

1192. It is not necessary to repeat the each and every portion of the evidence which corroborates the confession of accused No.1. The discussion on various points earlier is sufficient enough to say that the confession of accused No.1 has been corroborated generally by the evidence adduced by the prosecution. As such there is sufficient evidence to establish that the accused No.1 and deceased accused Nos.1 to 9 and the wanted accused Nos.1 to 11, 13, 15, 18,20, 27,28, 31, 34 and 35 were party to the conspiracy. The confession made by the accused No.1 and his plea before the court makes out that he and the deceased accused Nos.1 to 9 had undergone extensive training at various camps including Muzaffarabad in POK. It is also clearly established that wanted accused No.1 was over all incharge of the operations of Lashker-e-Taiba and wanted accused No.2 was actively guiding the accused No.1 and the deceased accused Nos.1 to 9

and other trainees at various camps.

1193. Here a question that may arise is as to how one can come to the conclusion that co-conspirators/handlers were stationed somewhere in Pakistan when the instructions were being given to the accused on telephone. No doubt there is no direct evidence to say that the handlers were issuing instructions from the Pakistan. This had become difficult for Investigating Agency because landline or local mobile numbers of Pakistan have not been used by the co-conspirators. It may be noted here that the caller ID displayed on the mobile phones of the accused used by them during the course of attack would be either Common Client number given by Callphonex or one of the DID numbers. The person who avails VOIP services and the DID numbers can use this facility from any place in the world wherever the computer with internet facility is available. However, considering the fact that wanted accused No.1 had been supervising the whole training and the wanted accused No.2 was very much with the accused No.1 and the deceased accused Nos.1 to 9 at various stages of training, it can safely be said that the calls received by the accused at Hotel Taj, Hotel Oberoi and Nariman House had their origin in Pakistan. The

accused No.1 in his confession has stated that each one of them was given one mobile phone loaded with Indian SIM card. However, it appears from the sequence of events that the said SIM cards did not work except one SIM card of Mobile No. 9810719424 . It is for this reason that the accused had used SIM cards of Mrs.Rita Agarwal and Mr.Gavriel. The SIM card issued in the name of Mrs.Rita Agarwal was used by accused Nos.6 & 7(Hotel Oberoi) and telephone number issued in the name of Mr.Gavriel was used by accused Nos.2 & 3 from Nariman House. The accused No.1 in his confession has also stated that they were told that one of the numbers of handlers/ co-conspirators had already been fed in the mobile phones and that if any one of the ten accused wanted to contact the co-conspirators including wanted accused No.7, they had to push the green key of the mobile key pad. It is therefore, clear that mobile phones were given to the accused No.1 and deceased accused No.1 to 9 at Pakistan during the course of training and they were also told to push green key on the key pad. I think this is more than sufficient evidence to say that the handlers/ co-conspirators were in Pakistan.

1194. What can be gathered from the above discussion is

that there is ample evidence against the accused No.1 to show that he was part of conspiracy. The evidence adduced by the prosecution against accused No.1 is confession of accused No.1. Though the confession has been retracted by the accused No.1, it has been corroborated by the evidence adduced by prosecution in the form of testimony of witnesses and seized articles including arms and ammuntion.

1195. Apart from this evidence, there are admissions made by accused No.1 in his statement before this court on 20th and 21st July, 2009. It has already been stated that admissions can be proved against accused u/s 21 of the Evidence Act. Though the accused in his statement u/s 313 Cr.P.C. has denied all the admissions made by him, and has sated that he was under police pressure, the said explanation given by the accused cannot be accepted inasmuch as he has not explained as to how and where the police had created pressure upon him to admit certain parts of alleged offences. The plea of accused No.1 was not accepted because the admissions made by the accused No.1 were not confession of the whole charges against him. However, though the plea was not accepted by the Court for the reasons recorded separately on the same day, the court has taken a view that

the admissions made by accused No.1 in the said plea can be used against him in view of provisions of Sec.21 of the Evidence Act. Since the accused No.1 has not given any explanation as to how police had brought pressure upon him to make admissions and since I have personally seen the demeanour of accused No.1 , I do not feel that he was addressing the court under any pressure. He was absolutely comfortable and had voluntarily made the statement on that day. The cell of accused No.1 is situated a few meters away from the court room. The cell of accused is manned by Security Officials of jail. As such I do not think that there was any occasion for police to meet the accused No.1 in the cell and to bring pressure on him. I have also taken note of the fact that accused No.1 was never allowed to meet anybody while being brought to the court and even during his return journey to jail. As stated earlier, the cell of accused No.1 is a few meters away from the Court room and there is no occasion for the police officers to get in touch with the accused No.1. Tight security and vigil is always there on the part of officers and Jawans of ITBP. Therefore, in my view the statement of accused No.1 that pressure was created upon him by the police is totally unacceptable. The accused No.1 has quite intelligently and schemingly avoided certain portions to be mentioned in his plea on

20.7.2009. It need not be stated here that the Court has no right to cross-examine or put questions in the nature of cross-examination during the course of recording of plea of accused. Therefore, whatever was stated by the accused No.1 had been recorded by me in the same sequence . I had not even changed the sequence of narration.

1196. If one goes through the statement of accused No.1 recorded on 20th & 21st July, 2009, it can be seen that he had admitted most of the facts with regard to his training at various places in Pakistan and Mujjafarabad (Pak Occupied Kashmir). He has also admitted his involvement in the incident of firing at CST railway station and many other such admissions have been made by him. In my considered opinion therefore, the prosecution has been able to establish charge of conspiracy punishable u/s 120B of IPC against the accused No.1. The evidence relied upon by the prosecution against the accused No.1 to prove charge of conspiracy has been stated in **para-1184** of the judgment. It can be seen that most of the pieces of evidence adduced by the prosecution have been accepted by the Court. The facts which corroborated the retracted confession of accused No.1 are stated at **para-1191** of the judgment. The corroboration of confessional

statement of accused No.1 by the evidence adduced by the prosecution clearly establishes that the accused No.1 was part of the conspiracy which in fact was a very large scale conspiracy. The evidence discussed by me herein above would show as to how many persons were involved in the whole conspiracy and how they had been imparting training to young boys to act as terrorists and were involved in exporting terror to India. As already stated, charge for the offence punishable u/s 120B IPC is proved against the accused No.1.

1197. Before I part with discussion on this point, it may be mentioned here that Sec.18 of Unlawful Activities (Prevention) Act, could not have been included in the first charge because section 18 of the Act itself speaks about the conspiracy to commit terrorists act. That conspiracy is an independent offence for which support of Sec.120B of IPC is not necessary, What the prosecution is able to establish is that accused No.1 and the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 11, 13,15,18, 20, 27, 28, 31, 34, and 35 were party to a criminal conspiracy to commit the offences punishable u/s 302, 307, 326, 325, 332. 333, 342, 343. 353 , 364. 365, 437 of IPC, offence punishable u/s 25 and 27 of Arms Act, offence

punishable under Explosives Act and Explosive Substances Act , offence punishable u/s 3 and 4 of Prevention of Damage to Public Properties Act , offence punishable u/s 151 and 153 of Railways Act, offence u/s 135 of Customs Act , offence punishable under Foreigners Act and Passport (Entry Into India) Act, 1920 and offence punishable u/ss 13,16 & 20 of Unlawful Activities (Prevention)Act, 1967.

1198. As such the point No.1 as against the accused No.1 is answered in affirmative barring Secs. 10, 20 and 23 of Unlawful Activities (Prevention) Act, 1967 and Sec.152 of Railways Act. The offences punishable under the unlawful activities (Prevention)Act, are being dealt with by me separately.

1199. Point Nos. 2, 3,4 and 5 pertain to the offences punishable us/ 121, 121A, 122 of IPC. The point The point Nos. 2,3 ,4 and 5 run as under

> **2. Does the prosecution prove that accused No.1 along with deceased accused Nos. 1 to 9 during the period between 26th November, 2008 to 28th November, 2008 had waged war against the Government of India?**

3. Does the prosecution prove that accused Nos. 1, 2 and 3 along with the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 35 within and without India had conspired to wage war against the Government of India?

4. Does the prosecution prove that accused Nos. 1, 2 and 3 along with the deceased accused Nos.1 to 9 and wanted accused Nos. 1 to 35 within or without India conspired to overawe by means of criminal force or show of criminal force, the Central Government and the State Government of Maharashtra ?

5. Does the prosecution prove that accused Nos.1, 2 and 3 along with the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 35 had , during the period between December 2007 and November, 2008 collected men, arms and ammunitions within and outside India and made any other preparations to wage war with intention of either waging war or being prepared to wage war against the Government of India ?

1200. To answer these four points I will have to primarily examine

two issues i.e. whether the acts committed by accused No.1 and the deceased accused No.1 to 9 amounted to offence of waging war against the Goverment of India **and** whether Sec.121 and consequently Sec. 121A and 122 IPC are applicable to foreign nationals.

1201. To understand what is waging of war, I am guided by two judgments of Hon'ble Supreme Court. The first judgment is in the matter of **Nazir Khan Vs.State of Delhi reported at 2003 Cri.L.J . 5021** . The Honble Supreme Court at para **25 to 30** of the said judgment has said:

> "25. The Indian Law Commissioners in their second report dated 24-6-1847 had observed. We conceive the term "wages war against the Government" naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous." Mere collection of men, arms and ammunitions does not amount to waging war.
>
> 26. There is a difference, says Foster : (3 Crown cases, pp. 208, 209 and 210) "between those insurrections which have carried the appearance of an army formed under leaders, and provided with military weapons, and with drums, colours, etc., and those other disorderly tumultuous assemblies which have been drawn together and

conducted to purposes manifestly unlawful, but without any of the ordinary shew and apparatus of war before mentioned.

> "I do not think any great stress can be laid on that distinction. It is true, that in case of levying war the indictments generally charge, that the defendants were armed and arrayed in a warlike manner; and, where the case would admit of it, the other circumstances of swords, guns, drums, colours etc., have been added. But I think the merits of the case have never turned singly on any of these circumstances."

> "In the cases of Damaree and Purchase. . . . . there was nothing giving in evidence of the usual pageantry of war, no military weapons, no banners or drums, nor any regular consultation previous to the rising; and yet the want of these circumstances weighed nothing with the Court, though the prisoners' counsel insisted much on that matter. The number of the insurgents supplied the want of military weapons; and they were provided with axes, crows, and other tools of the like nature, proper for the mischief they intended to effect. . . . . .

> "The true criterion, therefore, in all these cases is, quo animo did the parties assemble? For if the assembly be upon account of some private quarrel, or to take revenge on particular persons, the statute of treasons hath already determined that point in favour of the subject. . . . . .Upon the same principle and within the reason and equity of the statute, risings to maintain a private claim of right, or to destroy particular inclosures, or to remove nuisance, which affected or were thought to affect in point of interest the parties assembled for these purposes, or to break prisons in order to release particular persons without any other circumstances of aggravation, have not been holden to amount to levying war within the statute."

27. It is the fundamental right of every citizen to have his own political theories and ideas and to propagate them and work for their establishment so long as he does not seek to do so by force and violence or contravene any provision of law. Thus, where the pledge of a Society amounted only to an undertaking to propagate the political faith that capitalism and private ownership are dangerous to the advancement of society and work to bring about the end of capitalism and private ownership and the establishment of a socialist State for which others are already working

under the lead of the working classes, it was held that it was open to the members of the Society to achieve these objects by all peaceful means, ceaselessly fighting public opinion that might be against them and opposing those who desired the continuance of the existing order of society and the present Government; that it would also be legitimate to presume that they desired a change in the existing Government so that they could carry out their programme and policy; that the mere use of the words 'fight' and 'war' in their pledge did not necessarily mean that the Society planned to achieve its object by force and violence.

1. About the expression 'Whoever' the law Commissioners say : (2nd Report : Section 13) "The laws of a particular nation or country cannot be applied to any persons but such as owe allegiance to the Government of the country, which allegiance is either perpetual, as in the case of a subject by birth or naturalization, and c., or temporary, as in the case of a foreigner residing in the country. They are applicable of course to all such as thus owe allegiance to the Government, whether as subjects or foreigners, excepting as excepted by reservations or limitations which are parts of the laws in question.

2. Regarding 'Wage war' according to the Law Commissioners, these words "seems naturally to import a levying of war by one who throwing off the duty of allegiance arrays himself in open defiance of his sovereign in like manner and by the like means as a foreign enemy

would do, having gained footing within the realm. There must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature.

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

29. The word "wages" has the same meaning as "levying" used in the English statute. In Lord George Gorden's case (1784) 21 St Tr 485, 644, Lord Mansfield said : "There are two kinds of levying war :- one against the person of the king; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors :- the other, which is said to be levied against the majesty of the king,

or, in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the king; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn Government; and by force or arms, to restrain the king from reigning according to law."

30. An assembly armed and arrayed in a warlike manner for any treasonable purpose is bellum levatum, though not bellum percussum. Lifting and marching are sufficient overt acts without coming to a battle or action.

"No amount of violence, however great, and with whatever circumstances of a warlike kind it may be attended, will make an attack by one subject on another high treason. On the other hand, any amount of violence, however insignificant, directed against the King will be high treason, and as soon as violence has any political objects, it is impossible to say that it is not directed against the king, in the sense of being armed opposition to the lawful exercise of his power. Where the object of a mob is not mere resistance to a District Magistrate but the total subversion of the British power and the establishment of the Khilafat Government, a person forming part of it and taking part in its actions is guilty of waging war. When a multitude rises and assembles to attain by force and violence any object of a general public nature, it amounts

to levying war against the Government. It is not the number of the force, but the purpose and intention, that constitute the offence and distinguish it from riot or any other rising for a private purpose. The law knows no distinction between principal and accessory, and all who take part in the treasonable act incur the same guilt. In rebellion cases it frequently happens that few are let into the real design, yet all that join in it are guilty of the rebellion. A deliberate and organized attack upon the Government forces would amount to a waging war if the object of the insurgents was by armed force and violence to overcome the servants of the Government and thereby to prevent the general collection of the capitation tax." (See Aung Hia's case (1931) 9 Rangoon page 404). AIR 1931 Rangoon 235 : 33 Cri LJ 205) (SB)

"There is a diversity between levying of war and committing of a great riot, a rout, or an unlawful assembly. For example, as if three, or four, or more, do rise to burn, or put down an inclosure in Dale, which the lord of the manor of Dale hath made there in the particular place; this or the like is a riot, a rout or an unlawful assembly, and no treason. But if they had risen of purpose to alter religion established within the realm, or laws, or to go from town to town generally, and to cast down inclosures, this is a levying of war (though there be great number of the conspirators) within the purview of this statute, because the pretence is public and general, and not private and particular." (See Cokes' Inst. Ch. 1, 9)”

1202. In the said case a foreign national was abducted and a demand was made that the government of India should release ten hardcore terrorists from jail. Copies of demands were faxed to the President, Prime Minister and other dignitaries. Three days time was given for meeting the demand and threat was also given that in case the demand was not met,the kidnapped foreigners would be killed. The observations made by the Hon'ble Supreme Court at **para 25 to 30** clearly indicate that though it was not a conventional war, but the way in which the offence was committed and the demands were made for release of hardcore criminals, the Hon'ble Supreme Court came to the conclusion that the accused were guilty of offence punishable u/s 121 of IPC.

1203. In another case in the matter of **Navjyot Sandu Vs.State of Punjab reported at 2005 Cri.L.J. page 3950 ,** it was observed by the Hon'ble Supreme Court at **para -18**

> "War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war imbedded in Section 121 is not to be understood in international law sense of inter-country war involving military operations by and between two or more

hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the Illustration to Section 121 itself makes it clear that 'war' contemplated by Section 121 is not conventional warfare between two nations. Organizing or joining an insurrection against the Government of India is also a form of war. 'Insurrection' as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. "Rebellion, revolution and civil war are progressive stages in the development of civil unrest the most rudimentary form of which is 'insurrection' - vide Pan American World Air Inc. v. Actna Cas and Sur Co. [505 FR 2d 989 at P. 1017]. An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression 'war' and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or Government."
(emphasis supplied)

1204. It was further said in the said judgment by the Hon'ble Supreme Court at page 4048 of Cri.L.J.

"On the analysis of the various passages found in the cases and commentaries referred to above, what are the high-

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

> the Government might very well be an act of waging war."

1205. While dealing with the facts of the said case the Hon'ble Supreme Court in the same judgment has said in the same para at **page- 4050 :**

> "The learned senior counsel Mr. Ram Jethmalani argued that in a case of war, the primary and intended target must be combatants as distinguished from civilians, though the latter may be incidentally killed or injured and that feature is lacking in the present case. This contention, though plausible it is, does not merit acceptance. When an attack on the Parliament was planned, the executors of this plan should have envisaged that they will encounter resistance from the police and other armed security personnel deployed on duty fairly in large numbers at the Parliament complex. The slain terrorists and other conspirators should have necessarily aimed at overpowering or killing the armed personnel who would naturally come in their way. Inflicting casualties on the police and security personnel on duty as well as civilians if necessary would have been part of the design and planning of these hard-core terrorists and the criminal conspirators. It is not necessary that in order to constitute the offence of waging war, military or other forces should have been the direct target of attack. There is no such hard and fast rule and nothing was said to that effect in the long line of cases referred to

> supra. The act laying siege of Parliament House or such other act of grave consequences to the Government and the people is much more reflective of the intention to wage war rather than an attack launched against a battalion of armed men guarding the border or vital installations."
> (emphasis supplied)

1206. The point whether Sec.121 of IPC is applicable to foreigners was also dealt with by the Hon'ble Supreme Court in the same judgment and it was said at **page 4051** :

> "It was next contended that foreign nationals who intrude into the territory of India and do not owe even temporary allegiance to the Government of India cannot be charged of the offence of waging war. In other words, the contention is that a person who is not a citizen nor a resident alien cannot be accused of high treason. The decisions of House of Lords in Joys v. DPP [1946 All ER page 186] and of Privy Council in Lodewyk Johannes v. AG of Natal [1907 AC 326] have been referred to. The dicta in Anthony Crammer v. USA [325 US pages 1-77] and in the case of United States v. Villato [1797 CC Pennsylvania Page 419] have also been referred to in support of his proposition. The learned counsel has also placed reliance on Sec. 13 of the 2nd Report of the Law Commissioners on the Indian Penal Code, the excerpts of which are given in Nazir Khan's case [(2003) 8 SCC 461 at 486]. The Law Commissioners observed thus : 2003

AIR SCW 5068 : AIR 2003 SC 4427 : 2003 Cri LJ 5021

"The law of a particular nation or country cannot be applied to any persons but such as owe allegiance to the Government of the country, which allegiance is either perpetual, as in the case of a subject by birth or naturalization and or temporary, as in the case of a foreigner residing in the country. They are applicable of course to all such as thus owe allegiance to the Government, whether as subjects or foreigners, excepting as excepted by reservations or limitations which are parts of the law in question."

We find it difficult to sustain the argument of learned Senior Counsel. The word 'whoever' is a word of broad import. Advisedly such language was used departing from the observations made in the context of Treason statute. We find no good reason why the foreign nationals stealthily entering into the Indian territory with a view to subverting the functioning of the Government and destabilizing the society should not be held guilty of waging war within the meaning of Section 121. The section on its plain terms, need not be confined only to those who owe allegiance to the established Government. We do not have the full text of the Law Commissioners' Report and we are not in a position to know whether the Law Commissioners or the drafters of Indian Penal Code wanted to exclude from the ambit of Section 121 the unauthorized foreigners sneaking into Indian territory to undertake war like operations against the Government. Moreover, we have no material before us to hold that the

> views of Law Commissioners on this aspect, were accepted. Those views, assuming that they are clearly discernible from the extracted passage, need not be the sole guiding factor to construe the expression 'waging war'. Though the above observations were noticed in Nazir Khan's case, the ultimate decision in the case shows that the guilt of the accused was not judged from that standpoint. On the other hand, the conviction of foreigners (Pakistani militants) was upheld in that case."
> (Emphasis supplied)

A combine reading of both the judgments would show that the provisions of Sec.121,121A and 122 of IPC are applicable to foreign nationals also. It is further seen that to prove the offence of waging war, it is not necessary to prove that it was a regular military operation. The number of attackers could not be a criteria. Intention is of paramount importance in such case. After having noted the observations made by the Hon'ble Supreme Court, let me now advert to the facts of this case and examine whether the case of accused No.1 is covered by Sec.121 of IPC.

1207. In fact there is overwhelming evidence against the accused No.1 in the form of his own confession and the other evidence adduced by the prosecution. The statements made by the co-conspirators in their

discourses to the accused and others are also admissible u/s 10 of the Evidence Act. It has come at more than one places in earlier part of the judgment that the object of criminal conspiracy was to challenge the Government of India and to ask the government to separate Kashmir i.e. Indian administered portion of Kashmir. The preparations made for attacking Mumbai were on so large scale and so meticulous that such a preparation in such a large scale and with such meticulousness can be seen in the operations carried out by Government armed forces. The accused No.1 and deceased accused Nos. 1 to 9 had carried lethal weapons like 7.62 mm short rifle and 7.62/.30" pistols .A large quantity of cartridges were given to each of the accused. Each of the accused was given one powerful RDX bomb to be exploded as planned. The preparation for mounting attack on Mumbai was being done for months together. This can be seen from the evidence collected by the prosecution and produced in the court and also from the confession of accused No.1. Yamaha Enduro machine (O.B.M.) was imported from Japan, five Nokia phones were imported from China and VOIP services were availed well in advance. Training was given to accused No.1 and the deceased accused Nos. 1 to 9 at various places for months together. The training was so hard and rigorous that some of the trainees

could not sustain the training and left the training camps. Marine training was also given to the accused No.1 and deceased accused Nos. 1 to 9. It was planned well in advance that they would be hijacking one Indian boat. An inflatable boat was also carried by the accused which in fact had been used by the accused to reach seashore at Badhwar Park. The detail evidence discussed by me herein above clearly establishes that the preparations for attacking Mumbai were not less than the preparation made by any defence force for declaring war. I have already stated that number of the attackers hardly matter in such case. The Hon'ble Supreme Court has said in the case of **Navjot Sandu** that when the court is hearing a case u/s 121 IPC, court is not trying the prisoners of war.

1208. Apart from the preparations made by the accused No.1 and deceased accused Nos.1 to 9 and wanted accused Nos. 1 to 11, 13, 15, 18, 20 ,27, 28, 31, 34 and 35 whose names have appeared in the confession of accused No.1, what can be seen is that the execution was carried out meticulously as planned by the accused No.1, deceased accused Nos. 1 to 9 and their co-conspirators.

1209. After having gone through the above stated two judgments of the Hon'ble Supreme Court, what can be gathered is that the court, while trying the offence u/s 121 of I.P.C. will bear in mind that-

1) most important is the intention or purpose behind the alleged defiance or rising against the government,

2) a war like operations were directed against government machinery,

3) it was intended to strike at the sovereign authority of government,

4) total number of accused and the manner in which they were equipped, is not very much material. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms,

5) There is no need of pomp and pageantry usually associated with war ,

6) Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government may be an act of waging war.

1210. Now, let us examine facts of this case in the light of what has been stated by the Hon'ble Supreme Court in the case of Nazir Khan and Navjot Sandhu . As far as preparations for waging war are concerned, I have in detail stated as to how accused No.1 and others were trained physically and mentally to make them fit for attacking Mumbai. I have also discussed as to how they were brought on the seashore of Karachi and thereafter by boat Al-Husaini ship. It is also stated in detail as to in what manner they hijacked Indian boat Kuber and completed their journey up to Indian waters. It has further stated that they completed their further journey up to Mumbai seashore by an inflatable boat.

1211. The said inflatable boat has been seized, life savings jackets have also been seized. The manner in which attacks were carried out at various places has been stated by the eyewitness. If one goes through the **table Nos. 7 & 8** , it may be seen that similar type of AK-47 rifles and 7.62 mm/.30" pistols were used by the accused No.1 and the deceased accused Nos.1 to 9. The **table Nos.9 & 10** give a graphic picture of the live cartridges recovered from various spots and empties of cartridge cases fired by accused No.1 and the deceased accused Nos.1 to 9 at various places of the offences. **Table No.12** describes the explosives used by the accused

while committing offences. It is therefore, abundantly clear that not only there was an intention to challenge the government authorities including security forces but there was intention to cause heavy loss of life and property. The evidence discussed so far clearly establishes that accused No.1 and deceased accused Nos. 1 to 9 had caused death of **166** persons and they have injured more than hundred persons. Had any of them died due to the injuries sustained by them, accused would have been held guilty of the offence of murder for causing those injuries also. Apart from this, while discussing the charge u/s 333 IPC, the court has come to the conclusion that majority of the public servants were injured by the accused with intention to deter or prevent them from discharging their duties. It is another thing that though a charge for the offence punishable u/s 333 IPC had been framed for voluntarily causing grievous hurt to the public servants, in some cases prosecution has been able to prove only simple hurt. But the point remains that the government police officers/ Commandos were challenged, assaulted, injured and killed.

1212. The way in which the accused No.1 and deceased accused nos. 1 to 9 had attacked various places and camped in those places, shows that

they knew that the security forces would come to retaliate. The accused were however, prepared to challenge the security forces and direct their operation against the government machinery It has also come in the evidence that considering the nature of weapons used by the accused and the way they suddenly struck terror, it was found necessary to call the Commandos of National Security Guards whose training is equivalent to the training of armed forces. As such the accused had directed their strike even against the armed forces. They were not even satisfied with large number of deaths. They went to the extent of giving message to the Government that it was a trailer and the film would follow. It shows as to how much they were determined to challenge and fight with the Government and security forces. They went on to make a statement which would create disaffection amongst a class of people against the Government of India. The incident described by P.W.215-Mr.Rajesh Kadam clearly shows how much resistance was put by the deceased accused Nos. 6 & 7 against the allied force like NSG Commandos . As such the accused No.1 and the deceased accused Nos. 1 to 9 had not come to India only to commit few murders and destroy some government property but it was a large scale conspiracy to strike terror , destroy public and private property, create disaffection amongst a class of

people against the government, overawe the Central Government and the State Government. I have gone through the judgments of Hon'ble Supreme Court in the matter of **Nazir Khan and Navjot Sandu**. If facts of this case are compared with the facts of any of these two cases, it can safely be said that the acts on the part of the accused No.1 and the deceased accused Nos.1 to 9 did not permit the Court to draw any other conclusion except that a war was waged against India.

1213. Apart from this, from the telephonic instructions received from the co-conspirators it is abundantly clear that the co-conspirators were watching television and had been directing the actions of accused in India on the basis of locations of the security forces available to them through their media channels. It is not that the accused No.1 and the deceased accused No.1 to 9 had simply come here to kill few people and ran away from the spot. The prosecution has successfully established that the accused had come here to kill human beings in large scale particularly striking against foreign nationals including the persons of Israeli origin and they were determined to camp till they fight against the government machinery. It can be seen from the instructions received by the accused at Oberoi, Taj

and Nariman House on telephone that time and again it was being impressed upon the accused in India by their co-conspirators in Pakistan that they were not supposed to create a situation of arrest. In this regard I may refer to **talk No.12** of **hotel Oberoi.** It will be appropriate to reproduce the talk verbatim so that one can understand the intensity of the strike and the intention of accused No.1 ,the deceased Nos. 1 to 9 and the wanted accused named by the accused No.1 . The said portion can be reproduced verbatim as under :

" The person giving instructions tells accused Fahad Ullah Fadulla, my brave soldier, don't be scared. If there is any chance of fighting, come out and throw hand grenade.

(

Accused replied : Both the hand grenades are thrown.

(

Co-conspirator asks-Howmany kalashan magazines you have ?

Accused says-I have two.

(

After brief discussion the co-conspirators tells -

Do not create a situation where you could be arrested . Do remember. The problem will be resolved only by fighting . It should not happen that somebody throw a smoke bomb and makes you unconscious and thereafter takes you away.

(

Accused : No.

The Co-conspirator- It would be a great loss. you should fight, you should fire as soon as you see anybody. Fire and burst fire. Thereafter there would be a chaos and you try to come out.

after some talk-

Co-conspirator again tells-Be courageous my soldier, don't be discouraged.

Accused - Inshaallah

Co-conspirator tells-The success lies in receiving the bullet.

God is waiting for you.

1214. It can be seen from this talk that the accused No.1, deceased accused No. 1 to 9 and wanted accused had decided to kill persons in large number, destroy property at large scale. They were determined to fight security forces including armed forces and they were determined to fight till the end. An attack with this type of mental preparation and physical preparation, in my view, amounts to waging war. Briefly stated, it is proved that :

(1) Accused No.1, deceased accused Nos. 1 to 9 and all the arms , ammunitions and explosives were brought at the seashore of Karachi ,

(2) Accused No.1, deceased accused No.1 to 9 and some of the wanted accused had travelled by ship called Al-Husaini,

(3) They were accompanied by some of the wanted accused on the ship,

(4) They had hijacked Indian fishing vessel Kuber,

(5) Arms, ammunitions , explosives, fuel and other articles were transferred from Al-Husaini to Kuber,

(6) The navigator of the boat Kuber was wrongfully confined and was later on killed,

(7) G.P.S. and mobile phones were used,

(8) They had ultra modern speed boat by which they travelled upto Mumbai seashore in a very planned and meticulous manner and the accused No.1 and the deceased accused Nos.1 to 9 reached the place assigned to them for attack ,

(9) They suddenly struck terror by indulging into indiscriminate firing by means of deadly weapons like AK-47 rifle ,

(10) VOIP facility was also used by the wanted accused for being in contact with the deceased accused Nos. 2 to 9,

(11) It is very important to note that after indiscriminate firing their aim was to keep certain persons hostages,

(12) This is demonstrated by the fact that they did not kill each and every person who came in their way thereafter,

(13) As such intention was not simple to commit murders but it was abundantly clear that they wanted to strike terror and challenge the government authorities,

(14) Despite the knowledge that the place of attack had been surrounded by the security forces, none of the accused had surrendered before the security forces. On the contrary instructions were given to the deceased accused No.7 that before dying he should come out from the room on 18th floor of Oberoi and open burst firing on both the directions of corridor.

If this is not waging war, there cannot be any other conceivable situation which may amount to waging war. I have therefore, come to the conclusion that accused No.1 and deceased accused Nos. 1 to 9 during the period between 26th November, 2008 to 28th November, 2008 had waged war against the government of India. **Point No.2 is therefore answered in affirmative.**

1215. As far as point No.3 is concerned, I do not think that any separate discussion is necessary. I have elaborately stated as to how preparations were made by the accused No.1 , deceased accused Nos. 1 to 9 and wanted accused whose names have appeared in the confession of accused No.1 and as to how they had conspired to wage war against the government of India. Offence of conspiracy u/s 120B IPC is a distinct offence and conspiracy to wage war against government of India is another distinct offence punishable u/s 121A of IPC. As stated earlier, I have in detail mentioned the training undergone by the accused No.1 and the deceased accused Nos. 1 to 9, the arms and ammunition carried by them and the offences committed by them after getting out of the inflatable boat. Further discussion on any of these things would be repetition and will only

add to the volume of judgment. To my mind it is not necessary to repeat the same. It is abundantly clear that there was conspiracy to commit offence punishable u/s 121 of IPC. The only thing which needs to be mentioned specifically is that prosecution could not bring material on record that all the wanted accused were involved in the conspiracy. The prosecution has brought material only against wanted accused Nos. 1 to 11, 13, 15,18, 20, 27, 28, 31, 34 and 35. **The point no.3** is therefore answered as under :

> **'Prosecution has proved that accused No.1. deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 11, 13, 15,18, 20, 27, 28, 31, 34 and 35 within and without India had conspired to wage war against government of India.**

1216. Point No.4 also does not need any separate discussion. It is very clear that there was conspiracy to overawe by means of criminal force the Central Government and the Government of Maharashtra. As far as point No.5 is concerned , it also does not need any separate discussion because I have in detail stated as to how the men, arms and ammunition were collected within and outside India and preparations were made to wage war against the Government of India. In point Nos .4 and 5 also

involvement of only those wanted accused is established whose names have stated by me herein above. As far as case of accused Nos. 2 and 3 is concerned, the same is to be dealt with separately and findings in that regard will also be given separately. The Point No.4 is answered as under :

'Prosecution has proved that accused No.1, deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 11, 13, 15,18, 20, 27, 28, 31, 34 and 35 within and without India had conspired to overawe by means of criminal force the Central Government and the State Government of Maharashtra.

Point No.5 is answered as under :

Prosecution has proved that accused No.1 deceased accused Nos. 1to 9 and wanted accused Nos. 1 to 11, 13, 15,18, 20, 27, 28, 31, 34 and 35 during the period between December, 2007 and November, 2008 had collected men, arms and ammunition within and outside India with intention to wage war against the Government of India.

1217. When the words 'within' and 'without India' are mentioned by me, it has to be borne in mind that I have considered that the conspiracy is a continuous offence and the actual offences have been committed in India by the accused No.1 and deceased accused Nos. 1 to 9 by their physical entry in to India and physical participation in the ghastly crimes at various places in Mumbai. As far as the involvement of wanted accused whose names have been figured in the confessional statement of accused No.1 is concerned, Court has only considered their involvement in the conspiracy. The court cannot give any verdict against them because they are not tried so far. They were not physically present in India or in any ship registered in India. In this regard I have been guided by the judgment of **Hon'ble Supreme Court in the matter of Mobarik Ali Ahmed Vs. The State of Bombay, reported at AIR 1957 Supreme Court 857.** In the said case issue was raised that the accused was Pakistani national who during the entire period of commission of offence had never stepped into India and was only at Karachi and wherever the legislature in framing the Penal Code wanted to legislate about anything that has reference to something done outside India it has specifically said so and that therefore it may be expected that if it was intended that the Penal Code would refer to a person actually present

outside India at the time of the commission of the offence, it would have specifically said so.. While answering the said issue the Hon'ble Supreme Court at **para-27** has observed as under :

> "27. Learned counsel drew our attention, to a number of sections in the Penal Code, viz., 108A, 177, 203, 212, 216, 216A and 236. The argument based on reference to these sections is that wherever the legislature in framing the Penal Code wanted to legislate about anything that has reference to something done outside India it has specifically said so and that therefore it may be expected that if it was intended that the Penal Code would refer to a person actually present outside India at the time of the commission of the offence, it would have specifically said so. We are unable to accept this argument.
>
> These sections have reference to particular difficulties which arose with reference to what may be called a related offence being committed in India in the context of the principal offence itself having been committed outside India-that is for instance, abetment, giving false information and harbouring within India in respect of offences outside India. Question arose in such cases as to whether any criminal liability would arise with reference to the related offence, the principal offence itself not being punishable in India and these sections were intended to rectify the lacunae.
>
> On the other hand, a reference to S.3 of the Code clearly

> indicates that it is implicit therein that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were not so, the legal fiction implicit in the phrase "as if such act had been committed within India' in Sec.3 would not have been limited to the supposition that such act had been committed within India, but would have extended also to a fiction as to his physical presence at the time in India."

After having gone through the judgments cited before the Hon'ble Supreme Court on the issue, the Hon'ble Supreme Court further said at **para-32** as under :

> "32. After giving our careful consideration to the questions raised before us, we are clearly of the opinion that even on the assumption that the appellant has ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Indian Penal Code notwithstanding his not being corporeally present in India at the time."

For what has been stated by me in this para, **the accused No.1 is found guilty of the offences punishable u/ss 121, 121A and 122 of IPC**.

1218. One thing which is necessary to be stated here itself is that no court can take cognizance of any offence punishable under Chapter VI of IPC except with the previous sanction of Central Government or the State Government. This is what is provided u/s 196 of Cr.P.C. IN the case before me the accused No.1 is found guilty of the offences punishable u/s 121, 121A and 122 of IPC . These are the offences punishable under Chapter-VI of IPC. The court could not have taken cognizance of this offence without previous sanction of Central Government or the State Government. The Court has therefore , framed Point No.192 which runs as under :

192. Does the prosecution prove that a valid sanctions had been granted by the Competent Government under section 196 of Cr.P.C. for taking cognizance of the offences punishable u/s 121 121A and 122 of Indian Penal Code ?

The prosecution has examined P.W.253-Ms.Chitkala Zutshi who has stated in her evidence at para-6 page 1745 of the evidence that she had accorded sanction u/s 196 of Cr.P.C. for prosecuting offenders for the offence punishable u/s 121, 121A and 122 of IPC. A proposal for grant of such

sanction was received from Mr.Deven Bharati, Addl.Commissioner of Police DCBCID. The proposal was dated 6th January , 2009 and was received by P.W.253 on 17th January, 2009. P.W.253 had gone through the proposals and had interactions with the Chief Investigating Officer Mr.Mahale. After having gone through the papers and after having discussed the whole case with the Chief Investigating Officer Mr.Mahale, she had accorded sanction on 10th February 2009 as she was fully convinced that the prosecution was justified. The file was approved by the Home Minister before the sanction was signed by P.W.253. As such the sanction was accorded on behalf of Government of Maharashtra. The sanction is produced at **Exh. 1051**. The proposal submitted by Mr.Deven Bharati is at **Exh..1052**.

1219. Another sanction of similar nature was accorded on 31.3.2009 vide **Exh. 1055**. It appears that another sanction was accorded because names of some of the wanted accused had not been mentioned in the earlier sanction **Exh.1051.**

1220. P.W.253 was cross-examined by ld.advocate Mr.Kazmi with regard to almost all sanctions and consents granted by this witness either in

the capacity of Home Secretary or on behalf of the Government. As far as sanction Exh.1051 and 1066 are concerned, there does not appear to be any cross-examination except the suggestion that the sanctions were faulty and were not in accordance with law. This suggestion has been denied by the witness. **My answer to point No.192 is in affirmative** .

1221. It may further be noted that sanction of competent authority is necessary for prosecution of accused for the offence of conspiracy to commit offences other than the offences punishable with death or imprisonment for life or rigorous imprisonment for a period of two years and upwards. There are many offences of which the accused No.1 is found guilty, which fall under this category. This part of sanction is covered under Exh.1051 and Exh.1055. **My answer to point No. 193 is also in affirmative.**

1222. Now let me proceed to decide the point No157 to 161. Point Nos. 157, 158 and 159 could be answered together. Point Nos. 157, 158 and 159 run as under :

157. Does the prosecution prove that

the accused No. 1, No.2 and No.3 during the period between December, 2007 and November, 2008 were members of the unlawful association namely Lashkar-e-Taiba which has been declared as unlawful by a Notification u/s 3 of Unlawful Activities (Prevention) Act, 1967 ?

158. Does the prosecution prove that accused No. 1, No.2 and No.3 continued to be the members of the said unlawful association ?

159. Does the prosecution prove that accused No.1, No.2 and No.3 had assisted the operation of said association ?

The prosecution has not produced any notification issued by the Central Government u/s 3 of Unlawful Activities (Prevention)Act,1967. It may be noted that notification of Central Government is necessary to be issued u/s 3 to label any association to be unlawful. Such notification comes into effect only after confirmation made by the Tribunal . Section '3' of Unlawful Activities (Prevention)Act, 1967 runs as under :

3) Declaration of an association as unlawful-

(1) If the Central Government is of opinion that any association is, has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

It is thus clear that in the absence of such notification the charge u/s 10 of

Unlawful Activities (Prevention)Act cannot be proved. It must therefore fail. **My answer to point No.157 is in negative. Point No. 158 and 159 do not survive in view of the answer to point No.157.**

1223. As far as point No.160 and 161 are concerned, they can be reproduced as under :

> **160. Does the prosecution prove that accused No.1,2 and 3 took part in and committed unlawful activities as defined u/s 2(1)(O) of Unlawful Activities(Prevention) Act, 1967 ?**
>
> **161. Does the prosecution prove that the accused No.2 and 3 had advocated, abetted, advised and had incited commission of the said unlawful activities ?**

Unlawful activity has been defined **u/s 2(1)(O)** of Unlawful Activities Act which runs as under :

> "Unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible

representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

1224. In the first place I may mention here that the accused No.1 in his confession before the ld. Magistrate has stated at **page-12** that the wanted accused No.1-Aamir Hafeez Saeed had told all the Mujahideen (trainees) that they had to fight to separate Kashmir. The wanted accused No.2-Zaki-Ur -Reheman at the same time had said as under :

"Time for Jihad had come. Our community had been fighting for Kashmir since last fifteen years. Despite that Indian Government has not been liberating Kashmir. Therefore, we have to fight a war against India to acquire Kashmir."

1225. Secondly, it may be noted that the deceased accused Imran who was involved in the incident at Nariman House, had said so many spurious words on phone to the anchor of electrical channel India TV . What he had said was being aired live . He had contacted media as per the instructions issued to him during the course of conspiracy. He had uttered the words which were sufficient to cause disaffection amongst a section of people against India. **Page No.4** of **talk No.17** is full of such statements made by the deceased accused Imran. Such statements were sufficient to cause disaffection in a section of people against India.

1226. I have already said that accused No.1, deceased accused Nos. 1 to 9 including deceased accused Imran had entered India together and they were part of conspiracy. The statements made by wanted accused No.1 and wanted accused No.2 before the trainees (Mujahideens) including the accused No.1, were intended to bring about secession of a part of the territory of India from the Union of India. As such in my opinion the activities of wanted accused No.1 and 2 and statements of accused Nos. 1 and 2 and statements made by deceased accused Imran (deceased accused No.2) on telephone aired live by the media channel India TV , were sufficient to fall under the definition of unlawful activities.

1227. I am considering the case of accused No.1 only and not of accused No.2 and 3. Since the accused No.1 was part of the conspiracy, he is found guilty of the offence punishable **u/s 13 of Unlawful Activities (Prevention)Act, 1967, r.w. Sec. 109 r.w. Sec.120B of IPC. Point No.160 is answered accordingly.**

1228. Point Nos. 162 to 165 also can be discussed together and their answers would depend upon the outcome of the common discussion. Point Nos. 162 to 165 run as under :

> **162. Does the prosecution prove that accused No.1 and the nine deceased accused during the period between 26th November, 2008 and 29th November, 2008 at Mumbai and particularly at C.S.T.Rly.Station, Cama and Albless Hospital, Badruddin Tayabji Road, N.S.Purandare Road, Girgaum Chowpaty, Western Express Highway, B.P.T., Mazgaon, Mumbai, Hotel Oberoi, Trident, Hotel Taj, Nariman House and Cafe Leopold committed terrorist act as defined u/s 15 of the Unlawful Activities(Prevention)**

Act, 1967 ?

163. Does the prosecution prove that the said terrorist act of the above said accused had resulted in death of 166 persons at the places mentioned in the preceding charge ?

164. Does the prosecution prove that the accused No. 1, 2 and 3, nine deceased accused and the thirty five wanted accused during the period between year 2007 and 2008 at Mumbai and other places had conspired to commit terrorist act and the acts preparatory to commission of a terrorist act ?

165. Does the prosecution prove that the accused Nos.1, 2 & 3 were members of terrorist gang or terrorist organization viz. Lashkar-e-Taiba during the period between December 2007 and November 2008?

To decide these issues, it will have to be seen in the first place whether Lashkar-e-Taiba is a terrorist organization. Terrorist organization has been

defined **u/s 2(1)(m)** of Unlawful Activities (Prevention)Act, 1967.

> 2(1)(m)- "terrorist organization" means an organization listed in the Schedule or an organization operating under the same name as an organization so listed;

Lashkar-e-Taiba has been listed in the Schedule and therefore, it is obviously a terrorist organization. Terrorist act has been defined **u/s 15** of the Act.

> **"15. Terrorist Act**- Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people of any section of the people in India or any foreign country.-
>
> (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause -
>
> (i) death of, or injuries to any person or persons, or
>
> (ii) loss of , or damage to, or destruction of, property; or
>
> (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

> (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
>
> (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
>
> (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,
>
> commits a terrorist act.

To determine point No.162, it will have to be examined whether the acts committed by accused No.1 and the deceased accused Nos. 1 to 9 amounted to terrorist act or not. It has been clearly established by the prosecution that the accused No.1 and deceased accused No.1 to 9 had used bombs, explosive substances, firearms including lethal weapons like AK-47 rifles in such a manner as to cause death and injuries to persons and loss of property. The intention behind use of bombs, explosive substances and causing loss of property was to strike terror in the people. The acts of the deceased accused Nos. 2 to 9 continued from the night of 26th November 2008

till the morning of 28th November, 2008. A war like situation was created in southern portion of city. As already stated by me, the accused No.1 and the deceased accused Nos. 1 to 9 had indulged into lobbing of hand grenades, explosion of RDX bombs, use of firearms including lethal weapons like AK 47 rifles. The intention of accused No.1 and deceased accused Nos. 1 to 9 obviously was to strike terror in the people. The acts of accused No.1 and the deceased accused Nos. 1 to 9 had resulted into death of 166 persons and injuries to many others. As such it can be seen that the acts of accused No.1 and deceased accused Nos.1 to 9 had not only resulted into death of 166 persons and injuries to lot of others, but their acts had also resulted into loss of property, destruction of property in India used in connection with purpose of Government of India and State Government. Loss was caused to C.S.T.M. which is property of Government of India. Loss was also caused to Cama Hospital building which is property of State Government. The acts of accused No.1 and the deceased accused Nos.1 to 9 were intended to threaten and overawe by means of criminal force or show of criminal force public functionaries like Police, S.R.P. and NSG Commandos. Accused No.1 himself had caused death of many persons and has caused lot of loss to public and private property. In my opinion, the accused No.1 therefore has

committed terrorist act within the meaning of Sec.15 of Unlawful Activities (Prevention)Act, 1967. **He is therefore, found guilty of the offence punishable u/s 16 of the Act.** Point No.162 is therefore ,answered accordingly. It is obvious from the whole discussion that **point No.163 is to be answered in affirmative. The accused No.1 is found guilty of the offence punishable u/s 16 of Unlawful Activities (Prevention)Act, 1967.**

1229. As far as point No.164 is concerned, it is obvious from the evidence adduced by the prosecution that the substantive charges and the charge of conspiracy proved against the accused no.1 that **he had conspired with the deceased accused Nos.1 to 9 and wanted accused Nos. 1 to 11, 13,15,18,20,27,28,31,34 and 35 to commit terrorist act within the meaning of Sec.18 of the Unlawful Activities (Prevention)Act, 1967. I therefore hold that accused No.1 is also found guilty of the offence punishable u/s18 of the Unlawful Activities (Prevention)Act, 1967.**

1230. The point No.165 shall not detain me for a longer period as the discussion herein above clearly establishes that the accused No.1 was member of the organization called Lashkar-e-Taiba. His confession and

corroborative evidence is sufficient to prove this charge. Lashkar-e-Taiba is a terrorist organization listed in the Schedule .The Confession of accused No.1 is corroborated on almost all points by the other evidence adduced by the prosecution. The confession of accused No.1 clearly indicates that he had voluntarily gone to the office of Lashkar-e-Taiba and had adopted membership of the said terrorist organization. There was no invitation or coercion which made the accused No.1 a member of the said organization. He was fully involved in the discussion and training. It cannot be said that he was used by the senior members of the organization. The confession of accused No.1 is very unambiguous on almost all points and it clearly indicates that the accused No.1 suo moto approached the office of Lashkar-e-Taiba and involved himself in the activities of the said organization. As such he was member of the terrorist organization. In my opinion therefore, the prosecution has been able to establish that the **accused No.1 was a member of terrorist organization called Lashkar-e-Taiba. Point no.165 is therefore answered accordingly. The accused No.1 is found guilty of the offence punishable u/s 20 of The Unlawful Activities (Prevention) Act 1967.**

1231. Now let me proceed to consider point no.190 which runs as under :

> **190. Does the prosecution prove that a valid sanctions had been granted by the Competent Authority Under section 45 of the Unlawful Activities (Prevention) Act 1967 for taking cognizance of the offences punishable under the said Act?**

Section 45 of the Unlawful Activities (Prevention)Act, 1967, says:

> 'Cognizance of Offences.-
>
> (1) No court shall take cognizance of any offence-
> (i) under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf ;
>
> (ii) Under Chapters IV and VI without the previous sanction of the Central Government, or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

1232. It may be noted that the offence punishable u/s 13 falls under

Chapter III of the Act and the offences punishable u/s 16, 18 and 20 fall under Chapter IV of the Act. Therefore, the prosecution is required to prove prior sanction of the Central Government or the officer authorized by the Central Government for taking cognizance of the offence under Chapter III. The prosecution is under obligation to produce prior sanction of the Central Government or the State Government for taking cognizance of the offences punishable under Chapter IV and VI. The prosecution has examined P.W.253-Ms.Chitkala Zutshi in this regard. P.W.253 has stated that she had been authorized by the Central Government to grant sanction u/s 45 of the Act. A notification was issued on 21/6/2007 authorizing secretaries of the State Governments and Union territories, in charge of Home Department to exercise such powers. Since P.W.253 was Additional Chief Secretary to the Government of Maharashtra in Home Department, she, by virtue of said notification dated 21/6/2007 was authorized to grant sanction for taking cognizance of the offences punishable under Chapter III of the Act. The sanction has been granted by this officer vide **Exh.1056**. A reading of sanction discloses that it was granted on behalf of the Central Government and State Government. The sanction for the offences punishable under Chapter III has been granted on behalf of Central

Government and sanction for the offences punishable under Chapter IV has been signed by this officer on behalf of the State Government. It is stated by this witness that the file was placed before the Home Minister and the sanction was accorded only after approval of the Home Minister.

1233. It is further stated by this witness that the sanction was granted for taking cognizance of the offences punishable u/s 10, 13, 16, 17, 18, 20 and 23 of the Unlawful Activities (Prevention)Act, 1967. **I therefore answer point No.190 in affirmative.**

1234. Almost all the points framed for determining guilt or otherwise of the accused No.1 have been decided. The guilt of accused No.1 in respect of the offences where he was directly involved or where he was involved with the deceased accused No.1-Abu Ismail have been decided. The points involving deceased accused Nos.2 to 9 in the incident of Hotel Oberoi, Leopold, Taj and Nariman house and taxi bomb blast at Mazgaon have also been decided. What has now remained to be decided is culpability of accused No.1 in the offences committed by the deceased accused Nos.2 to 9. What has further remained to be decided is the

culpability of accused No.2 and 3 in the offence of conspiracy in general and in the offence of conspiracy to wage war against the Government of India and conspiracy to overawe by means of criminal force the Central Government and the State Government. It is also yet to be decided whether the accused Nos. 2 and 3 were involved in the conspiracy to collect men, arms and ammunition to wage war against the Government of India.

1235. As far as culpability of accused No.1 in the offences committed by deceased accused Nos.2 to 9 is concerned, the Court has already found confession of the accused No.1 to be voluntary and correct. The court has also come to the conclusion that accused No.1, deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 11, 13,15,18,20,27,28,31,34 and 35 were part of the conspiracy. The accused No.1 and deceased accused Nos. 1 to 9 had come together in the boat Kuber. Thereafter they had travelled together in the inflatable bat. After getting down from the inflatable boat they had proceeded to their assigned destinations. As such everything had gone according to the plan. It is abundantly clear that accused No.1 and deceased accused Nos.1 to 9 knew their individual role as well as the role to be played by their associates. It is not that the accused No.1 and the deceased

accused Nos. 1 to 9 had to play an independent role without knowledge of one another. In the circumstances, particularly when the offence of conspiracy has been proved against the accused No.1, it should not take much time for me to come to the conclusion that the accused No.1 has abetted by conspiracy, the crimes committed by the deceased accused Nos.2 to 9. It is always stated by me that accused who is part of conspiracy can be convicted independently for the offence punishable u/s 120B IPC as the said offence is an independent offence and it is completed as soon as the conspiracy is proved. It is not necessary to prove that the acts conspired to be committed had actually been committed. Once the acts in pursuance of conspiracy have been committed, the accused who have committed those acts would be liable for the substantive offence committed by such accused and would also be liable for the offence of abatement by conspiracy with regard to the offences committed by other conspirators. As such the accused No.1 can be held guilty for the offences committed by the deceased accused Nos.2 to 9 with the help of Sec. 109 r.w. Sec.120B of IPC.

EVIDENCE AGAINST ACCUSED NOS. 2 & 3 :

1236. Now let me proceed to examine whether the prosecution has

been able to prove that accused Nos. 2 and 3 were also part of the conspiracy. In this regard it may be noted that accused nos. 2 and 3 are charged for the offence of conspiracy u/s120B IPC. They are also charged for the offence of conspiracy to commit offence punishable u/s 121 of IPC. A conspiracy to commit offence punishable u/s 121 is punishable u/s 121A of IPC. As such it is clear that conspiracy to wage war is an offence punishable u/s 121A of IPC. Therefore it is not necessary to read Section 121 IPC with Section 120B of IPC. Once the conspiracy to commit offence punishable u/s 121 IPC is established, accused can be convicted of the offence punishable u/s 121A of IPC. In brief, to punish the accused for the offence of conspiracy to wage war , it is not necessary to take help of Sec.120B of IPC.

1237. It is clear from the charge-sheet and the evidence adduced by the prosecution that the accused Nos.2 and 3 were not physically present in Mumbai on 26/11/2008. It is the case of prosecution that the accused No.2 had handed over certain maps to accused No.3 which accused No.3 had caused tobe delivered to the co-conspirators in Pakistan. It is further the case of prosecution that the map-art.101 allegedly seized from right side

trouser pocket of the deceased accused No.1-Abu Ismail, was given to the deceased accused No.1 by his co-conspirators during the course of training and when the accused accused No.1 and the deceased accused Nos. 1 to 9 were briefed by their co-conspirators in Pakistan. As such the prosecution case is that the map handed over by accused No.2 to the accused No.3 is the same map which has been seized under the panchanama-Exh.99. The evidence of prosecution witness in this regard has been discussed by me in detail in the initial portion of the judgment. However, it is necessary to state in brief that panchanama-Exh.97 is the inquest panchanama of dead body of deceased accused No.1-Abu Ismail and panchanama Exh.99 is the panchanama in respect of seizure of clothes of the deceased accused No.1-Abu Ismail.

1238. To establish the fact that map was handed over to the accused No.3 by accused No.2 at Kathmandu, Nepal, prosecution has examined the solitary witness i.e. P.W.160-Mr.Naruddin Mehboob Shaikh . His evidence has been discussed by me in detail. The summary of his evidence is that he had gone to Nepal along with his friend Bharat Thakur and he had stayed at Bharat Thakur's native place at Purana Dahineshwar , Pashupatinath

Mandir, Kathmandu, Nepal. He had also gone to Kathmandu for a pleasure trip. Bharat Thakur could not accompany him because he was not well. The accused No.2 is stated to be a childhood friend of P.W.160. The accused No.2 had by chance met P.W.160 at Kathmandu and he was taken to hotel room of accused No.2. It is in this room that P.W.160 had seen the accused No.2 handing over certain maps to the accused No.3. P.W.160 was not able to identify the map when art.101 was shown to him in the court, but has stated that art.101 looks like the one he had seen in the hotel room of accused No.2 being handed over to accused No.3 by the accused No.2.

1239. It has also been stated by me while discussing the evidence of other witnesses that this map, earlier seized from trouser pocket of the deceased accused No.1, was taken out from a sealed envelope during the course of investigation and was sent to handwriting expert. Specimen handwriting of accused No.2 was also taken. The handwriting expert - P.W.146-Mr.Aher has given positive opinion in favour of the prosecution stating inter alia that the specimen handwriting and the sketch map-art.101 had been authored by one and the same person. However, I do not think it necessary to discuss that part of evidence in detail because accused No.2

has admitted that the sketch map-art.101 is in his handwriting. He however, has stated in his statement u/s 313 Cr.P.C. that he was beaten by the police and was compelled to prepare the sketch map-art.101 after his arrest in this case. Therefore the area of enquiry by the court has narrowed down. The prime question which now remains to be examined is whether this map was handed over by accused No.2 to the accused No.3. As such answer of this question wholly depends upon the evidence of P.W.160.

1240. The evidence of P.W.160 is not corroborated by any evidence. I am aware that corroboration is not a rule of law unless the statute insists for corroboration. As such the evidence is not to be counted but is to be weighed. The court has to look for the quality of evidence and not quantity. In the present case it is abundantly clear that the evidence of P.W.160 is not corroborated by any other evidence. The prosecution has not examined Bharat Thakur though Bharat Thakur has been cited as prosecution witness. His statement was also recorded during the course of investigation. A summons was issued by the court which was returned unserved.

1241. During the course of arguments the ld. Spl.P.P. has submitted

that though Mr.Bharat Thakur has not been examined, there is no reason to disbelieve the evidence of P.W.160. Mr.Nikam has submitted that P.W.160, though has not been able to produce any documentary evidence of his Nepal visit, is completely reliable witness. It is however, argued on behalf of accused No.2 that no implicit reliance can be placed on the evidence of P.W.160 because prosecution has not been able to explain as to why did they fail to examine Bharat Thakur.

1242. I have given my anxious considerations to the arguments of both the sides. As already stated, multiplicity of the witnesses is not important. What is important is the quality of evidence. I have carefully examined the evidence of P.W.160. In the first place it may be noted here that P.W.160 has no documentary evidence of any nature to establish that he had gone to Nepal in the month of January, 2008. The ld.Advocate Mr.Shahid Azmi had cross-examined this witness at length to impeach his credibility. The witness however had denied all the suggestions. The fact however, remains that the witness has not been able to adduce any document of travel to Nepal or his stay at Kathmandu for three days. What is important to note is that the witness himself has admitted in his cross-

examination that police did not ask him the date of his visit . Police further did not ask him by which train he had travelled up to Sonavali Border. Police also did not ask him as to the source from which he spent money during the course of his visit to Nepal. It is an admitted position that the P.W.160 has no regular source of income. Therefore, his source of expenditure also assumes importance in the circumstance. It is not known as to why police did not ask all these things to P.W.160. In addition to this P.W.160 has admitted that a record is maintained at Sonavali border with regard to entry of persons into Nepal. He was not able to produce any entry slip . Apart from failure on the part of P.W.160 to produce documentary evidence of his journey to Nepal and his stay in the hotel, the investigating agency has also not made any attempt to collect the said evidence. There is no evidence before me to show that the Investigating Officer had ever visited Sonavali to verify whether P.W.160 had visited Nepal . In the ordinary course court would not have insisted for such evidence but considering the fragile nature of evidence of P.W.160, some corroboration , to my mind, was necessary to inspire confidence in the mind of court that P.W.160 had actually visited Nepal in the month of January, 2008 and had occasion to meet accused Nos. 2 and 3.

1243. A suggestion was put to P.W.160 during the course of cross-examination that the police officer Mr.Raju Mohite had met him on 18.2.09 in presence of one Mr.K.K. and Mr.Sarfaraj and that M.Mohite had suggested that one of Muslim friends of accused No.2 would have to give evidence against accused No.2 in the case of 26.11.2008. The witness has denied that he has not been working anywhere since February, 2009 and that he has no source of income since then. He has also denied that he has been visiting office of Crime Branch and is being paid Rs.6000/- per month by Crime Branch by way of subsistence .

1244. It also needs to be noted here that this witness knew that the accused No.2 had been arrested . His statement was recorded after the arrest of accused No.2. It is not the case that accused Nos. 2 and 3 had been brought from the custody of U.P. police after the statement of this witness. There is no other witness to mention about the meeting of accused No.2 and 3 at Nepal. Bharat Thakur has not been examined by the prosecution. It was submitted on behalf of the prosecution that Bharat Thakur is disappeared and they were unable to trace him. I think this is a very feeble explanation given by the prosecution which does not appeal to my reason. If the

prosecution was really interested in examining Bharat Thakur, they could have applied for bailable warrant or Non-bailable warrant. They could have even prayed for initiating proceeding u/s 82 and 83 of Cr.P.C. for proclamation and attachment of property of the witness. It cannot be ignored that Bharat Thakur was one of the most important witnesses since the whole case of prosecution was based upon the meeting of accused No.2 and 3 allegedly witnessed by P.W.160. It may be noted the I.O. had recorded statement of Bharat Thakur during investigation. Hence all necessary steps should have taken to secure his attendance.

1245. As such the evidence of P.W.160 is not free from doubts. In this regard I may refer to the judgment of **Hon'ble Supreme Court in the matter of Ravi Vs. State reported at AIR 2009 S.C.214** wherein after having referred to the various judgments of Hon'ble Supreme Court on the subject of quantity and quality of evidence, the Hon'ble Supreme Court at **para 11 & 12** has said

> "In Vadivelu Thevar v. The State of Madras (1957 SCR 981) this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two

categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under

(AIR p. 619, paras 11-12) AIR 1957 SC 614
'11.... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :
(1) Wholly reliable.
(2) Wholly unreliable.
(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.'

1246. In my view, P.W.160 is not wholly reliable witness. I cannot also say that he is wholly unreliable. I can however, say with certainty that this witness is neither wholly reliable nor wholly unreliable. In the circumstances corroboration to his testimony was necessary. If there is no corroboration and there is no reasonable explanation as to why Bharat Thakur was not examined and as to why the prosecution failed to take necessary steps to secure Bharat Thakur's attendance even by coercive methods like Non Bailable Warrant, court cannot take risk of relying upon the evidence of P.W.160. There are strong chances of miscarriage of justice if evidence of P.W.160 regarding his meeting with the accused Nos.2 & 3 is accepted.

1247. It is the case of prosecution that the map -art.101 was found in trouser pocket of deceased accused No.1-Abu Ismail. It is also the case of prosecution that the said map was seized under panchanama-Exh.99. The accused Nos.2 & 3 had been arrested in the month of December 2008. Police Officer **P.W.48-Mr.Prashant Marde** has stated in his evidence that the sealed packet containing art.101 was opened during the course of investigation on 28-1-2009 and the map was sent for opinion of handwriting

expert. The prosecution has examined independent witness P.W.32-Mr.Sanjar Sonawane, who was present when the sealed envelope was opened and the map was taken out for being sealed again after putting identification marks on the writing. The accused No.2 has admitted his handwriting on the map art. 101. As such opinion of handwriting expert does not assume any importance.

1248. What is argued before me on behalf of the accused Nos.2 & 3 is that the map was never recovered from trouser pocket of deceased accused No.1 and that the map theory is an after thought of police. It is further argued that panchanama-Exh.99 in respect of seizure of clothes of the deceased accused No.1-Abu Ismail and the map-art.101 had been prepared later on after arrest of accused No.2 . My attention was invited to the cross-examination of panch witness-P.W.14-Mr.Shivaji Shivekar who was panch witness to both the panchanamas Exh.97 and Exh.99. Exh.97 is the inquest panchanma of dead body of deceased accused No.1-Abu Ismail and Exh.99 is the panchanama in respect of seizure of clothes . P.W.14 has admitted in his cross-examiantion that two different pens appeared to have been used for writing Exh.97 and Exh.99. He has further admitted that both

the panchanamas were written by one and the same constable. He however, has denied that the panchanama-Exh.99 had been prepared after two to three weeks of the incident. There is no explanation on record as to why there is difference of ink in writing of two panchanamas written at one and the same place one after another. In this regard it may be noted here that as per the practice prevailing in Mumbai, the Investigating Officer is supposed to place all the papers daily before the Sr.Inspector pertaining to investigation carried out by the I.O. In the present case also both the panchanamas were placed before the Sr.P.I. on 27/11/08 itself. However, signatures of the Sr.P.I. on both the panchanamas are also in different ink. Since his signature on both the panchanamas is not in the same ink and since this fact was brought to the notice of prosecution , it was duty of the prosecution to explain as to why there is difference between two signatures of the same officer stated to be made at one place at the same time. I have also taken note of the fact that not only the panchanama Exh.97 and Exh.99 are written by different pen but even the signatures on the panchanamas are made by different pen. It was therefore submitted on behalf of accused No.2 that it is highly doubtful that the map-art.101 was recovered on the same day i.e. on the night of 26th and 27th November 2008 from the trouser pocket of

deceased accused No.1.

1249. The ld.advocate for accused No.2 had cross-examined police officer P.W.27-Mr.Warang who had drawn both the panchanamas Exh.97 and Exh.99. It was brought to his notice that he had stated in the panchanama that during the course of panchanama-Exh.99 photographs of all the articles were taken from different angles. The witness has admitted contents of the panchanama Ex.99. The witness however, had hastened to add that it was written due to inadvertence on his part. It was therefore tried to be stated that no photographs were taken of the articles seized under panchanama-Exh. 99. I think, this part of his evidence is highly doubtful. In my opinion he was trying to hide something from the court. Photographs must have been taken and therefore, this fact was stated in the panchanama. His evidence that he has stated this fact in the panchanama due to inadvertence, is not acceptable to the court. The art.3 alleged to be the trouser of deceased accused No.1, was shown to this witness. This witness agreed that there were blood stains on the right side of the trouser. He did not agree that there were more blood stains on right side of the trouser as compared to the left side. According to this witness there were more blood

stains on left side.

1250. The point which the court is required to examine is whether in the circumstances was it possible that the sketch map art.101, if at all it was seized on the night of 26th and 27th November 2008 would remain in right side pocket of trouser without any blood stains. I have carefully examined the trouser-art.3. I have also gone through the evidence of P.W.23-Dr.Mohite who has stated that the dead body was lying on a stretcher. Since the dead body was placed on a stretcher within a very short time of death of accused No.1-Abu Ismail, it was but natural that blood must have collected in the centre of the stretcher as the stretcher is normally of 'C' shape. The waistline area of the undergarment of the deceased accused No.1 and his trouser must have been soaked with blood. Moreover, report of C.A. which has been exhibited in the Court vide Exh.349 clearly disclose that the trouser -art.3 which is mentioned as Exh.26 in the report of C.A. was stained with blood . It can be seen from the trouser produced in the court that the C.A. had cut small small portions from the trouser to examine whether it was stained with blood. It is seen that one such small portion of the trouser was cut from near the right side trouser pocket and that was also

stained with blood. In the circumstances I am of the view that blood must have reached right side pocket of the trouser where the map was found. Moreover, the right side trouser pocket in which the map was allegedly found, is having blood stains at various places. Therefore, in the circumstances the map-art.101 should have been stained with blood.

1251. I have also considered submission of ld.Advocate Mr.Mokashi that there are no wrinkles of any nature on the paper of sketch map -art.101. If the prosecution case is to be believed, the art.101 must have been put in right side pocket of deceased accused No.1 about 2-3 earlier to 26-11-2008 when he left Pakistan. Thereafter he had travelled by boat Al-Hussaini, boat Kuber and by inflatable boat. It is the case of prosecution that accused No.1 and deceased accused No.1-Abu Ismail had entered CST railway station and thereafter they went to Cama Hospital , Metro Junction and Barrister Rajani Patel Road and ultimately they were intercepted at Vinoli Chowpaty. It is thus clear that the map was in the trouser pocket of deceased accused No.1 for a long time and during this period the deceased accused No.1was completely in action at least from the time of his entry in CST railway station till he was killed at Vinoli Chowpaty. There must have

been sweating. He must have changed his position at various places including on the terrace of Cama Hospital. He had driven Qualis vehicle with one hand. He had also driven Skoda car. During this period the map was allegedly in his right side trouser pocket. Art.101 produced in the court appears to be prepared on a very thin paper. In my considered view had this map remained in the trouser pocket of the deceased accused No.1-Abu Ismail for such a long time, it would have in fact been spoiled to a large extent or some wrinkles. Some signs to show that it was in the pocket would have appeared on the map. To my mind, the evidence in respect of seizure of art.101 therefore appears to be highly doubtful. The ld. Spl.P.P. has invited my attention to the confession of accused No.1 wherein he has stated that one of the wanted accused had told the accused No.1 and the deceased accused Nos.1 to 9 that the maps had been supplied by Faeem Ansari and Sabuddin of India. The ld. Spl.P.P. wanted me to accept that portion of evidence in view of Sec.10 of the Evidence Act. I do not think that such an occasion has arisen for the court inasmuch as the evidence in respect of seizure of map, meeting of accused No.2 and 3 at Nepal and P.W.160 meeting them in the hotel room itself is rejected by the court. Court has opined that the story of recovery of map from the trouser pocket

of deceased accused No.1 is doubtful.

1252. Another piece of evidence against the accused No.2 is the oral evidence of witness P.W.35-Colabkar , oral evidence of witness P.W.38-Mr.Rajendra Bhosale and oral evidence of P.W.40-Smt.Shantabai Bhosale. The prosecution case is that the accused No.2 was in search of a residential place in southern Mumbai. It appears that prosecution wanted to establish that the accused No.2 was to give logistic support to the accused No.1 and deceased accused Nos. 1 to 9 during the course of proposed attack and therefore, he was in search of residential place in South Bombay particularly near Badhwar Park. For that purpose he had visited fishermen colony and had contacted P.W.35-Mr.Jeevan Colabkar who was running a public communication centre (PCO) at fishermen colony. He was asked by the accused No.2 to search a residential place for accused No.2. It is stated by P.W.35 that the accused No.2 had given Rs.5000/- to him for the said purpose. P.W.35 was reluctant to accept the amount. However, the accused No.2 had insisted and therefore, P.W.35 had accepted the said amount. After few days accused No.2 had again visited the P.C.O. of P.W.35. Since the P.W.35 could not arrange for any residential accommodation, an amount

of Rs.4500/- was returned to the accused No.2 by P.W.35. It is further stated that the accused No.2 was reluctant to accept the said amount of Rs.4500/-. It is further stated by P.W.35 that the accused No.2 had introduced himself as Sahil Pawaskar.

1253. During the course of cross-examination of this witness it was seen that he was not a regular estate agent nor any other person had ever met him with a request to arrange for accommodation. It is therefore not clear as to how the accused No.2 had directly gone to P.W.35 to assist him to get a residential accommodation. It is not the case of prosecution that accused No.2 and P.W.35 were known to each other nor it is the case of prosecution that there was any middle man.

1254. It appears that prosecution case is that since the accused No.2 could not get accommodation bear Badhwar Park, he had acquired residential accommodation belonging to Smt.Shantabai Bhosale. P.W.40 -Smt.Shantabai Bhosale was in need of money to repay the loan which she had taken for medical treatment of her son. It is stated by her that she therefore had given her room on rental basis to the accused No.2 for a rent

of Rs.3000/- per month and deposit of Rs. 60,000/- . This transaction was finalized with the mediation of estate agent Mr.Kumar Shivaji and Mr.Rajendra Bhosale nephew of P.W.40. Mr.Rajendra Bhosale has been examined as P.W.38. He has also given more or less similar evidence. It is stated by this witness that accused No.2 had introduced himself as Sahil Pawaskar. P.W.38 has identified accused No.2 to be the same person who had acquired room of P.W.40.

1255. It can be seen from the evidence of P.W.38 and P.W.40 that the accused No.2 had allegedly approached them through one Kumar Shivaji. Kumar Shivaji has not been examined by the prosecution nor any explanation is given as to why said Kumar Shivaji has not been examined. While considering the evidence of P.W.160 I had said that corroboration is not a matter of rule. I had also said that the Court is concerned with quality of evidence and not quantity of evidence. IN the present case evidence of Kumar Shivaji appears to be a missing link . Non-examination of the said witness certainly creates doubt about correctness of evidence of both P.W.38 and P.W.40. In addition to this what is more pertinent to note is that the prosecution has not produced the original agreement allegedly

executed between P.W.40 and the accused No.2. What the prosecution has produced is the coloured zerox copy of the so called agreement. What is further pertinent to note is that P.W.40 has identified zerox copy of her thumb impression Exh.180 colly. to be her original thumb impression. She has not even bothered to see whether the agreement is original or zerox copy. P.W.40 has stated in her evidence that the original agreement was taken away by the police and that it was not in her possession. Prosecution has not given any explanation as to why the original agreement is not produced. In the absence of original agreement, zerox copy cannot be taken as a secondary evidence. Moreover, the prosecution was under obligation to establish that the original agreement was not available and then only the court could have considered zerox copy of the agreement. Non-production of original agreement without any explanation and production of coloured zerox copy as an original document, is very fatal to the prosecution case. To my mind the whole story of accused No.2 acquiring accommodation at Patthe Bapurao Marg belonging to P.W.40 under a written agreement appears to be doubtful. The evidence of P.W.35 also does not inspire confidence in my mind as there are no reasons as to why P.W.35 was contacted by the accused No.2 when there was no earlier intimacy between

the two.

1256. The next piece of evidence against the accused No.2 is oral evidence of P.W.36-Mr.Vivek Saxena and the documents produced at Exh.168, 169 and 170. The evidence of this witness has been summed-up by me in detail in earlier part of the judgment. Briefly stated, this witness has stated that the accused No.2 had taken admission in the Computer Institute namely Softpro Computer Education situated at Mumbai Samachar Marg, Fort,. P.W.36 was working as manager in the said Institute. It is stated by this witness that the accused no.2 had signed inquiry form-Exh.168 and application form-Exh.169 and had also signed copy of the receipt Exh.170 for seeking admission in the said Institute. It has come in the evidence of handwriting expert that the specimen signature and handwriting of the accused No.2 and the document at Exh. 168 and Exh.169 were authored by one and the same person. As such, the prosecution has adduced evidence that the handwriting and signature on equiry form Exh.168 and application form-Exh.169 belong accused No.2. The accused No.2 in his statement u/s 313 Cr.P.C. has stated that he had not signed the application form and enquiry form in presence of P.W.36. During the

course of cross-examination of P.W.47 it was suggested on behalf of the accused No.2 that the police got the enquiry form Exh.168 and the application form -Exh.169 filled in by the accused No.2 under duress and force. As such it is the case of accused No.2 that he was compelled to fill up both the forms i.e. Exh.168 and Exh.169 after his arrest by Mumbai police. The suggestion of ld.Advocate of accused No.2 to the Investigating Officer that he compelled accused No.2 to sign these documents, has been denied. However, what is important to be noted in this regard is that P.W.36 has not produced any record of his Institute. He has not produced the muster roll. In his cross-examination by ld.Advocate Mr.Shahid Azmi, P.W.36 has admitted that he did not belong to teaching faculty and therefore he had no occasion to interact with the students frequently. However, he had asserted during the course of cross-examination that he had been taking rounds of the class. As such what he wanted to say is that he had occasion to see the accused No.2. But what is missing in the investigation is that the police had not collected attendance sheet of the students. For this there is no explanation as to why these vital documents of the institute are not collected. The loose application form and the enquiry form will not be sufficient to show that these documents were maintained by the Institute in

regular course of their business. The admission register maintained in regular course of business of institute could have been produced.

1257. What is further pertinent to note is that the enquiry form -Exh.168 and the application form-Exh.169 were not seized under panchanama. They were collected from P.W.36 during the course of recording of his statement. As such there are many loose ends left out by the police with respect to alleged admission of accused No.2 in the computer institute called Softpro.

1258. As such it can be seen that the pieces of circumstantial evidence collected by the prosecution as against the accused Nos.2 and 3 are not free from doubt. On the contrary almost all the pieces of evidence to connect the accused Nos.2 and 3 with the alleged offences are found to be doubtful and tainted. No doubt the charge of conspiracy is hard to be proved by direct evidence. In most of the cases charge of conspiracy is normally proved on the basis of circumstances and inferences. However, circumstantial evidence has to be strong enough to inspire confidence in mind of the court. What should be the nature of circumstantial evidence has

been described by the **Hon'ble Supreme Court in the case of Chattar Singh Vs. State of Haryana reported at 2009 Cri.L.J. 319.** The Hon'ble Supreme Court has referred various earlier judgments also. In my opinion it would be apt to reproduce **para-5 to para-12** of the said judgment to understand the whole law on circumstantial evidence. Para-5 to para-12 of the said judgment run as under :

> "**5**. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan (AIR 1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinde Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as

to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

6. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors.,v. State of A.P. (1996)

10 SCC 193, wherein it has been observed thus: 1996 AIR SCW 2903

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....

7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumutatively should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else; and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

8. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. 1992 AIR SCW 640

9. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the

inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

11. In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

1259. It is thus clear that the prosecution has not been able to

establish the circumstances and the chain of circumstances in the manner they are supposed to. There are many loose ends and there is scope for doubting each and every piece of evidence. I do not think that chain having missing links of such defective pieces of evidence can be a basis for conviction. The court also cannot ignore that in case the accused No.2 or accused No.3 are convicted of the offence of conspiracy, they will be visited with serious consequences in the nature of severe punishment. I do not think such fragile pieces of evidence are sufficient to prove the charges against accused No. 2 and 3.

1260. Before I end the discussion in respect of evidence adduced by the prosecution as against the accused Nos.2 and 3, it should be noted here that the prosecution has also exmined P.W.213-Mr.Ashok Kumar Raghav and P.W.261 - Mr.Krantikumar Varma to establish that the accused No.2 was found in possession of similar maps when he was arrested by Rampur Police in connection with a case registered at Rampur. The prosecution has also examined P.W.254-Mr.Manpreet Vohra to establish that accused No.2 had obtained a Pakistani passport on the basis of bogus documents produced before Pakistan authorities. I would have considered and examined the

evidence of these three witnesses had the evidence in respect of seizure of art.101 - the sketch map been reliable. In my opinion it will not be proper for this court to give any finding with regard to handwriting on the documents which are seized in connection with the another case by Rampur Police of U.P. It is also not proper to give any opinion with regard to Pakistani passport allegedly obtained by accused No.2 on the basis of bogus documents. The issue concerning these documents including passport is subjudice before the ld. Additional Sessions Judge, Rampur. Therefore, it is found inappropriate to give any finding in that regard. As already stated, I would have examined it as an additional circumstance had the primary circumstance on which the prosecution relied, been accepted against the accused No.2 and 3. With this, the discussion in respect of prosecution evidence as against the accused No. 2 and 3 ends. The result is very obvious that the prosecution has not been able to establish the alleged role of accused No. 2 and 3 in the offences committed by accused No.1 and the deceased accused Nos. 1 to 9. Though the prosecution has established most of the charges against the accused No.1 and though the prosecution has been able to establish that the accused No.1 is guilty of abetment by conspiracy of the offences committed by deceased accused Nos.2 to 9,

prosecution has not been able to prove beyond reasonable doubt that the accused No.2 and No.3 were also involved in the offences. In my opinion , since almost all the pieces of evidence adduced by the prosecution against the accused Nos. 2 and 3 are found to be doubtful, the benefit of doubt must go to the accused.

1261. Moreover, from the whole scheme of the conspirators what appears to me is that the accused No.1 and the deceased accused No. 1-Abu Ismail were not supposed to go out of C.S.T.railway station. It appears from the whole scheme that the destinations of each pair were fixed and they were to keep hostages at the places assigned to them. It is also very clear from the evidence and the telephonic conversation recorded and produced in the court, particularly the telephonic conversation being talk No.12, which has been referred by me extensively earlier in the case of hotel Oberoi, that the accused No.1 and the deceased accused Nos.1 to 9 were supposed to station at the places assigned to them and to kill as many as persons they could and keep some persons hostages. It was neither planned nor expected by handlers that either of the ten accused would go back to Pakistan alive. To my mind they were directed to fight till they died. In the circumstances,

there could not have been any different instruction for the accused No.1 and deceased accused No.1 . From the whole sequence of events what appears to me is that the accused No.1 and the deceased accused No.1 had by mistake come out of the CST railway station. Once they got out of the station, it was impossible for them to go back because they knew that police and R.P.F. Jawans were there at the railway station. It is in these circumstances that they entered Badruddin Tayyabji Road and thereafter they went to Cama Hospital and terrace of Cama Hospital. The accused No.1 and the deceased accused No.1 purposely going to terrace of Cama hospital, does not fit in the scheme of conspirators. In fact it was absolutely dangerous position for accused No.1 and the deceased accused No.1 to be on the terrace of Cama Hospital. The evidence discussed by me in the case of Cama Hospital particularly the evidence of Addl.C.P.Mr.Date (P.W.118) and Mr.Chandrakant Tikhe (P.W.109) would clearly show that it was not planned by them to go to the terrace of the hospital. It has come in the evidence of P.W.109 that accused No.1 and the deceased accused No.1 were asking for the way to go down from the terrace. In fact it was an ideal position for police to nab the accused No.1 and the deceased accused No.1 or kill them on the terrace. It was unfortunate that the additional police help

did not come within time and in the result two police officers lost their lives and others were seriously injured on the sixth floor of the Hospital. It has come in the evidence that P.W.128 Yashwant Thorawade, PI of Azad Maidan Police Station was on the opposite side of Mahapalika Road. From the evidence of Mr.Thorawade and Police Constable Mr.Suresh Kadam (PW 138) it appears that there were other policemen also on Mahapalika Road when the accused No.1 and the deceased accused No.1 had come out of the hospital and had entered Badruddin Tayabji Road. They were seen by Mr.Thorawade and others. It appears that no effective steps were taken to apprehend them. On the contrary, when the accused No.1 and the deceased accused No.1 hijacked the Qualis vehicle and went towards Metro Junction by crossing Mahapalika Road, Mr.Thorawade and others did not chase them though they were armed with firearms and they had Bolero vehicle with them. The Sr.Police Officer Mr.Thorawade instead of chasing the accused, had gone to Bombay Hospital on the pretext of visiting one of the police officers who was taken to Bombay Hospital after being injured in the incident of Cama Hospital. In view of this , it appears to be improbable to me that the map showing the road leading to Malabar Hills would have been given to the deceased accused No.1-Abu Ismail by the co-conspirators.

This also does not appeal to the reason particularly when the better coloured maps can be down loaded and prints can be taken out from the various Web sites like ***google earth*** and ***Wiki Mapia .*** It has been stated by the accused No.1 in his confession that they were shown google earth map on laptop. It is therefore clear that the conspirators were aware of these things. They had used best available technology invluding VOIP service and Yamaha Enduro Machine. Therefore this rustic sketch map-art.101 , to my mind, did not fit in the scheme of the conspirators. This is an additional ground that I am not inclined to believe the case against the accused No.2 and 3.

1262. The Hon'ble Supreme Court in Judgment cited Supra has quoted portion from the book of Sir Alfred Wils with approval in which it is stated that :

> **"If there be any reasonable doubt of guilt of accused, he is entitled , as of right, to be acquitted."**

It is clear that the accused Nos. 2 and 3 are entitled to benefit of doubt as far as charge of conspiracy and abetment of other offences by conspiracy is concerned. There are only two direct charges against the accused No.2

which are under head -7 of points for determination(Point Nos.128 & 129) . Head -7 covers point Nos.125 to 130. They are as under :

125. Does the prosecution prove that the accused No.1 and the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of their common intention had prepared false identity cards in the names of (1) Samir Dinesh Chaudhari, (2) Naresh Vilas Varma,(3) Arjunkumar Virakumar, (4)Dinesh Kumar Ravikumar, (5) Raghubir Singh Ranjit Singh, (6) Arun Vikram Sharma and (7) Rohit Dipak Patil ?

126. Does the prosecution prove that the accused No.1 and the nine deceased accused in pursuance of the said criminal conspiracy and in furtherance of their common intention had committed forgery of the said identity cards in order to commit offence of cheating ?

127. Does the prosecution prove that the accused No.2 and 3 had abetted the said offence of forgery

in order to commit offence of cheating ?

128. Does the prosecution prove that accused No.2-FahimAnsari in pursuance of the said criminal conspiracy on or about 10th December,2007 had secured admission in Softpro Computer Education, Engineer Premises, 93, Bombay Samachar Marg, near Bombay Stock Exchange, Fort, Mumbai, by personating himself to be Sahil Pawaskar ?

129. Does the prosecution prove that accused No.2-Fahim Ansari in pursuance of the said criminal conspiracy on or about 28th November, 2007 had obtained Reliance mobile phone SIM card from Utraula Consumers Co-Op. Society, Fitawala Chawl, Kurla (W), Mumbai by personating himself to be Sahil Pawaskar ?

130. Does the prosecution prove that the accused No.1 and 3 had abetted the said offences committed by the

accused No.2 ?

As far as point Nos. 125 and 126 are concerned I may refer to **para- 1168** of this judgment in respect of seizure of identity cards from the accused No.1 and some of the deceased accused. The prosecution has not led any evidence as to who had prepared the identity cards. However, the evidence of P.W. 19-G.Radhakrishnan, Principal of Arunoday Degree College Hyderabad, clearly establishes that the identity cards produced in the court including the identity card bearing photograph of accused No.1 in the name of Samir Chaudhary, were not issued by Arunoday Degree College, Hyderabad. All the identity cards were shown to the witness and it is in no uncertain term stated by this witness that these cards had never been issued by their college. He has denied in his cross examination that the cards were issued to the students of Arunoday Degree College. He has also denied that the identity cards art.61, 104, 123, 126 , 127, 128 and 130 were signed by some other official of the college. It is thus proved that the cards are false documents and somebody has committed forgery by preparing false documents dishonestly.

1263. As far as accused No.1 is concerned, he was found in

possession of identity card art.104 seized under panchanama Exh.99. It is proved that the identity card art.104 is a false document. It is also proved that it was prepared with intention of causing it to be believed that it was issued by Arunoday Degree College Hyderabad. It was further prepared to support the claim that the accused No.1 was student of the said college. As such ingredient of offence of forgery are completed. However, it is not proved that the forgery had been committed by the accused No.1 . Since the accused No.1 was found in possession of the forged document,it can be said that he had abetted the offence of forgey and he can be held guilty for the offence punishable u/s 465 r.w. 109 of IPC.

1264. A similar view was taken in the case reported at **(1898)21 All 113 in the matter of Muhammed Saeed Khan.** In the said case also a police constable's character and service roll in his custody was found to have been tampered with in this way, that a page apparently containing remarks unfavourable to the constable, had been taken out and a new page with favourable remarks, purporting to have been written and signed by various superior officers police, had been inserted in its place, the intent being to favour the chances of his promotion; it was held that this

interpolation amounted to forgery, but that inasmuch as it was not proved that the constable himself prepared and inserted the false page, he was found guilty of abetment only. As such point No.125 and 126 can be answered together as under :

Accused No.1 is found guilty of the offence punishable u/s 465 r.w.109 of IPC.

1265. Since the evidence against the accused No.2 and 3 is not believed by the court, **answer to point No.127 is in negative.**

1266. I have already extensively dealt with evidence of P.W.36. The evidence with regard to admission of accused No.2 at Softpro is higly doubtful. I therefore, come to the conclusion that the prosecution has miserably failed to prove that the accused No.2 had posed himself to be Sahil Pawaskar and had taken admission in Softpro Computer Institute. **Point No.128 is therefore answered in negative.**

1267. As far as Point No.129 is concerned, prosecution has led no

evidence at all. **Point No.129 is therefore answered in negative.**

1268. Point No.130 does not survive in view of my answer to point No.129.

1269. As far as Sec.23 of Unlawful Activities (Prevention)Act, 1967 is concerned, after having gone through the provisions of said Section, I am of the view that the said Section will not be applicable to the accused No.1 because accused No.1 himself was involved in terrorist acts. This Section, to my mind, will be applicable to the persons other than the persons involved in the terrorist acts who unauthorizedly possess bomb, dynamic hazardous substance or lethal weapons or substances capable of most destruction or biological chemical substance of warfare . This Section provides for enhanced penalty to be imposed on such person/persons irrespective of the penalty provided under Explosive Act, Explosive Substances Act or Arms Act. Since the accused No.1 himself was involved in terrorist acts and is found guilty of the offence punishable u/s 16 of the Unlawful Activities (Prevention)Act, 1967, provisions of this Section, to my mind, will not be applicable to accused No.1. The accused No.1 is

therefore, entitled to be acquitted of the offence punishable u/s 23 of the Unlawful Activities (Prevention)Act, 1967.

1270. In view of my answers recorded against point Nos. 1 to 196 on the basis of reasoning given by me, I have come to the conclusion that:

1) The accused No.1-Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid is found guilty of the offence punishable u/s 120-B of Indian Penal Code for having conspired with the deceased accused No.1 to 9 and wanted accused Nos. 1 to 11, 13, 15, 18, 20, 27, 28, 31, 34 & 35 to commit offences punishable **u/ss. 302, 307, 326, 325, 332, 333, 342, 343, 353, 364, 365, 419, 427, 435, 436, 465, 468, 471 and 474 of Indian Penal Code.**

2) The accused No.1 is found guilty of the offence punishable **u/s 121 of Indian Penal Code** for having waged war against the Government of India.

3) The accused No.1 is further found guilty of the offence punishable u/s **121-A of Indian Penal Code** for having entered into conspiracy with the deceased accused Nos. 1 to 9 and wanted accused Nos. 1 to 11, 13,15,18,20,27,28,31,34 & 35 to commit offence punishable u/s 121 of Indian Penal Code.

4) The accused No.1 is also found guilty of the offence punishable u/s **122 of Indian Penal Code** for having collected arms with intention of waging war against the Government of India.

5) The accused No.1 is further found guilty of the offence punishable **u/s 302 of Indian Penal Code** for having committed murder of :

1) Amarchand Naran Solanki
(deceased at Sr.No.129)

2) Sitaram Mallapa Sakhare
(deceased at Sr.No.83)

3) Rahamuttal Ibrahim
(deceased at Sr.No.84)

4) Vinod Madanlal Gupta
(deceased at Sr.No.86)

5) Ambadas Ramchandra Pawar
(deceased at Sr.93)

6) Abbas Rajjab Ansari
(deceased at Sr.112)

7) Tukaram Ombale
(deceased at Sr.No.130)

6) He is found guilty of the offence punishable **u/s 397 of Indian Penal Code** for having used deadly weapon like AK-47 rifle at the time of committing robbery of Skoda car at Barrister Rajani Patel Marg, Mumbai.

7) He is also found guilty of the offence punishable u**/s 25(1B)(a) of The Arms Act** for having possessed arms and ammunition without licence.

8) He is further found guilty of the offence punishable **u/s 25(1)(A) of The Arms Act** for having possessed prohibited arms.

9) He is also further found guilty of the offence punishable u/**s 27 of The Arms Act** for having used prohibited arm.

10) He is also found guilty of the offences punishable **u/s 13** of **The Unlawful Activities (Prevention) Act, 1967 r/w 109 r/w 120B** of **Indian Penal Code.**

11) He is also found guilty of the offences punishable **u/ss 16, 18 and 20** of **The Unlawful Activities (Prevention) Act, 1967.**

12) He is also found guilty of the offence punishable **u/s 9-B(1)(a)(b) of The Explosives Act** for having imported and possessed explosives.

13) He is also found guilty of the offence punishable **u/s 3(b) of The Explosive Substances Act 1908** for having unlawfully and maliciously caused explosion

of a nature likely to endanger life and property by means of special category of explosive substances.

14) He is also found guilty of the offence punishable **u/s 3(3) of Passport (Entry Into India) of 1920.**

15) He is also found guilty of the offence punishable u**/s 135(1)(a) of The Customs Act**.

16) He is further found guilty of the offence punishable **u/s 3 and 4** of **The Prevention of Damage to Public Property Act.**

17) He is also found guilty of the offences punishable **u/s 151, 153 of The Railways Act** for having caused destruction to railway properties and for having endangered safety of persons travelling by railway.

18) The accused No.1 is also found guilty of the

offence punishable **u/s 302 r.w.34 of Indian Penal Code** for having committed murder of the deceased at Sr.77 to 128 (except deceased at Sr.Nos. 83, 84,86, 93 and 112), Sr.No.32 to 36, Sr.No.21 to 29 and 72 & 73,mentioned in Col.No.2 of **table No.2** in furtherance of common intention of the accused No.1 himself and the deceased accused No.1.

19) Accused No.1 is further found guilty of the offence punishable **u/s 302 r.w. 109 r.w. 120B of Indian Penal Code** for having abetted by conspiracy murder of deceased at Sr.No.10 to 20 (Hotel Leopold), Sr.No.1 to 9 (Nariman House), Sr.No.74 to 76 (Mazgaon Blast), Sr.No.131 to 166 (Hotel Taj) and Sr.No.37 to 71 (Hotel Oberoi) mentioned in Col.No.2 of **table No.2**.

20) Accused No.1 is further found guilty of the offence punishable **u/s 307 r.w.34 of Indian Penal**

Code, in furtherance of common intention of himself and the deceased accused No.1 for having caused injuries to PW 62, 518, 517, 506, 516, 63, 519, 69, 510, 56, 88, 89, 504, 64, 87, 515, 524, 521, 513,527, 505, 53, 507, 512 , 523, 52, 525, 522, 508,509, 86,520 ,49, 51, 526, 514, 511, 118,112 ,469, 471, 470, 472, 473, 109, 111, 106 ,136 , 139, 456, 454, 457, 453, 455, 2, 171 and 490 (Sr.Nos. 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 22, 23, 29, 31, 34, 36, 39, 40, 46, 50, 51, 54, 56, 61, 62, 63, 67, 68, 71, 86, 87, 94, 95, 96, 105, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127,128 and 129 respectively of **Table No.2**.) with such intention and under such circumstances that had any one of them died, accused No.1 would have been guilty of offence of murder punishable u/s 302 IPC r.w. 34 IPC.

21) Accused No.1 is also found guilty of the offence punishable **u/s 307 r.w.109 r.w. 120B of Indian Penal**

Code for having abetted by conspiracy offence of attempt to commit murder of the injured -P.W.Nos.474, 489, 477,475,480,481,482,483, 486, 485, 476, 484, 488, 487, 478, 479,467,460, 462, 466,461, 459, 465, 458, 468 and 463(Sr.Nos.185, 186, 192, 193, 197, 198, 200, 201, 203, 205, 206, 207, 208, 210, 211, 212, 221, 223, 224, 226, 227, 229, 230, 231, 237, 238 of **Table No.3**) by the deceased accused Nos.4 & 9.

22) Accused No.1 is also found guilty of the offence punishable **u/s 307 r.w.109 r.w. 120B of Indian Penal Code** for having abetted by conspiracy offence of attempt to commit murder of the injured -P.W.Nos.493, 500, 501, 502, 499, 503, 497, 496, 188, 492, 495, 184, 494, 498, (Sr.Nos. 156, 157, 158, 159, 160, 161, 167, 168, 169, 170,172,176, 183 & 184 respectively of table No.3) by deceased accused No.4,5, 8 and 9.

23) Accused No.1 is also found guilty of the offence

punishable **u/s 307 r.w.109 r.w. 120B of Indian Penal Code** for having abetted by conspiracy commission of offence of attempt to commit murder of the injured at Sr.No. 213 & 219 (PW 439 and 445) of table No.3 by the deceased accused Nos.2 and 3.

24) Accused No.1 is also found guilty of the offence punishable **u/s 307 r.w.109 r.w. 120B of Indian Penal Code** for having abetted by conspiracy commission of offence of attempt to commit murder of the injured at Sr.132, 133, 136, 147 ,148 , 150 & 152(PW 452, 447, 448,451, 450, 446 & 449)of table No.3 by the deceased accused Nos. 6 & 7.

25) Accused No.1 is also found guilty of the offence punishable **u/s 332 r.w.34 of Indian Penal Code** for having voluntarily caused hurt to PW. Nos. 62,517, 516, 519, 69, 510, 56, 512, 522, 520, 49, 112, 118, 469, 470, 471, 472, 473, 109, 111, 136, 454 & 2, (Sr. Nos.2,

6, 8, 13, 14, 15, 16, 54, 63, 86, 87, 111, 110, 112, 114, 113, 115, 116, 117, 118, 120, 123, 127 respectively in Table No. 3) the public servants in furtherance of common intention of himself and the deceased accused No.1 with an intention to prevent or deter these public servants from discharging their duties.

26) Accused No.1 is also found guilty of the offence punishable **u/s 333 r.w.34 of Indian Penal Code** for having voluntarily caused grievous hurt to Sr.No.121, (PW 139) mentioned in table No. 3, in furtherance of common intention of accused no.1 himself and deceased accused No.1 with intention to prevent or deter the said public servant from discharging his duty as such public servant.

27) Accused No.1 is also further found guilty of the offence punishable **u/s 333 r.w. 109 r.w. 120-B of Indian Penal Code** for having abetted by conspiracy

commission of offence of voluntarily causing grievous hurt to public servants i.e. injured at Sr.No. 161 & 161 (PW No. 499 & 503) mentioned in table No.3 by the deceased accused No.4,5,8 and 9.

28) Accused No.1 is also found guilty of the offence punishable **u/s 333 r.w. Sec.109, r.w. 120B of Indian Penal Code** for having abetted by conspiracy commission of offence of voluntarily causing grievous hurt to public servant at Sr.152 (PW 449) mentioned in table No.3, by deceased accused No. 6 and 7 with intention to prevent or deter the said public servant from discharging his duty as such public servant.

29) Accused No.1 is further found guilty of the offence punishable u/s 332 r.w. 109 r.w. 120B of IPC for having abetted offence of voluntarily causing hurt to public servant Sr.No. 185, 186, 156, 157, 158,159

(PW 474, 489, 493, 500, 501 and 502 respectively) mentioned in table No.3 by deceased accused No.4,5,8 and 9 with intention to prevent or deter the said public servants from discharging their duties as public servants.

30) Accused No.1 is further found guilty of the offences punishable **u/ss 342, r.w.34 of IPC, 343 r.w.34 of Indian Penal Code, 364 r.w. 34 of Indian Penal Code and 392 r.w. 34 of Indian Penal Code.**

31) He is also found guilty of the offences punishable **u/ss 342 r.w. 109, r.w.120B of Indian Penal Code, 343 r.w. 109 r.w. 120-B of Indian Penal Code.**

32) Accused No.1 is also found guilty of the offence punishable **u/s 436 r.w. 34 of Indian Penal Code.**

33) Accused No.1 is also found guilty of the offence

punishable **u/s 436 r.w. 109 r.w. 120B of Indian Penal Code.**

34) Accused No.1 is also found guilty of the offence punishable **u/s 14 of Foreigners Act, 1946**.

35) Accused No.1 is acquitted of the offences punishable **u/s 465, 468 of Indian Penal Code and u/s 465 r.w. 34 of Indian Penal Code**.

36) Accused No.1 is acquitted of the offence punishable **u/s 152 of The Railways Act.**

37) He is acquitted of the offence punishable **u/s 10 of Unlawful Activities (Prevention)Act, 1967.**

38) He is acquitted of the offence punishable **u/s 23 of Unlawful Activities (Prevention)Act, 1967.**

39) Accused No.2-Fahim Harshad Mohammad Yusuf Ansari and Accused No.3-Sabuddin Ahmed Shabbir Ahmed Shaikh are acquitted of all the charges framed against them.

40) Accused No.2 and accused No.3 shall be released from the prison forthwith if they are not required in any other case.

41) Case of accused No.1 is adjourned for hearing on the point of sentence on 4th May, 2010.

(M.L.Tahaliyani)
Addl.Sessions Judge,
Gr.Mumbai

Dt:- 3rd May 2010

Court resumed on 6th May, 2010

1271. Ld.Spl.P.P.Mr.Nikam and the ld. Advocate Mr. Pawar are heard on the point of sentence. In the first place let it be stated here that there are **three** offences for which the accused No.1 may be visited with

death sentence. The offence **u/s 121 of Indian Penal Code** is punishable with death or imprisonment for life and also fine. Similarly, the offence punishable **u/s 302 of Indian Penal Code** also prescribes the similar punishment i.e. death or imprisonment for life and fine. Thirdly, **Sec.16** of the **Unlawful Activities (Prevent)Act, 1967** also prescribes the similar punishment for the terrorist act if the act had resulted in death of any person.

1272. The ld. Spl.P.P.Mr.Nikam and ld. Advocate Mr.Pawar have relied upon various judgments of Hon'ble Supreme Court. However, the arguments of both the ld. lawyers had centered around the judgments of **Hon'ble Supreme Court in the matter of Bachan Singh Vs. State of Punjab reported at AIR 1980 S.C. 898 and in the matter of Machhisingh Vs. State of Punajb reported at AIR 1983 S.C. 957.**

1273. The ld. Spl.P.P. has taken me through the various aggravating circumstances suggested by Dr.Chitalye during the course of arguments before the Hon'ble Supreme Court and also various mitigating circumstances suggested by the same ld. lawyer in the matter of **Bachan Singh**. The ld. Spl.P.P. has further submitted that if one goes through the

case of accused No.1, there is hardly any mitigating circumstance except age of the accused No.1. As far as aggravating circumstances are concerned, the ld.Spl.P.P. has submitted that almost all aggravating circumstances are applicable to the present case inasmuch as the offences have been committed after previous planning and involve extreme brutality. The acts of the accused No.1 exhibit exceptional depravity on the part of accused No.1. It is submitted that innocent passengers were killed and injured, members of police forces, public servants were assaulted, injured and killed while they were on duty. The ld. Spl.P.P. has submitted that there is only one circumstance in favour of accused No.1 i.e. age. However, it was further submitted that considering the training accused No.1 had undergone and the way he behaved at various places of occurrences with extreme brutality, his young age cannot come to his rescue.

1274. The ld. Spl.P.P. has also relied upon the judgment in the matter of **Devendra Pal Singh Vs. State (NCT) Delhi reported at 2002 S.C. Cases (Cri) 978**.

1275. Before I proceed to examine whether what the ld. Spl.P.P.has

submitted is acceptable or otherwise, it is necessary to be stated here that in the judgment of **Bachan Sing** cited supra , the Hon'ble Suprem Court, while accepting the suggestion made by Dr.Chitalye with regard to aggravating circumstances had added Rider at para 201. **Para-200** is where the aggravating circumstances are mentioned . **para-201** of the said judgment run as under :

> "201. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other."

1276. Similarly, the mitigating circumstances generally accepted by the Hon'ble Supreme Court are found at **para-204 o**f the said judgment which runs as under :

> "204. Dr.Chitaley has suggested these mitigating factors :
>
> "Mitigating circumstances:- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:-
>
> (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
>
> (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

> (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
> (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
>
> (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
> (6) That the accused acted under the duress or domination of another person.
> (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

1277. If one goes through para-201 of the judgment, it would be seen that the Hon'ble Supreme Court has observed that suggestions made by Dr.Chitaley could be accepted as indicators but that should not fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other. In this regard what is necessary to be borne in mind is the observations made by the Hon'ble Supreme Court in the same judgment from **para 169 to para 175** which run as under :

> "169. Dr.Chitale contends that the wide observations in Jagmohan as to the impossibility of laying

down standards or norms in the matter of sentencing are too sweeping. It is submitted that soon after the decision in Furman, several States in U.S.A. am ended their penal statutes and brought them in conformity with the requirements of Furman. Support has also been sought for this argument from Greg V.Georgia wherein the Supreme Court of the United States held that the concerns expressed in Furman decision that death penalty may not be imposed in as arbitrary or capricious manner could be met by a carefully drafted statute ensuring that sentencing authority was given adequate guidance and information for determining the appropriate sentence, a bifurcated sentencing proceeding being preferable as a general proposition.

170. If by “laying down standards”, it is meant that 'murder' should be categorised beforehand according to the degree of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free-play of discretion, the argument merits rejection.

171. As pointed out in Jagmohan, such “standardisation” is well-nigh impossible.

172. Firstly, there is little agreement among penologists and jurists as to what information about the crime and criminal is relevant and what is not relevant for fixing the dose of punishment for a person convicted of a particular offence. According to Cessare Beccaria, who is

supposed to be the intellectual progenitor of today's fixed sentencing movement, 'crimes are only to be measured by the injury done to the society' . But the 20th Century sociologists do not wholly agree with this view. In the opinion of Von Hirsch, the " seriousness of a crime depends both of the harm done (or risked) by the act and degree of the actor's culpability". But how is the degree of that culpability to be measured? Can any thermometer be devised to measure its degree ? This is very baffling, difficult and intricate problem.

173. Secondly, criminal cases do not fall into set-behavioristic patterns. Even within a single-category offence there are infinite, unpredictable and unforeseeable variations. No two cases are exactly identical. There are countless permutations and combinations which are beyond the anticipatory capacity of the human calculus. Each case presents its own distinctive features, its peculiar combination of events and its unique configuration of facts. "Simply in terms of blameworthiness or desert criminal cases are different from one another in ways that legislature cannot anticipate and limitations of language prevent the precise description of differences that can be anticipated. This is particularly true of murder. There is probably no offence', observed Sir Ernest Gowers, Chairman of the Royal Commission, " that varies so widely both in character and in moral guilt as that which falls within the legal definition of murder". The futility of attempting to lay down exhaustive standards was demonstrated by this Court in Jagmohan by citing the

> instance of the Model Penal Code which was presented to the American Supreme Court in Mc Goutha.
>
> 174. Thirdly, a standardization of the sentencing process which leaves little room for judicial discretion to take account of variations in culpability within single-offence category ceases to be judicial. It tends to sacrifice justice at the alter of blind uniformity. Indeed, there is a real danger of such mechanical standardization degenerating into a bed of Procrustean cruelty.
>
> 175. Fourthly, standardization or sentencing discretion is a police matter which belongs to the sphere of legislation. When Parliament as a matter of sound legislative, did not deliberately restrict, control or standardise the sentencing discretion any further then This is encompassed by the broad contours delinerated in Sec. 354(3), the Court would not by over-leaping its bounds rush to do what parliament, it its wisdom, warily did not do."

1278. It is thus stated by the Hon'ble Supreme Court that if by "laying down standards", it is meant that 'murder' should be categorized beforehand according to the degree of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free-play of discretion, the argument merits rejection. It thus can be noted that the Hon'ble Supreme Court was not inclined to lay

down exhaustive list of aggravating and mitigating circumstances and at the end of said judgment it was said at para-207:

> " A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

1279. In the present case no doubt all aggravating circumstances are present. The mitigating circumstance is only one i.e. age of the accused No.1. It is not established that the accused had committed offences under the influence of extreme mental disturbance. Considering the brutality with which the offences have been committed, and the way the accused No.1 has been changing his stand in the court from time to time, sometimes even without the knowledge of his lawyer, shows that he is extremely trained person and the training also included as to how one should behave in the eventuality of arrest and trial. Therefore, in my opinion there are no chances of reformation and rehabilitation. I may hasten to add that there is no evidence to show that the accused honestly and bonafidely entertained a belief that he was morally justified in doing large scale murders.

1280. As far as duress and domination is concerned, it can be seen from the evidence on record and observation made by this court that the accused No.1 and one Mujjafar Lal Khan both had voluntarily gone to the office of terrorist organization Lashkar-e-Taiba at Rawalpindi . Both had voluntarily offered themselves to be Mujahideens and had undergone training at various training camps. It may be noted that Mujjafar Lal Khan could not sustain the training and his brother had taken him away from the training camp. It is further necessary to be noted here that accused No.1 after completion of training was given an option either to visit his native place or to remain in the service (khidmat) of trainers in the training camp. The accused No.1 opted to remain in the training camp in the service of his trainers. That shows that he had done everything voluntarily and offered himself to be trained as a terrorist. There was no compulsion, no duress or domination of any person. It has come in the confession of accused No.1 which has been accepted by the court. except a small rejected portion with regard to sketch map that some of the trainees could not sustain the training and they deserted the training camp . The accused No.1 did not opt to desert the training camp. Therefore, there is no question of he being under duress or domination of any other person. The arguments of ld.Advocate

Mr.Pawar for accused No.1 that he had acted under duress of the leaders of Lashkar-e-Taiba is, therefore, not acceptable.

1281. Moreover, what is pertinent to note is that in the case of **Bachan Singh** the Hon'ble Supreme Court was considering the constitutional validity of Sec.302 of I.P.C. I have also taken note of the observation of Hon'ble Supreme Court at **para -171** that murders could not be categorized and standardization is well-nigh impossible. The Hon'ble Supreme Court has also noted that there is little agreement among penologists and jurists as to what information about the crime and criminal is relevant and what is not relevant for fixing the dose of punishment for a person convicted of a particular offence. Secondly, criminal cases do not fall in to set-behavioristic pattern . Even within a single-category offence there are infinite, unpredictable and unforeseeable variations. No two cases are exactly identical. There are countless permutation and combinations which are beyond the anticipatory capacity of the human calculus. Each case presents its own distinctive features, its peculiar combination of events and its unique configuration of facts. Apart from this, what is important to be noted is that offences of the nature committed by terrorist organizations

without any respect for life and property is a recent phenomena and that aspect was not under consideration of the Hon'ble Supreme Court in the matter of Bachan Singh. It is precisely for this reason the Hon'ble Supreme Court has categorically observed that there could not be any categorization and standardization.

1282. As far as the case reported at **AIR 1983 Supreme Court 957 in the matter of Machhi Singh Vs. State of Punjab** is concerned, what the Hon'ble Supreme Court has said is that a balance-sheet of aggravating and mitigating circumstances shall be drawn before taking any decision on the point of sentence. However, in the present case there are no mitigating circumstances which may call for preparing a balance -sheet of aggravating and mitigating circumstances. The observations made by the Hon'ble Supreme Court in that case at **para-32** are also worth noting which reads as under :

> "32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. . In the first place, The very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by

killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance :

I Manner of Commission of Murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as

to arouse intense and extreme indignation of the community. For instance.

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house,

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his

body is dismembered in a fiendish manner.

II Motive for commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. for instance when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

III Anti-social or socially abhorrent nature of the crime.

(a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV Magnitude of crime

When the crime is enormous in proportion. For instance

when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V Personality of victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity. (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust, (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

1283. In this regard the observations made by **His Lordship Justice A.P.Sen in matter of Rajendra Prasad Vs. State of U.P. reported at AIR 1979 S.C. 916** are also worth noting :

133. The value of capital punishment, as an aspect of deterrence, was perhaps most strongly put

> forward and very clearly stated by the great jurist, Sir James Fitzjames Stephen more than a hundred years ago:25
>
> 25 . Royal Commission on Capital Punishment 1949-55 Report, p. 19.
>
> "No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove,
>
> simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity for producing some result..... No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of commutation of his sentence for the severest secondary punishment ? Surely not. Why is this ? It can only be because 'All that a man has will he give for his life.' In any secondary punishment, however terrible, there is hope; but death is death; its terrors cannot be described more forcibly."

1284. I have further taken note of the judgment of the **Hon'ble Supreme Court in the matter of Ankush Maruti Shinde Vs. State of Maharashtra reported at AIR 2009 - 2609 , para -14** which reads as

under :

> 14. The law regulates a social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For

> instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. (1987) 2 SCR 710, this Court while refusing to reduce the death sentence observed thus :AIR 1987 SC 1346, Para 6
>
> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

1285. In addition to this, one may also take note of observations of Apex Court in the matter of **Dhananjay Chatterjee @ Dhana Vs. State of W.B. reported at 1994 (2) S.C.Cases -626, para-15 :**

> “15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected stated of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect

> public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."
> (Emphasis supplied)

1286. After being noted what the Hon'ble Supreme Court has stated in various judgments, what is further to be noted is what is stated by the noted Jurist Mr.Salmond -

> " A society which felt neither anger nor indignation at outrageous conduct would hardly enjoy an effective system of law"

1287. In the present case before me, as already stated by me only mitigating circumstance is age of the accused. But the only one mitigating circumstance cannot weigh against numerous aggravating circumstances. It hardly can tilt the balance in favour of the accused. The crimes committed by the accused are barbaric, diabolic and in my view the accused has shown extreme depravity while committing the offences. The court has already given a finding that the offences have been committed with previous planning and extreme meticulousness. The brutality is writ large if one goes

through the evidence of eyewitnesses of C.S.T. incident where innocent passengers were killed indiscriminately. The accused has not spared even the poor Bhelwala who had not even come in his way at Badruddin Tayyabji Road. I have already stated that there is no evidence to show that the offences were committed under extreme mental or emotional disturbance. The chances of accused being reformed or rehabilitated are nil. Ld.Advocate Mr.Pawar for accused No.1 has submitted that the offences were committed under religious frenzy by the accused. This argument needs to be rejected because the accused has committed murders of persons without any consideration of their religion or race.

1288. Moreover, apart from the fact that no case is made out for lesser punishment of life imprisonment for the offence punishable u/s 302 of IPC, what can be seen is that the accused is also found guilty of the offence punishable u/s 121 of IPC. The ld. author Dr.Sir Hari Singh Gour in his commentary on Indian Penal Code has said :

> " Be it known throughout the length and breadth of the country that the life of every person who wages war against the Government is forfeit to the State, and that upon conviction he is liable to receive sentence of death. Let there be no illusion."

It may be noted here that these remarks are made in context of citizens who owe allegiance to the Government of India. In the present case the accused No.1 is a foreigner , trained in foreign country in a regular training camp meant for exporting terror to other countries. He was accompanied by nine persons of similar mindset, had crossed Indian borders and had stealthily entered India with deadly arms, ammunition and deadly explosives. The Government forces including National Security Guard Commandos were challenged. There was no remorse or indication of surrender by any of them. I have already come to the conclusion that the accused No.1 was part of one and the same conspiracy and he is found guilty of the conspiracy to commit various offences and he had also conspired to wage war against the Government of India.

1289. In this regard I have also taken note of observations of Hon'ble Supreme Court in the matter of **Dhananjay** cited supra, as to how courts shall respond to the society's cry for justice against the criminals. Justice demands that courts must impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime.

1290. In the present case the accused No.1 and the deceased accused

Nos.1 to 9 had killed 166 persons and had injured more than 111 persons. In my opinion, this is rarest of rare case and alternative option of imprisonment for life is unquestionably foreclosed. Court also cannot loose sight of the fact that in the case of Nazir Khan, one of the accused who was known to be a dreaded terrorist, was required to be released by the Government in return of the passengers who were kept hostage at Kandahar in Air India flight. Let there not be another Kandahar. This is also one of the reasons that accused No.1 cannot be kept alive. His life must come to an extinction in the interest of nation.

1291. The third offence which provides for death penalty is terrorist act. Once the court has come to the conclusion that the accused deserves death penalty for having committed **seven murders** independently and for having committed more than fifty murders in furtherance of common intention of accused No.1 himself and deceased accused No.1 and for having committed rest of the murders by abetting the same by conspiracy, the Court has no option but to impose death penalty for the terrorist acts committed by the accused No.1. The effects of terrorist acts of the accused No.1 are still echoing. It was noted by me during the course of trial that a large number

of eyewitnesses did not turn up before the Court because of fear. It was also noticed by me that many of the eyewitnesses even did not tell the police that they had witnessed either accused No.1 or the deceased accused No.1 while indulging into terrorist acts at various places including CST railway station. How then the court has to respond after having seen this effect on the mind of the people of the acts of the accused No.1 and his associates. The only befitting response will be to impose death sentence on the accused No.1 for terrorist act which is punishable u/s 16 of the Unlawful Activities (Prevention) Act,1967.

1292. As far as order in respect of disposal of property u/s 452 Cr.P.C. is concerned, it may take some time because some of the articles are not exhibited in the court though they were produced by the prosecution at the time of filing of the charge-sheet. These articles are also lying in the custody of the court without there being any identifying number of the court. It is therefore, necessary to segregate exhibited articles and non-exhibited articles. It is also necessary to examine necessity of preserving certain articles and destroying some of them. As already stated, it may take some time. I therefore, propose to pass order u/s 452 Cr.P.C. at a later

stage. However, the articles produced from the court of ld. First Addl.Sessions Judge, Rampur (U.P.) are required to be returned to the Court because the same might be required by the said court for holding trial against the accused No.2 and 3. I therefore, propose to pass order in respect of return of those articles to the court of ld. First Addl.Sessions Judge, Rampur (U.P.).

1293. Before I proceed to pass the final order I would like to place on record my appreciation for the assistance extended by ld.Spl.P.P.Mr.Ujjwal Nikam and ld. Advocate Mr.K.P.Pawar and Mr.More for the accused No.1 appointed under free legal aid.

1294. I must also place on record my appreciation for the contractors, architects and engineers of Public Works Department for renovating the court premises within a shortest possible time as per requirements of the Court. I must place on record my appreciation for the security cover provided to this court by the Police, S.R.P. and I.T.B.P.Jawans. Addl.Commissioner of Police Mr.Sadanand Date, D.C.P. Dr.Suhas Warke , A.C.P. Mr.Vilas Marathe, Sr.P.I.Mr.Vasant Tajane and PSI Mr.J.M.Kakade

have taken all the necessary steps to infuse a sense of security amongst the staff members, witnesses , journalists and others who had been attending this court. The jail authorities were always prompt enough to follow directions of the court . The case could be heard on day-to-day basis because of the cooperation extended by the jail authorities. Jt.Commissioner of Police Mr.Rakesh Maria, Addl.C.P. Mr.Deven Bharati and Sr.P.I.Mr.Ramesh Mahale and his team members need to be complimented for completing the investigation within a short time and for keeping the witnesses present without use of coercive process.

1295. Lastly, I must appreciate the work done by my staff members who had extended wholehearted support to me by not availing even their casual leaves and by remaining present even on holidays and during vacation.

1296. The media persons also need to be thanked for keeping the trial open to the world. Despite severe restriction on entry they had been regularly attending the court and had been keeping the world informed of the proceedings of the Court.

O R D E R

1) The accused No.1-Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid is convicted of the offence punishable **u/s 120-B r/w Sec.302 of Indian Penal Code** and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to suffer S.I. for one month. He shall be hanged by neck till he is dead.

2) The accused No.1 is further convicted of the offence punishable **u/s 121 of Indian Penal Code** and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to suffer S.I. for one month. He shall be hanged by neck till he is dead.

3) The accused No.1 is also convicted of the offence punishable **u/s 16 of the Unlawful Activities (Prevention)Act, 1967** and is sentenced to death and is

further sentenced to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to suffer S.I. for one month. He shall be hanged by neck till he is dead.

4) The accused No.1 is further convicted of the offence punishable **u/s 302 of Indian Penal Code** for having committed murder of -

1) Amarchand Naran Solanki
(deceased at Sr.No.129)

2) Sitaram Mallapa Sakhare
(deceased at Sr.No.83)

3) Rahamuttal Ibrahim
(deceased at Sr.No.84)

4) Vinod Madanlal Gupta
(deceased at Sr.No.86)

5) Ambadas Ramchandra Pawar
(deceased at Sr.93)

6) Abbas Rajjab Ansari
(deceased at Sr.112)

7) Tukaram Ombale
(deceased at Sr.No.130)

and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to

suffer S.I.for one month. He shall be hanged by neck till he is dead.

5) The accused No.1 is further convicted of the offence punishable **u/s 302 r/w 34 of Indian Penal Code and u/s 302 r/w 109 and 120B of Indian Penal Code** and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to suffer S.I. for one month. He shall be hanged by neck till he is dead.

6) The accused No.1 is convicted of the offence punishable **u/s 307 r/w 34 of Indian Penal Code and u/s 307 r/w Sec.109 r/w 120-B of Indian Penal Code** and sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rs.Ten thousand only) i/d to suffer S.I. for one month.

7) The accused No.1 is further convicted of the offence punishable **u/s 392 r/w 34 of Indian Penal Code** and is sentenced to suffer rigorous imprisonment for a term of 5 (five) years and to pay a fine of Rs.5000/- (Rs.five thousand only) i/d to suffer S.I. for 15 days.

8) The accused No.1 is also convicted of the offence punishable **u/s 397 of Indian Penal Code** and is sentenced to rigorous imprisonment for a term of 7(seven) years and is sentenced to pay a fine of Rs.5000/-(Rs.five thousand only) i/d to suffer S.I. for 15 days.

9) The accused No.1 is convicted of the offence punishable **u/s 364 of Indian Penal Code** and is sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- (Rs.five thousand) i/d to suffer S.I. for 15 days.

10) Accused No.1 is also convicted for the offence punishable **u/s 333 r/w 34 of Indian Penal Code and u/s 333 r/w 109 r/w 120B of Indian Penal Code** and is sentenced to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.1000/-(Rs.one thousand only) i/d to suffer S.I. for 15 days.

11) The Accused No.1 is also convicted for the offence punishable **u/s 332 r/w 34 of Indian Penal Code and u/s 332 r/w 109 r/w 120B of Indian Penal Code** and is sentenced to suffer rigorous imprisonment for 2 (two) years and to pay a fine of Rs.1,000/-(Rs.one thousand only) i/d to suffer S.I. for 15 days.

12) The accused No.1 is further convicted of the offence punishable **u/s 121-A of Indian Penal Code** and is sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rs.ten thousand only) i/d to suffer S.I. for one month.

13) The accused No.1 is further convicted of the offence punishable **u/s 122 of Indian Penal Code** and is sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rs.ten thousand only) i/d to suffer S.I.. for one month.

14) The accused No.1 is further convicted of the offence punishable **u/s 25(1B)(a) of The Arms Act** and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-(Rs. five hundred) i/d to suffer S.I. for one week.

15) The accused No.1 is further convicted of the offence punishable **u/s 25(1A) of The Arms Act** and is sentenced to suffer rigorous imprisonment for 5(five) years and to pay a fine of Rs.1,000/- (Rs.one thousand only) i/d to suffer S.I. for two weeks.

16) The accused No.1 is further convicted of the offence punishable **u/s 27 of The Arms Act** and is

sentenced to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Rs.1,000/- (Rs.One thousand) i/d to suffer S.I. for one week.

17) The accused No.1 is further convicted of the offence punishable **u/s 9-B(1)(a)(b) of the Explosives Act** and is sentenced to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- (Rs.Five hundred) i/d to suffer S.I. for one week.

18) The accused No.1 is further convicted of the offence punishable **u/s 3(b) of the Explosive Substances Act, 1908** and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rs. ten thousand only) i/d to suffer S.I. for one month.

19) The accused No.1 is further convicted of the offence punishable **u/s 151 of the Railways Act** and is sentenced to suffer rigorous imprisonment for one year

and to pay a fine of Rs.1000/-(Rs.one thousand) i/d S.I. for 15 days.

20) The accused No.1 is further convicted of the offence punishable **u/s 153 of the Railways Act** and is sentenced to suffer rigorous imprisonment for one year.

21) The accused No.1 is further convicted of the offence punishable **u/s 3 (3) of Passport (Entry Into India)Act, 1920** and is sentenced to suffer R.I. for one month and to pay a fine of Rs.100/-(Rs.One hundred) i/d S.I. for 7 (seven) days.

22) The accused No.1 is also convicted of the offence punishable **u/s 135(1)(a) of the Customs Act** and is sentenced to suffer rigorous imprisonment for a term of 7 (seven)years and to pay a fine of Rs.10,000/- (Rs.ten thousand) i/d suffer S.I. for one month.

23) The accused No.1 is also convicted of the

offences punishable **u/s 342 r.w.34 of Indian Penal Code and u/s 342 r.w. 109 r.w 120B of Indian Penal Code** and is sentenced to suffer R.I. for six months and to pay a fine of Rs.100/-(Rs.One hundred) i/d S.I. for 7(Seven) days.

24) He is also convicted of the offence punishable **u/s 343 r/w 34 of Indian Penal Code and u/s 343 r.w. 109 r/w 120B of Indian Penal Code** and is sentenced to suffer R.I. for one year and to pay a fine of Rs.200/-(Rs. Two hundred) i/d S.I. for 15 days.

25) He is also convicted of the offence punishable **u/s 436 of Indian Penal Code** and is sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/- (Rs.Five thousand) i/d to suffer S.I. for 15 days.

26) He is also convicted of the offence punishable **u/s 3 of the Prevention of Damage to Public Property Act**

and is sentenced to suffer R.I. for one year and to pay a fine of Rs.10,000/- (Rs.ten thousand) i/d S.I. for one month.

27) He is also convicted of the offence punishable **u/s 4 of the Prevention of Damage to Public Property Act** and is sentenced to suffer R.I. for two years and to pay a fine of Rs.10,000/-(Rs.ten thousand) i/d S.I. for one month.

28) He is also convicted of the offence punishable **u/s 13 of Unlawful Activities(Prevention)Act,1967** and is sentenced to suffer R.I. for 5(five)years and to pay a fine of Rs. 10,000/- (Rs. ten thousand) i/d S.I. for one month.

29) He is also convicted of the offence punishable **u/s 18 of Unlawful Activities(Prevention)Act,1967** and is sentenced to suffer R.I. for 5 (five)years and to pay a fine of Rs. 10,000/- (Rs. ten thousand) i/d S.I. for one

month.

30) The accused No.1 is also convicted of the offence punishable **u/s 20 of Unlawful Activities(Prevention) Act,1967** and is sentenced to suffer R.I. for 5 (five) years and to pay a fine of Rs. 10,000/- (Rs. ten thousand) i/d S.I. for one month.

31) He is also convicted of the offence punishable **u/s 14 of The Foreigners Act** and is sentenced to suffer R.I. for one year and to pay a fine of Rs.500/-(Rs.Five hundred) i/d to suffer S.I. for one week.

32) It is felt that no separate sentence is required to be imposed for the conspiracy to commit other offences which are minor in nature as the sentence of death has already been awarded to the accused for the offence punishable **u/s 120B r/w 302 of Indian Penal Code**. Similarly, punishment for the offences committed in furtherance of common intention and similar offences

abetted by the accused No.1 have been made punishable with one and the same punishment and no separate sentence is awarded for the same offence covered by **Sec. 34 and sec.109 r.w.120B of Indian Penal Code.**

33) The proceeding shall be submitted to the Hon'ble High Court and sentence of death shall not be executed until it is confirmed by the Hon'ble High Court.

34) **Ex.797** - Search and Seizure Memo,
Ex.1085 -Opinion of the handwriting expert,
Art.801 - Passport in the name of Hassan Hammad,
Art.802 - I-card,
Art.803 (colly) - Ten maps,
Art.804(colly) - Papers containing information regarding computer,

be sent back to the office of Ld. 1st Addl.Sessions Judge, Rampur (U.P.) through the Chief Investigating Officer Mr.Ramesh Mahale. Xerox copies of the documents ordered to be returned to the Ld. 1st Addl.

Sessions Judge, Rampur(U.P.) shall be retained on record.

The order in respect of other articles will be passed at a later stage.

A copy of the Judgment and final order shall be given to accused no.1 free of cost immediately.

(M.L.TAHALIYANI)
Addl.Sessions Judge,
Dt:-6-5-2010. **Gr.Mumbai.**