IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO.2 OF 2010
IN
SESSIONS CASE NO.175 OF 2009

The State of Maharashtra. ... Complainant

Versus

Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid. ... Respondent (Orig. Accused No.1)

Mr. Ujjwal Nikam, Special Public Prosecutor with Mr. Shahajirao Shinde, Additional Public Prosecutor for the Complainant-State.

Mr. Amin Solkar with Ms. Farhana Shah, appointed advocates for the respondent-accused.

ALONG WITH

CRIMINAL APPEAL NO.738 OF 2010
IN
SESSIONS CASE NO.175 OF 2009

Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid, aged 22 years, Residing at Village Faridkot, Taluka : Dipalpur, District : Okara, Punjab, Pakistan (presently lodged at Arthur Road Central Prison, Mumbai). ... Appellant

Versus

The State of Maharashtra. ... Respondent

Mr. Amin Solkar with Ms. Farhana Shah, appointed advocates for the appellant-accused.

Mr. Ujjwal Nikam, Special Public Prosecutor with Mr. Shahajirao Shinde, Additional Public Prosecutor for the respondent-State.

ALONG WITH

CRIMINAL APPEAL NO.606 OF 2010
IN
SESSIONS CASE NO.175 OF 2009

The State of Maharashtra (through Crime Branch Unit-I, DCB, CID, Mumbai. ... Appellant

Versus

1. Fahim Harshad Mohammad Yusuf Ansari @ Abu Jarar @ Sakib @ Sahil Pawarkar @ Samir Sheikh @ Ahmed Hasan, R/o. Room No.2409, Chawl No.303, Motilal Nagar No.2, M.G. Road, Goregaon (West), Mumbai (At present lodged in Bareli Central Prison, U.P.).

2. Sabauddin Ahamed Shabbir)
Ahmed Sheikh @ Saba @)
Farhan @ Mubbashir @ Babar)
@ Sameer Singh @ Sanjiv @)
Abu-Al-Kasim @ Iftikhar @)
Murshad @ Mohammad)
Shafiq @ Ajmal Ali, R/o. At)
Post : Gandwar (Sakri Police)
Station), Via Pandol, District)
Madhubani, Bihar State (at)
present lodged in Lucknow)
Central Prison, U.P.).) ... Respondents

Mr. Ujjwal Nikam, Special Public Prosecutor with Mr. Shahajirao Shinde, Additional Public Prosecutor for the appellant-State.

Mr. R.B. Mokashi for respondent 1.

Mr. Syed Ejaz Abbas Naqvi with Mr. I.B. Dixit for respondent 2.

CORAM: MRS. RANJANA DESAI &
RANJIT MORE, JJ.

DATE ON WHICH THE JUDGMENT IS RESERVED : 7TH FEBRUARY, 2011.

DATE ON WHICH THE ORDER IS PRONOUNCED: 21ST FEBRUARY, 2011.

JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. Accused 1 - Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid (for convenience, "**A1-Kasab**") was

tried along with two others viz. Fahim Harshad Mohammad Yusuf Ansari @ Abu Jarar @ Sakib @ Sahil Pawarkar @ Samir Sheikh @ Ahmed Hasan (since acquitted) (for convenience, "**A2-Ansari**") and Sabauddin Ahamed Shabbir Ahmed Sheikh @ Saba @ Farhan @ Mubbashir @ Babar @ Sameer Singh @ Sanjiv @ Abu-Al-Kasim @ Iftikhar @ Murshad @ Mohammad Shafiq @ Ajmal Ali (since acquitted) (for convenience, "**A3-Shaikh**") in Sessions Case No.175 of 2009 by the Court of Sessions for Greater Mumbai for offences punishable under Sections 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 (for short, "**IPC**"), under Sections 25(1B)(a) of Arms Act r/w 120-B r/w 109 of the IPC 25(1A) of Arms Act r/w 120-B r/w 109 of IPC, 25(2)(3) of Arms Act r/w 120-B r/w 109 of IPC, 27 of Arms Act r/w 120-B r/w 109 of IPC, under Sections 10, 13, 16, 18 and 23

of the Unlawful Activities (Prevention) Act, 1967, under Sections 9-B(1)(a)(b) of Explosives Act r/w 120-B r/w 109 of IPC, under Sections 3 of the Explosives Substances Act r/w 120-B r/w 109 of IPC, under Sections 4(a) of Explosives Substances Act r/w 120-B r/w 109 of IPC, under Sections 3(3) of Passport (Entry into India) Act, 1920 r/w 120-B r/w 109 of IPC, under Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 r/w 120-B r/w 109 of IPC, under Sections 151, 152 and 153 of the Railways Act r/w 120-B r/w 109 of IPC, under Section 135 of the Customs Act r/w 120-B r/w 109 of IPC, under Section 14 of Foreigners Act r/w 120-B r/w 109 of IPC.

2. In addition to that, A1-Kasab was also charged for the offences punishable under Sections 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 IPC under Sections 25(1B)(a) of Arms Act r/w 34 of IPC, under Section 25(1A) of the Arms Act r/w 34 of IPC, under Section 25(2)(3) of Arms Act r/w 34 of IPC, under Section 27 of Arms Act r/w

34 of IPC, under Section 9-B(1)(a)(b) of Explosives Act r/w 34 of IPC, under Section 3 of Explosives Substances Act r/w 34 of IPC, under Section 4(a) of Explosives Substances Act r/w 34 of IPC, under Section 3(3) of Passport (Entry into India) Act, 1920 r/w 34 of IPC, under Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 r/w 34 of IPC, under Sections 151, 152 and 153 of the Railway Act r/w 34 of IPC, under Section 135 of Customs Act r/w 34 of IPC, under Section 14 of Foreigners Act r/w 34 of IPC.

3. Further A1-Kasab was also charged independently for the offences punishable under Sections 302, 307, 333, 342, 343, 364, 465, 468, 419 and 397 of the IPC, under Sections 25(1B)(a), 25(1A), 25(2)(3), 27 of Arms Act, under Section 9-B(1)(a)(b) of Explosives Act, under Section 3 and 4(a) of Explosives Substances Act, under Section 3(3) of the Passport (Entry into India) Act, 1920, under Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984, under Sections 151, 152 and 153 of the Railway Act, under Section 135 of the Customs Act,

under Section 14 of the Foreigners Act.

4. A2-Ansari was also independently charged for the offences punishable under Sections 465 and 471 of the IPC.

5. For trying the accused under Sections 121, 121A and 122 of the IPC, for offences under the Unlawful Activities (Prevention) Act, 1967, for offences under the Customs Act and for offences under the Arms Act, sanctions were required under Sections 188 and 196 of the Code of Criminal Procedure, 1973 (for short, "**the Code**") under Section 39 of the Arms Act, under Section 45 of the Unlawful Activities (Prevention) Act, 1967 and under Section 135 of the Customs Act respectively. Consent of the District Magistrate for trying the accused for offences under the Explosive Substances Act, 1908 was necessary. Learned Sessions Judge has returned a finding that the necessary sanctions were taken. There is no challenge to this finding before us, hence it is not necessary for us to

go into that aspect. In any case, we have perused the relevant evidence and, we are of the opinion that the said finding is correct.

6. By the impugned judgment and order dated 6/5/2010, A2-Ansari and A-3 Shaikh have been acquitted of all the charges and A-1 Kasab is convicted of the offence punishable under Section 120-B r/w Section 302 of the IPC and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 121 of the IPC and is sentenced to death and is further sentenced to pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offence punishable under Section 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/- (Rupees Ten Thousand only) in default to

suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 302 of the IPC 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.No.93), (6) Abbas Rajjab Ansari (deceased at Sr.No.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/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 302 r/w Section 34 of the IPC and under Section 302 r/w Sections 109 and 120-B of the IPC and is sentenced to death and is further sentenced to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is convicted of the offence punishable under Section 307 r/w Section 34 of the IPC and under Section 307 r/w Section

109 r/w Section 120-B of the IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 392 r/w Section 34 of the IPC and is sentenced to suffer rigorous imprisonment for a term of 5 (five) years and to pay a fine of Rs.5000/- (Rupees Five Thousand only) in default to suffer simple imprisonment for 15 days. He is also convicted of the offence punishable under Section 397 of the IPC and is sentenced to rigorous imprisonment for a term of 7 (seven) years and is sentenced to pay a fine of Rs.5000/- (Rupees Five Thousand only) in default to suffer simple imprisonment for 15 days. He is convicted of the offence punishable under Section 364 of the IPC and is sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- (Rupees Five Thousand only) in default to suffer simple imprisonment for 15 days. He is also convicted for the offence punishable under Section 333 r/w Section 34 of the IPC and under Section 333 r/w

Section 109 r/w Section 120-B of the IPC and is sentenced to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.1000/- (Rupees One Thousand only) in default to suffer simple imprisonment for 15 days. He is also convicted for the offence punishable under Section 332 r/w Section 34 of the IPC and under Section 332 r/w Section 109 r/w Section 120-B of the IPC and is sentenced to suffer rigorous imprisonment for 2 (two) years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to suffer simple imprisonment for 15 days. He is further convicted of the offence punishable under Section 121-A of the IPC and is sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 122 of the IPC and is sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 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/- (Rupees Five Hundred only) in default to suffer simple imprisonment for one week. He is further convicted of the offence punishable under Section 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/- (Rupees One Thousand only) in default to suffer simple imprisonment for two weeks. He is further convicted of the offence punishable under Section 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/- (Rupees One Thousand only) in default to suffer simple imprisonment for one week. He is further convicted of the offence punishable under Section 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/- (Rupees Five Hundred only) in default to suffer simple imprisonment for one week. He is further convicted of the offence punishable under Section 3(b) of the Explosive

Substance Act, 1908 and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 151 of the Railways Act and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/- (Rupees One Thousand only) in default to suffer simple imprisonment for 15 days. He is further convicted of the offence punishable under Section 153 of the Railways Act and is sentenced to suffer rigorous imprisonment for one year. He is further convicted of the offence punishable under Section 3(3) of the Passport (Entry into India) Act, 1920 and is sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs.100/- (Rupees One Hundred only) in default to suffer simple imprisonment for 7 (seven) days. He is also convicted of the offence punishable under Section 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/-

(Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offences punishable under Section 342 r/w Section 34 of the IPC and under Section 342 r/w Section 109 r/w Section 120-B of the IPC and is sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.100/- (Rupees One Hundred only) in default to suffer simple imprisonment for 7 (seven) days. He is also convicted of the offence punishable under Section 343 r/w Section 34 of the IPC and under Section 343 r/w Section 109 r/w Section 120-B of the IPC and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.200/- (Rupees Two Hundred only) in default to suffer simple imprisonment for 15 days. He is also convicted of the offence punishable under Section 436 of the IPC and is sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/- (Rupees Five Thousand only) in default to suffer simple imprisonment for 15 days. He is also convicted of the offence punishable under Section 3 of the Prevention of Damage

to Public Property Act and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offence punishable under Section 4 of the Prevention of Damage to Public Property Act and is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offence punishable under Section 13 of the Unlawful Activities (Prevention) Act, 1967 and is sentenced to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 and is sentenced to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted

of the offence punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967 and is sentenced to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for one month. He is also convicted of the offence punishable under Section 14 of the Foreigners Act and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- (Rupees Five Hundred only) in default to suffer simple imprisonment for one week. No separate sentence is 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 under Section 120-B r/w Section 302 of the IPC. Similarly, offences committed in furtherance of common intention and similar offences abetted by A1-Kasab have been made punishable with one and the same punishment and no separate sentence is awarded for the same offence covered by Sections 34 and 109 r/w Section 120-B of the

IPC.

7. As required by Section 366 of the Code, the present Reference has been submitted to this court by the Court of Sessions for Greater Mumbai.

8. A1-Kasab has preferred Criminal Appeal No.738 of 2010 which has been admitted by this court. Being aggrieved by the judgment and order of acquittal of A2-Ansari and A3-Shaikh, the State of Maharashtra has preferred Appeal No.606 of 2010, which has also been admitted by this court. Some arguments were advanced on the question as to whether we should hear the confirmation case first or we should hear the appeal filed by A1-Kasab first. Mr. Nikam, learned Special Public Prosecutor submitted that the appeal filed by A1-Kasab should be heard first. Mr. Solkar, learned appointed advocate for A1-Kasab submitted that the confirmation case should be heard first and the appeal may be heard thereafter. Since A1-Kasab wanted the confirmation case

to be heard first and also in view of the judgment in ***Emperor v. Narayan Ramchandra Jarag (1948) 50 Bom.L.R. 151***, by a reasoned order dated 7/10/2010, we took a decision to hear the confirmation case first. That order is not challenged. Since the confirmation case and appeal filed by the State of Maharashtra and the appeal filed by A1-Kasab arise out of the same facts and circumstances and arise out of the same Sessions Case, they are being disposed of by this common judgment and order.

9. It must be stated here that so far as order passed by learned Sessions Judge acquitting A2-Ansari and A3-Shaikh is concerned, it is not possible for us to disturb it because the view taken by learned Sessions Judge is a reasonably possible view. In our opinion, it cannot be called perverse. We shall give our reasons for this finding at the appropriate stage when we deal with the appeal filed by the State. We shall first deal with the confirmation case and the appeal filed by A1-Kasab and

then go to the State appeal. As per the prosecution case, A1-Kasab and deceased A1-Abu Ismail had actually participated in the crime committed at various places. A1-Kasab being the only surviver, he is tried by learned Sessions Judge. This being a case of conspiracy, learned Sessions Judge had to also examine the involvement of deceased accused and he has given findings only as regards their involvement. So far as the wanted accused are concerned, they obviously cannot be tried for any offence in their absence. Again being a case of conspiracy, learned Sessions Judge had to consider their involvement while considering A1-Kasab's involvement. He has, therefore, considered their involvement. We find this course to be perfectly legal and valid.

10. Before we begin with the facts, we must note that A1-Kasab conveyed to us through his counsel Mr. Solkar that he wants to remain present in this court during the hearing of the confirmation case. An application was filed to that effect. The State filed its reply. By a detailed

order dated 20/9/2010, considering the threat perception expressed by the police we rejected that prayer. Relying on the judgments of the Supreme Court in ***State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 SCC 601*** and ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr., (2005) 3 SCC 284***, we directed the State to make arrangement for Video Conferencing so that A1-Kasab can see the court proceedings and can hear the arguments. Accordingly, arrangement has been made. A1-Kasab has intermittently availed of the Video Conferencing facility.

11. This confirmation case relates to the horrific terrorist attack made on important locations like Hotel Taj, Hotel Oberoi, Chatrapati Shivaji Terminus (for short, **"CST"**) which are the pride of Mumbai, on the night of 26/11/2008. The terrorist attack continued upto early hours of 29/11/2008. In this terrorist attack, 166 persons died and 238 persons were injured. There was colossal property loss to the tune of about Rs.155,56,77,105/-.

The prosecution case is that this attack was masterminded by Pakistan based terrorist organization viz. Laskhar-e-Taiba (for short, "**LeT**"), which is now known as Markaz-ud-Dawa-wal-Irshad. LeT has its training camps in Pakistan Occupied Kashmir (for short, "**PoK**").

12. In this terrorist attack, **A1-Kasab**, **A2-Ansari** and **A3-Shaikh**, nine deceased accused and 35 wanted accused were involved. The names of the nine deceased accused are as under :

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, Punjab, Pakistan.

9. Shoaib @ Abu Soheb.
Resident of Naroral, Shakkar Road, Siakot, Punjab, Pakistan.

They shall be referred to as "**deceased A1**" to "**deceased A9**" respectively.

13. Names of 35 wanted accused are as under :

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 Saheb – (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.

They shall be referred to as "**wanted A1**" to "**wanted A35**" respectively.

14. The gist of the prosecution story as evident from the direct and circumstantial evidence adduced by the prosecution and by the confessional statement of A1-Kasab recorded under Section 164 of the Code which according to the prosecution is broadly corroborated by the other evidence and events on record, is as under.

15. A1-Kasab is a Pakistani national. A2-Ansari is a permanent resident of Goregaon, Mumbai and A3-Shaikh is a permanent resident of Bihar. According to the prosecution a conspiracy was hatched within Pakistan and India by the 35 wanted accused, 9 deceased accused and arrested accused A1-Kasab, A2-Ansari and A3-Shaikh during the period between December, 2007 and November, 2008 to wage war against the Government of India to allegedly liberate Kashmir and to that end to commit various offences punishable under the IPC and other enactments. The accused collected arms and ammunition within and outside India to achieve the object of the conspiracy. They conspired to overawe by means of criminal force and by show of criminal force, the Central Government and the Government of Maharashtra.

16. A1-Kasab and 9 deceased accused were trained by the wanted accused at Muridake and Manshera in PoK.

A2-Ansari and A3-Shaikh did not take part in actual training but their role was to assist the other accused by providing them with sketch maps of various places of Mumbai. A2-Ansari had prepared sketch maps of various locations of Mumbai and he had travelled to Nepal from Mumbai to handover the said sketch maps to A3-Shaikh. A3-Shaikh had delivered the said maps to the perpetrators of the crime in Pakistan. The attack on India was led by wanted A1-Hafeez Mohammad Saeed acting as Major of LeT. Wanted A2-Zaki-Ur-Rehaman Lakhvi, a senior leader of LeT has also acted as a key figure in this attack.

17. We have already referred to the confessional statement of A1-Kasab. We shall deal with all legal submissions advanced in respect of the said statement at the appropriate stage. We shall narrate the relevant portion thereof after we deal with every incident. For the present, we may only state that the following part of the prosecution story is drawn from the confessional statement of A1-Kasab which according to the prosecution

is the catalogue of events and naturally fits in with the rest of the evidence and surrounding circumstances. A1-Kasab hails from Village Faridcot, Zilla Okara, District Punjab, Pakistan. He has studied upto 4th standard in Urdu Medium School in Pakistan. In 2000, he left the school and went to Lahore with his father to find a job. A1-Kasab was staying in Lahore with his father. He was doing labour work. Due to some quarrel between him and his father over money, he started staying independently. A1-Kasab came in contact with one Shafiq. They started working with Welcome Tent Service. There, A1-Kasab came in contact with Mujjafar Lal Khan. A1-Kasab and Mujjafar Lal Khan left Lahore for Rawalpindi in 2007 for a better job. They started staying at Bangash colony. They were impressed by persons belonging to LeT because they appeared to be fighting for so called liberation of Kashmir in the name of Jamat-Ul-Dawa. A1-Kasab and Mujjafar Lal Khan attended camps organized by persons belonging to Jamat-Ul-Dawa, who were associated with LeT. They attended the camps and

decided to take training for Jihad. In December, 2007, they went to the office of LeT at Raza Bazar, Rawalpindi for that purpose. They were asked to go to Daura-e-Sufa, Markaz Taiba Muridake. Accordingly, they reached the camp of LeT. Wanted A8–Fahad Ullah gave them entry at Daura-e-Sufa. Wanted A8-Fahad Ullah and wanted A13-Abu Mufti Saeed trained them for 21 days. Wanted A1, A2, A3, A4, A6 and A18 were introduced to A1-Kasab and other trainees. Wanted A1-Hafeez and wanted A2-Zaki-Ur-Rehaman told them that it was time for Jihad and Kashmir could be acquired only after waging war against India. Wanted A4-Abu Al Kama told the trainees that big cities of India were to be targeted. By such attacks, India could be weakened from inside and that, one who dies in Jihad would get place in heaven. Due to such indoctrination, the trainees were prepared to attack India. In February, 2008, they were chosen for Daura-e-Aam training. Wanted A8-Abu Fahad Ullah gave them a note and sent them to Mansera Markaz Aksa. From there, they were sent to Battal village. Thereafter, the trainees were

given further rigorous training for 21 days at Battal which included use of arms and ammunition, training in folding and unfolding weapons, etc. After this training, the trainees were permitted to go home or serve the other trainees. A1-Kasab did not go home but chose to serve the other trainees. The other trainees were trained by wanted A9, A10, A11 and A15. After that training, A1-Kasab and others were told to go to the office of LeT in Model Town at Okara for Daura-e-Khas. Accordingly, they went to LeT office at Model Town. From Model Town, they got the address of LeT office of Mujjafarabad. They went to the office of LeT camp at Mujjafarabad. Mujjafarabad is in PoK. They went to that camp. They were further trained at Maskar Aksa, Mujjafarabad in PoK for 60 days. Wanted A28 was the trainer during this period. They were trained in using arms and ammunition like AK-47, use of launchers, satellite phones, hand grenades, map reading (G.P.S.), etc. Wanted A31 also trained them. During this training, one stranger, wanted A20-Major General came there. Wanted A5-Abu Kaahfa

told them that he was Major General and the trainers were his people. Major General's name was not told to them. Wanted A20-Major General talked to them. He enquired about their training. After this training, wanted A28-Abu Mavia gave A1-Kasab money, asked him to go home and on his way back, go to the office at Baitul. A1-Kasab accordingly went home and on his return journey went to Baitul. From there, A1-Kasab was then taken to selection point by wanted A28. About 20 to 22 trainees were present at the selection point. A CD was shown to the trainees as to how a Fidaeen attack was carried out in Kashmir. Wanted A4 addressed the trainees about how Fidaeen attacks are carried out successfully in Kashmir.

18. Wanted A1 selected 15 persons including A1-Kasab for Fidaeen attacks. They were given different names. A1-Kasab was named Abu Mujahid. The said 15 persons were sent for training known as Daura-e-Ribat. This training was inter alia for intelligence collection, harbouring knowledge of targets, keeping watch on

targets and escaping in case of target attacks. They were also trained to misguide people by giving false identity. Wanted A18 was supervising the training. The training was given by wanted A5 and wanted A34. During this training, wanted A20-Major General came there twice. He directed that they should be given marine training. This training got over in August, 2008. In September, 2008, Ramzan month started. They were then taken to Karachi by wanted A5 and marine training was given to them by wanted A35 for 3 days. They were trained to read maps, use G.P.S. to ascertain routes in the sea, etc.

19. On the 13th day of Ramzan, wanted A1 Hafeez Mohammad Saeed and wanted A2-Zaki-Ur-Rehman Lakhvi and other wanted accused called the trainees to their office at Baitul Mujahid. Thereafter, they were taken back to Baitul. Some of them were sent to Kashmir for terrorist attack and three more persons were admitted in their group. They are deceased A1-Abu Ismail, A7-Abu Fahadulla, A8-Abu-Ali. The trainees were told that time for

Jihad had come. The financial strength of India depends on the income of commercial capital Mumbai and, therefore, it was necessary to attack Mumbai and they had to reach Mumbai by sea. At that time, wanted A20-Major General came there. He asked them to give a demonstration of firing. He appreciated the firing of A1-Kasab and, he went away. Thereafter, they were introduced to wanted A7-Zarar Shah, a computer expert, who trained them to misguide people by showing a phone call made from Pakistan as a call made from some other country. They were told that wanted A7 had installed a hi-tech media room where maps, CDs and other information of other countries is collected and kept. He selects targets from them and informs wanted A2.

20. Thereafter, wanted A1-Hafeez Saeed and wanted A2-Zaki-Ur-Rehaman made five pairs of the 10 trainees. At that time, wanted A2-Zaki-Ul-Rehman told them that on Friday, the 27th, they have to launch a terror attack on Mumbai. Wanted A1-Hafeez Saeed told them that one

Indian boat needs to be hijacked to go to Mumbai from Karachi. He told them that they have to attack people at CST, Malabar Hill, Hotel Taj, Hotel Leopold and Nariman House where Israeli people live. American, British and Israeli people have to be selected and killed because they have inflicted miseries on them. They were asked to explode RDX bombs near targets so that police who come to help and other people will be killed due to traffic jam. They were asked to launch the attack at 7.30 p.m. because at that time there will be huge crowd. The trainees were told that they would be given identity cards bearing Hindu names and they had to tie a thread on their wrists which is normally tied by Hindus in India.

21. It was decided that A1-Kasab and deceased A1-Abu Ismail would carry out attack at CST and Malabar Hill, deceased A5-Hafiz Arshad @ Abdul Rehman Bada @ Hayaji and deceased A8-Javed @ Abu Ali would attack Taj Hotel, deceased A7-Fahad Ullah and deceased A6-Abdul Rehman Chhota @ Saakib would attack Hotel Oberoi and

deceased A2-Imran Babar @ Abu Akasha and deceased A3-Nasir @ Abu Umar would attack Nariman House. It was also decided that deceased A9-Shoaib @ Abu Sohib and deceased A4-Nazir @ Abu Umer would after firing at Hotel Leopold join deceased A5-Hafiz Arshad and deceased A8-Javed @ Abu Ali at Hotel Taj. It was further decided that A1-Kasab would plant a bomb in a taxi which he would be hiring to reach CST Station and deceased A4-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. The strategy was that the attackers of Nariman House and Taj Hotel would keep some persons as hostages and speak to media. They would disclose their identity as Indian Muslims and throw challenge to the Indian Government for liberating Muslims. Thereafter, preparation was made for the proposed attack on Mumbai. They were shown maps of various places of Mumbai like CST and Malabar Hill.

22. Maps drawn by A2-Ansari were shown to the trainees. On 15th day of Ramzan, they were given practice of firing from AK-47 rifles. They were trained to prepare tiffin bombs of RDX and to install timers in these bombs. On the next day, they were directed to remove their mustache and beard. Their photographs were taken for identity cards. On the 17th day of Ramzan, they were taken to the same house at Karachi where they were staying. On the 18th day of Ramzan, all the trainees were directed to put their names on the labels affixed to the timers of bombs and they were kept by wanted A5-Abu Kaafa in his custody. The identity cards bore their photographs, Hindu names and fake particulars. They were trained to inflate inflatable boat and to remove it's valve. They were also trained as to how bomb could be placed below driver's seat in a running car.

23. On 21/11/2008, all of them came to a house near a creek. Wanted A2, A3, A7 and A5, deceased A3 and A4 were there. Wanted A2 declared deceased A1-Abu Ismail

as the leader of this mission. Wanted A3 handed over arms and ammunition which were kept in the boxes to deceased A1-Abu Ismail. Wanted A3 gave money to each pair. Wanted A7 gave each one of them one mobile. Wanted A7 told them that in order to misguide Indian people, Indian Sim cards have been put in the mobiles and they should be activated when they reach Mumbai. They were told by wanted A2 that their numbers (handlers numbers) were fed in the said mobiles on which they (handlers) could be contacted by pressing the green button. He gave one number to deceased A1-Abu Ismail which he noted in his diary. A1-Abu Ismail noted particulars about areas of Mumbai in the diary. Wanted A2 gave one satellite phone to deceased A1-Abu Ismail and he went away.

24. Deceased A1-Abu Ismail gave each one of them one big sack, one AK-47, 8 magazines, 240 rounds, 8 hand grenades, 1 rifle, 1 pistol and 3 magazines thereof, 21 rounds, 1 headphone, batteries and 1 charger. He then

gave them one small sack each with RDX bomb kept in a tiffin bomb inside the same. He gave each pair GPS system and one pouch.

25. They cleaned their AK-47 rifles and pistols. They inserted 30 rounds in the magazines of AK-47. They inserted 7 rounds in each pistol. They tied 2 magazines to their AK-47 with tapes. In the night, they kept the bags in the vehicle of LeT. Deceased A1-Abu Ismail asked each one them to keep their Indian identity cards in their respective pockets which they did. In the night, wanted A3 and A5 asked them to note the latitude and longitude so that with the help of GPS they can easily reach Mumbai. They did as directed.

26. On 22/11/2008 A1-Kasab and nine deceased accused proceeded to the creek where wanted A2-Zaki-Ur-Rehaman Lakhvi was present. He told them that the pairs of terrorists who would be occupying Nariman House, Hotel Taj, Hotel Oberoi, would try to contact the media.

They were given the sketch maps prepared by A2-Ansari and A3-Shaikh. A1-Kasab and deceased A1-Abu Ismail were given the sketch map indicating road map leading to CST and Malabar Hill. They were told to tear off the maps after reaching their destination. Around 7.00 p.m., A1-Kasab and the nine deceased accused were taken to a big marine vessel in high sea where wanted A14-Hakim Saab was present along with his three associates. The haversacks containing arms and ammunition and other articles to be carried by A1-Kasab and the deceased accused were transported to seashore in a separate vehicle. They were also loaded in the said big marine vessel. At about 9.00 p.m., A1-Kasab and the deceased accused were transferred from the said marine vessel to another ship by name Al-Hussaini. The haversacks were also transferred to Al-Hussaini. Wanted A14-Hakim Saab and his three associates stayed back in the said big marine vessel. Seven persons including wanted A16-Mursheed, wanted A17-Aakib and wanted A19-Usman were present on board of Al-Hussaini. The haversacks

were handed over to A1-Kasab and the nine deceased accused. They were also given life saving jackets, blankets and other necessary articles. With these equipments, arms, ammunition and articles required for the journey A1-Kasab and the nine deceased accused started their journey in Al-Hussaini along with the said seven persons including three wanted accused named above.

27. On 23/11/2008 at about 12.00 noon a fishing vessel viz. M.V. Kuber was hijacked by them in the 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 M.V. Kuber. The fifth fisherman, who was navigator of M.V. Kuber was taken hostage by A1-Kasab and the nine deceased accused. The diesel already loaded on Al-Husaini was also transferred to M.V. Kuber.

28. After taking the navigator of M.V. Kuber as hostage

on board, A1-Kasab and the nine deceased accused started their journey towards Mumbai seashore. With the help of GPS and the navigator Amarchand Solanki, A1-Kasab and the nine deceased accused successfully navigated the boat. During their journey, they were communicating with wanted A3-Abu Hamza on a satellite telephone. They tied threads to their respective wrists to hide their identity as Pakistani nationals. The vessel M.V. Kuber reached Indian territorial waters at about 4.00 p.m. on 26/11/2008.

29. Deceased A1-Abu Ismail after reaching Mumbai sea water, received certain instructions on satellite phone. A1-Kasab told deceased A1-Abu Ismail that it is advisable to kill the said navigator Amarchand Solanki. A1-Kasab asked deceased A9-Shoaib @ Abu Soheb and deceased A3-Nasir @Abu Umar to catch hold his leg. Thereafter, A1-Kasab caught hold of the hair of navigator Amarchand Solanki and pulled his neck. A1-Kasab slit his neck in the engine room of M.V. Kuber. Thereafter, deceased A1-Abu

Ismail, deceased A3-Nasir @ Abu Umar, deceased A7-Fahad Ullah and deceased A8-Javed @Abu Ali pumped air into the inflatable boat and the said boat, after reassembling, was downed in the sea. A1-Kasab and the nine deceased accused changed their clothes. They put on life saving jackets as well as waterproof trousers. Their earlier clothes were left in M.V. Kuber. The arms and ammunition were also transferred to the inflatable boat. At this point of time, they saw one vessel approaching from the opposite direction. They thought it was a naval vessel and, therefore, they hurriedly jumped into the inflatable boat speedily. Therefore, they could not remove the sea valve of M.V. Kuber as decided earlier. With the use of GPS, they reached seashore of Mumbai at Badhwar Park, Cuffe Parade. A1-Kasab and deceased A1-Abu Ismail got out of the inflatable boat. They collected their haversacks and the bags containing RDX bombs. The time was around 9.00 p.m. Some of the fishermen staying in the fishermen colony at Badhwar Park inquired from A1-Kasab and others regarding their identity and the purpose

of their being in the said locality. A1-Kasab told them that they were students. A1-Kasab sharply reacted to the inquiry made by the fishermen.

30. From Badhwar Park, the five pairs proceeded to their targets. A1-Kasab and deceased A1- Abu Ismail hired a taxi to go to CST. During the course of their journey from Badhwar Park to CST, A1-Kasab installed a timer on a RDX bomb and placed it below the driver's seat. Within 15 to 20 minutes, they reached CST from Badhwar Park. They tried to contact wanted A3-Abu Hamza but could not succeed. Both of them were in the main line waiting hall at the CST. Deceased A1-Abu Ismail went to toilet situated near the waiting hall and installed timer on the bomb which was in his custody and left the same in the luggage of passengers lying in the waiting hall. Thereafter A1-Kasab and deceased A1-Abu Ismail went on a killing spree with their AK-47 rifles. Deceased A1-Abu Ismail took out hand grenade from his bag and threw it in the direction of passengers in the waiting hall.

Immediately thereafter, another hand grenade was thrown by him. Thereafter A1-Kasab and deceased A1-Abu Ismail took out their AK-47 rifles and started firing indiscriminately at the passengers. The police officers who tried to retaliate the firing, were also shot at. Some of the policemen were killed during the firing. After killing large number of passengers, A1-Kasab and deceased A1-Abu Ismail proceeded towards the waiting hall of local journey trains. While crossing the passage between the main waiting hall of long journey trains and waiting hall of local journey trains, they killed one of the police officers on duty. They had also killed one book stall owner. After reaching the local railway waiting hall, A1-Kasab and deceased A1-Abu Ismail fired on the policemen belonging to Government Railway Police (for short, "**GRP"**). Some of the Railway Protection Force Jawans (for short, "**RPF jawans**") and GRP attempted to capture or kill A1-Kasab and deceased A1- Abu Ismail. The policemen had used carbines and pistols but unfortunately neither A1-Kasab nor his associate deceased A1-Abu Ismail could be caught

or injured during the exchange of fire. A1-Kasab and deceased A1-Abu Ismail also fired at the announcer who was sitting in the public announcement room on the mezzanine floor of the local railway waiting hall. During this period two photographers of Times of India Group who were in their office which is situated across the road opposite CST, had entered CST and taken photographs of A1-Kasab and deceased A1-Abu Ismail. In connection with this incident, C.R. No.155 of 2008 was registered at V.T. Railway Police Station on the complaint of API Bharat Bhosale. Investigation of this crime was later on handed over to DCB, CID. On transfer to DCB, CID, a fresh C.R. No.213 of 2008 came to be registered. Further investigation was done by PI Gangawane. In the CST incident, 53 persons were killed and 110 persons were injured.

31. After killing many persons at the CST, A1-Kasab and deceased A1-Abu Ismail went out of CST via foot over bridge and landed in a bylane known as Badruddin

Tayyabji Marg (for short, "**B.T. Marg/B.T. Road**"). PW-102 Vernekar, photographer of Times of India Group, who had earlier taken photographs at CST, noticing that the accused were going out of CST via foot over bridge, immediately went to the Times of India building which is at the corner of B.T. Marg. He knew that he could take photographs of A1-Kasab and his associate from the second floor of Times of India building when they were passing over the foot over bridge. He, therefore, went to the second floor of the Times of India building. He took at least two photographs of A1-Kasab holding AK-47 rifle in his hand and violently moving forward on foot over bridge.

32. After landing at B.T. Marg from the foot over bridge, A1-Kasab and deceased A1- Abu Ismail were in search of a vehicle to leave the spot. They, therefore, attempted to open the doors of cars parked in the by lane, but could not succeed. Therefore, they entered Cama Hospital from one of the rear side gates of the hospital. They jumped over

one of the gates and entered Cama Hospital. CCTV cameras are installed by the Times Group outside its building on the portion which is on the side of B.T. Marg. According to the prosecution, the visuals of A1-Kasab and deceased A1- Abu Ismail were captured by the said CCTV cameras. According to the prosecution, A1-Kasab and deceased A1-Abu Ismail were seen in the visuals while attempting to open one of the vehicles holding rifles in their hands.

33. Before entering Cama hospital, A1-Kasab and deceased A1-Abu Ismail killed Shivkumar Gupta, a bhel vendor, Thakur Budha Vaghela, a slum dweller on B.T. Marg and Bhagan Gangaram Shinde, a young boy staying in the same locality.

34. After killing, the said three persons, A1-Kasab and deceased A1-Abu Ismail entered Cama Hospital from the rear gate. At Cama Hospital, they killed two security guards viz. Baban Balu Ughade and Bhanu Devu Narkar.

After killing the said two persons on the ground floor, they went upstairs and attempted to kill the patients including children. However, by the time they reached upper floors, patients and hospital staff closed all the doors of wards and other rooms. It was, therefore, not possible for A1-Kasab and deceased A1- Abu Ismail to kill the patients.

35. As most of the rooms and wards were found closed, A1-Kasab and deceased A1- Abu Ismail went on the terrace of the main building of Cama Hospital. PW-109 Chandrakant Dyandev Tikhe, one of the staff members of Cama Hospital was on duty on the terrace of the building. He was guarding the generator installed on the terrace. A1-Kasab and deceased A1-Abu Ismail asked him as to how they could go down. PW-109 Chandrakant Tikhe told them that there was only one staircase for entry and exit.

36. In the meanwhile, a police team headed by Additional Commissioner of Police PW-118 Sadanand

Vasant Date reached the sixth floor of Cama Hospital. There was a landing area between the sixth floor and the terrace and a door between this landing area and the terrace. The police party led by Additional Commissioner of Police PW-118 Sadanand Date started firing towards the terrace. A1-Kasab and deceased A1-Abu Ismail used PW-109 Tikhe as shield and they told him to be in the front while both of them proceeded towards the staircase leading to the sixth floor of the building. While A1-Kasab and deceased A1-Abu Ismail were using PW-109 Tikhe as shield, Additional Commissioner of Police PW-118 Sadanand Date, his subordinate officers and constables started firing towards A1-Kasab and deceased A1-Abu Ismail. However, they did not succeed in apprehending or killing the accused. A1-Kasab and deceased A1-Abu Ismail, however, killed two police officers viz. Prakash Pandurang More and Vijay Madhukar Khandekar and they also succeeded in injuring one Police Constable Sachin Tilekar and Additional Commissioner of Police PW-118 Sadanand Date and other policemen and officers. The

injured persons were taken to the lower floors for treatment. PW-118 Sadanand Date was left on the sixth floor. PW-109 Tikhe managed to come on the sixth floor and from there, he went to the lower floor. A1-Kasab and deceased A1-Abu Ismail succeeded in escaping from Cama Hospital because PW-118 Date and other police officers were injured due to fragments of grenades thrown by them.

37. When A1-Kasab and deceased A1-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. A1-Kasab and deceased A1-Abu Ismail therefore, instead of proceeding to Mahapalika Road adjoining St. Xavier's college, entered B.T. Marg from D.N. Road and shot at a police officer viz. PI Durgude who was coming from the direction of Metro Junction. PI Durgude died on the spot. After killing him, A1-Kasab and deceased A1-Abu Ismail again entered B.T. Marg from Mahapalika Road. One

white Honda City car with red beacon belonging to PW-140 Bhushan Gagrani, the Secretary in Health Department of Government of Maharashtra was coming from the opposite direction. It was driven by PW-139 Maruti Phad, who was staying near G.T. Hospital. He was staying in the staff quarter building known as High Rise Building situated near G.T. Hospital. PW-140 Gagrani was staying at his official residence in Yashodhan at Churchgate. Due to the terror attack at multiple places, PW-140 Gagrani was called for urgent meeting in Mantralaya and, therefore, he asked PW-139 Maruti Phad to bring the car to his official residence. A1-Kasab and deceased A1-Abu Ismail fired at the said car thereby injuring PW-139 Maruti Phad. PW-139 Maruti Phad sensing the seriousness of the situation, pretended to be dead and locked the car from inside.

38. The police team headed by Senior I.P.S. Officer Hemant Karkare was travelling in a Qualis brand police vehicle to reach Cama Hospital to assist PW-118

Sadanand Date. This vehicle was spotted by A1-Kasab and deceased A1-Abu Ismail. They fired at the said vehicle. The police officers sitting in the said vehicle also fired at A1-Kasab and deceased A1-Abu Ismail. Due to the firing, three police officers and three police constables, who were in the said vehicle died. The three senior police officers were Hemant Karkare, Ashok Kamate and Vijay Salaskar and three police constables were Balasaheb @ Nana Chandrakant Bhosale, Jayawant Hanumant Patil and Yogesh Shivaji Patil. PW-136 PN Arun Dada Jadhav was lying in the rear portion of the vehicle as he had also received bullet injures. A1-Kasab and deceased A1-Abu Ismail went near the vehicle and removed the dead bodies of the three police officers from the vehicle. Deceased A1-Abu Ismail occupied the driver's seat and A1-Kasab occupied the adjoining seat in the front. PW-136 PN Arun Jadhav pretended to be dead. Deceased A1-Abu Ismail drove away the vehicle from Mahapalika Road and proceeded to Metro Junction. From there, the vehicle was taken to Mantralaya via Maharshi

Karve Road. One of the tyres of the said police vehicle was punctured, A1-Kasab and deceased A1-Abu Ismail had to search for another vehicle. They spotted a Skoda car belonging to the father of PW-144 Sharan Arasa near Vidhan Bhavan at Barrister Rajani Patel Marg. PW-144 Sharan Arasa was driving the car and his friend and his wife were accompanying him in the said car. They were going to rescue their friend PW-238 Siddharth Umashankar who was brought to Inox Theater at Nariman Point after being evacuated from Hotel Oberoi. PW-238 Siddharth Uamashankar had given a call to his friend PW-147 Samit Ajgaonkar to pick him up. When the Skoda car came near Vidhan Bhavan, which is situated near Inox Theater at Nariman Point, A1-Kasab and deceased A1-Abu Ismail directed PW-144 Arasa to come out of the car. Deceased A1-Abu Ismail occupied the driver's seat and A1-Kasab occupied the front left seat of the car. Deceased A1-Abu Ismail had left his AK-47 rifle in the police vehicle and picked up AK-47 rifle of police officer Ashok Kamate from the police vehicle. He had

kept the said AK-47 rifle of Kamate in front of him in the leg space of driver's seat of Skoda car and proceeded further. A1-Kasab was holding his AK-47 rifle and a pistol.

39. In the meantime, a wireless message had been sent to all the police stations that two terrorists had hijacked a Skoda car and they should be intercepted wherever they were found. The road at Marine Drive was barricaded. The barricades were installed in front of Cafe Ideal at Girgaum Chowpaty. Some police officers including PW-1 Bhaskar Kadam, PW-2 Sanjay Govilkar, PW-3 Hemant Bavthankar, ASI Tukaram Ombale and police constables were on duty at the place barricaded by D.B. Marg Police Station. PW-1 PSI Bhaskar Kadam was having a 9 mm service pistol loaded with ten rounds. Few other police officers had also their service pistols with them.

40. Around 00.16 hours, 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. At about 00.30 hours, one Skoda car was spotted by the police officers on duty at Girgaum Chowpaty. (*In the police charge-sheet, the place Girgaum Chowpaty was 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. PW-3 Hemant Bavthankar and other police officials blew whistles and issued direction to the driver of the car to stop it. The driver of the car immediately put on head lights of the car. He 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. A1-Kasab and deceased A1-Abu Ismail raised their hands to indicate that they had surrendered before the police. When the police officers went near the car, deceased A1- Abu Ismail suddenly started firing at the police from his pistol. PW-1 Bhaskar Kadam and his

colleague PW-3 Bavthankar both fired at deceased A1-Abu Ismail from their service pistols. During the said firing deceased A1-Abu Ismail was injured. PW-2 Sanjay Govilkar, ASI Tukaram Ombale and other police officials attempted to catch hold of A1-Kasab. A1-Kasab immediately came out of the car and laid himself down on the road in supine position. While he was trying to fire with his AK-47 rifle, ASI Tukaram Ombale pounced upon him. He sustained bullet injury due to the firing from AK-47 rifle of A1-Kasab. PW-2 Sanjay Govilkar was also injured. In the meanwhile, other police officers used necessary force and disarmed A1-Kasab and took him into custody. Deceased A1-Abu Ismail was also taken into police custody. In the meantime, other police officers from D.B.Marg Police Station had also reached the spot. PW-2 Sanjay Govilkar, ASI Tukaram Ombale, A1-Kasab and deceased A1-Abu Ismail were taken to the hospitals. The Skoda car was barricaded and secured for investigation. ASI Tukaram Ombale was declared dead at Harkisandas Hospital. PW-2 Sanjay Govilkar was admitted for

treatment. Deceased A1-Abu Ismail was declared dead at Nair Hospital and A1-Kasab was admitted for treatment in the said hospital. FIR of PW-1 Bhaskar Kadam was recorded vide C.R. No.305 of 2008. The said C.R. was then transferred to DCB, CID. On transfer, it was registered as C.R. No.182 of 2008. A1-Kasab was shown arrested in the said case vide Arrest Panchnama (Ex-215) on 27/11/2008. Thereafter, he was shown arrested in other cases.

41. Spot panchnama was drawn during the course of which empty cartridge cases of pistols of police officers PW-1 Bhaskar Kadam, PW-3 Hemant Bavthankar, pistols of the accused, and rifle of A1-Kasab 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. One jacket was found on the 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 (for short, "**BDDS**") of Mumbai Police.

42. According to the prosecution, while A1-Kasab was in the hospital, he made a statement which led to recovery of M.V. Kuber, dead body of deceased Amarchand Solanki, one GPS and one mobile phone from M.V. Kuber. During the course of inquest panchnama of dead body of deceased A1-Abu Ismail, one map, prepared by A2-Ansari, was recovered from his trouser pocket. It was seized and sealed. A2-Ansari and A3-Shaikh were taken into custody from Rampur Jail with the permission of the Additional Sessions Judge, Rampur (U.P.). The specimen handwriting and signature of A2-Ansari was taken. The sealed cover containing the map prepared by A2-Ansari 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 A2-

Ansari. It is the case of the prosecution that the map recovered from trouser pocket of deceased A1-Abu Ismail is in the handwriting of A2-Ansari.

43. It is the case of the prosecution that A2-Ansari was to lend logistic support to the attackers. He, therefore, acquired a room belonging to one Ms. Shantabai Bhosale at Patthe Bapurao Marg, Mumbai-400 008 on rental basis. A2-Ansari had also taken admission in a computer institute namely Softpro Computer Education at Fort, Mumbai under an assumed name i.e. Sahil Pawaskar. The documents submitted in the computer institute by A2-Ansari were seized during the course of investigation. According to the handwriting expert, the said documents were written and signed by A2-Ansari. The prosecution recorded the statements of one Naruddin Mehboob Shaikh and one Bharat Thakur which revealed that the map which was recovered from trouser pocket of deceased A1-Abu Ismail was handed over to A3-Shaikh by A2-Ansari at Kathmandu, Nepal.

44. So far as other eight deceased accused are concerned, it is the case of the prosecution that after A1-Kasab and deceased A1-Abu Ismail got down from the inflatable boat, six other accused 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.

45. The further case of the prosecution is that the pair of accused who had proceeded to Hotel Leopold i.e. deceased A4-Nazir @ Abu Umer and deceased A9-Shoaib @ Abu Soheb had fired indiscriminately at the customers at Hotel Leopold and had caused death of 11 persons and

had injured 28 persons. By the time Colaba police reached Hotel Leopold, the duo had gone to Hotel Taj to join the other pair of the accused. The FIR in respect of the said incident which occurred at Hotel Leopold was recorded at Colaba Police Station vide C.R. No.240 of 2008 on the complaint of PW-179 PSI Sudhakar Deshmukh. A spot panchnama was drawn which revealed that a large scale destruction was caused at Hotel Leopold. Number of empties and AK-47 magazines were found. Later on, a fresh C.R. No.193 of 2008 was registered at DCB, CID. Further investigation was carried out by PW-266 PI Damodar Chaudhari.

46. It is the case of the prosecution that deceased A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased A8-Javed @ Abu Ali were the two accused who had entered Hotel Taj. Deceased A4-Nazir @ Abu Umer and deceased A9- Shoaib @ Abu Soheb had joined them after firing at Hotel Leopold. They fired indiscriminately at the ground floor particularly at Wasavi and Golden

Dragon Restaurants and had caused deaths of large number of guests on the ground floor. Thereafter, they proceeded to upper floors. They had also used hand grenades during the course of attack on staff and guests of Hotel Taj. Considering the fact that sophisticated weapons had been used by the accused at all the places of attack, Marcos commandos were called to help the police. Later on, commandos of National Security Guards (for short, "**NSG**") were called to apprehend or eliminate the terrorists. During the course of exchange of fire between the terrorists and commandos, at Hotel Taj four deceased accused used AK-47 rifles and hand grenades and had set fire to the valuable property of Hotel Taj. Thirty six persons died at Hotel Taj and 30 persons were injured. During the period of 60 hours, the four deceased accused were inside the hotel. After 60 hours' fight, NSG could eliminate deceased A4-Nazir @ Abu Umer, deceased A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, deceased A8-Javed @ Abu Ali and deceased A9-Shoaib @ Abu Soheb. The estimated loss of property at

Hotel Taj is Rs.114 crores. Two live RDX laden Improvised Explosive Devices (for short, "**IED**") were recovered from outside Hotel Taj.

47. It is the case of the prosecution that the above stated four deceased accused had established contact with their co-conspirators stationed at Pakistan and they were receiving instructions from them on telephone. The said telephonic conversation was intercepted by the police and the same was recorded. The intercepted conversation revealed that it was not a simple crime of committing murders or destruction of properties but it was a case of conspiracy hatched by A1-Kasab, A2-Ansari and A3-Shaikh, deceased accused and the wanted accused to wage war against Government of India and to commit other offences. Some of the guests and staff members were kept hostages for few hours in one of the rooms at Hotel Taj and they were physically and mentally tortured. In respect of the incident at Hotel Taj, C.R. No.

242 of 2008 was registered by the Colaba Police Station on the complaint of PW-182 PI Prakash Bhoite. Four AK-47 rifles in burnt condition, few magazines of AK-47 rifles, haversacks carried by the accused, live rounds, empties and bullets were seized during the course of drawing panchnamas. Panchnamas in respect of destruction of properties at Hotel Taj were also drawn. Inquest panchnamas of the deceased accused and the deceased victims were also drawn and the dead bodies were sent for postmortem examination. On transfer of investigation to DCB, CID, fresh C.R. No.194 of 2008 came to be registered by DCB, CID and further investigation was carried out by PW-267 PI K.V. Nigade.

48. The pair of deceased A2-Imran Babar @ Abu Aakasha and deceased A3-Nasir @ Abu Umar had entered Nariman House which is a prayer-cum-residential place for persons of Israeli origin. At the time of the incident the Gabriel couple, their child Moshe and their guests were at

Nariman House. Their two servants were also present. The accused carried out large scale destruction of property at Nariman House. Ms.Sandra and PW-239 Kazi Zakir Hussain, the servants of Gabriel couple, sensing serious danger to their lives hid themselves in one of the rooms. They had been hearing sound of firing constantly while hiding themselves. When the firing stopped, the said two servants went on the upper floors and found the child Moshe 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 incident. In all, 8 persons were killed at Nariman House and in the adjoining buildings and 7 persons were injured. The total loss of property is calculated to the extent of Rs. 1,09,00,000/-. Deceased A2-Imran Babar @ Abu Aakasha and deceased A3-Nasir @ Abu Umar were eliminated by the NSG commandos. An FIR in respect of the incident at Nariman House was registered on the complaint made by PW-200 PSI Hanumant Bhandalkar vide C.R. No.241 or 2008 at Colaba Police Station. Panchnama of this place

was also drawn in presence of panchas. Panchnama of the place near petrol pump where one bomb had exploded was also drawn. Used and live firearms and ammunition were seized. Arms and ammunition recovered from Nariman House by NSG commandos were also seized by the police at Colaba Police Station. On transfer of further investigation to DCB, CID, a fresh C.R. No.197 of 2008 was registered by PW-271 API Vijay Shinde. Arms and ammunition seized by the police were sent for analysis to Forensic Science Laboratory.

49. Deceased A6-Abadul Reheman Chhota @ Saakib and deceased A7-Fahad Ullah after travelling from Badhwar Park to Nariman Point in the inflatable boat, left the boat abandoned at Nariman Point. Both of them entered Hotel Oberoi and Hotel Trident. They had also indiscriminately fired at the people in the lobby of one of the restaurants at mezzanine floor. Before entering the hotel, they had planted RDX laden IED on the slope of flowerbed adjacent

to Hotel Trident main entrance. Subsequently, the said RDX bomb exploded. The said IED did not cause any serious damage because it was covered by the BDDS staff with a 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 subsequently exploded. Some guests were forcibly taken hostage from Kandhar Restaurant and were taken to upper floors. Thereafter, the said accused continued to fire and lob grenades from various positions. They also contacted T.V. channels and had attempted to mislead the public by giving false information to the T.V. channels. Thirty five persons died and 24 persons injured in the incident at Hotel Oberoi and Hotel Trident. Estimated loss of property at Hotel Oberoi and Trident was Rs.40,40,00,000/-. Deceased A6-Abadul Rehaman Chhota @ Saakib, and deceased A7- Fahad Ullah were eliminated by NSG commandos.

50. An offence regarding the incident at Hotel Oberoi was registered at Marine Drive Police Station vide C.R. No. 231 of 2008. Later on, it was transferred to DCB, CID, and C.R. No.191 of 2008 was registered. Further investigation was carried out by PW-270 PI Shengale. During the investigation, arms and ammunition were seized. Dead bodies of the said two accused were found in the corridor at 18th floor of Hotel Oberoi. Inquest panchnamas were drawn of both the dead bodies. Postmortem examination of dead bodies was conducted by medical officers at the Government and Municipal hospitals.

51. The inflatable boat was located by one of the fishermen of fishermen colony of Badhwar Park. It was brought to the seashore at Badhwar Park from Nariman Point. The boat and material found in the boat were seized by the police. The police seized life saving jackets and other miscellaneous articles from the said boat. Initially, the boat was seized as an unclaimed property

but, later on during the course of enquiry of death of the navigator Amarchand Solanki, it was realized that it was a case of murder and, hence, an offence in that regard was registered on the complaint made by PW-39 PSI Padmakar Devare vide C.R. No.52 of 2008 at Yellow Gate Police Station. Later on, the investigation was transferred to DCB, CID. On transfer, a fresh C.R. No.186 of 2008 was registered and further investigation was carried out by PW-47 PI Sripad Kale.

52. According to the prosecution, each accused was given one RDX laden IED and they were carrying their bombs in the small sack. One of the RDX laden IEDs carried by A1-Kasab and deceased A1-Abu Ismail was planted in the taxi which A1-Kasab and deceased A1-Abu Ismail had hired from Badhwar Park to go to CST. The said taxi was later on hired from CST by Advocate Laxminarayan Goyal for going to Charkop, Kandivali. The said bomb exploded when the taxi was on its way to

Charkop, Kandivali causing death of Advocate Goyal and the driver Umar Shaikh. The taxi was completely destroyed. PW-164 ASI Shankar Chandrakant Tambe of Vile Parle Police Station registered C.R. No.464 of 2008. In this connection, spot panchnama was prepared. Mutilated limbs of human bodies were seized for examination. They were sent for DNA analysis which revealed that only two persons were travelling in the said taxi. Investigation of this case was transferred to DCB, CID and on transfer, fresh C.R. No.198 of 2008 was registered. Further investigation was carried out by PW-174 PSI Vaibhav Dhumal.

53. One of such bombs was planted in a taxi by deceased A4-Nazir @ Abu Umer and deceased A9- Shoaib @ Abu Soheb who travelled from Badhwar Park to Hotel Leopold and later on entered Hotel Taj to join deceased A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji and deceased A8-Javed @ Abu Ali. The said taxi was hired by PW-225 Wasim Ahmed Bashiruddin Shaikh from near

Hotel Leopold for going to Dongari. He left the taxi at Dongari which was later on hired by deceased Zarina and Reema who wanted to go to the residence of Zarina at Bombay Port Trust. They reached the spot. However, after getting out of the taxi, while they were paying taxi fare to the taxi driver, the bomb exploded resulting into the death of the taxi driver and the two ladies viz. Zarina and Reema. The explosion of bomb seriously injured persons who were nearby the said taxi at the time of explosion. PW-175 PC Kishor Kharate reported the incident to Byculla Police Station and C.R. No.318 of 2008 came to be registered in respect of the said incident. It was transferred to DCB, CID and on transfer, it was numbered as C.R. No.200 of 2008. The material found on the spot was seized under panchnama.

54. 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. Two other 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 by deceased A4-Nazir @ Abu Umer and deceased A9-Shoaib @ Abu Soheb which exploded on the same night. The other bomb exploded at Nariman House during encounter of the deceased accused with the NSG commandos.

55. 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 Hotel Gokul in the vicinity of Hotel Taj. One live bomb was recovered in the luggage of passengers which was kept safely by CST railway police when the luggage was being given to the claimants. All the three live bombs were defused by the BDDS of Mumbai. The remnants of defused bombs were sent to the Ballistic Expert for his opinion. According to the prosecution, in almost all the bombs, RDX was used for explosion. Thus, out of 10 RDX laden IEDs carried by A1-

Kasab and nine deceased accused, 3 were recovered live, 1 had exploded in front of Hotel Trident (Oberoi), 1 had exploded in the taxi in which Advocate Laxminarayan Goyal was travelling from CST to Charkop, Kandivali, 1 had exploded in the taxi in which Zarina and Reema were travelling from Dongari to Bombay Port Trust, 1 had exploded at the petrol pump near Nariman House, 1 was exploded by deceased A2-Imran Babar @ Abu Aakasha and deceased A3-Nasir @ Abu Umar in Nariman House, 1 had exploded in Hotel Taj during the incident and 1 more had exploded in Hotel Oberoi during the course of incident.

56. The following Table No.1 will indicate the particulars of cases registered by police at various police stations which were taken over by DCB, CID in respect of the terrorist attack which took place in Mumbai.

TABLE NO.1

Sr. No.	Police Station & CR Nos.	DCB CR No.	Title of the case	Place of Offence	Death & Injured	Name of accused
01	Yellowgate Police Station CR No.52/2008	186/2008	Kuber Tandel Murder	On Fishing vessel "MV Kuber" Approximately 5 nautical miles from Mumbai shore.	Death - 01 Injured – None Not traced - 04	1. Mohd. Ajmal Moh. Amir Kasab @ Mujahid, 2) Ismail Khan @ Abu Ismail, 3) Shoheb @ Abu Shoheb & 4) Nasir @ Abu Umer.
02	Vile Parle Police Station CR No.464/2008	198/2008	Vile Parle Taxi Blast	Western Express Highway, Opp. Coty Swan Club, Vile Parle (E), Mumbai.	Death - 03 Injured - 03.	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail.
03	CST Railway Police Station CR No.155/2008 (ATS CR No.20 of 2008)	213/2008	CST Railway Station	Main Line Hall & Local Line Hall and Passage between both the halls of CST Railway Station	Death – 52 Injured – 109	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail
04	Azad Maidan Police Station CR No.245/2008	187/2008	Cama Hospital (Inside)	Cama Hospital Compound, Maha-nagar Palika Marg, Mumbai.	Death – 07 Injured – 10.	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail.

05	Azad Maidan Police Station CR No.246/2008	188/2008	Cama Hospital (Outside)	B.T. Road, North Gate of Cama Hospital, ATM Centre of Corporation Bank, Maha-nagar Palika Marg, Metro Cinema Junction.	Death – 09 Injured – 07	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail.
06	Marine Drive Police Station CR No.230/2008	192/2008	Scoda Car Robbery	Opp. Mittal Tower "B" Wing, Near Usha Mehta Junction, Barrister Rajni Patel Marg, Mumbai.	Death – None Injured – None	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail.
07	D.B. Marg Police Station CR No.305/2008	182/2008	Vonoli Junction Encounter	Opp. Cafe Ideal, N.S. Purandare Marg, Girgaum Choupaty, Mumbai.	Death – 01 Injured – 01	1) Mohd. Ajmal Mohd. Amir Kasab @ Mujahid & 2) Ismail Khan @ Abu Ismail.
08	Byculla Police Station CR No.318/2008	200/2008	Mazgaon Taxi Blast	Opp. BPT Colony Building, No.8, Mulji Rathod Marg, Wadi Bunder, Mazgaon, Mumbai 10.	Death – 03 Injured – 19	1) Shoheb @ Abu Shoheb & 2) Nazir @ Abu Umer.
09	Colaba Police Station CR No.240/2008	193/2008	Hotel Leopold	Hotel Leopold, S.B.S. Road, Colaba, Mumbai.	Death – 11 Injured – 28	1) Shoheb @ Abu Shoheb & 2) Nazir @ Abu Umer..

10	Colaba Police Station CR No.242/2008	194/2008	Hotel Taj	Hotel Taj, P. Ramchandani Marg, Colaba, Mumbai.	Death – 36 Injured – 30	1) Shoheb @ Abu Shoheb, 2) Nazir @ Abu Umer, 3) Javed @ Abu Ali & 4) Hafiz Arshad @ Abdul Rehman Bada @ Hayaji.
11	Colaba Police Station CR No.241/2008	197/2008	Nariman House	Nariman House, Colaba Wadi, Sahid Bhagatsing Road, Colaba, Mumbai.	Death – 09 Injured – 07	1) Babar Imran @ Abu Akasha & 2) Nasir @ Abu Umer.
12	Marine Drive Police Station CR No.231/2008	191/2008	Hotel Oberoi	Hotel New Oberoi & Hotel Trident, Nariman Point, Mumbai – 400 020.	Death – 35 Injured – 24.	1) Fahadullah & 2) Abdul Rehman Chota.

57. The fact that these incidents had occurred and the fact that 166 persons died and 238 persons were injured in these incidents can hardly be disputed. The persons who succumbed to the injuries at various places were taken to the hospital by different witnesses. They have either deposed in the court or have filed affidavit evidence. In respect of deceased persons, postmortem notes have been brought on record. Some

of the concerned doctors have either deposed in the court about the postmortem notes or have filed affidavit evidence indicating the cause of death. The dead bodies have been handed over to the relatives or persons acquainted with the deceased, some of whom have filed affidavit evidence in the court. From this evidence, the names of the deceased persons, the places where their bodies were found and the nature of injuries suffered by them can be ascertained. On this basis, Table No.2 has been prepared and incorporated in the judgment by learned Sessions Judge. There is no challenge to the fact that the persons named in the said table have died. There is also no challenge to the place where they have died and the nature of their injuries. We have gone through the evidence and we find no difficulty in reproducing the said table with some corrections. The dead body of Rajendrakumar Baburam Sharma, whose name is shown at Sr.No.8 was found at CST and not at Nariman House and the dead body of Daphne Hilary Schmidt, whose name is shown at Sr.No.20 was found at

Leopold and not at CST. This is confirmed by PW-533 Jehani, who has filed affidavit evidence (Ex-1406-A). We have accordingly, corrected the table and reproduced it. Following is the said table which states the names of the deceased, the place where death occurred and the nature of injuries suffered.

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	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	Leopold	Firearm injuries
21	Hemant Kamlakar Karkare	Cama Out	Firearm injuries
22	Ashok Marutirao Kamate	Cama Out	Firearm injuries

Sr.No	Name of the Deceased	Place of Death	Nature of injury
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	Cama Out	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

Sr.No	Name of the Deceased	Place of Death	Nature of injury

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

Sr.No	Name of the Deceased	Place of Death	Nature of injury
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

Sr.No	Name of the Deceased	Place of Death	Nature of injury

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

Sr.No	Name of the Deceased	Place of Death	Nature of 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

Sr.No	Name of the Deceased	Place of Death	Nature of injury

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

58. Following Table No.3 states the names of the injured persons, the places where they got injured and the nature of injuries suffered by them. Some of them were

examined in the court. Some of them have filed evidence on affidavit under Section 296 of the Code. That the persons mentioned in this table were injured at the places mentioned there and the nature of their injuries is not disputed.

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	Prakash 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.	Brush
15	510	Shambunath Munai Yadav	C.S.T.	Bullet
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
22	504	Pappusing Mannusingh	C.S.T.	Bullet
23	64	Punamsingh Santosh Singh	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 S. Qureshi	C.S.T.	Bullet

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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.	Blast
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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/Bullet
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
110	118	Sadanand Vasant Date	Cama In	Blast
111	112	Vijay Abaji Shinde	Cama In	Bullet
112	469	Vijay Tukaram Powar	Cama In	Blast
113	471	Mohan Dyanoba Shinde	Cama In	Bullet & Blast
114	470	Sachin Dadasaheb Tilekar	Cama In	Bullet & Blast
115	472	Vinayak Chintaman Dandgawhal	CST	Bullet
116	473	Hirabai Vilas Jadhav	Cama In	Bullet
117	109	Chandrakant Dyandev Tikhe	Cama In	Blast
118	111	Kailash Chandrabhan Ghegadmal	Cama In	Blast
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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	-	She Fung Chein	Oberoi	
144	-	Reshma Sanjay Khiyani	Oberoi	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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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	-

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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	562	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	Bullet
204	-	Bhaskar Paddu Dewadiga	Leopold	Bullet
205	485	Manoj Bahadur Thakur	Leopold	Bullet

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
206	476	Ransale Gilbert Santhumayor	Leopold	Bullet/Blast
207	484	Mohd. Ayub Mohd. Abdul Ansari	Leopold	Bullet
208	488	Prashant Vasant Tambe	Leopold	Bullet/Blast
209	-	Benjamin Jerold Methis	Leopold	Blast
210	487	Naresh Mulchand Jumani	Leopold	Bullet
211	478	Nilesh Mahendra Gandhi	Leopold	Bullet/Blast
212	479	Prakash Satan Bharwani	Leopold	Bullet/Blast
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

Sr. No	PW. No.	Name of the injured	Place of incident	Nature of injury
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

59. It would also be necessary to reproduce Table No.4 incorporated by learned Sessions Judge in respect of witnesses who had either carried the dead bodies to the hospital from the places of the incidents or who had seen the dead bodies at the places of incidents, names of the deceased, names of the places of incidents and the date on which they were carried to the hospitals.

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
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**
9	Yokeved 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
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**
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.T.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.T.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
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**
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	Sher 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 Hawai 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
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**
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
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**
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 Garg	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
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**
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 Mybem	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
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**
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
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**
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
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**
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
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**
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
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**
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	Gulab Pandharinath Nalavade (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
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**
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
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**
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
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**
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	Hema Kasi 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)	Taj	St.George's 26-11-2008
166	Elizabeth Russell	Mr.Gulab Pandharinath Nalavade(PW 632)	Taj	St.George's 26-11-2008

60. We find it appropriate to reproduce Table No.5 prepared and incorporated by learned Sessions Judge in respect of details of postmortem notes of the above deceased persons with some corrections of minor mistakes which we have located upon perusing the evidence and record. These postmortem notes have not been disputed.

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	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 exit wound over 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	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	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 corresponding 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	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 corresponding exit wounds also. The same have been described in the P.M. notes Ex.457 colly.	Haemorrhage & Shock due to firearm injuries (Unnatural) Ex.457colly	-
5	Gajendra Singh	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 preserved for B.E.

1	2	3	4	5	6	7	8
6	Ben Zion Chroman	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	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	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 posteromedial aspect of left knee joint. There were corresponding exit wounds also.	Shock and haemorrhage due to multiple firearm injuries (Unnatural) Ex.470	Pellet preserved for B.E.
9	Yokevet Mosho Orpaz	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 (Colly.)	-

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	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 corresponding exit wounds also.	Haemorrhage and shock due to firearm injuries (Unnatural) Ex.415	-
11	Pirpasha Mehboobali Shaikh	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 corresponding exit wounds.	Haemorrhage and shock due to firearm injuries (Unnatural) Ex.1513	-

1	2	3	4	5	6	7	8
12	Shahabuddin Sirajuddin Khan	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 were retrieved.	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
13	Harishbhai Durlabbhai Gohil	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 corresponding exit wounds.	death due to fire arm injury (unnatural) Ex.1516	-
14	Hidayatullah Anwarali Kazi	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	Leopold	27-11-08 J.J.P.M.	Dr.Javale (PW 100)	1. Penetrating wound on anterior upper thigh. 2. Perforating wound at post of right thigh gluteal region. (Exit). There was fracture of right femur	Shock due to perforating blast injury (Unnatural) Ex.406	-

1	2	3	4	5	6	7	8
16	Gourav Balchand Jain	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. Gopal-krishnan	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. Bullet retrieved from calf region.	Haemorrhage shock due to firearm injuries (Unnatural) Ex.1512	Bullet preserved for B.E.

1	2	3	4	5	6	7	8
18	Kamal Nanakram Motwani	Leopold	---	---	---	---	---
19	Jurgen Hienrich Rudolf	Leopold	---	---	---	---	---
20	Daphne Hilary Schmidt	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 entry wound on the right shoulder. There were corresponding exit wounds also.	Haemorrhage and shock due to multiple firearm injuries (Unnatural) Ex.444 (Colly.)	-

1	2	3	4	5	6	7	8
21	Hemant Kamlakar Karkare	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 corresponding exit wounds and two deformed bullets retrieved.	Haemorrhage and shock due to multiple firearm injuries (Unnatural) Ex.495	Bullets preserved for B.E.
22	Ashok Marutirai Kamate	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 Salaskar	Cama Out	27-11-08 J.J.P.M.	Dr. Niturkar (PW 104)	Four firearm entry wound 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	Haemorrhage and shock due to firearm injuries (Unnatural) Ex.422	Two bullets and metallic fragments preserved B.E.

1	2	3	4	5	6	7	8
24	Bapurao Sahebrao Durgude	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 entry wound on right arm and other minor injury. there were corresponding exit wounds also.	Haemorrhage and shock due to firearm injuries (Unnatural) Ex.500	Metallic particles preserved for B.E.
25	Balasaheb @ Nana Chandrakant Bhosale	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 frontal lobe of brain. It was retrieved. 3. Two firearm wounds on lower limbs.	-	-
26	Arun Raghunath Chite	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 corresponding exit wound	Haemorrhage and shock due to firearm injury (Unnatural) Ex.1572	-

1	2	3	4	5	6	7	8
27	Jayawant Hanumant Patil	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 of chest. Two corresponding exit wounds and other minor injuries.	Haemorrhage and shock due to firearm injury (Unnatural) Ex. 497	-
28	Yogesh Shivaji Patil	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	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 surrounding tissue. 3. Oval shape lacerated wound on right chest wall.	Shock and haemorrhage due to vital organ injury in a case of firearm injury (Unnatural) Ex.475	-
30	Prakash Pandurang More	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 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	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	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	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	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 correspondi ng 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	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	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	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 (Colly.)	-

1	2	3	4	5	6	7	8
38	Murad Amarsi	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	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	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	Oberoi	-	-	---	--	--
42	Sandeep Kisan Jeswani	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	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	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	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	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	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 (Colly.)	-

1	2	3	4	5	6	7	8
48	Reshma Sunil Parikh	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	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	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	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	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	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	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	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	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	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	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.	Shock due to abdominal injury (Unnatural) (Ex.402)	--
59	Ashok Kapoor	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	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 Maloo	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 corresponding to injury Nos.1 & 2 were noted. A bullet was found retained in front of body of L4 vertebra	-	-
62	Kannubhai Zaverbhai Patel	Oberoi	--	--	--	--	--
63	Anil Bipinchandra Thaker	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	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 interior 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	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	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 Benjamin Mandalik	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 (Colly.)	--

1	2	3	4	5	6	7	8
68	Sarjerao Sadashiv Bhosale	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	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	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	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 (Colly.)	--
72	Mohabbat Umer abdul Khalid	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	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	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 Shriramkishore Bind	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 Ravivul Shaikh	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 (Colly.)	--

1	2	3	4	5	6	7	8
77	Shashank Chandrasen Shinde	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 Begum Hamid Shaikh	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	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) (Colly.)	A piece of bullet preserved for B.E.
80	Ajij Nabilal Rampure	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)	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	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	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 corresponding 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	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	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	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	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	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	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	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	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	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	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 hammerra gic.	Haemorrhag e and shock due to firearm injuries (Unnatural) (Ex.427)	Bullet preserve d for B.E.
94	Jaikumar Durairaj Nadar	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 haemorrhag e as a result of gun shot injuries, as alleged. (Ex.1546)	--

1	2	3	4	5	6	7	8
95	Deepali Janardhan Chitekar	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	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	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	Hasibul Raheman Faizuddin Raheman Shaikh	C.S.T.	27.11.08 K.E.M.	Dr. Balsara (PW-593)	1. Circular punctured firearm entry wound below the tip of 7th 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	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	C.S.T.	27.11.08 Nair P.M.	Dr.Mohite (PW-23)	1. Circular lacerated wound over right chest region below midclavicular 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	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	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	Shaikh Ayub Shaikh Yakub	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	Afreen Shahadab Qureshi	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	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	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 laceratedwound over right iliac region. 5. Multiple abrasion on left supraclavicular region.	-	-

1	2	3	4	5	6	7	8
107	Manohar Sohani	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 lung in case of firearm injury (Unnatural) (Ex.480)	--
108	Mohammed Hussain Moh. Alamgir Shaikh	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 Sahauddin Ansari	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	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	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	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 (Colly.)	Bullet preserved for B .E.

1	2	3	4	5	6	7	8
113	Unknown male person	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. Sheshaai Baburao Kharatmal	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	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	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	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	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 (Colly.)	--
119	Fatmabi Rehman Shaikh	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	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	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	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	Anish Prabhu	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	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	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	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 (Colly.)	--

1	2	3	4	5	6	7	8
127	Baichand Ramprasad Gupta	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	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 Nanan Solanki	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	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	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	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	Taj	-	-	-	-	-
134	Andres Don Livera	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	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 haemoperit o-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	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	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	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	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	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	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	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 Martis	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	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	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	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	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 (Colly.)	-
148	Maksud Tabarakali Shaikh	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	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	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	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	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	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	Taj	-	-	-	-	-
155	Samarveer Singh Karamveer Singh Kang	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 Karam Bir Singh Kang	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	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	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	Taj	-	-	-	-	-
160	Gautam Devsingh Gosai	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 (Colly.)	-

1	2	3	4	5	6	7	8
161	Rajan Eshwar Kambli	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	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	Taj	5-12-08 J.J.P.M.	Dr. Sunanda Katke (PW 592)	1. Entry wound on right side of posteriorly upper trunk. 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	Taj	27-11-08 St. George	Dr. A.G. 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	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	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 (Colly.)	-

61. It must be noted here that some of the medical officers who had done the postmortem have been examined in the court and have given details of nature of

injury and cause of death. Some of the medical officers who have been examined in the court have given the cause of death but they have not given details of injuries. Some postmortem notes have been admitted by the court under Section 294 of the Code.

62. In respect of Charge under Section 307 of the IPC, it is necessary to quote Table No.6 incorporated by learned Sessions Judge in his judgment. Charge under Section 307 of the IPC was framed on the basis of injuries suffered by 238 persons, who were treated in hospitals and discharged. Out of 238 persons, the prosecution could examine only 111 witnesses who had suffered injuries at various places. In some cases, medical officers who had examined the injured persons have also been examined and medical certificates have been produced. Some of the witnesses have been examined in the open court. Some of the witnesses claim that they had seen either A1-Kasab or deceased A1 to A9. Large number of them had

not seen the accused but had sustained injuries. Such witness have been examined as formal witnesses under Section 296 of the Code. Affidavits of medical officers cover the treatment provided to the injured persons. But, all the injured persons are not examined. Only medical officers' evidence without examining the injured persons is of no use. Under such circumstances, learned Sessions Judge has prepared a table which indicates the names of the injured, names of the hospitals where the injured are 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 the medical certificates, if any. Wherever, medical officer is not examined, his name is not mentioned. We may reproduce the said Table No.6 for ready reference.

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	Dr. Harshal Gavai (PW-588)	1. Three conduced lacerated wounds at anterior aspect of neck, transverse in direction over midline of neck. 2. Multiplie lacerated wounds around lumbar spine around 2 cm x 1 cm each.

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. P.L. Tiwari (PW-554)	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.B.S. Chitlangia (PW 583)	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 444)	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)

63. It is the case of the prosecution that the handlers and the co-conspirators stationed in Pakistan had used Voice over Internet Protocol (for short, "**VoIP"**) service provided by the Callphonex, New Jersey, U.S.A. to establish contact with the accused in Mumbai. They had taken Direct Inward Dialing (for short, "**DID**") numbers from Callphonex. These DID numbers when used, would display the caller ID of Callphonex Number in the phones of the parties who were contacted. According to the prosecution, deceased A4-Nazir @ Abu Umer, deceased A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji,

deceased A8-Javed @ Abu Ali and deceased A9- Shoaib @ Abu Soheb who were killed at Hotel Taj by NSG commandos had established contacts with their handlers and the co-conspirators by using Cell phone Nos. 9910719424 and 9622588209. According to the prosecution, SIM card of the Cell phone No. 9910719424 of Airtel was sold by PW-259 Gurvindersingh Bakshi of Delhi to one Suresh Prasad. The 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 the 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.

64. According to the prosecution, deceased A6-Abadul Reheman Chhota @ Saakib had established contact with the handlers and the co-conspirators from Cell Nos. 9769679723 and 9820704507. According to the

prosecution, the first Cell number belonged to PW-250 Ms. Lisa Kristina Ringner who was staying in one of the rooms on the 18th floor of Hotel Oberoi and the second Cell number belonged to Rita Agarwal who was killed in the incident at Hotel Oberoi. The SIM cards of these two guests were used by deceased A6-Abadul Reheman Chhota @ Saakib for establishing contact with his mentors in Pakistan.

65. As far as Nariman House is concerned, deceased A2-Imran Babar @ Abu Aakasha had used SIM card of Cell No. 9819464530 belonging to deceased Gabriel. The conversation between the deceased accused and the co-conspirators from Nariman House, Hotel Oberoi and Hotel Taj to the unknown destination in Pakistan was recorded by the officers of DCB, CID by diverting the said telephone numbers to police numbers. According to the prosecution, the conversation recorded by the police clearly indicates that A1-Kasab and the nine deceased accused 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.

66. During the course of investigation, when the confession of A1-Kasab was recorded by learned Magistrate, it was revealed that A1-Kasab and the nine deceased accused were given one mobile phone each by wanted A7-Zarar Shah with Indian SIM cards. They were told that the SIM cards will 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 phones with independent unique international mobile equipment identity numbers (for short, "**IMEI**") were dispatched from Nokia, China to Pakistani dealers.

67. According to the prosecution, Yamaha Enduro Outboard Machine seized by the police from Badhwar Park was shipped from Japan to Pakistan.

68. The seized arms and ammunition, remnants of explosives, sand and soil from the place of explosion were sent to the Ballistic 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 offence had been committed, tallied with the empties test fired from the weapons brought by A1-Kasab and the nine deceased accused. The 7.62 mm short live cartridges recovered from various places of the offences, were found to be live on test firing. According to the prosecution, the recovery of large amount of empties and cartridges indicated that large scale 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.

69. According to the prosecution, fired bullets recovered from the spot and retrieved from some of the dead bodies

also positively indicated the role of A1-Kasab and the nine deceased accused. The bullets retrieved from some of the dead bodies from CST indicated that the deceased were shot either by A1-Kasab or deceased A1-Abu Ismail. Tallying of bullet retrieved from the dead body of deceased Tukaram Ombale with the test fired bullet from AK-47 rifle used by A1-Kasab showed that it is A1-Kasab who was responsible for the death of 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 were received in the laboratory for examination.

70. The police had also recovered various articles from boat M.V. Kuber which were transferred from vessel 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 boat M.V. Kuber. The DNA of sweat found on some of the blankets tallied with

DNA of the deceased accused. DNA of sweat sample collected from the jackets found on the boat was also compared. The DNA of blood sample of A1-Kasab tallied with DNA of sweat found on one of the jackets. A large number of fuel drums found on boat M.V. Kuber indicate that fuel cans or drums were also transferred from Al-Husaini to M.V. Kuber.

71. During the course of investigation, confessional statement of A1-Kasab was recorded under Section 164 of the Code by the Additional Chief Metropolitan Magistrate. According to the prosecution, this confession gets corroboration from the circumstantial evidence and the direct evidence collected by the investigators.

72. The investigation at Porbandar Port revealed that the boat M.V. Kuber was registered at Porbandar Port in the name of brother of PW-43 Vinod Babulal Masani. The investigation revealed that deceased Amarchand Solanki

was the navigator and there were other four sailors with him. Dead body of Amarchand Solanki was found in boat M.V. Kuber 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 A1-Kasab. As per the confession of A1-Kasab, the other four fishermen who were forcibly taken to Al Husaini from boat M.V. Kuber had been killed by the wanted accused on the vessel Al-Husaini.

73. According to the prosecution, the confession given by A1-Kasab and corroborative evidence in the form of circumstantial evidence and the direct evidence collected by the police clearly show that A1-Kasab along with the nine deceased accused and wanted A1 to A35 had conspired to wage war against Government of India and to commit various offences as detailed in the charge-sheet.

74. According to the prosecution, A1-Kasab, all the nine deceased accused and wanted A1 to A35 in pursuance to the said conspiracy had collected men, arms and ammunition within and outside India and had made other preparations to wage war against the Government of India. In pursuance of the said conspiracy, they committed substantive offences as stated in the charge-sheet.

75. It is the prosecution case that interception of telephone conversation was approved by the competent authority and ex-post facto permission was granted under Section 5(2) of the Telegraph Act, 1885 and Rules made thereunder. Similarly, a valid sanction was obtained under Section 196 of the Code for prosecution of the accused under Sections 121, 121-A, 122 of the IPC from the competent authority. A valid sanction was granted by the competent authority for prosecution of accused for the offences punishable under Sections 10, 13, 16, 17, 18, 20

and 23 of Unlawful Activities (Prevention) Act, 1967. Sanction was also obtained by Investigating Officer for prosecution of A1-Kasab for the offence punishable under Section 25(1B)(a) read with Section 3 of the Arms Act. The Commissioner of Customs had also sanctioned prosecution of the accused for the offence punishable under Section 135 of the Customs Act. Sanction as required was also granted under Section 188 of the Code for taking cognizance of offences committed outside India. Sanction for taking cognizance of offence of conspiracy to commit offences other than those punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more was also granted by the competent authority.

76. All the twelve FIRs were clubbed together and a common charge-sheet was submitted by the DCB, CID against A1-Kasab, A2-Ansari and A3-Shaikh and the wanted A1 to A35.

77. Since A1-Kasab had not engaged any lawyer, Mr. Kazmi and Mr. Pawar were appointed to appear for him. Later on, Mr. Kazmi was replaced by Mr. Pawar. A2-Ansari and A3-Shaikh were represented by Mr. Mokashi with Mr. Azmi and Mr. Naqvi respectively.

78. Charges were explained to the accused on 6/5/2009. All the accused pleaded not guilty to the charges. Their pleas came to be recorded at Ex-51, Ex-52 and Ex-53 respectively. After additional charge was framed, the pleas of A1-Kasab, A2-Ansari and A3-Shaikh were again recorded and they are at Ex-51A, Ex-52A and Ex-53A respectively. Thereafter, the trial started. After evidence of 134 witnesses was recorded on 20/7/2009, A1-Kasab pleaded guilty to some of the charges. His plea was not accepted by learned Sessions Judge as it was partial admission of the guilt. Learned Sessions Judge, however, made it a part of the record. After the prosecution

witnesses were examined and before A1-Kasab was called on for his defence, he was examined under Section 313(a) of the Code. He denied all the admissions of guilt and stated that he was under police pressure. He did not lead any evidence. Learned Sessions Judge perused the evidence on record and convicted A1-Kasab as aforesaid. He acquitted A2-Ansari and A3-Shaikh of all the charges.

79. Apart from confirmation case and appeal filed by A1-Kasab, we have also dealt with appeal filed by the State of Maharashtra challenging the acquittal of A2-Ansari and A3-Shaikh.

80. We have heard Mr. Nikam, learned Special Public Prosecutor for the State and Mr. Solkar and Ms. Shah, learned appointed advocates for A1-Kasab. We have also heard Mr. Mokashi, learned counsel for A2-Ansari and Mr. Naqvi, learned counsel for A3-Shaikh. With the assistance of learned counsel, we have gone through the relevant

record. We have also seen the CCTV footages. Considering the nature of the case and the voluminous record, we shall first deal with the arguments advanced by the counsel in respect of A1-Kasab's case. We shall then turn to the prosecution case about A2-Ansari and A3-Shaikh.

81. Mr. Nikam, learned Special Public Prosecutor submitted that the prosecution has proved beyond reasonable doubt that A1-Kasab, A2-Ansari and A3-Shaikh along with deceased A1 to A9 and wanted A1 to A35 during the period between December, 2007 to November, 2008 were party to a criminal conspiracy to wage war against the Government of India and to that end committed several offences under different enactments and they did wage war against the Government of India. He submitted that A1-Kasab and deceased A1-Abu Ismail indiscriminately fired at innocent people at CST, outside and inside Cama Hospital. They killed and injured several police officers. Counsel further submitted that the

prosecution has adduced evidence of injured eye-witnesses. There is clinching circumstantial evidence which bears out the prosecution case. Counsel submitted that A1-Kasab has voluntarily made a confession which is recorded by PW-218 Ms. Sawant-Waghule, Additional Chief Metropolitan Magistrate. He has also pleaded guilty to a substantial part of the prosecution case. Counsel submitted that though he has subsequently retracted his confessional statement and plea, the retraction is an afterthought and since the confession is voluntary and true and corroborated by other evidence on record A1-Kasab has been rightly convicted on the basis thereof. Counsel relied on several judgments in support of his case to which we shall advert in due course.

82. It is necessary to mention that Mr. Solkar, learned appointed advocate for A1-Kasab has told us that he is limiting his argument to the incidents in which A1-Kasab is allegedly involved and his alleged role in conspiracy. He

submitted that the main theme of his arguments is that A1-Kasab is not involved in any of the incidents and is not part of the alleged conspiracy. Mr. Solkar submitted that he is not challenging the prosecution case so far as the involvement of deceased A1-Abu Ismail and the deceased accused and the wanted accused is concerned. He submitted that the case of A1-Kasab is that he is not concerned with the deceased accused and wanted accused. Mr. Solkar has not disputed or challenged the rest of the prosecution case which, inter alia, involves incidents at Hotel Leopold, Hotel Taj, Nariman House and Hotel Oberoi. We have, however, gone through the entire evidence in connection with those incidents and the relevant material as they are relevant for the purpose of examining the charge of conspiracy.

83. Mr. Solkar submitted that A1-Kasab was denied a fair and reasonable opportunity to defend his case because services of experienced lawyer were not made available

to him. He submitted that the appointed lawyer was not given time to study the case and the case was concluded in a great hurry causing grave prejudice to A1-Kasab. Counsel submitted that vital evidence was not brought on record and, therefore, the case must be remanded for retrial or additional evidence needs to be taken on record by this court. Counsel submitted that the alleged confessional statement has been extracted from A1-Kasab by the police by exerting pressure on him. It is not a true and voluntary statement. A1-Kasab has retracted it and, hence, it should not have been relied upon for any purpose. Similarly, plea of guilty of A1-Kasab was retracted by him and, therefore, learned Sessions Judge erred in using it against him. Counsel submitted that the prosecution has failed to prove its case beyond reasonable doubt. Counsel relied upon several judgments in support of his case to which we shall soon advert.

PRELIMINARY OBJECTIONS.

84. We must note that the above is a mere outline of the submissions of learned counsel. For the sake of convenience and to avoid repetition, we shall deal with submissions of learned counsel on each topic separately at the appropriate place. But before we do that, it is necessary to deal with certain preliminary objections and certain submissions which are likely to crop up at every stage. The prosecution is heavily relying on confessional statement of A1-Kasab recorded under Section 164 of the Code. It is also relying on the plea of guilty of A1-Kasab. Heavy reliance is also placed on identification parade evidence. It is urged that there is delay in recording evidence of some of the witnesses. The conduct of the witnesses in not reacting in a particular manner to a particular incident, is commented upon. Orders passed by learned Sessions Judge recalling certain witnesses, allowing deferring of cross-examination and allowing re-examination are challenged. In our opinion, it would be proper to deal with these submissions at the outset so

that, we do not have to consider them when, we deal with each incident. We, therefore, proceed to deal with those submissions first. Thereafter, we will go to each incident.

A. FAIR OPPORTUNITY TO A1-KASAB TO DEFEND HIS CASE.

85. We shall start with Mr. Solkar's submission that A1-Kasab was not given a fair opportunity to defend the prosecution case and, hence, it is necessary to remand the case to the trial court.

86. In this connection, counsel took us to Appendix B of Chapter V of the Criminal Manual. He relied on Rules 6 and 7 and particularly sub-rules (5) and (6) of Rule 7. Rule 6 pertains to panel of legal practitioners for Legal Aid. Mr. Solkar submitted that as per Rule 6, the appointment of a legal practitioner for the unrepresented accused person shall be made from a panel of legal practitioners constituted for each court by the Presiding Officer of the Court in consultation with the President and the Office bearers of the Bar Association. He submitted

that where the offence is punishable with sentence of death or imprisonment for seven years or more, a senior advocate with a junior advocate from the panel shall be appointed for defending the unrepresented accused and as far as possible, the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

87. Mr. Solkar submitted that this procedure ought to have been meticulously followed by learned Sessions Judge, which he has not done. Relying on the judgment of the Orissa High Court in ***Pitambar Dehury & Ors. v. State of Orissa, 1985 Cri.L.J. 424***, judgment of the Madhya Pradesh High Court in ***Sagri v. State of Madhya Pradesh, III-1991 (1) Crimes 580*** and judgment of the Allahabad High Court in ***Ram Awadh v. State of U.P., 1999 Cri.L.J. 4083***, Mr. Solkar submitted that the advocate has not to be merely a senior advocate, but he must also have sufficient experience in criminal matters. He may not be a designated senior advocate but

he should necessarily have several years of practice to his credit. Counsel submitted that the record does not show that learned Sessions Judge went through the panel of lawyers and made the appointment after due deliberation. He submitted that A1-Kasab was deprived of the services of a competent lawyer.

88. It is not possible for us to accept this submission. Initially, Ms. Anjali Waghmare was appointed as *amicus curiae* for A1-Kasab. However, by order dated 15/4/2009 passed on application (Ex-7), her appointment was revoked because, it appears that an allegation was made that she had appeared for one of the victims. In the said order, learned Sessions Judge has stated that he had gone through the list of advocates on the panel of free legal aid maintained by the Registrar, Sessions Court, Greater Bombay. He has observed that some of them had met him in his chamber. Pertinent observation of learned Sessions Judge must be noted. He has stated that considering the nature of the case, the magnitude thereof

and voluminous record, it was necessary to appoint a lawyer who has the ability to handle the case of this nature competently and with due diligence. He has expressed that it was, therefore, necessary to convey a message to the President of the Bar Association to find out as to whether any lawyer who is not on the panel, is ready to appear for A1-Kasab. He requested Mr. Kazmi, who was present in the court to convey this message to the President of the Bar. He, thereafter, adjourned the matter to 16/4/2009.

89. The order passed by learned Sessions Judge on 16/4/2009 is also a reasoned order. It notes that the President of the Bar Association, learned advocates Mr. Sudeep Pasbola, Mr. Dave, Mr. Randhir Kale, Mr. Suhas Gaikwad, Mrs. Arundhati Walavalkar, Mr. Pravin Singhal, Mr. Abbas Kazmi and Mr. Yug Choudhari were present. He has recorded that he had a meeting with them for about 15 to 20 minutes regarding the issue of providing free legal aid to A1-Kasab and the discussion proved to be

fruitful. He has recorded that after due deliberations with the lawyers who were present in the chamber, it was decided that Mr. Kazmi shall represent A1-Kasab. Learned Sessions Judge has observed that Mr. Kazmi is not a lawyer on the panel of lawyers maintained by the Principal Judge of City Civil and Sessions Court, Greater Mumbai but he has referred to what he had stated in his order dated 15/4/2009 that considering the nature of the case, the magnitude thereof and the voluminous record, it was necessary to appoint a competent lawyer though he may not be on the panel. He has then considered the question whether lawyers who are not on the panel can be appointed. He has rightly relied on the judgment of the Madhya Pradesh High Court in ***Chandra Prakash Gajurel v. Inspector of Police, Chennai, 2006 Cri.L.J. 1791*** where the submission that lawyer who is not on the panel cannot be appointed, was rejected. Learned Sessions Judge has also referred to another judgment of this court in ***Criminal Appeal No.487 of 2008 in Ramchandra Nivrutti Mulak v. State of Maharashtra***

on question of fees to be paid to the *amicus curiae* lawyer and observed that the Government should consider granting reasonable fees to the appointed lawyer.

90. Having perused the above orders, we are of the opinion that learned Sessions Judge was alive to the need to appoint a competent lawyer to defend an accused who is facing serious charges like murder, waging of war, etc. He has considered whether a counsel who is not on the panel, could be appointed for the accused or not. He had a discussion with the President of the Bar of Sessions Court and other lawyers and after due deliberation, he has appointed Mr. Kazmi. It may be stated here that Rule 6 of Appendix B of Chapter V of the Criminal Manual states that as far as possible, the Presiding Officer shall not make an appointment from outside the panel, but he may do so for any exceptional reason to be recorded in writing. Therefore, this Rule vests a discretion in learned Sessions Judge to appoint a counsel from outside the panel. He has to only give reasons for it. In this case, learned Sessions

Judge has while exercising discretion given reasons. It cannot be said that learned Sessions Judge has appointed Mr. Kazmi without taking into consideration the salutary principle that a fair and reasonable opportunity has to be given to an accused to defend his case. It is not contended by Mr. Solkar that Mr. Kazmi is a junior lawyer or that he had no sufficient experience. It is true that at times, Mr. Kazmi has not chosen to cross-examine certain witnesses but at times, he has cross-examined some witnesses at length. It cannot be inferred from the fact that because Mr. Kazmi chose not to cross-examine certain witnesses that he showed lack of competence in handling the present case. We also find that learned Sessions Judge has also examined Court Witnesses and, wherever necessary, he has asked questions to the witnesses. There is, therefore, no miscarriage of justice.

91. In ***Pitamber Dehury***, the Orissa High Court has referred to the judgment of the Supreme Court in ***Ranchod Mathur Wasawa v. State of Gujarat, AIR***

1974 SC 1143 where the Supreme Court has stressed the need to appoint competent State counsel for undefended accused in grave cases. It was observed that indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases. The Supreme Court has further observed that sufficient time and complete papers should also be made available, so that the advocate chosen may serve the cause of justice with all the ability at his command. In ***Sagri***, the Madhya Pradesh High Court has reiterated the same view. In ***Ram Awadh***, the Allahabad High Court has observed that when the law enjoins appointing a counsel to defend an accused, it means an effective counsel, a counsel in real sense who can safeguard the interest of the accused in best possible manner which is permissible under law. It is further observed that where the accused is facing a murder charge, his case should be handled by a competent person and not by a novice or one who has no

professional expertise. It is further observed that the duty of a judge is to discern the truth. It is observed that a defence lawyer plays an important role in bringing out the truth before the court by cross-examining the witnesses and placing relevant material or evidence before the court. It is further observed that the absence of proper cross-examination may, at times, result in miscarriage of justice and the court has to guard against such an eventuality. Reliance was placed on the judgment of the Supreme Court in ***Ranchod Wasawa***, to which we have made a reference hereinabove.

92. There can be no dispute about the need to make services of a competent experienced lawyer available to an accused who is facing serious charges like murder, waging of war, etc. As we have already stated, we are unable to come to a conclusion that learned Sessions Judge has not kept these principles in mind. The orders passed by him which we have quoted hereinabove indicate that after due application of mind, he appointed

Mr. Kazmi. Besides, learned Sessions Judge has himself monitored the proceedings effectively, examined court witnesses and, whenever necessary, he has asked questions. The submission of Mr. Solkar that A1-Kasab was not provided a competent lawyer or any prejudice was caused to him must, therefore, be rejected.

93. Mr. Solkar drew our attention to sub-rules (5) and (6) of Rule 7. Sub-rule (5) states that if any advocate after having agreed to serve on a panel neglects or refuses to accept an appointment, he shall forthwith cease to be a member of the panel and shall be debarred from being reappointed on the panel. If an advocate refuses or neglects an appointment, his name shall be reported by the Presiding Officer of the court to the Bar Council of Maharashtra. Sub-rule (6) states that if any legal practitioner after accepting an appointment, neglects or refuses to discharge his duties properly, the authority which sanctioned the appointment shall remove the legal practitioner and appoint another in his place. Mr. Solkar

submitted that Mr. Kazmi should have been removed at the earliest and another competent officer should have been appointed in his place.

94. It appears that after almost all important witnesses were examined and the question of taking affidavits of formal witnesses such as claimants of dead bodies was being considered, Mr. Kazmi did not assist learned Sessions Judge properly. He stated that he did not care for those affidavits. He seemed to have made certain gestures which offended learned Sessions Judge. Looking to his attitude and gestures, on 30/11/2009 at the fag end of the trial, learned Sessions Judge revoked order appointing Mr. Kazmi and, in his place, he appointed Mr. Pawar who was assisting Mr. Kazmi and was well conversant with the facts. Learned Sessions Judge has observed that since Mr. Pawar knows Marathi language, Mr. Kazmi took assistance from him and, as such, Mr. Pawar could conduct the case. Thus, the procedure contemplated in sub-rule 6 of Rule 7 was followed when

necessary by appointing another advocate who was conversant with the facts so that A1-Kasab's interest will not be jeopardized.

B. DOES EXPEDITIOUS TRIAL AFFECT A1-KASAB'S RIGHTS.

95. It is urged that Mr. Kazmi was not given sufficient time to peruse the record. Several witnesses were examined on a day and this expedition has affected A1-Kasab's right to have a fair and reasonable opportunity to defend the case. We find that on 16/4/2009, papers were given to Mr. Kazmi. It is pertinent to note that on 8/5/2009, he was asked to dispute the genuineness or otherwise of the documents but, he did not admit any of the documents and, therefore, it cannot be said that because of the expeditious handling of the case, any prejudice was caused to A1-Kasab. Charge was framed on 6/5/2009 and the trial started on 8/5/2009 but, we do not find from the Rozanama that Mr. Kazmi made a request for adjournment because the trial was started immediately. Besides, the trial went on for about seven months and Mr. Kazmi had sufficient time to read papers

as the trial progressed.

96. We have no hesitation in rejecting Mr. Solkar's objection to expeditious disposal of this case. In ***Kartar Singh v. State of Punjab, (1994) 3 SCC 569***, the Supreme Court has held that speedy trial is a component of personal liberty. In ***Hussainara v. Home Secretary, State of Bihar, AIR 1980 SC 1819***, the Supreme Court has held that a procedural law is void if it does not provide for speedy trial. The Supreme Court has stressed the need to ensure that criminal trials are expedited. The court has not just to guard the interest of the accused. It must also guard the interest of the prosecution which is interested in bringing the culprit to book so that victims get justice. We are of the opinion that speedy trial is also a facet of the victims' rights safeguarded by Article 21 of the Constitution of India. Though ***Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors. (2004) 4 SCC 158*** on which Mr. Solkar has placed reliance in support of his prayer for retrial is not applicable to this

case to canvas that point, it must be remembered that in that case, the Supreme Court gave recognition to the victims' rights. The Supreme Court observed that a broader public and societal interest requires that the victims of the crime who are not ordinarily parties to the prosecution and the interests of the State represented by their prosecuting agencies do not suffer. Examined from this angle, we feel that it is necessary for a court to strike a balance between the right of an accused and the right of a victim. Just as an accused is required to be given a fair chance to defend his crime, the victims of the crime are also entitled to have a speedy trial because if the trials are delayed, it is possible that the evidence may vanish and the witnesses may not be available. The perpetrators of the crime may escape punishment. In the facts of this case, we feel that the Sessions Court has struck a balance by playing a participatory role in the trial by making available to A1- Kasab the services of a senior lawyer; by giving reasonable time to his lawyer and by expeditiously disposing of the case.

C. NON-EXAMINATION OF CERTAIN WITNESSES.

97. We are also unable to accept Mr. Solkar's submission that the prosecution should have examined persons who were cited as prosecution witnesses and some of whose statements were recorded by the police. In this connection, Mr. Solkar stated that Anita Wadiar, who is stated to be present when the inflatable boat landed at Badhwar Park and the injured police officer - Parasnath, who had seen the terrorists, Ms. Anita Solanki and Anokha Rajappa, whose mobiles were borrowed by PW-123 Timesh Chinekar and the In-charge of Armoury, who had given the arms to PW-66 Kiratkar, ought to have been examined by the prosecution and since they are not examined, the case needs to be remanded.

98. It is not necessary for the prosecution to multiply witnesses. The prosecution has to only examine such witnesses who would unfold the prosecution story. In ***State of Madhya Pradesh v. Dharkole alias Govind Singh & Ors., 2005 SCC (Cri.) 225***, a similar contention

was raised before the Supreme Court. While rejecting the said contention, the Supreme Court held that non-examination of some persons per se does not corrode vitality of prosecution version, particularly when the witnesses examined have withstood incisive cross-examination and pointed to the respondents as the perpetrators of the crime. In this case also, the prosecution has examined eye-witnesses who have deposed about the crimes committed by A1-Kasab. Ample circumstantial evidence has also been produced by the prosecution. Several injured witnesses have been examined by the prosecution. Witnesses have identified A1-Kasab in the identification parade and also in the court. They have been extensively cross-examined. However, substratum of the prosecution case has remained intact. In such a situation the prosecution was not obliged to multiply the witnesses. In fact, in **Dharkole**, the Supreme Court has gone on to observe that it is not necessary for the prosecution to examine somebody as a witness even though the witness was not

likely to support the prosecution version. In this case, the prosecution has adduced sufficient evidence – oral as well as circumstantial to establish its case about the movements of various officers and the actual terrorist attacks as we shall soon see. The injured officers and other witnesses completely bear out the prosecution case. The contention that on the above count, the case should be remanded, is therefore, rejected.

D. REMAND AND RETRIAL.

99. Mr. Solkar's submission that the printouts of call details made from mobile phone of Jt. C.P. Karkare and other witnesses, wireless messages and police logbook ought to have been produced and, for that purpose, the case needs to be remanded, also deserves to be rejected. We are satisfied that the material produced by the prosecution has correctly unfolded the prosecution story.

100. On the question of remand, Mr. Solkar placed reliance on ***Zahira Sheikh***, which is popularly known as Best Bakery case. This case arose out of a bizarre

incident where, out of communal frenzy, a mob set fire to a bakery and killed innocent people. In that case, prosecution was faulty and biased. Witnesses were threatened and the trial court had adopted a perfunctory approach. The Supreme Court was convinced about the improper conduct of the trial. The Supreme Court was of the view that there was ample evidence on record glaringly demonstrating subversion of justice delivery system. In view of the fact that there was no congenial and conducive atmosphere in the State of Gujarat, the Supreme Court transferred the case to Mumbai for retrial. While doing this, the Supreme Court reminded the courts of their participatory role in a trial. Reference was made to Section 311 of the Code and Section 165 of the Evidence Act which confer vast powers on the presiding officer of the court to elicit all necessary materials and to monitor the proceedings in aid of justice. The Supreme Court stressed the need to have fair prosecutors. The Supreme Court also referred to Section 391 of the Code which allows appellate court to take additional evidence, if

found necessary. It is in the context of the peculiar facts before it that the Supreme Court held that failure to accord fair hearing to the accused or to the prosecution violates even the minimum standard of due process of law. Though, there can be no dispute about the principles laid down by the Supreme Court, by no stretch of imagination, facts of the present case can be equated with the facts in ***Zahira Sheikh***.

101. In this case, the trial court has adopted a participatory role. It has permitted recall of witnesses. It has examined court witnesses and at times, it has asked pertinent questions to elicit correct information. It cannot be said that the investigation in this case is faulty or the prosecutor was inept. No witnesses were threatened. The prosecution has examined as many as 659 witnesses. There are several injured witnesses who have deposed about the incidents in question. The prosecution has brought expert's evidence on record. Several witnesses have been examined to bring on record circumstantial

evidence which is vital to the issues involved in this case. This, in our opinion, is not a case where any further evidence needs to be taken on record. We are, therefore, of the opinion that on the basis of ***Zahira Sheikh***, it cannot be canvassed that the present case should be retried or that this court should take any additional evidence on record. In fact, as noted by us, in ***Zahira Sheikh***, the Supreme Court has given recognition to victims' rights and victims' rights will be defeated if this case is sent for retrial. Request for retrial is, therefore, rejected.

102. It is then argued that some public interest litigation is pending in this court and the State Government has initiated an inquiry as regards the lapses of intelligence. It is, therefore, necessary to bring particulars of the inquiry on record. We find no hesitation in rejecting this argument because the inquiry conducted by the State Government about the lapses of intelligence has nothing to do with the present confirmation case. If any officers

are responsible for any lapses, the State Government in its wisdom may take action against them. We are concerned with the charges levelled against A1-Kasab. In our opinion, it was not at all necessary for the prosecution to bring the particulars of the pending public interest litigation or alleged inquiry conducted by the State Government on record. This argument of counsel must, therefore, be rejected.

E. SUBMISSIONS ON CONFESSIONAL STATEMENT OF A1-KASAB:

103. The prosecution has heavily relied on the confession of A1-Kasab recorded by PW-218 Ms. Sawant-Waghule, Additional Chief Metropolitan Magistrate. The said confession was retracted by A1-Kasab by sending an application through his counsel on 17/4/2009. Mr. Nikam, learned Special Public Prosecutor submitted that conviction can be based on a retraction, if it is true and voluntary. He submitted that whether a confession is

trustworthy or not can be ascertained by reading the same. The contents of the document provide the internal proof of trustworthiness of the document. In this connection, he relied on judgment of the Supreme Court in ***Mobarak Ali Ahmed v. The State of Bombay, AIR 1957 SC 857.*** Mr. Nikam further submitted that failure to comply with the provisions of the Criminal Manual will not render the confession inadmissible in evidence. It may only reduce its evidentiary value. He submitted that, if the judicial confession is found to be voluntary and true, then it cannot be discarded merely on the ground that it was recorded in the Magistrate's chamber. Mr. Nikam submitted that the Magistrate is required to ensure that requirements of Section 164 of the Code are fully satisfied. If the Magistrate's evidence indicates that requisite procedure is followed, then it is not proper to question the truthfulness and voluntary nature of the confession. Mr. Nikam further submitted that conviction can be based on retracted confession also, if it is found to be true and voluntary and, if retraction appears to be an

afterthought. Mr. Nikam submitted that though reliance can be placed on an uncorroborated confession, if it inspires confidence, as a rule of prudence, court looks for corroboration before acting upon it. It is sufficient, if there is general corroboration as to the important incidents. Mr. Nikam pointed out that in this case evidence of PW-218 Ms. Sawant-Waghule clearly establishes that she had followed provisions of Section 164 of the Code. She has also followed the guidelines laid down by the High Court Criminal Manual. Her evidence is supported by the Investigating Officer PW-607 PI Mahale. Retraction of the confessional statement made by A1-Kasab is clearly an afterthought. He submitted that the confessional statement is corroborated by the other evidence on record. It is true and voluntary and, therefore, learned Magistrate has rightly placed reliance on it. Mr. Nikam submitted that a judicial confession can be partly accepted. The court can reject the exculpatory part and can accept inculpatory part of confession. In support of his submission, counsel relied on the

judgments in ***Bhagwan Singh Rana v. State of Haryana, 1976 Cri. L.J. 1379, Keshoram Bora v. The State of Assam, 1978 Cri. L.J. 1089, Dagdu & Ors. Etc. v. State of Maharashtra, AIR 1977 SC 1579, Shankar @ Gauri Shankar & Ors. v. State of T. N., 1994 SCC (Cri.) 1252, State of Punjab v. Harjagdev Singh, (2010) 2 SCC (Cri.) 170, State of T. N. v. Kutty @ Lakshmi Narsimhan, 2001 SCC (Cri.) 1177***.

104. Mr. Solkar, learned counsel for A1-Kasab, on the other hand, submitted that learned Magistrate has failed to follow the mandatory provisions of Section 164 of the Code. She has not abided by the instructions laid down in the High Court Criminal Manual. He submitted that, if the law provides any procedure, it must be followed. He submitted that the confessional statement is not true and voluntary. Moreover, it is retracted by A1-Kasab as it was obtained by the police under threat and coercion. He submitted that there is no rebuttal of the retraction and, hence, what is stated in the rebuttal must be accepted

as true. It is pointed out that the confession is recorded in the chamber in breach of the provisions of the High Court Criminal Manual.

105. Mr. Solkar submitted that it was incumbent upon learned Magistrate to ascertain from A1-Kasab as to for how long he was in police custody prior to the recording of his statement. She has not done so. Learned Magistrate has, therefore, not ascertained whether he was under the influence of the police and was forced to make a statement. Mr. Solkar drew our attention to the evidence of PW-607 PI Mahale, who has stated that he last interrogated A1-Kasab in the night between 16/2/2009 and 17/2/2009. Therefore, on 17/2/2009 when A1-Kasab was produced before learned Magistrate he was under the influence of police. Mr. Solkar further submitted that PW-607 PI Mahale has stated that A1-Kasab had first expressed his willingness to make a confessional statement in December, 2008. It was, therefore, necessary to record his statement immediately. Mr.

Solkar submitted that the delay in recording the confession clearly indicates that the confession was concocted. Mr. Solkar further submitted that services of a lawyer ought to have been made available to A1-Kasab even before 17/2/2009 when he was produced before learned Magistrate because the lawyer would have explained to him the implication of making a judicial confession. Mr. Solkar submitted that the alleged confession indicates that A1-Kasab was not repentant. Therefore, it cannot be called a confession. Mr. Solkar further submitted that on 17/2/2009 A1-Kasab was produced before learned Magistrate for the first time. On that day, she is stated to have asked him certain questions as required by the High Court Criminal Manual and Section 164 of the Code. Mr. Solkar contended that learned Magistrate should have asked the same questions again to A1-Kasab when he was produced before her on 18/2/2009 and on 21/2/2009. Failure to do so, has eroded the evidentiary value of the alleged judicial confession.

106. Mr. Solkar submitted that the prosecution has to first prove its case. Judicial confession can only be used in aid of proved facts. It has to be true and voluntary. He submitted that the judicial confession has to be read as a whole. It must be corroborated in material particulars. Mr. Solkar submitted that A1-Kasab's alleged judicial confession contains details which are not corroborated by any evidence on record. Therefore, it will have to be rejected in its entirety. In support of his submissions, Mr. Solkar relied on the judgments in ***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru 2005 SCC (Cri.) 1715***; ***Dhananjaya Reddy v. State of Karnataka, (2001) 4 SCC 9; Kehar Singh v. State (Delhi Admin.) AIR 1936 PC 253(2); Mazahar Ali & Anr. v. State 1976 Cri. L.J. 1629; State v. Mitu 1977 Cri. L.J. 1018; Ganesh Prasad Singh v. State of Orissa 1987 Cri.L.J. 1345*** *and* ***State of Orissa v. Duleswar Bank, 2008 Cri. L.J. 1065.***

DISCUSSION ON CONFESSIONAL STATEMENT OF A1-KASAB.

107. Before going to the judgments on judicial confession, we must ascertain the facts. On 17/2/2009, A1-Kasab expressed his desire to give judicial confession. On 17/2/2009, he was produced before PW-218 Ms. Sawant-Waghule for recording his statement under Section 164 of the Code by PW-607 PI Ramesh Mahale.

108. Order dated 17/2/2009 passed by learned Magistrate states that she placed A1-Kasab in the custody of her peon Khandagale, PC Talekar and her personal orderly. She satisfied herself that there was no policeman in her chamber from where the proceedings could be seen or heard except her peon and her constable who were not concerned with the investigation of the crime and who were necessary to guard A1-Kasab. The order further states that she informed A1-Kasab that he was no longer in police custody and asked him whether he has to make

any complaint of ill-treatment against the police. He replied in the negative. The order further states that learned Magistrate ensured that nobody had assured A1-Kasab that by making a confession, he will be free or he will get lesser punishment. Learned Magistrate asked him why he wants to make confession. A1-Kasab stated that he will tell everything when his statement will be recorded in detail. The order further states that therefore, learned Magistrate gave him 24 hours for reflection. He was informed that he was kept in Magisterial custody and not in police custody. He was accordingly remanded to judicial custody. He was directed to be produced before her on 18/2/2009 at 11.00 a.m. On this statement, A1-Kasab has signed. His thumb impression is also there.

109. Accordingly, on 18/2/2009, A1-Kasab was again produced before PW-218 Ms. Sawant-Waghule. Noting dated 18/2/2009 made by learned Magistrate on Part I of the confessional statement states that she was satisfied that there was no policeman in the chamber or at any

place from where the proceedings could be heard or seen except her peon Khandagale and her personal orderly from the police who were not concerned with the investigation but who were necessary to guard A1-Kasab. The noting further states that she asked the details as to the length of time during which he was in police custody and the place where he has been in custody or surveillance of the police. The preliminary questions asked by her are important. She made it known to him that she was a Magistrate and she was not concerned with the police who had arrested him. She told him that he was not in police custody but was in her custody. He understood this. She further asked whether he had any complaint about the police to which he replied in the negative. She asked him his date of arrest. She asked him when and why he felt like making a judicial confession. He answered that he felt like making a confession on the day of arrest and he wants to make confession because he is not sorry for what he has done. She asked him how he suffered injury. He told her that on

26/11/2008 he was injured in police firing. He told her that he was making confession of his free will about the attack on Mumbai made by him and his associates on 26/11/2008. She explained to him that he was not bound to make a confession. She told him that the confession can be used against him in a court of law and he can be sentenced for that. He stated that he knew about it. She told him that if he does not give confession, he will not be sent to police custody. He said he understood what she had said. She asked him whether he was forced to make a statement, whether he was given any promise and whether he was given any assurance by the police or anyone else that he will be made approver and acquitted in this case. He replied in the negative. She asked him whether he still wanted to make a statement. He answered in the affirmative. She asked him whether he wants a lawyer to be present at the time of giving statement. He replied in the negative. He stated that he was making confession because he wanted to send a message to others that they should follow him.

110. She then gave him 48 hours' time for reflection, informed him about it and remanded him to judicial custody. She told him that during that period, he will be kept in judicial custody. He signed on this questionnaire. He also put his thumb impression thereon. On 20/2/2009, he was again produced before PW-218 Ms. Sawant-Waghule. Noting made by learned Magistrate on 20/2/2009 shows that she again asked the same questions to A1-Kasab in order to ascertain whether he wants to give his confession voluntarily. After satisfying herself from his answers that he was ready to give confession voluntarily, she started recording his confession on 20/2/2009. In the noting dated 21/2/2009 made by learned Magistrate at the beginning of Part II of the confession, she has stated that A1-Kasab was produced from judicial custody. She has noted that she satisfied herself that there was no policeman in the court's chamber where the proceedings could be heard or seen, except her typist Mr. Kadam and her court's Head

Constable Mr. Antu Chavan, who were not concerned with the investigation and who were necessary to guard the accused. Recording of confession was completed on 21/2/2009. Certificate II dated 21/2/2009 issued by learned Magistrate and appended to judicial confession dated 21/2/2009 clearly states that learned Magistrate had explained to A1-Kasab that he was not bound to make confession and that, if he confesses, the confession may be used against him. She has further stated that the confession was taken in her presence and was read out to A1-Kasab and admitted by him to be correct and containing a full and true account of statement made by him. She has further stated that she believed that the confession was voluntarily made. Certificate III issued by her and which is appended to confessional statement dated 21/2/2009 states the grounds on which learned Magistrate felt that the confession was genuine. The grounds stated by her are: (a) she had explained the questions to A1-Kasab and he had given reply to each and every questions freely; (b) where time was required A1-

Kasab asked for time freely without hesitation and then himself explained the events and (c) during the recording of confession, he was calm and stable. Learned Magistrate has noted the precautions taken by her as follows: (a) she informed him that he was no more in police custody and she is not concerned with the police investigation; (b) she had put him in the custody of her court staff during the recording of confession and (c) she had given him sufficient time for reflection. She has concluded the certificate by confirming that she had given 72 hours' time for reflection to A1-Kasab before recording the confession. She has also stated that after the confession, A1-Kasab was remanded to judicial custody. She has also stated that as a precaution, in addition to his signature, she has taken A1-Kasab's right hand thumb impression.

111. We have perused the evidence of PW-218 Ms. Sawant-Waghule and we are of the opinion that learned

Magistrate has taken adequate care while recording the confessional statement of A1-Kasab. She had given him sufficient time for reflection. Her evidence indicates that except her personal staff, no person from any investigating agency or police officer was in her chamber when the confession was being recorded. Her evidence is in tune with her order dated 17/2/2009, the noting made by her on 18/2/2009, 20/2/2009 and 21/2/2009 and the certificates appended by her to the confessional statements.

112. We have gone through the cross-examination of PW-218 Ms. Sawant-Waghule. The defence has not been able to make any dent in her evidence. The defence has not elicited anything in the cross-examination from which it can be said that she had not followed the provisions of Section 164 of the Code or of the High Court Criminal Manual. She comes across as a very truthful witness. No allegation is made against her that she forced A1-Kasab to give confessional statement. We have no hesitation in

placing implicit reliance on this witness. We are of the opinion that learned Magistrate has ensured that requirements of Section 164 of the Code are satisfied.

113. PW-607 PI Mahale is the Investigating Officer. This witness completely corroborates PW-218 Ms. Sawant-Waghule. He has stated that A1-Kasab was produced before learned Chief Metropolitan Magistrate. He has stated that, on 17/2/2009, PW-218 Ms. Sawant-Waghule, learned Additional Chief Metropolitan Magistrate was directed to record the confessional statement of A1-Kasab under Section 164 of the Code and on that day, A1-Kasab was produced before her. He has further stated that A1-Kasab was then remanded to judicial custody. In the cross-examination, he has reiterated that he had produced A1-Kasab before learned Magistrate on 17/2/2009. He has denied that A1-Kasab was again handed over to the police on 17/2/2009. He has denied that A1-Kasab was compelled to give confessional statement before the Magistrate. This witness has

corroborated the evidence of PW-218 Ms. Sawant-Waghule.

114. It is pointed out that this witness has stated that A1-Kasab was interrogated by him for the first time on 27/11/2008 and it was in the first week of December, 2008 that A1-Kasab was willing to give a confession before the Magistrate. It is argued that, though A1-Kasab expressed his willingness to give confession in the first week of December, 2008, he was not produced immediately for recording his confession, but was produced as late as in February, 2009. PW-607 PI Mahale has given explanation about this delay. He has stated that A1-Kasab could not be produced before learned Magistrate for recording his confession before 17/2/2009 because other part of investigation was in progress. He has stated that entry to that effect has been taken in the case diary.

115. In our opinion, in the peculiar facts and

circumstances of the case, the defence cannot draw any mileage from the time taken to record the confessional statement. The investigation of this case cannot be equated with the investigation of an ordinary criminal case. It was a huge task. The incidents of firing, bomb blasts and rampant killings took place at several places. Several members of the police force, which included Senior Police Officers were killed. Many of them were seriously injured. The police obviously had to co-ordinate their efforts to get proper direction. In such extraordinary situation, if some time was taken to follow the procedure, obtain necessary orders and record the confession, that cannot be taken against the prosecution. We are not inclined to hold that time was taken by the police because the police wanted to concoct the statement. It is submitted that this witness has stated that the last interrogation of A1-Kasab was done by him during the intervening night of 16/2/2009 and 17/2/2009 and, therefore, he was under police pressure when he showed willingness to make a confession on 17/2/2009 and when

he made confession pursuant to that. It is not possible to accept this argument. We have already reproduced at length the relevant order and noting of learned Magistrate and the certificates issued by her. The observations made by her and the preliminary questions asked by her indicate that learned Magistrate had ascertained the length of A1-Kasab's police custody. She had satisfied herself that he was voluntarily making the statement. She gave him sufficient time for reflection. This submission must, therefore, fail.

116. It is argued that sub-rule (1) of Rule 18 of the Criminal Manual was not followed. Sub-rule (1) of Rule 18 of the Criminal Manual states that ordinarily a confession should be recorded in the open court during court hours. It was argued that in breach of this sub-rule the confessional statement was recorded in chamber of learned Magistrate.

117. In ***Dhananjaya Reddy***, the Supreme Court has

observed that the function of the Magistrate in recording confession under Section 164 of the Code is a very solemn act which he is obliged to perform by taking due care to ensure that all the requirements of Section 164 are fully satisfied. It is further observed that the Magistrate should not adopt a casual approach. Referring to its judgment in ***Kehar Singh***, the Supreme Court held that the compliance of sub-section (2) of Section 164 of the Code being mandatory and imperative, its non compliance renders the confession inadmissible in evidence. The Supreme Court has emphasized that if a Statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. In this connection, the Supreme Court has referred to its judgment in ***Nazir Ahmad v. King Emperor, AIR 1936 PC 253 (2)***. Having perused the evidence of PW-218 Ms. Sawant-Waghule, we are of the opinion, that there is complete compliance with Section 164 of the

Code while recording the confessional statement of A1-Kasab.

118. So far as the instructions laid down by this court in the Criminal Manual as regards recording of judicial confession are concerned, the legal provision appears to be different. Rule 18 contains instructions. It begins by saying that the instructions contained therein are issued for the guidance of the Magistrate recording confessions and statements under Section 164 of the Code and they are not intended to fetter discretion given by the law to the Magistrates. It is further clarified that the only object with which they are issued is to indicate generally the manner in which the discretion may be exercised. Thus, these instructions are directory and not mandatory. They are for the guidance of the Magistrates. They do not encroach upon the Magistrates' discretion. So far as the objection to the recording of the statement in the chamber is concerned, it is true that ordinarily, confession has to be recorded in the open court, but in a given set of

circumstances, the Magistrate may be justified in recording it in her chamber. Looking to the gravity of the offence and the threat perception as regards A1-Kasab, in our opinion, learned Magistrate cannot be faulted for having recorded the confessional statement in her chamber. Exceptional reasons are implicit in the very nature of the instant case. We have gone through the cross-examination of learned Magistrate. No question was asked to learned Magistrate as to why confessional statement was recorded in the chamber. In our opinion, opportunity ought to have been given to learned Magistrate to explain why confessional statement was recorded in the chamber. In the absence of such opportunity being given to her, defence cannot make capital out of this. It was not suggested to learned Magistrate that she was acting at the behest of police. A1-Kasab has not stated in his statement recorded under Section 313 of the Code that learned Magistrate forced him to make the confession. There is no allegation made against learned Magistrate.

119. In this connection, we may refer to the judgment of the Calcutta High Court in ***Abed Ali Jamadar v. State, 1987 (2) Crimes 785*****.** In that case, statement of the accused was recorded in the chamber of the Magistrate. This was challenged placing reliance on the Supreme Court's judgment in ***Ram Chandra v. State of Uttar Pradesh, AIR 1957 SC 381*****.** The Calcutta High Court noted that in that case learned Magistrate did not ascertain why the accused was making statement after such a long time and, in the cross-examination, she admitted that she thought it improper to record the confession in court during court hours, being unaware of the standing orders issued by the Government of Uttar Pradesh, the first rule whereof says that confession may ordinarily be recorded in open court and during court hours unless for exceptional reasons, it is not feasible to do so. The Calcutta High Court observed that it is in these circumstances that the recording of confession in jail without adequate reasons was improper. The Calcutta

High Court made it clear that in ***Ram Chandra***, though the Supreme Court emphasized the desirability of recording confessions in open court as required by the Government Orders, it did not rule that a confession recorded in Magistrate's chamber, if otherwise acceptable, is to be abjured merely because it was not recorded in the open court. Referring to the facts before it, the Calcutta High Court observed that the confession did not suffer from any infirmity whatsoever and, in such a situation, it was not proper to discard it merely on the ground that it was not recorded in open court. We respectfully concur with the Calcutta High Court. In the facts of this case, we are of the opinion that there is sufficient compliance with the guidelines contained in the High Court Criminal Manual as regards recording of judicial confession and learned Magistrate cannot be faulted for recording the confessional statement in the chamber.

120. We must now turn to the question as to how to

assess evidentiary value of a confession since counsel have addressed us on this issue at great length. It is not necessary to refer to all the judgments which are cited before us on that question because all of them reiterate the same principles. We shall only refer to those cases in which the Supreme Court has crystallized the principles. It would be appropriate to first refer to ***Navjot Sandhu @ Afsan Guru***. In this case, the Supreme Court has referred to several of its earlier judgments and stated as under:

> *"(a) Confessions can be acted upon, if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of a confession and its truth is accepted, it is safe to rely on it ..... A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or*

*advice, the retraction may not weigh with the court, if the general proved facts in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the earlier statement was true ……..” (**Bharat v. State of U.P. (1971) 3 SCC 950**).*

*“(b) 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 rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction 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”. **(Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094**)*

(c) *In **Shankaria v. State of Rajasthan, (1978) 3 SCC 435,** the Supreme Court observed that the twin tests to be applied to evaluate a confession are (1) whether confession was perfectly voluntary and (2) if so, whether it is true and trustworthy. The Supreme Court observed that, if the first test is satisfied, the question of satisfying the second test does not arise. As to the evaluation of a confessional statement, the Supreme Court observed as under:*

> *"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."*

(d) *As regards nature of corroboration required in **Parmananda Pegu v. State of Assam, (2004) 7 SCC 779**, the Supreme Court observed as under:*

> *"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 case****, 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 case****".*

121. In ***Bhagwan Singh Rana,*** referring to its earlier judgments, the Supreme Court 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.

122. In ***Keshoram Bora***, it was submitted before the Supreme Court that it was not open to the court to take the inculpatory part of the judicial confession into consideration and reject the exculpatory part. It was further submitted that an admission can be taken either as a whole or not at all. The Supreme Court rejected this submission and held that it is well settled that where a confession or an admission is separable, there can be no objection to take one part into consideration which appears to be true and reject the other part which is false. The Supreme Court referred to its decision in ***Nishikant Jha v. State of Bihar, AIR 1969 SC 422***, where it has observed as under:

> *"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."*

123. In ***Shankar @ Gauri Shankar***, the accused had

retracted confessions made by them. The Supreme Court considered the evidence and held that the retracted confessions were amply corroborated on all material aspects by the evidence of witnesses and the prosecution had satisfactorily proved that the retracted confessions were true and voluntary and the same were sufficiently corroborated on all material particulars establishing the guilt of the accused. Thus, reliance can also be placed on a retracted confession, if the prosecution satisfactorily establishes that it is true and voluntary and is corroborated on all material particulars.

124. In ***Swaran Singh Rattan Singh v. State of Punjab, 1957 Cri. L.J. 1014***, it is held that whether or not the confession is voluntary or not would be a question of fact and such a finding should not be interfered with unless it is felt that the impugned finding has been reached without applying the true and relevant legal tests in the matter.

125. It is necessary to discuss the judgments of Orissa High Court and Jammu & Kashmir High Court cited by Mr. Solkar because the observations made therein are similar.

F. PRINCIPLES AS REGARDS EVIDENTIARY VALUE OF CONFESSIONAL STATEMENT.

126. The principles which can be deduced from the above judgments may be stated:

a) A confession can be acted upon, if the court is satisfied that it is true and voluntary.

b) It must fit into the proved facts and must not run counter to it.

c) The court may take into account the retracted confession, if the court is satisfied that retraction was an afterthought.

d) A retracted confession may form the legal basis of a conviction, if the court is satisfied that it was true and voluntarily made.

e) It is not the rule of law, but a rule of prudence that a court shall not base a conviction on a retracted confession without corroboration.

f) It cannot, however, be laid down as an inflexible rule of practice or prudence that under no circumstances can such conviction be made without corroboration. In a given case, a court may be convinced of the absolute truth of a confession and prepared to act upon it without corroboration.

g) It is, however, unsafe to rely upon a confession much less a retracted confession, unless the court is satisfied that it is true and voluntarily made and has been corroborated in material particulars.

h) Corroboration in material particulars 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.

i) If after examining and comparing the confession with the rest of the evidence, in the light of surrounding circumstances and probabilities of each case, the confession appears to be a probable catalogue of events and it naturally fits in

with the rest of the evidence and the surrounding circumstances, it can be taken to be true and trustworthy.

j) The whole of the confession should be tendered in the court. It is not the law that it can either be taken as a whole or not at all. It may be open to the court to reject the exculpatory part and take into consideration the inculpatory part. 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.

k) Whether a confession is voluntary or not is a question of fact and such a finding should not be interfered with unless the court is satisfied that it has been reached

without applying the true and relevant tests in the matter.

127. The upshot of the above discussion is that, we can rely upon the retracted confession, if it is true and voluntary, if it does not run contrary to proved facts and, if we are satisfied that the retraction is an afterthought. We have to further find out whether the confession is corroborated in material particulars but for that meticulous examination of the entire material is not necessary. We must see whether there is broad corroboration in conformity with the general trend of confession. It is open to us to reject the exculpatory facts and take into consideration inculpatory facts. The findings recorded by the trial court on this issue shall not be disturbed by us, unless we are satisfied that the trial court has not applied relevant tests.

128. Having gone through the evidence of PW-218 Ms.

Sawant-Waghule and PW-607 PI Mahale and having read the order passed by PW-218 Ms. Sawant-Waghule, the noting made by her and the certificates issued by her, we are of the opinion that the judicial confession of A1-Kasab recorded by PW-218 Ms. Sawant-Waghule is voluntary. The conclusion of learned Sessions Judge that it is voluntary is recorded after applying the relevant tests. The same cannot be interfered with by us because it is borne out by the evidence on record. We are also of the opinion that the confession is true and the retraction sent by A1-Kasab is an afterthought. We have no hesitation in coming to the conclusion that the confession naturally fits in with the rest of the evidence and the surrounding circumstances and it appears to be probable catalogue of events. It fits in the proved facts and it does not run counter to them. Proved facts corroborate it in material particulars. The inculpatory part of the same can safely be relied upon and exculpatory part can be rejected. We shall soon deal with the relevant evidence on record to fortify this conclusion of ours.

129. For ready reference, we reproduce the gist of the confessional statement of A1-Kasab recorded by PW-218 Ms. Sawant Waghule. It reads thus :

G. GIST OF CONFESSIONAL STATEMENT OF A1-KASAB.

130. A1-Kasab was born on 13/9/1987 in Village Faridkot, Taluka Dipalpur, District Okara, Punjab, Pakistan. He left his school in the year 2000. In the year 2001, he came to stay at Lahore along with his father and uncle. His father and uncle left Lahore in the year 2005. He was staying alone in a room on rental basis. He used to visit his village intermittently. However, there was a quarrel between him and his father over his income. He, therefore, left the rental house and started staying at Dargah of Ali Hajveri at Lahore. He came in contact with one Shafiq who got a job for him at Welcome Tent Service, Rawalpindi Road. While working at Welcome Tent Service, he came in contact with one Mujjafar Lal Khan. 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 in contact with the persons belonging LeT. They also started visiting camps of Jamat-Ul-Dawa. LeT came to be known as Jamat-Ul-Dawa after the ban on LeT in the year 2002.

131. In the month of December, 2007 both of them visited office of LeT at Raja Bazar, Rawalpindi. They made their intention to join Jihad clear to the persons of LeT. They were, therefore, asked to visit the office of LeT next day with their baggage. A1-Kasab 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 LeT for Daura-e-Sufa training. Both of them entered the camp after their personal search. They were given training of 21 days along with other trainees. In all, there were thirty trainees. They were converted to Ahale Hadis from Sunni. During the initial training, they underwent physical

training. They also heard discourses on Jihad. During the course of said training, wanted A8-Abu Fahad Ullah and wanted A13-Abu Mufti Saeed were trainers of A1-Kasab, 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 wanted A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab, wanted A2-Zaki-Ur-Rehaman Lakhvi, wanted A3-Abu Hamza, wanted A4-Abu Al Kama @ Amjid, wanted A6-Mujja Mil @ Yusuf and wanted A18-Abu Umar Saeed. Wanted A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab told all the trainees that they had to fight for liberating Kashmir and that time was ripe for Jihad. Wanted A2-Zaki-Ur-Rehaman Lakhvi told them that their community had been fighting for Kashmir for last fifteen years and that despite continuous fight of fifteen years, Indian Government was not liberating Kashmir and, therefore, they had to fight war to liberate Kashmir. All the trainees agreed to fight a war for Kashmir. Wanted A4-Abu Al Kama @ Amjid 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. This training was to take place at Mansera Markaz Aksa. A1-Kasab and others reached the area of Mansera after twelve hours' bus journey. After their verification, they were allowed entry in the camp. They were taken to the place known as Buttal. From there, they walked for about thirty minutes to a hilly place.

132. The said training went on for 21 days. During the said training, A1-Kasab and others had to undergo physical exercise, do running and learn mountaineering. They were also trained in dismantling and assembling firearms like AK-47 rifle (referred to by A1-Kasab as “Klashan” in his confessional statement). They were also trained in firing. During the course of said training of 21 days, elder brother of Mujjafar Lal Khan visited the place and he took away his brother. A1-Kasab then engaged

himself in the service of senior members of the Organization. During the period when A1-Kasab was serving senior members of the Organization, other persons were undergoing training under the supervision of wanted A9-Abu Abdul Rehman, wanted A10-Abu Anas, wanted A11-Abu Bashir and wanted A15-Yusuf. Thereafter, the trainer of A1-Kasab, wanted A9-Abu Abdul Rehman had sent A1-Kasab and others to Okara for a training known as Daura-e-Khas. From there, they were sent to Mujjafarabad, which is situated in PoK, where they underwent training. They were to take training in a place known as Markaz Aksa. The training was imparted to them at a hilly area known as Chelabandi. This training went on from May, 2008 to July, 2008 i.e. for about two and half months. During this training, the trainees were trained to be strong Jihadies. They were trained in firing, assembling firearms. They were also trained to use rocket launchers and hand-grenades. Training was imparted to them in respect of satellite phones, GPS and map reading. To make them physically strong, they were

trained to remain hungry for 60 continuous hours and during this period, they were to climb mountains with heavy load on their back. The said training was very rigorous. Ten Mujaheeds could not sustain the said training and deserted the training camp. This training was imparted by wanted A28-Abu Mavia and wanted A31-Abu Hanjla. During the said training, one unknown person visited the training camp. The said person hugged wanted A1- Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab and wanted A2-Zaki-Ur-Rehaman Lakhvi. Wanted A28-Abu Mavia and wanted A31-Abu Hanjla saluted the said unknown person. A1-Kasab and others were told that he was Major General Sahab. (This Major General Sahab is shown as wanted A20 in the charge-sheet and the charge). A1-Kasab and others were told that their trainers were deputies of the Major General Sahab. Wanted A20-Major General Sahab made enquiry with A1-Kasab and others regarding training. He 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.

133. After this training, A1-Kasab was given Rs.1300/- by wanted A28-Abu Mavia and was told to visit his village. He was directed that after visiting his village, he had to return to the office of wanted A1-Aamir Hafiz Saeed known as Baitul Mujahidin. A1-Kasab, after visiting his village for about one week, returned to the office of wanted A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab 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 A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab, wanted A3-Abu Hamza, wanted A6-Mujja Mil @ Yusuf and wanted A28-Abu Mavia were present at the selection point. Wanted A5-Abu Kaahfa and wanted A4-Abu Al Kama were also present. A CD was played on a laptop to show as to how Fidayeen attack was carried out at Kashmir. The selected persons were given alias names by wanted A1-Hafeez Mohammad Saeed @

Hafiz @ Hafiz Saab. Alias name of A1-Kasab was Abu Mujahid. The others who were present at the time of this naming ceremony, were deceased A2-Imran Babar, deceased A3-Nasir, deceased A4-Nazir, deceased A5-Hafiz Arshad, deceased A6-Abdul Rehman Chota and deceased A9-Shoaib. One more trainee from Rawalpindi was also 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 A5-Abu Kaahfa and wanted A34-Abu Imran were their trainers during the said training of Daura-e-Ribat. During this training also, Major General Sahab (wanted A20) visited their camp and appreciated the trainees.

134. After this training, they were taken to Karachi. Thereafter, arrangement for their stay 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 read maps, to judge depth of sea, use of GPS and they were also trained to spread fish net in the sea. Training for spreading fish net was given to enable them to disguise themselves as fishermen. After marine training, they were again brought to the office of wanted A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab known as Baitul Mujahid. After about three days, six of them were sent for Fidayeen attack on Kashmir. However other three i.e. Ismail Khan, Fahad Ullah and Javed were admitted in the group of A1-Kasab. They were known as Abu Ismail (deceased A1), Abu Fahad Ullah (deceased A7) and Abu Ali (deceased A8). A1-Kasab and others were told that those three persons had also undergone the training like them.

135. On the 13th day of Ramzan, wanted A1 to wanted A6 and wanted A18 called A1-Kasab and other trainees to the office of wanted A1-Hafeez Mohammad Saeed @ Hafiz @

Hafiz Saab at Baitul Mujahid. Wanted A1-Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab 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. Wanted A2-Zaki-Ur-Rehaman Lakhvi 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 have taken marine training, they will have to reach Mumbai by sea. In the meantime, wanted A20-Major General Saheb also reached there and he took test of all the trainees in respect of AK-47 rifle training.

136. A1-Kasab was declared to be the best amongst all and his work was appreciated by wanted A20-Major General Sahab. Thereafter, wanted A5-Abu Kaahfa introduced wanted A7-Zarar Shah to all the trainees and stated that he was Chief of the media wing of LeT.

137. All the ten Mujahids were divided into five pairs

(baddiya). The five pairs described by A1-Kasab in his confession before the learned Magistrate are as under :

1. A1-Ajmal Kasab- deceased A1-Abu Ismail

2. Deceased A2-Imran Babar and deceased A3-Nasir

3. Deceased A4-Nazir Ahemad and deceased A9- Shoaib

4. Deceased A5-Hafiz Arshad @ Hayaji and deceased A8-Javed

5. Deceased A6-Abadul Reheman Chhota and deceased A7-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 VTS Station, Malabar Hill, Hotel Taj, Hotel Leopold, Hotel Oberoi and Nariman House. They

were specifically told that while carrying out the attack they had to see that they selectively kill Americans, British and Israeli citizens as they had committed lot of atrocities on Muslims. Further instructions were given that while firing at VTS they should carefully ascertain as to how many Muslims are in the crowd. However, they had to fire without any discrimination at VTS 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 Hotel 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 bombs 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.

138. It was decided that A1-Kasab and deceased A1-Abu Ismail would fire indiscriminately at VTS and kill passengers on a large scale and, thereafter, they would

proceed to Malabar Hill and again start firing at Malabar Hill. Deceased A5-Hafiz Arshad and deceased A8-Javed were directed to go to Hotel Taj. Deceased A6-Abadul Rehman Chhota and deceased A7-Fahad Ullah were to attack Hotel Oberoi. Deceased A2-Imran Babar and deceased A3-Nasir @ Abu Umar were to attack Nariman House and deceased A4-Nazir @ Abu Umer and deceased A9-Shoaib were to attack Hotel Leopold and, thereafter, they had to join their associates at Hotel Taj. A1-Kasab was to install a RDX bomb below taxi driver's seat while proceeding to VTS and deceased A4-Nazir was to install RDX bomb below taxi driver's seat while proceeding to Hotel Leopold. Similarly, deceased A8-Javed was to install a bomb below taxi driver's seat while proceeding to Hotel Taj. It was decided that RDX bombs would be planted near the places of attack.

139. It was further decided that the pairs of deceased accused who would be attacking Nariman House, Hotel Oberoi and Hotel Taj would establish contact with media

and would falsely declare that they had kept some persons as hostages 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 A7-Zarar Shah and the maps were shown to A1-Kasab and deceased A1 to A9. A1-Kasab was specifically shown the places like VTS, Malabar Hill and roads leading to VTS and Malabar Hill. They were also shown few sketch maps and were told that these maps were prepared by one Sabauddin Ahmed Shaikh and Fahim Ansari of Indian origin, who are in custody in connection with an incident of firing at Rampur Police Camp. Wanted A5- Kaahfa had specifically shown a road from Badhwar Park to VTS and, thereafter, from VTS 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 Ramzan, 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 same. On the same night, they returned to the head office of LeT i.e. Baitul Mujahid. They were directed to cut their hair and get their beard shaved. New clothes, shoes and socks were purchased for all of them. They were also given watches in which Indian time was set. Photographs of A1-Kasab and of deceased A1 to A9 were taken. Identity cards were given to A1-Kasab and deceased A1 to A9 with Indian names purportedly issued by Arunodaya Degree College, Bangalore. The identity card given to A1-Kasab was issued in the name of Samir Chaudhary. Identity card given to deceased A1-Abu Ismail was issued in the name of Naresh Verma. Similarly, the identity cards of other deceased accused were also issued in 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. 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.

140. On the 20th day of Ramzan, wanted A2-Zaki-Ur-Rehaman Lakhvi visited the place where A1-Kasab and deceased A1 to A9 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 Ramzan Id in the same house at Ajijabad Mohalla in Karachi. During this period, they were trained to install bomb below driver's seat in a running taxi.

141. On 21/11/2008, A1-Kasab and deceased A1 to A9 were brought to another house situated near a creek. Wanted A2-Zaki-Ur-Rehman, wanted A7-Zarar Shah, wanted A3-Abu Hamza, wanted A5-Abu Kaahfa, Nasir and Nazir Ahmed were already present in the said house.

Deceased A1-Abu Ismail was named as Chief of the Mission. Arms and ammunition were given to deceased A1-Abu Ismail. Deceased A1-Abu Ismail was also told as to how the arms and ammunition were to be distributed amongst the ten accused including deceased A1-Abu Ismail himself. A1-Kasab and deceased A1-Abu Ismail were given Rs.10,800/- which they equally shared. Similar amount was given to other accused also. Wanted A7-Zarar Shah had given one mobile phone 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 Mumbai waters. They were instructed to start mobile phone only after reaching Mumbai. A1-Kasab and others were also told by wanted A2-Zaki-Ur-Rehaman Lakhvi that wanted A7-Zarar Shah had fed one number in the mobile phone and that if A1-Kasab and the nine deceased accused wanted to contact their handlers or co-conspirators, they would be required to press the green button.

142. Deceased A1-Abu Ismail was given certain phone numbers by wanted A2-Zaki-Ur-Rehaman Lakhvi and he was also given one satellite phone. The details of latitude and longitude were also written down by deceased A1-Abu Ismail in one diary. Wanted A2-Zaki-Ur-Rehaman Lakhvi thereafter left the said place. Deceased A1-Abu Ismail thereafter distributed the arms and ammunition amongst the ten accused including he 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. of raisin, one head phone, three 9 volt batteries and charger. 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 LeT. Deceased A1-Abu Ismail asked them to keep in the pocket their identity cards bearing Hindu names.

143. On 22/11/2008 at about 6.00 a.m., all the accused proceeded to the creek after offering Namaz. Wanted A2-Zaki-Ur-Rehman told them that wanted A1-Hafeez Mohammad Saeed had taken lot of pains on this mission and that this mission was necessarily to be a successful mission. He told them that there should not be any omissions or frustration of the plan which would make wanted A1-Hafeez Mohammad Saeed feel ashamed. 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 A3-Sabauddin and A2-Fahim Ansari were handed over to each pair. The sketch map containing road maps of

VST and Malabar Hill was kept by deceased A1-Abu Ismail with him. All of them were told that they had to tear off the maps after reaching their destination. Deceased A1-Abu Ismail 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 A16-Mursheed, wanted A17-Aakib and wanted A19-Usman. All of them belonged to LeT. Wanted A16-Mursheed had handed over haversacks containing arms and ammunition and the sack containing bomb to each of the accused. Deceased A1-Abu Ismail 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 wanted A17-Aakib and wanted A19-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 kept there to assist the accused in navigating the boat to Indian waters. The diesel containers of Al-Husaini were also transferred to boat Kuber. The four persons who were transferred to boat Al-Husaini were kept hostages there. The articles meant for A1-Kasab and deceased A1 to A9 including their arms and ammunition were transferred to boat Kuber.

144. In accordance with their 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 deceased A1-Abu Ismail and deceased A8-Javed. A1-Kasab and deceased A1 to A9 had maintained contacts with wanted A3-Abu Hamza through satellite phone. The navigator was being given food intermittently because they wanted his help to reach Mumbai.

145. On 26/11/2008 at about 11.00 a.m. deceased A1-Abu Ismail gave red and pink threads to all the accused to tie on their wrists. The boat reached near Mumbai waters around 4.00 p.m. A1-Kasab and deceased A1 to A9 could see tall buildings of Mumbai. A1-Kasab asked wanted A3-Abu Hamza as to what was to be done with the navigator of M.V. Kuber. Wanted A3-Abu Hamza laughed and told him "*do what you want*". A1-Kasab then advised deceased A1-Abu Ismail that the best option available to them was to eliminate the navigator. Accordingly, A1-Kasab with the help of deceased A9-Shoaib and deceased A3-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. A1-Kasab suspected it to be a naval boat and, therefore, they immediately left boat Kuber and jumped into inflatable boat and started their journey towards Mumbai. In this process, deceased A1-Abu Ismail forgot to remove the sea valve of boat Kuber. He also forgot his satellite phone on boat Kuber. After navigating for about one and half hour, the speed boat was brought to the seashore. A1-Kasab and deceased A1-Abu Ismail 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.

146. While A1-Kasab and deceased A1-Abu Ismail 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. A1-Kasab told the said person that they were students. There was minor verbal quarrel between him on one hand and the said person on the other hand. Thereafter, A1-Kasab and deceased A1-Abu Ismail proceeded towards the road and hired a taxi. They reached VTS within 15 to 20 minutes. Before reaching VTS, A1-Kasab had installed a RDX bomb below the driver's seat. He had adjusted the timer in such a manner that the bomb would explode only after one hour and fifteen minutes. After entering VTS, A1-Kasab was not satisfied with the crowd in the Station. He thought it was lesser then what was shown to him when the CD was played before him by wanted A7-Zarar Shah. Deceased A1-Abu Ismail therefore, tried to contact wanted A3-Abu

Hamza but could not contact him because of lack of network. Deceased A1-Abu Ismail also could not contact anybody from his phone. Both the phones were kept with him by deceased A1-Abu Ismail. Thereafter, they proceeded further inside the VTS. According to the plan, deceased A1-Abu Ismail had installed timer on a bomb carried by him. This work of installation of batteries and timer was done by deceased A1-Abu Ismail 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 deceased A1-Abu Ismail and A1-Kasab decided to open fire.

147. First of all, deceased A1-Abu Ismail had thrown one hand grenade on the passengers and thereafter both of them started firing from their AK-47 rifles indiscriminately. After sometime, one more hand-grenade was thrown by deceased A1-Abu Ismail and both of them again continued to fire and, killed large number of persons at VTS. The people who were injured and who had not sustained any

injuries started running out of VTS due to fear. In the meantime, police started firing at the accused, however A1-Kasab and deceased A1-Abu Ismail retaliated. Some of the policemen were killed by them and, thereafter, both of them came out of VTS from a bridge (foot over bridge). A1-Kasab had emptied about six magazines at VTS. As soon as they landed in one of the lanes from the said bridge, they had attempted to open the door of one of the cars as they had seen many cars parked in the said lane. They could not open the door of 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 them. They therefore thought that they should enter the adjoining building and fire at the police from the terrace of the building. They thought that they would be able to eliminate the police officers by throwing hand grenades and firing at them by AK-47 rifles. Thereafter, they entered the building by jumping over the main gate. The police followed them. There was exchange of fire between the police and A1-Kasab and deceased A1-Abu

Ismail in the said building. A1-Kasab and deceased A1-Abu Ismail could succeed in killing some police officers who had followed them. After killing the police officers they came down from terrace. At that time, they came to know that the building was a hospital. They could hear the cries of some women and children in the rooms. A1-Kasab and deceased A1-Abu Ismail 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 near the wall, they saw one policeman on the road. A1-Kasab killed the said policeman and, in the meantime, they also saw one car with red beacon coming out of the said lane. A1-Kasab and deceased A1-Abu Ismail started firing at the said vehicle. Deceased A1-Abu Ismail threw 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 doors of the car but could not succeed.

148. In the meantime, one car with amber light was seen approaching them from the said lane. A1-Kasab and deceased A1-Abu Ismail, therefore, immediately took shelter behind the bushes on the footpath. As soon as the said vehicle came near the bushes, A1-Kasab and deceased A1-Abu Ismail started firing at the vehicle. There was cross-firing from the vehicle also. A1-Kasab sustained injuries on his both the hands due to firing from the said vehicle. After sometime, there was no firing from the said vehicle. A1-Kasab and deceased A1-Abu Ismail 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 rear door of the vehicle but could not succeed. Deceased A1-Abu Ismail opened the door from the driver's side and A1-Kasab opened the left front door. The dead bodies of three police officers were taken out of the vehicle and were thrown on the

road. Deceased A1-Abu Ismail 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. Deceased A1-Abu Ismail occupied driver's seat and A1-Kasab occupied front left seat. Both of them thereafter left the said lane in the said police vehicle. (This police vehicle is referred to as police Qualis vehicle in the evidence of witnesses).

149. While they were proceeding further in the said vehicle, they saw that there was a large number of policemen and public at one square (junction). Deceased A1-Abu Ismail fired at the police and the public while driving the vehicle. In the meantime, left tyre of the said police vehicle got punctured. Despite that, deceased A1-Abu Ismail continued to accelerate speed of the vehicle. After sometime, one car was spotted by them. A1-Kasab fired in the air. Therefore, the said car was stopped. The driver of the said car was forcibly pulled out from the car. Two other passengers had also left the car. Deceased A1-

Abu Ismail occupied the driver's seat and A1-Kasab occupied the front left seat of the car.

150. A1-Kasab asked Deceased A1-Abu Ismail as to where they were to go. Deceased A1-Abu Ismail replied that they were to go to Malabar Hill. A1-Kasab inquired from deceased A1-Abu Ismail as to exactly which place they had to go at Malabar Hill. Deceased A1-Abu Ismail told him that he would come to know that only after reaching Malabar Hill. They could not reach Malabar Hill as they 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. Deceased A1-Abu Ismail kept headlights own 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 take 'U' turn. The car hit the road divider and came to a stand still. Since the police approached the car, both of them raised their hands to pretend that they had surrendered. Despite that, police continued to reach

near the car. Deceased A1-Abu Ismail 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 with his pistol. A1-Kasab also, sensing danger, opened left door and picked up his AK-47 rifle. The police tried to snatch away his rifle. There was a scuffle between A1-Kasab and the police. During the scuffle A1-Kasab pulled trigger of his rifle. The bullet hit the police officer who had held his AK-47 rifle. Due to the bullet injury, the police officer collapsed on the road. Immediately thereafter, he was assaulted by the policemen with sticks. He was disarmed and was apprehended. He saw that deceased A1-Abu Ismail was injured and he was also apprehended by the police. They were then taken to the hospital in an ambulance. Deceased A1-Abu Ismail was declared dead. A1-Kasab was admitted for treatment. He was interrogated by the police. He disclosed his name, address and other details to the police. He also disclosed to the police as to how he reached Mumbai along with his other associates.

151. Before we turn to the evidence, we will have to deal with the plea of guilt of A1-Kasab.

H. GIST OF PLEA OF GUILTY OF A1-KASAB.

152. On 6/5/2009, Charge (Ex-50) was explained to the accused. All the accused pleaded not guilty to the charge and claimed to be tried. Their pleas came to be recorded at Ex-51, Ex-52 and Ex-53 respectively. Additional Charge was framed against the accused. That was also explained to the accused. All the accused pleaded not guilty to the same. Their pleas were recorded at Ex-51-A, Ex-52-A and Ex-53-A.

153. After the evidence of 134 witnesses was recorded on 20/7/2009, A1-Kasab told the court that he wants to have conference with his lawyer Mr. Kazmi. After conferring with his lawyer for about 30 minutes, A1-Kasab informed the court that he wants to plead guilty and that he wants

to make a statement. Objection was raised by the prosecution that his plea was recorded under Section 299 of the Code when the Charge was explained and that stage having gone his plea cannot be recorded now. Subsequently, however, the prosecution conceded that the accused could plead guilty at any subsequent stage of the trial. It is, therefore, not necessary to dwell on this issue any further, particularly in view of the observation of the Supreme Court in **State of Maharashtra through CBI v. Sukhdev Singh @ Sukha & Ors., 1992 Cr. L.J. 3454(i)** that nothing prevents the accused from pleading guilty at any subsequent stage.

154. Learned Sessions Judge, therefore, recorded the statement of A1-Kasab on 20/7/2009 and his additional statement on 21/7/2009 in which he partly pleaded guilty. They are at Ex-531 and Ex-531-A respectively. It would be appropriate, at this stage, to reproduce the gist of admissions made by A1-Kasab in his statements containing plea of guilty recorded by the trial court.

"1. There were in all ten persons including A1-Kasab;

2. Wanted A3-Abu Hamza, wanted A5-Abu Kaahfa, wanted A2-Zaki-Ur-Rehman had come to see them off at Karachi.

3. A1-Kasab knew names of nine deceased accused.

4. A1-Kasab gave details as to how he and others travelled upto Al Husaini and as to how they hijacked boat Kuber.

5. A1-Kasab stated that there were seven persons on Al Husaini boat. He disclosed names of three of them as wanted A16-Murshad, wanted A17-Aakib and wanted A19-Usman and stated that

wanted A16-Murshad was the boss.

6. *A1-Kasab admitted to have hijacked boat Kuber and further admitted that the articles were transferred from Al-Husaini to boat Kuber.*

7. *A1-Kasab also referred to inflatable boat and other articles.*

8. *He mentioned that there were five persons on boat Kuber; that Amarchand Solanki was the navigator and that four of them were transferred to Al Husaini.*

9. *A1-Kasab admitted that there were ten persons including him and the 11th person was the navigator Amarchand Solanki.*

10. A1-Kasab further stated that deceased A1-Abu Ismail was navigating Kuber boat with the assistance of Amarchand Solanki by using GPS.

11. A1-Kasab admitted that they had been keeping watch around the boat alternatively.

12. A1-Kasab admitted killing of Amarchand Solanki. A1-Kasab, however, did not admit that deceased Amarchand was killed by him. He stated that he had seen deceased A4-Abu Umer holding a rope and deceased A9-Sohaib holding a knife indicating thereby that deceased A9-Sohaib had killed the navigator.

13. A1-Kasab admitted that each of the ten bags contained one AK-47 rifle, one

pistol and eight hand-grenades. He admitted the prosecution story regarding bombs. He admitted that there was one mobile set of Nokia make in each of the bags. He further admitted that hand grenades were made in China and they were of different shapes.

14. *A1-Kasab admitted that there were five pairs of the accused and each pair was carrying one GPS. He admitted that he and deceased A1-Abu Ismail had travelled to CST in a taxi. He did not admit that he had planted bomb below the driver's seat in the taxi.*

15. *A1-Kasab admitted that deceased A1-Abu Ismail had thrown hand grenades in the first instance at CST and that both of them had fired at the passengers. He*

also admitted that after firing in the main hall they had proceeded to the second hall. He admitted the encounter between deceased A1-Abu Ismail and the police at CST. He admitted that there was exchange of fire between the police and him.

16. *A1-Kasab has admitted their entry in B. T. Road. He admitted that the pictures shown in the court when the first CD was played in the court are the correct record.*

17. *A1-Kasab further admitted the firing at the B.T. Road and his entry in the Cama Hospital along with deceased A1-Abu Ismail.*

18. *A1-Kasab also admitted the evidence*

given by the witnesses regarding their confinement in the bathroom.

19. *He further admitted that there was a person who was reluctant to cooperate with the accused and he was injured. He admitted that he had seen the said person in a pool of blood. He stated that the said person has been examined as a witness in the court. It may be noted here that the said person is PW-106 Harishchandra Shrivardhankar.*

20. *He further admitted their entry on the terrace of a building and encounter with the police when the police arrived on the 6th floor. After sometime they left Cama Hospital.*

21. *He admitted the incident at B. T. Road*

involving two vehicles including one vehicle of police officers.

22. *He admitted having taken away police vehicle after removing deceased police officers from the said vehicle. He further admitted having robbed Skoda vehicle. The incident narrated by the witness Sharan Arasa (PW-144) regarding the key of the car has also been admitted by A1-Kasab in his statement. He admitted their interception by the police.*

23. *He admitted that deceased A1-Abu Ismail had tried to take "U" turn when they were intercepted by the police. He admitted that they were taken to the hospital.*

24. He 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 admitted his training at Muridake and Mansera.

26. He admitted his visit to village Buttal for training. He named three trainers i.e., wanted A10-Abu Anas, wanted A11-Abu Bashir and wanted A9-Abdul Rehman.

27. He admitted that he had taken training at Mujjafarabad in Azad Kashmir. He admitted to have gone to 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. *He admitted that after about ten days of his return, Sayyad Bhai and wanted A3-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. *A1-Kasab also admitted to have taken marine training at Karachi seashore. He admitted that he and other trainees were trained to spread fish net in the sea.*

31. *A1-Kasab also admitted to have seen some movies and pictures of CST on a laptop of wanted A3-Abu Hamza. He admitted that the scheduled programme*

of attack was delayed and that they were informed accordingly. He further admitted that arms and ammunition 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 and ammunition were transferred to boat Al-Husaini before A1-Kasab and others reached there.

I. DISCUSSION ON PLEA OF GUILTY OF A1-KASAB.

A question arose before learned Sessions Judge whether A1-Kasab could be convicted of all the charges framed against him on the basis of plea of guilty. Objection was raised by the prosecution that A1-Kasab's plea be rejected and it should not and could not be made a part of the record because it cannot be considered for any purpose.

155. Order dated 23/7/2009, passed by the learned

Sessions Judge on the statement of A1-Kasab recorded on 20/7/2009 and 22/7/2009 indicates that in the light of this court's judgment in **Abdul Kadar Allarakhia v. Emporor, AIR 1934 Bombay 345,** learned Sessions Judge recorded the said statements in detail and directed that the said statements i.e. the plea shall form part of the record. Learned Sessions Judge was satisfied that the plea of guilty was voluntary. Learned Sessions Judge recorded that A1-Kasab himself told him that his statement was voluntary and that he was not influenced by any extraneous things. He also informed the court that he was not mentally or physically tortured in jail custody. Learned Sessions Judge observed that admissions can be proved against the accused under Section 21 of the Indian Evidence Act. He further observed that A1-Kasab has partially admitted the guilt, he has not admitted all the charges and, therefore, it was not possible to accept the plea of guilty and convict him, however, it can be used against A1-Kasab in view of Section 21 of the Indian Evidence Act. Learned Sessions Judge has while coming

to the conclusion that statement made by A1-Kasab is voluntarily made, made certain pertinent observations about the demeanour of A1-Kasab. He observed that while making the statement, A1-Kasab was not under any pressure. He was absolutely comfortable and he voluntarily made the statement. Learned Sessions Judge observed that A1-Kasab quite intelligently and schemingly avoided certain portions to be mentioned in his plea. He further observed that the cell of A1-Kasab is near the court and is manned by security officials of the jail and, therefore, there was no occasion for police officers to bring pressure on him.

156. Thus, the trial proceeded further. After the prosecution witnesses were examined and before A1-Kasab was called on for his defence, he was examined under Section 313(b) of the Code. He denied all the admissions of guilt made by him and stated that he was under police pressure. Learned Sessions Judge did not accept the case of police pressure pleaded by A1-Kasab

because A1-Kasab had not explained as to how and where the police had exerted pressure upon him to admit certain parts of alleged offences. Learned Sessions Judge referred to his order dated 23/7/2009 and reiterated the reasons given by him. In addition to that he added that cell of A1-Kasab is situated a few meters away from the court room and is manned by security officials of jail and as such there was no occasion for the police to bring pressure on him. It is further observed that A1-Kasab was never allowed to meet anybody while being brought to the court and during journey to jail and, therefore, his statement that police pressure was exerted on him is totally unacceptable. Learned Sessions Judge in the circumstances used the plea as a corroborative piece of evidence.

J. OBJECTION TO THE USE OF PLEA OF GUILTY AS CORROBORATIVE PIECE OF EVIDENCE.

157. Mr. Solkar, learned counsel for A1-Kasab submitted that learned Sessions Judge was right in making the plea a part of record. He submitted that learned Sessions Judge was also right in not accepting the plea as it was partial

admission of guilt. Mr. Solkar further submitted that learned Sessions Judge was right in not examining A1-Kasab at the stage under Section 313 (a) of the Code. Mr. Solkar submitted that learned Sessions Judge, however, erred in using the plea against A1-Kasab as a corroborative piece of evidence. He submitted that plea was made after 136 witnesses were examined. The evidence indicates that A1-Kasab conferred with his counsel only for a short while. The plea of guilty is, therefore, not true and voluntary. It was made without understanding the implication thereof. Mr. Solkar further submitted that A1-Kasab has subsequently retracted the plea. Therefore, the plea could not have been relied upon for any purpose. Mr. Solkar further submitted that the plea is like a confession made by A1-Kasab. He submitted that there is a great variance between A1-Kasab's confession recorded under Section 164 of the Code and the plea and, therefore, neither the judicial confession nor the plea can be relied upon.

158. In ***Abdul Kadar Allarakhia,*** this court has observed that, if the accused makes a statement that he is guilty of the offence charged, before the question of its acceptance by the court can arise, the court must ordinarily be satisfied that the statement has been made with full understanding of the plea and of the implications of the plea. This court has further observed that it is desirable to record a complete statement of the accused to find out what he exactly means by pleading guilty. This court has further observed that a plea made by the accused before the judge at the commencement of the sessions case cannot stand in a worse position than a confession made by the accused himself before a Magistrate under Section 164 of the Code, or a statement made by the accused admitting his guilt to the court of the committing Magistrate. This court has further observed that such a plea could not be effaced from the record and in reality forms part of the record. The following observations of this court need to be quoted.

> *"Where, therefore, the accused pleads guilty, and the Judge is satisfied that the accused understands fully the implications of his plea, then the plea must be recorded. After recording the plea, it is open to the Judge either to convict or not to convict the accused upon that plea, and as a matter of practice it is desirable to proceed with the trial as if the plea was one of not guilty, lest the evidence may disclose that the facts proved do not, in law, constitute an offence of murder but some lesser offence. But in such cases, the plea remains a plea of guilt, and the trial proceeds for the purpose of ascertaining the circumstances which had resulted in the death and to find out whether the accused can, in law, be said to have committed murder."*

In view of the above, in our opinion, learned Sessions Judge has rightly made the plea a part of record.

159. In ***Sukhdev Singh @ Sukha,*** the Supreme Court dealt with plea of guilty and the procedure to be adopted while recording it. The relevant portion of the Supreme Court judgment may be quoted:

> *"Even on the first principle, we see no reason why the Court could not act on the admission or confession made by*

the accused in the court of the trial or in his statement recorded under Section 313 of the Code. The procedure for the trial of Sessions case is outlined in Chapter XVIII of the Code. According to the procedure provided in that Chapter after the case is opened as required by S. 226, if, upon consideration of the record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for reasons to be recorded. If, however, the Judge does not see reason to discharge the accused he is required to frame in writing a charge against the accused as required by S. 228 of the Code. Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that, if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that, if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear,

> *unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself. This plea of guilt may also be put forward by the accused in his statement recorded under S. 313 of the Code."*

160. In the light of the above judgments, learned Sessions Judge adopted a very prudent approach and, instead of accepting the plea of guilty which was partial, and convicting A1-Kasab, he proceeded with the trial to ascertain his involvement. Learned Sessions Judge did not examine A1-Kasab under Section 313(a) of the Code at that stage, because according to him that would have

caused prejudice to him. Learned Sessions Judge had the advantage of seeing the demeanour of A1-Kasab. He was, therefore, in a better position to evaluate credibility of his plea (as to demeanour see **Babu v. State of Kerala, (2010) 9 SCC 189**). We are, therefore, of the opinion, that learned Sessions Judge's observation that A1-Kasab was absolutely comfortable and he made the statement voluntarily, will have to be accepted. Learned Sessions Judge has observed that A1-Kasab told him that he was not mentally and physically tortured in jail. We have no reason to disbelieve this statement.

161. Mr. Solkar submitted that there is variance between the plea and the judicial confession. It is true that there is some difference between the two. But, there is no great variance as contended by Mr. Solkar. In the plea, A1-Kasab has attributed lesser role to himself. Therefore, the plea appears to have been made cleverly and consciously.

162. We have already noted that A1-Kasab has retracted

his plea. In his statement under Section 313 of the Code, when A1-Kasab's attention was drawn to the statement made by him in his plea of guilty that he had sustained injury due to firing from the police vehicle, he gave evasive answer. He stated that he had not so stated and that he did not remember. When he was asked whether he wanted to say anything more about the case, he stated that he was apprehended on 6th day of the month in which the incident dated 26th had occurred. Thereafter, he was handed over to RAW and RAW handed him over to Crime Branch. He has further stated that the officers of Crime Branch shot at him, injured him and later on he was produced before the Magistrate. The evidence on record to which we shall soon advert indicates that this is a dishonest defence. There is cogent evidence on record to prove that A1-Kasab was apprehended on 26/11/2008 at Chowpaty when the hijacked Skoda vehicle driven by deceased A1-Abu Ismail in which he was sitting, was stopped by the police at Chowpaty. In cross-firing, deceased A1-Abu Ismail and ASI Ombale died. The

retraction of the plea of guilty is, therefore, clearly an afterthought. In ***Sidharth Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 2 SCC (Cri.) 1385***, the Supreme Court has held that where the accused furnishes false answers as regards proved facts, the court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused. As we have already noted, the plea of guilty is rightly made a part of the record. Its retraction is an afterthought. This conduct of A1-Kasab will indeed be a circumstance against him. As we have already noted in ***Abdul Kadar Allarkhia***, this court has observed that a plea made by the accused before the Judge at the commencement of the sessions case cannot stand in a worse position than a confession made by the accused himself before a Magistrate under Section 164 of the Code or a statement made by the accused admitting his guilt to the court of the committing Magistrate. Therefore, in our opinion, the plea made by A1-Kasab before learned Sessions Judge admitting guilt will also have to be

examined in the light of the principles laid down by the Supreme Court as regards confessional statement which we have noted hereinabove. It bears repetition to state that learned Sessions Judge has made observation about the demeanor of A1-Kasab. He has considered all circumstances and observed that A1-Kasab was not under any pressure and had voluntarily made the said statements. He has further observed that intelligently, A1-Kasab has avoided mentioning certain facts in his statement. This reasoning of learned Sessions Judge is correct. In our opinion, therefore, it is open to the court to take into consideration that part which appears to be true and reject the other part which is false (***Keshoram Bora***). We are satisfied that the retraction of plea of guilty by A1-Kasab is clearly an afterthought and is totally unpalatable. The statements of A1-Kasab recorded by learned Sessions Judge admitting guilt, therefore, can be used as a corroborative piece of evidence. We concur with learned Sessions Judge on this aspect.

K. IDENTIFICATION PARADE.

163. Another important issue involved in this case is the identification of A1-Kasab by the witnesses. There are witnesses who have participated in the identification parade and identified A1-Kasab. Some of them are injured. There are some witnesses who were injured but they did not participate in the identification parades. They have identified A1-Kasab in the court. Some witnesses are not injured. They have not participated in the identification parade but, they have identified A1-Kasab in the court.

164. Learned Sessions Judge has observed that though most of the witnesses have stated that they had no occasion to see the photographs of A1-Kasab, he was not inclined to believe that part of the evidence. Learned Sessions Judge has expressed that in his opinion most of the witnesses must have seen the photographs of A1-Kasab on the TV or in the newspapers. Learned Sessions

Judge has then posed a question to himself whether this has vitiated the substantive evidence of the witnesses given in the court. He has answered this question by saying that the photographs were not purposely shown to the witnesses; they were so widely published that a large number of people all over the world might have seen the photographs of A1-Kasab but, there was nothing in the cross-examination to show that it is because of the photographs that the witnesses have identified A1-Kasab. Learned Sessions Judge has further observed that most of the witnesses had seen A1-Kasab from very close quarters during the incident. Therefore, they had sufficient opportunity to remember the face and physic of A1-Kasab. Mr. Nikam, learned Special Public Prosecutor submitted that learned Sessions Judge's finding that the photographs were published and the witnesses must have seen them, jeopardizes the dock identification, which is made by the witnesses because it can be argued that those witnesses had seen A1-Kasab on TV or in the newspapers. He submitted that there is no consistency between the

observations of learned Sessions Judge that these witnesses had opportunity to see A1-Kasab, because most of them had seen him from close quarters and his observation that they had seen him on TV or in the newspapers. Mr. Nikam submitted that it is, therefore, necessary to clarify the correct position. We appreciate the anxiety of Mr. Nikam. In fact, Mr. Solkar has also submitted that if witnesses had seen the photographs of A1-Kasab on TV and in the newspapers, their dock identification cannot be relied upon. It is necessary to refer to the relevant judgments of the Supreme Court citied by both sides and then turn to the evidence of PW-265 Sharad Vichare, the SEM.

165. Identification parade is a step in investigation. It is vital to the investigation of a case. It helps the investigating agency to find out whether it is on the right track. It is not substantive evidence. Identification of the accused by a witness in a court is substantive evidence. Identification of an accused by the witness in the

identification parade lends support to his identification in the court by the same witness. The High Court Criminal Manual lays down the guidelines which the Special Executive Magistrates (SEMs) are expected to follow while conducting identification parades. These guidelines are directory and not mandatory. The SEM is expected to scrupulously follow them but minor deviations from the guidelines do not vitiate the identification parade. Basic requirements, however, have to be followed. In this connection, we can usefully refer to the judgment of the Supreme Court in ***State of Maharashtra v. Suresh, 2000 (1) SCC 471.*** In that case, this court took the view that the identification parade was irretrievably vitiated because the witnesses had said that the accused were taken on foot from the police station to the place where the parade was conducted and their faces were not covered during such transit. The Supreme Court considered the minutes of the test identification parade where it was inter alia stated that the suspects were brought from the lock up with the help of two respectable

persons and all precautions were taken so that the witnesses would not see the suspect during such transit and held that this court had niggled on unimportant details and come to a wrong conclusion. The Supreme Court observed that the Executive Magistrate had adopted sufficient safeguards in ensuring that the parade was conducted in a reasonably foolproof manner. The object behind conducting a test identification parade and how the test identification parade evidence is to be appreciated was stated by the Supreme Court in the following paragraph.

> *"If potholes were to be ferreted out from the proceedings of the Magistrates holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities*

> *that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held (vide Budhsen v. State of U.P., Ramanathan v. State of T.N.).”*

166. In ***Anilkumar v. State of U.P., 2003 SCC (Cri.) 770,*** there was 47 days' delay in holding the test identification parade. The Supreme Court referred to its judgment in ***Brij Mohan v. State of Rajasthan, 1994 (1) SCC 413***, where the test identification parade was held after three months. The Supreme Court held that no time limit could be fixed for holding a test identification parade. Sometimes, the crime itself is such that it would create a deep impression on the minds of the witnesses who had an occasion to see the culprits. The Supreme Court observed that this impression would include facial impression of the culprits and such a deep impression would not be erased within a period of three months. The Supreme Court in the facts before it, where the accused

had attacked the brother of the injured in a brutal manner and killed, held that circumstances were such that they would impress upon the minds of the injured, the facial expressions of the assailants. It was further observed that in their memory also the facial expressions of the assailants would get embossed. Thus despite the delay, identification in the identification parade was upheld because the final expressions of the accused were imprinted in the memory of the witnesses on account of nature of the offence.

167. In ***Siamon & Ors. v. State of Karnataka, 2004 SCC (Cri.) 646,*** no identification parade was held. The accused were identified by the witnesses first time in the court. It was urged that it was risky to rely on such identification. The Supreme Court rejected this argument. The relevant observations of the Supreme Court are as under:

> *"The legal position on the aspect of identification is well settled. Under Section 9 of*

the Indian Evidence Act, 1872, the identity of the accused persons is a relevant fact. We have no difficulty in accepting the contention that evidence of mere identification of an accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of that evidence. Courts generally look for corroboration of the sole testimony of the witnesses in court so as to fix the identity of the accused who are strangers to them in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It has also to be borne in mind that the aspect of identification parade belongs to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. Mere failure to hold a test identification parade would not make inadmissible the evidence of identification in court. What weight is to be attached to such identification is a matter for the courts of fact to examine. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration (see Malkhansingh v. State of M.P.)"

168. In ***Sarvan Singh v. State of Punjab, 2003 SCC (Cri.) 282,*** also the Supreme Court accepted the identification of the accused in the court without there

being any identification parade.

169. In ***Pramod Mandal v. State of Bihar, 2005 SCC (Cri.) 75,*** the Supreme Court considered whether delay in holding identification parade is fatal. After considering the relevant judgments on the point, the Supreme Court held that it is neither possible nor prudent to lay down any invariable rules as to the period within which a test identification parade must be held. The Supreme Court observed that this matter must be left to the court of fact to decide in the facts and circumstances of each case. In that case, it was argued that even in the absence of test identification parade the conviction of the appellant would be fully justified on the basis of evidence of *PW-4* alone, who identified the appellant in the court. The Supreme Court accepted this argument. The Supreme Court observed that there was no irregularity or unfairness in the holding of the test identification parade. It was further held that evidence of *PW-4* who was an eye-witness was corroborated by the result of the test

identification proceedings. There was sufficient light to enable the witness to identify the dacoits. The presence of *PW-4* could not be disputed because he had suffered injuries. He had ample opportunity to notice the appearance and physical features of the culprits. The Supreme Court observed that the traumatic experience of that fateful day in which a young girl lost her life, within his view, must have left the faces of the assailants imprinted in his memory. The Supreme Court, therefore, did not doubt the veracity of *PW-4* in arriving at this conclusion. The Supreme Court relied on its judgment in ***Malkhansingh v. State of M.P., (2003) 5 SCC 746***, where it has observed that failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases, observed the Supreme Court, it may accept the evidence of identification even without insisting on corroboration.

170. In ***Munshi Singh Gautam (Dead) & Ors. v. State of M.P. 2005 SCC (Cri.) 1269***, the Supreme Court has held that it is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. While dealing with the identification of the accused made first time in the court, the Supreme Court held that it is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger, who had just a fleeting glimpse of the persons identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court and it is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them in the form of earlier identification proceedings. The Supreme Court, however, clarified that this rule of prudence, however, is

subject to exceptions when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. The Supreme Court further observed that the weight to be attached to identification made first time in the court would be a matter for the courts of fact. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration.

171. Following the dictum of the Supreme Court in ***Munshi,*** in ***Sidhartha Vashisht @ Manu Sharma***, the Supreme Court has held that even when there is no previous test identification parade, the court may appreciate the dock identification as being above board and more than conclusive.

172. It is clear from the above judgments that to ascertain whether identification parade evidence is reliable or not, one has to consider the evidence of the SEM, the test identification parade memo and other relevant

circumstances. If the parade is conducted in a reasonably foolproof manner by adopting sufficient safeguards, minor deviations should not lead the court to discard that evidence. There is no doubt that test identification parade should be held as soon as possible. But, no hard and fast rule can be laid down in this behalf. It is neither possible nor prudent to lay down any rules as to the period within which a test identification parade should be conducted. The time factor would depend on facts and circumstances of each case and if there is proper explanation, delay in holding identification parade will not vitiate it. Identification of an accused in the court in the absence of test identification parade can also be relied upon in a given set of circumstances. If the witness had sufficient opportunity to see the accused because of availability of light, or if the witness undergoes a traumatic experience and, therefore, the features of the accused are embossed in his memory, and if his evidence inspires confidence, identification made by him in the court can safely be believed.

173. In the light of the above principles, we shall examine the evidence on record. PW-265 Sharad Vichare, the SEM has deposed that he had conducted three identification parades on 27/11/2008 at Arthur Road Prison, Mumbai, in respect of A1-Kasab. There were five identifying witnesses during the course of the first parade. They are PW-136 PN Arun Jadhav, PW-138 PN Suresh Kadam, Satyawan Dagadu Utekar, Ramchandra Laxman Utekar and PW-139 Maruti Phad. In the second identification parade, four identifying witnesses participated. They are PW-1 PSI Bhaskar Kadam, PW-3 API Hemand Bavthankar, PW-2 API Sanjay Govilkar and Ashok Sadashiv Pimpale. In the third identification parade, five identifying witnesses participated. They are PW-109 Chandrakant Tikhe, PW- 107 Raosaheb Funde, PW-103 Bharat Waghela, PW-105 Sandeep Waghela and PW-101 Mrs. Anjali Kulathe. This witness has stated that all the identifying witnesses identified A1-Kasab during the said three parades.

174. This witness conducted three more identification parades on 28/12/2008 by adopting similar procedure. In the first identification parade, six identifying witnesses participated. They are PW-49 Bharat Bhosale, PW-68 Kirankumar Bhosle, Suresh Fulchand Khatalkar, PW-66 Sandeep Khiratkar, PW-55 Dhananjay Gavali and PW-58 Mammat Nardele. In the second identification parade, there were two identifying witnesses. They are Bharat Tandel and PW-28 Bharat Tamore. In the third identification parade, identifying witness was PW-144 Sharan Arasa. Four more identification parades were held on 14/1/2009 in Arthur Road Prison. In the first parade, identifying witness was PW-147 Samit Ajgaonkar. In the second identification parade, identifying witness was Chokha Landge. In the third identification parade, identifying witnesses were PW-54 Jillu Jadav, PW-62 Sudama Pandarkar, PW-59 Harshad Patil and PW-57 Lau Kharat. In the fourth identification parade, the identifying witness was PW-111 Kailash Ghegadmal. In all these

identification parades, the identifying witnesses identified A1-Kasab.

175. The evidence of this witness discloses that he had complied with the guidelines of the High Court Criminal Manual which a Magistrate is expected to follow while conducting identification parades. He is an experienced person who has conducted about 200 identification parades. He has stated that the identification parades were held in the barracks of Arthur Road prison and he had taken care to ensure that the barracks were not visible to the identifying witnesses. He has further stated that the dummies were different for all the parades and they were selected by him from prisoners produced before him by the Prison Authorities. He has clearly stated that he had selected dummies of the built and height similar to that of A1-Kasab. He has further stated that during the course of all the identification parades, A1-Kasab was given opportunity to change his position whenever a new identifying witness was to be called. He was also given

option to change his clothes. He had also asked all the identifying witnesses whether they were shown A1-Kasab or his photographs anytime before their entry into the parade room. He has stated that all the witnesses replied in the negative. He has further stated that he had taken care to see that the witnesses who had taken part in the parade would not be allowed to meet any other witnesses who were waiting for their turn. He has further stated that the police officers, after introduction of identifying witnesses and selection of panch witnesses, were not allowed to be in the company of identifying witnesses or the panch witnesses. They used to remain outside the jail premises. He has repeated that he had taken all the precautions to see that the witnesses could not see A1-Kasab before his arrival in the parade room. He has said that the dummies in all parades pertaining to A1-Kasab were having thin beard. No dummy was bald. None of the dummies had hair upto shoulder. None of the dummies was having mole on his face. None of the dummies had any scar on his face. He has categorically

stated that he had conducted the identification parades on the basis of guidelines issued by the High Court Criminal Manual.

176. Mr. Solkar, however, pointed out that in the cross-examination, this witness was asked whether he had asked the identifying witnesses that they had occasion to see the photographs of A1-Kasab in the newspapers or on the TV. He has admitted that he did not ask such a specific question to any identifying witness. Mr. Solkar submitted that it was incumbent upon PW-265 Vichare to ask such a specific question to every identifying witness. We find no substance in this. We have already noted that this witness had asked a general question to all the witnesses which they had answered in the negative. If a general question was asked whether the witnesses had occasion to see the photographs of A1-Kasab on the TV or in the newspapers, it was not necessary for PW-265 Vichare to ask a specific question to every identifying witness. Mr. Solkar further submitted that PW-265

Vichare did not go to each and every dummy and ascertain whether they were having any identifying marks on their faces. Only after proper scrutiny, he should have selected dummies. He submitted that this not having been done, the identification parade becomes suspect. We have no hesitation in rejecting this submission. We have noted the care taken by PW-265 Vichare while selecting dummies. He has categorically stated that he ensured that all dummies were of similar built and height as that of A1-Kasab. He has further stated that during the course of all the identification parades, A1-Kasab was given opportunity to change his position whenever a fresh identifying witness was to be called. He was also given option to change his clothes. He had also taken care to see that there were no identifying marks on the dummies which would distinguish them from A1-Kasab. As stated by the Supreme Court in ***Suresh***, if the SEM follows the basic guidelines of the High Court Criminal Manual, if the identification parade is reasonably foolproof and is supported by properly drawn identification parade

memos, minor deviation in the procedures, will not vitiate it. In fact, we are of the opinion that there are no procedural irregularities in this case.

177. We have also gone through the relevant identification parade memos. Having perused the evidence of this witness, we are more than satisfied that PW-265 Vichare has meticulously followed the High Court Criminal Manual. He has taken care to ensure that dummies who resemble A1-Kasab were selected. He has taken all precautions to see that the identifying witnesses do not see A1-Kasab before the identification parade. The identification parade memos also inspire confidence. They bear out evidence of PW-265 Vichare. This witness has been cross-examined at length. However, in the cross-examination, he has reiterated that he had taken due care while conducting the identification parades. The defence has not elicited anything in the cross-examination which can establish that PW-265 had conducted the identification parade in a casual manner contrary to the

guidelines issued by the High Court Criminal Manual.

178. Mr. Solkar then submitted that there is delay in holding identification parade. Having regard to the nature of investigation which the police had to conduct in this case, which included recording statements of hundreds of witnesses, collecting voluminous circumstantial evidence, ascertaining international ramifications of the crime, etc. we are of the opinion that time taken to conduct identifying parade cannot be termed as delay. We have already noted the Supreme Court's observations that there is no fixed time schedule laid down as to the holding of the identification parades. In a given case, if there are sound reasons for not holding identification parade expeditiously, the delay will not be fatal. In our opinion, this is one such case. We are further of the opinion that merely because A1-Kasab's photograph was shown in the newspapers and on the TV, it cannot be presumed that all witnesses must have seen them. As we progress further and deal with individual instances, we will examine the

evidence of each identifying witness in the light of our above observations.

L. DELAY IN RECORDING STATEMENT.

179. There is one more aspect which needs to be dealt with at the outset. In respect of some of the witnesses, Mr. Solkar's contention is that their statements were recorded after considerable delay and, therefore, their evidence should not be taken into consideration. He submitted that the delay in recording statements of witnesses reflects on their credibility inasmuch as it gives rise to a grave suspicion that the time was used by the police to concoct the statements. It is not possible for us to accept this submission. We take judicial notice of the fact that the police were investigating a serious case of conspiracy. They were ascertaining the depth and extent of the conspiracy, which had international ramifications. The terrorists had targeted several important places, RDX was used. There were several bomb blasts. Two bombs

exploded in taxis, one at Vile Parle and another at Mazgaon. A totally new modus operandi was used by the conspirators. They had used the sea route to come to Mumbai, Satellite phones were used to contact the handlers. GPS was used to find the way to Mumbai. Several senior police officers succumbed to death on account of injuries sustained while trying to nab the terrorists. Investigation of a case of this nature cannot be equated with the investigation of an ordinary case of murder. Delay in recording the statements of witnesses, in our opinion, will not adversely affect the prosecution case. Besides, delay in recording statements cannot be taken against the prosecution unless the investigating officer is asked to give explanation for the delay and he fails to give explanation. No questions were posed to the investigating officer about this aspect. The witnesses have also not been confronted with this aspect.

180. In this connection, we may refer to ***Sidhartha Vashisht @ Manu Sharma.*** In that case, it was argued

that there was delay in recording statements of witnesses and that was fatal to the prosecution case. The Supreme Court observed that there were no concomitant circumstances to suggest that the investigator was deliberately marking time with a view to giving a particular shape to the case. It was observed that the details of investigation conducted on each day were very clearly brought out in the evidence of various witnesses. It was held that in the circumstances, delay in recording the statements of witnesses cannot be considered as an infirmity in the case. In our opinion, the above observations of the Supreme Court are squarely attracted to the present case. In this case, the investigator cannot be accused of any remissness or dilatory tactics with a view to concocting a false case against A1-Kasab.

181. We may also refer to the judgment of the Supreme Court in ***Vijay Kumar Arora v. State (Govt. of NCT of Delhi), (2010) 1 SCC (Cri.) 1476***. In that case, the statements of witnesses were recorded after one month

from the date of death of the deceased. The Supreme Court observed that neither an explanation was sought from any of the witnesses as to why their statements were recorded after a delay of one month nor the investigating officer was questioned about the delay in recording statements of those witnesses. The Supreme Court clarified that the law on the point is well settled. Unless the investigating officer is asked questions about the delay in recording statements and an explanation is sought from the witnesses as to why their statements were recorded late, the statements by themselves do not become suspicious or concocted. This judgment is also applicable to the present case. Similar view has been taken by the Supreme Court in ***Ranbir & Ors. vs. State of Punjab, AIR 1973 SC 1409***, ***Sunil Kumar & Anr. v. State of Rajasthan, 2005 SCC (Cri.) 1230*** and in ***Banti @ Guddu v. State of M. P., 2004 SCC (Cri.) 294***. This submission is, therefore, rejected.

M. REACTION OF WITNESSES IN PARTICULAR MANNER.

182. We must note that Mr. Solkar has attacked the conduct of some of the witnesses on the ground that they did not react in a particular manner. It must be remembered that the terrorist attack on various important locations of Mumbai was unprecedented and general public was caught unawares. None expected such horrific attack on public places. Number of people were affected. People ran helter-skelter to save their lives. This unusual terror attack was bound to give rise to unusual and different reactions. It would not, therefore, be right to discard the evidence of witnesses in this case on the ground that the witnesses did not behave in a particular manner. In this connection, we may usefully refer to the judgment of the Supreme Court in ***State of U.P. v. Devendra Singh, 2005 SCC (Cri.) 582***. Same argument was advanced in that case. Relying on its judgment in ***Rana Pratap v. State of Haryana (1983) 3 SCC 327***, the Supreme Court rejected the said

submission by observing as under:

> *"Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the assailants. Some may remain tight-lipped, overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon a variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way".*

N. MINOR DISCREPANCIES.

183. Mr. Solkar during the course of his argument laid stress on certain minor discrepancies in the evidence of witnesses. On the basis of such minor discrepancies, evidence of witnesses cannot be discarded. In ***State of Rajasthan v. Smt. Kalki & Ors., AIR 1981 SC 1390***, while meeting with similar submission, the Supreme Court observed that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. The Supreme Court has observed that these discrepancies 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 the like. Material discrepancies are those which are not normal and not expected of a normal person. Similar view has been taken by the Supreme Court in ***State of Panchab v. Karnail Singh, 2003 (5) Supreme 508.*** Thus minor errors of observation would not persuade us to discard the evidence of witnesses.

O. RECALL AND RE-EXAMINATION OF WITNESSES AND DEFERRING OF EXAMINATION IN-CHIEF.

184. Mr. Solkar has taken strong exception to the prosecution recalling some of the witnesses and deferring the examination-in-chief by adjourning the case. According to him, this is done by the prosecution to fill in the lacunae. Mr. Solkar submitted that learned Sessions Judge should not have allowed the recall of witnesses. We are not inclined to accept this submission. If we see Section 311 of the Code and Sections 138 and 165 of the Evidence Act, we find that the stress is on obtaining the best evidence as to reach the truth. The discretion which vests in the Presiding Officer of the court to allow recall of a witness or summon a witness is guided by this salutary principle. Some of the Supreme Court judgments to which our attention is drawn need to be quoted.

185. In ***Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346***, while considering the scope of

Section 540 of the Code of Criminal Procedure (5 of 1898) which is similar to Section 311 of the Code, the Supreme Court observed that the cardinal rule in the law of evidence is that best available evidence should be brought before the court to prove a fact or the point in issue. The Supreme Court observed that any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person in attendance though not summoned as a witness or recall or re-examine any person already examined who is expected to throw light upon the matter in dispute, because if judgments happened to be inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated. The Supreme Court observed that this section is expressed in widest possible terms and do not limit the discretion of the court in any way. The Supreme Court, however, clarified that this power should not be used capriciously or arbitrarily or for filling up the lacuna left by the prosecution or the defence. Witness could be recalled even after the

evidence is closed for just decision of the case.

186. In ***Rajendra Prasad v. Narcotic Cell, 1999 SCC (Cri.) 1062***, after the prosecution and the defence closed their evidence at the instance of the prosecution two of the witnesses, who were already examined, were re-summoned for the purpose of proving certain documents for prosecution. They were further examined and the evidence was once again closed and the case was posted for arguments. The public prosecutor again moved an application seeking permission to examine *PW-21* and two other persons. The trial court allowed this application in exercise of its powers under Section 311 of the Code. The Supreme Court confirmed the trial court's order by observing that an oversight in the prosecution case cannot be treated as an irreparable lacuna. Following observations of the Supreme Court need to be quoted.

> *"A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant*

materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up".

"Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better".

"It cannot be said as a legal proposition that the court cannot exercise power of resummoning any witness, if once that power was exercised, nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during final arguments. The power of the court is plenary to summon or even

> *recall any witness at any stage of the case, if the court considers it necessary for a just decision. The steps which the trial court permitted in this case for resummoning certain witnesses cannot, therefore, be spurned down or frowned at."*

187. Section 165 of the Evidence Act vests vast powers in the trial court to put any question in any form at any time, to any witness or to the parties about any fact relevant or irrelevant in order to discover the relevant facts. Its importance is stressed by the Supreme Court in ***Zahira***.

188. In ***Rammi @ Rameshwar etc. v. State of M.P., 1999 (8) Supreme 364***, while considering scope of reexamination contemplated under Section 138 of the Evidence Act, the Supreme Court observed as under:

> *"The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. There is "an erroneous impression that re-examination should be confined to clarification of ambiguities which have*

been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the Court in accordance with the other provisions. But the Court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination".

"Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the Court. If the Court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions".

"A Public Prosecutor who is attentive

> *during cross-examination cannot but be sensitive to discern which answer in cross-examination requires explanation. An efficient Public Prosecutor would gather up such answers falling from the mouth of a witness during cross-examination and formulate necessary questions to be put in re-examination. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination."*

189. Having regard to the best evidence rule reflected in the above provisions of law and having regard to the above quoted judgments of the Supreme Court, we cannot fault learned Sessions Judge for permitting recall of witnesses or permitting their reexamination. This case involves several incidents. It has international ramifications. Several experts were examined. Huge data had to be co-related. It appears to us that because of sheer volume of record, due to oversight certain facts which were necessary to be brought on record for the just decision of the case, were not brought on record. Certain

clarifications were necessary. Learned Sessions Judge had to, therefore, exercise his powers under Section 311 of the Code. It must be remembered that the prosecution adduced evidence of 654 witnesses. Learned Sessions Judge examined 5 court witness. CW-1 Varghese was examined to find out whether the CCTV recording at the Times of India was authentic. CW-5 PI Anthony was examined because he had defused the bombs and there was no evidence to indicate who had defused them. Other three court witnesses are NSG commandos who had taken part in the operation at the places of attack and who had handed over the articles recovered at these places to the police. Indeed, this was the correct step taken by learned Sessions Judge. PW-138 PN Suresh Kadam has deposed about the incident which took place when the Qualis police jeep passed from Mahapalika Road near junction of B.T. Road and Mahapalika Road adjoining St. Xavier's College. At that time, PW-128 PI Thorawade, who was in-charge of Azad Maidan Police Station was present. Inadvertently, he was not asked anything about

this incident. Learned Sessions Judge, therefore, recalled PW-128 PI Thorawade to find out whether PW-138 PN Suresh Kadam's evidence should be accepted or not. We feel that learned Sessions Judge correctly recalled this witness. We do not find any instances where witnesses have been recalled for filling in lacunae. It is important to note that learned Sessions Judge has recalled witnesses at the instance of defence also.

190. So far as the grievance that examination-in-chief of witness cannot be differed is concerned, we find that there is no provision in the Code restraining the court from deferring the examination-in-chief. Such an exercise may be necessary in a given case. Learned Sessions Judge's discretion to adjourn the case cannot be fettered. Unless there is reason to believe that examination-in-chief was deferred purposely to favour the prosecution, he cannot be faulted for passing such order. Undoubtedly, such order cannot be passed for the asking in a routine manner. The judge has to be circumspect while granting

such permission and such orders can be passed only in rare cases for genuine reasons. It is contended that in this case, examination-in-chief of PW-66 Khiratkar and PW-150 Ghadage was deferred to enable the prosecution to fill in the lacunae. We do not find that examination-in-chief was deferred to fill in the lacuna. We shall deal with that aspect at the appropriate stage when we discuss the evidence of these witnesses.

191. Certain minor errors committed by the investigating agency have been noted by us. They are not errors of any grave nature vitiating the trial. In a huge case like this, in the nature of things there may be small errors committed by the investigating agency due to oversight. The law on this point is well settled by the Supreme Court in a long line of judgments. The Supreme Court has repeatedly held that in case of defective investigation the court has to be circumspect but it is not right to acquit the accused solely on the ground of defective investigation. If the occular evidence is cogent and reliable that can be relied

upon. (**See *Paras Yadav & Ors. v. State of Bihar,* *1999 (2) SCC 126*** and ***Dhanaj Singh v. State of Punjab, AIR 2004 SC 1920***). In our opinion, in this case, the evidence adduced by the prosecution which includes occular evidence as well as circumstantial evidence, inspires great confidence. Minor errors will, therefore, not have any adverse impact on the case.

192. After dealing with the preliminary objections and after referring to the relevant observations of the Supreme Court as regards evidentiary value of the confessional statement of the accused, plea of guilty of the accused and identification parade evidence and after focusing our attention on the general principles underlying appreciation of evidence laid down by the Supreme Court on which submissions were advanced by the counsel, we shall now deal with the incidents in which according to the prosecution, A1-Kasab is directly involved. They can be broadly categorized as under:

P. PLACES OF INCIDENTS INVOLVING A1-KASAB & DECEASED A1-ABU ISMAIL.

i) Incident at Badhwar Park.

ii) Incident of Vile Parle Taxi Blast.

iii) Incident of firing at CST.

iv) Incident of firing at “Cama In”.

v) Incident of firing at “Cama Out”.

vi) Incident of Skoda Robbery.

vii) Incident of firing at Vinoli/Girgaum Chowpaty.

193. Before we go to all individual incidents, we feel that it is necessary to reproduce certain tables which learned Sessions Judge has incorporated in his judgment for ready reference as the contents of the said tables have not been disputed by the defence. Some of the said tables have already been reproduced by us in the earlier part of our judgment.

194. The prosecution has examined three Ballistic Experts. They are PW-150 Gautam Ghadage and PW-151 Shamsunder Munj and PW-157 Vasudev Patil. The learned

Sessions Judge has prepared a table containing the summary of total number of empties, their place of seizure, exhibit numbers of panchnama and opinion of the Ballistic Experts. We reproduce the same for ready reference.

TABLE NO.7

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 Panchnama 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 panchnama 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 panchnama 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 them-selves 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

195. For the sake of convenience, we also reproduce the table which gives the details of live cartridges seized by police from various places and from the police officers who were involved in the

operation:

TABLE NO.8

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)

196. We also deem it necessary to give a table which contains the details of the magazines seized by the police. It is reproduced as under:

TABLE NO.9

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.

197. The table showing panch witnesses, police officers, carriers and opinion of PW-172 Sandeep Chetti and PW-247 Rajendra Mavle is reproduced as under:

TABLE NO.10

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 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.15 to 20 (Arts. 577 to 582) Nitrite radical was detected in / on Ex.21 (Arts. 583) 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)

198. There are some minor errors in the tables which we have reproduced. As we have already noted, the contents of the tables have not been challenged before us. Wherever possible, we have corrected the tables. Minor errors in the table are due to voluminous record and the huge task of co-relating facts. Therefore, we are of the opinion that minor errors in paper-work will not vitiate the prosecution case. They do not go to the root of the matter. Substratum of the prosecution case has remained intact throughout.

INCIDENTS CONCERNING DIRECT INVOLVEMENT OF A1-KASAB AND DECEASED A1-ABU ISMAIL.

199. We shall now analyze evidence in respect of each incident. We must mention that we have visited the places where the incidents had taken place. We followed the route which according to the prosecution, A1-Kasab and deceased A1-Abu Ismail followed as they proceeded from Badhwar Park upto Girgaum Chowpaty, so that it would be easier for us to follow the prosecution case.

A. INCIDENT AT BADHWAR PARK.

200. We shall first start with Badhwar Park incident. In this connection the prosecution has examined PW-28 Bharat Tamore. At the relevant time, he was working as a Mukadam in Hotel Taj, Mumbai. He is a resident of Machhimar Nagar 2, Cuffe Parade. His house is very near the seashore and close to Hotel Taj. His duty hours were from 10.00 p.m. to 7.00 a.m. According to him, on 26/11/2008, he left his residence at about 9.15 p.m. to

attend to his duty at Hotel Taj. According to him, to go out of the fishermen colony, he has to walk by the side of the seashore. While he was proceeding to Hotel Taj, he noticed one inflatable boat on the seashore. In the street lights, he could see 10 persons sitting in the boat. They were wearing life saving jackets. Eight persons got out of the boat. They were having one haversack and one hand bag each. They removed their jackets and put them in the boat. Two of them proceeded towards the main road. Since they were unknown persons, PW-28 Tamore asked them as to from where they had come. One of them told him that they were students. The other wanted to know as to how he was concerned about their identity. The said two persons and 6 remaining persons proceeded further on the main road. The two persons who were left in the boat proceeded towards Nariman Point in the same boat. Thereafter, PW-28 Tamore proceeded to attend to his duty. PW-28 Tamore has further stated that on 27/11/2008 at about 7.00 a.m. while he was returning home, he saw some policemen standing near Badhwar

Park Railway Officers' Colony. They were talking about inflatable boat. PW-28 Tamore narrated the incident to them. He gave description of the two persons with whom he had a talk. He identified A1-Kasab in the court as the same person who had replied to him that they were students. He identified the dead body of deceased A1-Abu Ismail in the identification parade of dead bodies held at J.J. Mortuary.

201. Mr. Solkar submitted that the prosecution has examined this solitary witness to prove arrival of A1-Kasab and others at Badhwar Park. There is no corroboration to his evidence and, hence, he should not be believed. He has referred to one Bharat Tandel. However, the prosecution has not examined him. This witness claims that he was on duty from 10.00 p.m. of 26/11/2008 to 7.00 a.m. of 27/11/2008 at Hotel Taj. After the terrorist attack, Hotel Taj was cordoned off and, therefore, he could not have come out. Mr. Solkar submitted that, if he really came out, he should have

spoken about what had happened in Hotel Taj to the police. He does not do so. He has stated that the said persons proceeded on the main road. But he does not say what happened to them. He also does not say that A1-Kasab and deceased A1-Abu Ismail threw their jackets in the sea which is the prosecution case. This witness is, therefore, a got up witness.

202. It is not possible for us to accept this criticism. This witness is the most natural witness. He is the employee of Hotel Taj and he stays in the Machhimar Nagar which is near Badhwar Park. Though Hotel Taj was cordoned off, those who escaped from the attack were allowed to go out. So there is nothing surprising about his coming out. His claim that he saw the terrorists landing at Badhwar Park from inflatable boat appears to be unassailable. Since the said persons were unknown, he talked to one of them i.e. A1-Kasab. He identified A1-Kasab in the identification parade. He identified him in the court also. Merely because his evidence does not disclose that he

talked about the incidents which occurred inside Hotel Taj to people, it cannot be concluded that he is a got up witness. From his evidence, it appears that the police were talking about the inflatable boat. Since, he had seen it and had talked to two of the persons, who got down from the boat, he appears to have narrated that incident to the police. There is nothing unnatural about his conduct. Bharat Tandel's non-examination does not affect the credibility of this witness because by itself, his evidence inspires confidence. He was not expected to follow the terrorists because at that time, he did not harbour any suspicion about them. Mr. Solkar submitted that this witness has admitted in the cross-examination conducted on behalf of A2-Ansari and A3-Shaikh that he might have seen photographs of A1-Kasab before identification parade. As we have already noted, we do not attach much importance to this. It was not specifically suggested to him that he identified A1-Kasab because of that. In our opinion, he had sufficient opportunity to see the features of A1-Kasab because he had talked to A1-

Kasab. His identification in the identification parade, therefore, cannot be doubted. It is pertinent to note that the statement of this witness is recorded immediately on the next day. We find no difficulty in relying on the evidence of this witness.

203. It is now necessary to go to the evidence of PW-29 Prashant Dhanu. He is a fisherman. He resides at Fishermen Colony, Cuffe Parade, Mumbai. He has stated that on 26/11/2008 at 9.15 p.m. he had gone for fishing in the sea in Ekvira Boat along with his relatives. When they reached near Nariman Point, they saw a rubber boat having yellow stripes in abandoned condition. It was a motor boat of Yamaha make. They towed the said boat to their trawler and brought it near Fishermen Colony. The police had arrived there. They handed over the boat to the police. When the boat (Art. 156) was shown to him, he identified it as the same boat. In the cross-examination of this witness, minor omissions have been brought on record. In the court, he has stated that there

were some life saving jackets in the boat and the engine was of Yamaha make. He has also stated that the boat had yellow stripes. But, he has omitted to say this to the police.

204. Mr. Solkar submitted that this witness claims that his relatives were also with him. The prosecution should have examined his relatives to lend corroboration to his evidence. Mr. Solkar submitted that reliance should not be placed on the testimony of this solitary witness. Mr. Solkar submitted that the conduct of this witness is also unnatural because he claims that he had gone for fishing and, instead of fishing, he allegedly towed the boat to Badhawar Park. Mr. Solkar also laid stress on the above mentioned omissions in his police statement.

205. In our opinion, it was not necessary to examine relatives of this witness who had gone for fishing. As already noted by us, the prosecution need not multiply its witnesses if evidence adduced by it is sufficient to

establish it's case. We are of the opinion that since this witness is a fisherman, he is the most natural witness. His claim that he had gone for fishing cannot be rejected because he towed the boat to the Fishermen Colony. He has stated that he towed the boat to Badhwar Park because he thought that the boat owner whoever he may be, should not suffer unnecessarily. In the cross-examination, he has not been asked whether he did fishing or not. Since, his explanation was not asked for, his conduct cannot be characterized as unnatural. There is nothing on record to suggest that he had any information that the said boat was abandoned by the terrorists. In the nature of things, he would not know the significance of life saving jackets being on the boat or the boat having a Yamaha engine. Therefore, no significance can be attached to his not telling the police about it. We find no reason to discard the evidence of this witness.

206. PW-34 Parshuram Meher is also a fisherman staying in Fishermen Colony at Cuffe Parade, Mumbai. He is a

pancha to panchnama (Ex-162) under which inflatable boat (Art. 156) was seized. He has stated that the boat had Yamaha engine of 40 horse power. It had yellow stripes on it. Amongst other things, which he has stated as having been found on this boat, he has referred to eight jackets of saffron colour and one Glue tube having the marking `Samad Rubber Private Limited', Ferozpur Road, Lahore, Pakistan. In the cross-examination, he has stated that the words “Ferozpur Road, Lahore, Pakistan” are not clearly visible and they appear to have been scratched. In our opinion, scratching could have been done to conceal Pakistan connection. He identified the inflatable boat (Art.156), Yamaha Engine (Art.157), eight life saving jackets [Art.182 (Colly.)] when they were shown to him in the court along with all other articles as articles having been seized under panchnama (Ex-162).

207. Mr. Solkar submitted that PW-34 is a habitual pancha. Mr. Solkar submitted that he has admitted that he used to visit Cuffe Parade Police Station being office

bearer of Fishermen Society. His evidence, therefore, will have to be cautiously examined. Mr. Solkar submitted that this witness also speaks about Bharat Tandel as the person who was present when panchnama (Ex-162) in respect of seizure of inflatable boat and articles found therein was being drawn. Mr. Solkar submitted that if Bharat Tandel was present when PW-28 Tamore witnessed the arrival of the terrorists and he was also present at 11.45 p.m. when the panchnama (Ex-162) was drawn, the prosecution ought to have examined Bharat Tandel to corroborate PW-28 Tamore and PW-29 Prashant Dhanu. Mr. Solkar further submitted that neither PW-28 Tamore nor PW-29 Prashant Dhanu state that any of the terrorists threw his jacket in the sea. For this purpose, the prosecution is relying on the confessional statement of A1-Kasab. If the jackets were thrown in the sea, they would be floating in the sea. Those jackets have not been found floating in the sea and, therefore, this part of the prosecution story taken from the confession of A1-Kasab is not corroborated by any evidence.

208. We find no substance in these submissions. Merely because this witness has stated that he used to visit Cuffe Parade Police Station being the office bearer of Fishermen's Society, it cannot be presumed that he would oblige the police by being a pancha to a fabricated panchnama. We are unable to attach any importance to non-examination of Bharat Tandel. In our opinion, the evidence of PW-28 Tamore and PW-29 Dhanu establishes the prosecution case about the arrival of inflatable boat at Badhwar Park. So far as the jackets are concerned, it is true that the witnesses do not speak about the terrorists throwing the jackets in the sea. We have already noted that the confessional statement of the accused must broadly fit in the prosecution case. It is not necessary that confessional statement should be corroborated in minute particulars. In fact, this indicates that the witnesses were not tutored. We find no difficulty in relying on the evidence of this witness.

209. PW-162 PI Jagtap was attached to DCB, CID. He was present when PSI Kamble drew panchnama (Ex-162) as regards the seizure of the inflatable boat and the articles found therein. Mr. Solkar submitted that the police did not send any articles seized from the inflatable boat for DNA profiling and, therefore, adverse inference needs to be drawn against the investigating officers. We are not inclined to draw any such adverse inference. The police had sent the articles seized from M.V. Kuber for DNA profiling. Hence, if the police thought that it was not necessary to send the articles seized from inflatable boat for DNA profiling, no fault could be found with them. PW-99 is PSI Mohd. Patel who had taken charge of the boat (Art. 156) and the articles found on it. PW-162 PI Prahlad Jagtap corroborates the seizure of boat (Art. 156) and the articles found on it and drawing of panchnama (Ex-162).

210. PW-30 is Gatala Rajkumar, a Marine Engineer, working as Sales Supervisor in George Maijo Industries (P)

Limited. His company is the sole authorized importer and dealer of Yamaha Out Boat Machines in India. On request of the police, he inspected the engine of the boat (Art. 157) which as stated by him is known as Out Boat Machine (OBM). Upon examination of the said engine, he has stated that the said engine was not imported and sold by his company. According to him, the company maintains record of sale of OBMs. He has stated that he corresponded with the company's main office at Chennai and got the information that the OBM (Art.157) having engine bracket number 67602E-3 and other relevant identification marks was not imported by his company in India. In the cross-examination, he has strengthened his evidence. It does not affect his credibility.

211. PW-154 is Pat Williams, who is working as Senior Product Specialist, Yamaha Motor Corporation, USA, Cypress CA. He is working with Ms. Michel, Assistant Manager (Service) of Yamaha Motor Corporation, USA. Evidence of this witness was recorded through audio-

video linkage. He has stated that Yamaha manufactures OBMs and they can be identified on the basis of serial number on the motor bracket and the engine. He has stated that he had sent details of OBM by email to his General Manager and he had received email from the company in response thereto. He produced printouts of those emails in the court. According to him, last seven digits of the number identify the motorboat and there would never be more than one OBM having similar last seven digits of serial number for the same size of machine. Referring to the machine of the said boat, he has stated that Yamaha Out Boat Machine Enduro 40 bearing serial number # 1020015 was dispatched to Business and Engineering Trend in Pakistan on 20/1/2008. It was dispatched from Japan to Pakistan. It was dispatched to Karachi Sea Port in Pakistan. He has identified the signature of Ms. Michel on document at Ex-604 which is a letter addressed to U.S. Department of Justice, FBI Los Angeles by Yamaha Corporation. Defence has not been able to make any dent in the evidence of

this witness. The evidence on record thus conclusively proves that inflatable boat (Art. 156) was brought from Pakistan.

212. In his confessional statement, A1-Kasab has stated that about four nautical miles away from Mumbai, he and other terrorists left M.V. Kuber and they proceeded towards Mumbai in speed boat which was being driven by deceased A1-Abu Ismail. He has stated that that boat had a Yamaha engine. He has stated that they reached the shore of Mumbai. He has stated that he and deceased A1-Abu Ismail got down from the speed boat with their belongings. He has stated that he and deceased A1-Abu Ismail threw their jackets in the sea. He has stated that after they got down, the others also got down from the boat. He has stated that he and deceased A1-Abu Ismail met a person who asked them as to where they were going and he told them that they were students. He has further stated that as per the plan, they hired a taxi. Deceased A1-Abu Ismail sat in front. He sat on the rear

side and they proceeded to CST. It is evident that this portion of confessional statement is corroborated by the evidence of the witnesses which we have reproduced hereinabove. In our opinion, the prosecution has successfully established the arrival of A1-Kasab and other terrorists by the inflatable boat by adducing cogent evidence. The relevant portion of the confessional statement of A1-Kasab fits in with the rest of the evidence. The plea of A1-Kasab also corroborates this case of the prosecution. We shall now proceed to the Vile Parle Taxi Blast.

B. INCIDENT OF VILE PARLE TAXI BLAST

213. The prosecution has adduced evidence which tracks the taxi which was hired by A1-Kasab and deceased A1-Abu Ismail near Badhwar Park. PW-164 is ASI Shankar Tambe. He was on duty on the night intervening 26/11/2008 and 27/11/2008 on Mobile-I police van of Vile Parle Police Station. At about 23.00 hours, while he was patrolling at Nehru Road, Vile Parle, he received a

message from Control Room that there was a bomb explosion in a taxi at Western Express Junction in front of City Swan Club, Vile Parle (East). He rushed to the spot. He found Motor Taxi No.MH-01-G-7792 lying broken into pieces. Dead body of a male was found at some distance. A driving licence issued in the name of Mohd. Umer Abdul Khalid was found on the spot. Name of the owner of the taxi was Abdul Rahim Abu Bakar. He lodged complaint Ex-691-A with PW-165 PSI Mausmi Patil of Vile Parle Police Station. It was registered as C.R. No.464 of 2008. On transfer to DCB, CID, it was renumbered as C.R. No.198 of 2008. It was revealed during spot inspection that two persons had been killed in the explosion. PW-168 is Ms. Usha Choudhary, sister-in-law of Laxminarayan Goyal. She has stated that Laxminarayan Goyal was a practicing advocate from Hyderabad. According to her, Laxminarayan Goyal had visited Mumbai for some court work and he was to return to Hyderabad on the night of 26/11/2008. He, however, missed the train. He, therefore, intimated to her on landline that he had missed

the train; that there had been an incident of firing at CST and, therefore, he would be leaving CST to come to their place at Charkop, Kandivli. After five minutes, he intimated to her that he had left CST by taxi. She contacted him at 10.30 p.m. when he had reached Dadar. His daughter contacted him at 10.45 p.m. and thereafter Laxminarayan's phone was not reachable. She lodged a complaint with Kandivli Police Station. She was directed to go to Vile Parle Police Station. She was told that two persons were killed in a taxi blast. She visited Cooper Hospital and identified the dead body of her brother-in-law Laxminarayan. PW-169 is Irshad Shaikh friend of Mohd. Umer Abdul Khalid, deceased driver of the said taxi, who had conversation on mobile phone with deceased Mohd. Umer Abdul Khalid at about 10.00 p.m. on 26/11/2008. According to PW-169 Irshad Shaikh, he had told him that there was firing at CST and he was proceeding to Kandivli with one passenger. He learnt from Vile Parle Police Station that there had been a bomb blast in a taxi of his friend Mohd. Umer Abdul Khalid. He identified dead body

of Mohd. Umer Abdul Khalid at the Cooper Hospital.

214. PW-308 Momina is wife of deceased Mohd. Umer Abdul Khalid. She has filed affidavit under Section 296 of the Code. PW-170 is Abdul Rahim Abubakar Shaikh, owner of the said taxi. These two witnesses have corroborated the case that in the taxi driven by deceased Mohd. Umer Abdul Khalid, there was a bomb blast. PW-171 Shamsunder Choudhary is an eye-witness to this blast. He was injured in the said blast. PW-236 is Changdeo Godse, the Nodal Officer of Vodafone. He has produced print-outs [Ex-921 (Colly.)] of conversation of Mohd. Umer Abdul Khalid with PW-169 Irshad Shaikh and PW-170 Abdul Rahim Shaikh. PW-171 Shamsunder Choudhary, PW-490 Balkrishna Bare, PW-491 Sheldon Alman are eye-witnesses who were injured in this incident. PW-171 Shamsunder Chaudhary was admitted in ICU till 5/12/2008. There is no effective cross-examination of this witness. He has spoken about the blast. PW-491 Sheldon Alman has filed affidavit evidence. He has also spoken

about the blast. He was admitted in Sion Hospital. PW-490 Balkrishna Bare was admitted in Cooper Hospital. He had also witnessed the blast. PW-166 Welankar is a pancha to spot panchnama (Ex-694) which was drawn by PW-167 API Lotlikar. PW-394 Ramchandra Choudhary drew the inquest panchnama of Laxminarayan Goyal and Mohd. Umer Abdul Khalid. PW-538 Vijay Pawar is a pancha to panchnama of seizure of the clothes of the injured. PW-539 is API Milind Desai, who drew inquest panchnama, PW-600 is Dr. Shivaji Kachare who did autopsy of Laxminarayan and Mohd. Umer Abdul Khalid. PW-579 is Dr. Vincent, PW-578 is Dr. Babar, PW-577 is Dr. Mohanrao who issued medical certificates to those who were injured in this incident. PW-172 is Sandip Chetti, Assistant Chemical Analyzer. He has analyzed the articles and materials seized from the spot and parts of the taxi and submitted the result of the analysis. According to him, RDX was detected on the material and parts of the taxi. Evidence of these witnesses has not been successfully challenged by the defence.

215. The prosecution has filed affidavit of PW-535 Dinesh Mahajan, who is working as Executive Engineer, MMRDA in lieu of oral evidence to bring on record valuation of damage caused to Western Express Highway, near City Swan Club, Vile Parle (East), Mumbai due to the said bomb explosion. This witness has not been cross-examined by the defence. He inspected the scene of offence and assessed the damage to the public property. He stated that damage to public property due to the said bomb explosion was to the extent of Rs.6,000/-. To his affidavit, he has annexed his report.

216. In his confessional statement, A1-Kasab has stated that it was decided by all of them that while proceeding to their destinations in a taxi, they would keep RDX bomb below the seat of the driver because once the taxi is destroyed due to the blast, no one would know from where they had come. He has further stated that accordingly, they hired a taxi after landing. Deceased

A1-Abu Ismail sat on the front seat and he sat on the rear seat of the taxi. The driver was kept engaged in conversation by deceased A1-Abu Ismail. A1-Kasab has further stated that at that time he installed two 9 volt batteries in a RDX bomb and kept it under the driver's seat. The timer was fixed for 1 hour and 15 minutes. He has further stated that within 20 to 25 minutes, they reached CST by taxi.

217. In our opinion, the above confessional statement of A1-Kasab is corroborated by the evidence of the witnesses, the gist of which we have narrated hereinabove. It is pertinent to note that PW-28 Tamore has stated that he saw A1-Kasab and others at about 9.15 p.m. at Badhwar Park. A1-Kasab and deceased A1-Abu Ismail must have reached CST by 9.40 p.m. because at 9.50 p.m. the blast at CST took place. In the RDX bomb kept in the taxi, the timer had been fixed by A1-Kasab for 1 hour and 15 minutes. According to PW-168 Ms. Usha Choudharty, sister-in-law of Laxminarayan Goyal, she

contacted Laxminarayan Goyal at 10.30 p.m. and his daughter contacted him at 10.45 p.m., and thereafter, his phone was not reachable. At about 11.00 p.m., PW-164 PI Tambe got information that there was a bomb blast at Vile Parle. Thus, the bomb blast must have occurred approximately between 10.45 p.m. and 11.00 p.m. In view of this, in our opinion, A1-Kasab's confessional statement that on the RDX bomb, he had fixed a timer for 1 hour and 15 minutes is corroborated by the above circumstances and evidence of witnesses. In his plea though A1-Kasab has admitted that a bomb was planted in the taxi, which was hired by them at Badhwar Park, he has cleverly suggested that it was planted by deceased A1-Abu Ismail.

218. Mr. Solkar submitted that the body of Laxminarayan Goyal was so disfigured that it could not have been identified. He submitted that there is no cogent evidence to support the prosecution case against A1-Kasab as regards this blast. We reject this submission of Mr.

Solkar. We find no reason to doubt the identification of dead body of Laxminarayan Goyel by his sister-in-law PW-168 Ms. Usha Choudhary. In our opinion, the circumstances on record, the relevant evidence which we have discussed hereinabove and the confessional statement of A1-Kasab clearly establish the involvement of A1-Kasab in this blast. He is, therefore, responsible for the deaths of taxi driver Mohd. Umer Abdul Khalid and murder of Laxminarayan Goyal. Mr. Nikam, learned Special Public Prosecutor submitted that learned Sessions Judge should have sentenced A1-Kasab individually for the murder of Laxminarayan Goyal and Mohd. Umer Abdul Khalid because the confessional statement of A1-Kasab shows that he had planted the bomb below the driver's seat. However, he has not done so. Mr. Nikam submitted that, therefore, this court should convict A1-Kasab individually for the murder of Laxminarayan Goyal and Mohd. Umer Abdul Khalid and sentence him to death for the said offence. We, however, find that in respect of this, the State has not preferred appeal. Learned Sessions

Judge has convicted and sentenced A1-Kasab under Section 302 read with Section 34 of the IPC for the murder of the said two persons and sentenced him to death for that offence. In view of the above, it is not possible for us to consider this request of Mr. Nikam. We reject this prayer of Mr. Nikam.

219. Having read the above evidence, we are satisfied that after landing at Badhwar Park, A1-Kasab and deceased A1-Abu Ismail hired a taxi; A1-Kasab sat behind the driver and kept a bomb below his seat; they got down at CST; the taxi proceeded further with one Laxminarayan Goyal and that the bomb exploded at Vile Parle in which the taxi driver Mohd. Umer Abdul Khalid and Laximinarayan Goyal died in the night of 26/11/2008 at Vile Parle. We are also satisfied that A1-Kasab and deceased A1-Abu Ismail on the night of 26/11/2008 and 27/11/2008 at Western Express Highway, Opp. 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 cause injury to the property. We confirm the said finding of learned Sessions Judge.

220. In view of the above, we confirm the finding that A1-Kasab had caused injuries described in Column No.4 to the deceased at Serial No.72 – Mohammad Umer Abdul Khalid and the deceased at Serial No.73 – Laxminarayan Goyal in Table No.2 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.

221. We also confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' common intention at the time of committing murders of the deceased at Serial No.72 – Mohammad Umer Abdul Khalid and the deceased at Serial No.73 – Laxminarayan Goayal. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail have caused injuries of the nature mentioned

in Column No.5 to the persons mentioned at Serial Nos. 128 to 130 in Column No.3 at the places mentioned in Column No.4 of Table No.3 i.e. at Vile Parle 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. We also confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' intention while causing injuries to the abovesaid persons.

C. INCIDENT OF FIRING AT CST.

222. We shall now turn to the CST incident. It is necessary to first refer to the star witnesses, whose evidence is most crucial to the prosecution. PW-61 is Sabastian D'Souza who was working as a photographer with the Times of India. His office is situated in the Times of India building opposite CST. According to him, on 26/11/2008 at about 9.50 p.m. he along with his colleague came out of their office to go to Hotel Taj as they had received information

that there was firing at Hotel Taj. As they came out of the main gate, there was firing at CST. He entered Platform No.1 of local line of CST. It was deserted. There was a local train on Platform No.1. He went to Platform No.2 through that train. He proceeded to the main hall of local line of CST. He walked upto the exist of Platform No.6 in the main hall. He saw two policemen. One of them was in uniform and the other person was in plain clothes looking towards the passage between the main line and the local line. At that time, he saw two persons in the passage between the main line and the local line. They were at a distance of 100 feet from him. They were firing. The policemen fired at them. The bookstall owner started pulling down the shutter of his bookstall. He received a bullet injury and he fell down. PW-61 Sabastian took his photograph which is at Ex-238. According to him, one gunman was short and the other was tall. According to him, the tall person was wearing gray jacket and the short person was wearing gray trouser and blue T-shirt. In the court, he identified A1-Kasab as the short person.

According to PW-61 Sabastian, he wanted to take photographs of the gunmen and, hence, he entered the train which had halted at Platform No.6. He saw the person in plain clothes taking gun from the policeman in uniform and taking position to fire at A1-Kasab. He took their photographs which are at Ex-239 (Colly). According to him, he asked the two policemen to enter the train because they had taken a dangerous position. He then went to Platform No.4, because the gunmen were proceeding towards the local line. According to PW-61 Sabastian, he took over 100 photographs but they were blurred because he could not use flash light as that would have attracted the terrorists. He has produced three photographs of A1-Kasab which were taken from a distance of about 30 feet. They are at Ex-240 (Colly.). He has produced four photographs in which A1-Kasab and his companion are seen. They are at Ex-241 (Colly.). He has produced photographs of two persons lying between Platform Nos.6 and 7. They are at Ex-242 (Colly.). He has produced 10 photographs of main hall of main line. They

are at Ex-243 (Colly.) He has produced memory card (Art. 216) in which photographs snapped by him were saved. It was returned to the witness because the police had not seized it during investigation. CD produced by him is marked as Art.217. According to him, printouts were taken out by him from the CD in a laboratory known as Colo Lab at Bora Bazar.

223. In his cross-examination, this witness comes across as a very truthful witness. He has stated that A1-Kasab reached Platform No.3 first and his colleague joined him later on. A1-Kasab threw his bag on the floor. Both of them entered the motorman's cabin of local train stationed at Platform No.3. A train arrived at Platform No. 2. Some passengers alighted from the train. The announcer announced that the passengers should not alight from the train and, if they wanted to go out, they should go out from the rear gate. The announcer PW-65 Vishnu Zende has corroborated this fact. According to PW-61 Sabastian, the accused went to Platform No.1. He

did not follow them out of fear. He has admitted that printouts of the photographs were taken after a few days. He has admitted that photographs of A1-Kasab taken by him were shown on the television and published in the Mumbai Mirror newspaper on the next day. He has denied that the photographs produced by him are morphed. He has stated that he could not see any policeman in the waiting hall when the accused were proceeding towards Platform No.1. But he has added that his main target was to take photographs of the accused and, as such, he did not bother to see whether any policemen were there or not.

224. Mr. Solkar submitted that he is not disputing the presence of PW-61 Sabastian at the CST. He submitted that he is, however, disputing PW-61 Sabastian's case that he saw the terrorists because according to him, he was at a distance of 100 feet away from the accused. He submitted that none of the witnesses speak about his presence. The photographs of A1-Kasab produced by him

appear to be morphed. Mr. Solkar submitted that the memory card of his camera was not taken charge of by the police. It was returned to him by the court. CD was also produced after considerable delay. Mr. Solkar submitted that a person from Colo Lab where the photographs were developed out of the CD ought to have been examined by the prosecution. Mr. Solkar submitted that therefore it is possible that photographs showing A1-Kasab are not genuine. No reliance should be placed on the claim of this witness that he saw A1-Kasab. Mr. Solkar submitted that this witness did not participate in the identification parade. His evidence is, therefore, not useful to the prosecution.

225. PW-102 is Sriram Vernekar. He is a professional photographer of the Times of India. He was in the office when the firing took place. According to him, at about 10.00 p.m., he heard sound of firing from the direction of CST. He picked up the camera and rushed towards CST from the subway gate. He saw two persons firing in the

direction of railway office and booking office. He took their photographs near the entrance of main hall from subway porch. He has produced three photographs which are at Ex-410A, Ex-410B and Ex-410C [Ex-410 (Colly.)]. According to him, he saw the said persons climbing foot-over bridge from Platform No.1. They were firing towards the Times of India building from foot-over bridge. They had been lobbing hand grenades also. At that time, this witness was in front of Times of India building. He went on the second floor of the said building. He took one photograph by using flash. The short fellow's attention was diverted towards the Times of India building due to flash of camera. He fired three to four rounds at the Times of India building. He has produced photograph (Ex-410D) which was taken by him when the short fellow was getting down from the bridge towards B.T. Road. He has admitted that the memory card (Ex-411 for Identification) was not handed over to the police when his statement was recorded. He identified A1-Kasab as the same short person in the court. When he was shown

identity card (Art.61), he identified the photograph thereon as the photograph of companion of A1-Kasab. He has been cross-examined but the defence has not made any dent in his evidence. He has denied the suggestion that the photographs could have been morphed.

226. Mr. Solkar, learned counsel for A1-Kasab did not dispute the presence of this witness at CST. He, however, disputed the claim of this witness that he had seen A1-Kasab and deceased A1-Abu Ismail. He submitted that this witness did not participate in the identification parade. The distance between him and A1-Kasab was such that he could not have seen A1-Kasab. His identification of A1-Kasab in the court is, therefore, doubtful. He submitted that the police have not taken charge of the memory card from him and, therefore, the possibility of A1-Kasab's figure being superimposed on the photographs cannot be ruled out. Mr. Solkar submitted that according to this witness, he did not see any

policemen or RPF jawan in the main hall of local line. Mr. Solkar submitted that this falsifies the evidence of PW-66 Khiratkar, who was attached to RPF at the relevant time. PW-66 Khiratkar has stated that on receiving information as regards firing at CST, he and his colleague had entered the main hall of local line. He had also gone to the general hall of local railway station. He claimed that he and his colleague had fired at the terrorists. Therefore, either PW-102 Vernekar is lying or PW-66 Khiratkar is lying. Mr. Solkar submitted that the statement of this witness is recorded 4 to 5 days after the incident. Hence, no reliance could be placed on it.

227. Criticism of the evidence of PW-61 Sabastian and PW-102 Vernekar can be dealt with together. It must be kept in mind that Mr. Solkar has not denied the presence of these two witnesses. He has not denied that there was sufficient light at CST. He has also not denied that the incidents did occur at CST. His case is that A1-Kasab was not present at CST. According to him, these witnesses

had not seen A1-Kasab and photographs in which A1-Kasab is seen are morphed. It is difficult to accept this submission.

228. It is true that the memory cards have not been seized during investigation. But, we are unable to come to a conclusion that photographs which show A1-Kasab, are morphed or that A1-Kasab's figure is superimposed. The Times of India building is situated just opposite CST. Being photographers attached to the Times Group, their presence in the Times of India building and their rushing to CST after hearing the sound of firing is most natural. The photographs clicked by them bear testimony to their presence.

229. The photographs are on record for anyone to see. They speak for themselves. We have seen them. That, the incidents in question took place and several persons died at CST is admitted. Availability of light is admitted. From a bare look at the photographs, we are convinced

that they are authentic. It is not possible for anyone to create such glory scenes. People are seen lying injured in pools of blood. People are seen lying dead. A dead woman is seen being carted on a handcart. Such scenes cannot be created. The background is of CST. That is not disputed. In fact, authenticity of all the photographs is not questioned. It is contended that the photographs in which A1-Kasab is seen are fake. We are unable to accept this submission. What interest would these two photographers who are independent witnesses, who had risked their lives and taken photographs, have in creating such photographs of A1-Kasab? The argument of Mr. Solkar that A1-Kasab's figure is superimposed will have to be rejected un-hesitantly. These photographs have come from the custody of witnesses who are professional photographers and whose evidence is of sterling quality. Therefore, we have no doubt about their authenticity. It is necessary to note that learned Sessions Judge has also observed that the evidence of these witnesses is free from any blemish. In the absence of any circumstances,

warranting the presence of a calculated effort to create a false case, it is not possible for us to hold that photographs of A1-Kasab clicked at CST are fake and created by PW-61 Sebastian and PW-102 Vernekar or by the investigating agency to implicate A1-Kasab. We must note that there is no suggestion made to PW-61 Sabastian or PW-102 Vernekar that they had not seen the accused or the incident. In fact, as noted by us, Mr. Solkar has not denied their presence.

230. In any case, as held by learned Sessions Judge, the identification of the accused made by these witnesses in the court can never be doubted. Being newspaper photographers, they were bent on following the accused and taking their photographs. They had focused their attention totally on the accused. Hence, they had sufficient opportunity to observe the features of A1-Kasab and his companion. It is argued that PW-61 Sabastian has stated that he was 100 feet away from A1-Kasab and, hence, he could not have observed his features. This

argument cannot be accepted because, according to this witness, he had also taken photographs of A1-Kasab from a distance of 30 feet. We also find no substance in Mr. Solkar's submission that evidence of PW-102 Vernekar is falsified because he has stated that he did not see any policemen or RPF jawan in the main hall of local line, whereas PW-66 Khiratkar of RPF has deposed to the contrary. In such a rapidly moving scenario, it is possible that PW-102 Vernekar did not notice RPF jawans or policemen, his concentration basically being on the movements of the accused as he wanted to click their photographs.

231. As regards alleged delay in recording statement of PW-102 Vernekar, he has fairly stated that his statement was recorded 4 to 5 days after the incident. Neither he nor the investigating officer has been questioned about this. In any case, in the facts of this case, 4 to 5 days' time taken to record the statement does not affect the credibility of this witness.

232. We must also note that learned Sessions Judge has observed that the photograph of deceased A1-Abu Ismail found on the identity card (Art.61) is blurred. We have carefully seen the said photograph. It is a very clear photograph. Learned Sessions Judge's above quoted observation is, therefore, factually wrong. Therefore, identification of companion of A1-Kasab - deceased A1-Abu Ismail made in the court by PW-102 Vernekar on the basis of identity card (Art.61) will have to be accepted. In the circumstances, we have no hesitation in recording that PW-61 Sabastian and PW-102 Vernekar are truthful witnesses and both of them had seen A1-Kasab and his companion firing at people at CST.

233. PW-65 Vishnu Zende works as an announcer at CST. According to him, on 26/11/2008, he was on duty from 3.00 p.m. to 11.00 p.m. He has stated that the office of the announcer, where Public Address System is installed, was on the mezzanine floor. The announcer can see

Platform Nos.1 to 7 from the glass pane. According to him, at about 9.55 p.m. he heard sound of big explosion. He could see from the window of his cabin that the passengers from the main line were running towards the local line. He informed the Government Railway Police and Railway Protection Force about what he had seen and requested them to go to the main line. While his announcement was in progress, he heard sound of firing. He saw persons having bleeding injuries running towards local line. He, therefore, announced on Public Address System that passengers alighting from local trains should opt to leave platforms from the rear side and not from the main hall side. He continued to announce this message for about 20 to 25 minutes. According to him, four local trains were parked at Platform Nos.1, 3, 6 and 7. Local trains had also arrived at Platform Nos.2, 4 and 5. He saw two terrorists coming from the side of Platform No.7. According to him, when one of them reached near the entry gate of Platform No.4, he could see him from the distance of 15 to 20 feet. The other person had followed

him. Both of them had been firing. He, therefore, suspended the announcement because he could be seen by them and they could have fired at him. He has further stated that the short terrorist sat down on the floor of the main hall and loaded his gun with a magazine. He threw his bag in the hall itself and continued to fire. PW-65 Zende has further stated that to avoid being shot at by the terrorists, he and his colleagues sat down on the floor in their cabin. During this period, one of the bullets hit the glass pane and after piercing through the glass pane had exited from the back of the plywood partition. According to him, they were sitting on the floor for about one and half hour and they had been in contact with their officers on telephone. He has further stated that the passengers had been using rear gate to leave platforms due to the continuous announcement made by him. He has given the approximate height of the terrorists. He identified A1-Kasab in the court as the same person who was loading the gun and who had thrown away his bag. When identity card (Art.61) was shown to him, he

identified the photograph thereon as that of the tall terrorist, who was accompanying A1-Kasab. When haversack (Art.219) was shown to him, he stated that it is the same bag which was thrown by A1-Kasab in the main hall of local line.

234. In the cross-examination, he has stated that the Police Help Center is not visible from the mezzanine floor. He explained that he had not seen any policemen from the cabin because he was mainly concentrating on the announcement. He has stated that his statement was recorded on 12/1/2009. According to him, Mr. Tiwari and Mr. Peshwe were on duty with him. He has denied the suggestion that he had not seen A1-Kasab and his companion on 26/11/2008.

235. Mr. Solkar, learned counsel for A1-Kasab submitted that the statement of this witness was recorded after considerable delay and, therefore, no reliance should be placed on his evidence. It is not possible to accept this

submission because neither this witness nor the Investigating Officer was asked to explain the delay in recording the statement. Besides, we have already referred to this aspect and stated that in the peculiar circumstances of the case, because some time is taken in recording the statements of some of the witnesses, no adverse inference can be drawn against the prosecution. Mr. Solkar submitted that Mr. Tiwari and Mr. Peshwe who were with this witness ought to have been examined. We reject this submission. Evidence of this witness inspires confidence. There was no need for any witness to corroborate his evidence. Mr. Solkar submitted that he is not disputing that this witness was on duty but he is disputing his claim that he had seen A1-Kasab. He submitted that according to this witness, he had ducked because the terrorists were firing. Besides, A1-Kasab was loading his gun and the incident might have lasted for a few seconds and, therefore, this witness could not have seen A1-Kasab and his associate. We find no substance in this submission. It is not possible to entertain such

hypothetical argument. It is pertinent to note that this witness's office is situated on the mezzanine floor from where the platforms were clearly visible. Being an announcer, his presence is most natural. On our visit to CST, we have seen where PW-65 Zende's office is situated. In our opinion, it is so situated that this witness must have had full opportunity to clearly see the incident about which he has deposed. PW-61 Sebastian has stated that public announcement was going on. Therefore, presence of this witness and his claim that he had seen A1-Kasab and his companion cannot be disputed.

236. PW-49 is PI Bharat Bhosale. At the relevant time, he was attached to CST Railway Police Station as API. He was on duty on the night of 26/11/2008 and 27/11/2008. He reported for duty at 20.30 hours. PI Shashank Shinde was also on duty. At about 21.50 hours, while he was getting out of the police station he heard sound of firing from the side of the main hall of CST main line Railway Station. He proceeded to the main hall from the side of

taxi stand (North) through the general booking office and PI Shashank Shinde proceeded from the side of SBI ATM (South). He entered the main hall from the side of medical store. He saw two terrorists holding AK-47 rifles and firing indiscriminately at passengers sitting in the main hall. Many people were injured and many were lying in a pool of blood. The two terrorists were near the public toilet situated in the main hall. They were at a distance of about 40 feet from this witness. According to him, one of them was short and the other was tall. He identified A1-Kasab as the short terrorist in the court. The photograph on the identity card (Art.61) was identified by him as that of the tall terrorist. According to him, after witnessing the incident, he rushed to the police station for additional force. When he reached near the entrance of the police station, one of the terrorists fired at him. One of the bullets pierced through his right upper arm and stuck to the wall near the table of Police Station House Officer. He intimated the Railway Police that the terrorists had entered the premises of Railway Station and additional

force was needed. He came to the main hall with PC Nalawade. He found PI Shashank Shinde lying in an injured condition. There were 100 to 125 passengers lying in injured condition. PC Nalawade and PW-58 PC Nardele fired at the terrorists. According to him, thereafter A1-Kasab and his associate proceeded towards Platform No.1 of local line. In the meantime, additional police force came there. Injured persons were taken to hospital. This witness was also admitted in St. George Hospital. His complaint was recorded. It is at Ex-220. In the identification parade held at Arthur Road Prison on 28/12/2008, he identified A1-Kasab. He has been cross-examined, however, in the cross-examination he has stood firm.

237. Mr. Solkar submitted that it is doubtful whether PW-49 Bharat Bhosale was actually there in the main hall of main line. Mr. Solkar submitted that PW-49 claims that he had a 9 mm pistol holster loaded with 9 rounds. If he was there in the main hall of main line and, if he was

likely to be a target of the terrorists, he should have fired from the pistol. He has given a lame explanation that he did not fire from his service pistol because there were many passengers in between him and A1-Kasab and his associate and there were strong chances of passengers being injured or killed due to firing. Mr. Solkar submitted that this explanation deserves to be rejected. This only suggests that he was not present in the main hall of main line. In all probability, he was at the Railway Police Station only. The bullet hit him when he was at the Railway Police Station and in any case, if his story that there were several people around in the main hall of main line, is to be accepted then he could not have seen A1-Kasab and his associate because of the crowd. Mr. Solkar submitted that, therefore, the evidence of this witness may be rejected. Mr. Solkar submitted that the identification made by this witness of A1-Kasab in the identification parade must be disbelieved because he did not give description of A1-Kasab in the statement recorded by the police. He has given an explanation that

he forgot to give description and that he gave it in his further statement. Mr. Solkar submitted that this creates doubt about the claim of this witness that he had witnessed A1-Kasab firing at CST.

238. We find no substance in Mr. Solkar's criticism of this witness. This witness is an injured witness. The injury sustained by him goes a long way in establishing his presence. It is true that though this witness had a pistol, he did not fire. But according to him, if he had fired, many passengers would have got injured or killed. This is a reasonable explanation. He has frankly admitted that he forgot to give description of the terrorists and he has given it in his supplementary statement. This is understandable considering the fact that he was seriously injured and had to be shifted to St. George Hospital. He has identified A1-Kasab in the identification parade and he has also identified deceased A1-Abu Ismail as the associate of A1-Kasab when identity card (Art.61) having photograph of deceased A1-Abu Ismail was shown to him.

Identification made by him in the identification parade and in the court is unassailable. It is pertinent to note that PW-60 Geetanjali Gurav, a female police constable, to whose evidence, we shall soon come, has stated that PW-49 Bharat Bhosale had gone to the police station for additional force and one of the bullets of the terrorists had hit him. Assuming PW-49 Bharat Bhosale received injury near the police station when he had gone to bring additional police force, this is not inconsistent with the claim that he had seen A1-Kasab and rushed for additional police force. Evidence of this witness inspires confidence.

239. PW-60 is PC Geetanjali Gurav. In the night of 26/11/2008 and 27/11/2008 she was on duty at CST near Main Gate No.3. She has stated that at 21.50 hours, there was a big explosion at main line of CST followed by sound of firing. According to her, PI Shinde, PW-49 PI Bhosale, PSI Khandale and other policemen including herself went to the main hall. She accompanied by PW-49 PI Bhosale went near the Medical Store. She saw two terrorists in the

main hall. According to her, one of them was tall. He threw one hand grenade at the passengers. The hand grenade exploded and number of passengers were injured. According to her, both the terrorists were firing from AK-47 rifles. She and PW-49 PI Bhosale were going towards the Railway Police Station to call for additional force. At that time, one of the bullets hit PW-49 PI Bhosale on his left upper arm. PW-49 PI Bhosale fell down. This witness extended help to him. She saw both the terrorists proceeding towards the local line of CST. PW-49 PI Bhosale was taken to the hospital. She found more than 100 passengers lying badly injured in the main hall. According to her, one terrorist was short and the other was tall. She identified A1-Kasab in the court as the short terrorist. When the identity card (Art-61) was shown to her, she identified the photograph thereon as of the other terrorist who was accompanying A1-Kasab.

240. Mr. Solkar, learned counsel submitted that PW-60 Geetanjali Gurav has been examined only to corroborate

PW-49 PI Bhosale, she is not a truthful witness. He submitted that this witness claims that she helped PW-49 PI Bhosale when he received injury but PW-49 PI Bhosale does not speak about her. She does not speak about the route which PW-49 PI Bhosale says he had followed. We find no substance in this submission. That, she has not referred to the route referred to by PW-49 PI Bhosale is hardly a circumstance which can persuade us to discard her evidence. It is true that PW-49 PI Bhosale has not referred to this witness in his evidence but PW-49 PI Bhosale was seriously injured. One of the bullets had pierced through his right upper arm. Therefore, he might not have noticed this witness. It is pertinent to note that he had to be shifted to St. George Hospital for treatment. Hence, because PW-49 PI Bhosale has not referred to her presence, it cannot be said that this witness was not present at CST as claimed by her. We find her to be a truthful witness.

241. PW-54 is HC Jillu Yadav. He was attached to CST

Railway Police Station. According to him from 8.00 p.m. on 26/11/2008 to 8.00 a.m. on 27/11/2008, he was on duty at GM's gate of CST. At about 9.50 p.m. he heard sound of firing from the side of CST main hall. He saw passengers running towards the GM's gate. He locked the GM's gate and proceeded towards the main hall of local line. He saw one person sitting in the main hall of local line. He was loading his rifle with magazine. In the police booth situate in the main hall of local line, one policeman with a rifle was on duty. He did not fire though asked by PW-54 Jillu Yadav. It may be stated here that this policeman is PW-59 Harshad Patil. PW-54, therefore, took the rifle from him and tried to fire at the person who was loading his rifle in the main hall. He could not fire because the rifle was locked. In the meantime, one more person came there. He appeared to be companion of the person who was loading the rifle in the main hall. Both of them started firing at PW-54 Jillu Yadav. He and the police constable PW-59 Harshad Patil took shelter behind the pillar. PW-54 Jillu Yadav threw one plastic chair towards

them. The said two persons again started firing at PW-54 Jillu Yadav. While firing at him, they had been proceeding towards Platform No.1 of local line. Thereafter, PW-54 Jillu Yadav narrated the incident to some RPF officers. According to him, one of the two persons who was firing was short and the other was a tall person. He identified A1-Kasab in the identification parade. In the court, he identified A1-Kasab as the same person who was firing at him with AK-47 rifle. When identity card (Art.61) was shown to him, he identified the photograph on the identity card as the photograph of the person who was seen in the company of A1-Kasab at CST. He has been cross-examined but his testimony is not shattered in the cross-examination.

242. Mr. Solkar, learned counsel for A1-Kasab submitted that evidence of PW-54 Jillu Yadav does not inspire confidence. He claims that he had thrown a plastic chair at the terrorists. This story is inherently improbable. He had not given description of the terrorists to the police,

therefore, his claim that he identified A1-Kasab in the identification parade deserves to be rejected. We are not impressed by these submissions. PW-54 Jillu Yadav is a Head Constable attached to RPF. His presence at CST is natural. He has denied the suggestion that he was not at CST on 26/11/2008. His case that he threw a plastic chair at the terrorist is supported by the CCTV footage. His evidence is also supported by PW-59 Harshad Patil, as we will soon see. He had sufficient opportunity to see A1-Kasab. His claim that he identified him in the identification parade therefore deserves to be accepted. His claim that he identified deceased A1-Abu Ismail's photograph, when his identity card (Art.61) was shown to him as the companion of A1-Kasab, also cannot be rejected. In our opinion, PW-54 Jillu Yadav is a truthful witness.

243. PW-59 is PC Harshad Patil. He was attached to Vashi Railway Police Station. At the relevant time, he was assigned duty of patrolling female compartments of local

railway from Vashi to CST. On the night of 26/11/2008 and 27/11/2008, his duty hours started from 8.30 p.m. He boarded the female compartment of CST bound local train which departed from Vashi at 8.50 p.m. The said train reached CST at 9.35 p.m. He was waiting for the train which he was to board for duty in front of Platform No.3. At about 9.50 p.m., he heard sound of explosion and firing from the side of main hall of CST main line. He noticed that the passengers were running helter-skelter. Within a short time, PI Shashank Shinde of CST Railway Police came near the Police Help Centre at the local line and informed that two terrorists had been firing in main hall of main line. PW-58 PC Nardele and PC Gavit were near the Police Help Centre. PI Shashank Shinde proceeded towards the main line. He was followed by PW-58 PC Nardele and PC Gavit. After sometime, he saw two terrorists proceeding towards local line. According to him, he fired one round by taking shelter behind the Police Help Centre. The round, however, misfired because of defective cartridge. In the meantime, both the terrorists

had reached main hall of CST local line in front of Platform No.3. PW-54 HC Jillu Yadav reached near the Police Help Centre. He asked this witness to fire at the terrorists. Since his rifle had misfired and bolt could not be opened it was not possible for him to fire at the terrorists. PW-54 Jillu Yadav thought that he was intentionally avoiding firing and, therefore, he rushed to him and took rifle from him and attempted to fire at the terrorists. Since one of the misfired rounds had already stuck in the barrel, it was not possible for PW-54 Jillu Yadav to open fire at the terrorists. He returned the rifle. He took shelter behind the pillar. The terrorists fired at them but they were not injured because of the pillar. PW-54 Jillu Yadav thereafter threw a plastic chair towards the terrorists. The terrorists again opened fire at them, however, they did not receive any bullet injury because of the pillar. The terrorists then proceeded towards Platform No.1. He and PW-54 Jillu Yadav came out from the GM Gate and went to the main line to help the injured persons. Number of persons were lying in injured condition. According to him, he had seen

the terrorists from a distance of 40 feet in the halogen light of railway station. One of them was tall and the other was short. He identified AI-Kasab in the court as the terrorist whom he has described as the short terrorist. When identity card (Art.61) was shown to him, he stated that the photograph on the said identity card was of the other terrorist who had accompanied A1-Kasab. He attended the identification parade at the Arthur Road prison and identified A1-Kasab.

244. This witness has been cross-examined, however, in the cross-examination his testimony in the examination-in-chief has not been shattered. In fact, a suggestion was put to him whether PW-54 Jillu Yadav had snatched the rifle from him and to that he has said that PW-54 Jillu Yadav had indeed snatched the rifle from him. He has completely corroborated the evidence of PW-54 Jillu Yadav. By putting suggestion that whether PW-54 Jillu Yadav had snatched his rifle, the defence has admitted the presence of PW-54 Jillu Yadav.

245. Mr. Solkar submitted that PW-58 PC Nardele has referred to the presence of a photographer near the Police Help Centre at the local line. PW-59 Harshad Patil claims that he had seen PI Shashank Shinde and PW-58 Nardele but he does not refer to a photographer. Mr. Solkar submitted that, therefore, the presence of PW-61 Sabastian, the photographer of the Times Group is not proved. We reject this submission. We have already dealt with PW-61 Sabastian's evidence and held that his presence is proved. The terrorist attack at CST was packed with so much action that in the nature of things, it was difficult for every witness to see every other witness or all the minor events. Evidence of witnesses in this case cannot be discarded by holding that they are not reliable because they have not referred to a particular witness or a particular event which other witnesses might have seen. Such evaluation is unjust. In our opinion, the evidence of PW-59 Harshad Patil has a ring of truth. It deserves to be accepted.

246. PW-66 is Sandeep Khiratkar, PI attached to RPF. According to him, on 26/11/2008, he received a message that there was a bomb explosion and firing at CST main line. He rushed to CST, went to armoury and collected rifle with 20 rounds. He came out of GM porch abutting D.N. Road. He took position in GM porch along with PW-68 PSI Bhosle and PI Shirsagar. They saw two terrorists coming towards the porch. The terrorists started firing towards them. They retaliated by firing at the terrorists. Both the terrorists entered the railway station again. They followed the terrorists, entered the main hall of local line. When they reached the main hall, they saw the terrorists going towards Platform No.1 They were near T.C. Office of Platform No.1. The terrorists fired at them from Platform No.1. Taking shelter, they reached near the foot over bridge. Somebody told them that the terrorists had left the railway station via foot over bridge. According to this witness, one of the terrorists was short and the other was tall. He identified A1-Kasab in the

court. He identified A1-Kasab in the identification parade held on 28/12/2008 at Arthur Road Prison as one of the terrorists who had been firing at CST. When identity card (Art.61) was shown to him, he identified the photograph on the said identity card as that of the tall terrorist who was accompanying A1-Kasab. According to him, CCTV cameras have been installed at CST by Railway Administration and the movements of A1-Kasab and his companion were captured by CCTV cameras in the main hall and Platform No.1. He was told by RPF jawan Jadhav that the movements of the terrorists have been recorded on DVR. He immediately prepared CD from the DVR of the visuals captured by him. The copy was prepared of the visuals between 9.30 p.m. to 10.45 p.m. On 26/11/2008, the CD was immediately sealed. It was handed over on 6/12/2008 to Senior PI Shaikh of DCB CID. He has stated that the recording on DVR is stored for a period of seven days and on the eighth day, the recording of the first day automatically gets deleted. The CD produced by the prosecution is taken on record by learned

Sessions Judge as secondary evidence as the original recording had already been deleted automatically.

247. Mr. Solkar submitted that PW-66 PI Khiratkar has in his evidence stated that the movements of A1-Kasab and his companion were captured by CCTV Cameras at Platform No.1; that on 26/11/2008 at 11.30 p.m. he was told by Jadhav, RPF jawan that the movements of the terrorists were recorded in the DVR; that immediately thereafter, he had prepared a CD from the DVR of the visuals captured by CCTV cameras of the main hall and other places wherever the movements of the terrorists had been seen and that the copy was prepared of the visuals captured between 9.30 p.m. to 10.45 p.m. of 26/11/2008 and the CD was sealed by him immediately after preparing the same. Mr. Solkar submitted that the prosecution has not examined Jadav who was allegedly with PW-66 PI Khiratkar and who's evidence could have unfolded the correct facts. Mr. Solkar submitted that learned Special Public Prosecutor with a view to getting

over this, prayed that the examination-in-chief be deferred and it was accordingly deferred. Mr. Solkar pointed out that in the deferred examination-in-chief this witness was made to say that there were 21 CCTV cameras installed at main and local lines and he had inadvertently stated that there were 21 CCTV cameras only on local line. He was further made to say that there are 15 CCTV cameras at the main line and 6 CCTV cameras at the local line and the CCTV cameras at the main line were not functioning in the night of 26th November. Mr. Solkar further submitted that according to the prosecution, the original recording of CCTV footages gets deleted after 7 days and, therefore, the prosecution could have taken charge of the DVR. Mr. Solkar submitted that instead, CD was taken on record as secondary evidence. He pointed out that PW-66 PI Khiratkar has stated that the memory card was inbuilt in the DVR and it was possible to preserve the original record by installing another DVR and sealing the DVR on which the visuals had been recorded. Counsel submitted that it was

necessary for the prosecution to preserve the original record by taking charge of the DVR.

248. We are not inclined to hold that the examination-in-chief of this witness was deferred by learned Special Public Prosecutor to fill in the lacuna. This witness appears to have made an inadvertent error which he has clarified in his further examination-in-chief. He has clarified that in all, there are 21 CCTV cameras installed at main line and local line and due to inadvertence, he had stated that there were 21 CCTV cameras only on local line. He has further clarified that there are 15 CCTV cameras at main line and 6 CCTV cameras at local line. This witness has further clarified that the main line CCTV cameras were not functioning on the night of 26/11/2008 and 27/11/2008 and they were under maintenance. It appears that the sealed cover bearing C.R. No.188 of 2008 containing CDs was opened under the direction of learned Sessions Judge. It was found to contain one Sony DVD - R 120 min / 4.7 GB. Learned Sessions Judge took it

on record as secondary evidence as the original recording had already been deleted automatically. When the said DVD was shown to him, this witness has stated that it was the same DVD which was prepared by him from the DVR installed at CST and handed over to PI Shaikh of DCB, CID during the investigation of C.R. No.188 of 2008. He has stated that the CD was played before him in the court. PW-66 PI Khiratkar has stated that the visuals are seen by him and they are the same visuals seen and copied by him from the DVR. The said CD is marked as Ex-255. We find nothing wrong in this exercise. There was no need to take charge of the DVR. We may also mention that PW-631 S.P. Singh who was posted as Assistant Security Commissioner at RPF Office has filed his affidavit evidence to the effect that on 1/12/2008, Sr. Divisional Security Commissioner, RPF, CST Main Line had ordered him to conduct inquiry about non functioning of DVR surveillance system at CST Main Railway Station on 26/11/2008 at 9.40 p.m. He has further stated that accordingly, he completed inquiries on 18/2/2009 about non-functioning

of DVR surveillance system and found that the system was not functioning since 25/11/2008 from 23.00 hours.

249. PW-55 is Dhananjay Gavali. He had joined Home Guards in the month of August, 2006. He was on duty at Subway at Gate No.2 of CST. His duty hours were from 20.00 hours of 26/11/2008 to 8.00 hours of 27/11/2008. According to him, at about 21.50 hours, there was a sound of bomb explosion and firing from the side of main line of CST. The passengers, some of whom were injured were seen running towards local line from the main line. This witness went to main line of CST to find out what had happened. There, he saw two persons firing indiscriminately at passengers. Some passengers were lying on the floor in injured condition. In the meantime, PI Shashank Shinde reached there. He directed him to rescue passengers and take them out of the main hall. The terrorists continued to fire and were proceeding towards local line of CST. The passengers were directed to leave the station from the side of local line main hall.

The terrorists continued to fire and, hence, this witness took shelter in the toilet which is situated in the waiting hall of local line. According to this witness two jawans of GRP and RPF fired at the terrorists in retaliation. Both the terrorists proceeded towards Platform No.1 while firing at Jawans. This witness identified A1-Kasab in the court as the short terrorist. When identity card (Art.61) was shown to him, he identified the photograph on the identity card as that of the other terrorist. He identified A1-Kasab in the identification parade held on 28/12/2008. On 6/01/2009, he identified the dead body of deceased A1-Abu Ismail in the identification parade of dead bodies. Through the cross examination nothing has come on record which can discredit him. We find his evidence to be truthful.

250. PW-57 is Lau Kharat, who was working as an employee of a contractor of the Central Railway. On 26/11/2008, he was on duty from 16.00 hours to 00.00 hours. He was at Platform Nos.9 and 10 at about 20.30

hours of 26/11/2008 when he heard the sound of explosion in the main hall of main line of CST. He saw two young boys holding machine guns in their hands and firing at passengers in the main hall. One of them was tall and the other was short. The indiscriminate firing went on for about 15 to 20 minutes. He was at a distance of 20 feet away from the said two boys. The tall boy proceeded towards the taxi stand firing at passengers and short boy proceeded towards local line. He entered the main hall where he found many passengers lying in the pool of blood. He went to rescue them. He identified A1-Kasab in the court as the short boy, who was firing at passengers. When identity card (Art.61) was shown to him, he identified the photograph thereon as that of deceased A1-Abu Ismail, the companion of A1-Kasab. He identified A1-Kasab in the identification parade held on 13/1/2009. In the cross-examination, he reiterated and supported his version in the examination-in-chief. Mr. Solkar contended that this witness has stated that the tall terrorist had proceeded to taxi stand which is not consistent with the

version of other witnesses. We find this criticism without any merit. We have already noted that it is not possible for all the eye-witnesses to give identical version. In the nature of things, there may be slight difference in the version of witnesses. It is more so in a case like this. Hence, we reject this criticism. We find this witness to be reliable.

251. PW 58 is Mammath Nardele. He was working as Police Constable at CST. According to him, he was on duty from 8.00 p.m. of 26/11/2008 to 8.00 a.m. of 27/11/2008. Mr. Lokhande and Mr. Jaiswal were also on duty with him. His duty point was foot over bridge at Platform No.1 opposite the Times of India building. Police Help Centre was situated in front of Platform No.3 of local line. According to him, at 21.45 hours, he proceeded to Police Help Centre for dinner. He heard sound of bomb explosion and firing from the direction of the main hall of main line. The passengers of the said main hall started running towards the main hall of local line. In the

meantime, PI Shashank Shinde came there. He asked him to accompany him. This witness loaded 10 rounds in his carbine. Before, he could accompany PI Shinde, PI Shinde had already proceeded towards the main hall along with PW-62 ASI Pandarkar, a photographer and a police constable. They proceeded in the direction of Platform No.6. He followed them. PI Shinde and others had reached Platform No.7. There was sound of firing from Platform No.7 and, therefore, this witness entered a local train which was at Platform No.6 and took shelter in one of the compartments. At that time, he saw two terrorists holding AK-47 rifles and carrying one handbag each on their shoulders proceeding towards local line. He fired at them. The terrorists fired at him. Since he was in the compartment, he was not hurt in firing. He again tried to fire but his carbine got locked. He saw the terrorists proceeding towards the Police Help Centre. Taking advantage of the situation, he proceeded towards Armoury of Railway Police. He unlocked his carbine and loaded the same with 20 rounds and after wearing a bullet

proof jacket he returned to the main hall of local line. By that time, he came to know that the terrorists had left the CST. According to him he had seen the terrorists from a distance of 20 to 25 feet. One of the terrorists was tall and the other was short. He identified A1-Kasab in the court as the short terrorist. When identity card (Art.61) was shown to him he identified the photograph on the identity card as that of the tall terrorist who was with A1-Kasab. He identified A1-Kasab in the identification parade held on 28/12/2008. He identified dead body of deceased A1-Abu Ismail as the companion of A1-Kasab in the identification parade of dead bodies held in the J.J. Mortuary.

252. Mr. Solkar submitted that the prosecution should have examined Mr. Lokhande and Mr. Jaiswal who were with this witness to support his evidence. His evidence is, therefore, not corroborated. Mr. Solkar submitted that this witness has stated that a photographer was with PI Shinde when he came to the Police Help Centre.

However, this story is also not corroborated, therefore, this witness should not be believed. It is not possible for us to accept this submission. We have already recorded that two photographers' presence at the CST is proved. This witness has been cross-examined, however, except certain insignificant minor omissions, nothing has been brought on record which would affect the veracity of this witness. He had sufficient opportunity to observe A1-Kasab and his companion. He has identified A1-Kasab in the identification parade. We find no difficulty in relying on his evidence.

253. PW-62 is PSI Sudama Pandarkar. In the month of November, 2008, he was attached to Thane Railway Police Station. He was on duty in the night intervening 26/11/2008 and 27/11/2008. He was given patrolling duty in ladies compartment on local trains. He boarded a local train from Thane at 8.54 p.m. According to him, the train reached Platform Nos.4 and 5 of CST at 9.45 p.m. He went to Police Help Centre and made entry in respect of

his patrolling duty. After about five minutes, he heard sound of bomb explosion followed by firing. He saw passengers running helter-skelter. PI Shashank Shinde reached the Police Help Centre. He informed him that terrorists had been firing in main hall of CST. He accompanied PI Shashank Shinde. He and PI Shinde proceeded towards the main line. One terrorist who was about 6 feet in height was coming from the side of taxi stand and was firing towards Railway Police Station. He was standing in front of Railway Police Station. This witness fired two rounds at him. However, none of the shots hit the terrorist. At that time, PC Ambadas Pawar took rifle from him and fired one round at the terrorist. The other terrorist, who was short was seen approaching towards them from the side of Platform No.8 of main line. He was also firing with AK-47 rifle. This witness, PC Pawar and PI Shinde went towards Platform No.7 through Platform No.6 and came near the ATM of Indian Bank. Both the terrorists started firing at them with AK-47 rifles. One of the bullets pierced through the left chest of this

witness and exited from the back of his chest. He fell down due to the bullet injury. Similarly, PI Shinde and PC Pawar sustained bullet injuries. They fell down. Both the terrorists proceeded towards main hall of local line. He went to St.George Hospital with the help of one passenger i.e. PW-57 Lau Kharat. He identified A1-Kasab in the court as the short terrorist who was firing at him. When identity card (Art.61) was shown to him he identified the photograph on the said identity card as the photograph of the tall terrorist who was accompanying A1-Kasab. He identified A1-Kasab in the identification parade held on 14/1/2009. When photographs [Ex-239 (Colly.)], were shown to him, he confirmed that he and PC Ambadas Pawar are seen in those photographs. When photograph (Ex-242) was shown to him, he confirmed that in that photograph, PI Shinde and PC Ambadas Pawar were seen lying in injured condition at the CST. When photograph (Ex-245) was shown to him, he confirmed that in that photograph, he was seen being taken to hospital by PW-57 Lau Kharat. He has not been seriously cross-

examined. Evidence of this witness inspires implicit confidence because he is an injured witness and his presence is amply corroborated by the photographs which are on record.

254. PW-68 is PSI Kirankumar Bhosle. He was attached to Railway Police Force of CST main line. On the night of 26/11/2008 and 27/11/2008, he was on duty at CST. His duty hours commenced at 8.00 p.m. On 26/11/2008 at about 21.50 hours, he was at Platform No.13 near the Reservation Counter. He heard sound of bomb explosion in the main hall of main line. He saw one tall person with AK-47 gun firing indiscriminately at passengers in the general hall (main hall of main line). He removed a bomb from his shoulder bag and threw the same towards passengers. There was another person who was short. He was also holding AK-47 rifle and was firing indiscriminately at the passengers. This witness went to the Armoury which is situated on the ground floor below GM Office and collected a pistol. He was told that the

terrorists had proceeded towards the main hall of local line. When he went near GM porch abutting D.N. Road, he met PW-66 PI Khiratkar and PI Kshirsagar. The two terrorists were seen coming out of local line of CST in the main porch near subway. They were at a distance of 30 to 35 feet from them. At that time, they fired at both the terrorists and, in retaliation, the terrorists also fired at them. Thereafter, both the terrorists proceeded towards Platform No.1 of local line. He and his two colleagues entered the general hall of local line through GM porch. PW-66 PI Khiratkar fired at both the terrorists after reaching the general hall of local line. He took magazine from ASI Suryawanshi, who was there in the general hall, loaded it in his pistol and fired two rounds in the direction of the two terrorists. In retaliation, they also fired. He saw both the terrorists going towards T.C. Office of Platform No.1. He identified A1-Kasab in the court as the short terrorist who was firing at people. He identified A1-Kasab in the identification parade held on 28/12/2008.

255. Mr. Solkar submitted that, if this witness was at a distance of 30 to 35 feet away from the terrorists and he claims that he had fired, then either he would have got killed or the terrorists would have got killed. Therefore, the evidence of this witness must not be relied upon.

256. We find no substance in this argument. Evidence of this witness is corroborated by the evidence of PW-66 PI Khiratkar. Merely because in the firing neither he nor the terrorists got injured, this witness cannot be disbelieved. This argument presupposes that this witness opened fire without taking shelter. It is pertinent to note that some of the policemen, who faced the terrorists and fired at them, succumbed to the injuries sustained by them. It will all depend on how and from which angle the firing was done. This witness has stood firm in the cross-examination. In our opinion, he is a truthful witness.

257. PW-50 is Natwarlal Rotawan. At the relevant time, he was staying in Mumbai. He is the father of PW-51

Devika Rotawan. His eldest son is staying at Pune. He wanted to visit his son at Pune. Hence, he, his daughter PW-51 Devika and his son Jayesh reached CST at about 9.00 p.m. to catch train which was to leave at 10.55 p.m. They were waiting in the main hall of the main line of CST in front of Platform No.13. At about 9.50 p.m, he heard loud sound of explosion. He saw two terrorists having machine guns. They were firing indiscriminately at the passengers in the main hall of the main line. He, therefore, decided to leave the main hall along with his children. While they were trying to run away from the main hall, his daughter PW-51 Devika sustained a serious bullet injury on her right leg. He saw both the terrorists moving towards the local line. After sometime, police came there and they were taken to St.George Hospital. PW-51 Devika was operated upon and a bullet was recovered from her leg. According to this witness, he had seen both the assailants from a distance of about 20 to 25 feet. One of them was short and the other was tall. He identified A1-Kasab in the court as the short terrorist.

Defence has not succeeded in demolishing his evidence by cross-examining him. His evidence is supported by the evidence of PW-51 Devika. PW-51 Devika was about 9 years' old when the incident took place. She has stated that on 26/11/2008, she was at VT Railway Station along with her father and her brother Jayesh. They had to go to Pune to visit her brother Bharat. According to her, they reached CST at about 9.30 p.m. She has stated that when they were waiting there, she heard a loud sound of explosion. They decided to leave the Station. As they were leaving the Station, the firing was going on. One of the bullets hit her right leg. She fell down due to the bullet injury. The injury was bleeding. She became unconscious. She regained consciousness at J.J. Hospital. According to her, she had seen one of the persons who had been firing. She stated that there were two persons who were firing at the passengers. She identified A1-Kasab in the court as the person who was firing. Defence has not made any dent in her evidence by cross-examining her. In our opinion, evidence of PW-50

Rotawan and PW-51 Devika is of great importance to the prosecution. They completely support each other and bear out the prosecution case.

258. PW-53 is Ms. Nafisa Qureshi. According to her, on 26/11/2008, she, her husband and her daughter Afrin, who was at that time six years' old, were to go to Aurangabad by Devgiri Express. The train was to start at 9.10 p.m. They were waiting in the main line waiting hall because the train was delayed. Her husband had gone out of the Station to bring some eatables. Around 9.30 p.m., she heard a sound of bomb explosion. She got up and saw that firing was going on. She saw two persons having guns in their hands. They were firing in all directions. According to her, due to the firing, her daughter sustained bullet injury on her back. She died on the spot. This witness sustained injury on her left leg. She became unconscious. She regained consciousness at J.J. Hospital on 30/11/2008. She had seen the two persons who were firing from a distance of 15 to 20 feet.

According to her, one terrorist was tall and the other was short. She identified A1-Kasab in the court as the short terrorist. The defence has not been able to shake her evidence by cross-examining her. There are minor omissions in her evidence. They are inconsequential. This witness is also crucial to the prosecution. She had seen the accused from close quarters. Mr. Solkar submitted that in the cross-examination this witness has stated that she was having tea and biscuits in the canteen adjoining the court hall. Therefore, she must have seen A1-Kasab before entering the court hall. There is no substance in this submission. This witness has categorically stated that she had no occasion to see A1-Kasab before entering the court hall. There is no reason to disbelieve her. We find her testimony to be reliable.

259. PW-63 is ASI Pandurang Patil attached to CST Railway Police Station. According to him, in the night of 26/11/2008 and 27/11/2008, he was on duty at local line of Mumbai CST. He received a message from Public

Address System of CST that he was required to be at CST Railway Police Station. He reached CST Railway Police Station. At about 21.50 hours, he heard a sound of explosion and firing. He rushed towards the main line waiting hall. He saw two terrorists holding AK-47 rifles and firing indiscriminately at the passengers in the main line waiting hall. According to him, one of the terrorists was tall and the other was short. The taller terrorist took out a bomb from his bag and hurled it at the passengers. The bomb exploded and number of passengers were injured. They were lying in a pool of blood. At that time, he was in the main hall in front of Platform Nos.11 and 12. The short terrorist fired at him. One of the bullets pierced through his left thigh and, after exiting from left thigh, entered the right thigh and exited from the exterior portion of the right thigh. Due to the injures sustained on both his thighs, he fell down in the main hall. Both the terrorists continued to fire at passengers and went towards the local line. He had seen them from a distance of 22 to 25 feet. He identified A1-Kasab in the court as

the short terrorist. When identity card (Art.61) was shown to him, he identified the photograph on the same as the photograph of the tall terrorist. His cross-examination does not help the defence. His evidence is of great importance to the prosecution because, he is an injured witness and he had seen the accused from close quarters. His presence at the CST is not disputed as can be seen from his cross-examination. There is no challenge to his presence.

260. The prosecution has examined PW-69 Vishal Kardak. He was working as Khalashi in CST. According to him, on 26/11/2008 he was on duty at main line of CST from 4.00 p.m. to 12.00 a.m. He was on Platform No.10 of main line. At about 21.50 hours, there was a big explosion at CST. He saw two terrorists in front of Platform No.13. They were having one gun each. One terrorist was tall and the other terrorist was short. According to him, the tall terrorist took out something from his bag and threw it at the passengers. There was explosion in which many

passengers were injured. The short person was firing indiscriminately at the passengers. He saw the terrorists from a distance of about 15 to 30 feet. This witness sustained brush injury on right side of his head. He was bleeding. He was admitted in Byculla Railway Hospital. He identified A1-Kasab in the court as the terrorist who was firing indiscriminately. His evidence is not shattered in the cross-examination. There is no challenge to his presence. Being an injured witness, his evidence is also crucial and important to the prosecution.

261. PW-86 is Ms. Sangeeta Sardar. According to her, she had come to Mumbai on 25/11/2008. She was to return to Akola on 26/11/2010 by Mumbai Hawada Mail (via Nagpur). Her husband PW-87 Niranjan Sardar was also travelling with her. They were waiting in the main hall of the main line before boarding the train. The departure time of the train was 9.00 p.m. According to her, the train was to depart later than the scheduled departure time. At 10.00 p.m. there was big explosion. She saw two persons

holding guns. One was taller than the other. Both were firing at the public. The tall fellow took out something from the bag and threw it at them. There was big explosion. This witness sustained multiple injuries due to steel balls of the bomb. According to her, she still has some steel balls in her body. According to her, after the explosion, the short fellow again fired due to which her husband sustained two bullet injuries. They were bleeding profusely. According to her, the accused were 15 to 20 feet away from them. Both of them proceeded towards local line of CST while firing. The police took them to the hospital. This witness identified A1-Kasab in the court as the short fellow who was firing at the CST. When identity card (Art.61) was shown to her, she identified the photograph thereon as that of the tall fellow who was accompanying A1-Kasab. The defence has not made any dent in her examination-in-chief by cross-examining her.

262. PW-86 Ms. Sangeeta Sardar's evidence is

corroborated by PW-87 Niranjan Sardar - her husband. He has supported and reiterated the version of the incident given by PW-86 Ms. Sangeeta Sardar. He had seen A1-Kasab and one more person firing at them. He has stated that A1-Kasab fired bullets with his gun and two bullets hit him. He sustained one bullet injury below his left ear and the other on his head. His wife was also injured in the explosion. He identified A1-Kasab in the court. When identity card (Art.61) was shown to him, he identified the photograph thereon as that of the person accompanying A1-Kasab. His cross-examination has not helped the defence.

263. PW-88 is Ansar Saudagar. He is a resident of Pune. He had come to Mumbai to see off his aunt who was to go for Haj. He was to return to Pune on 26/11/2008 by railway. He reached CST at about 9.00 p.m. He was waiting in the main hall of CST. According to him, at about 9.50 p.m. he heard a loud sound. He saw two persons holding guns standing in front of Platform No.13.

According to him, both of them were firing indiscriminately at the public. The tall person was firing at the police who were near the public toilet. The other person was firing at the passengers in the main hall. The tall person took out a bomb from his bag and threw it towards the passengers. The short fellow continued to fire at the passengers. One bullet hit him on his right leg below knee joint. Both of them continued to fire and proceeded towards local line. He was taken to G.T. Hospital for treatment and the bullet was retrieved by doctors at G.T. Hospital. He identified A1-Kasab in the court as the short fellow, who was firing at the people. When the identity card (Art.61) was shown to him, he identified the photograph thereon as that of the tall fellow who was accompanying A1-Kasab. In cross-examination he has stood firm. PW-88 Saudagar was examined by PW-94 Dr. Khairmode. A bullet was retrieved from his right fibula. It was examined by the Ballistic Expert PW-150 Ghadage. According to PW-150 Ghadage, Art.479 was 7.62 mm short rifle copper jacketed bullet. It tallied

with the test fired bullet from AK-47 rifle (Art.10). AK-47 rifle (Art.10) has been identified by the witness to be the same rifle which was held by A1-Kasab.

264. PW-89 is Ms. Harshada Salaskar. She had come to attend a marriage at Virar. She was to return to her village on 26/11/2008. She along with her aunt was waiting at VT Railway Station (CST) to board Kokan Kanya Train at 11.00 p.m. in the main hall. Suddenly there was big explosion. Two persons were seen firing at the public. She saw the tall person taking out something from his bag. He threw it at the public. A large number of passengers were injured. The other fellow was firing. One bullet hit her on her left thigh. She sustained a bleeding injury. The bullet was taken out by the doctors at G.T. Hospital. She identified A1-Kasab in the court as the person who had shot at her. She identified the photograph on Identity card (Art.61) as the photograph of the person who was accompanying A1-Kasab. There is no effective cross-examination of this witness. It may be

stated here that PW-94 Dr. Sonali Khairmode had examined PW-89 Harshada Salaskar. Bullet retrieved from the body of PW-89 Salaskar was forwarded to the Ballistic Expert. PW-150 Ghadage, the Ballistic Expert opined that the said bullet (Art.477) was 7.62 mm short rifle copper jacketed bullet. According to him, the said bullet tallied with the test fired bullet from AK-47 rifle (Art. 10). Opinion of PW-150 Ghadage is part of Ex-206 (Colly.). AK-47 rifle (Art.10) was used by A1-Kasab.

265. PW-56 is Kishore Kale. He was working as Hamal at CST. He was on duty at CST from 16.00 hours to 00.00 hours of 26/11/2008. According to him, at about 21.50 hours, he was proceeding towards Platform No.13. When he was in the main hall of the main line of CST, he heard a loud sound of big explosion. He saw two persons holding rifles and firing at the persons who were waiting in the main hall. According to him, many persons were injured in the firing. He also sustained injury to his left ankle. He was admitted at St. George Hospital and was treated

there. According to him, one accused was tall and the other accused was short.

266. PW-64 is Ms. Poonam Singh. She was to leave for Lakhimpur (U.P.) by Mahanagari Express on 26/11/2008. Departure time of the train was 00.35 hours. She along with her family members reached the VT Station (CST) at 9.00 p.m. At about 9.55 p.m. she heard a sound of explosion. She saw two persons holding guns, one was tall and the other was short. Both of them started firing at the passengers. Many persons died on the spot. She sustained bullet injury on the back portion of her right shoulder. She immediately fell down and became unconscious. She regained consciousness at G.T. Hospital. She came to know that her son was also injured and he was in another ward. She saw her son after about a month. She was admitted in ICU in St. George Hospital for about two and half months. There is no effective cross-examination of this witness.

267. PW-52 is Farooqi Khaliluddin. He and his son Abdul Razak had come to Mumbai on 24/11/2008 to meet their relative, who was to go for Haj. After they met that person, they decided to leave Mumbai for Jalgaon. They had reserved seats in Rajendra Nagar Express. The departure time was 11.25 p.m. on 26/11/2008. They reached CST at 9.00 p.m. They were waiting in the main hall of Platform Nos.13 and 14 to board the said train. At about 10.00 p.m. there was sound of big explosion. He saw two young boys in front of Platform No.13 holding guns. They had rexin bags. They fired indiscriminately at the passengers. The passengers sustained injuries. One of the boys took out a bomb from his bag and threw it in their direction. The bomb exploded. He and his son got injured. His son was badly injured. According to him, the tall fellow had thrown the bomb towards them. The other fellow was in a joyous mood due to the result of the firing and continued to fire at the passengers. The firing went on for 15 to 20 minutes. In the court, he identified A1-Kasab as the same person who was firing indiscriminately

in a joyous mood. The police took them to the hospital for treatment. According to this witness, some of the particles of the bomb are still in his body and the doctor has told him that the surgery to remove them will be a difficult surgery. Defence has not made any dent in his version by cross-examining him. He has denied that he had occasion to see photograph of A1-Kasab on television or in newspaper.

268. Deceased Akash Akhilesh Yadav whose name is mentioned at Serial No.81 of Table No.2 succumbed to death due to firearm injury caused to him at CST. There is no eye-witness to say that deceased Akash was shot at by A1-Kasab. The report of the Ballistic Report also does not confirm that the bullet retrieved from the scalp of deceased Akash tallied with test fired bullet from AK-47 rifle (Art.10) which was used by A1-Kasab. Thus, the prosecution has not been able to prove that Akash died due to firearm injuries caused by A1-Kasab. However, considering the evidence on record as regards the

incident at CST, learned Sessions Judge has rightly held that Akash Yadav was killed at CST either by A1-Kasab or by deceased A1-Abu Ismail.

269. PW-74 Pandharinath Yeram was at the relevant time, working as PI at CST Railway Police Station. He was directed to draw inquest panchnamas of bodies of the passengers who had died due to the injuries sustained during the incident on 26/11/2008. As directed, he went to St. George Hospital and drew the inquest panchnamas of dead bodies. According to him, luggage of the injured and deceased passengers was safely stored in one of the rooms of Court of Metropolitan Magistrate (Railway Court). According to him, on 3/12/2008 PC Shendge told him that one of the bags in the luggage appeared to be suspicious. He, therefore, visited the said room where the luggage was stored. There was one bag on the table which contained a metal box. It was found covered with pink coloured foam. He, therefore, called BDDS. The police officers of BDDS arrived. The team was headed by CW-5

PI Anthony. The bomb was defused by BDDS and the articles were seized under panchnama (Ex-269). When the articles seized under panchnama were shown to him, he stated that they are the same articles. The articles contained two batteries, two detonators, one cortex wire, one explosive powder mixed with steel balls, eight pink coloured foam pieces, electric circuit with timer, etc. He has been cross-examined. However, his cross-examination does not help the defence.

270. PW-75 Suraj Padwi is pancha to inquest panchnamas. PW-70 is Chandrakant Sarnobat. He is a pancha to spot panchnama (Ex-257) of waiting hall of main line and local line of CST. He deposed about firearm empties, hand grenades, magazines, haversacks, pistol holster, steel blade, etc. which were seized under the said panchnama. In the cross-examination, he has reiterated his version in the examination-in-chief. PW-73 PI Dilip Gore has drawn supplementary spot panchnama of main line of CST (Ex-263). PW-71 Indrajit Singh is pancha to

supplementary panchnama of local line of CST (Ex-259).

271. CW-5 is PI Anthony Steven Mathews. He is attached to BDDS. He has deposed about the defusal of one RDX bomb and two hand grenades found at CST main line. According to him, when he got a call from CST Railway Police Station that one suspected article was detected on the second floor of the building, he along with BDDS staff rushed to CST. One small haversack was found on the second floor of the building. There was a metal container covered with pink foam pieces. According to him, it was found to be RDX bomb and, it was defused by using remote techniques. He handed over those articles to PW-74 PI Yeram. He has further stated that on 30/11/2008, two hand grenades seized by CST Railway Police Station were defused by his team at Girgaum Chowpati. The remnants of the hand grenades were handed over to PW-73 PI Gore. PW-72 is Rajesh Kacheria. He is pancha to Ex-261 under which defusal of two hand grenades was recorded.

272. Certain witnesses who are injured have deposed about the incident which they saw. Certain injured witnesses have filed their affidavit evidence but they do not describe the incident. However, PW-62 Sudama Pandarkar, PW-63 Pandurang Patil, PW-69 Vishal Kardak, PW-56 Kishore Kale, PW-59 Harshad Patil, PW-64 Ms. Poonam Singh, PW-87 Niranjan Sardar, PW-53 Ms. Nafisa Qureshi, PW-52 Farooqui Khaliluddin, PW-86 Ms. Sangita Sardar, PW-49 Bharat Bhosale, PW-51 Ms. Devika Rotawan, who were injured in the incident, have deposed about the injuries sustained by them and have also described the incident. Some of them have identified A1-Kasab in the identification parade and in the court and they have identified deceased A1-Abu Ismail on the basis of his identity card (Art.61). The learned Sessions Judge has, therefore, rightly considered the evidence of these witnesses and has come to a finding that A1-Kasab and deceased A1-Abdul Ismail had caused injuries of the nature mentioned in Column No.5 to the persons

mentioned in Column No.3 at serial Nos. 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 20 to 23, 29, 31, 34, 36, 39, 40, 46, 50, 51, 54, 56, 61, 62, 63, 67, 68, 71, 86, 87, 94, 95, 96 and 105 of Table No.3.

273. Having read the evidence, it is now necessary to go to the confessional statement of A1-Kasab dated 20/2/2009 (Ex-810). He has stated that he and deceased A1-Abu Ismail reached VT (CST) by taxi within 15 minutes. They entered the passage. Nearby, there was a toilet. A1-Kasab has further stated that he gave his bag to deceased A1-Abu Ismail and went to the toilet and came back. Thereafter, deceased A1-Abu Ismail took his small bag with the bomb to the toilet. After coming out of the toilet, deceased A1-Abu Ismail kept the bag containing bomb in the luggage area. Then A1-Kasab took out AK-47 rifle. Deceased A1-Abu Ismail took out hand grenade from his bag and threw it at the people. Then both of them started firing. After sometime, deceased A1-Abu Ismail took out one more hand grenade from the bag and threw it at

people. Thereafter, they fired with AK-47 rifles. Many people died. People started running out of fear. Within a short while, Station was empty. According to A1-Kasab, police started firing at them. They started firing at the police. The police were trying to stop them by firing at them. They shot the policemen dead. Thereafter, they climbed the foot over bridge and went out of the Station. The evidence of the prosecution witnesses corroborates this part of the confessional statement of A1-Kasab.

274. In his plea recorded by learned Sessions Judge, A1-Kasab has admitted the incident at CST. He has stated that they fired at public at CST with the guns which were produced in the court. He has, inter alia, stated that they continued to fire and that deceased A1-Abu Ismail was throwing grenades also. This admission in his plea is in tune with the evidence of prosecution witnesses which we have quoted hereinabove.

275. So far as the incident at CST is concerned, the

important witnesses of the prosecution and their particulars are reproduced below for ready reference.

Sr. No.	PW No.	Name of Witnesses	Status	Identification		
				TIP	In Court	Art.61(*)
1.	49	PI Bhosale	Injured	Yes	Yes	Yes
2.	60	PC Ms. Gurav	-	-	Yes	Yes
3.	62	ASI Pandarkar	Injured	Yes	Yes	Yes
4.	63	ASI Patil	Injured	-	Yes	Yes
5.	54	HC Yadav	-	Yes	Yes	Yes
6.	59	PC Patil	-	Yes	Yes	Yes
7.	66	PI Kiratkar	-	Yes	Yes	Yes
8.	55	Gavali	-	Yes	Yes	Yes
9.	57	Kharat	-	Yes	Yes	Yes
10.	58	PC Nardele	-	Yes	Yes	Yes
11.	68	PSI Bhosale	-	Yes	Yes	-
12.	50	Rotavan	-	-	Yes	-
13.	51	Ms. Rotawan	Injured	-	Yes	-
14.	53	Ms. Qureshi	Injured	-	Yes	-
15.	86	Ms. Sardar	Injured	-	Yes	Yes
16.	87	Sardar	Injured	-	Yes	Yes
17.	88	Saudagar	Injured	-	Yes	Yes
18.	89	Ms. Salaskar	Injured	-	Yes	Yes
19.	52	Khaliluddin	Injured	-	Yes	-
20.	69	Kardak	Injured	-	Yes	-
21.	65	Zende	-	-	Yes	Yes
22.	61	Sebastian	-	-	Yes	Yes(**)
23.	102	Vernekar	-	-	Yes	Yes

(*) Denotes the identity card displaying the photograph of deceased A1-Abu Ismail

(**) Denotes identification of deceased A1-Abu Ismail on the basis of the photographs clicked by him at CST.

276. At the cost of repetition, it may be stated that there is no dispute that persons mentioned in Table No.2 died at the places mentioned in Column No.3 thereof and they died of injuries mentioned in Column No.4 thereof. Similarly, there is no dispute that the persons mentioned in Column No.3 of Table No.3 received injuries of the nature mentioned in Column No.5 at places mentioned in Column No.4 thereof.

277. We must mention that A1-Kasab is individually responsible for the deaths of the persons mentioned at Serial Nos.81, 83, 84, 86, 93 and 112 in Table No.2. In view of the above analysis of the evidence, we confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused injuries described in Column No.4 in Table No.2 to the deceased from Serial Nos.77 to 128 except deceased at Serial Nos.81, 83, 84, 86, 93 and 112 at CST. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused the aforesaid injuries

to the aforesaid persons 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. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' intention at the time of committing the aforesaid murders.

278. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused injuries of the nature mentioned in Column No.5 to the persons mentioned in Column No.3 at Serial Nos.1 to 109 in Table No.3 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. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' common intention while causing injuries to the said persons.

279. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail at CST voluntarily caused

grievous hurt to PW-49 API Bharat Bhosale, PW-63 ASI Pandurang Patil, PW-62 ASI Sudama Pandarkar, PC Adhikrao Kale, Home Guard Vishveshwar Pacharne, Home Guard Uttam Sasulkar, ASI RPF Ramji Napi, Havaldar Giri, Constable Feroz Khan Ghauri, Security Guard of B.M.C. Ashok Patil, PC Balu More, HC Murlidhar Zole, PW-69 Vishal Kardak, Khalasi of Central Railway, PW-56 Kishore Kale, Khalasi of Central Railway, Shambhunath Yadav, Booking Clerk, Central Railway and Ashok Renatale, Booking Clerk, Central Railway. We confirm the finding that above 16 persons were discharging their duties as public servants. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused injuries to the said persons with intention to prevent or deter the said public servants from discharging their duties as public servants.

280. In our opinion, the evidence which we have discussed hereinabove conclusively proves that A1-Kasab and deceased A1-Abu Ismail indiscriminately fired at

innocent people at CST. They killed and injured number of innocent people which include policemen also, particulars of which have been given in tables reproduced hereinabove.

D. INCIDENT OF FIRING AT CAMA IN.

281. According to the prosecution after achieving their despicable object, A1-Kasab and deceased A1-Abu Ismail went out of CST from foot over bridge of D.N. Road and entered B.T. Road behind Cama Hospital. Before forcing their entry into Cama Hospital, they fired at B.T. Road and killed and injured people. Learned Sessions Judge has included those incidents also under the heading “Cama-in”. For convenience, we propose to do the same.

282. We have already noted that the Times of India building is situated just opposite CST. There were CCTV cameras installed outside the said building. According to the prosecution, two of the cameras facing B.T. Road had

captured movements of A1-Kasab and deceased A1-Abu Ismail after they got down from the foot over bridge, entered B.T. Road and when they were trying to open one of the cars parked in the said lane. Before, we start analyzing the evidence relating to Cama Hospital incident, it is necessary to refer to the witnesses who depose about the said CCTV cameras and visuals captured by them.

283. PW-116 is Prabhakar Yadav, who was working as a Security Guard in the Times of India office situated opposite CST. According to this witness, CW-1 Varghese was working as a Chief Manager (Security) in the Times of India. One CD produced by CW-1 Varghese was seized by police in his presence in the office of CW-1 Varghese at the Times of India building. Panchnama (Ex-488) was drawn in respect of the seizure of the said CD (Art.381). When panchnama (Ex-488) was shown to him, this witness has identified his signature thereon. PW-124 is API Mukhtar Shaikh, who went to the Times of India building to collect the CD from CW-1 Varghese.

284. PW-119 Sriniketan Joshi is working as General Manager (Information Technology) in the Times of India. His office is situated in the Times of India Building, Opp. CST. According to him, CW-1 Peedikayil Varghese is working in the Times of India as Security In-charge. CCTV cameras have been installed at various places inside and outside the building. According to him, two cameras are on the side of B.T. Road. Management of CCTV cameras is under the Security Department. The software is installed by Zycom Security System. The images captured by cameras are recorded in the hard disk. The system was able to store recording of four days. Recording of the images of fifth day deletes the recording of images of the first day and so on and so forth. His department was the custodian of the hard disk where the recorded images are stored. According to him, recording of the images of night of 27/11/2008 and 28/11/2008 on the cameras situated at B. T. Road was separately saved on a hard disk for “Times Now Channel” which is run by the Times of India Group.

He has stated that the CD of that recording was prepared by him on 10/12/2008 at the request of the police. He identified Art.381 as the same CD. According to him, the data saved on the hard disk for “Times Now Channel” was for six hours from 20.00 hours of 26/11/2008 onwards. The inbuilt clock of operating system was running one hour ahead. He was again recalled by the prosecution because the visuals were not played in his presence when his evidence was recorded. He stated that the visuals captured by CCTV cameras were automatically recorded without any manual intervention. He stated that the visuals of CCTV cameras are regularly recorded and installed as per the software installed and this is done as per the normal practice of Security Department of the Times of India. It appears that the CD (Art.381) was played in open court. Upon seeing the visuals, this witness stated that they are part of the copy recorded by him from the visuals of CCTV recording of the Times of India. He has denied that the CD (Art.381) was fabricated. His cross-examination has not benefited the

defence. Copy of the CCTV footage was taken charge of from him by PW-124 API Shaikh.

285. Learned Sessions Judge called CW-1 Varghese as Court Witness to find out whether the compact disk containing visuals was an authentic record of the visuals captured by CCTV cameras of the Times of India. CW-1 Varghese has corroborated PW-119 Sriniketan Joshi. He has stated that he was working as Chief Security Officer in the Times of India. He is in charge of security of the Times of India building. According to him, security control room is in his office and the computer is located in his office. He has stated that the visuals captured by CCTV cameras are recorded on the hard disk of the computer situated in his office. He has confirmed that PW-119 Sriniketan Joshi is in charge of the computers and cameras. According to him, PW-119 Shriniketan Joshi was the custodian of the computers and the CD produced in the court (Art.381) was prepared by PW-119 Sriniketan Joshi from the computer located in his cabin. The CD was

prepared in the presence of the police in his office and was handed over to PW-124 API Shaikh in his presence. The CD was Imation make. When Art.381 was shown to him, he said that it was the same disc. There is no effective cross-examination of this witness.

286. PW-103 is Bharat Waghela. His hut is situated at a distance of 5 feet from B.T. Road. According to him, at about 9.30 p.m. on 26/11/2008, he and his two friends i.e. PW-105 Sandeep Waghela and Bhagan Shinde were chatting in front of the rear gate of Cama Hospital. Gupta Bhelwala was selling bhel there. At about 10.30 p.m. he saw two persons entering B.T. Road from the Times of India Building side. One of them was tall and the other was short. Both of them, started firing. The short fellow was firing towards them. He shot at Gupta Bhelwala in his presence. Gupta Bhelwala fell down on the road. This witness got frightened and ran away towards his hut. His friends also ran away from the spot. He shut the doors of his hut after entering in it. From the gap between door

frame and shutter of his hut, he saw the short fellow firing towards his brother's house. He heard his brother crying. The tall fellow was firing in the lane. After sometime, he saw both of them going towards the gate of Cama Hospital. According to him, after sometime he went to his brother's house. He saw his brother Thakur Budha Waghela lying in a pool of blood. He took his brother to G.T. Hospital. His brother was declared dead by the doctors at G.T. Hospital. After five minutes Bhagan Shinde was also brought to the hospital. He was also declared dead. He identified A1-Kasab in the identification parade held on 27/12/2008 as the person who had fired at Gupta Bhelwala and at the house of his brother. He identified him in the court also. He identified the dead body of deceased A1-Abu Ismail at the time of identification parade of dead bodies held at J.J. Hospital mortuary. When identity card (Art.61) was shown to him, he stated that the photograph thereon is of the companion of A1-Kasab. This witness has been cross-examined but nothing has come in his cross-examination

which could shatter his evidence in the examination-in-chief. His statement was recorded immediately on the next day i.e. 27/11/2008.

287. PW-105 is Sandeep Waghela. He is cousin of PW-103 Bharat Waghela. He knew deceased Bhagan Shinde, deceased Gupta Bhelwala and deceased Thakur Waghela, the brother of PW-103 Bharat Waghela. According to him, he was with PW-103 Bharat Waghela and Bhagan Shinde at the rear gate of Cama Hospital, when the incident of firing occurred. Gupta Bhelwala was selling bhel. He was at a distance of 15 feet away from them. According to this witness, at about 10.30 p.m., he heard sound of firing. When he looked at the direction of firing, he saw two persons coming towards Cama Hospital from the side of the Times of India building. They were at a distance of 50 to 60 feet away from him. He could see them in the street light. One of them was tall and the other was short. They were firing with their guns. The short person fired at Gupta Bhelwala. He fell down due to bullet injury. This

witness was scared. He took shelter behind a motorcycle which was parked nearby. According to him, Bhagan Shinde and PW-103 Bharat Waghela ran away. He identified A1-Kasab in the identification parade held on 27/12/2008 as the person who was firing at the people. He identified him in the court also. In his cross-examination, he has stated that Bhagan Shinde and PW-103 Bharat Waghela ran towards SB-1 office. A1-Kasab and deceased A1-Abu Ismail had gone towards SB-1 office. They had been firing there also. After that they returned to Cama Hospital gate and jumped into the premises of Cama Hospital. In the cross-examination, he has not changed his version. Mr. Solkar has not been able to assail the evidence of PW-103 Bharat Waghela and PW-105 Sandeep Waghela successfully.

288. At this stage, it is necessary to turn to the confessional statement of A1-Kasab. In his confessional statement, A1-Kasab has stated that he and deceased A1-Abu Ismail came down from the bridge. In the lane, they

were looking for a taxi. But, they could not get a taxi. Therefore, they tried to open the cars which were parked in the lane. But they could not find a single car which was not locked. They proceeded ahead in the lane and fired. This part of the confessional statement fits in the catalogue of events. It is corroborated by the evidence of PW-116 Prabhakar Yadav, PW-119 Sriniketan Joshi, PW-103 Bharat Waghela and the CCTV footage. We may mention here that we have also seen the CCTV footage. The accused are seen trying to open a car which was parked in the lane. In the plea, A1-Kasab has stated that he and deceased A1-Abu Ismail climbed the foot over bridge from CST, entered a lane (B.T. Road) and checked the vehicles as they wanted one vehicle. He admitted that visuals in the CD which were shown in the court about this incident were correct. He has admitted the firing at B.T. Road.

289. The prosecution has thus successfully established that A1-Kasab and deceased A1-Abu Ismail came out of

CST and from foot over bridge of D.N. Road, they entered B.T. Road behind Cama Hospital. They fired on B.T. Road and killed people. We shall now go to the evidence adduced by the prosecution in respect of the events which took place inside the Cama Hospital.

290. PW-101 is Ms. Anjali Kulathe. She was working as a staff nurse at the Cama Hospital. According to her on the night of 26/11/2008 and 27/11/2008, she reported for duty at 8.00 p.m. She was on the first floor of the new building. At about 10.30 p.m., she heard sound of firing from the rear side of the hospital. She peeped out from the rear window of Ante Natal Care Unit. She could see two persons climbing on steel gate of Cama Hospital situated at the back of the hospital. According to her, one of them was tall and the other was short. She could see them because there was sufficient street light. According to her, the gate is at a distance of 10 to 15 feet away from the window from where she had seen them. Both of them jumped in the premises of Cama Hospital. The tall person

fired in the direction of window from where she was looking at them. One of the bullets hit right wrist of the servant Ms. Hira Jadhav. She was immediately taken to the casualty ward on the ground floor of the hospital. This witness then informed Dr. Archana, who was on duty, that two terrorists had entered the building. She immediately rushed back to her ward, closed all the doors from inside. There was a collapsible gate to the ward. She put a lock on the said gate. All the patients from Ante Natal Care Ward were removed to pantry, just to keep them in a safer place. Thereafter, there was a sound of firing and the explosion went on for about two hours. She and all the patients got frightened due to the explosion. She and all the patients were in the pantry till they were taken out by senior officers at 4.00 a.m. of 27/11/2008. She identified A1-Kasab in the identification parade held on 27/12/2008. She identified him in the court also. When identify card (Art.61) was shown to her, she identified the photograph on the said card as that of the tall person who was assisting A1-Kasab. In the cross-examination she has

reiterated her version in the examination-in-chief.

291. PW-107 is Raosaheb Funde. He is working as a Security Guard at the Cama Hospital. According to him, on 26/11/2008 he was on duty from 2.00 p.m. to 10.00 p.m., at Nurses Hostel, Cama Hospital premises. After his duty hours, he was to go to his house at New Bombay by local train to be boarded from CST. At 11.00 p.m. when he reached the main gate of the hospital at Mahapalika Road, he learnt from staff members of his hospital that there was incident of firing at CST. He, therefore, decided to stay back at the hospital instead of going to CST. He came back to the main gate of the building near collapsible gate. The security guard - Baban Ugade was also there. He and Ugade were standing near the collapsible gate. He saw A1-Kasab and one more person approaching towards the gate. A1-Kasab shot at Security Guard - Ugade with a rifle. Ugade fell down due to the bullet injury. The bullet had hit his abdomen. This witness got scared and ran towards first floor through

staircase. He went to the fifth floor and took shelter in a ward. He took shelter behind a stand which is used for drying clothes. A1-Kasab came there and said 'Utho' (Rise). He put barrel of his rifle on his head and directed him to proceed towards the bathroom. He saw one person lying in a pool of blood in front of the bathroom. One tall person was standing near the person who was lying in a pool of blood. A1-Kasab directed this witness to open the bathroom and forced him to enter in it. He followed his direction. When he entered the bathroom, he saw that three persons had already been confined in the bathroom. The bathroom was thereafter bolted from outside. They were rescued 2 to 3 hours after the police arrived. He identified A1-Kasab in the identification parade held on 27/12/2008. When identity card (Art.61) was shown to him, he identified the photograph thereon as that of the companion of A1-Kasab. He identified the dead body of companion of A1-Kasab in the identification parade of dead bodies held at J.J. Hospital. In the cross-examination, this witness has

stood firm. PW-101 Ms. Anjali Kulathe and PW-107 Raosaheb Funde being employed as nurse and security guard respectively at the Cama Hospital are the most natural witnesses. Their evidence inspires confidence. Mr. Solkar failed to point out any material discrepancies in their evidence.

292. PW-108 is Thomas Uledhar. According to him, his sister Gracy was admitted in Cama Hospital for delivery. He visited the hospital on 26/11/2008 to see his sister along with his brother-in-law PW-123 Timesh Chinnekar, his friend Soman and his nephew Moses. They reached Cama Hospital at about 10.00 p.m. Some of the relatives went to CST as they wanted to go back home. However, they returned within a short time and told him that firing was going on at CST. As he was discussing this, he heard a voice in Hindi that ‘terrorists had entered Cama Hospital’. All of them rushed to the fifth floor where his sister was admitted. They hid themselves in the ward. After sometime he, his brother-in-law PW-123 Timesh and

his friend Soman came near Ward No.5 to see what was happening outside. This witness opened the door. He saw two persons in the corridor near the staircase. One of them was tall and the other was short. Both of them came close to him. They forced him and his friend to enter the Ward and directed them to face the wall. The short fellow snatched mobile phones of everyone. The tall person stabbed and shot at one elderly person. That elderly person is PW-106 Harishchandra Shriwardhankar to whose evidence, we shall soon advert. After sometime they were forced to enter the bathroom. The bathroom was bolted from outside. After sometime one more person was brought and forced to enter the bathroom. In all, four persons were in the bathroom. He identified A1-Kasab in the court as the short fellow. According to this witness, the terrorists could not attack patients because they were hiding in toilet and sister's check up room. The terrorists had been searching for patients. Both of them were in the Ward for about 25 to 30 minutes.

293. Mr. Solkar submitted that this witness has admitted that he had seen photograph of A1-Kasab several times in newspapers and on TV and, therefore, his identification of A1-Kasab in the court is suspect. It is true that this witness has admitted that he had seen the photographs of A1-Kasab in the newspapers and on TV. However, it was not suggested to him that he has identified A1-Kasab because of that. It is also not asked to this witness as to when exactly he had seen the photographs of A1-Kasab. The evidence of this witness goes a long way in establishing the prosecution case. He had seen the terrorists from a very short distance. This witness was confined in the bathroom by A1-Kasab. He has, therefore, sufficient opportunity to observe the features of A1-Kasab. Identification of A1-Kasab made by this witness in the court, therefore, cannot be doubted. The relevant judgments of the Supreme Court in respect of identification of a witness in the court (dock identification) has already been discussed by us in the earlier part of the

judgment.

294. PW-123 is Timesh Chinnekar. PW-108 Thomas is his brother-in-law. He has stated that his wife Gracy was admitted in Cama Hospital on 22/11/2008. PW-108 Thomas and members of his family visited Cama Hospital on 26/11/2008 at about 6.00 p.m. They left the hospital at about 10.00 p.m. After sometime they returned to the hospital. They told him that there was an incident of firing at CST. They were standing in the open ground in front of Cama Hospital building. They got to know that terrorists had been approaching Cama Hospital. Therefore, they rushed to the fifth floor of the building and entered the Ward where his wife was admitted. According to him, at about 10.45 p.m., he and his brother-in-law PW-108 Thomas went out of the Ward to see what was happening outside the Ward. As soon as they came out of the Ward, they were confronted by two terrorists, one of them was short and the other was tall. This witness identified A1-Kasab in the court as the same short

terrorist. According to him, A1-Kasab directed them to face the wall. A1-Kasab was standing near them holding a rifle in his hand. The tall fellow went out of the Ward and within a short time, he brought one elderly fellow in the Ward. The tall terrorist fell the elderly person on the ground and assaulted him with a dagger. A1-Kasab asked him as to where the other persons were. He told him that he did not know. A1-Kasab then snatched his two mobile phones. He also snatched one mobile phone of his brother-in-law. A1 Kasab threatened him that if he makes any noise, he would be dealt with in the same manner. He directed him to enter the bathroom. According to him, as soon as he entered the bathroom the door was bolted from outside. After sometime, one more person was brought to the bathroom and he was also confined in the bathroom along with them. After sometime he heard sound of firing and explosion.

295. Mr. Solkar submitted that the statement of this witness is recorded on 12/12/2008 and in view of this

delay, no reliance should be placed on his evidence. We have already noted that in the circumstances of the case, delay in recording the statement cannot be taken against the prosecution. Moreover, this witness has not been asked why there was delay in recording his statement. This criticism must, therefore, fail.

296. Mr. Solkar submitted that according to PW-108 Thomas Uledhar, his Reliance mobile phone was snatched by A1-Kasab. PW-123 Timesh Chinnekar had two mobile phones. He had borrowed them from his neighbours - Anok Rajappa and Anita Solanki. According to him, those two mobile phones were snatched by A1-Kasab. These three mobile phones were found in the sacks found on the terrace of Cama Hospital. It is so mentioned in the panchnama (Ex-486). These mobile phones were returned to the owners by the police under orders of the court. Mr. Solkar submitted that the police have not produced the printouts of the call details of calls made and received from these three mobile phones. They were

necessary to prove the prosecution story that the terrorists were contacting their handlers in Pakistan. Any local involvement also could have come to light.

297. We find no substance in this contention. The accused cannot dictate to the police as to how they should conduct the investigation. In this case, the prosecution has collected enough material to indicate that the accused were taking guidance from the handlers. The prosecution has brought the intercepted conversation on record. We shall advert to that aspect a little later. Non production of the printouts of call details of mobile phones seized from PW-108 Thomas and PW-123 Timesh is not a circumstance which can be taken against the prosecution.

298. PW-106 is Harishchandra Shriwardhankar. He was working as Senior Clerk at Mantralaya, Mumbai at the relevant time. According to him, on 26/11/2008 at about 6.00 p.m., he had gone to visit Dargah of Hajrat Saeed

Shah Baba situated behind Metro Cinema. He left that place at 10.30 p.m. and proceeded to CST via Metro Subway and St. Xavier's College. According to him, when he reached the gate of Cama Hospital at Mahapalika Road, he saw many persons running helter-skelter on Mahapalika Road. He learnt that there was incident of firing at CST. With a view to protecting himself, he entered Cama Hospital. As he entered the gate of Cama Hospital, he saw a dead body in front of entrance of the main building. There was one collapsible gate to the main entrance. He suspected that some incident must have occurred. He, therefore, entered the main building from the collapsible gate. He found all the doors closed. He went upto the fourth floor of the building. As soon as he reached the fifth floor, he was confronted by a person holding a gun and a knife. That person was also carrying a bag on his shoulder. He was about 5 feet and 6 inches tall. He put the knife on this witness's neck. He realized that he would kill him and, therefore, he hit him on his private part with his knee. He also attempted to hit him

with his bag, however, the bag slipped out of his hand. The said fellow inflicted two knife blows on his neck. He sustained bleeding injury. That person caught hold of his collar and fell him down and inflicted a knife blow on his back. He also shot one bullet on his back. By that time, he lost strength to resist the said person and he became unconscious. He regained consciousness after about 3 to 4 days at J.J. Hospital. When identity card (Art.61) was shown to him, he identified the photograph thereon as that of the person who had assaulted him at the Cama Hospital. When photographs [Ex-410 (Colly.)] were shown to him, he identified the tall person in the photograph to be the same person who had assaulted him. There is no effective cross-examination of this witness. Evidence of this witness is also of great significance because deceased A1-Abu Ismail, who was accompanying A1-Kasab had assaulted him with knife and had fired at him. He had seen deceased A1-Abu Ismail from a very short distance. His narration of the incident, therefore, will have to be accepted as truthful.

His evidence supports the prosecution case that deceased A1-Abu Ismail was also at CST and was also on a killing spree. In his cross-examination, he has admitted that he has not stated before the police that he had attempted to hit his assailant with a bag. This is a minor omission which has no adverse impact on his evidence.

299. PW-109 Chandrakant Tikhe was working as lift operator at Cama Hospital at the relevant time. His duty hours were from 10.00 p.m. to 7.00 a.m. on the night of the incident. According to him, at the relevant time he was on the terrace. At about 10.00 p.m., he heard the sound of firing from the ground floor of Cama Hospital. He shut the collapsible gate of enclosure on the terrace where the Solar system was installed. He was inside the enclosure. He saw two terrorists on the terrace of the building. One of them was tall and the other was short. The short fellow held his rifle towards him and threatened him. He, therefore, opened the enclosure. The tall fellow was also holding a gun. This witness identified A1-Kasab

in the court as the short fellow who had held the gun at him. According to him, he came out of the collapsible gate. A1-Kasab wanted to know the way which takes one out of the hospital. He told him that there was only one staircase and there was no separate exit from the terrace. In the meantime, the tall fellow who was keeping watch on the situation shouted 'police' and started firing towards the staircase. According to this witness, A1-Kasab held his gun on his back and pushed him towards the staircase. Both the accused brought him in the landing area of the staircase between the sixth floor and the terrace. He saw three to four policemen in front of the lift on the sixth floor. He raised his hands towards them apprehending that he may be killed by police suspecting him to be a terrorist. He saw one of the staff members PW-111 Kailash with the police. PW-111 Kailash told the police that he was employee of Cama Hospital. The police then fired at the accused. The accused went back to the terrace. Taking advantage of this situation, this witness came down to the sixth floor and told the police that there

were two terrorists. A1-Kasab thereafter started firing at them from the staircase. He threw hand grenade on the sixth floor. The particles of hand grenade hit neck of this witness resulting in bleeding injuries. Some policemen were also injured due to explosion of hand grenade. According to this witness, one police officer and a policeman collapsed in front of the lift due to the said firing. Thereafter, the terrorists again exploded one hand grenade and fired indiscriminately in the direction of the lift on the sixth floor. Some other policemen and officers were also injured due to this explosion and firing. This witness came down on the second floor of the building. He was accompanied by two policemen and a staff member PW-111 Kailash. Thereafter they were shifted to GT Hospital. He was then taken to KEM Hospital and was under treatment for three days. This witness identified A1-Kasab in the identification parade held on 27/12/2008. This witness has been cross-examined at some length. The defence has not been able to make any dent in his evidence. On the contrary, he has reiterated in the cross-

examination that A1-Kasab and his companion brought him down to the landing area. He has stated that there was exchange of firing between the terrorists and police but he explained that he had ducked when the firing was going on.

300. The prosecution has also examined PW-111 Kailash Ghegadmal who, at the relevant time, was working as a watchman at the Cama Hospital. According to him, on 26/11/2008 at about 10.30 p.m., he was on the second floor of the doctor's building in Cama Hospital. At about 10.30 p.m., he heard sound of firing and, therefore, he looked down from the window of the second floor corridor. He saw watchman Baban Ugade lying in a pool of blood near the entrance of the main building. He saw watchman Bhanu Narkar also lying in injured condition near benches in the courtyard of the building. After sometime, he saw watchman Appa Jadhav entering the premises of the hospital with some police officers. He, therefore, went to them and told them that the terrorists

might have gone to the main building because he had seen two watchmen lying in injured condition in front of the main building. According to this witness, seven police officers, policemen, Appa Jadhav and he went to the sixth floor of the building by lift. Appa Jadhav went down by the same lift. There was some sound on terrace of the building. PW-118 Addl. C.P. Date climbed two steps of the staircase leading to the terrace and threw some object on the terrace. Immediately thereafter, there was firing from the terrace in the direction of the sixth floor. They took shelter behind the wall. After sometime, PW-109 Chandrakant Tikhe was seen coming down from the terrace raising both the hands. The police held their gun towards him. This witness told the police that he was one of the employees of the hospital. PW-118 Addl. C.P. Date asked PW-109 Tikhe to bend down. He, therefore, sat down on the staircase. Thereafter, the police started firing towards the terrace. In the meantime, PW-109 Tikhe had come down on the sixth floor. One hand grenade was thrown towards them from the terrace.

PW-109 Tikhe was injured due to the explosion of hand grenade. One police officer and one policeman proceeded further towards the staircase leading to the terrace and started firing. There was firing from the terrace in retaliation. According to this witness, further, the police officer and the policemen who were firing towards the terrace were injured due to the firing of the terrorists and they collapsed on the sixth floor. In the meantime, there was one more explosion of the hand grenade thrown by the terrorists which injured him and most of the policemen on the sixth floor. He went down to the second floor. He was removed to G.T. Hospital for treatment. This witness has described the terrorist who was firing from the terrace as the short terrorist. This witness identified A1-Kasab in the identification parade held on 14/1/2009 at Arthur Road Prison as the same short terrorist. He identified A1-Kasab in the court also.

301. This witness has been cross-examined at some length. To a suggestion put to this witness in the cross-

examination as to whether the police had been firing at the terrorists when PW-109 Tikhe was coming down from the terrace to the sixth floor, he has answered in the affirmative. Therefore, the defence has admitted the presence of PW-109 Tikhe also. The defence has not been able to elicit anything in his cross-examination which can shatter his evidence.

302. The prosecution has examined PW-118 Addl. C.P. Sadanand Date. PW-118 Date has stated that on 26/11/2008 he received information regarding the incident of firing. He, therefore, asked Addl. C.P., South Region from whose jurisdiction the incident was reported as to whether he needed his help. The Addl. C.P., South Region requested him to proceed to CST. He, therefore, collected one carbine and 20 rounds in the name of his wireless operator Tilekar from Malabar Hill Police Station which is near his residence. Since he heard the sound of explosion from the side of Breach Candy Hospital, he visited Breach Candy Hospital in his car along with his

wireless operator and the driver. As nothing abnormal was found at Breach Candy Hospital, he proceeded towards CST. When he reached Metro Junction, he met officers from Azad Maidan Police Station i.e. PW-112 API Shinde, API Pawar and two head constables. They informed him that the sound of firing was from the rear side of the G.T. Hospital. Therefore, all of them proceeded on foot to the lane leading to the G.T. Hospital to verify as to what was happening behind the G.T. Hospital. When they reached near the lane leading to the G.T. Hospital from the side of Mahapalika Road, they found that there was nothing abnormal in the said lane. Having learnt that there was some problem at Cama Hospital they proceeded to Cama Hospital. One watchman of Cama Hospital met them at the main gate of the hospital. He told them that there was some problem on the fourth floor of the Cama Hospital and that firing had taken place inside the building. He accompanied them. Before they could reach main building of the hospital, they met PI More and a constable. Both of them joined this witness

and other police officers. They saw two dead bodies lying in front of the main building of the hospital. This witness asked one of his Head Constables who had a firearm to be at the main entrance. Before they could enter the lift, one of the staff members of the hospital told them that there was some problem on the terrace of the building. They went to the sixth floor by lift. The watchman who met them at the gate went down by the lift. According to this witness, he threw one iron object which was lying on the sixth floor towards the door of the terrace. Immediately thereafter, there was firing from automatic weapon towards the terrace door. Therefore, he and his colleagues took position behind the wall and in retaliation fired towards the terrace door. According to him, after sometime one bulky fellow was seen on landing area between terrace and the sixth floor. He raised his hands. This witness was informed by PW-111 Kailash that he was an employee of Cama Hospital. That person indicated that there was somebody behind him. He, therefore, asked him to duck. Thereafter, this witness fired from

above that person towards the terrace. Taking advantage of the situation that person came down on the sixth floor and introduced himself as Tikhe. He is PW-109. In the meantime, a hand grenade was thrown from the side of terrace. It exploded on the sixth floor in front of the lift. Some police officers, PW-109 Tikhe and this witness sustained injuries due to the said explosion. After the explosion, the police officers continued to fire towards the terrace. In the meantime, there was another hand grenade explosion on the sixth floor. The second explosion injured almost all officers who were on the sixth floor of the building including this witness. PI More and PC Khandekar could not go down because they were badly injured. Other police officers and staff of Cama Hospital went down. This witness continued to fire towards the terrace in retaliation. Exchange of fire went on for about 40 minutes. He took cover behind a wall situated in front of right side lift. After sometime he sensed some movements on the sixth floor. When he came out from the side of the wall, he saw that the said two persons had

already gone down to the fifth floor. It was around 11.50 p.m. He informed his superiors on cell phone that two persons had gone down from the sixth floor and that they had automatic weapons and hand grenades. At about 00.45 hours, help came and he was shifted to Cama Hospital as he had received serious injuries. He was shifted to KEM Hospital and was treated there. He has been cross-examined, however, the cross-examiner has not been able to dislodge his version. It must be noted here that this witness had not seen the accused, however he had witnessed the incident of firing. Since he is an injured witness, his presence can hardly be disputed.

303. Mr. Solkar submitted that it is the prosecution case that A1-Kasab had fired with his AK-47 rifle at Cama Hospital. However, the scene of offence panchnama indicates that at Cama Hospital, only empties of 9.mm bullets were found, which were used for firing a pistol. There were no empties of bullets of 7.62 mm used in AK-47 rifles. He submitted that, therefore, A1-Kasab did

not use AK-47 rifle at all.

304. This submission deserves to be rejected. Ex-486 is the spot panchnama which shows that on the sixth floor of Cama Hospital, amongst other things, three empties having 4 cm. length were found. Ex-608 is the covering letter sent by PW-129 PSI Kuyeskar to the Ballistic Expert. The covering letter states that the terrorists had fired and had thrown hand grenades at people near Cama Hospital and on the fifth and sixth floors of the Cama Hospital. The letter further states that the pieces of hand grenades, empties and other articles recovered from the scene of offence are being sent for analysis. Annexed to the said letter is a list containing description of articles. At serial no.15 are the “4 cm. long red colour empties”. The report of the ballistic expert which is at Ex-609 states that those empties tally amongst themselves and with those on cartridges test fired from the 7.62mm short assault rifle in Ex-7 of BL-990-B/08 showing that the 7.62mm short rifle empties in Ex-5A to 5C have been fired from the 7.62mm

short assault rifle in Ex-7 of BL-990-B/08. BL-990-B/08 pertains to the incident which occurred inside Cama Hospital. Therefore, use of AK-47 rifle on the sixth floor of Cama Hospital is proved. Mr. Solkar submitted that the police have also not produced the call details of the mobile phone of Addl.C.P. Date. Mr. Solkar submitted that Addl.C.P. Date was, according to the prosecution, present at the scene of offence for 40 minutes and, therefore, the printouts of the call details made from mobile phone of Addl.C.P. Date would have unfolded the prosecution story as to whether Addl.C.P. Date had, in fact, contacted his senior police officers during the time when he was at Cama Hospital. In our opinion, there was no need for the prosecution to produce the printouts of Addl. C.P. Date's mobile phone. Addl. C.P. Date has stepped in the witness box. He was injured. His evidence inspires implicit confidence. His version that he contacted his seniors after he was injured does not need any such corroboration.

305. PW-112 is API Vijay Shinde attached to Azad Maidan Police Station who was on duty on 26/11/2008. According to him, on receiving message he proceeded towards Cama Hospital with PW-118 Addl. C.P. Date, PSI More and others. They saw two dead bodies lying at the entrance of the hospital. They went to the sixth floor. He has affirmed that PW-118 Addl. C.P. Date threw an object on the terrace to check the movements of the terrorists. Thereafter, firing started. The police started firing towards the terrorists. According to this witness, his pistol was locked and, therefore, he could not fire. In the meantime, the terrorists threw one hand grenade towards the police which exploded. One of the fragments entered his knee joint resulting in bleeding injury. One more hand grenade was thrown by the terrorists towards the police officers due to which he sustained injury on his abdomen. According to him, he lost his pistol due to the explosion. He was removed to the Bombay Hospital where he was treated. His statement was recorded by PW-127 PSI Desai

which was treated as FIR. It is at Ex-439. His cross-examination has not yielded any good results for the defence. A mistake in the butt number of the pistol has been brought on record which, in our opinion, is not of any consequence. PW-127 PSI Desai has confirmed that he recorded statement of PW-112 API Shinde which was treated as FIR (Ex-439). He registered the crime vide C.R. No.245 of 2008, which on transfer to DCB, CID became C.R. No.187 of 2008.

306. PW-121 Vankatesh Sawala is pancha to panchnama (Ex-504) under which clothes of PW-118 Addl. C.P. Date were seized. PW-122 PSI Pawar had drawn the said panchnama. PW-110 Mahadeo Lambore is pancha to panchnama (Ex-436) under which clothes of PW-112 PSI Vijay Shinde were seized. PW-115 Nazimuddin Shaikh and PW-117 Subhash Borate are the panchas to panchnama (Ex-486). PW-125 Balu Bhumkar had drawn inquest panchnama of dead bodies of Ugade and Narkar. PW-126 is PSI Raghunath Mahale, who recorded the statements

of PW-118 Addl. C.P. Date and PW-109 Chandrakant Tikhe. PW-129 Pravin Kuyeskar and PW-158 Ravindra Badgujar were concerned with the investigation of this case.

307. Having perused the evidence of PW-109 Tikhe, PW-111 Kailash, PW-118 Addl. C.P. Date and PW-112 API Vijay Shinde, who are injured witnesses, we are of the considered opinion that these witnesses corroborate each other in great detail as regards the incident which took place on the sixth floor of main building of Cama Hospital. Witnesses, who have identified A1-Kasab had opportunity to observe him. The incident was of such gravity that the features of A1-Kasab must have been imprinted in their memory. Similar is the case with deceased A1-Abu Ismail's identification.

308. It is submitted that assuming the prosecution story to be true, as per the prosecution case, entry in Cama Hospital was not part of the conspiracy. Therefore, the

entry in Cama Hospital and the holding of prosecution witnesses as hostages by A1-Kasab and his companion in Cama Hospital is a concocted story. This argument is without any merit. In the confessional statement, A1-Kasab has given the reason why he and his companion deceased A1-Abu Ismail entered Cama Hospital. He has stated that when they crossed the foot over bridge of CST and entered in the lane, they fired. There was heavy firing from the police. Therefore, they decided to enter the building situated in front of them, go to the terrace and fire at the police. Thus, they were forced to enter Cama Hospital. Once having entered Cama Hospital in tune with the general theme of conspiracy, they fired at people and held some of them as hostages. They were compelled to leave Cama Hospital because of the police resistance and obviously because they wanted to carry out their further object. This will be more clear as, we move on.

309. It is now necessary to go to the confessional statement made by A1-Kasab. In the confessional statement, A1-Kasab has stated that after they got down from the foot over bridge on the B.T. Road, they could not find a single car which was not locked. They proceeded ahead in the line and fired. At that time, police started firing. Seeing this, they decided that they should force their entry into the opposite building, go to the terrace of the building, fire at the police, throw hand grenades at them and kill them. Thereafter, they jumped over a small gate and went inside the building. In that building, police followed them. A1-Kasab has further stated that they fired at the police and other people and threw hand grenade at them. At that time, police also fired at them. They killed policemen. Thereafter, when the firing at the ground level stopped, both of them went down. He has further stated that they were in that building for about one hour. During the time they spent in that building, they got to know that that building was a hospital. From the rooms of that building, cries of ladies and small

children could be heard. Then they decided that they would go to every room of the hospital and kill women and children. For that purpose, they tried to open the rooms of the hospital. But, the doors of all rooms were closed from inside and the outer iron doors were also closed. Therefore, they could not open them. Hence, they started from there to reach their final target. They got down from the building. They proceeded towards the front side of the building by taking cover of the wall. After going ahead, they jumped from wall and landed on the road.

310. This confessional statement fits in the chain of events which, all the witnesses through their evidence have brought on record. The evidence of witnesses which we have reproduced hereinabove, corroborates this part of the confessional statement.

311. In his plea, A1-Kasab has inter alia admitted his entry in the Cama Hospital along with deceased A1-Abu Ismail, he has admitted firing and throwing of hand grenades in the Cama Hospital. He has admitted that they had confined people in the bathroom. He has admitted that the person who was reluctant to cooperate with them was injured and lying in a pool of blood.

312. The above analysis of the evidence of injured eye-witnesses, injured witnesses, circumstantial evidence, ballistic experts' evidence persuades us to confirm the findings of the trial court in respect of the incident of Cama In. We have no hesitation in holding that complicity of A1-Kasab and deceased A1-Abu Ismail in this incident is clearly established.

313. So far as the incident at Cama-In is concerned, the important witnesses of the prosecution

and their particulars are reproduced below for ready reference.

Sr. No.	PW No.	Name of Witnesses	Status	Identification		
				TIP	In Court	Art.61(*)
1.	103	Bharat Waghela	-	Yes	Yes	Yes(**)
2.	105	Sandeep Waghela	-	Yes	Yes	
3.	101	Ms. Kulathe		Yes	Yes	Yes
4.	107	Funde		Yes	0	Yes(**)
5.	108	Uledhar	-	-	Yes	-
6.	123	Chinnekar	-	-	Yes	-
7.	109	Tikhe	Injured	Yes	Yes	-
8.	111	Ghegadmal	Injured	Yes	Yes	-
9.	118	Addl.C.P. Date	Injured	-	-	-
10.	112	API Shinde	Injured	-	-	-
11.	106	Shrivardhankar	Injured	-	-	Yes

(*) Denotes the identity card displaying the photograph of deceased A1-Abu Ismail

(**) Denotes identification of deceased A1-Abu Ismail in the identification parade of dead bodies.

E. INCIDENT OF FIRING AT CAMA OUT.

314. It is now necessary to come to the evidence of witnesses who speak about the incident which took place outside Cama Hospital after the accused finished their merciless killings inside the Cama Hospital and came out

and entered B.T. Road adjoining St. Xavier's college. This incident relates to killing of PI Bargude which had occurred before the accused hijacked the police jeep after killing senior police officers who were sitting inside.

315. PW-138 is PN Suresh Kadam who was attached to Azad Maidan Police Station. According to him, on the night of 26/11/2008 and 27/11/2008 after receiving wireless message that two terrorists were proceeding towards Metro Junction, he and his colleagues went to DCB Zone-1, near Bora Bazar in two police vehicles. According to him, PW-118 Addl. C.P. Date also reached Metro Junction. After leaving their vehicles at Metro Junction, they started walking towards Cama Hospital. On the way as directed by PW-118 Addl. C.P. Date he went to collect bullet proof jackets from Azad Maidan Police Station and reached in front of Cama Hospital in Bolero Police Vehicle. That vehicle was parked on the left side of Mahapalika Road opposite Cama Hospital. He was accompanied by PW-128 Sr. PI Thorawade amongst

others. They took position by the side of their vehicle in anticipation of the terrorists. According to him, at about 11.45 p.m., they saw two persons on the footpath of Cama Hospital. One was tall and the other was short. In the meanwhile, one motorcycle was seen proceeding towards CST from Metro Junction on Mahapalika Road. There was one police officer on the pillion seat. He got down near the gate of St. Xavier's College. The motorcycle went ahead. According to this witness, both the accused fired at the said officer from a distance of 15 to 20 feet. He and his colleague also fired at the accused. The accused fired at them in retaliation. In the meantime, a white car with a red beacon was seen approaching Mahapalika Road from B.T. Road. The accused fired at the said vehicle. They threw hand grenades at the said vehicle. Thereafter, they proceeded towards Rangbhavan lane. It may be stated here that the police officer who was shot dead was PI Bargude. The white car with red beacon was the car of PW-140 Bhushan Gagrani a Senior IAS Officer. We shall soon come to his evidence. This witness has

identified A1-Kasab in the identification parade held on 27/12/2008. He has identified him in the court also. He has also identified dead body of deceased A1-Abu Ismail in the identification of dead bodies held on 6/1/2009. In the cross-examination, he has denied the suggestion that he and his colleagues who had brought bulletproof jackets had entered Cama Hospital. He has denied that he was unable to see A1-Kasab clearly. He has stated that B.T. Road was clearly visible from the place where he was standing. He has stated that he had heard sound of burst firing from Rangbhavan lane. He has stated that he had seen Qualis vehicle proceeding towards Mahapalika Road from B.T. Road. According to him, he had seen the accused sitting in the said vehicle but he could not see anyone else.

316. It must be stated here that Qualis vehicle about which he has spoken, is the same vehicle which was seized by the accused and from which senior police officers Joint C.P. (ATS) Karkare, Addl. C.P. Kamate and PI

Salaskar were pulled out by the accused after they were shot dead. We shall advert to that evidence soon. Evidence of this witness is attacked on the ground that he falsifies the prosecution case that PW-136 Arun Jadhav was in the Qualis vehicle. We do not attach much importance to the statement of PW-138 PN Kadam that he had only seen the accused sitting in the Qualis vehicle. It is important to note that PW-136 Arun Jadhav had received injury. PW-136 Arun Jadhav has stated that he was pretending to be dead. He would, therefore, obviously not be visible to anyone standing on the road.

317. As we shall soon see evidence of PW-138 Arun Jadhav inspires confidence and is corroborated by the evidence of PW-128 PI Yeshwant Thorawade, who was attached to Azad Maidan Police Station at the relevant time. He was in-charge of investigation of C.R. No.245 of 2008 till it was taken over by DCB, CID. It appears that he was recalled by the court because though he was with PW-138 PN Suresh Kadam and had witnessed the incident

seen by PW-138 PN Suresh Kadam, he had not been asked any question about the same. He has confirmed that he had witnessed the incident seen by PW-138 PN Suresh Kadam. He stated that as instructed by PW-118 Addl. C.P. Date, PW-141 PSI Shelke and other staff members came to Azad Maidan Police Station at about 11.15 p.m., to collect bullet proof jackets and ammunition. They collected bullet proof jackets and ammunition. He joined PW-138 PN Kadam, PW-141 PSI Shelke and PC Utekar and PC Redekar. Mr. Gawade was driving the police vehicle Bolero. They reached Mahapalika Road in front of St. Xavier's College. According to him, at about 23.45 hours, two persons were seen coming out of Cama Hospital in suspicious manner. After sometime one police constable was seen on Mahapalika Road on a bike. One police officer was on the pillion seat of the same bike. He got down in front of St. Xaveir's College and the constable went back to the side of Metro Junction after taking "U" turn. According to him, the said two suspicious persons fired at the police officer and he collapsed on the road.

This witness therefore, started firing at them. They also fired in retaliation and entered B.T. Road from the side of St. Xavier's College. He tried to contact South Control, but did not succeed. He, therefore, went to Metro Junction. At that time, one police vehicle appeared from B.T. Road and took right turn on Mahapalika Road towards Metro Junction. He saw two terrorists in the vehicle. It went towards Gol Masjid. According to this witness, the person who was sitting on the right side was firing on the road.

318. In the cross-examination he has explained that earlier when he was examined in the court he did not describe the incident because he was told that he would be called as a witness in Crime No.246 of 2008 of Azad Maidan Police Station. He has confirmed that he had seen PI Dargude being shot down by the terrorists. There is no challenge to this. He has also referred to the white car with red beacon at B.T. Road. According to him, the terrorists had fired at the said car also. His cross-

examination has not made any dent in his evidence. Evidence of this witness corroborates the evidence of PW-138 PN Suresh Kadam.

319. We shall now turn to the white car with red beacon. PW-139 Maruti Phad is driver of PW-140 Bhushan Gagrani, an IAS Officer in the service of Government of Maharashtra. He was staying in official quarter in High Rise building situated near Cama Hospital. According to him, on 26/11/2008, at about 9.30 p.m., he received a call from PW-140 Gagrani that he should go to his residence at Yashodhan building because PW-140 Gagrani was urgently called to Mantralaya. He started going to Yashodhan building via Mahapalika Road. As he was approaching Mahapalika Road through B.T. Road, he saw two persons. One was tall and the other was short. He identified A1-Kasab in the court as the short person of the two. They were firing. According to him, apprehending danger he reversed the car. They fired at his vehicle. Two bullets pierced through the window screen and hit his

right hand. The third bullet hit his waist. Tubes of his car's tyres were punctured. Therefore, he centrally locked the car. At that time, he heard the sound of bomb explosion. According to him, the accused came and tried to open the doors of his car but they could not do that. He pretended to be dead. After sometime, they went towards SB-1 office on B.T. Road. This witness saw them from the windscreen of his car. According to him, they reached High Rise building taking shelter of bushes abutting it. According to him, at the same time, one police vehicle was seen approaching Mahapalia Road from the side of SB-1 office. As soon as the vehicle came in front of the two accused, they started firing indiscriminately on the said vehicle. During this incident A1-Kasab sustained a bullet injury. According to this witness, consequently A1-Kasab's gun fell down, but he picked it up and again started firing at the police vehicle. Within a short time, the tall person went near the said vehicle and opened right front door and pulled out the driver on the road. He also pulled out another person

from the middle seat of the vehicle. A1-Kasab went to the left side of the vehicle and pulled out the person who was sitting on the left front seat. His associate occupied the driver's seat and he occupied left front seat of the vehicle. The vehicle proceeded to Mahapalika Road. According to him further, when he was lying in the car, he received a phone call from PW-140 Gagrani. He narrated the incident to him. After sometime, the police came and he was shifted to the hospital. This witness lost his ring finger due to injury. His other fingers are also not functioning properly due to the bullet injuries. He identified A1-Kasab in the identification parade held on 27/12/2008. When identity card (Art.61) was shown to him, he identified the photograph thereon as that of deceased A1-Abu Ismail. He also identified dead body of deceased A1-Abu Ismail in the identification parade of the dead bodies held in the J.J. Hospital. His cross-examination has not helped the defence. He has stood firm in his cross-examination.

320. PW-140 Gagrani has confirmed that on 26/11/2008 at about 11.30 p.m., he received a message from Chief Secretary asking him to reach Mantralaya for an urgent meeting. He, therefore, called PW-139 Maruti Phad - his driver and told him to bring his car to Yashodhan Building. His driver did not come, so he again called him. PW-139 Phad told him that there had been firing at the car and the car was in the vicinity of Rangbhavan. He ensured that PW-139 Phad gets help. He received a message that PW-139 Phad had received bullet injuries and was admitted in G.T. Hospital. Evidence of this witness completely supports the evidence of PW-139 Maruti Phad.

321. PW-133 is ACP Shantilal Bhamre. He was working as Addl. C.P. Pydhonie Division. On 26/11/2008, he reported for duty at 9.00 a.m. and left his office at 9.00 p.m. in Qualis vehicle. At 10.00 p.m., when he was at home, he received a call from his wireless operator that there was a terror attack in South Mumbai. His Qualis vehicle was returning to the office with his wireless operator. He

called him back. He then went back to his office. He deployed police on L.T. Marg. He was patrolling the area in Qualis vehicle. His driver was ASI Balasaheb Bhosale. His wireless operator PC Yogesh Patil was operating the wireless set whose call sign was “Able”. He reached B.T. Road at 11.45 p.m. He was at a distance of 25 feet from the rear gate of Cama Hospital. He got down from the vehicle upon seeing some police officers taking position near the gate. He saw senior officers Mr. Karkare, Mr. Kamte and Mr. Salaskar along with their staff members near the compound wall of Cama Hospital. Those officers proceeded towards his Qualis vehicle, boarded it and proceeded towards SB-1 office. His wireless operator and driver were in the vehicle. He left B.T. Road via D.N. Road. After sometime, he received a call from control room on Peter Mobile directing him to reach the lane of Rangbhavan, B.T. Road. When he reached Corporation Bank ATM Centre, he saw police officers Mr. Karkare, Mr. Kamte and Mr. Salaskar lying in injured condition. They were removed to the hospital in police vehicle. He has

been cross-examined at some length. However, his testimony has remained intact. He has stated in the cross-examination that about 5 to 7 minutes after the departure of Mr. Karkare, Mr. Kamte and Mr. Salaskar, in the Qualis vehicle he had heard a sound of firing.

322. PW-130 is Nitin Mathne - police constable attached to Anti Terrorist Squad (for short, "**ATS**"). He was working as wireless operator of Mr. Karkare, the then Joint C.P., ATS. He used to be always in the car of Mr. Karkare. On 26/11/2008, after finishing the work, Mr. Karkare and he reached the residence of Mr. Karkare at 9.45 p.m. along with other members of the team which was deployed for protection of Mr. Karkare. Mr. Karkare came and told them that they were required to go to CST. They proceeded to CST at 10.00 p.m. They reached near Haj House on D.N. Road. The road was blocked with barricades. They got down from their vehicle. DCP Sanjay Mohite, Addl. C.P., Railway Police, Mr. Raghuwanshi and D.C.P. Mr. Koregaonkar were present

there. They came to know from these officers that there was firing at CST and the terrorists had gone to SB-1 office. They proceeded towards CST through B.T. Road. Mr. Karkare put on a bulletproof jacket and helmet and took his pistol from the vehicle. When they reached at the back of Cama Hospital they heard sound of firing and explosion from the hospital. Staff members of the Crime Branch were seen approaching from the side of SB-1 office. After sometime, Addl. C.P. Mr. Kamte and PI Mr. Salaskar also reached there with their staff members. The officers started discussing. In the meantime, there was sound of firing and explosion coming from Cama Hospital. They saw Mr. Tilekar, the wireless operator of Addl. C.P. Mr. Date coming from the rear gate of Cama Hospital. They broke open the door and rescued Mr. Tilekar. There was one Bolero Police Jeep in Cama Hospital at the back, It was brought out. As there was firing from the terrace of Cama Hospital, Mr. Kamte started firing towards the terrace of the Cama Hospital. After sometime, they heard the sound of firing from St.

Xavier's college. Mr. Karkare told them that they should take position behind Cama Hospital and he would enter Cama Hospital along with other officers from the main gate abutting Mahapalika Road. At that stage, this witness saw one Qualis vehicle on B.T. Road. The Qualis vehicle was of Pydhoni Police Station. It was called 'Able Pydhoni'. Addl. C.P. Kamte and Joint C.P. Karkare sat in the vehicle. PI Salaskar was driving the vehicle. Mr. Kamte sat besides him on the front left seat and Mr. Karkare sat on the middle seat. Mr. Bhosale, wireless operator - Mr. Jaya Patil, wireless operator of Mr. Kamte and Mr. Arun Jadhav assistant of Mr. Salaskar occupied extreme back seats of the vehicle. The car proceeded towards SB-1 office. After sometime, there was a sound of burst firing from the direction of St. Xavier's college. Thereafter, for sometime, there was complete silence. Therefore, this witness along with others went towards SB-1 office in the vehicle. When they reached in front of ATM Centre of Corporation Bank, B.T. Road, they saw Mr. Karkare, Mr. Kamte and Mr. Salaskar lying there in injured

condition. Qualis vehicle was missing. One Honda City white car was seen lying in a slanting position at some distance. The injured police officers were removed to hospital. Thereafter, this witness went to Azad Maidan Police Station and lodged FIR which is at Ex-522. It was recorded by PW-141 PSI Shelke. Evidence of this witness has not been shattered in the cross-examination. This witness corroborates evidence of PW-128 Thorawade and PW-139 Maruti Phad – driver of Honda City white car and PW-133 ACP Shantilal Bhamre. PW-131 Rajesh Kombekar is pancha to spot panchnama Ex-524, which is drawn by PW-132 Pradeep Londe. This panchnama refers to (i) immobilizing of Honda City car; (ii) the incident which took place at the rear side of Cama Hospital, (iii) incident which occurred near the Corporation Bank ATM Centre where three police officers died, (iv) incident which occurred at the entry gate of St. Xavier's college and (v) the incident at the Metro Junction. Ex-524, inter alia, notes the empties, lead pieces, bullet marks and other articles found at these places of occurrence. It also refers to the

bullet marks, lead pieces and blood found in the Honda City car.

323. PW-136 is PN Arun Jadhav. He is the star witness of the prosecution. He is attached to the Anti Extortion Cell of Mumbai Police of which PI Vijay Salaskar was the chief. According to him, on 26/11/2008 he reached his office at 21.45 hours. He was informed on phone that there was firing at Colaba and at Taj Hotel and he should inform PI Salaskar regarding the same. He informed PI Salaskar accordingly. PI Salaskar told him to reach Colaba Police Station with arms and ammunition from the Armoury of Anti Extortion Cell along with other staff members. Therefore, he and PC Shetye collected weapons and proceeded to Colaba Police Station. At Colaba Police Station, PI Salaskar was present. It was learnt that the terrorists after firing at CST Railway Station, had entered the Cama Hospital via B.T. Road. This witness along with PI Salaskar and others reached there at about 11.30 p.m. Joint C.P. Karkare and Addl. C.P. Kamte were also present.

They were near the rear gate of Cama Hospital. They saw one policeman coming out of the Cama Hospital from the rear gate. He appeared to be injured. There was firing from the Cama Hospital. Addl. C.P. Kamte fired with his AK-47 rifle towards the Cama Hospital. The injured police constable was sent to the hospital for treatment. He told them that Addl. C.P. Date and other police officers were lying in injured condition on the upper floors of the Hospital. There was discussion between Mr. Karkare, Mr. Kamte and PI Salaskar. Mr. Karkare told the officers to go towards the front gate of Cama Hospital. There was one police jeep of Pydhoni Division facing towards SB-1 office. PI Salaskar occupied the driver's seat of that jeep. Mr. Kamte occupied the left front seat. Mr. Karkare occupied the middle seat of the vehicle. This witness sat in the extreme rear side of the vehicle. Driver Mr. Bhosale was sitting along with him. Two constables i.e. Yogesh Patil and Jaywant Patil were occupying the seat opposite to them. Yogesh Patil was wireless operator of the said vehicle and Jaywant Patil was wireless operator of Mr.

Kamte's vehicle. When they were proceeding towards SB-1 office, they received a message that two terrorists had been hiding in Rangbhavan lane. Mr. Kamte directed PI Salaskar to slow down the vehicle and proceed further cautiously. There were bushes on the right side of the road of 5 feet to 5.5 feet height. When they reached near the said bushes, there was a burst firing at their vehicle. This witness saw one tall man and one short man firing towards their vehicle with AK-47 rifles. Therefore, he, Mr. Karkare, Mr. Kamte and Mr. Salaskar started firing towards the said tall and short person from windows of their vehicle. During the said exchange of fire, this witness sustained an injury on his right elbow. He also sustained a bullet injury on his left shoulder. Because of these injuries, his carbine fell down in the vehicle. The terrorists continued to fire at them. All of them sustained firearm injuries. After sometime, there was complete silence. The tall man tried to open rear door of their vehicle but he could not do so. At that time, this witness tried to pick up his weapon. But, he could not pick it up.

Driver Mr. Bhosale was badly injured and had fallen down on him. Mr. Yogesh Patil and Mr. Jaywant Patil were also unable to move. Realizing that it was not possible to retaliate, this witness pretended to be dead. At that time, he heard the sound of opening of the door of his vehicle. He also heard the sound of starting of his vehicle. He realized that the vehicle was running on the road. The tall terrorist was driving the vehicle and Mr. Karkare and PI Salaskar and Mr. Kamte were not in the jeep. At the Metro Junction, he heard the sound of firing. But, he continued to pretend that he was dead. He realized that the vehicle was running with one of the tyres and its tube in punctured condition. The vehicle stopped behind Vidhan Bhavan. He saw both the terrorists leaving the said spot in a car which looked like Honda City car. He heard the sound of firing. He, therefore, informed the control room that two terrorists had run away in a car and he was in the vehicle of Pydhoni Division in which Mr. Karkare and others were travelling and which was lying in abandoned condition in front of State Bank of Mysore. He

requested for help. After sometime, Peter Mobile of Marine Drive Police Station reached there. He narrated the incident to PW-137 Senior PI Mr. Amrute, who had come there. He informed them that Mr. Karkare, Mr. Kamte and PI Salaskar had been lying in injured condition near Rangbhavan and Mr. Yogesh Patil, Mr. Jaywant Patil and Mr. Bhosale were lying in a vehicle of Pydhoni Police Station in injured condition. He identified A1-Kasab in the court. He identified A1-Kasab in the identification parade held on 27/12/2008 as the short terrorist. On 6/1/2009, he identified the dead body of deceased A1-Abu Ismail from amongst 7 dead bodies in the identification parade of dead bodies. In the cross-examination, it was suggested to him that the terrorists had fired first at their vehicle. He stated that it was correct to say that the terrorists had fired first at their vehicle. He has stated that AK-47 rifle held by A1-Kasab had fallen down however, again he picked it up and fired at them. He has stated that he and Mr. Karkare fired from the windows of their vehicle. He sustained bullet injury while he was

firing at the terrorists. Five bullets hit his body. Three bullets hit his right elbow and 2 bullets hit his left shoulder. One of the five bullets is still in his body. He has reiterated that after sustaining injuries, he had partly collapsed on the seat. Mr. Bhosale collapsed on his chest. Mr. Jaywant Patil and Mr. Yogesh Patil also collapsed in their seats. He has further stated that Mr. Yogesh Patil was lying on his knee. At that time, his mobile phone rang. A1-Kasab, who was sitting on the left front side of the jeep opened fire. The bullet after piercing the middle seat had hit Mr. Yogesh Patil who died due to bullet injury sustained during this incident. According to him, during burst firing, 10 to 15 shots must have been fired by A1-Kasab. He has stated that the tall terrorist pulled PI Salaskar and Mr. Karkare and A1-Kasab pulled Mr. Kamte out of the vehicle. He has further stated that around 00.25 hours, A1-Kasab and his associate left Vidhan Bhavan after hijacking Scoda car. Thereafter, he pulled the handset of wireless which was hanging behind the driver's seat by stretching his left hand from where he

was sitting. This supports his version in the examination-in-chief that he got in touch with the control room after the terrorists left Vidhan Bhavan in Skoda car.

324. PW-137 Senior PI Sanjay Amrute attached to Azad Maidan Police Station had gone to PW-136 Arun Jadhav after he received the information from him about the incident. He has supported PW-136. He shifted PW-136 Arun Jadhav to the hospital. His cross-examination is ineffective.

325. PW-134 is Santosh Pawar, pancha witness. He is pancha to Ex-529 under which Qualis vehicle MH-01-PA 569 was seized. He has corroborated PW-136 Arun Jadhav. He has stated that on 27/11/2008, he resumed his business at the tea stall in front of Vidhan Bhavan. He was called by the police to act as a pancha in respect of Qualis vehicle standing in front of Vidhan Bhavan. According to him, the said Qualis vehicle was found stationed at Barrister Rajani Patel Road at the rear side of

Vidhan Bhavan. Right side of the wheel of the said vehicle was without tire and tube. There were bloodstains on the bonnet of the vehicle. There were three holes of firing on front windscreen. The windscreen was found shattered. Right side mirror was found broken. There were three marks of firing on right front door. There were ten fire holes on right rear door. One of the sliding glasses of right rear door was completely broken and other was found shattered. There were five firing holes on the right side of the vehicle. The rear windscreen was completely broken. There were three firing holes on the rear door. The glasses of front, left and right doors were found broken. There were firing holes and dents on the hood of the vehicle. The footrest was found stained with blood. The driver's seat was found stained with blood. One gun was found on left front seat of the vehicle. There was one magazine attached to the said gun. It was empty magazine. There were three magazines on left front seat. Two of them were empty. There were 28 rounds in the third magazine. One pistol was also there on the same

seat. It was loaded with the magazine. There were 13 rounds in the magazine. There was one more pistol magazine containing three rounds. Two empties were found in the front leg space and two empties were found in the middle leg space. There were three pistols on the middle seat. All the pistols were loaded with magazines. One magazine was found empty. The rest of the two magazines were containing 12 and 10 rounds each. Twenty three live cartridges were found on front leg seat. In the extreme rear portion of the vehicle, one machine gun was found loaded with magazine containing 27 rounds. This witness has stated that all these articles were collected from the vehicle. They were given to the police officers of Marine Drive Police Station. When the articles were shown to him in the court, he identified them as the same articles. Amongst other things, he identified one AK-47 rifle (Art.427). He has been extensively cross-examined but the defence has not been able to elicit anything in his cross-examination which can damage his version. PW-135 PSI Sanjay Chavan had drawn

panchnama (Ex-529). He has corroborated PW-134 Santosh Pawar. PW-141 PSI Atmaram Shelke recorded FIR (Ex-522) of PW-130 PC Nitin Mathne. The offence was registered vide C.R. No.246 of 2008. After its transfer to DCB, CID, it was renumbered as C.R. No.188 of 2008.

326. So far as the witnesses examined by the prosecution in connection with the incidents which took place in and around Cama Hospital are concerned, Mr. Solkar has contended that there is variation in the time given by the witnesses as regards the explosion. We do not attach much importance to the alleged variation because estimate of time differs from person to person. Slight variation in time is, therefore, of no consequence.

327. Mr. Solkar submitted that the wireless messages of the control room should have been produced by the prosecution. That would have indicated the movements of Karkare, Kamte and Salaskar, the senior police officers and PW-136 PN Arun Jadhav. The prosecution has

adduced enough evidence to establish what prompted the senior police officers and PW-136 PN Arun Jadhav to proceed to B.T. Road and about their movements. It was, therefore, not necessary to produce the wireless messages of the control room. Mr. Solkar further submitted that the senior police officers Karkare, Kamte and Salaskar were at the rear gate of Cama Hospital. Instead of taking the short cut, they had chosen a long route to go to the front gate of Cama Hospital, which is unnatural. This submission also needs to be rejected. What prevailed upon the officers at that moment cannot be imagined at this stage. They might have taken this route for some purpose. The prosecution is not expected to meet every hypothesis of the defence.

328. Mr. Solkar further submitted that PW-139 Maruti Phad was in a state of shock and, it is inconceivable that he would have seen the terrorists firing at Karkare, Salaskar and Kamte. He further submitted that PW-139 Maruti Phad and PW-138 PN Suresh Kadam did not contact

the police for securing help for the senior police officers. This suggests that they were not present at the scene of offence.

329. So far as PW-139 Maruti Phad is concerned, he did contact his employer PW-140 Bhushan Gagrani and inform him about the incident. So far as PW-138 PN Suresh Kadam is concerned, his conduct cannot be assailed because he fired at the accused. His evidence is corroborated by PW-128 Thorawade, and, therefore, his presence is proved. Mr. Solkar submitted that PW-136 Arun Jadhav was wounded and was in semi conscious condition and, he might not have seen A1-Kasab. We have already noted that PW-136 Arun Jadhav's evidence is truthful. He was inside the Qualis vehicle. The tenor of his evidence inspires confidence and, there is no reason to disbelieve his version that he had seen the terrorists.

330. About the proof of incidents which took place outside Cama Hospital in which amongst others, three senior

police officers were killed, there can hardly be any doubt. All the witnesses examined by the prosecution to establish this part of the prosecution story are truthful. They are consistent and they corroborate each other. The police witnesses, by reason of their duty, had to be present at the scene of offence. Their presence, therefore, cannot be doubted. They are most natural witnesses. PW-138 PN Suresh Kadam and PW-128 Sr. PI Thorawade had clearly seen the terrorists gunning down PI Bargude. PW-139 Maruti Phad, driver of PW-140 Gagarani had a very narrow escape. A1-Kasab and deceased A1-Abu Ismail fired at his car. Bullets damaged his car. Bullet hit his waist. He lost his ring finger. The terrorists could not open his car because it was centrally locked. He pretended to be dead but he could see one police vehicle approaching Mahapalika Road from the side of SB-I office. He could see the terrorists firing on the said vehicle. In this firing A1-Kasab sustained a bullet injury. He saw deceased A1-Abu Ismail and A1-Kasab pulling out three persons from the said vehicle, getting into the said

vehicle and going away. He identified A1-Kasab in the identification parade. He identified dead body of deceased A1-Abu Ismail in the identification parade of dead bodies.

331. In our opinion, the witness who establishes the prosecution case to the hilt is PW-136 Arun Jadhav. He has deposed as to how he along with Joint C.P. Karkare, Addl. C.P. Kamte, PI Salaskar. police driver Bhosale, PC Yogesh Patil and PC Jaywant Patil proceeded towards SB-1 office when they received a message that two terrorists had been hiding in Rang Bhavan lane. He has deposed as to how, when they reached near the bushes, there was burst firing on their vehicle. He has deposed about the exchange of fire between the police and the terrorists in which he sustained injury on his right elbow and on his left shoulder. He has deposed as to how police driver Bhosale, PC Yogesh Patil, PC Jaywant Patil received injuries and they were unable to move. It may be stated here that all these three policemen succumbed to their

injuries. This witness has further stated that he pretended to be dead. He has deposed as to how the terrorists took away the vehicle without Joint C.P. Karkare, Addl. CP Kamte, PI Salaskar. He has stated that the police vehicle was running with a punctured wheel and, hence, the terrorists got into another car which looked like Honda City car and ran away. He then contacted the control room. Identification of A1-Kasab by this witness, in our opinion, can never be doubted. He has also identified the dead body of deceased A1-Abu Ismail in the identification of dead bodies. He is truly the star witness of the prosecution.

332. The inquest panchnama of dead body of ATS Chief Hemant Karkare was drawn on 27/11/2008 by PSI Desai. It is at Ex-516. The postmortem examination of Mr. Hemant Karkare was done by PW-120 Dr. Bhalchandra Chikhalkar. PW-120 Dr. Chikhalkar opined that the deceased had died due to hemorrhage and shock due to multiple firearm injuries. 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. PW-120 Dr. Chikhalkar's opinion vide postmortem notes (Ex-495) states that two deformed bullets were retrieved from the body of Mr. Hemant Karkare. However, the comparison did not lead to any conclusive opinion whether the bullets tallied with the test fired bullets from the weapon held by A1-Kasab or deceased A1-Abu Ismail.

333. The inquest panchnama of the dead body of Mr. Vijay Salaskar was drawn by PW-372 Anil Kadam. It is at Ex-1242A. The postmortem examination was conducted by PW-104 Dr. Ganesh Niturkar. There were four firearm entry wounds on various parts of the dead body including vital parts like chest and right forearm. There are two corresponding exit wounds. PW-104 Dr. Niturkar opined that the deceased had died due to hemorrhage 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 the Ballistic Expert for examination. However, the comparison did not lead to any conclusive opinion.

334. So far as the deceased Mr. Ashok Kamate, Additional C.P. is concerned, the inquest panchnama of his dead body was done by PW-370 Aditya Nandi vide Ex-1240A and the dead body was sent to the Medical Officer for postmortem examination. During the course of the postmortem examination, PW-120 Dr. Chikhalkar had found the following external injuries:

> *"1) Firearm wound of entry on left frontal and supraorbital region cruciate shapped size 3 cm x 2 cm diameter with surrounding laceration of size 6 cm x 3 cm x bone deep, enverted margins. No tattooing, blackening and burning.*
>
> ***Tract:-*** *bullet had entered through this wound fracturing left frontal bone with haemorrhagic lacerated tract through brain, direction was front to back with its corresponding exit through left parietooceipital lobe fracturing left parietal and occipital bone, cruciate exit wound of size 8 cm x 5 cm x bone deep, everted margins, bone chips absent. Brain matter*

severely lacerated and partly absent.

2) Firearm wound of entry on blade of shoulder top centrally between neck and right shoulder of size 3 cm x 2 cm, inverted margins. No blackening, singeing tattooing present around wound of entry over region of 10 cm diameter.

***Tract*:-** *haemorrhagic lacerated tract of bullet through this entry wound on right shoulder blade, direction above downward, lateral to medial lacerating right pleura and lung at two places and bullet was found embedded in right side of chest cavity, retrieved and forwarded for Ballistic expert.*

3) Abrasion left shoulder top of size 3 cm x 1 cm(shoulder blade top centrally)

4) Laceration right thigh just above right knee of size 2 cm x 1 cm circular."

PW-120 Dr. Chikhalkar has found the following internal injuries:

"1) Fracture of skull bone left frontal, parietal, occipital bone.

2) Laceration of brain, right lung and corresponding soft muscle tissue."

335. 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 Exhibit 496. The forwarding letters to the Ballistic Expert are at Ex-496A collectively. The bullet is at Art.391. PW-157 Vasudev Patil, Assistant 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 AK-47 rifle. As such, in the opinion of Ballistic Expert, the bullet retrieved from the body of Ashok Kamate was fired from AK-47 rifle.

336. Learned Sessions Judge has held that A1-Kasab or deceased A1-Abu Ismail had caused injuries described in Column No.4 to deceased at Serial Nos.21, 22 and 23 viz. Hemant Karkare, Ashok Kamate and Vijay Salaskar respectively as mentioned in Table No.2 with intention to cause death or bodily injury and that the bodily injuries

intended to be caused were sufficient in the ordinary course to cause death and that A1-Kasab and deceased A1-Abu Ismail shared each others intention at the time of committing their murder. We have no hesitation in confirming this finding because the evidence on record which we have discussed hereinabove clearly establishes this. PW-130 PC Mathne, the Wireless Operator of Jt. C.P. Hemant Karkare, PW-133 ACP Bhamre and PW-136 PN Jadhav have clearly established that Jt.C.P. Karkare, Addl. C.P. Kamte and PI Salaskar were together and they proceeded towards SB-I Office. The injured PW-136 PN Jadhav was in the Qualis vehicle with Jt.C.P. Karkare, Addl. C.P. Kamte and PI Salaskar when they were attacked. He has stated how the terrorists attacked them. He has stated that the terrorist resorted to burst firing. The Qualis vehicle was badly damaged. PW-136 PN Jadhav has identified A1-Kasab in the identification parade as well as in the court. He has also identified deceased A1-Abu Ismail in the identification parade of dead bodies. PW-139 Maruti Phad, an injured witness had seen the terrorists

firing at the Qualis vehicle. He has identified A1-Kasab in the identification parade as well as in the court. He has also identified deceased A1-Abu Ismail in the identification parade of dead bodies as well as on the basis of identity card (Art.61). This supports the prosecution case that A1-Kasab was in Ranghbhavan Lane and deceased A1-Abu Ismail was accompanying him. The postmortem notes of Jt.C.P. Karkare, Addl. C.P. Kamte and PI Salaskar clearly state that all these three police officers had received firearm injuries. Therefore, though the Ballistic Expert's opinion in respect of bullets retrieved from the bodies of Jt. C.P. Karakare and PI Salaskar do not conclusively state that they were fired either from AK-47 rifle used by A1-Kasab or deceased A1-Abu Ismail, we have no hesitation in holding A1-Kasab and deceased A1-Abu Ismail responsible for their death. No other conclusion can be drawn on the basis of the evidence on record. Culpability of A1-Kasab and deceased A1-Abu Ismail is writ large on the record. It is settled principle of law that the Expert's opinion is opinion evidence and by itself it is not

conclusive. If there is eye-witness account or other cogent evidence, then it overrides Expert evidence. We have already referred to the relevant case law in that behalf.

337. In his confessional statement, A1-Kasab has said that after getting out of the hospital, as they were proceeding towards left side by taking cover of the wall, they saw one policeman coming from the front side. He killed the policeman with his AK-47 rifle. At that time, there was firing towards them. They also retaliated and went inside a lane. In the lane, they saw a car with red beacon. He fired at the vehicle. After that, the car moved some distance and stopped. Deceased A1-Abu Ismail immediately took out a hand grenade and threw it. He also fired at the car with a view to ensuring that it goes away. A1-Kasab also fired at the car with his AK-47. After that, when they went near the car and tried to open the car, they found that all the glasses of the car were closed and the doors were locked and the car driver was lying inside. They tried to open the door but it did not open.

After that, they saw one vehicle with a yellow beacon coming towards them from the front side. After seeing this vehicle, both of them went towards the wall and stood in the bushes. When the vehicle came near them, they fired at it. At that time, there was firing from the vehicle towards them. The firing from the vehicle stopped. Thereafter, they peeped inside the vehicle and found that all the policemen were lying dead. They went behind the vehicle and tried to open the rear door but it did not open. Since his hand was paining, he took support of deceased A1-Abu Ismail and stood up and fired at the road behind the vehicle. Thereafter, deceased A1-Abu Ismail pulled out the dead bodies of the driver of the vehicle and the person sitting behind him. A1-Kasab pulled out the dead body of the person who was sitting next to the driver. Since the bullets of AK-47 of deceased A1-Abu Ismail were over, he took the police officer's AK-47 from the vehicle. Thereafter, A1-Kasab sat on the seat next to the driver and deceased A1-Abu Ismail occupied the driver's seat. When the vehicle was started, deceased A1-Abu Ismail

told him that he had received bullet injuries on his leg and arm. A1-Kasab has further stated that when they reached a junction (chowk), crowd was present. Policemen and public had gathered there. Deceased A1-Abu Ismail was firing at the police and the public while driving the vehicle. After sometime, the rear left side tyre of the said vehicle got punctured. Even then, deceased A1-Abu Ismail was driving the vehicle with high speed. The further part of the confessional statement to which we shall soon refer, will show that these terrorists were proceeding via Chowpaty towards Malabar Hill which was their final target.

338. This part of the confessional statement fits in the evidence adduced by the prosecution, which we have referred to hereinabove. The prosecution witnesses corroborate the confessional statement of A1-Kasab.

339. In his plea, A1-Kasab has, inter alia, admitted hijacking of police vehicle after killing police officers after

they went outside Cama Hospital and entered the road. He has admitted that he and deceased A1-Abu Ismail had received injuries. He has admitted that deceased A1-Abu Ismail was driving the police vehicle but the tyre of the said vehicle was punctured.

340. Thus, on the basis of the evidence of above mentioned witnesses and the spot panchnama which shows that live cartridges, magazines, pistols etc. were recovered from the scene of offence, we record our conclusion that the prosecution has conclusively proved the incidents which took place outside Cama Hospital and the involvement of A1-Kasab and deceased A1-Abu Ismail in them.

341. So far as the incident at Cama-Out is concerned, the important witnesses of the prosecution and their particulars are reproduced below for ready reference.

Sr. No.	PW No.	Name of Witnesses	Status	Identification		
				TIP	In Court	Art.61(*)
1.	138	PN Suresh Kadam	-	Yes	Yes	-
2.	139	Maruti Phad	Injured	Yes	Yes	Yes(**)
3.	136	PN Arun Jadhav	Injured	Yes	Yes	(**)

(*) Denotes the identity card displaying the photograph of deceased A1-Abu Ismail

(**) Denotes the identification of deceased A1-Abu Ismail in the identification parade of dead bodies.

342. We have already referred to the evidence of PW-118 Addl.C.P. Sadanand Date, PW-112 API Vijay Shinde, PW-109 Chandrakant Tikhe, PW-111 Kailash Ghegadmal and PW-106 Harischandra Sriwardhankar. These are injured witnesses. They have deposed about their injuries and they have also deposed about the incident.

343. PW-469 Vijay Powar was working as Police Inspector in Thane Rural. He was deployed on the sixth floor of Cama Hospital on the relevant day for fighting anti terrorist operation. He sustained bullet and blast injuries. He was admitted to Bombay Hospital. He has stated that

on account of firing at the terrace of Cama Hospital, he has sustained injuries.

344. PW-470 Sachin Tilekar was attached to RTPC in Wireless Section. On 26/11/2008, he was deployed for fighting anti-terrorist operation at Cama Hospital. In the said firing at the terrace of Cama Hospital, he had sustained blast injuries. He was admitted to Bombay Hospital.

345. PW-471 Mohan Dnyanoba Shinde who was Head Constable attached to Azad Maidan Police Station was also deployed at Cama Hospital for the purpose of fighting with the terrorists. He has also stated that he received bullet and blast injuries due to firing on the terrace of Cama Hospital. He was admitted at J.J. Hospital.

346. PW-473 Hirabhau Jadhav was working as Aaya at Cama Hospital. She was on the first floor at Cama

Hospital. She received firearm injury on her right wrist joint due to indiscriminate firing. It must be noted that these witnesses viz. PW-469 Vijay Powar, PW-470 Sachin Tilekar, PW-471 Mohan Shinde and PW-473 Haribhau Jadhav have filed their affidavit of evidence.

347. In view of the above evidence, we confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused injuries described in Column No.4 in Table No.2 to the deceased from Serial Nos.21 to 36 at the incidents of Cama-In and Cama-Out. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused the aforesaid injuries to the aforesaid persons 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.

348. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' intention at the time of

committing the aforesaid murders.

349. We confirm the finding that either A1-Kasab or deceased A1-Abu Ismail had caused injuries of the nature mentioned in Column No.5 to the persons mentioned in Column No.3 at Serial Nos.110 to 126 except Serial No. 115 in Table No.3 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. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail shared each others' common intention while causing injuries to the said persons.

350. On the basis of the aforesaid evidence, we confirm the finding that A1-Kasab and deceased A1-Abu Ismail in furtherance of common intention on 26/11/2008 at Cama Hospital wrongfully confined (i) PW-123 Timesh Chinekar, (ii) Soman Ghosh, (iii) PW-108 Thomas Uledar and (iv) PW-107 Raosaheb Funde.

F. INCIDENT OF SKODA ROBBERY.

351. From the evidence of PW-136 PN Arun Jadhav, it is clear that while he was lying in an injured condition in the police vehicle i.e. in the Qualis vehicle, he saw that the accused left the Qualis vehicle behind Vidhan Bhavan because its tyre and tube were punctured. They got into a car which looked like Honda City car and left the place. Though PW-136 Arun Jadhav has referred to the car in which the accused got into as a car which looked like Honda City car, it is the prosecution case that it was a Skoda car. It is now necessary to see how the accused got hold of the Skoda car.

352. PW-144 is Sharan Arasa. His father owns a Skoda car bearing Reg. No.MH-02-JP-1276. According to Mr. Arasa, on 26/11/2008 he had gone to the house of his friend PW-147 Samit Ajgaonkar at 11.45 p.m. to pick him up as they wanted to go to Nariman Point to rescue their friend

PW-238 Siddharth Umashankar, who was working as Sales Manager at Hotel Oberoi. According to him, he was informed by PW-147 Ajgaonkar that PW-238 Umashankar was evacuated from Hotel Oberoi and lodged at Inox Multiplex, Near Vidhan Bhavan at Nariman Point. He along with PW-147 Ajgaonkar and his wife Megha left Mahim at about 11.45 p.m in the Skoda car. At about 00.15 hours on 27/11/2008 they reached Rajani Patel Road, Nariman Point. One Qualis police vehicle was approaching towards them from the opposite direction. According to him, somebody shouted from the said vehicle directing them to stop the car. One round was fired in the air. They, therefore, stopped the car. One person got down from left side of the said police vehicle and came in front of their vehicle . He asked this witness to come out of the car. The person who was driving the Qualis vehicle came out of it and pulled him out of the Skoda car by holding his collar. In the meantime, PW-147 Ajgaonkar and his wife Megha had already left the car and were sitting on the footpath. According to him, as he got out of the car, he realized that

the key was with him. He, therefore, threw the said key. He identified the short person who had come from the left side of the Qualis jeep as A1-Kasab in the court. He stated that A1-Kasab came near him and asked for the key. The key was lying near the right wheel of the car. He gave it to A1-Kasab. The car was driven by the associate of A1-Kasab. Within 3 to 4 minutes police van came there. He narrated the incident to the police. They were scared, so they went to PW-147 Ajgaonkar's house at Mahim. After one and half hour, he went to Mahim Police Station. His statement was recorded by the police, which was treated as FIR. It is at Ex-567. On 28/12/2008 he identified A1-Kasab in the identification parade. When Art.61 was shown to him, he identified the photograph thereon as that of deceased A1-Abu Ismail. He stated that he is the same person who had driven away his Skoda car. He has stood firm in the cross-examination. PW-147 Ajgaonkar and PW-238 Umashankar have corroborated PW-144 Arasa.

353. PW-147 Samit Ajgaonkar is a friend of PW-144 Sharan Arasa. He is also a friend of PW-238 Siddharth Umashankar. He has stated that on the night of 26/11/2008 and 27/11/2008, he came to know about the incident of firing at Hotel Taj and Hotel Oberoi after watching the T.V. news. He contacted PW-238 Siddharth Umashankar, who was working as Sales Manager at Hotel Oberoi. He told this witness that he was rescued and has been taken to Inox and he should pick him up from Inox. He contacted his friend PW-144 Sharan Arasa and informed him about the incident and told him that they should go to Inox to pick up PW-238 Siddharth Umashankar. PW-144 Arasa came to his residence in his father's Skoda car at about 11.45 p.m. Thereafter, this witness along with his wife and PW-144 Sharan Arasa proceeded to Inox in the Skoda car bearing Registration No.MH-02-JP-1276. PW-144 Sharan Arasa was driving the car. According to this witness, while they were proceeding towards Inox, they saw a police vehicle on the other side of the road. It was facing east. They were

about 600 feet from Maharshi Valmiki Junction (for short, “M.V. Junction”). The police vehicle was at a distance of about 60 feet from their car. At that time, they heard a sound of firing. Two persons got down from the said vehicle and were approaching their car. According to this witness, one of them was tall and the other was short. He identified A1-Kasab in the court as the short person, who was approaching their car along with his associate who was taller as compared to him. He has further stated that both of them came near them. The tall fellow went near PW-144 Sharan Arasa. A1-Kasab was standing in front of the car. He told them to come out of the car. The tall person pulled PW-144 Sharan Arasa out of the car by holding his collar. According to this witness, he and his wife got down from the car and went on the footpath on left side of the car. The tall fellow occupied the driver's seat and A1-Kasab occupied left front seat. The tall fellow realized that there was no ignition key in the car. A1-Kasab therefore, got down from the car and demanded key from PW-144 Sharan Arasa. PW-144 Sharan Arasa

picked up the key which he had thrown near the car and gave it to A1-Kasab. Thereafter, both of them proceeded towards Inox in the Skoda car of PW-144 Sharan Arasa. This witness has further stated that in the meantime, two police vehicles reached M.V. Junction. They narrated the incident to the police. Since they were too scared, they went to his residence in a taxi. In the afternoon, he went to Mahim Police Station along with PW-144 Sharan Arasa. PW-144 Sharan Arasa lodged his complaint. When Art.61 was shown to him, he identified the photograph thereon as the photograph of the tall person accompanying A1-Kasab. He identified A1-Kasab in the identification parade. The evidence of this witness inspires confidence. He had sufficient opportunity to observe the accused. The defence has not been able to elicit anything in his cross-examination which can make him an unreliable witness.

354. PW-238 is Siddharth Umashankar. He was working as Sales Manager in Oberoi. He knows PW-147 Ajgaonkar and PW-144 Arasa. According to this witness, on

26/11/2008, he reported for duty at 8.45 a.m. and was in the hotel till about 9.45 p.m. or 10.00 p.m. Around 9.45 p.m., he heard sound of gunshots. He along with some of the staff members and guests went out to Inox Multiplex, which is situated at a few minutes walking distance from Hotel Oberoi through exit/entrance door. He received a call from PW-147 Ajgaonkar, who wanted to confirm the situation which he had come to know from TV news. He confirmed it and requested him to pick him up from Inox Multiplex. There were many calls between the two of them. At about 00.45 hours on 27/11/2008, he was informed by PW-147 that his car had been taken away by two terrorists and that he was on his way to his residence at Mahim. This witness has corroborated PW-144 Arasa and PW-147 Ajgaonkar. He is further corroborated by printouts [Ex-929 (Colly.)]. These printouts pertain to incoming and outgoing calls received/made by him and PW-144 Arasa. PW-236 Changdev Godse, Assistant Nodal Officer of Vodafone has produced these printouts. Genuineness of these printouts is not disputed by the

defence.

355. PW-145 is PSI Bhimrao Sarolkar. He was the Investigating Officer. PW-148 is PSI Maruti Zende who has registered the offence of robbery of Skoda car being C.R. No.230 of 2008 which was renumbered as DCB CID C.R. No.192 of 2008. He has drawn spot panchnama. He has also recorded the statement of PW-144 Arasa. PW-129 is PSI Pravin Kuyeskar. He was also the Investigating Officer of this offence.

356. Mr. Solkar submitted that the area behind Vidhan Bhavan was cordoned off due to the terrorists attack and, therefore, PW-144 Sharan Arasa and PW-147 Samit Ajgaonkar could not have reached at the back of Vidhan Bhavan. Mr. Solkar submitted that according to PW-144 Sharan Arasa another Skoda car was seen coming to the scene of incident from where the Skoda was robbed. He stated that the said car was similar to his car. The said car was chased by four police vehicles. The prosecution

has not brought on record where the chase ended and where that car went. Mr. Solkar submitted that the prosecution has not explained what happened to that car. This disproves the prosecution case that PW-144 Sharan Arsa's car was used by the terrorists. According to Mr. Solkar, the car which went ahead was the car involved in the incident of robbery and not the car which was allegedly intercepted at Chowpaty. Mr. Solkar submitted that PW-137 Sanjay Amrute, Sr.PI of Marine Drive Police Station reached the scene of offence at 00.30 hours. He has stated that he had not seen anyone at Vidhan Bhavan near the Pydhunie Able vehicle and, therefore, either PW-137 Sanjay Amrute or PW-145 Bhimrao Sarolkar, who has registered the offence of robbery of Skoda car is lying. Mr. Solkar submitted that A1-Kasab has wrongly been convicted under Section 397 of the IPC though the ingredients of Section 397 of the IPC are not disclosed. Mr. Solkar submitted that the evidence does not disclose use of any weapon while hijacking the Skoda car.

357. All submissions of Mr. Solkar deserve to be rejected. There is no indication in the record as to which area of Vidhan Bhavan was cordoned off and exactly at what time it was cordoned off. Besides, there is sufficient evidence on record to establish that PW-144 Arasa's car was hijacked on the road behind Vidhan Bhavan. Therefore, it is not necessary to dwell on this issue. So far as the other Skoda car is concerned, it is not necessary to spend time on following that vehicle when it is proved by cogent evidence that it is PW-144 Arasa's Skoda car, which was hijacked by A1-Kasab and deceased A1-Abu Ismail and it was intercepted by the police at Girgaum Chowpaty. When we come to that evidence, the utter unsustainability of Mr. Solkar's submission will be realized. It is also not possible to accept his contention that the case of robbery is not made out. In our opinion, all the ingredients of offence of robbery are present in this case.

358. In his confessional statement, A1-Kasab has stated that when they reached a junction (chowk), they found

that number of policemen and people present there. Deceased A1-Abu Ismail was firing at the police while driving the vehicle. The tyre of the police vehicle in which they were sitting was punctured. Deceased A1-Abu Ismail stopped the vehicle. He saw a white car approaching towards them from other side of the road. A1-Kasab fired with his AK-47 rifle. Both of them got out of the vehicle. They went towards that car. A1-Kasab brandished AK-47 at the car driver and asked him to stop the car. After so threatening him he stood in front of that car. The car driver immediately stopped the car. Deceased A1-Abu Ismail forcefully pulled the driver out of the car. At that time, the person who was sitting next to the driver and the woman who was sitting on the back seat, got out of the car. At that time, A1-Kasab was giving cover to deceased A1-Abu Ismail. After that, deceased A1-Abu Ismail sat in the white car. A1-Kasab sat next to him and they started from there. A1-Kasab asked deceased A1-Abu Ismail as to where they were supposed to go. Deceased A1-Abu Ismail replied that they had to go to

Malabar Hill. A1-Kasab asked him which place (of Malabar Hill) they had to reach. Deceased A1-Abu Ismail told him that he would tell him after he reaches Malabar Hill. This part of the confessional statement of AI-Kasab fits in the prosecution case deposed to by the above mentioned witnesses. It is corroborated by them.

359. In his plea, A1-Kasab has admitted that the police vehicle in which they were travelling was punctured; that they had stopped the Skoda car; that there were two males and one female in the Skoda car; that they got out of the Skoda car; that he took the key from one of the three persons and gave it to deceased A1-Abu Ismail; that he sat on the left front seat and they proceeded further.

360. In our opinion, therefore, the prosecution has established its case that A1-Kasab and deceased A1-Abu Ismail committed robbery of Skoda vehicle driven by PW-144 Sharan Arasa.

361. So far as the incident of Skoda robbery is concerned, the important witnesses of the prosecution and their particulars are reproduced below for ready reference.

Sr. No.	PW No.	Name of Witnesses	Status	Identification		
				TIP	In Court	Art.61(*)
1.	144	Sharan Arasa	-	Yes	Yes	Yes
2.	147	Samit Ajgaonkar	-	Yes	Yes	Yes

(*) Denotes the identity card displaying the photograph of deceased A1-Abu Ismail

362. In view of the above evidence, we are satisfied that the prosecution has successfully proved that A1-Kasab and deceased A1-Abu Ismail on 27/11/2008 at about 00.15 hours at Barrister Rajani Patel Marg, Mumbai wrongfully restrained PW-144 Sharan Arasa, PW-147 Sameet Ajgaonkar and Ms. Megha Ajgaonkar and that both the accused shared each others intention.

363. We are also satisfied that the prosecution has

successfully proved that A1-Kasab and deceased A1-Abu Ismail in furtherance of their common intention had committed robbery in respect of the aforesaid Skoda car.

364. We are also satisfied that both the above accused 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 PW-144 Sharan Arasa and PW-147 Sameet Ajgaonkar and Ms. Megha Ajgaonkar.

G. INCIDENT OF FIRING AT VINOLI/GIRGAUM CHOWPATY.

365. It is the case of the prosecution that after committing robbery of Skoda car belonging to PW-144 Sharan Arasa, deceased A1-Abu Ismail drove it towards Chowpaty and, he and A1-Kasab, who was with him, were intercepted at Chowpaty by the police. Deceased A1-Abu Ismail succumbed to the injuries sustained by him and A1-Kasab was apprehended by the police.

366. As regards this incident, the prosecution has examined PW-6 PHC Sudhir Desai. He is a police wireless operator working at South Control of Mumbai police. According to him, he was on duty at South Control from 8.00 p.m. of 26/11/2008 to 8.00 a.m. of 27/11/2008. At about 00.32 hours on 27/11/2008 he received a message from Cuffe Parade Police Station that a Skoda car was proceeding towards Mantralaya after opening fire near Vidhan Bhavan and that there were terrorists in the said car. At about 00.37 hours, he received another message that there had been incident of firing at Girgaum Chowpaty and the terrorists in the car have been apprehended. The said message is produced by him in the court. It is at Ex-74B. He conveyed that message to the control room. Entry in respect thereof is at Ex-74C. At about 00.41 hours, he received a message that two terrorists had been arrested and one ASI had been injured. Entry in respect of this message is at Ex-74D. At 00.42 hours, he received a message that help of BDDS

vehicle was needed. It is at Ex-74E. At 01.21 hours, he received a message that help of police officers was needed for disposal of hand grenade. The entry in respect thereof is at Ex-74F (Colly.).

367. The prosecution has then examined PW-1 PSI Bhaskar Kadam. He was on duty at D.B. Marg Police Station from 20.00 hours on 26/11/2008 till 9.00 a.m. on 27/11/2008. He was informed by Sr. PI Mali that some terrorists had attacked certain parts of South Mumbai and there were bomb explosions. He was directed to visit Girgaum Chowpatty along with members of Crime Branch to arrange for Nakabandi. He went to Girgaum Chowpatty. PW-3 API Hemant Bavthankar was present there along with other officers. After sometime, PW-2 API Govilkar and ASI Tukaram Ombale and other policemen also reached the spot of Nakabandi. In the meantime, they received a message that terrorists had killed many persons including police officers at CST, Hotel Taj, Hotel Oberoi, Cama Hospital and Nariman House. The barricade

was strengthened by installing double barricade at about 00.10 hours on 27/11/2008 on N.S. Purandare Road. Thereafter, another message was received that two terrorists were proceeding towards Chowpaty from Vidhan Bhavan via Marine Drive in a Skoda car. At about 00.30 hours, one Skoda car was spotted by them proceeding towards Chowpaty from South Mumbai on Marine Drive. All the policemen on duty asked the driver of Skoda car to stop. The driver stopped the car at a distance of 50 feet from the barricades. The driver was asked to put off the headlights and put on the lights inside the car. The driver ignored the direction and started spraying the water on the windscreen with wiper spray. It was, therefore, difficult to see the persons sitting in the car. The driver started the car and attempted to take 'U' turn. He could not do so because of the road divider. The car dashed against the divider. He and 6 other policemen rushed towards the car and gheraoed it. The driver and the other person who was sitting on the left side in the car, raised their hands to indicate that they had surrendered. When

PW-1 PSI Bhaskar Kadam approached the driver of the car, he started firing at him with the firearm which he was holding, from the window of the car. PW-1 PSI Kadam started firing at him. The driver of the Skoda car was injured due to the firing from his pistol. The other person who was sitting on the left hand side of the car opened the left door and came out of the car. The said person while getting out of the car purposely fell down on the road. ASI Tukaram Ombale and PW-2 API Sanjay Govilkar were proceeding towards the left front door of the car. The person who got out of the car from left front door started firing at ASI Tukaram Ombale with AK-47 rifle. ASI Ombale pounced upon him. ASI Ombale and PW-2 API Govilkar sustained firearm injuries due to the firing of the said person with the AK-47 rifle. Other members of the team started assaulting the said person with lathis. They succeeded in disarming him. His AK-47 rifle was snatched from him. This witness was at a distance of 8 to 10 feet from the place where A1-Kasab was disarmed and apprehended. Injured ASI Ombale and API Govilkar were

sent to the hospital. The terrorists were also taken to the hospital. Thereafter, they got the information that one of the terrorists had expired at Nair Hospital and the other terrorist was admitted in Nair Hospital. They also got information that ASI Ombale had died. FIR of this incident was recorded by PW-31 PI Sawant. It is at Ex-57. This witness identified A1-Kasab in the identification parade. He identified A1-Kasab in the court also. When Art.10 was shown to him, he identified the same as the same AK-47 rifle with which A1-Kasab had killed ASI Ombale. When Art.12 was shown to him, he identified it as the same AK-47 rifle which was found in the leg space of the driver's seat of the Skoda car. He identified dead body of deceased A1-Abu Ismail in the identification parade of dead bodies. He also identified photograph of deceased A1-Abu Ismail when identity card (Art.61) was shown to him.

368. The prosecution has examined PW-3 API Hemant Bavthankar who was attached to D.B. Marg Police Station.

He has stated that he was present on N.S. Purandare Road in front of Ideal Cafe on 27/11/2008 when the incident occurred. He had gone to the said place as directed by Sr. PI Mali. He reached Girgaum Chowpaty at about 21.55 hours. Nakabandi was organized as directed. According to him, PW-1 PSI Kadam, PW-2 API Govilkar and ASI Tukaram Ombale also reached there. At about 00.30 hours, one car was seen approaching Girgaum Chowpaty in high speed. It was on western side of the road. He and other policemen directed the car driver to stop the car by raising their hands and blowing whistles. The said car stopped at a distance of 50 feet from the barricades. He and his colleagues told the passengers to put off the headlights. The driver ignored the direction. On the contrary, the driver put on wipers and started spraying water on the windscreen of the car. He drove the car in high speed and tried to take 'U' turn in order to run away from the spot. But, he could not succeed because of the road divider. The car hit the road divider. This witness suspected the passengers to be terrorists. The police

shouted at them. Both the terrorists raised their hands pretending that they had surrendered. He was standing on the divider on the right side of the car when the car hit the divider. PW-1 PSI Kadam was about 15 feet away from him on eastern side of the road of south bound traffic. The police tried to approach the car. The driver of the car fired at this witness and at other policemen who were trying to go near him. The bullets fired at him missed him. He went behind the said car and fired three rounds from his service pistol on the rear wind screen of the car. PW-1 PSI Kadam also fired at the driver. The driver was injured due to the said firing. He was taken into custody by the police. In the meantime, this witness came near left front door of the car. The co-passenger of the driver fired from his firearm at ASI Ombale, PW-2 API Govilkar and other policemen. ASI Ombale and PW-2 API Govilkar sustained bullet injuries. The other policemen disarmed the co-passenger and apprehended him. This witness identified A1-Kasab in the court as the same person who had fired at ASI Ombale and PW-2 Govilkar. ASI Ombale

and PW-2 Govilkar were removed to the hospital. The terrorists were also removed to the hospital. According to this witness, there was one hand grenade and two magazines of AK-47 rifle in the jacket lying on the rear seat of the Skoda car. PW-9 PSI Godse of BDDS removed the said hand grenade and took it to Chowpaty. One AK-47 rifle was found in the leg space in front of the driver's seat. When Art.10 AK-47 rifle was shown to him, this witness identified it as the same rifle which was held by A1-Kasab. When Art.12 was shown to him, he identified it as the same rifle which was found in the leg space of the driver's seat. He identified the dead body of deceased A1-Abu Ismail at the mortuary of the J.J. Hospital on 6/1/2009 in the identification parade of dead bodies. The postmortem notes of deceased A1-Abu Ismail corroborate the version of this witness. He identified A1-Kasab in the identification parade held at Arthur Road on 27/12/2008.

369. PW-2 is API Sanjay Govilkar. According to him, he

was on duty at D.B. Marg Police Station from 8.00 a.m. on 26/11/2008. He went home at 9.30 p.m. He learnt from the TV news that the terrorists had fired at some places in Mumbai. Realizing the seriousness of the situation, he reached D.B. Marg Police Station at 10.30 p.m. At about 00.05 hours, on 27/11/2008, he was directed by Sr. PI to go to Ideal Cafe for Nakabandi. He was informed by the operator of Peter Mobile van of D.B. Marg Police Station that one Skoda car was proceeding towards Mantralaya from Vidhan Bhavan. He was informed that some terrorists who were in that Skoda car had fired at Vidhan Bhavan. At about 00.30 hours, one car had stopped near the barricades installed for Nakabandi. They directed the car driver to put off the headlights. Their directions were not obeyed by the driver. The driver started wipers and windscreen water spray. The car proceeded further towards barricades. The driver attempted to take a 'U' turn. However, he could not succeed as the car hit the road divider. According to him, ASI Ombale and other policemen proceeded towards left front door of the said

car. PW-3 API Bavthankar and PW-1 PSI Kadam and others went towards the drivers' side. He and ASI Ombale reached near the left front door of the car. One terrorist opened the door and he was coming out with an AK-47 rifle in his hand. He and ASI Ombale attempted to catch hold of the weapon held by him. However, he resisted and fell down on the road. He started firing while he was lying on the road. This witness and ASI Ombale sustained injury due to the firing. ASI Ombale sustained serious injuries. He sustained injury on right side of his waist. AK-47 rifle was snatched from the terrorist by this witness and other policemen after he was assaulted with lathis. He identified A1-Kasab as the same terrorist who was holding AK-47 rifle and who had fired at him and ASI Ombale, in the court. He identified Art.10 as the same AK-47 rifle, which A1-Kasab was holding. He participated in the identification parade held on 27/12/2008 and identified A1-Kasab. He has stated that he and ASI Ombale did not have any firearms with them. In the cross-examination this witness has stood firm. On the

contrary, to a suggestion put to him, he has stated that it is correct to say that there was a scuffle between A1-Kasab on one hand and ASI Ombale and him on the other hand. Thus, the defence has admitted the presence of ASI Ombale and of this witness at the scene of the offence. PW-2 API Govilkar is an injured witness. PW-21 Dr. Jyoti Rao has issued injury certificate to him. Implicit reliance can be placed on him. In our opinion, these police witnesses inspire confidence.

370. PW-10 is Shashikant Pawar. He is a pancha to panchnama of the scene of incident drawn at Girgaum Chowpaty (Ex-80). According to him, Skoda car No.MH-02-JP-1276 was facing the shop namely Culfi Center at Chowpaty; one pistol was found lying on the right side of the car; two empties were found lying near the pistol. There were 5 cartridges in the said magazine. One cartridge was found in the chamber of the pistol. Two empties, a pistol, cartridges and cartridge found in the chamber and the magazine were wrapped in separate

brown papers and the said packets were sealed. According to him, two empties were found near the footpath abutting Cafe Ideal. They were also wrapped in a brown paper and were sealed. The packets containing seized articles were opened in the court. He identified the articles contained therein as the same articles. When pistol (Art.14) was shown to him, he confirmed that it was the same pistol which was seized in his presence.

371. He stated that one black pouch (Art.53) was found on the driver's seat of the said Skoda car. There was a pistol magazine in the said pouch. The magazine contained seven live cartridges. The magazine and the cartridges were wrapped in two separate brown wrappers. There was one mobile charger, one Nokia battery, identity card of a Hyderabad college and some Indian currency in the pouch. All the articles were wrapped separately in brown wrappers. When these articles were shown to him, he confirmed that they were the same articles.

372. He stated that there was a rifle in the leg space in front of driver's seat and the magazines of the said rifle contained 23 cartridges. There was one cartridge in the chamber. The said rifle, magazines and 24 cartridges were seized and wrapped in separate brown papers. They were sealed. When Art.12 was shown to him, he confirmed that it was the same rifle which was lying in the leg space in front of driver's seat. He also confirmed that the magazines [Art.36(Colly.)] were the same magazines. He further stated that there were blood stains on the left seat of the car. There was one gray colour jacket on the rear seat of the car. According to him, there was one hand grenade in the right pocket and two magazines in the left pocket of the jacket. He stated that one more rifle was seen lying at a distance of 8 to 10 feet on left side of the car. There were two magazines attached to the said rifle. There were in all 23 cartridges in both the magazines. There was one cartridge in the chamber of the rifle. The rifle (Art.10), magazines and cartridges were seized and sealed by the police. When rifle (Art.10)

and other articles were shown to him, he identified them as the same articles. He stated that at the same place, one pistol with holster was found. There was one magazine in the pocket of pistol holster. There were seven live cartridges in the said magazine. There were six cartridges in the magazine loaded on the pistol One cartridge was in the chamber of the pistol. They were all seized and sealed separately by the police. When all the seized articles were shown to him, he confirmed that they were the same articles.

373. PW-31 is PI Vinod Sawant, who was attached to D.B. Marg Police Station. He has registered FIR (Ex-57) in respect of Girgaum Chowpaty incident. He is the investigating officer of the said case. His evidence discloses that on getting information about the incident he reached Girgaum Chowpaty. On reaching the spot, he found that ASI Ombale and API Govilkar had received injuries. He found one Skoda car on N.S. Purandare Road in front of Cafe Ideal below the foot over bridge.

According to him, the Skoda appeared to have hit the road divider. He drew the spot panchnama (Ex-80). He has stated that two AK-47 rifles were seized during the panchnama. One of them was found in the leg space in front of driver's seat and the other was found on the road on left side of the car. He found five AK-47 magazines. One of them was attached to AK-47 rifle found in the leg space. Two magazines were found attached to the rifle which was found on the road. According to him, two magazines were recovered from the jacket which was found on rear seat of the car. In all, 50 live cartridges, eight empties and one bullet lead were recovered during the course of panchnama. He has stated that empties were found at various places. Two pistols were recovered from the spot. One of them was found loaded with five live cartridges. One cartridge was found in the chamber. Two empties were found near the said pistol. This pistol was lying on the right side of the car. The other pistol was found on left side of the car. There were seven rounds in the magazine of the pistol. The pistol was found in a

holster. According to him, there was one loaded magazine in outer pocket of the holster. There were seven rounds in the said magazine. He has stated that one pouch was found on the driver's seat. One magazine in the pouch was found loaded with seven rounds. One Nokia charger, one Nokia battery and Indian currency were found in the said pouch. One identity card purportedly issued by Arunoday Degree and P.G. College, Hyderabad, issued in the name of Naresh S/o. Vilas Varma having a photograph thereon was also found in the said pouch. One more pouch was found near pistol holster on the left side of the car. One pistol magazine and one note pad was found in the said pouch. The magazine was found loaded with seven rounds. He has stated that all the articles were separately wrapped and sealed and labels were applied on all the wrappers. He has stated that he had signed all the labels. When the said articles were shown to him, he identified them. He has stated that AK-47 rifle (Art.10) was found on the left side of the car and AK-47 rifle (Art.12) was found in the leg space.

He has stated that Art.39 is the same jacket which was found on the rear seat of the car. He has stated that Art. 43 is the same pouch which was found on the driver's seat. He also identified identity card (Art.61) which was found in the pouch (Art.53). He has identified all live catridges, empties, bullets, which were seized under the panchnama and which were shown to him.

374. PW-31 PI Vinod Sawant has also drawn panchnama (Ex-110) under which weapons used by the officers to protect themselves were seized. He has stated that one pistol each, seven live rounds and two magazines each were seized from PW-1 PSI Kadam and PW-3 API Bavthankar. He identified the pistols, magazines and cartridges seized from PW-1 PSI Kadam and PW-3 API Bavthankar when shown to him in the court. He has stated that inquest panchnama of ASI Ombale which was drawn by PW-24 Gaikwad was handed over to him and inquest panchnama of deceased A1-Abu Ismail was handed over to him by PW-27 API Warang.

375. In the cross-examination, he has reiterated his version in the examination-in-chief. He has denied that he identified AK-47 (Art.12) only on the basis of the sling. He has stated that he identified the same on the basis of number of armoury written on the rifle, number of armoury written on the magazine and the sling. He has also denied that he identified AK-47 rifle (Art.10) because AK-47 rifle (Art.12) had already been identified by him and Art.10 was the only AK-47 left out. Cross-examination of this witness has not made any dent in the prosecution case. He has corroborated PW-10 Shashikant Pawar.

376. At the cost of repetition, it may be stated here that PW-3 API Bavthankar has stated that one hand grenade and two magazines of AK-47 rifle were found in the jacket lying on the rear seat of the Skoda car. PW-9 PSI Godse has stated that on 26/11/2008, he was directed to search a Skoda car on N.S. Purandare Road (Marine Lines). During the search, one jacket of ash colour was found on

the rear seat of the Skoda car. There was one hand grenade in right pocket of the jacket and two magazines in left pocket of the jacket. He secured the hand grenades by means of cellophane tape and carried the same to the sand at Chowpaty. PW-20 Bachha Yadav is the pancha to panchnama (Ex-65) which was drawn by PW-3 API Bavthankar, under which the said hand grenade was defused. CW-5 PI Anthony Mathews of BDDS defused the said hand grenade.

377. It may be stated here that PW-1 PSI Kadam has stated that injured ASI Ombale and PW-2 API Govilkar were sent to the Harkisandas Hospital in a Peter Mobile van. He received a call from API Yadav from the Hospital that ASI Ombale had died during treatment.

378. PW-15 is Rajan Vasaikar, pancha to the inquest panchnama of deceased ASI Ombale, which is at Ex-102. He is also pancha to Ex-103 under which clothes of deceased ASI Ombale were seized. PW-24 is PSI Sanjay

Gaikwad who has drawn the above panchnamas. PW-100 is Dr. Sunil Jawale, who has done the postmortem of dead body of ASI Ombale. He has stated that two bullets and a deformed coin were recovered from the dead body of ASI Ombale. According to Dr. Jawale, ASI Ombale died due to shock following firearm injuries. The postmortem notes are at Ex-390 (Colly.). The bullets Art.295 and Art.296 and deformed coin Art.297 were sent to the Chemical Analyzer. The forwarding letter (Ex-392) is produced by PW-100 Dr. Jawale. He has stated that he handed over the seized articles in a sealed condition to the Chemical Analyzer. The Ballistic Expert/Assistant Chemical Analyzer PW-157 Vasudev Patil has stated that Art.295 and Art.296 tallied with the test fired bullets from AK-47 rifle (Art.10). Needless to say that Art.10 is identified by the witnesses as the same AK-47 rifle used by A1-Kasab. There is no doubt, therefore, that A1-Kasab is responsible for the death of ASI Ombale.

379. There are other formal witnesses who talk about the

maintenance of medical papers of A1-Kasab in Nair Hospital, collection of DNA profile and hand wash of A1-Kasab. It is not necessary to refer to them at this stage.

380. Mr. Solkar submitted that PW-2 API Govilkar has stated that he has received one injury on his waist. He has produced his shirt (Art.27) which has a hole on the right side. Mr. Solkar relied upon Medical Certificate (Ex-115) which describes injury of PW-2 API Govilkar. It says that there was no entry and exit wound on his body. Mr. Solkar submitted that, therefore, the case of this witness that he sustained bullet injury is false. He merely has an abrasion. We reject this submission. PW-2 API Govilkar has clearly stated that he received only one injury. Certificate (Ex-115) states that there was abrasion and no active bleeding. There was also oedema. Thus there was no profuse bleeding but that does not mean that there was no blood at all. The hole on the right side of the shirt (Art.27) is not inconsistent with this. The

bullet appears to have brushed against the body of PW-2 Govilkar and passed through his shirt.

381. Mr. Solkar submitted that there are no holes in the seats of the Skoda car. He submitted that no leads were found in the Skoda car, which is inconsistent with the prosecution story that PW-1 PSI Kadam and PW-3 API Bavthankar fired at the Skoda car. So far as the absence of holes in the seats of Skoda car is concerned, we do not attach much importance to this because the panchnama states that there was a hole on the door of the Skoda car. It is also pertinent to note that rear glass of the car was broken and empties and lead bullets were found lying outside the car. Therefore, the prosecution story that the police officers fired at the car is true. One cannot imagine as to how and in which directions the bullets would travel. The damaged condition of the Skoda car itself establishes that the police had fired at it.

382. Mr. Solkar submitted that PW-2 API Govilkar has

stated that A1-Kasab was disarmed by him and he took charge of his AK-47 rifle. However, in the panchnama drawn by PW-31 Vinod Sawant, it was stated that the AK-47 was lying on the left side of the car. Mr. Solkar submitted that therefore AK-47 (Art.10) which is stated to be in the hands of A1-Kasab was not, in fact, in his hands. This, in our opinion is a minor discrepancy which does not affect the prosecution case. The fact that AK-47 (Art.10) was used by A1-Kasab and it was taken over by the police is established by the eye witnesses. That is the substratum of the prosecution case and it is not demolished by the above discrepancies.

383. Mr. Solkar submitted that it is the case of the prosecution that deceased A1-Abu Ismail rolled down the glass windows of the front side doors of the Skoda car and he fired at PW-1 PSI Kadam and PW-3 API Bavthankar and other police officers. It is also the prosecution case that PW-1 PSI Kadam and PW-3 API Bavthankar fired from the right side of the car. Mr. Solkar submitted that, however,

the postmortem notes do not show that deceased A1-Abu Ismail had received any injuries on his right side and therefore, the prosecution story is falsified. We find no substance in this submission. Panchnama (Ex-80) shows that rear side of the glass of Skoda car was broken. PW-3 API Bavthankar has stated that he went behind the car and fired three rounds. One cannot predict how bullets would travel. Besides postmortem notes of deceased A1-Abu Ismail indicate that he had received injuries on the right side also. PW-23 Dr. Mohite conducted the postmortem. The postmortem notes are at Ex-122. We find from column 17 that deceased A1-Abu Ismail had received two injuries on the right arm (Injuries 3 and 4). Injuries 8 and 9 are on the right index finger. This submission of Mr. Solkar is, therefore, rejected.

384. Mr. Solkar also submitted that one of the bullets was retrieved from left side knee of deceased A1-Abu Ismail and it was fired from .38 revolver. He submitted that this is inconsistent with the prosecution version of the incident

at Girgaum Chowpaty. This submission will have to be rejected because according to the prosecution, this injury was received by deceased A1-Abu Ismail outside Cama Hospital.

385. We feel that in the circumstances of the case, finger print expert's evidence was not at all necessary as contended by Mr. Solkar. There is clinching evidence on record which establishes that AK-47 rifle (Art.10) was used to kill ASI Tukarm Ombale by A1-Kasab. We reject this submission of Mr. Solkar.

H. DISCREPANCIES BETWEEN MEDICAL EVIDENCE AND OCULAR EVIDENCE.

386. It was urged by Mr. Solkar that the prosecution case that A1-Kasab fired at ASI Ombale from very close quarters is not substantiated by the medical evidence. He submitted that, if A1-Kasab had used AK-47 rifle and fired at deceased Ombale from close quarters, there would be

singing, blackening or tattooing around the wounds suffered by ASI Ombale. Mr. Solkar submitted that there is no such evidence in this case. Therefore, the bullets were fired from beyond the firing range.

387. Our attention is drawn to ***Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition*** in which the learned author has observed at page 721 that, if a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. It is observed that the adjacent hairs are singed and the clothes covering the part are burnt by the flame. However, the learned author has further observed that these signs may be absent when the weapon is pressed tightly against the skin of the body, as the gases of the explosion and the flame smoke and particles of

gunpowder will all follow the track of the bullet in the body.

388. In ***J.B. Mukherjee's book titled Forensic Medicine And Toxicology, 3rd Edition at page 405***, the learned author has observed that when firearm is fired with its muzzle end in firm and direct contact with the body surface, then whole of the discharge containing flame, gases, powder, smoke and metallic particles, etc. will be blown into the track taken by the bullet through the body under pressure. It is further observed that in such a situation there will be little or no evidence of burning, singeing, blackening and tattooing around the wound of entrance.

389. In ***Textbook on Forensic Medicine And Toxicology by Krishan Viz. 4th Edition 2008 at page 319,*** learned author has observed that if the contact with the skin is firm, and effective seal is formed between the muzzle and the skin which prevents much escape of

gases, soot and powder, so that soiling, burning and powder deposition around the margins of the entrance wound will be minimal or absent.

390. The above extracts indicate that absence of singeing, blackening and tattooing around the wounds suffered by ASI Omble will not affect the credibility of the prosecution case. It is possible that the rifle came in close contact with the skin. In such case, singeing, blackening and tattooing will not be present. There is no absolute rule that singeing, blackening and tattooing must be present. In any case, when there is clear eye-witness account, which establishes how ASI Ombale died, we are not inclined to accept Mr. Solkar's submission and reject the prosecution story on the ground that there was no singing, blackening and tattooing around the wounds suffered by ASI Ombale.

391. The alleged discrepancies in the eye-witness account and medical evidence and also between the eye-witness

account and Ballistic Expert's Report, do not help Mr. Solkar. It is well settled that expert's evidence is not conclusive but it is used as corroborative piece of evidence. When there is consistent, cogent and credible eye-witness account, the expert's evidence recedes in the background.

392. In ***Surendra Singh & Anr. v. State of U.P., 2004 SCC (Cri.) 717***, it was contended that the injuries noticed by the doctor are at variance with the ocular evidence. The Supreme Court observed that mere fact that the doctor said that injuries appear to be on one side of the body and the witnesses said that attacks were from different sides is too trifle an aspect. The Supreme Court observed that it is only when the medical evidence totally improbabilizes ocular evidence that the court starts suspecting the veracity of the evidence and not otherwise.

393. Similar view has been taken by the Supreme Court in

Dharkole @ Govind Singh. In that case the Supreme Court observed that it would be erroneous to accord undue primacy to hypothetical answers of medical witnesses to exclude the eye-witness account which had to be tested independently and not treated as the "variable", keeping the medical evidence as the "constant". The Supreme Court observed that it is trite that where the eye-witness account is found credible and trustworthy medical opinion pointing to alternative possibility is not accepted as conclusive.

394. In ***Vijay Kumar Chauhan v. State of Uttar Pradesh, (2009) 1 SCC (Cri.) 9515***, the accused had used firearm and had killed the complainant's wife, however, the ballistic expert was not examined. The Supreme Court held that there is no inflexible rule that in every case where the accused person is charged with murder caused by lethal weapon, the prosecution case can succeed in proving the charge only if ballistic expert is examined. In what cases the examination of a ballistic

expert is essential for the proof of the prosecution case must depend upon the facts and circumstances of each case. In the facts before it the Supreme Court observed that having regard to the ocular evidence adduced by the prosecution there was no reason to discard the prosecution theory, that the injury suffered by the complainant's wife was caused by a bullet fired from a revolver. Thus it is clear that eye-witness account which inspires confidence overrides the expert's evidence and in fact, in a given case, even if an expert is not examined, that will not have adverse impact on the prosecution case.

395. Mr. Solkar submitted that it is the prosecution case that AK-47 rifle (Art.12) was given to Addl. C.P. Kamte by PW-7 Arun Jande, the armoury in-charge. According to the prosecution, it was picked up by deceased A1-Abu Ismail from Addl. C.P. Kamte after he was shot dead. It was stated to be in the leg space of the front seat of the Skoda car. Mr. Solkar submitted that, however, the Ballistic

Expert's report and the evidence of PW-216 Bhupendra Dhamankar, who is a pancha to the panchnama which was drawn at Hotel Oberoi indicates that Art.12 was used at Hotel Oberoi. As per the Ballistic Expert's report, four empties found on the 18th floor of Hotel Oberoi i.e. Ex-15A to Ex-15D were in fact fired from Art.12. Therefore, Art.12 could not have been used by deceased A1-Abu Ismail at Chowpaty and the prosecution has planted it.

396. This submission has no merit. On 7/8/2009, PW-150 Gautam Gadge, who is a Chemical Analyzer was examined. In his evidence PW-150 Gadge stated that empties Ex-15A to Ex-15D were examined and they were compared with the empties of test fired cartridges from Ex-1 and Ex-2 (Art.765 and 768) and it was found that Ex-15A to Ex-15D were not fired either from Ex-1 or from Ex-2. He further stated that on the basis of characteristic features of firing pin impression and the ejector marks on these empties and the empties of test fired cartridges from Ex-1 of BL 990A-08, he had come to the conclusion

that Ex-15A to 15D tallied amongst themselves and they were fired from 7.62 mm assault rifle (Ex-1) of BL 990A-08 (Art.12).

397. On 7/10/2009, on the request of learned Special Public Prosecutor, the examination was deferred. On the next day this witness stated that there is a typing mistake in his final opinion/report. He stated that he had earlier stated that Ex-15A to 15D tallied amongst themselves and they were fired from 7.62 mm assault rifle Ex-1 of M.L.C. No.990/A08 (Art.12). He further stated that he had now gone through his original notes which are in his handwriting. He produced the original notes in the court. He pointed out that in the original note he has stated “15A, B, C, D” tally amongst themselves and are fired from 7.62 mm (short) assault rifle other than Ex-1 and Ex-2 of M.L.C. No.BL 990A/08 received from the Sr. P.I. DCB CID Unit-I, Crime No.182 of 2008. He has reiterated the said opinion in the court. In his cross-examination, this witness has stated that he had not examined Art.10

and Art.12 produced before the court. They were examined by Chemical Analyzer Mr. Patil. He has stated that the empties found by D.B. Marg Police Station and forwarded to Chemical Analyzer for examination were examined and compared by Mr. Patil and report was submitted by him vide BL No.990A/08. He has stated that it is correct to say that empties Ex-15A to Ex-15D of BL No.1119-08-(Art.843 (Colly.) were not compared with empties of test fired cartridges from Art.10 and Art.12. He has stated that his opinion (Ex-841) is verbatim copy of his handwritten notes (Ex-840) except the mistake he had pointed out earlier in his evidence in examination-in-chief. (Ex-839 is forwarding letter). He has stated that there was no query from the police to give opinion whether Art. 843 (Colly.) i.e. Ex-15A to Ex-15D i.e. empties were fired from Art.10 or Art.12.

398. We find that there is no tampering of the original notes or fabrication of the original notes. This is a case of mistake and that is confirmed by the fact that a mistake is

also committed while typing the unit number. In the result of his analysis, as regards empties Ex-15A to Ex-15D he has stated that they were received from Senior Police Inspector, Unit No.I, C.R. No.182 of 2008 when in fact, C.R. No.182 of 2008 (Chowpaty incident) was investigated by Unit No.III and Unit No.I was investigating C.R. No.191 of 2008 (Hotel Oberoi incident). This submission of Mr. Solkar is, therefore, rejected. Mr. Solkar also argued that examination-in-chief of PW-150 Gautam Gadage was differed to fill in the lacuna. We reject this submission also. After examining the original note and the report, we are of the opinion that there was a genuine mistake. Clarification was necessary. Therefore, at the request of Special Public Prosecutor, learned Sessions Judge rightly differed the examination-in-chief.

399. In his confessional statement, A1-Kasab has stated about his journey along with deceased A1-Abu Ismail in the Skoda car. After they seized the car of PW-144 Sharan

Arasa, they sat in it and deceased A1-Abu Ismail started driving it towards Malabar Hill. He has stated that after they travelled some distance, he realized that they were travelling on a road which was passing by the side of sea. He realized that it is the same road which goes towards Malabar Hill as demarcated in their maps by A3-Sabauddin and A2-Fahim. He has further stated that as they were travelling in high speed they saw barricades put on the road. Policemen were standing around the barricades. He has further stated that the policemen saw their car from far and raised their hands, blew whistles and asked them to stop. It was difficult to cross-over the barricades, hence A1-Kasab told deceased A1-Abu Ismail to stop the car somewhere near the barricades. He told him to keep the headlights of the car on so that the car numbers and their faces are not seen by the police. According to him, as stated by him, deceased A1-Abu Ismail stopped the car at some distance from the barricades and he kept the car lights on. The policemen were shouting from far that 'Naka Bandi was on and that

they should put out the lights'. A1-Kasab has further stated that when he inspected the place, he felt that the height of the left side divider was less. He felt that, if they took the car in a high speed they could cross it. He told deceased A1-Abu Ismail about it. Deceased A1-Abu Ismail started spraying water on the glasses of the car and started wiper. He took the car little ahead in a fast speed. He turned the car on his left and on to the divider. However, the car could not cross over the divider and stopped there. At that time, police came towards them from both sides. They realized the situation and raised their hands. The policemen moved forward towards them. Seeing this, deceased A1-Abu Ismail tried to lift AK-47 rifle, however, the said AK-47 rifle which was kept down could not be taken out. He, therefore, picked up the pistol which was kept on the seat and fired towards the police. At that time A1-Kasab also opened the door and picked up AK-47 rifle. Police started firing. Policemen started snatching his AK-47 rifle. In that scuffle, he fell down, however, he fired from AK-47 rifle. The bullets hit

the policeman, who had caught hold of the rifle. That policeman fell down but the other policemen beat him with lathis and snatched the AK-47 rifle from him. They caught hold of him. In the meanwhile, deceased A1-Abu Ismail who was injured was also apprehended by police. Both of them were taken to the hospital. He got to know that in the hospital, deceased A1-Abu Ismail had died. He has further stated that in the hospital he told the police and the doctor his name and deceased A1-Abu Ismail's name. He told them that they were Pakistanis. He has further stated that then he was treated at the hospital. He was given hospital clothes to wear. The police then interrogated him about the incidents and he narrated all the facts to the police.

400. The confessional statement of A1-Kasab fits in catalogue of events which is brought on record by the above prosecution witnesses. The evidence on record is in tune with the general trend of the confession. Having gone through the relevant eye-witnesses' account and

circumstantial evidence, we are of the opinion that the prosecution has successfully proved its case about the incident at Girgaum Chowpaty.

401. In his plea, A1-Kasab has admitted the incident but has cleverly stated that he could not fire because he was assaulted. He has tried to disown the murder of ASI Ombale.

402. So far as the incident at Chowpaty is concerned, the important witnesses of the prosecution and their particulars are reproduced below for ready reference.

Sr. No.	PW No.	Name of Witnesses	Status	Identification		
				TIP	In Court	Art.61(*)
1.	1	PSI Bhaskar Kadam	-	Yes	Yes	Yes(**)
2.	3	API Bavthankar	-	Yes	Yes	(**)
3.	2	API Govilkar	Injured	Yes	Yes	-

(*) Denotes the identity card displaying the photograph of deceased A1-Abu Ismail

(**) Denotes identification of deceased A1-Abu Ismail in the identification parade of dead bodies.

403. In view of the above analysis of the evidence, we confirm the finding that A1-Kasab had caused firearm injuries to deceased ASI Ombale with intention to cause bodily injuries and that the bodily injuries intended to be caused were sufficient in ordinary cause of nature, to cause death.

404. We confirm the finding that the injured API Govilkar had suffered hurt while he was discharging his duties as a public servant due to the voluntary act on the part of A1-Kasab and deceased A1-Abu Ismail with intention to deter him from discharging his public duties as public servant and that they shared each others' intention.

405. Learned Sessions Judge has held that the prosecution has proved that A1-Kasab had caused grievous hurt to PW-2 API Govilkar.

406. This finding is wrong. Ex-115, the medical certificate of PW-2 API Govilkar states that he had abrasion and he was required to be hospitalized only for two days. This finding is, therefore, set aside. In our opinion, A1-Kasab is guilty of having caused simple hurt to PW-2 API Govilkar.

I. INCIDENT OF M.V. KUBER.

407. The prosecution is heavily relying on the discovery of the dead body lying in the boat M.V. Kuber at the instance of A1-Kasab. It is, therefore, necessary to turn to the evidence adduced by the prosecution in this connection.

408. PW-25 Bhavesh Takalkar is pancha to memorandum of statement of A1-Kasab recorded under Section 27 of the Indian Evidence Act. According to this witness, on being requested, he went to trauma ward of Nair Hospital on 27/11/2008 at about 11.45 a.m. PW-42 Chandrakant Jadhav and PW-48 PSI Marde were present there. He identified A1-Kasab in the court as the same person who was in the trauma ward. He stated that PW-13 Dr. Kesari examined A1-Kasab and certified that he was able to give his statement. A1-Kasab made a statement that he would show the dead body of Nakhwa, a satellite phone, a GPS and a note book on the boat and the place in the boat where he had concealed the dead body of Nakhwa. His statement was reduced to writing by the police. The doctor inquired with A1-Kasab whether he could sign. He stated that he cannot sign because of injury on his hand. The doctor made endorsement to that effect. The police, thereafter, took signatures of both the panchas on the memorandum of statement of A1-Kasab (Ex-136). He

confirmed that Ex-136 is the same memorandum of statement of A1-Kasab. He confirmed that it bore his signature. He further stated that since the whereabouts of the boat were not known and were not disclosed by A1-Kasab, it was decided to search for the boat with the help of Coast Guard. Accordingly, a panchnama was drawn. It is at Ex-137. He stated that the said panchnama was concluded at 2.15 p.m. Thereafter, he and the other pancha were allowed to go. According to him, on the same day at about 10.30 p.m., one police constable had come to his place with a request that he should attend the D.B. Marg Police Station. Accordingly, he went to the D.B. Marg Police Station. He and the other pancha were informed that the boat in question had been traced and it had been anchored at Sassoon Dock. In the meantime, PW-48 PI Marde brought A1-Kasab. Thereafter, this witness, other pancha, A1-Kasab and the police went to Sassoon Dock from D.B. Marg Police Station. The Coast Guard officers were present there. One boat was found anchored at the dock. It was identified by A1-Kasab as

the same boat. A1-Kasab led them to the engine room of the said boat. There was one dead body near the staircase in the engine room. There was a wooden plank near the dead body. One satellite phone, GPS and a note book were found concealed below the said wooden plank. Both the hands of the dead body were found tied behind the body by means of a nylon rope. The dead body was removed from the boat and brought to the jetty. The satellite phone, GPS and a note book were also brought to the Jetty. A1-Kasab identified the dead body as the same dead body which was concealed by him. There were injuries on the dead body. One incised wound was found on the back portion of the neck. The clothes of the dead body were removed and panchnama was drawn. Articles recovered from the boat like satellite phone, GPS, and note book were sealed separately. Those articles were shown by A1-Kasab. Panchnama (Ex-138) was drawn by the police as regards recovery of dead body, recovery of articles from the boat and sealing thereof. In the cross-examination, this witness has reiterated his version in the

examination-in-chief. He has stated that panchnama (Ex-138) was correctly recorded. He has stated that the name of boat i.e. Kuber was written in Gujarati as well as in English. He has stated that the police decided not to take A1-Kasab to the sea as the location of the boat was not known and as treatment of A1-Kasab was in progress. He has further stated that PW-48 PI Marde thought that it was dangerous to go to the sea with A1-Kasab. In the cross-examination, he has stood firm.

409. PW-42 is PSI Chandrakant Jadhav. At the relevant time, he was attached to D.B. Marg Police Station. According to him, on 27/11/2008 at 10.30 a.m., he was directed by PW-31 PI Sawant to visit Nair Hospital to interrogate A1-Kasab. He visited the trauma ward for that purpose. He has stated that officers of DCB, CID including PW-48 PI Marde were present in Nair Hospital. A1-Kasab was examined by PW-13 Dr. Kesari who stated that he was in a fit condition to give statement to the police. He has stated that he recorded the statement of A1-Kasab

after taking permission of PW-13 Dr. Kesari. According to him, A1-Kasab wanted to say something about the crime. He, therefore, called pancha and then recorded statement of A1-Kasab. It is at Ex-136. According to this witness, A1-Kasab made a statement that he would show the place in the boat where he had concealed the dead body of the navigator, a satellite phone, a GPS and a note book. According to him, since the exact location of the boat was not known and since terrorist attack was still going on at some places, it was not found safe to take A1-Kasab to the seashore. The panchas were, therefore, told that they would be called again whenever the boat will be located. Accordingly the panchas were relieved. Panchnama was drawn. It is at Ex-137. PW-42 returned to D.B. Marg Police Station and made station diary entry in respect of proceedings at Nair Hospital. It is at Ex-185. He has further stated that at about 10.30 a.m., a message was received from PW-48 PI Marde that a boat had been located by Coast Guard and it has been anchored at the Sassoon Dock. He made station diary entry in respect of

the information. It is at Ex-186. Both the panchas were asked to attend the D.B. Marg Police Station. PW-48 PI Marde brought A1-Kasab to D.B. Marg Police Station. He made station diary entry (Ex-187) and proceeded to Sassoon Dock with his staff and panchas. They reached Sassoon Dock at 00.00 hours. A1-Kasab identified the boat. A1-Kasab discovered the dead body in the engine room. He also discovered one satellite phone, a GPS and a note book concealed below a wooden plank. The note book was taken charge of for investigation purpose. Other articles were seized and sealed. A panchnama was drawn. It is at Ex-138. He confirmed his signature on the panchnama. He identified the articles when shown to him as those seized from the said boat. He has been cross-examined extensively. However, his evidence has remained intact.

410. PW-13 Dr. Kesari was the resident Medical Officer attached to Nair Hospital at the relevant time. He certified that A1-Kasab was well oriented and able to

speak when his statement (Ex-136) was recorded. The endorsement made by him is at Ex-90. Dr. Kesari has been cross-examined. But, the defence has not been able to make any dent in his evidence.

411. PW-48 PI Marde was attached to DCB, CID. He has corroborated the evidence of PW-25 Bhavesh Takalkar and PW-42 Chandrakant Jadhav. According to him, on 27/11/2008, at about 10.30 a.m, he received a direction to interrogate A1-Kasab, who was admitted in Nair Hospital. He went to Nair Hospital. PW-42 PSI Jadhav was present there. According to him, he was present when PSI Jadhav recorded the statement of A1-Kasab. In view of statement made by A1-Kasab that one boat had been left abandoned in high sea, he contacted PW-37 Addl.C.P. Jagannathan and requested him to trace the boat with the help of Coast Guard. Investigation of Crime No.305 of 2008 of D.B. Marg Police Station was assigned to DCB, CID. It was converted into C.R. No.182 of 2008. At 9.00 p.m. as directed by PW-31 PI Vinod Sawant, he again went to Nair

Hospital; took custody of A1-Kasab; brought him to D.B. Marg Police Station and recorded his statement at 9.30 p.m. on 27/11/2008. He brought A1-Kasab back to Nair Hospital. During investigation, he received information that the boat M.V. Kuber was traced and it had been anchored at Sassoon Dock. He informed PW-42 PSI Jadhav about it. He arrested A1-Kasab in Crime No.182 of 2008 of DCB, CID under panchnama (Ex-215). As per the message received from PW-42 PSI Jadhav, he took A1-Kasab to D.B. Marg Police Station at 23.10 hours. A1-Kasab was taken to Sassoon Dock at 23.30 hours. This witness has confirmed that a dead body, one GPS, one satellite phone and one note book were recovered from the boat. In cross-examination, he has reiterated that he was present on the boat M.V. Kuber when dead body of Amarchand Solanki and other articles were recovered. He has stated that panchanama (Ex-138) in respect of recovery of articles from the boat M.V. Kuber was drawn by PW-42 PSI Jadhav.

412. PW-37 is Mr. Jagannathan, Addl. C.P. Mumbai Head Quarters, Mumbai. According to him, on 27/11/2008 at about 14.00 hours, he received a call from PW-48 PI Marde that one Indian fishing vessel had been abandoned about four nautical miles away from the Indian coast and that the sailor of the said boat had been killed and the dead body had been left in the said boat. He, therefore, contacted Commandant Mr. Bakshi of Coast Guard and requested him to search for the said vessel. He has produced contemporaneous record which bears out the contact established by the police with him and with the Coast Guard.

413. PW-26 is Prabhdeep Malhotra. He is Commandant of Coast Guard, Colaba, Mumbai. According to him, on 27/11/2008 at 14.40 hours, he received a message from Regional Operation and Planning Officer to search for an abandoned fishing vessel. The location was given as four nautical miles form Mumbai coast. He took out from Kunjali Naval Station at about 15.00 hours. He located

the boat at 16.40 hours about 6 nautical miles away from Mumbai coast. He came back to Kunjali and reported the matter to Mr. Srivastava. He was asked to keep a watch on boat till the arrival of Coast Guard Ship - Sankalp-46. Accordingly, he took out from Kunjali in a chopper and kept watch on the boat. In the cross-examination, he has said that the boat was registered at Porbunder and the boat having Porbunder registration had no business to be in Mumbai Port. He stated that the boat was in a vague position in the sea. He further stated that normally boats having registration number of other ports are not seen at Mumbai coast and if they are seen they are considered to be suspicious. In his cross-examination, he has reaffirmed whatever he has said in the examination-in-chief.

414. PW-41 is Gorakh Nalawade. He is pancha to panchnama (Ex-182) under which articles found on the boat were seized. He has given the list of articles which were seized from the boat – M.V. Kuber, some of which appeared to be made in Pakistan. Art.192 is empty plastic

container of 'Mountain Dew' with the words “PBL Site Karachi” printed on it. Art.193 (Colly.) are two washing brushes made in Pakistan by Victory Brush. Art.194 is a bag on which the words `Pakistan White Refined Sugar, crop year 2007-2008 expiry date December, 2009' are printed. An empty paper bag (Art.195) of wheat flour bearing the words “Hari Atta Chakki, Qmar Food Products, Shah faisal Town, Karachi” was seized. On one plastic can which was seized, the words 'Sulaz Cog Industrial Area, Karachi, Pakistan' were found printed. According to him, fourteen woolen blankets [Art.184 (Colly.) and Art.185 (Colly.)] and fifteen jackets [(Art.186 (Colly.)] were also seized. When the articles were shown to him in the court, he stated that they are the same articles which were seized from the boat. He stated that all the articles were sealed by the police. Labels were affixed thereon and signatures of the panchas were taken on the labels. When panchnama (Ex-182) was shown to him, he confirmed that signatures on all the pages of the panchnama were his. Defence has not been able to make

any dent in his evidence by cross-examining him.

415. PW-43 Vinod Masani is the owner of M.V. Kuber. According to him M.V. Kuber was registered in the name of his brother Hiralal Masani at Porbunder. Another boat by name Maa also belongs to his family. According to him M.V. Kuber left Porbunder along with boat Maa on 14/11/2008 for fishing with five persons on board which included Amarchand Solanki. It was to return in 10 to 12 days. Maa returned to Porbunder on 25/11/2008 but M.V. Kuber did not. He made necessary inquiry. On 27/11/2008 at about 5 p.m., he received a call that Coast Guard Officer, Mumbai wanted to talk to him. That officer called him to Mumbai. He visited PW-47 PI Kale on 2/12/2008 at Mumbai. The police showed him the boat anchored at Melat Bunder, Mumbai. He identified it as his boat. He was told that Amarchand Solanki's dead body was found on the boat. When articles seized from M.V. Kuber were shown to him, he stated that they did not belong to him. He stated that the boat was returned to

him on execution of a bond. In the cross-examination, he confirmed that there were no life saving jackets or blankets or GPS on M.V. Kuber when it left Porbunder. His cross-examination has not done any damage to his evidence.

416. PW-44 Manjunath Ramshastri was working with Corporation Bank as Senior Manager. He had given loan to the brother of PW-43 Masani for repairs of M.V. Kuber. PW-33 Mahendrakumar Mohanti was working as Additional Port Officer with Gujarat Maritime Board at the relevant time. He produced Registration Book (Art.167) which showed that M.V. Kuber was registered at Porbunder Port. Relevant record has been produced by him. His cross-examination has not demolished this fact. PW-46 Deepak Kumar Dave was, at the relevant time, working as the Superintendent of Customs. He produced creek pass issued to M.V. Kuber, copy of which is at Ex-201. His evidence is not seriously challenged.

417. PW-44 PSI Laxman Sable of Yellow Gate Police Station had recorded FIR of PW-39 PSI Devare of Crime Branch in respect of murder of Amarchand Solanki vide C.R. No.52 of 2008. PW-47 PI Kale was attached to DCB, CID. He took over the investigation of C.R. No.52 of 2008 from PSI Sable and converted it into C.R. No.186 of 2008.

418. Mr. Solkar, learned counsel for A1-Kasab severely criticized the prosecution's claim that the boat M.V. Kuber and the dead body concealed therein was discovered at the instance of A1-Kasab. Mr. Solkar submitted that learned Sessions Judge has rightly disbelieved the alleged discovery. Drawing our attention to the Privy Council's judgment in ***Pulukuri Kottaya & Ors. v. The King Emperor, 48 Cri. L.J. 1947***, Mr. Solkar submitted that the discovery under Section 27 of the Evidence Act is discovery of the place where the article is allegedly concealed and not the discovery of the article. It is the knowledge of the accused about the place where the article is allegedly concealed which is important. Mr.

Solkar submitted that in this case the evidence on record clearly indicates that the police had knowledge that the dead body of Amarchand Solanki was concealed in boat M.V. Kuber even before the alleged statement of A1-Kasab was recorded under Section 27 of the Evidence Act.

419. Mr. Solkar submitted that if the police had prior knowledge of the fact discovered from some other source, then the alleged discovery will not come within the meaning of Section 27 of the Indian Evidence Act. In this connection, he relied on ***Jafar Hussain Dastagir v. State of Maharashtra, 1969 (2) SCC 872***, where the Supreme Court has held that in order to attract Section 27, the prosecution must establish that information given by the appellant led to the discovery of some fact deposed to by him. The discovery must be of some fact which the police had not previously learnt from other source and the knowledge of the fact was first derived from information given by the accused. The Supreme Court clarified that essential ingredient of Section 27 is that the

information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Mr. Solkar submitted that examined in the light of this judgment, the alleged discovery of boat M.V. Kuber and the dead body of Amarchand Solanki concealed in it, is not discovery at the instance of A1-Kasab.

420. Relying on the judgment of the Supreme Court in ***Mohamed Inayatullah v. State of Maharashtra, (1976) 1 SCC 828,*** Mr. Solkar submitted that if a place from where an object is discovered is accessible to all and sundry and is not in any way under the control or occupation of the accused, the discovery under Section 27 cannot be believed.

421. Mr. Solkar also relied on ***Sukhvinder Singh & Ors. v. State of Punjab, 1994 (2) Crimes 904***. In that case, the information that the dead body was concealed at a particular place was already given by the appellant to the police. The police did not act on that. They recorded two

disclosure statements of *PW-10/B* and *PW-10/C*. The Supreme Court held that the two subsequent statements were not admissible in evidence because at the best, they were leading to the re-discovery of a fact already disclosed and capable of discovery. The Supreme Court observed that once the fact has been discovered, Section 27 of the Evidence Act cannot be again made use of to re-discover the discovered fact. On the basis of this judgment, Mr. Solkar contended that according to the prosecution the disclosure statement was made by A1-Kasab at Nair Hospital and the location of the boat was made known to the police. Evidence of PW-37, PW-48, PW-42 and PW-26 indicates that a message was given to the control room by PW-48 Marde that the boat was to be located in the sea. The said boat was located by PW-26 Malhotra and it was anchored at Sassoon Dock. Mr. Solkar stated that PW-42 PSI Jadhav has stated that since the location of the boat was not known, the panch witness PW-25 Takalkar was allowed to go with instructions that he would be again called when the boat was located. The

panch witness was again called when the boat was located by PW-26 Malhotra and intimation was given to the police. Mr. Solkar further submitted that the evidence of PW-42 PSI Jadhav and PW-47 Kale clearly discloses that when A1-Kasab was taken to the said boat, police officers of D.B. Marg Police Station along with the panch witness PW-25 Takalkar were present near the boat. Mr. Solkar submitted that, therefore, the boat was located with the help of Coast Guards and was brought to the Sassoon Dock. The boat was, therefore, not discovered at the instance of A1-Kasab. Mr. Solkar submitted, in the light of ***Sukhvinder Singh***, that the police already had information. The fact was discovered or was capable of discovery and, therefore, the alleged discovery is not discovery at the instance of A1-Kasab. Mr. Solkar further submitted that in this case, an important link is missing. The prosecution has not examined any witness who had anchored the boat at Sassoon Dock. Relying on ***Mohammad Inayatullah,*** Mr. Solkar submitted that the prosecution has not excluded

the possibility of anybody else visiting the boat or entering the dock before PW-42 PSI Jadhav along with panch witnesses had entered the said boat. There is no evidence to establish that the officers of Yellow Gate Police Station or officers of the Coast Guard had not entered the boat before A1-Kasab reached there. Mr. Solkar submitted that, for all these reasons learned Sessions Judge's view that discovery of dead body at the instance of A1-Kasab is not proved, be confirmed.

422. It is not possible for us to accept Mr. Solkar's submissions. Having read the above evidence of the witnesses, in our opinion, certain facts are clearly established. There is no doubt that M.V. Kuber was a fishing vessel registered at Porbunder Port in the name of Hiralal Masani brother of PW-43 Vinod Masani. A creek pass was issued to M.V. Kuber by the Customs. M.V. Kuber had left Porbunder Port on 14/11/2008 for fishing along with five persons which included Amarchand Solanki.

423. We must now come to the tracing of M.V. Kuber. Evidence of PW-42 PSI Chandrakant Jadhav of D.B. Marg Police Station and evidence of PW-48 PSI Marde of DCB, CID and evidence of panch witness PW-25 Bhavesh Takalkar establish that A1-Kasab expressed willingness to make a statement on 27/11/2008. Accordingly his statement came to be recorded which is at Ex-136. We have carefully read Ex-136. A1-Kasab says;

> *"नाखवानी लाश, सॅटेलाईट फोन, जी.पी.एस और नोटबुक जीस हिंदुस्थानी कश्तीमे है वो कश्ती और नाखवाकी लाश जहा छुपाई है वह जगह दिखाता हू और सॅटेलाईट फोन, जी.पी.एस और नोटबुक निकाल के देता हू।"*

(I would show the Indian boat in which the navigators body, satellite phone, GPS and notebook are kept and the place where the navigator's body is concealed and I will take out the satellite phone, GPS and notebook). Little earlier he has stated as under:

"मैने नाखवा की लाश वहीपर छुपाई है"।

(I have concealed navigator's body there only)

424. Recording of Memorandum (Ex-136) was completed on 27/11/2008 at 1.30 p.m. Evidence of PW-25 Takalkar pancha to this panchnama states that since whereabouts of the boat were not known, it was decided to search for the boat with the help of Coast Guard. According to this witness, this course was adopted also because A1-Kasab had suffered injury and it was dangerous to go to the sea with A1-Kasab. Panchnama (Ex-137) was drawn accordingly. It was concluded at 2.15 p.m. This witness and the other pancha were allowed to go. PW-42 PSI Jadhav who had recorded A1-Kasab's statement corroborates this witness. He has stated that since exact location of the boat was not known and since the terrorist attack was still going on, it was not found safe to take A1-Kasab to the seashore. The panchas were allowed to go and were told that they would be called again when the boat will be located. He has also stated that panchnama (Ex-137) was drawn recording the above facts. PW-48 PI Marde informed the main control room that A1-Kasab had

given information. It was received by PW-37 ACP Jagannathan. PW-37 Jagannathan made entry to that effect in station diary at 14.10 hours in the main control room. It is at Ex-172. This information was communicated to Commandant Mr. Bakshi of the Coast Guard. PW-26 Commandant Malhotra received a massage from Regional & Planning Officer Mr. Srivastav to search for an abandoned vessel on 27/11/2008 at 2.40 hours. The location was given as four nautical miles from Mumbai coast. He took out from Kunjali Naval Station at about 15.00 hours and located the boat at about 16.40 hours, about 6 nautical miles away from Mumbai. He was told to keep watch on the boat till arrival of Coast Guard Ship Sankalp 46. He kept watch till Sankalp 46 arrived near the boat at about 18.40 hours. When PW-48 PI Marde was interrogating A1-Kasab at the Nair Hospital, he received information that the boat was traced and was anchored at Sassoon Dock. He got message that A1-Kasab should be taken to D.B. Marg Police Station. At 23.10 hours they reached D.B. Marg Police Station. From

there, A1-Kasab was taken to Sassoon Dock at 23.30 hrs. PW-25 Takalkar, the pancha and other panch witnesses were called and they were taken to Sassoon Dock. A1-Kasab identified the said boat as the same boat referred to by him. He led them to the boat and to the engine room of the boat. One dead body of a man was found in the engine room. A1-Kasab also discovered one satellite phone, a GPS and a note book concealed below a wooden plank. A panchnama was drawn to that effect. It is at Ex-138. Ex-138 was completed at 2.00 a.m. on 28/11/2008.

425. At the outset, we must note that learned Sessions Judge has wrongly observed that A1-Kasab has not stated that he had concealed the navigator's body. We have already quoted the statement made by A1-Kasab that he had concealed navigator’s body. Mr. Solkar, learned counsel for A1-Kasab has conceded that learned Sessions Judge’s above observation is factually incorrect.

426. In ***Pulukuri Kottaya***, the Privy Council has held that it is fallacious to treat the fact discovered equivalent to the object produced; the fact discovered embraces the place from which the object is produced and knowledge of the accused as to this and the information given must relate distinctly to this fact. In ***K. Chinnaswamy Reddy v. State of Andhra Pradesh (1963) 3 SCR 412***, learned Sessions Judge had held that part of the statement of the accused recorded under Section 27 of the Evidence Act, which related to his having hidden the ornaments was inadmissible. The Supreme Court overruled the Sessions Judges interpretation of Section 27 and held that the words “where he had hidden them” would be admissible in evidence, whether it amounted to confession or not. Thus, from the above judgments, it is clear that knowledge of A1-Kasab as to the place from which the dead body is produced is important and his statement that he concealed it would be admissible. It is true that in order that Section 27 must apply the prosecution must establish that information given by the

appellant led to the discovery of some fact deposed to by him and the discovery must be of some fact which the police had not previously learnt from other source (***Jafar Hussain Dastagir***). It is also true that once the fact has been discovered, Section 27 of the Evidence Act cannot be made use of to re-discover the discovered fact. (***Sukhvinder Singh***).

427. Learned Sessions Judge has observed that when A1-Kasab's statement was recorded, location of the boat was not known to the police. This is correct to the extent that exact location of the boat was not known to the police because A1-Kasab had informed the police that the boat was abandoned in the high sea. In the nature of things, he could not have given exact location of the boat. It bears repeatation to mention that PW-48 PI Marde, who was present when A1-Kasab's statement was recorded has stated that in view of statement made by A1-Kasab that one boat had been left abandoned in high sea, he contacted PW-37 Addl. C.P. Jagannathan and requested

him to trace the boat with the help of Coast Guard.

428. Learned Sessions Judge has observed that the boat was located with the help of Coast Guard and not with the help of A1-Kasab. It is true that A1-Kasab was not taken by the police for search of the boat. But that in our opinion is not of any consequence. For this, explanation is given by PW-25 Takalkar, the panch witness and PW-42 PSI Jadhav. They have stated that A1-Kasab was under treatment; exact location of the boat was not known and the terrorist attack was still going on and, therefore, it was not found safe to take A1-Kasab to the high sea. On that eventful day, Mumbai witnessed an unprecedented terrorist attack. It was under the grip of fear. Nobody knew the exact nature of the attack, the number of persons involved in the attack and where the terrorists were located. In such a situation, A1-Kasab could not have been taken by the police with them for search of the boat in high sea. But, there is no reason to disbelieve the police that after interrogating A1-Kasab, they got

information about the boat and they traced it. It is not possible for us to believe that the police themselves found it. It is an admitted position that out of the ten terrorists who attacked Mumbai, only A1-Kasab was arrested. He was the only accused who was interrogated by the police on that day. In such a situation, information about the boat abandoned in the sea in such unusual manner in such bizarre incident could only have been obtained from A1-Kasab. The same logic would apply to the finding of dead body in the said boat.

429. In this connection, following observations of the Supreme Court in ***Navjot Sandhu @ Afsan Guru***, are important.

> "There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the Police Officer to the place where an object is

> concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the Investigating Officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the Investigating Officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the Police Officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the Police Officer chooses not to take the informant – accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence."

Therefore, in the peculiar circumstances of the case, if A1-Kasab was not taken by the police to locate the boat pursuant to the information supplied by

him, that does not create any lacuna in the prosecution case.

430. The sequence of events which we have narrated hereinabove, indicates that PW-48 PI Marde had after interrogating A1-Kasab informed PW-37 Jagannathan Addl.C.P., Mumbai that one Indian fishing vessel had been abandoned about 4 nautical miles away from the Indian coast; that the sailor of the said boat had been killed and the dead body had been left in the said boat. PW-37 contacted Commandant Bakshi of Coast Guard and requested him to search for the boat. PW-26 Malhotra Assistant Commandant, Coast Guard, located the boat. He was asked to keep a watch on the boat till the arrival of Coast Guard Ship Sankalp 46. He, accordingly, again took out from Kunjali in a chopper and kept watch on the boat till the arrival of Sankalp 46. The boat was then toed to Sassoon Dock.

431. PW-42 PSI Jadhav is a very important witness. He is

the scribe of panchnamas Ex-136, Ex-137 and Ex-138. No suggestion is put to him that the dead body of Amarchand Solanki was already discovered by the police officers of D.B. Marg Police Station or of Yellow Gate Police Station or by the Coast Guard. On the contrary, in the cross-examination, he has stated that when A1-Kasab was brought to Sassoon Dock, he had no handcuffs and that he led them to the engine room. He has further stated that the satellite phone, GPS and note book were taken out by A1-Kasab himself from below the wooden plank. He has denied that the panchnamas (Ex-136, Ex-137, Ex-138 and Ex-182) were prepared at the police station to implicate A1-Kasab.

432. PW-25 Takalkar is a pancha to panchnamas (Ex-136, Ex-137 and Ex-138). This witness has also not been asked whether any police officer or Coast Guard entered the boat M.V. Kuber before A1-Kasab was taken there. He has categorically stated in the cross-examination that there was only one cabin in M.V. Kuber and the engine

room was opened by A1-Kasab himself and he led them to the engine room. He has also stated that a satellite phone, GPS and a note book were also taken out by A1-Kasab himself.

433. PW-48 PI Marde was attached to DCB, CID. He had interrogated A1-Kasab at Nair Hospital and in view of the statement made by A1-Kasab regarding M.V. Kuber, he contacted PW-37 Addl.C.P. Jagannath to take help of Coast Guard to locate M.V. Kuber. No suggestion was put to this witness that any officers had entered the boat before A1-Kasab was taken there. In fact, he has stated that it is A1-Kasab who led them to the engine room from the cabin. Only a general suggestion was put to him that all the articles had been planted and panchnama has been prepared by the police at the Police Station which he has denied. No suggestion has been put to PW-37 Jagannath and PW-26 Malhotra.

434. PW-39 is PSI Devare whose FIR (Ex-178) in respect of

murder of Amarchand Solanki was registered by PW-44 Laxman Sable. PW-44 PSI Sable was attached to Yellow Gate Police Station. No suggestion is put to this witness that any police officer had entered M.V. Kuber before A1-Kasab was taken there. PW-47 Sripad Kale is the Investigating Officer of Crime No.52 of 2008 of Yellow Gate Police Station in respect of murder of Amarchand Solanki, which was converted into DCB, CID C.R. No.186 of 2008. He was an important witness. But, the defence has failed to put any suggestion to him that the police officers had entered M.V. Kuber before A1-Kasab was taken there. In view of this state of evidence, it is not possible for us to presume that the officers of the Yellow Gate Police Station or the officers of the Coast Guard must have entered M.V. Kuber before A1-Kasab was taken there and they must have prepared the panchnama. The catalogue of events has a ring of truth. There was no calculated effort to concoct a statement and involve A1-Kasab. It is not possible for us to hold that the police had come to know about the boat and the dead body of Amarchand Solanki

therein even before A1-Kasab told them about it. In view of this, in our opinion, ***Jafar Hussain Dastagir*** will have no application to the facts of the present case. Since a watch was kept on the boat by Coast Guard till ship Sankalp 46 arrived, the possibility of anyone entering in it till Sankalp 46 arrived is ruled out. Coast Guard has not made any such complaint. Merely because no one is examined to say who and how the boat was toed to Sassoon Dock, it cannot be presumed that someone must have entered the boat and discovered the dead body and, therefore, it could not have been rediscovered particularly when the defence has not asked any of the witnesses about this possibility. To this extent, we are unable to accept learned Sessions Judge's view. Facts of this case leave no scope for such conjectures or surmises. The discovery of the dead body by A1-Kasab cannot be described as re-discovery of same object. ***Sukhvinder Singh*** will, therefore, not be applicable to the present case.

435. Deceased Amarchand Solanki had a chop wound over neck postoner area. On dissection of skin, it was found that subcutaneous tissues, muscles, bones, spiral cord showed cut injury with infiltration in the surrounding tissues. The prosecution has examined PW-599 Dr. Gajanan Chavan. The postmortem notes are at Ex-1568.

436. ***Mohammed Inayatullah*** has also no application to this case because in that case, drums were recovered from a Musafirkhana which was a place for resting and waiting for travellers. As observed by the Supreme Court, ***Musafirkhana*** from its very nature is accessible to all and sundry. This cannot be said about a boat found abandoned in sea. That place was certainly not accessible to all and sundry.

437. In his confessional statement, A1-Kasab has stated that at about 4.00 p.m. they came near Bombay. He phoned Abu Hamja on satellite phone as to what should be done with the navigator. Abu Hamja laughed and told

him to do what he thinks proper. That time, he told deceased A1-Abu Ismail that it would be proper to kill the navigator. Thereafter, he told others to catch hold of the navigator's legs. Then he caught hold of the hair of the navigator, cut his throat and kept the dead body in the engine room.

438. In his plea, he has generally supported the case of the prosecution about M.V. Kuber. However, he has cleverly assigned the role of killing Amarchand Solanki to wanted A4-Nazir @ Abu Umer and wanted A9-Shoaib @ Abu Soheb. Tracing of M.V. Kuber on the information given by A1-Kasab and the discovery of dead body of Amarchand Solanki at the instance of A1-Kasab is established by the evidence on record. We are also satisfied that there is broad corroboration to the above quoted confessional statement of A1-Kasab from the evidence on record. The corroboration is in conformity with the general trend of the confession.

439. We, therefore, hold that the information as regards M.V. Kuber was given to the police by A1-Kasab and pursuant to that information, the police located the boat. The information that the dead body of Amarchand Solanki was hidden in M.V. Kuber was given to the police by A1-Kasab and it was discovered at his instance. In view of the above analysis of the evidence, we confirm the finding that A1-Kasab along with nine deceased accused in furtherance of their common intention during the period between 23/11/2008 to 26/11/2008 wrongfully confined Amarchand Solanki in the fishing boat “M.V. Kuber”. We confirm the finding of learned Sessions Judge that A1-Kasab killed Amarchand Solanki on M.V. Kuber.

INDIVIDUAL INVOLVEMENT OF A1-KASAB IN DEATH OF SEVEN PERSONS.

440. We have now covered all the incidents in which A1-Kasab is directly involved. Out of the persons who were

killed at various places of incidents, A1-Kasab was individually responsible for the deaths of seven persons. We shall now deal with that evidence. It may be stated here that the evidence on record to which we shall soon advert establishes that AK-47 rifle (Art.10) which was used by A1-Kasab was taken over by the police when he was intercepted at Girgaum Chowpaty.

441. The dead body of Sitaram Sakhare was found at CST (ADR No.179 of 2008), PW-641 PC Santosh Supe took it to the St. George Hospital. PW-95 PSI Anil Karekar drew the inquest panchnama, which is at Ex-330-A. Dead body of Sitaram Sakhare was handed over to PW-337 Babasaheb Sakhare, who is his relative. Postmortem examination on the dead body of Sitaram Sakhare was done by PW-83 Dr.Vijay Tasgaonkar. The postmortem notes are at Ex-330. On examination, following external injuries were found on the dead body of Sitaram 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.*

On internal examination, following was revealed :

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.

442. The cause of death is stated to be hemorrhage and shock due to firearm injuries. PW-83 Dr. Vijay Tasgaonkar has stated that a bullet was retrieved from the dead body of Sitaram Sakhare. It was sealed in a phial and was sent to Chemical Analyzer for examination. A sealed packet bearing ADR No.179 of 2008 - BL No. 1040-08/ Ex.1 was

opened during the course of examination of this witness. He identified the phial (Art.292) and the bullet (Art.293). PW-79 Sr.PI Dilip Mane of C.S.T. Railway Police Station has stated that the bullet retrieved from the dead body of Sitaram Sakhare was forwarded through PW-438 PC Vilas Parab. PW-150 Gautam Ghadage, Chemical Analyzer has in his report (Ex-292) stated that the bullet (Art.293) is fired from 7.62 mm short rifle copper jacketed bullet. Another Chemical Analyzer working in Ballistic Division of Forensic Science Laboratory is PW-157 Vasudev Patil. He has stated that the bullet (Art.293) tallied with the test fired bullet from Art.10. The above evidence establishes that Sitaram Sakhare succumbed to bullet injuries caused by AK-47 rifle (Art.10) used by A1-Kasab. A1-Kasab is, therefore, responsible for the death of Sitaram Sakhare.

443. Similarly, dead body of Rahamtulla Ibrahim was found at CST. It was carried to St. George Hospital by PW-641 PC Santosh Supe. Inquest panchnama on the dead body of Rehamtulla Ibrahim was drawn by PW-95 PSI

Anil Karekar vide Ex-380. Postmortem on the dead body of Rahamtulla Ibrahim was done by PW-113 Dr.Sachin Sonawane. Postmortem notes are at Ex-441 (Colly.). On examination, following internal and external injuries were found 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.*

444. According to PW-113 Dr. Sonawane, the deceased had died due to haemorrhage and shock due to firearm injuries. He has stated that the injuries were ante mortem. They were sufficient to cause death in the ordinary course of nature. 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 Chemical Analyzer. This fact has been confirmed by PW-79 Sr. PI Dilip Mane. A sealed packet bearing FSL No.BL-1041-2008 containing the said phial (Ex-1) was opened and Art.329 was shown to this witness. He identified the same to be the same bullet which was retrieved from the dead body of deceased Rahamtulla Ibrahim. The said bullet was examined by PW-150 Gautam Ghadage, who opined that it was copper jacketed bullet fired from 7.62 mm short rifle. He has stated that the bullet (Art.329) tallied with the test fired bullets of AK-47 rifle (Art.10). The dead body of Rahamtulla Ibrahim was handed over to PW-325 Shaikh Mohd. Rahamtulla. The above evidence indicates that Rahamtulla Ibrahim succumbed to the bullet injuries caused by A1-Kasab with his AK-47 (Art.10). A1-Kasab is, therefore, responsible for the death of deceased Rahamtulla Ibrahim.

445. Dead body of Vinod Madanlal Gupta was also found at CST (ADR No.182 of 2008). It was carried to the hospital by PW-635 PC Vishal Kute. Inquest panchnama

of this dead body was drawn by PW-92 Sr. PI Kisan Gavit. It is at Ex-371. Postmortem of the dead body of deceased Vinod Gupta was conducted by PW-23 Dr.Shailesh Mohite. On examination of the dead body of Vinod Gupta, PW-23 Dr. Mohite found the following external injuries:

> *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.*

446. PW-23 Dr. Mohite has opined that this injury was ante mortem and was sufficient to cause death in ordinary course of nature. On internal examination of the dead body, PW-23 Dr. Mohite 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.

447. According to PW-23 Dr. Mohite, Vinod Gupta died due to shock and haemorrhage as a result of perforation of both the lungs as a result of firearm injuries. His evidence reveals 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 Forensic Science Laboratory for examination. PW-23 Dr. Mohite identified bullet (Art.338) to be the same which was forwarded to the ballistic expert in a plastic container (Art.337). PW-79 Sr. PI Dilip Mane has stated that the bullet recovered from the dead body of Vinod Gupta was forwarded to the Chemical Analyzer. The Chemical Analyzer's report is at Ex-310. PW-150

Ghadage, the Chemical Analyzer examined the said bullet (Art.338). He has stated that the bullet (Art.338) was a deformed copper jacketed bullet having rifling marks. The bullet was further examined by PW-157 Vasudev Patil. He has stated that the bullet (Art.338) was fired from AK-47 rifle (Art.10). The dead body of deceased Vinod Gupta was handed over to PW-334 Natraj Patiraj Nirankari.

448. The above evidence proves that deceased Vinod Gupta succumbed to the bullet injuries sustained by him and the said bullet injuries were caused by A1-Kasab, who used AK-47 rifle (Art.10). A1-Kasab is, therefore, responsible for the death of deceased Vinod Gupta.

449. Dead body of PC Ambadas Ramchandra Pawar was found at CST. Inquest panchnama of the dead body of PC Ambadas Pawar was drawn by PW-96 API Pandurang Bhangare vide (Ex.382). According to the inquest panchnama body of PC Ambadas Pawar was taken for postmortem to the J.J. Hospital by PC Supe. PW-104

Dr.Ganesh Niturkar conducted the postmortem on the dead body of Ambadas Pawar. 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.*

450. Dr. Ganesh Niturkar has stated that the injury was ante mortem and it was sufficient to cause death in the ordinary course of nature. During the course of postmortem, one bullet was retrieved from the right frontal lobe. The tract was found lacerated and haemorrhagic. The said bullet was sent to Chemical Analyzer by PW-79 Sr. PI Dilip Mane. When the bullet (Art. 308) was shown, he identified the same as the bullet retrieved from the dead body of Ambadas Pawar. PW-150

Gautam Ghadage, the Chemical Analyzer has stated that the said bullet (Art.308) is a deformed copper jacketed bullet fired from 7.62 mm short rifle. PW-157 Vasudev Patil, the Ballistic Expert has stated that Art.308 tallied with test fired bullets from AK-47 rifle (Art.10).

451. The above evidence establishes that PC Ambadas Pawar succumbed to the bullet injuries caused by AK-47 rifle (Art.10) used by A1-Kasab. A1-Kasab is, therefore, responsible for the death of deceased PC Ambadas Pawar.

452. The dead body of one Abbas Rajab Ansari was also found at CST. It was taken to St. George Hospital by PW-634 PC Pradip Wagh. The inquest panchnama of the dead body of Abbas Ansari was drawn by PW-85 PSI Vishwasrao Mudavadkar. It is at Ex-362. Postmortem on the dead body of Abbas Ansari was conducted by PW-104 Dr.Ganesh Niturkar. On examination of the dead body, he found the following injuries:

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.

453. Dr. Ganesh Niturkar has stated that all the injuries were ante mortem and were sufficient to cause death in the ordinary course of nature. He has stated that the deceased had died due to haemorrhage and shock following firearm injuries. According to this witness, one bullet was retrieved from right pleural cavity of the dead body. The entire tract was found lacerated and haemorrhagic. The bullet so retrieved was sealed and was handed over to police for being sent to Chemical Analyzer. PW-104 Dr. Ganesh Niturkar had identified the bullet (Art.306) as the same bullet which was retrieved

from the dead body of Abbas Ansari. PW-79 Sr. PI Dilip Mane has confirmed that the said bullet was forwarded to the Chemical Analyzer. PW-150 Ghadage, the Ballistic Expert has stated in his report that the bullet (Art.306) was a deformed copper jacketed bullet fired from 7.62 mm short rifle (Art.10). It has rifling marks . The said bullet was compared with test fired bullets from AK-47 rifle (Art.10) by PW-157 Vasudev Patil and he had come to the conclusion that Art.306 was fired from Art.10.

454. The above evidence establishes that deceased Abbas Ansari succumbed to bullet injuries caused by AK-47 rifle (Art.10) used by A1-Kasab. A1-Kasab is, therefore, responsible for the death of deceased Abbas Ansari.

455. The dead body of Amarchand Solanki was found in the boat M.V. Kuber. Postmortem on the dead body of Amarchand Solanki was conducted by PW-599 Dr. Gajanan Chavan. On examination of the dead body, he found the following external injuries:

"1) Chop wound over neck posterior area, horizontal, margins were contused and red coloured. Margins were also found sharply cut. The size of injury was 15 cm. x 8 cm. x bone deep till body of C5 vertebra. The bone showed sharp cut margins. Infiltration of blood seen in surrounding tissues. On dissection the skin, subcutaneous tissue, muscles, bones, spinal and cord showed sharp cut injury with infiltration in the surrounding tissues.

2) Contusion red coloured over lateral aspect of left thigh 8x8x muscle deep.

3) Abrasion on right side of chest 3x3 cm red coloured 3 cm below nipple.

4) Abrasion on right side of chest 4x3 cm red coloured 4 cm torn injury.

5) Fracture of C5 vertebra was seen."

456. He stated that all the injuries were ante mortem in nature and injury 1 was sufficient to cause death in ordinary course of the nature. He stated that deceased died due to shock due to multiple injuries.

457. We have already noted that in his confessional

statement, A1-Kasab has stated that when he reached near Mumbai at about 4.00 p.m., he phoned Abu Hanjla (wanted A-31) on satelite phone as to what should be done with the navigator. Abu Hanjla laughed and told him to do what he thinks is proper. A1-Kasab has further stated that he told deceased A1-Abu Ismail that it would be proper to kill the navigator. Thereafter, he told others to catch hold of the navigator's legs. Then he caught hold of the hair of the Navigator, cut his throat and kept the dead body in the engine room. We have already stated that the confessional statement is true and voluntary and reliance can be placed on it.

458. Finding of the dead body of Amarchand Solanki in the boat M.V. Kuber, other relevant circumstantial evidence and evidence of the prosecution witnesses discussed above conclusively establishes that A1-Kasab is responsible for the death of deceased Amarchand Solanki.

459. The evidence on record establishes that ASI Ombale

was sent to Harkisandas Hospital in Peter Mobile Van and he succumbed to the injuries during treatment. PW-100 is Dr. Sunil Jawale, who was attached to Rajawadi Hospital. He has stated that on 27/11/2008, he conducted the postmortem examination of dead body of ASI Ombale. He has stated that on external examination, he found the following 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.

460. He stated that all the injuries were anti mortem and there was compound fracture of right femur. PW-100 Dr. Jawale found following injuries on internal examination.

"1) 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."

461. He also found one deformed coin of Rs.2/-

denomination from right thigh. He has stated that one more bullet was recovered from the dead body. He stated that ASI Ombale died due to shock following firearm injuries.

462. He has stated that both the bullets and coin were sealed in one bottle and the bottle was handed over to the police. He has produced the office copies of the forwarding letter (Ex-392) under which the bullets and deformed coin were sent to the Chemical Analyzer. He has stated that Art.295 and Art.296 are the bullets and Art.297 is the deformed coin recovered from the dead body of ASI Ombale. He stated that Art.298 is the jar in which Art.296 and Art.297 were sealed and handed over to the police. He has stated that the jar had a label giving description of the articles. He has identified his signature on the label. PW-157 Vasudev Patil is the Ballistic Expert and Asst. Chemical Analyzer, who has stated that Art.295 and Art.296 tallied with the test fired bullets from AK-47 rifle (Art.10).

463. The above evidence on record has already made it clear that Art.10 is the same AK-47 rifle which was used by A1-Kasab. There is no doubt, therefore that A1-Kasab is responsible for the death of deceased ASI Tukaram Ombale.

464. For the sake of ready reference, we have prepared a table containing the gist of the above evidence showing the direct involvement of A1-Kasab in the murder of seven persons. It is as under:

S. No.	**Name of deceased**	**ADR No.**	**Inquest PN**	**PM Note / Dr.**	**CA**	**Carrier of Dead Body**	**Receiver of Dead Body.**
1.	Amarchand Solanki	65/08	-	PW-599 (Ex-1568)	-	-	-
2.	Sitaram Sakhare	179/08	PW-95 (Ex-330A)	PW-83 (Ex-330)	PW-150 (Ex-292) & PW-157	PW-641	PW-337
3.	Rahamtulla Ibrahim	180/08	PW-95 (Ex-380)	PW-113 (Ex-441) (Colly.)	PW-150	PW-641	PW-325
4.	Vinod Madanlal Gupta	182/08	PW-92 (Ex-371)	PW-23 (Ex-468)	PW-79 (Ex-310) & PW-150 & PW-157	PW-635	PW-334
5.	PC Ambadas Pawar	190/08	PW-96 (Ex-382)	PW-104 (Ex-427)	PW-79, PW-150 & PW-157.	PW-62	-
6.	Abbas Rajab Ansari	215/08	PW-85 (Ex-362)	PW-104 (Ex-425)	PW-150 (Ex-__) PW-157	PW-634	-
7.	ASI Tukaram Ombale	64/08	-	PW-100 (Ex-390) (Colly.)	-	-	-

INCIDENTS CONCERNING DIRECT INVOLVEMENT OF DECEASED A2 TO A9.

A. INCIDENT OF MAZGAON TAXI BLAST

465. While A1-Kasab and deceased A1-Abu Ismail, as per the conspiracy, went to CST in a taxi from Badhwar Park and till A1-Kasab was apprehended and deceased A1-Abu Ismail was killed at Girgaum Chowpaty, they committed various offences to achieve their object of criminal conspiracy. The other deceased accused went to their decided destinations. There they killed many people and were ultimately killed in the encounter with police and commandos. It is necessary to determine their role because A1-Kasab is not only facing charge of conspiracy and the charge of substantive offences committed by him but he is also facing charge of abetment by conspiracy of the offences committed by the deceased accused. The role of deceased A1-Abu Ismail has been discussed by us in detail. Role of deceased A2 to A9 can

be ascertained from the evidence adduced by the prosecution, by the intercepted conversation and from the judicial confession of A1-Kasab which we have found to be true and voluntary. We may also mention here that Mr. Solkar has not challenged the incidents in which deceased accused are involved. His case is that A1-Kasab is not party to the criminal conspiracy and, he is not involved in any of the incidents.

466. So far as wanted accused are concerned, their role needs to be ascertained because A1-Kasab is charged with conspiracy along with them. The participation of wanted A1 to A11, A13, A15, A18, A20, A27, A28, A31, A34 and 35 is disclosed from the confessional statement of A1-Kasab and the intercepted conversation. Learned Session Judge has, therefore, rightly come to the conclusion that the prosecution has proved only their participation in the conspiracy.

467. We shall now go to the incidents in which deceased

accused are involved and also discuss the involvement of wanted accused. At the cost of repetition, we must state that Table Nos.2 and 3 respectively quoted by us give particulars about the deceased and the injured. Those tables have not been challenged before us.

468. It is the prosecution case that deceased A4-Nazir @ Abu Umer and deceased A9-Shoaib @ Abu Soheb had travelled from Badhwar Park to Hotel Leopold by taxi bearing Registration No.MH-01-J-5308. It is alleged that deceased A4 and deceased A9 had planted a bomb in the said taxi and the bomb had exploded when the taxi reached opposite Bombay Port Trust, Mazgaon, Mumbai. According to the prosecution, in this blast, two female passengers and the driver of the taxi i.e. deceased at Serial Nos.74 to 76 in Table No.2 above, were killed instantly and nine by-standers were badly injured. The deceased female passengers were identified as Ms. Zarina and Ms. Reema. The name of the driver was Fulchand Bind. The prosecution, in order to establish this charge,

examined PW-225 Wasim Shaikh and eye witness PW-176 Mohd. Shaikh, the husband of the deceased Ms. Reema, PW-177 Abdul Shaikh who witnessed the blast, PW-175 PC Kishore Kharate who lodged the complaint in respect of the incident, PW-178 Dilip Wagaskar who is a pancha to spot panchnama (Ex–726) pertaining to this blast, PW-229 PSI Jagdish Rane who lodged the FIR, PW-230 Madhav Jagtap, the Investigating Officer who recorded statements of PW-225 Wasim Shaikh and PW-177 Abdul Shaikh, PW-251 Navinchandra Kandalkar, Special Executive Officer who held the test identification parade of the dead bodies of deceased accused, PW-263 Harshal Chendwankar, Mortuary Assistant, PW-233 PSI Vilas Datir, the Investigation Officer, PW-100 Dr. Sunil Javale and PW-594 Dr. Kiran Kalyankar, Medical Officers who have conducted postmortem of deceased Ms. Zarina, Ms. Reema and Fulchand Bind. The prosecution has also relied on the evidence in the form of affidavits of PW-458 to PW-468 who are injured witnesses.

469. According to PW-225 Wasim Shaikh, on 26/11/2008, he had gone for a stroll at Gateway of India. He wanted to hire a taxi to go to Wadi Bunder to meet his friend. He was waiting in front of Bank of Baroda opposite Hotel Leopold. After sometime, a taxi came there and stopped in front of Hotel Leopold. Two persons got down from the taxi. One of them was wearing a golden T-shirt and the other was wearing a gray T-shirt. According to him, he occupied the left front seat of the taxi. The taxi driver demanded Rs.13/- from the said passengers. One of them handed over a note of Rs.100/- to the taxi driver. The taxi driver did not have change. The said passengers did not bother to take back the balance from the taxi driver and hurriedly left the place. This witness left the taxi at Wadi Bunder in front of fire brigade office. This witness has further stated that when he got down from the taxi at Wadi Bunder, the same taxi was hired by two Muslim ladies for going to Mazgaon. According to him, on the next day, he came to know about the blast in a taxi at Mazgaon. He felt that it might be the same taxi and

visited Byculla Police Station. His statement came to be recorded. This witness identified the dead body of one of the two persons in the identification parade of the dead bodies held by PW-251 Kandalkar, Special Executive Magistrate. Visuals captured by CCTV cameras at Hotel Taj were played in the open court during the course of recording of evidence of this witness. He had identified the two persons in CCTV footage as the same persons who were seen by him getting down from the taxi at Hotel Leopold. There is no effective cross-examination of this witness.

470. PW-176 Mohd. Shaikh is the person who lost his wife and mother-in-law viz. Ms. Reema and Ms. Zarina in this taxi blast. He has corroborated PW-225 Wasim Shaikh. According to him, both the deceased had hired the taxi from Musafir Khana, Dongri to go to deceased Zarina's place at Dockyard Road. He had hired that taxi for them after one passenger got down at Musafir Khana. Within a few minutes of their departure from Dongri, this witness

received an information that there was a blast in a taxi. He, therefore, rushed to Sir 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. He identified the dead bodies of deceased Reema and deceased Zarina. There is no cross-examination of this witness. PW-293 Subhaschandra Bind, the brother of deceased Fulchand Bind was handed over the dead body of driver Fulchand Bind on 27/11/2008. He has filed affidavit evidence to that effect.

471. PW-177 is Abdul Shaikh. He deposed that he was staying in the same locality where deceased Zarina was staying. According to him, on the day on which this incident occurred, he was sitting along with neighbours of his family outside his hut at Wadi Bunder Road. At about 10.30 p.m. one taxi arrived there. He had seen deceased Zarina and deceased Reena in the said taxi. Suddenly, there was a blast in the said taxi. The taxi was broken

into pieces and the broken pieces had gone up in the air upto the second floor of the building. This witness also sustained injury due to the said blast. His family members including his wife, mother-in-law and brother-in-law had also sustained injuries. Deceased Zarina and Reema were moved to the hospital in injured condition. This witness was also taken to the hospital where he was admitted for treatment. He was treated as indoor patient for about one month. There is no effective cross-examination of this witness.

472. PW-175 is PC Kishore Kharate. He has stated that in the night of 26/11/2008 and 27/11/2008 at about 10.45 p.m. when he was on patrol duty, he was informed that there was a bomb blast in a taxi at Wadi Bunder, Mazgaon, Mumbai. He, therefore, immediately rushed to the spot. Taxi No.MH-01-J-5308 was found there in a badly damaged condition. Human limbs were found scattered around. One severed head was found at the distance of 15 to 20 feet from the damaged taxi. About

10 to 12 persons were injured in the incident. They were taken to the hospital for the treatment. He learnt that one male and one female had died in the incident, and therefore, he reported the matter to Byculla Police Station. He lodged complaint in respect of the said blast which is at Ex-722.

473. PW-178 is Dilip Wagaskar. He is a pancha to the spot panchnama of the scene of offence (Ex-726). He has identified his signature on the said panchnama. PW-229 is PSI Jagdish Rane who had drawn panchnama (Ex-726). This witness has recorded FIR (Ex-722) of PW-175 PC Kishore Kharate. It is stated by this witness that while he was on duty at Byculla Police Station in the intervening night of 26/11/2008 and 27/11/2008 at about 10.45 p.m., he learnt that there was a bomb blast in a taxi at Wadi Bunder, Mazgaon. He immediately intimated his senior and visited the spot. On visiting the spot, he noticed that the taxi was broken into pieces. The registration number of the taxi could be seen from the number plate. The

registration number of the taxi was MH-01-J-5308. He also saw pieces of human limbs lying at the spot. There was a big pit on the ground, apparently caused due to the explosion. He noticed considerable damage to the adjoining huts because of the bomb blast. He has stated that he drew spot panchnama (Ex-726). He seized certain articles under it. He has stated that at 1.00 p.m. he visited the site. Forensic Experts were present. They collected some articles found on the spot. He then drew panchnama (Ex-853).

474. PW-230 is Madhav Jagtap, Investigation Officer to whom PW-229 PSI Rane transferred the investigation of this case being Crime No.318 of 2008. During the course of investigation, this witness had recorded statement of witnesses and had forwarded 19 sealed parcels pertaining to this case to the Forensic Science Laboratory, Mumbai under forwarding letter (Ex-937). When it was shown to this witness, he identified his signature on the same. The report received from the Chemical Analyzer has been

produced at Ex–856 to Ex-862. PW-231 PSI Datir took over the investigation of this case and it was renumbered as DCB, CID, Crime No.200 of 2008.

475. PW-251 SEO Kandalkar conducted identification parade of the dead bodies at J.J. Mortuary on 6/1/2009. In this identification parade, PW-225 Wasim Ahmed has identified the dead body of one of the deceased accused. This witness has stated that this dead body bore No. 804/33 and it was the dead body of deceased A9-Abu Soheb. PW-263 Harshad Chendvankar, the Mortuary Assistant has corroborated this witness.

476. The evidence of PW-100 Dr. Sunil Javale, who did the postmortem on deceased Zarina discloses that she died due to shock following multiple injures. PW-113 Dr. Sachin Sonawane has done postmortem of Reema. He has opined that she died due to blast injuries. Postmortem notes of deceased Fulchand Bind are on record at Ex-1518. Cause of death is shown as death due

to bomb blast injuries. The articles seized under the panchnama were carried to the laboratory by PW-429 Sadashiv Nikam under letter dated 1/12/2008 copy of which is annexed to his affidavit evidence. PW-237 Sanjay Prabhavle, the Ballistic Expert was examined by the prosecution and he has opined that RDX (Cyclonite), Petroleum Hydro Carbon Oil and Nitrite (post explosion residue) were detected on three articles. Thus, it is abundantly clear from the deposition of this witness that the bomb which exploded in the taxi at Mazgaon was RDX bomb.

477. A1-Kasab has in his confession stated that one RDX bomb was given to him and to each of deceased A1 to A9 and it was decided that deceased A4 and deceased A9 would be traveling from Badhwar Park to Hotel Leopold. The evidence brought on record by the prosecution corroborates the above confessional statement and, in our view, it is sufficient to come to the conclusion that the RDX bomb was kept by deceased A4-Nazir @ Abu Umer in

the taxi bearing Registration No.MH-01-J-5308. It exploded at Wadi Bunder causing death of Zarina, Reema and driver Fulchand Bind.

478. In view of the above discussion, we confirm the finding that deceased A4-Nazir @ Abu Umer and deceased A9-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 Column No.4 to the deceased at Serial Nos.74 to 76 in Table No.2. We confirm the finding that the said accused caused the said injuries to the said deceased 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. We confirm the finding that the said deceased accused had shared each others intention at the time of committing murders of the said deceased. We confirm the finding that deceased A4-Nazir @ Abu Umer and A9-Shoaib @ Abu Soheb caused injuries to Smt. Manohara Begum Ali

Ahmed Shaikh, Smt. Hawa Abdul Salim Shaikh, Shri Sanju Krishna Ghorpade, Shri Manora Begum Ali Akbar Shaikh, Shri Siddiqui Firoz Shaikh, Smt. Shamin Rauf Shaikh, Shri Rehman Ali Akbar Shaikh, Smt. Heena China Shaikh, Smt. Mukhtar Srinivas Shaikh, Shri Kanhai Kumar Harikishor Paswan, at Wadibunder, Mazgaon, whose names are mentioned in Table No.3 with such intention and knowledge and under such circumstances that had they caused death of any of the said persons and had deceased A4-Nazir @ Abu Umer and A9-Shoaib @ Abu Soheb been alive, they would have been guilty of the offence of murder. We confirm the finding that deceased A4-Nazir @ Abu Umer and A9-Shoaib @ Abu Soheb had common intention.

B. INCIDENT OF FIRING AT HOTEL LEOPOLD

479. It is the prosecution case that deceased A4-Abu Umer and deceased A9 Abu Soheb by indiscriminate firing at Hotel Leopold killed eleven persons and injured

several persons including nine foreign nationals. The prosecution, in this regard, examined PW-181 Sachin Sorte who was working as Security Guard of Top Security, PW-179 PSI Sudhakar Deshmukh of Colaba Police Station who lodged complaint (Ex-728) in respect of firing at Hotel Leopold, PW-207 PSI Sanatan Gaikwad who recorded the above complaint of PW-179 PSI Deshmukh, PW-180 Vinod Waghela who is a pancha to the panchnama of the scene of offence of Hotel Leopold (Ex-732), PW-251 Navinchandra Kandalkar, the Special Executive Officer who conducted the identification parade of dead bodies, PW-205 PI Shirish Desai of Colaba Police Station who had drawn spot panchnama (Ex-732), PW-234 Manik Singh Patil who conducted the initial investigation of Hotel Leopold incident and PW-266 Damodar Choudhari attached to DCB, CID who had taken over the investigation from PW-234 PI Maniksingh Patil. The prosecution has also relied upon the evidence in the form of affidavits of injured witnesses viz. PW-474 to PW-489. These witnesses have not been cross-examined. The

prosecution lastly examined PW-533 Farzad Jehani, the owner of Hotel Leopold to prove the damage caused to Hotel Leopold. He has stated that the total loss was to the tune of Rs.50,000/-. He has also not been cross-examined by the defence.

480. PW-181 Sachin Sorte was working as a Security Guard in the shop known as “United Colors of Benetton of India Pvt. Ltd.” situate opposite Hotel Leopold. According to him, on 26/11/2008, he reported for duty at 20.45 hours. He was on duty outside the shop. At about 9.40 p.m. there was a bomb explosion at Hotel Leopold. Immediately thereafter, firing started. He saw two persons coming out of Hotel Leopold. He pulled down the shutter of his shop. One of the two persons fired at his shop. Two of the bullets hit the shutter of his shop. Dead body of one of the two persons was identified by him in the identification parade of the dead bodies held by PW-251 Kandalkar on 7/1/2009. In the cross-examination, he has stated that both the terrorists came out of Hotel

Leopold and proceeded to Hotel Taj from the adjoining road. His testimony is not shattered in the cross-examination. The presence of this witness at the scene of offence is natural because, he was working as security guard.

481. PW-179 PSI Sudhakar Deshmukh 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 a sound of firing and saw people running helter-skelter near Hotel Leopold. Hotel Leopold is hardly 100 feet away from Colaba Police Station. He, therefore, after collecting his pistol and 10 rounds from the armoury proceeded to the spot. According to him, when he reached Olympia Hotel, he saw two persons running towards Hotel Taj. One Sawant, a policeman who was on duty on Colaba Mobile 1 Van had sustained bullet injury during the said incident. He was sent to the hospital for medical treatment. PW-179 PSI Deshmukh saw the police driver of Colaba Mobile Van which was

parked near the hotel in an injured condition due to firing. The said driver was also sent to St. George Hospital. PW-179 PSI Deshmukh thereafter, returned to the police station and lodged complaint (Ex-728). He has identified his signature on Ex-728. The cross-examination of this witness does not, in any way, help any of the accused. Since, this witness had not seen faces of those two attackers, there was no question of his identifying them.

482. The panchnama of the spot at Hotel Leopold was drawn by PW-205 PI Shirish Desai in the presence of pancha PW-180 Vinod Waghela. PW-180 Waghela deposed that he is running a shop which is about 50 to 100 feet away from Hotel Leopold. He was called by PW-205 PI Desai to participate in the panchnama. During the course of recording of the panchnama, he saw that the glass panes of the hotel were broken. The hotel appeared to be completely ransacked and lot of blood stains were seen everywhere in the hotel. The police

seized following articles from the hotel in the presence of this 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 39 empty cartridges

7. Five lead bullets

8. Two blood samples were collected from the spot and they were seized by the police

9. Broken glasses with blood stains

10. One fork.

11. One spectacle

12. One currency note of Rs.10/- denomination."

This witness was shown two empty magazines [Art. 608 (Colly.)], 2 empty magazines [Art.610 (Colly.)], 6 live

cartridges [Art.612 (Colly.)], 1 empty (Art.613), 1 pistol holster (Art.615), 1 black colour pistol magazine (Art. 617), 5 live cartridges [Art.619 (Colly.)], 1 empty (Art. 620), 1 fire arm butt of iron (Art.622), 22 empties [Art.624 (Colly.), 17 empties [Art.626 (Colly.)], 3 lead cartridges [Art.628 (Colly.)], 2 fire bullets [Art.630 (Colly.), (lead cartridges), 2 glass bottles containing dried blood samples [Art.632 (Colly.)], blood mixed with earth (Art.634), glass pieces [Art.636 (Colly.), 1 steel fork [Art.638 (Colly.)], 1 spectacle (Art.640), 1 Indian currency note of Rs.10/- (Art. 642). He deposed that the above articles were seized in his presence from Hotel Leopold. The witness has identified his signature on the panchnama (Ex-732).

483. It is the prosecution case that deceased A4 and A9, after killing eleven persons and injuring several persons, proceeded to Hotel Taj and joined deceased A5 and A8. The dead bodies of deceased A4 and A9 were found at Hotel Taj. Two AK-47 rifles (Art.682 and Art.684) were produced by CW-3 Anil Jakhar before PW-196 PSI

Rahulkumar Naik under panchnama (Ex-760). We propose to discuss in detail the evidence in this regard while dealing with Hotel Taj incident.

484. The prosecution examined PW-157 Vasudeo Vijay Patil, Assistant Chemical Analyzer working in Ballistic Division of Forensic Science Laboratory. The evidence of this witness reveals that out of 22 7.62 mm short rifle empties recovered under panchnama (Ex-732), 19 empties tallied with empties of test fired cartridge cases of AK-47 rifle (Art.684) and 3 empties tallied with empties of test fired cartridge cases of AK-47 rifle (Art.682). Similarly, there was another group of 17 empties, some of which tallied with the empties of test fired cartridge cases of AK-47 rifle (Art.682) and some of which tallied with empties of cartridge test fired from AK-47 rifle (Art.684).

485. Thus, the prosecution in order to establish the incident of firing at Hotel Leopold and complicity of deceased A4 and A9 therein, has relied upon the evidence

of the eye witness viz. PW-181 Sachin Sorte, the evidence of pancha and police officers in respect of recovery of empty cartridge cases and the evidence of Ballistic Experts regarding comparison of empty cartridge cases with the weapons held by deceased A4 and A9. In our opinion, the evidence of the above witnesses inspires confidence.

486. It is now necessary to turn to the relevant portion of the confessional statement of A1-Kasab which refers to this incident. A1-Kasab has stated in his confessional statement that five pairs of the accused were made and that deceased A1 and A9 constituted one such pair. He has further stated that these deceased accused were to first go to Hotel Leopold and open fire, and thereafter, they were to join deceased A5 and A8 at Hotel Taj. It is also stated by A1-Kasab that deceased A4 and A9 were to install bomb below the driver's seat while proceeding to Hotel Leopold. Thus, this part of the confessional statement of A1-Kasab is corroborated by the evidence of

above mentioned witnesses and also by the circumstantial evidence which we have discussed hereinabove. The recovery of dead bodies of deceased A4 and A9 and deceased A5 and A8 from Hotel Taj completely bears out the plan of action stated by A1-Kasab.

487. The evidence on record which includes postmortem notes of the deceased at Serial Nos.10 to 20 in Table No.2 whose bodies were recovered at Leopold Hotel indicate that they died due to fire arm injuries. There is no challenge to their deaths and cause of death. The recovery of large number of empties of Art. 682 and Art. 684 and recovery of dead bodies of deceased A4 and A9 and further recovery of AK-47 rifles (Art. 682 and Art.684) would undoubtedly connect deceased A4 and A9 with the death of the deceased at Serial Nos.10 to 20 of Table No. 2. We have, therefore, no doubt that deceased A4 and A9 caused death of deceased at Serial Nos.10 to 20 of Table No.2. From the description of the incident given by the witnesses, it is clear that the intention of deceased A4

and A9 could not be other than to cause death of persons present inside and outside Hotel Leopold. Deceased A4 and A9 had traveled together from Badhwar Park to Hotel Leopold and indulged in firing at Hotel Leopold. This would clearly indicate that they had shared each others' intention. Thus, the prosecution successfully proved that deceased A4 and A9 had caused injuries to deceased at Serial Nos.10 to 20 of Table No.2 with the intention to cause death and the bodily injury intended to be caused were sufficient in ordinary course of nature to cause death.

488. We confirm the finding that deceased A4-Nazir@ Abu Umer and deceased A9-Shoaib @ Abu Soheb had caused injuries to PW-474 Pravin Sawant, PW-475 Kunal Jaiswani, PW-476 Ransle Santhumeyor, PW-477 Ejaj Abdula Karuwadan Kundi, PW-478 Nilesh Gandhi, PW-479 Prakash Bharwani, PW-480 Ramchandra Sellumadhava Nair, PW-481 Bharat Sasuprasad Gujar, PW-482 Rasika Krishna Sawant, PW-483 Mohd. Parvez Aslam Ansari, PW-484

Mohd. Ayud Mohd.Abdul Ansari, PW-485 Manoj Bahadur Thakur, PW-486 Phanishang Miksha Vikshum, PW-487 Naresh Mulchand Jumani, PW-488 Prashant Vasant Tambe and PW-489 Nivrutti Gavane, whose names are mentioned in Table No.3 with such intention or knowledge and under such circumstances that had they caused death of any of the said persons and had deceased A4-Nazir @ Abu Umer and A9-Shoaib @ Abu Soheb been alive, they would have been guilty of offence of murder. The prosecution has proved that deceased A4-Nazir @ Abu Umer and A9-Shoaib @ Abu Soheb shared each others intention while causing injuries to the said persons.

C. INCIDENT OF FIRING AT HOTEL TAJ.

489. According to the prosecution case, the deceased at Serial Nos.131 to 166 in Table No.2 were killed at Hotel Taj by deceased A4, A5, A8 and A9. Deceased A5 and A8 were part of the same pair and they had entered Hotel Taj after getting down from inflatable boat at Badhwar Park.

Deceased A4 and A9 had gone to Hotel Leopold and after killing eleven persons joined deceased A5 and A8 at Hotel Taj. The prosecution, in order to prove the incident of firing at Hotel Taj and killing of the above persons by deceased A4, A5, A8 and A9, relied upon the account of the incident given by the eye witnesses, identification of the dead bodies of deceased A4, A5, A8 and A9, recovery of the articles under various panchnamas, the evidence of the Ballistic Experts and the confessional statement of A1-Kasab.

490. Firstly, we shall deal with the evidence of the eye-witnesses. PW-184 is Ramamoorthy. He was working as Non-Executive Chairman of ING Vysya Bank. According to him, on 26/11/2008, he was staying at Hotel Taj Palace as he had to attend the Board Meeting of one of the companies. He was staying in Room No.632 on the 6th floor. According to him, at 10.15 p.m. he came to know from the hotel service room that there was an emergency and he should take care of himself. He saw the images of

what was happening in Hotel Taj, Hotel Leopold and Hotel Oberoi/Trident. After witnessing the images on television, he became restless. The television channels were also put off after 30 minutes and only the movies were being shown on the television. At about 11.15 p.m. somebody knocked his room door and said “Room Service; Room Service”. He did not open the door. Immediately thereafter, he heard a noise of gun shots and the door was opened forcibly. Two men entered the room. The tall person held his gun on his forehead and said “*Chup Raho*”. The other fellow gave a blow on his neck with his hand. Both of them brought him outside the room. They asked him to knock the doors of the neighbouring rooms. He followed their directions but, there was no response. Thereafter, he was pushed back to his room. He was asked to remove his *kurta* and *pyjama*. They tied both his hands behind him and also tied his legs with his clothes. This witness was crying and telling them that he was a blood pressure patient. The said two persons were talking on mobile phones. Within a few minutes, a staff

member was brought inside his room by one of the terrorists. The said staff member was crying. Within a few minutes, one more staff member was brought to his room. The names of these staff members were Adil and Swapnil. Within next half an hour, two more persons were brought to his room. Two more terrorists joined the earlier two terrorists, as such, there were four terrorists and five hostages including him. The names of other staff members were Rajendra and Sunil. The terrorists started interrogating him. One of them was physically handicapped and was limping. During conversion, he could hear three names i.e. Ali, Sohaib and Rehman. One of the terrorists asked him his and his father's names. He gave him his personal details and told him that he was a teacher. The terrorists became furious and started beating him and asked him as to how a teacher with meagre salary could afford to stay in Hotel Taj. The terrorists also asked him whether he was a smuggler. The terrorists asked him whether he was teaching people to kill Muslims. The witness told them that he was a

Professor of Bangalore University. After seeing his sacred thread, they asked him whether he was a *Brahmin*. The terrorists informed their colleagues on the phone that he was bald and fat and was a blood pressure patient. Hands and legs of the other hostages were also tied. They were made to lie on the floor. The terrorists also interrogated other hostages. Further, at about 2.50 a.m. on 27/11/2008, all the hostages including this witness were brought to the 5th floor in Room No.520. After about 5 minutes, there was a major blast and smoke entered the room. They were feeling suffocated because of the smoke. Two terrorists who had been guarding the hostages in Room No.520 moved out of the room around the time when smoke entered their room. It is when the terrorists had left the five persons in Room No.520 that this witness started crawling and went near the cot. With the help of the scissor in the business kit, he could untie his hands and also help others to untie their hands. As such gradually, all the five hostages were made free. The hotel boys made a big rope by means of curtains so that

they could get out of the room from the broken window. The young staff members could do that exercise but this witness could not go down by means of those ropes because of his age and illness. In the meantime, fire and metal pieces were seen falling. He searched for a pair of clothes of the occupant of Room No.520. He wore the same and ran out of the room to be carried down from the 5th floor. He reached near the window. He was taken out by fire brigade personnel. He was then admitted in Jaslok Hospital where he was treated. He identified the dead bodies of two terrorists in the identification parade of the dead bodies held at J.J. Mortuary. According to this witness, all the four terrorists were having fire arms. This witness has not been cross-examined.

491. PW-224 is Sunil Jadhav. He was on duty at Hotel Taj in the intervening night of 26/11/2008 and 27/11/2008. At about 10 p.m., he was going to the 5th floor of the hotel along with baggage of the guest. When the elevator reached the 2nd floor, he heard a sound similar to bursting

of crackers. When he reached the 5th floor, the intensity of the sound increased. He kept the baggage in the pantry and went to the 6th floor. He met Rajendra Bagade of House-Keeping. Room No.638 on the 6th floor was vacant. It was opened by Rajendra Bagade. He and Rajendra Bagade entered Room No.638 and bolted it from inside. At about 1.45 a.m., the room was forcibly opened. Two persons entered the room. Both of them were carrying one rifle each. One of them held his gun on the neck of this witness and said “Hands-up”. He and Rajendra Bagade were forcibly brought out of Room No. 638. They were brought in front of Room No.632. One of the above persons had injury in his leg. There were two more persons in front of Room No.632. This witness and Rajendra Bagade were compelled to lie down on the floor of the corridor. Their hands were tied and they were also assaulted. Other persons were also holding rifles. Thereafter, they were asked to enter Room No.632. Two of the staff members were already there. Both of them were lying on the bed with their hands tied. According to

this witness, after sometime they were taken out of Room No.632 and were taken to Room No.520 on the 5th floor. They were interrogated. This witness disclosed his name and told them that he was a *Maharashtrian*. During conversation of the terrorists, he heard four names i.e. Abu Sohaib, Umer, Rehman and Abu Ali. After sometime, he saw fire in the corridor of Room No.520. The fire was gradually increasing. The terrorists left the room due to extensive fire. After sometime, this witness and other hostages helped each other and untied their hands. They prepared a rope and came out of window to the terrace between the 2nd and the 3rd floor. PW-184 Ramamoorthy, however, could not come down. According to this witness, he came out of the hotel with the help of security officers. This witness identified dead bodies of two terrorists in the identification parade of dead bodies. When CCTV visuals of Hotel Taj were shown in the court, he identified all the four accused.

492. PW-188 is Adil Irani. He is an injured eye-witness. He

was on duty at Hotel Taj in the intervening night of 26/11/2008 and 27/11/2008. According to him, at about 9.40 p.m., he heard a sound of firing. He along with his friend went to the 6th floor by lift. His friend Swapnil was found in Room No.639. He also entered the said room and found that there was firing in the hotel. They closed the door. At about 1.15 a.m., the door was broke open by two persons holding guns. One of them was limping. The limping person started abusing him. Both of them brought this witness and Swapnil out of Room No.639 and asked them to lie down on the floor in the corridor. Afterwards, they were asked to stand up. Their hands were tied behind and they were taken to Room No.636 where two persons holding guns were standing outside the said room. The person inside the room was an old person i.e. PW-184 Ramamoorthy. This witness and Swapnil were asked to lie down on the bed with their faces down. The terrorists were hitting them. One of them took personal search of them and started abusing them. They were constantly talking on mobile phones.

This witness confirmed the presence of PW-184 Ramamoorthy, PW-224 Sunil Jadhav and Rajendra Bagade in Room No.632. According to this witness, they were brought to Room No.520. His mobile phone rang. The terrorists asked the caller i.e. the wife of this witness on the phone as to which caste she belonged to. One of the terrorists who was on mobile told the other terrorists to throw grenade and destroy the hotel. During the course of talks, they were saying "*Hum logone panch murge pakde hain, usme se ek murga badha hain. In logo ka kya karna hain*". After sometime, smoke entered the room. The terrorists left them in the room and went away. They helped each other and untied their hands. They closed the door. They made a rope of curtains and got out of the room. This witness confirmed that PW-184 Ramamoorthy continued to remain in the said room and he was shouting.

493. PW-255 Ms. Annie Irani is the wife of PW-188 Adil Irani. She has stated that on the intervening night of

26/11/2008 and 27/11/2008, her husband PW-188 Adil Irani had not returned home by 00.30 hours. She was watching T.V. She came to know about the terrorist attack on Hotel Taj. She was trying to call her husband continuously on his mobile phone. However, she could not get through. Ultimately, she could establish contact at about 1.45 a.m. on 27/11/2008. She has stated that the call was not responded to by her husband. Sombody else was talking on the phone. It was a male voice. That person was asking her name and caste. She told him that she is a Christian and her husband is a Parsi. On that, the caller said '*kya boli tu*' *(what did you tell)*. He also said '*operation rukwa do warna tabahi macha denge. Dubara phone mat karna warna Adil ko uda denge*' (Stop the operation otherwise we will destroy everything. Do not phone again otherwise we will kill Adil). She, therefore switched off her phone. She has stated that her husband was admitted in the hospital on the same night by staff members of Hotel Taj and she met him in the hospital at about 11.00 a.m. Hence, PW-255 Ms. Annie Irani has

corroborated the evidence of PW-188 Adil Irani.

494. Thus, on a perusal of the detailed version given by the above eye witnesses, it is clear that they have corroborated each other in material particulars. PW-184 Ramamoorthy and PW-188 Adil Irani are the injured eye witnesses. Presence of PW-184 Ramamoorthy, PW-188 Adil Irani and PW-224 Sunil Jadhav in Hotel Taj is natural and PW-184 Ramamoorthy stayed in Hotel Taj as a guest as he had to attend a Board Meeting of one of the companies and other eye witnesses are the staff members of Hotel Taj. So far as PW-188 Adil Irani and PW-224 Sunil Jadhav are concerned, their evidence is not shattered in the cross-examination. In our opinion, the evidence of the above eye witnesses inspires confidence and, therefore, deserves to be accepted.

495. As far as registration of offence with regard to the incident at Hotel Taj is concerned, same is registered by PW-183 API Shyam Khetre on the complaint made by

PW-182 PI Prakash Bhoite. PW-182 PI Prakash Bhoite was attached to Colaba Police Station. He was on duty on 26/11/2008. According to him, at about 21.30 hours, when he was at the police station, he heard a sound of firing. He, therefore, came out of the police station and had seen the incident of firing that was going on at Hotel Leopold. He, therefore, immediately collected his pistol with rounds from armoury and came out of the police station. He learnt that two persons who had been firing at Hotel Leopold had entered Hotel Taj from the rear side. Immediately, thereafter, he heard sounds of firing and explosion of bombs from Hotel Taj. This witness after informing this incident to Senior Police Inspector requested for additional force and with the additional force they entered Hotel Taj. This witness was shown the complaint recorded by PW-183 API Khetre. He identified his signature on the complaint. The said complaint is at Ex-735.

496. PW-182 PI Prakash Bhoite was directed by his seniors

to keep a watch around the locality of Hotel Taj and check if any explosive material has been planted near the hotel. This witness found one article in front of New Taj Hotel where renovation of a portion of Gateway of India was in progress. A metal box was found wrapped in pink foam. He suspected it to be a bomb and, therefore, called BDDS. The BDDS defused the said bomb. On 27/11/2008 at about 8.00 a.m., this witness found another bomb near Gokul Hotel behind Hotel Taj. This bomb was also similar to the bomb detected earlier. It was also defused by BDDS. On 27/11/2008, the remnants of two defused bombs were deposited at Colaba Police Station by officers of BDDS under panchnama (Ex-736). This witness identified Art.552 and Art.553 (Colly.), 2 metal boxes and foam pieces respectively. Under the above panchnama, the BDDS officers had handed over two rectangular metal containers, two pieces of pink foam and 16 kg. explosive material to PW-182 PI Prakash Bhoite. This witness was cross-examined. However, nothing was elucidated by the defence so as to damage the prosecution case. The

prosecution also examined PW-183 API Khetre who recorded the complaint of PW-182 PI Prakash Bhoite.

497. The officer from BDDS by name Anthony Mathews was examined as CW-5. His evidence discloses that he visited Hotel Taj at about 1.00 p.m. on 27/11/2008. He found a suspected article lying about 15 meters away from the main porch of Hotel Taj. After wearing his bomb suit, CW-5 and his colleague PSI Deepak Sawant put the said bomb at an isolated place. The lead wire was removed and the four components of the bomb were segregated. Two Duracell batteries which had black colour firing mechanism, two detonators and a piece of cortex wire, 8 kg. explosives containing steel balls were found in the container. The said container was taken to Girgaum Chowpaty. The explosive material was removed from the container. He confirmed that the explosive material and all the remnants of the bomb were handed over to Colaba Police Station. This witness, further, stated that one more similar RDX Bomb was detected near Hotel Gokul and the

same was also defused by him along with his team members in the manner stated hereinabove and the remnants were handed over to Colaba Police Station under panchnama. The evidence of PW-182 PI Prakash Bhoite, PW-183 API Khetre and CW-5 Anthony Mathews along with panchnama [Ex-736] proves that two RDX bombs, one at Hotel Taj and the other at Hotel Gokul near Hotel Taj were detected and, later on, defused and the explosive material along with other remnants was deposited with Colaba Police Station under the said panchnama (Ex-736).

498. The prosecution in addition to the above, brought on record the evidence with respect to visuals captured on CCTV cameras installed in the corridors of the Hotel Taj. PW-235 Prakash Shukla was working as Sr. Vice President and Chief Information Officer of Taj Group since 2000. This witness was the custodian of Data Visual Recorder (DVR). He has stated that the machines where the DVRs were installed were taken out of the rooms and handed

over to PW-223 PSI Santosh Dhemare, who was working in the office of DCP, Zone 1. He identified Art.859 and Art. 860 i.e. two hard disks and stated that these hard disks were removed from DVRs of Hotel Taj and Hotel Taj Palace after the incident of 26/112008. The prosecution also examined PW-223 PSI Santosh Dhemare. This witness has corroborated PW-235 Prakash Shukla by saying that he had taken two hard disks from him. He further stated that these hard disks were handed over to PI Nigade of DCB, CID. This witness also identified Art.859 and Art.860. At this stage, it is pertinent to note that PW-224 Sunil Jadhav has deposed that CCTV cameras have been installed in the corridors of Hotel Taj. This witness deposed that he can identify the persons in the visuals, if shown to him. The hard disk (Art.860) which was produced in the court was played in the open court during the recording of evidence of PW-224 Sunil Jadhav. The contents of the hard disk were captured by Camera No.9 at about 4.18 hours of 27/11/2008 and 2.45 to 2.47 hours of the same day. PW-224 Sunil Jadhav has identified four persons in CCTV

visuals and has stated that the said four persons had been directing him and the other staff members and PW-184 Ramamoorthy to Room No.520 on the 5th floor. Thus, the above CCTV footage from the hard disk (Art.860) corroborates the version of PW-224 Sunil Jadhav as well as PW-184 Ramamoorthy and PW-188 Adil Irani.

499. So far as the recovery of articles from Hotel Taj is concerned, the prosecution has relied upon panchnamas (Ex-744, Ex-760, Ex-746, Ex-749, Ex-750, Ex-751, Ex-752, Ex-757 and Ex-766). In addition to this, the prosecution also relied upon the evidence of PW-268 Ajay Bhirade and PW-269 Sunil Kudyadi. Before entry of NSG Commandos in the hotel, the operation was under Naval Commandos known as MARCOS. The articles recovered by the Naval Commandos (MARCOS Commandos) were handed over to the police on 27/11/2008 under the panchnama (Ex–744). The panchnama was drawn by PW-199 PI Dinesh Kadam. The panchnama (Ex-744) is proved by the prosecution by leading evidence of PW-186 Nishant Gaikwad, the pancha

and PW-199 Dinesh Kadam. Under this panchnama, following articles were seized from MARCOS Commandos:

> "1. Seven magazines of black colour. Out of them, six were containing nine rounds and one of them was empty.
>
> 2. One cotton bag containing 132 live cartridges.
>
> 3. Five hand grenades.
>
> 4. One bullet bayonet.
>
> 5. Seven empty cartridges.
>
> 6. Duracell batteries, Nokia charger, ear phones, nail cutter.
>
> 7. Packet containing dates and almonds.
>
> 8. One wallet containing ATM card and other miscellaneous articles including cash amount of Rs.6840/-.
> 9. One blue and red bag having label of changing the tie."

500. During the course of evidence PW-186 identified the following articles:

"1. Thirteen live cartridges and one empty-Art. 647 (Colly.) and 647-A.

2. Twenty-eight live cartridges and two empties-Art. 648 (Colly.) and 648-A.

3. Twenty-nine live cartridges and one empty-Art. 649 (Colly.) and 649-A.

4. Twenty-two live cartridges and one empty-Art. 650 (Colly.) and 650-A.

5. Twenty-nine live cartridges and one empty-Art. 651 (Colly.) and 651-A.

6. Twenty-nine live cartridges and one empty-Art. 652 (Colly.) and 652-A."

501. Likewise, PW-199 PI Dinesh Kadam also identified the above seized articles.

502. The operation to nab the terrorists and to evacuate the guests was taken over by NSG Commandos from the Naval Commandos (MARCOS). CW-3 Captain Anil Jhakar of National Security Guard was one of the Commandos who took part in the operation and had recovered certain articles including arms and ammunition from Hotel Taj and the same were handed over to PW-196 PSI

Rahulkumar Naik of Colaba Police Station under the panchanama (Ex-760). The prosecution in order to prove this panchnama, examined PW-196 PSI Rahulkumar Naik and PW-195 Raj Sarkania. Captain Anil Jhakar was also examined through audio video linkage as CW-3. Under the panchnama (Ex-760), following articles were recovered:

"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 9 mm. Rounds).

4. One separate pistol magazine.

5. Eight 9 mm loose cartridges.

6. Six 7.62mm cartridges.

7. One 7.62 mm empty.

8. One Nokia Mobile No.1200 partly burnt with sim card of Airtel.

9. One GPS GERMIN make with three batteries.

10. One mobile phone."

503. PW-196 PSI Rahulkumar Naik 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.686-A), one GPS (Q.123) and one Nokia phone (Art.668) as to be the same which were seized by him under panchnama (Ex-760). He has also identified his signature on the said panchnama. PW-195 Raj Sarkania, who is pancha to panchnama (Ex-760) has also identified the above articles to be the same articles which were seized under panchnama (Ex-760).

504. PW-196 PSI Rahulkumar Naik has drawn another panchnama on 30/11/2008 in respect of search and seizure at Wasabi and Harbour View Restaurants of Hotel Taj. This panchnama is at Ex-746. The panchnama was drawn in the presence of PW-187 Mukund Kumar. Under this panchnama, 150 pistol empties, 6 rifle empties and 28 bullets found at different places were seized. During

the course of visit to shopping arcade and pool side of Hotel Taj, 10 small empties, 12 big cartridges and 5 bullets were found near the pool side. At Shyamyana Restaurant, one grenade pin and one small empty were found. PW-187 Mukund Kumar has identified his signature on the panchnama (Ex-746) and has also identified 161 9 mm cartridge cases [Art.660 (Colly.)], 18 big empties [Art. 661 (Colly.)], 33 lead bullets [Art.662 (Colly.)] and hand grenade pin (Art.558).

505. PW-190 Milind Kurade is another Police Officer who visited Wasabi Restaurant and Golden Dragon Restaurant of Hotel Taj on 29/11/2008 and drew spot panchnama Ex-749. This panchnama was drawn in the presence of PW-189 Kulekar. Under this panchnama, following articles were seized:

> *"1. Two bags (Art.663 & Art.664).*
>
> *2. One wallet found in the said bag, one photo-identity card and five Indian currency notes of Rs.500/- denomination i.e.Art.123, 124 & 125 respectively.*

3. Hundred live cartridges were found in the bag (Art.663).

4. Ninety-five live cartridges- Art.665 (Colly.)

5. Five empties-Art.666 (Colly.)"

506. The above articles were identified by PW-190 Milind Kurade and PW-189 Ishwar Kolekar to be the same articles which were seized under panchnama (Ex-749).

507. The panchnama (Ex-750) was drawn by PW-192 PSI Vishwanath Bhosale in presence of PW-189 Kolekar. The panchnama pertains to recovery of articles from Room No. 551 of Hotel Taj. Under this panchnama, four magazines [Art.672 (Colly.) and Art.673 (Colly.)] and empties cartridges (Art.674) were recovered. These articles were identified by PW-189 Kolekar and PW-192 PSI Bhosale to be the same articles which were recovered from Room No. 551 of Hotel Taj under the panchnama (Ex-750).

508. PW-191 API Rajendra Machhinder had drawn

panchnama (Ex-751) of Bar Room and Sea Lounge Restaurants on the first floor of Hotel Taj. This panchnama was drawn in the presence of PW-189 Kolekar. Under this panchnama, two empties [Art.675 (Colly.)] and one empty (Art.676) were recovered. PW-189 Kolekar identified his signature on the panchnama (Ex–751). He also identified the above articles to be the same articles as recovered and seized in his presence under the panchnama (Ex-751).

509. The panchnama (Ex-752) was also drawn in the presence of PW-189 Kolekar. Under this panchnama, one pistol with one magazine, and one empty magazine and pistol [Art.677 (Colly.) and Art.678] were seized. The witness identified the articles to be the same articles which were seized by him under the above panchnama.

510. The prosecution also relied upon the panchnama (Ex-757). This panchnama was drawn at Crystal Hall of

Hotel Taj by PW-194 PSI Balasaheb Gadekar in the presence of PW-193 Ramchandra Shinde. Under this panchnama, seven empties [Art.679 (Colly.)] and a wrapper (Art.680) came to be seized. PW-193 Shinde and PW-194 Gadekar have identified their signatures on panchnama (Ex-757). They have also identified (Art.679 and Art.680) to be the same articles which were seized from Crystal Hall of Hotel Taj under panchnama (Ex-757).

511. The prosecution relies on one more panchnama (Ex-763). This panchnama was drawn by PW-198 PSI Anil Dhole on 17/12/2008 in the presence of PW-197 Anil Padghe. PW-198 Anil Dhone has deposed that he received phone call from the Security Officer of Hotel Taj that some suspicious articles were found during renovation of Wasabi Restaurant. He visited the Restaurant along with PW-197 Padghe. During the search, 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. PW-198 Anil Dhole

identified the bag (Art.689), two magazines [Art.691 (Colly.)], and one bayonet (Art.690). He also identified four cartridges and one empty [Art.692 (Colly.), and one cartridge and one empty cartridge case [Art.693 (Colly.)]. This witness and PW-197 Anil Padghe identified their signatures on panchnama (Ex-763).

512. In addition to the above, the prosecution examined PW-268 Ajay Bhirade and PW-269 Sunil Kudyadi who were working as Security Officers at Hotel Taj. PW-268 Bhirade stated in his deposition that 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 handed over to PI Nigade of DCB, CID.

513. PW-269 Sunil Kudyadi stated that he had recovered one pistol and five magazines and twelve live rounds from the debris during the course of renovation of Wasabi Restaurant and these articles were handed over to PI

Nigade of DCB, CID. Both the above witnesses have identified Art.946 and Art.677 (Colly.) to be the same articles which were handed over to PI Nigade of DCB, CID.

514. The prosecution also examined Chemical Analyzers PW-150 Ghadge, PW-151 Munj and PW-157 Patil. The depositions of these witnesses reveal that seven 7.62 mm short rifle empties were seized under panchnama (Ex-744) at Hotel Taj. Out of these seven empties, four empties had tallied with the empties of cartridge cases test fired from AK-47 rifle (Art.682) and three empties had tallied with empties of cartridge case test fired from AK-47 rifle (Art.684). Some of the empties (Art.674, Art.675, Art.676, Art.679 and Art.688-A) have tallied with the empties of cartridge cases test fired from Art.684. The evidence of the Ballistic Expert conclusively goes to show that four AK-47 rifles (Art.681 to 684) were used at Hotel Taj.

515. The prosecution has led evidence to establish that the dead bodies of deceased A4, A5, A8 and A9 were

collected from Hotel Taj. The prosecution also established by leading evidence that these four accused died due to hemorrhage and shock due to fire arm injuries associated with 40% superficial deep thermal burns. It is pertinent to note that names of these four persons have transpired in the intercepted conversation.

516. The confessional statement of A1-Kasab which we have found to be truthful and voluntary, establishes that deceased A5 and A8 had straight away gone to Hotel Taj and deceased A4 and A9 had joined them at Hotel Taj after Hotel Leopold incident as per their plan. Deceased at Serial Nos.131 to 166 in Table No.II have died due to fire arm injuries.

517. The fact that the dead bodies of these four deceased accused were found at Hotel Taj corroborates the confessional statement of A1-Kasab. Eye witnesses examined by the prosecution have clearly stated that the said four deceased accused were carrying AK-47 rifles

(Art.681 to 684) and these rifles were recovered from Hotel Taj under panchnama (Ex-760). The evidence of the Ballistic Expert proves that these rifles were used in the firing incident at Hotel Taj. It is nobody's case that AK-47 rifles had been planted. Besides, witnesses have established that the above four deceased accused were carrying AK-47 rifles.

518. In the above facts and circumstances, in our opinion, the prosecution has established beyond any reasonable doubt that deceased A4, A5, A8 and A9 are responsible for the death of 35 persons i.e. deceased at Sr. Nos.131 to 166 in Table No.II.

519. In view of the above discussion, we confirm the finding that deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb had caused injuries mentioned in Column No.4 to the deceased at Serial Nos. 131 to 166 in Table No.2. We confirm the finding that the

said injuries were caused to the said persons 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. We confirm the finding that deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb shared one another's intention to cause death of the above mentioned deceased. We confirm the finding that deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb had caused injuries of the nature mentioned in Column No.5 of Table No.3 at Hotel Taj to PW-184 Ramamoorthy, PW-188 Adil Irani, Ashish Ankush Patil, Nitin Digambar Kakade, Jagdish Waman Gujran, Nitin Satishkumar Minocha, Sajesh Narayan Nair, Amit Raghnath Khetle, Ashok Laxman Pawar, Arjun Sarjerao Mane, Saudagar Nivrutti Shinde, Shankar Shamrao Pawar. Since PW-184 Ramamoorthy and PW-188 Adil Irani were merely held as hostages, learned Sessions Judge has

rightly held that the prosecution has proved that deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb had caused injuries to the aforementioned persons except PW-184 Ramamoorthy and PW-188 Adil Irani with such intention or knowledge and under such circumstances that had they caused death of any of the said persons and had deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb been alive, they would have been guilty of offence of murder. We confirm the finding that deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali and A9-Shoaib @ Abu Soheb shared each others intention while causing injuries to the said persons.

D. INCIDENT OF FIRING AT NARIMAN HOUSE.

520. According to the prosecution, out of 8 terrorists

including A1-Kasab, who had got down at Badhwar Park on 26/11/2008, one pair consisting of deceased A2 and A3 had gone to Nariman House and had kept eight persons therein as hostages and ultimately killed all of them. The names of these eight persons are at Serial Nos.1 to 7 and 9 in Table No.II. These eight persons died due to fire-arm injuries. The prosecution in order to establish this incident, has relied upon the depositions of witnesses who have seen the incident, the evidence in the form of search and seizure under various panchnamas, the evidence of Ballistic Expert and the postmortem notes of deceased A2 and A3.

521. PW-201 is one Kamal Liladhar Singh. He is eye-witness to the incident, which took place at Nariman House. According to this witness, on 26/11/2008, he had gone to the lane in which Nariman House is situated, after having dinner at 9.30 p.m. He heard sound of bursting of crackers. He realised that it was coming from Nariman House. He went near Nariman House. He entered

Nariman House with a bamboo in his hand. When he reached the first floor, he saw two persons on landing area between second and third floors, one of them turned around and called him "*kafar*" and pointed gun towards him. He immediately ducked. The said persons started firing at him. After sometime, he found that the said persons were not there. He, therefore, came out of the building. This witness has described the said two persons. The statement of this witness was recorded on 11/12/2008. On 7/01/2009, this witness has identified the dead bodies of the said two persons in the identification parade of dead bodies. In the cross-examination, he has stated that he had not seen any watchman of Nariman House. He has denied the suggestion that he had not witnessed the incident of firing and that he was telling lies. There is some delay in recording his statement. But in the cross-examination, he has not been asked any question as regards the delay in recording his statement. However, he has explained that he did not come out of his house after arrival of the police because he was scared.

He has further stated that he did not voluntarily go to the police station to give his statement. He was called by the police and then he disclosed to the police as to what was seen by him. This explains the delay in recording his statement. It is clear that he was too scared to approach the police.

522. PW-239 is Kazi Zakir Hussain. He was working in Nariman House as servant and was residing in the accommodation provided to him in the said building. He has stated that Gavriel Holtzberg and his wife Ms. Rivka were residing in Nariman House along with their child Master Moshe, aged about 2 years. Ms. Sandra was also working with Holtzberg couple. According to this witness, on 26/11/2008 four guests had come to the house of Holtzberg. Dinner was over by 8.00 p.m.. He and Ms. Sandra had completed miscellaneous work and at 9.45 p.m., when he was going down to the ground floor, he saw one person armed with a gun standing at the landing area in between the second and the first floor. The said person

shot one bullet at him, but the bullet did not hit him. He immediately went up to the first floor. Ms. Sandra was in the hall of the first floor. He entered the said hall and shut the door from inside. The Gavriel couple and their guests were on the second floor of the building. This witness and Ms. Sandra went to the store room and bolted the door from inside. He put off the lights. He came out of the store room at 11.00 a.m. on 27/11/2008. During the time he was in the store room, he heard sounds of gun shots as if gun shots were fired within the premises of Nariman House. While they were trying to get out of Nariman House, they heard Master Moshe crying on the second floor. Ms. Sandra picked up Master Moshe and all of them came out of Nariman House. This witness has identified the photograph on identity card (Art.127) as the photograph of the person whom he had seen at Nariman House. This witness was cross-examined by the defence, however, he has remained firm.

523. PW-206 is Mohd. Salim Harharwala. This witness lost

his parents in this incident when they had shifted from one building to another building after the incident to save their lives. This witness has deposed that he along with his parents had been staying at Faridun Court building since last 15 years. The said building is very close to Nariman House. After the incident of firing, they apprehended danger to their lives and, therefore, this witness along with his family members, including his parents, had temporarily gone to Flat No.21 on the 4th floor of Colaba Court building, where Ms. Kalpna Sonawane was staying as caretaker of the flat because he found it a safer place to stay. Colaba Court is situated opposite Nariman House. When the incident of firing was going on, this witness and his parents, out of curiosity, were standing near the window, which was facing Nariman House. Around 10.30 p.m. there was firing from Nariman House towards the Colaba Court. In the said firing, some of the bullets hit parents of this witness, injuring them seriously. They were taken to the St. George Hospital, where they were declared dead before

admission. This witness was not cross-examined by learned advocate for the accused.

524. PW-202 is Rambuval Yadav. He was an employee of Express Petrol Pump, which is situated at Shahid Bhagat Singh Marg, Colaba. He was on duty at the said 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. The instructions of the employer were followed by this witness. After closing of petrol pump, he was sitting in the office situated near the petrol pump. At about 10.30 p.m. a bomb exploded near the wall adjoining the petrol pump. As a result, the wall collapsed. The office cabin occupied by this witness was also damaged to some extent due to the explosion. This witness was not cross-examined by learned advocate for the accused.

525. The prosecution has also examined PW-200 PSI Hanmant Vishnu Bhandalkar attached to the Colaba Police

Station. This witness in his evidence has stated that Nariman House is situated within the territorial jurisdiction of Beat No.2 of Colaba Police Station. This witness was on duty at the police outpost of Beat No.2 at Colabawadi. At about 9.40 p.m. on 26/11/2008, this witness heard sound of firing coming from the direction of Paachpayari locality. Therefore, he proceeded in that direction. After he had reached Pipewala building, he heard sound of bomb explosion. He later came to know that a bomb had exploded at petrol pump and that firing was going on at Nariman House. He also came to know that firing had taken place at Hotel Leopold and Hotel Taj. He reported the matter to the police station on 27/11/2008 at about 5.30 a.m. His complaint was recorded by PSI Deshmukh, which is at Ex-767. This witness has not been cross-examined by learned advocate for the accused.

526. Apart from the above evidence of eye-witnesses, who have witnessed the incident, the prosecution has also relied upon the panchnamas of seizure of articles from the

spot of incident. The prosecution in this regard has relied upon panchnamas (Ex–773, Ex-774, Ex-775 and Ex-771).

527. Panchnama (Ex-773) is drawn by PW-205 Shirish Desai in the presence of PW-204 Shripati Hate. This panchnama is in respect of the scene of offence at the petrol pump. PW-204 Shripati Hate, the pancha has deposed that during the course of panchnama, he had seen the partially damaged wall near the petrol pump. He had also seen a big pit in between the said wall and the shop “Mahavir Luggage”. The shutter of the said shop was also partially damaged. Some of the articles were lying scattered and damaged. Four cars parked near the said wall were also found damaged. This panchnama corroborates the evidence of PW-202 Rambuval Yadav. Scene of offence panchnama drawn in the Nariman House which is at Ex-774 is drawn by PW-205 PI Shirish Desai in the presence of PW-204 Shripat Hate. During the course of drawing of this panchnama, PW-204 found that Nariman House building was in a mess, heaps of broken

glasses and debris were found all over the compound. Four empty cartridges of 7.62 mm, forty empties of 9 mm were also found in the compound. One still helmet and one small empty cylinder were also recovered by the police during the panchnama. Lift doors were found damaged. Glass panes of all the windows of the hall on the first floor were found broken. The articles in the kitchen were lying scattered. Blood stains were found in the drawing room. Thereafter, they went to the second floor. Sixteen empties of 9 mm and twenty three empties of 7.62 mm were found on second floor. From the third floor, twenty eight 9 mm empties, three clips and one aluminum wire were recovered. On the fourth floor, everywhere there were blood stains. The pillows and bedsheets were found stained with blood. On the fourth floor, among other articles, sixty empties of 7.62 mm, three fired bullets of 7.62 mm cartridges, two fired bullets of 9 mm cartridges, one live cartridge of 7.62 mm, one small magazine containing six rounds were found. From the fifth floor, five empties of 7.62 mm, twelve empties of

9 mm and one aluminum clip were recovered. All the articles were seized and sealed. During the course of examination of this witness, the sealed pockets containing above articles were opened and this witness has identified among other articles, following articles :

(i) Four empties of 7.62 mm cartridges [Art. 717 (Colly.)]

(ii) 40 empties of 9 mm cartridges [Art.718 (Colly.).]

(iii) Sixteen empty cartridges of 9 mm [Art. 725 (Colly.)]

(iv) Twenty three empty cartridges of 7.62 mm [Art.726 (Colly.)]

(v) Twenty eight empty cartridges of 9 mm [Art.731 (Colly.)]

(vi) Three leads of 7.62 mm [Art.743 (Colly.)]

(vii) Two leads of 9 mm [Art.744 (Colly.)]

(viii) Four leads [Art.745 (Colly.)]

(ix) One pistol magazine with five cartridges, one empty and one fired bullet [Art.746 (Colly.)]

(x) One empty and one bullet [Art.747 (Colly.)]

(xi) Fifty nine empty cartridge of 7.62 mm [Art.748 (Colly.)]

(xii) One hundred fifty one empty cartridges of 9 mm [Art.749 (Colly.)]

(xiii) Twelve empty cartridges of 9 mm [Art.751 (Colly.)]

(xiv) Five empty cartridges of 7.62 mm [Art. 752 (Colly.)]

(xv) Five empty cartridges of 9 mm [Art.755 (Colly.)]

528. One other panchnama (Ex-775) was also drawn in the presence of PW-204 Shripat Hate. It is in respect of Room No.21 of building know as “Colaba House”, where parents of PW-206 Mohd. Salim Harharwala had died due to firing by deceased A2 and A3. So far as this panchnama is concerned, PW-204 has stated that one lady by name Kalpana Sonawane was present in Room No. 21. There were bullet holes on glass panes. Bullet marks were seen on one of the walls and a door. Two 7.62 mm fired bullets [Art.761 (Colly.)] were recovered from near the door. This witness has identified his signature on panchnama (Ex-775). Thus, the prosecution has got

panchnamas (Ex–773, Ex-774 and Ex-775) proved by examining PW-204 Shripat Hate. These panchnamas corroborate the version of PW-206 Mohd. Salim.

529. There is one more panchnama, which is at Ex-771. This panchnama was drawn by PW-234 PI Maniksingh Patil, in the presence of PW-203 Sagar Singh. This panchnama is in respect of articles produced by CW-4 Major Pavitar Prashant of NSG. It is the prosecution case that both deceased A2 and A3 were killed by NSG commandos during the operation undertaken to rescue the occupants of Nariman House. PW-203 Sagar Singh has identified his signature on panchnama (Ex-771). He has deposed that CW-4 Major Pavitar Prashant had produced following articles before the police:

(i) Two AK-47 rifles [Art.694 and Art.695]

(ii) Two pistols [Art.696 and Art.697 (Colly.)]

(ii) Three empties [Art.698 (Colly.)]

(iv) 16 AK-47 magazines [Art.699 (Colly.)]

(v) Thirty five AK-47 live cartridges, three empties and three bullets [Art.703 (Colly.)]

(vi) One hundred and eighty eight AK-47 live cartridges, four empties and four bullets [Art.704 (Colly.)]

(vii) I-card [Art.127]

530. The prosecution has also adduced evidence of Ballistic Expert. The evidence discloses that twenty three 7 mm short rifle empties and fifty nine 7.62 mm short rifle empties, [Art.726 (Colly.) and Art.748 (Colly.) respectively], recovered under the panchnama at Ex-774 and five empty cartridges of 7.62 mm [Art.752 (Colly.)] do tally amongst themselves and also tally with the empties and cartridge cases fired from AK-47 rifles which are either Art.694 or Art.695. As such, almost all cartridge cases of 7.62 mm short rifle had either tallied with Art.694 or Art.695.

531. In addition to the above, the prosecution has also examined PW-113 Dr. Sachin Sonawane, who performed

postmortem on the dead bodies of deceased A2 and A3. The postmortem notes are at Ex-458 (Colly.) and Ex-459 (Colly.) respectively. The postmortem notes disclose that deceased A2 and A3 had died due to hemorrhage and shock due to multiple firearm injuries. There is no challenge to the contents of these postmortem notes.

532. From the confessional statement of A1-Kasab, which we have already found to be trustworthy and voluntary, it is clear that deceased A2 and A3 were assigned the job of firing at Nariman House. The persons at Serial Nos.1 to 7 and 9 in Table No.II had died due to fire arm injuries. There is no challenge to this. PW-201 Kamal Singh and PW-239 Kazi Hussain have witnessed the incident of firing at Nariman House by deceased A2 and A3. PW-201 Kamal Singh has identified the dead bodies of these accused persons in the identification parade of dead bodies held on 7/1/2009. PW-239 Kazi Hussain has also identified photograph on identity card (Art.127) as the photograph of the person whom he had seen firing at Nariman House.

The dead bodies of deceased A2 and A3 were recovered from Nariman House. Evidence on record discloses that these accused had died due to hemorrhage and shock due to multiple firearm injuries. The evidence adduced by the prosecution regarding seizure of articles show that two AK-47 rifles and pistols along with various empties were recovered from Nariman House. The opinion of the Ballistic Expert further shows that the empties recovered do tally with the AK-47 rifles recovered from Nariman House. Deceased A2 and A3 were seen firing together. Therefore, the only conclusion that can be drawn is that these accused have killed eight persons named at Serial Nos.1 to 7 and 9 in Table No.II in furtherance of their common intention. The prosecution has filed affidavit of evidence of PW-439 Prakash Surve and PW-445 Anil Varal stating that they were injured in firing incident at Nariman House. This evidence is not challenged by the defence. They have not been cross-examined. Thus, the prosecution has proved that these two persons were injured at Nariman House in the firing done by deceased

A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar.

533. In view of the above analysis of evidence, we hold that deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar had caused injuries mentioned in Column No.4 to the deceased at Serial Nos.1 to 7 and 9 in Table No.2. We also hold that the aforesaid deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar had caused the aforesaid injuries to the aforesaid persons 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. We find that deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar had shared each others' intention at the time of causing death of the aforesaid person. We confirm the finding that deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar had caused injuries in the nature mentioned in Column No.5 at Table No.3 to PW-439 Prakash Surve and PW-445 Anil Varal. We confirm the

finding that deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar 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 deceased A2-Imran Babar @ Abu Aakasha and A3-Nasir @ Abu Umar been alive, they would have been guilty of offence of murder. We confirm the finding that deceased A2 and A3 had shared each other's intention while causing the aforesaid injuries to the aforesaid persons.

E. INCIDENT OF FIRING AT HOTEL OBEROI.

534. As far as firing incident at Hotel Oberoi/Trident is concerned, it has resulted into the death of 35 persons. Twenty four persons were injured in that firing. The names of deceased persons are mentioned at Serial Nos. 37 to 71 in Table No.II. It is the prosecution case that deceased A6 - Abadul Reheman Chotta and deceased A7 - Fahad Ullah committed this massacre. In this regard, the

prosecution has led evidence of eye-witnesses and evidence in respect of seizure of articles from the scene of offence. The prosecution has also examined police officers, panchas and experts.

535. PW-208 is PI Bhagwat Bansode, who was attached to Marine Drive Police Station at the relevant time. In the intervening night of 26/11/2008 and 27/11/2008, he was on patrolling duty in the vicinity of Mantralaya. At about 11.55 hours, a wireless message was received by him from the Control Room that firing was going on at Hotel New Oberoi and Trident. He, therefore, rushed to the place of incident. He found that main entrance glass pane of the Hotel was broken. Glass panes of Galleria Showroom were broken. He along with his staff members entered in hotel lobby. He found that there were bullet marks behind the bill desk. One person was lying dead in a pool of blood. Sound of firing was coming from the inner portion of Hotel New Oberoi. There is a restaurant by the name “Tiffin” on the ground floor of Hotel Oberoi. He saw

two persons firing indiscriminately in the said restaurant. They fired at him also. He took shelter behind the wall and fired two rounds towards them. Both the persons proceeded further and continued to fire from AK-47 rifles. Having realized that the said two persons were terrorists, this witness requested police control room to send additional force. The said terrorists were also throwing hand grenades. He could hear sound of big explosion and screams of people/guests coming from the hotel. The additional force reached the spot within 15 to 20 minutes. NSG Commandos came on 27/11/2008. On 28/11/2008 NSG Commandos killed both the terrorists. He lodged complaint at Marine Drive Police Station, which is at Ex-783. The complaint was recorded by PW-220 PSI Sudhir Garud. In the cross-examination, this witness [PW-208 Bansode] has explained that FIR was not lodged on 26/11/2008 because the entire force was deployed outside Hotel Oberoi and Trident to cordon off the hotel. His cross-examination has made no dent in his evidence.

536. PW-212 Pradip Bengalorkar was working as Assistant Steward at Hotel Oberoi. Since 2007, he was working in "Kandhar" restaurant, which is part of Hotel Oberoi. According to him, on 26/11/2008, he was on duty at Kandhar Restaurant from 19.00 hours onwards. He has stated that along with him, Manager Rahul Kadam, his colleague Jorden and Ms. Dinaj Sharma and other staff members were working in Kandhar Restaurant. At about 22.00 hours, there were 50 to 60 guests in Kandhar Restaurant. He and his colleagues were busy in serving the guests. Kandhar Restaurant is situated on the mezzanine floor. Tiffin Restaurant is situated in the main lobby of Hotel Oberoi. Tiffin Restaurant was visible from the mezzanine floor, where Kandhar Restaurant was situated. This witness has further deposed that at about 22.00 hours, he heard sound of firing from the side of main lobby. All of them went out of the hall. They found that firing was going on in Tiffin Restaurant. He saw two persons firing in Tiffin Restaurant with firearms. They

came back to Kandhar Restaurant and bolted the same from inside. Manager Kadam directed that the guests of the restaurant be taken out of the restaurant from rear door. In the meanwhile, there was firing on the main entrance door of Kandhar Restaurant. One of the bullets after piercing through glass pane of the door, hit Ms. Dinaj Sharma on her right forearm. They evacuated all the guests. After that, when they returned to the restaurant, they found that two terrorists had entered it. The terrorists directed them not to move and warned that if they try to run away, they would be killed. Thereafter, this witness was directed to spill liquor on the tables and furnitures. The terrorists further directed his colleague Jorden to set the furniture on fire with a lighter. The lighter was provided by one of the terrorists. The lighter, however, did not work. The terrorists, therefore, directed Jorden to set on fire the furniture with matchstick. Jorden followed the direction and set the table cloth on fire. The said two terrorists asked Jorden to speed up the work of setting the furniture on fire. While doing so, Jorden

sustained burn injury to his hands and, therefore, he shouted that his hand is injured. At this stage, one of the terrorists fired at Jorden. He collapsed on the spot.

537. The terrorists then asked PW-212 Bengalorkar to set the furniture on fire. This witness accordingly set one of the tables on fire. In the meanwhile, they directed him to take them to the floor where the VIPs were staying. They took him out of the restaurant. This witness pressed switch of the lift which was available exclusively for lower lobby. The terrorists wanted to go to the upper floor. When they were waiting for the lift to go to the upper floor, one of them had thrown hand grenade in Kandhar Restaurant. When they attempted to throw second hand grenade, this witness took advantage of the situation and entered the lift and pressed the button for lower lobby. The terrorists fired at the lift, but the lift had already left the said floor. Therefore, this witness was saved. He went to Food and Beverage Manager Pawanjit Singh in the

basement and explained the incident to him. The identification parade of the dead bodies of the above two terrorists was conducted by PW-251 SEO Kandalkar on 6/1/2009. This witness has identified the dead bodies of the two terrorists in the identification parade of the dead bodies. This witness was also shown visuals of Camera No. 9. He has deposed that two persons shown in the video were the same persons who were seen by him firing in Kandhar and Tiffin Restaurants. According to him, the first person in the video, who was wearing dark blue shirt had killed Jorden. The said person had directed him and Jorden to set on fire the furniture in Kandhar Restaurant. In the cross-examination of this witness, certain minor omissions have been brought on record, however, the same do not affect his testimony.

538. PW-215 Rajesh Kadam is the Assistant Chief Security Officer of Hotel Oberoi. According to him, on 26/11/2008, when he had left the hotel after duty hours, at 9.51 p.m. he received a telephone call from his colleague Pralhad

Raut that firing had been going on in the porch of the hotel. He, therefore, rushed to the hotel on his motorcycle. He reached Hotel Trident within 5 to 6 minutes. While he was talking with Chief Security Officer Nagmote in the porch, he saw one person coming out of the main entrance of Hotel Trident shouting “my friend, save him, save him.” He, therefore, rushed to the main entrance. However, Nagmote told him that since firing is going on in the hotel, he should be careful. He, therefore, visited ‘Varanda’ Restaurant, which is in the main lobby of Hotel Trident. One of the injured persons was rescued from Varanda Restaurant. A boy aged 7/8 years was also rescued from Varanda Restaurant. He has further deposed that one suspected article was seen outside the porch. He, therefore, called BDDS. The officers of BDDS covered the said article with Bomb Suppression Blanket. After sometime, he went to the main entrance of the hotel. He heard sound of bomb explosion. He learnt that the suspected article seen by him outside the porch had exploded. Two policemen were injured. They were

rescued by other police officers.

539. PW-215 Rajesh Kadam had further deposed that on 27/11/2008, 50 NSG Commandos headed by Colonel Rathi and Lt. Colonel Sharma reached Hotel Trident. This witness accompanied them as Assistant Chief Security Officer. They visited each and every floor of the hotel. They reached the 18th floor of the hotel at about 5.30 p.m. on 27/11/2008. They checked Room No.1856 on the 18th floor. This witness opened the door partly with the master key. Somebody started firing from inside the room. Major Sourabh was injured due to the firing. Realizing that the terrorists had been hiding in the said room, NSG Commandos started firing at the said room. They used hand grenades. They were at a distance of 10 feet from Room No.1856 near the staircase. One of the terrorists had come out of the said room. The terrorists started firing at the NSG Commandos. The NSG Commandos also, by taking position, started firing in retaliation. During the course of exchange of fire, the terrorists asked as to why

they (NSG Commandos) were hiding and firing and that if they had any guts, they should come out and fire. The terrorists also started firing at Lt. Col. R. K. Sharma. Lt. Col. R. K. Sharma also fired at them. After sometime, this witness heard a terrorist screaming in pain. He realized that the terrorist had sustained bullet injury. There were no lights. He and NSG Commandos stayed on the 18th floor during the entire night till 7.00 a.m. on 28/11/2008. There was no firing till then either by the terrorists or NSG Commandos. Firing resumed at 7.00 a.m. on 28/11/2008. This witness, at about 7.00 a.m., saw one terrorist lying near the lift. Some commandos fired at him and, thereafter, went near him. He was found dead. Thereafter, they went to the terrace. Six dead bodies were found on the terrace. Four persons were found lying in an injured condition. They were brought to the 18th floor. Thereafter, commandos and this witness started searching other rooms on the 18th floor to locate other terrorists. No terrorist was found in any other room of the 18th floor. The NSG Commandos found that the door of

Room No.1856 was closed. Therefore they decided to take search of the said room as they suspected that terrorists might be in the said room. The commandos fired at Room No.1856. There was firing in retaliation from Room No.1856. NSG Commandos broke open the door by exploding hand grenades. They also threw hand grenades inside the room. After sometime, other terrorist was also declared dead. This witness identified two dead bodies of the terrorists in the identification parade of the dead bodies conducted by PW-251 SEO Kandalkar as the same terrorists who were seen firing on the 18th floor of Hotel Oberoi. He was cross-examined by counsel for A1-Kasab, however, his evidence is not shattered in the cross-examination. It is pertinent to note that there was no cross-examination regarding identification of two deceased accused by this witness. The presence of Lt. Colonel Sharma is also not disputed.

540. Apart from the evidence of above eye-witnesses, the prosecution has relied upon the inquest panchnamas at

Ex-791 and Ex-790 of the dead bodies of deceased terrorists. The prosecution has led evidence of PW-211 PSI Vinayak Patankar, who has drawn panchnama (Ex-791) and PW-226 PSI Santosh Subalkar, who had drawn panchnama (Ex-790). The prosecution also led evidence of PW-210 Edvin Saldana, in whose presence the inquest panchnamas (Ex-790 and Ex-791) were drawn.

541. PW-211 PSI Vinayak Patankar has deposed that he was attached to Gamdevi Police Station and he had been to Hotel New Oberoi as directed by his superiors. He was on duty on the 18th floor of the hotel. He has deposed that he had drawn inquest panchnama (Ex-791) of a dead body lying near Lift No.3. According to this witness, there were 16 bullet injuries on various parts of the dead body and the apparent cause of death was bullet injuries. The clothes on the dead body were blue strips full shirt, black round neck T-shirt and blue trouser. This witness has identified all the clothes of the deceased and Nokia mobile battery, which was found in one of the pockets of the

trouser of the deceased.

542. PW-226 PSI Santosh Subalkar, has deposed that he had drawn inquest panchnama (Ex-790) of dead body lying in front of Room No.1850 on the 18th floor of Hotel Oberoi. It was dead body of a male in the age group of 25 to 30 years. The clothes on the dead body were blue T-shirt and black multi pocket trouser. There were thirty three bullet injuries on the dead body. According to this witness, the apparent cause of the death was bullet injuries. During the panchnama following articles lying near the dead body were seized by this witness:

(i) One AK-47 rifle [Art.765]

(ii) Two magazines [Art.771 (Colly.)]

(iii) One Pistol [Art.773]

(iv) Two pistol magazines [Art.775 (Colly.)]

(v) Six live cartridges [Art.777 (Colly.)]

(vi) One empty [Art.778]

(vii) One Bullet [Art.779]

(viii) Two empties [Art.780 (Colly.)]

(ix) One black pouch [Art.782]

(x) Cash amount of Rs. 3,500/- [Art.784 (Colly.)]

(xi) Nokia mobile [Art.786]

(xii) Mobile battery [Art.787]

(xiii) Brown blue shirt [Art.790]

(xiv) Black pant [Art.794]

(xv) Orange SIM Card [Art.797]

543. As stated above, PW-210 Edvin Saldana was pancha to both the inquest panchnamas (Ex-790 and Ex-791). We have perused his deposition. This witness has identified his signatures on panchnamas (Ex-790 and Ex-791). This witness has also identified articles which were identified by PW-211 PSI Vinayak Patankar and PW-226 PSI Santosh Subalkar, who have drawn the inquest panchnamas.

544. PW-217 PI Kiran Kale has drawn panchnama of the spot of incident, i.e. the 18th floor of Hotel Oberoi. The said panchnama is at Ex-804. The panchnama was drawn

in the presence of PW-216 Bhupendra Dhamankar. PW-216 Dhamankar has deposed that condition of the 18th floor was very bad. Most of the walls had blackened. One dead body was found lying in front of Room No.1854. According to this witness, one AK-47 rifle [Art.768] was found lying near the said dead body. Apart from AK-47 rifle, other articles were also found. This witness has identified Art.768 to be the same rifle which was seized from near the dead body. He has further identified six magazines of AK-47 rifle [Art.810 (Colly.)], fifty four empties [Art.812 (Colly.)], blue bag [Art.814], two Baynotes [Art.816 (Colly.], four fiber pipes [Art.822 (Colly.)], one Mobile charger [Art.824], one ear phone [Art. 825], one Duracell Battery [Art.826], two Panasonic Lithyle cell [Art.827], one packet of dry fruits [Art.829].

545. PW-217 PI Kiran Kale has also identified Art-768 as the same rifle which was found near the dead body lying in front of Room No.1854. He has identified articles which were identified by PW-216 Bhupendra Dhamankar.

546. The prosecution has also led evidence of Ballistic Expert. The evidence reveals that the cartridges, cases and empties seized under the above panchnamas tally with either Art.765 or Art.768.

547. We have already found that the confessional statement of A1-Kasab is voluntary and truthful. From the said confessional statement, it is clear that deceased A6 and A7 were directed to attack Hotel Oberoi. PW-28 Bharat Tamore had seen the inflatable boat and had also seen 10 persons in the said boat. He had further seen the said boat proceeding towards Nariman Point. Boat was spotted at Nariman Point by PW-29 Prashant Dhanu. The confessional statement of A1-Kasab is thus corroborated by the evidence on record.

548. The confessional statement and deposition of PW-28 Bharat Tamore and PW-29 Prashant Dhanu establish the presence of deceased A6 and A7 at Hotel Oberoi/Trident.

PW-208 Bhagwat Bansode, PW-215 Rajesh Kadam and PW-212 Pradeep Bengalorkar have witnessed the incident at Hotel Oberoi and Trident. They have described in detail as to how the terrorists had indulged in indiscriminate firing. PW-212 Bengalorkar was directed by the terrorists to set the furniture on fire. PW-212 Bengalorkar had seen Jorden being killed. The name of Jorden is shown at Serial No.64 in the list of deceased persons in Table No.II. Both PW-212 Bengalorkar and PW-215 Rajesh Kadam have identified the dead bodies of the deceased terrorists in the identification parade of the dead bodies conducted on 6/1/2009 by PW-251 SEO Kandalkar. PW-215 Rajesh Kadam had assisted the NSG Commandos in his capacity as Assistant Chief Security Officer of Hotel Oberoi. This witness has given detailed version as to how two terrorists were killed by the NSG Commandos. The dead bodies of the terrorists were recovered under the inquest panchnamas at Ex-791 and Ex-790. AK-47 rifles (Art.765 and Art.768] found on the 18th floor near the dead bodies of the terrorists, inquest panchnamas as well as the

postmortem notes (Ex-1532 and Ex-1531), which are admitted by the defence, unequivocally show that both the deceased terrorists have died due to firearm injuries. Obviously, they were eliminated by NSG Commandos. However, before they could be eliminated, they had killed 35 persons and injured 24 persons. The Ballistic Expert's report also proves that the empties and cartridges recovered from Hotel Oberoi tally with either Art.765 or Art.768, which were recovered from near the dead bodies of deceased A6 and A7. In our opinion, the evidence mentioned above, conclusively establishes that deceased A6 and A7 were involved in the incident of firing at Hotel Oberoi in which they killed 35 persons mentioned at Serial Nos.37 to 71 in Table No.II and injured 24 persons.

549. In view of the above analysis of evidence, we confirm the finding that deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah had caused injuries mentioned in Column No.4 to the deceased victims at Serial Nos.37 to 71 in Table No.2. We confirm the finding that deceased

A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah who died at Hotel Oberoi had caused the above injuries to the said deceased 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. We confirm the finding that deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah shared each others' intention at the time of causing death of deceased at Serial Nos.37 to 71 in Table No.2. We confirm the finding that deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah had caused injuries of the nature mentioned in Column No.5 to the persons mentioned in Column No.3 at Serial Nos.131 to 154 in Column No.4 at Table No.3. We confirm the finding that deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah had caused the said injuries with such intention and knowledge and under such circumstances that had they caused death of any of the said persons and had deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah been alive, they

would have been guilty of the offence of murder. We confirm the finding that deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah had shared each other's common intention while causing injuries to the said persons.

550. We have covered all the incidents of terror attacks. It is now necessary to go to the charge of conspiracy.

CONSPIRACY AND WAGING OF WAR.

551. A1-Kasab, A2-Ansari and A3-Shaikh were, inter alia, charged that they along with nine deceased accused and 35 wanted accused being members of the LeT during the period between December, 2007 and November, 2008 were party to a criminal conspiracy to wage war against Government of India and to commit several offences inter alia under Sections 302, 307, 326 and 325 of the IPC, offences punishable under Sections 10, 13, 16, 17, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967,

under Sections 25 and 27 of the Arms Act, offences punishable under the Explosives Act, offences punishable under the Explosives Substances Act, offences punishable under Sections 3 and 4 of the Prevention of Damage to the Public Properties Act, offences punishable under Sections 151, 152 and 153 of the Railways Act, offence punishable under Section 135 of the Customs Act, offences punishable under the provisions of the Foreigners Act and the Passport (Entry into India) Act, 1920 and to commit following illegal and certain acts by illegal means to wit,

(1) attempted to destabilize the Government of India by engineering violence in different part of India,

(2) attempted to create instability in India by the aforesaid subversive activities,

(3) terrorize the people in different parts of

India by indulging in wanton killings and destruction of properties through bomb attacks and use of fire arms and leghal weapons,

(4) to weaken India's economic might,

(5) to kill foreign nationals with a view to cause serious damage to tourism business on India,

(6) to adversely affect harmony between various communities and religions in India.

552. A1-Kasab was also, inter alia, charged that in pursuance of the said criminal conspiracy, he along with deceased A1 to A9 during the period between 26/11/2008 and 29/11/2008 waged war against the Government of India. He was further charged that he along with A2-Ansari, A3-Shaikh, deceased A1 to A9 and wanted A1 to

A35 within and without India conspired to wage war against the Government of India and also conspired to overawe, by means of criminal force and the show of criminal force, the Central Government and the Government of Maharashtra. He was further charged that he along with A2-Ansari, A3-Shaikh and the deceased and wanted accused during the period between December, 2007 and November, 2008 in pursuance of the said conspiracy collected men, arms and ammunitions within and outside India, and made other preparations to wage war with the intention of either waging or being prepared to wage war against the Government of India. A1-Kasab was further charged that he along with nine deceased accused in pursuance of the said criminal conspiracy caused serious injuries to several persons and committed murders of 166 persons at various places.

553. As we have already noted, learned Sessions Judge has acquitted A2-Ansari and A3-Shaikh. It must be noted here that out of 35 wanted accused, learned Sessions

Judge has held only the involvement of wanted A1 to A11, A13, A15, A18, A20, A27, A28, A31, A34 and A35 as proved. Learned Sessions Judge has, inter alia, held that A1-Kasab was a party to the criminal conspiracy to wage war against the Government of India and to commit several offences detailed in the Charge along with deceased A1 to A9 and wanted A1 to A11, A13, A15, A18, A20, A27, A28, A31, A34 and A35 and the said offences were, in fact, committed. Learned Sessions Judge has held that A1-Kasab and deceased A1 to A9 during the period between 26/11/2008 and 27/11/2008 had in pursuance of the said conspiracy waged war against the Government of India.

554. Since the offence of criminal conspiracy is held to be proved, it is necessary to find out whether learned Sessions Judge's conclusion as regards existence of criminal conspiracy is correct or not.

555. Mr. Solkar, learned counsel for A1-Kasab submitted

that learned Sessions Judge erred in coming to the conclusion that A1-Kasab was part of a criminal conspiracy. He submitted that the essence of criminal conspiracy is an agreement to commit crime. In this case, the prosecution has not been able to establish that there was any agreement to commit crime to which A1-Kasab was a party. He submitted that the edifice of the prosecution case rests on A1-Kasab's alleged confessional statement and, since that is not true and voluntary, it cannot be relied upon. The entire conspiracy theory must, therefore, collapse. Mr. Solkar submitted that there is no evidence to indicate when the alleged conspiracy started. He submitted that assuming without admitting the prosecution case, at the most, it could be said that A1-Kasab was asked to execute the plan. He submitted that his role can be, at the most, described as that of a contract killer. He had no knowledge of the alleged conspiracy. The prosecution could not bring on record any evidence to suggest that there was any local support and that A1-Kasab was in contact with any local people.

Counsel submitted that assuming A1-Kasab was part of a larger conspiracy, it must come to an end after A1-Kasab was arrested and he would not be responsible for the acts committed by other accused after his arrest. In support of his submissions, Mr. Solkar has drawn our attention to certain paragraphs of the judgments of ***State of Tamil Nadu through Superintendent of Police CBI/SIT v. Nalini & Ors. 1999 Cri.L.J. 3124*** and ***Navjot Sandhu (Afsan Guru)***.

556. Mr. Nikam, learned Special Public Prosecutor, on the other hand, submitted that the prosecution has led enough evidence to make out a case of criminal conspiracy and, therefore, conviction and sentence of A1-Kasab on that count needs to be confirmed.

557. We shall first refer to the definition of 'criminal conspiracy' given in Halsbury's Laws of England and judgments of the Supreme Court on the concept of criminal conspiracy. The ***Halsbury's Laws of England***

defines the criminal conspiracy as under:

> *"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."*

558. In ***Nalini***, after considering the relevant judgments on law of conspiracy, the Supreme Court has summarized the broad principles governing the conspiracy. They are as under:

> *"1. Under Section 120-A of the 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 overt 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 person 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 a 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 offence 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 enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre 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 consummation 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 to 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. *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 the 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 nor does it change the status of the other conspirators, and the mere fact that 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 object 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".

559. Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. Normally a conspirator's connection with the conspiracy would get snapped after he is nabbed by the police.

However, there could be cases where the conspirator's connection with the conspiracy would not necessarily be cut off with his arrest. It would depend on the facts and circumstances of each case. In this connection, the following observations of the Supreme Court in ***Nalini*** need to be quoted:

> *"114. Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particualr case. Normally, a conspirator's connection with the conspiracy would get snapped after he is nabbed by the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Of course, we are not unmindful of rare cases in which a conspirator would continue no confabulate with the other conspirators and persists with the conspiracy even after his arrest. That is precisely the reason why we said that it may not be possible to lay down a proposition of law that one conspirator's connection with the conspiracy would necessarily e cut off with this arrest."*

560. In ***Nazir Khan & Ors. v. State of Delhi, 2003 SCC***

(Cri.) 2033, the Supreme Court observed that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. The Supreme Court further observed that direct evidence in proof of a conspiracy is seldom available. It is not always possible to give affirmative evidence about the date of formation of criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object which

the objectors set before themselves as the object of conspiracy and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference. The Supreme Court further observed that 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 event 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 Supreme Court further observed

that 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 trappings of the provisions contained in Section 120-B. (***Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420***).

561. In ***Firozuddin Vs State of Kerala, 2001 (Cri.L.J.) 4215,*** *the* Supreme Court has observed 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.*

562. In ***Navjot Sandhu @ Afsan Guru***, the Supreme observed that those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. The Supreme Court further observed that there is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive

offence not committed by them. The Supreme Court, however, clarified that if there is proof to the effect that the accused played a role, attended to certain things, or took steps consistent with the common design underlying conspiracy, that will go a long way in establishing the complicity of the accused though it is not a legal requirement that the conspirator should do any particular act beyond the agreement to commit the offence.

563. In ***R. Venkatkrishnan v. Central Bureau of Investigation, (2010) 1 SCC (Cri.) 164***, while dealing with the offence of criminal conspiracy, the Supreme Court observed as under:

> *"Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they*

take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means, then even if nothing further is done, the agreement would give rise to a criminal conspiracy. Condition precedent for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by prosecution viz. meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from materials brought on record to arrive at a finding as to whether the charges of criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which offences have been committed and the level of involvement of accused persons therein are relevant factors. For the said purpose, it is necessary to prove that propounders had expressly agreed to, or caused to be done illegal act but it may also be proved otherwise by adducing circumstantial evidence and/or by necessary implication. In some cases, intent of unlawful case being made of the goods or services in question may be inferred from knowledge itself. A conspiracy may further be a general one and a separate one. A smaller conspiracy may be a part of a larger conspiracy. It may develop in successive stages. New techniques may be invented and new

means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant".

564. From the above, the following principles emerge.

(a) To make out offence of criminal conspiracy, intention to commit crime is necessary.

(b) Unlawful agreement to carry out the object of the intention, which is an offence is the gravamen of offence of conspiracy.

(c) Since conspiracy is hatched in privacy, direct evidence is not always available, hence conspiracy and its objects can be inferred from the circumstances and the conduct of the accused. Unlawful agreement need not be formal or express but may be inherent in and could be

inferred from circumstances such as declarations, acts and conduct of the conspirators. The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

(d) There has to be cogent and convincing evidence against each one of the accused charged with conspiracy.

(e) All conspirators need not know each other. They may not know the part played by others. They may not know when a conspirator joined the conspiracy and when he left it.

(f) The agreement need not be entered into by all the parties at the same time, but may be reached by successive actions

evidencing their joining of the conspiracy.

(g) To prove the charge of conspiracy, it is not necessary that the intended crime should have been committed. It is the unlawful agreement and not its accomplishment which is the gist or essence of the crime of conspiracy.

(h) If two or more persons enter into a conspiracy, any act done by them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. A conspirator is not responsible, however, for acts done by a conspirator after termination of the conspiracy.

(i) One who commits an overt act with the knowledge of the conspiracy is guilty. And

one who tacitly consents to the object 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.

(j) The mere proof of an agreement to commit crime 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.

(k) Those who committed the offences pursuant to the conspiracy by indulging in various acts will be individually liable for these offences in addition to being liable for criminal conspiracy but the conspirators cannot be held guilty of a

substantive offence not committed by them. For individual offences, all the conspirators may not be liable though they are all guilty of the offence of conspiracy. But if there is proof to the effect that the accused played a role, attended to certain things, or took steps consistent with the common design underlying conspiracy that will go a long way in establishing the complicity of the accused though it is not a legal requirement that the conspirator should do any particular act beyond the agreement to commit the offence. [***Navjot Sandhu @ Afsan Guru***.]

(l) Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. It cannot

be laid down as a proposition of law that a conspirator's connection with the conspiracy is necessarily cut off with his arrest.

565. Since A1-Kasab is, inter alia, charged for waging war against the Government of India and he has, in fact, been convicted for that offence, we need to ascertain what is meant by waging war against the Government of India. The term ‘war’ brings to our mind armed forces belonging to two rival nations fighting against each other with use of arms and ammunition. That is the traditional concept of war. Does that mean that if two countries have not declared war against each other, but a national of one country sneaks into the other country and commits offences and thereby overwhelms the security personnel deployed by the Government to attain a commanding position, that would not amount to waging war against that other country? If he and his co-conspirators keep foreign nationals and others hostages and try to

pressurize that other country to succumb to their demands, would that not amount to waging war against that other country?

566. In ***Navjot Sandhu @ Afsan Guru***, there was an attack on Parliament of India. The Supreme Court had, therefore, an occasion to consider the concept of waging war. The Supreme Court referred to Sections 121 and 121A of the IPC and took resume of the old English cases, Indian cases of pre-independence days and post independence days. The Supreme Court referred to the judgment of ***Maganlal Radhakishan v. Emperor, AIR 1946 NAG 176*** and quoted the principles laid down therein as under:

> *"(i) No specific number of persons is necessary to constitute an offence under Section 121, Penal Code.*
>
> *(ii) The number concerned and the manner in which they are equipped or armed is not material.*
>
> *(iii) The true criterion is quo animo did the gathering assemble?*

(iv) The object of the gathering must be to attain by force and violence an object of a general public nature, thereby striking directly against the King's authority.

(v) There is no distinction between principal and accessory and all who take part in the unlawful act incur the same guilt."

567. The Supreme Court observed that war, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war embedded in Section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. The Supreme Court clarified that 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. Though every terrorist act does not

amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. The following observations of the Supreme Court which contain its conclusions need to be quoted:

> *"On the analysis of the various passages found in the cases and commentaries referred to above, what are the highlights we come across? The important is the intention or purpose behind the defiance or rising against the Government. As said by Foster, "The true criterion is quo animo did the parties assemble?" In other words the intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of government troops or armed personnel deployed to maintain public tranquility. Though the modus operandi of preparing for the offensive act against the Government may be quite akin to the preparation in a regular war, it is often*

> *said that the number of force, the manner in which they are arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war".*

568. The attack on Parliament which is a symbol of the sovereignty of the Indian Republic was viewed very seriously by the Supreme Court. The Supreme Court observed that the firepower or the devastating potential of the arms and explosives that may be carried by a group of persons – may be large or small, as in the present case, and the scale of violence that follows may, at times, become useful indicators of the nature and dimension of the action resorted to. These, coupled with

the other factors, may give rise to an inference of waging war. The Supreme Court observed that entering Parliament House with sophisticated arms and powerful explosives with a view to laying a siege to that building at a time when members of Parliament, members of the Council of Ministers, high officials and dignitaries of the Government of India had gathered to transact parliamentary business, with the obvious idea of imperilling their safety and destabilizing the functioning of the Government and in that process, venturing to engage the security forces guarding Parliament in armed combat, amounts by all reasonable perceptions of law and common sense, to waging war against the Government. The Supreme Court repelled the contention that the purpose and design of the offence should be to substitute another authority for the Government of India. The Supreme Court observed that the undoubted objective and determination of the deceased terrorists was to impinge on the sovereign authority of the nation and its Government. Even if the conspired purpose and objective

falls short of installing some other authority or entity in the place of an established Government, it does not, detract from the offence of waging war.

569. The Supreme Court further observed that 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. The Supreme Court further observed that the question of formal declaration of war by the Government would only arise in case of outbreak of armed conflict with another country or a political group having the support of another nation but the theoretical possibility cannot be a guiding factor in construing the expression “waging war” in Section 121 especially when there is no legal provision mandating the Government to make such declaration. The Supreme Court also rejected the contention that foreign national who intrudes into the territory of India and do not owe even temporary allegiance to the Government of India cannot be charged with the offence of waging war. The Supreme Court

observed that the word “whoever” used in Section 121 is a word of broad import and has been advisedly used. The Supreme Court held that there was no good reason why foreign nationals stealthily entering into 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 of the IPC. The section on its plain terms, observed the Supreme Court, need not be confined only to those who owe allegiance to the established Government.

570. In ***Nazir Khan***, the accused had kidnapped four foreign nationals. Demand letters were sent to the British Embassy and the American Embassy and to various news agencies in India and abroad. The demand of the accused was that the Government of India should release 10 hardcore terrorists from the jail. The accused were charged, inter alia, for offences punishable under Sections 121A, 122 and 124A of the IPC. The trial court had convicted the accused. Some of the accused were

Pakistan nationals. It is pertinent to note that all the accused were sentenced, inter alia, for offences punishable under Sections 121, 121A and 122 of the IPC. The said conviction was confirmed by the Supreme Court. Thus, keeping persons as hostages and pressurizing the Government to succumb to the demands made by the terrorists amounts to waging war.

571. Thus, to constitute offence of “waging war”, it is not necessary that any particular number of persons is necessary. The mode and the manner of waging war is not defined. The war contemplated by this offence is not necessarily a traditional war. There need not be a declaration of war. Two countries may not be at war involving conventional military operations. A stealthy operation carried out by the terrorists to strike terror and to overwhelm the armed or other personnel can amount to waging war. Certain terrorist acts do fall within the ambit of the term “waging war”. The intention of perpetrators to strike at the sovereign authority of the

State is important. The purpose must be intended to be achieved by use of force and arms in defiance of armed and other security personnel. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage and that will manifest their intention to wage war. If such desperadoes hold the Government at ransom, by keeping foreign nationals as hostages and try to dictate terms to the Government that would amount to waging war. Places where the attackers launch the attack are also an indication of this offence. If a public place like a railway station which is under the Central Government's command is attacked, if hotels in which foreign nationals stay are attacked, if people particularly foreign nationals are kept hostages so as to bring the Government down on its knees, that would amount to waging war. It is not necessary that the object of the perpetrators should be to overthrow the existing Government and substitute it with other authority. Even foreign nationals who do not owe allegiance to the

Government can be held guilty of waging war. It is the intention to imperil the safety of the people to destabilize the Government with use of force, it is the intention to make the Government helpless by adopting devious means such as keeping people as hostages so that it would succumb to the illegal demands of the perpetrators which gives the offence the character of the offence of "waging war".

572. After examining the instant case in the light of above principles, we feel that following circumstances amongst others clearly establish the offence of criminal conspiracy to wage war against Government of India.

CIRCUMSTANCES CONSTITUTING CONSPIRACY AND WAGING WAR AGAINST THE GOVERNMENT.

I. UNLAWFUL AGREEMENT

573. Unlawful agreement to carry out the object of the conspiracy to commit crime is the gravamen of criminal

conspiracy. We have already quoted extensively the confessional statement of A-1 Kasab, which is corroborated by other evidence on record. We have found it to be true, voluntary and reliable. The unlawful agreement to commit crime is clearly reflected in this statement. It discloses that the attack on India was planned and monitored by wanted A-1 Hafeez Mohammad Saeed acting as the Major of LeT, a banned organization. Wanted A-2 Zaki-Ur-Rehaman Lakhvi acted as a key figure in this attack. Wanted A-1 and A-2 told the trainees that their community was fighting for what they called liberation of Kashmir, but the Indian Government was not liberating Kashmir and, therefore, they have to fight a war to liberate Kashmir. Wanted A-4 Abu Al Kama told the trainees that most of the big cities of India were to be targeted and whoever dies in the war will go to heaven. They were told that time for Jihad has come. Trainees were further told that financial strength of India depends on the income of commercial capital Mumbai and, therefore, they have to attack Mumbai. A-1 Kasab and

others agreed to fight a war against India. Thus, unlawful agreement to launch terror attack on India was made in Pakistan. This is corroborated by evidence on record, particularly the intercepted conversation.

II. TRAINING GIVEN TO A1-KASAB AND OTHERS.

574. Training which was given to A1-Kasab and others is an important aspect of this case. It goes a long way in establishing conspiracy. It is necessary, therefore, to refer briefly to the training given to A1-Kasab and others by their handlers, to which reference is made by A1-Kasab in his confessional statement. The confessional statement discloses that A1-Kasab and his co-conspirators were given rigorous training in Pakistan to prepare them for the attack on India. The first training was for twenty one days beginning from December, 2007, ending in January, 2008. This was given in Muridake, PoK. This training was called ‘Daura-e-Sufa'. This was physical training. During this period, the trainees were introduced to Chief of LeT

wanted A1-Hafeez Mohammad Saeed and Area Commander wanted A2-Zaki-Ur-Rehaman Lakhvi by wanted A5-Abu Kaahfa. The trainers were wanted A8-Fahad Ullah and wanted A13-Mufti Saeed. During this training, wanted A4-Abu Al Kama, wanted A3-Abu Hamza and wanted A18-Abu Umar Saeed visited the camp.

575. The second course of training began from February, 2008. It was for twenty one days. It was known as 'Daura-e-Aam'. It was given in Battal village. During this training, the trainees, inter alia, were taught to use AK-47 rifles and pistols. The trainers were wanted A9-Abu Abdul Rahman, wanted A10-Abu Anas and wanted A11-Abu Bashir and wanted A15-Yusuf. Thereafter, the trainees had to do a stint at the same place from March, 2008 to May, 2008. It was called 'Daura-e-Khidamat'. During this period, the trainees could go home or could look after the trainees who had come to the camp.

576. The third course of training was from May, 2008 to

July, 2008. It was called ‘Daura-e-Khasa. This training was given in the camp of LeT near Muzaffarabad. The name of the place was Maskar Aksa. The trainers were wanted A28-Abu Mavia and wanted A31-Abu Hanjla. During this period, the trainees were taught, inter alia, how to use GPS, Satellite phone and how to lob hand grenades. They were also given scientific training.

577. The fourth course of training began from August, 2008. It was for one month. It was called ‘Daura-e-Ribat’. It was given at Markas Taiba, Muridake. The trainers were wanted A5-Abu Kaahfa and wanted A34-Abu Imran. During this period, the trainers were taught the work of intelligence agents. They were taught how to collect the information about target, how to keep watch, how to follow people, how to hoodwink people, etc.

578. The fifth course of training began in September, 2008. It was for three days. The trainees were given marine training and the trainer was wanted A35-Hakim

Saheb. The trainees were taught how to gauge depth of sea, how to use sea routes by using GPS, how to read maps, how to throw fisherman's nets and how to navigate a boat.

579. In his confessional statement, A1-Kasab has given details of this training. In his plea, A1-Kasab has also admitted that they were given training. The prosecution has successfully established the attack made by A1-Kasab, deceased A1-Abu Ismail and other deceased accused on various locations of Mumbai. The prosecution has successfully established how they came to Badhwar Park in an inflatable boat. The prosecution has successfully established how they travelled from Karachi to Mumbai. The prosecution has also established how the attackers took instructions from their handles. The method used by them to commit various crimes, the manner in which the crimes have been committed indicate that rigorous training was given to them. Thus, the confessional statement of A1-Kasab which pertains to

the aspect of training is, in our opinion, corroborated by the evidence on record. This training was to make all of them ready to attack India as per the unlawful agreement.

III. IDENTIFICATION OF DEAD BODIES OF DECEASED ACCUSED.

580. PW-263 is Harshal Chendvankar. At the relevant time, he was working as Mortuary Assistant at J.J. Mortuary. According to him, as a Mortuary Assistant, it is his duty to give token numbers to all the dead bodies with distinct number for each and every dead body. The token number is called dead body number. According to him, the record of such numbers is maintained in a register in the mortuary. The register is maintained by the Mortuary Assistant. He has stated that he was maintaining the register at J.J. Hospital Mortuary. According to him, eight dead bodies were received by the mortuary on 29/11/2008. One dead body which was earlier kept at

Nair Hospital Mortuary was brought to J.J. Hospital Mortuary on 6/12/2008. ADR numbers were also noted in the register maintained by the mortuary on being intimated by the police. The names of the eight persons whose dead bodies were brought to J.J. Mortuary on 29/11/2008 were disclosed to J.J. Mortuary on 5/1/2009 when a letter with regard to identification parade to be held on 6/1/2009 was received. The said letter is at Art. 991.

581. This witness has further stated that eight dead bodies received by him on 29/11/2008 and whose names were received later on are at Serial Nos.801, 801A, 804, 817, 818, 819, 820 and 821. The entry in respect of ninth body was made in a different register which was maintained for dead bodies received from other hospitals. It is at Serial No.55 of the said register. He has produced both the registers which are Art.992 and Art.993 respectively. The xerox copies of the relevant pages are at Art.992A and Art.993A respectively. According to him,

all the entries are not in his handwriting. However, the names of the deceased have been recorded by him personally. The entries at Serial Nos.801, 801A, 804, 817, 818, 819, 820 and 821 are exhibited as Ex-1089, Ex-1090, Ex-1091, Ex-1092, Ex-1093, Ex-1094, Ex-1095 and Ex-1096 respectively. The entry at Serial No.55 of Art.993 is exhibited as Ex-1097.

582. The names, serial numbers of J.J. Hospital Mortuary Register, ADR numbers and token number of dead bodies of eight accused received by the J.J. Mortuary from the police are as under:

Sr. No. as per JJ Hospital Mortuary Register	***ADR Nos.***	***Body Nos./Token Nos.***	***Name of the deceased***
801	71/08	24	Fahad Ullah
801A	72/08	25	Abul Rehman Chhota
804	83/08	33	Abu Sohab
817	85/08	122	Nasir @ Abu Umar
818	84/08	140	Babar Imran @ Abu Akasha
819	97/08	48	Nazir @ Abu Umer
820	92/08	01	Javed @ Abu Ali
821	93/08	44	Hafiz Arshad @ Abdul Rehman Bada

583. The name, serial number of J.J. Hospital Mortuary Register, ADR number and token number of the dead body of the accused received by the J.J. Mortuary from other hospital is as under:

Sr. No. as per JJ Hospital Mortuary Register	***ADR Nos.***	***Body Nos. / Token Nos.***	***Name of the deceased***
55	63/08	A D 8	Abu Ismail

584. The names were given to the dead bodies on the basis of the confessional statement made by A1-Kasab. As regards the names, the prosecution is also drawing support from the intercepted telephonic conversation of the terrorists holed up in Hotel Taj, Nariman House and Hotel Oberoi or by the evidence of eye-witnesses, who heard the terrorists calling each other by names.

585. PW-251 Navinchandra Kandalkar is Special Executive Officer. According to him, he was requested by PW-607

Mahale, the Chief Investigating Officer to hold identification parades in respect of dead bodies of the alleged accused involved in the incident of 26/11/2008. The dead bodies were lying in the Mortuary of J.J. Hospital. He informed Mr. Mahale that identification parades would be held on 6/1/2009 and 7/1/2009.

586. On 6/1/2009, he attended the J.J. Mortuary. The Investigating Officer Mr. Rauf Shaikh was present. Five identifying witnesses were also present. They included PW-136 Arun Jadhav, PW-138 PN Suresh Kadam and PW-139 Maruti Phad. According to him, the identifying witnesses were asked to sit in a room otherwise than the room where identification parade was to be held. He invited two persons viz. Liladhar Patkar and Madhav Warkhandkar to act as panchas. He asked the Investigating Officer to go out of the room where identifying witnesses were sitting. According to him, he inquired with the witnesses whether photographs of the deceased accused were shown to them by the police.

They replied in the negative. Thereafter, he went to the Mortuary and directed the Mortuary Assistant to take out six dead bodies for identification. He has stated that the six dead bodies included dead body of deceased A1-Abu Ismail. Two panchas were with him when six dead bodies were taken out by the Mortuary Assistant. According to him, thereafter, he asked one of the panch witnesses to bring one identifying witness. The dead body of deceased A1-Abu Ismail was at Serial No.5 from the left. The panch witness brought the identifying witness Mr. Utekar. Mr. Utekar identified the dead body of deceased A1-Abu Ismail. He was then directed to go out of the parade room. The panch witness - Patkar was directed to bring another identifying witness. In the meantime, he changed the position of the dead bodies. The dead body of deceased A1-Abu Ismail was at serial No.2 from the left. The next identifying witness PW-138 PN Suresh Kadam was thereafter allowed to enter the parade room. PW-138 Kadam also identified deceased A1-Abu Ismail. According to this witness, similarly, the other identifying witnesses

were also called one by one and they were asked to identify the dead bodies of the accused. This witness has stated that each and every time, he was changing the position of the dead bodies. The other identifying witnesses called by him were Choka Landge, PW-139 Maruti Phad and PW-136 Arun Jadhav.

587. This witness has confirmed that whenever the identifying witnesses were called inside, nobody else except the pancha and the concerned identifying witness was allowed to be inside the room. Only ward boy was allowed to assist him for changing the position of the dead bodies. After conclusion of the parade, he prepared a parade memo and signatures of panchas were taken thereon. The said memo is at Ex-1034. He has identified his signature on the panchnama. According to him, as per the Mortuary record, body number of deceased A1-Abu Ismail was A.D. 8 and ADR number was 63/08.

588. Thereafter, he conducted another identification

parade in respect of dead body of deceased A1-Abu Ismail. The identifying witnesses PW-28 Bharat Tamore and Bharat Tandel were brought for identification. They identified the dead body of deceased A1-Abu Ismail. The panchanama/memorandum was drawn by him. He has identified his signature as well as the signature of the pancha. The panchnama is at Ex-1035.

589. On the same day, he conducted one more identification parade of the dead body i.e. the body of deceased A1-Abu Ismail. Identifying witnesses were Suresh Khatalkar, PW-55 Dhananjay Gavali and PW-58 Mammat Nardale. The other six dummy dead bodies were kept along with dead body No.AD 8. Similar procedure was adopted by him and all the three identifying witnesses had identified dead body No. AD 8. He stated that the panchnama was drawn by him. He identified his signature as well as the signature of panch witness. The panchnama is at Ex-1036.

590. Another identification parade for identification of dead body No.AD 8 was held on the same day. Same panch witnesses were present. The identifying witnesses were PW-3 Hemant Bavthankar, PW-1 PI Bhaskar Kadam and Ashok Pimpale. Six dummy dead bodies were used for identification parade. Similar procedure was adopted and all the three identifying witnesses identified dead body No.AD 8. The panchanama was drawn by him. He identified his signature as well as the signature of panchas on the said panchnama. The panchnama is at Ex-1037.

591. Another identification parade in respect of dead body Nos.801/24 and 801(A)/25 i.e. Fahad Ullah and Abdul Reheman Chhota, who were in Hotel Oberoi, was held. The identifying witnesses were PW-215 Rajendra Kadam, Bhupendra Dhamankar, Arjun Sawant and PW-212 Pradeep Bengalorkar. Ten dummy dead bodies were taken out for conducting identification parade. Similar procedure was followed. Both the dead bodies were

identified by the above four witnesses. The panchanama was drawn by him. He identified his signature as well as the signature of the panchas thereon. The panchnama is at Ex-1038.

592. The sixth identification parade in respect of dead body No.804/33 i.e. Abu Soheb was held on the same day. Similar procedure was followed. The identifying witness was PW-225 Wasim Shaikh. Six dummy dead bodies were used for the parade. The witness identified dead body No. 804/33. The panchanama was drawn by him. He identified his signature as well as the signature of panch witness thereon. The panchnama is at Ex-1039.

593. Four more parades were held on 7/1/2009. The first parade held on 7/1/2009 was in respect of dead body Nos. 804/33 and 820/01 i.e. Abu Soheb and Abu Ali. The ADR Nos. were 83/08 and 92/08 respectively. The identifying witnesses were PW-184 K.R. Ramamoorthy, PW-188 Adil Irani, Rajendra Bagale and PW-224 Sunil Jadhav. Similar

procedure was followed and all the witnesses identified both the dead bodies. The panchnama was drawn by him. The panchas viz. Suresh Golatkar and Sunil Nerulkar were present. He identified his signature as well as the signatures of the panchas thereon. The panchnama is at Ex-1040.

594. The next parade in respect of dead body No.804/33 i.e. Abu Soheb was also held on the same day in presence of same panchas. Similar procedure was followed. ADR No. was 83/08. The identifying witnesses were PW-181 Sachin Sorte, P.K. Shah Kunjumal and Hussain Sayyed. All the witnesses identified body No.804/33 i.e. Abu Soheb. The panchnama was drawn by him. He identified his signature as well as the signatures of panchas thereon. The panchnama is at Ex-1041.

595. The next identification parade in respect of body Nos. 818/140 and 817/122 i.e. Imran Babar and Abu Umar, who were in Nariman House was held in the similar manner

and in the presence of same panchas. The ADR Nos. of the dead bodies were 84/08 and 85/08 respectively. Nine dummy dead bodies were used for conducting identification parade. The identifying witnesses were PW-201 Kamal Singh and Harischandra Awad. Both the witnesses identified both the dead bodies. The panchanama was drawn by him. He has identified his signature as well as the signatures of the panchas thereon. The panchnama is at Ex-1042.

596. The next identification parade was in respect of dead body No.AD 8, ADR No.63/08 i.e. Abu Ismail. The identification parade was held in the presence of same panchas in the similar manner. The identifying witnesses were PW-107 Raosaheb Funde and PW-103 Bharat Waghela. Both these witnesses identified the dead body. The panchnama was drawn by him. He identified his signature as well as the signatures of panchas thereon. The panchnama is at Ex-1043.

597. This witness has stated that the identification parade in respect of dead body bearing ADR No.97/08 could not be held as the dead body was beyond identification. In the cross-examination, this witness comes across as a truthful witness. He has clarified that all the dead bodies were covered with bedsheets. He has stated that only faces were visible. He appears to have taken good care while conducting the parade.

598. PW-212 Pradeep Bengalorkar was working as Assistant Steward in Hotel Trident which is a part of Hotel Oberoi. He identified two dead bodies in the identification parade held on 6/1/2009 at J.J. Mortuary. According to him, one of them had shot at Mr. Jorden and the other had been lobbing hand grenades. He has given description of the said persons. He has stated that he was shown visuals on Camera No.9. According to him, the place shown in the visuals was the connecting passage between Hotel Trident and Hotel Oberoi. He was shown another visual of the same camera. He has stated that

the other two persons shown in the visual are the same who were seen by him firing at Tiffin and Kandhar restaurants. However, in the cross-examination, he has stated that the faces in the CCTV footage are not clear.

599. PW-224 Sunil Jadhav was working as bell boy at Hotel Taj. According to him, he was on duty on 26/11/2008 at Hotel Taj. He has stated that at about 1.45 a.m., somebody had forcibly opened the door of Room No.638. Two persons entered the room. They were carrying one rifle each and one of them held his gun on his neck and said `Hands up'. He and one Rajendra Bagade were forcibly brought out of Room No.638 and taken in front of Room No.632. They were asked to enter Room No.632 and then taken to Room No.520 on the fifth floor. He stated that he could describe both the persons. He stated that they were in the age group of 24 to 25 years. One of them was wearing black shirt. He had injury on his left leg. The other person was wearing a grey shirt.

According to him, two more persons were in front of Room No.632. One of them was wearing golden T-shirt and the other was wearing red T-shirt and red cap. He has given the details as to how these persons dealt with the inmates of Hotel Taj. PW-188 Adil Irani, who was an employee of Hotel Taj has identified the bodies of two terrorists. According to him, one of them was the terrorist who was limping and the other was the terrorist, who was talking on his mobile phone. PW-184 K.R. Ramamoorthy, the Non-Executive Chairman of ING Vaishya Bank was in Hotel Taj. He has identified bodies of two terrorists in the identification parade held on 7/1/2009 at J.J. Mortuary. According to him, one dead body was of the terrorist who was wearing black T-shirt and who was physically handicapped and the other dead body was of the terrorist who was wearing gray T-shirt.

600. He has further stated that the CCTV cameras had been installed in all the corridors of Hotel Taj and he can identify the persons seen by him if their pictures were

captured by CCTV cameras. Therefore, DVR was played in the court. He was shown visuals taken at 04.18 hours of 27/11/2008 and 02.45 hours to 02.47 hours of 27/11/2008 on Camera No.9. He identified four persons who were seen in the visuals as persons who were directing him, three other staff members and the guests to Room No.520 of fifth floor.

601. PW-225 Wasim Shaikh had visited Gateway of India on 26/11/2008. He has given description of two persons whom he had seen getting down from a taxi at Hotel Leopold. One was wearing a gray T-shirt and the other was wearing a golden T-shirt. He has stated that he identified one dead body as that of the person who was wearing gray T-shirt in the identification parade held by PW-251 Kandalkar. He has stated that if CCTV visuals are shown to him, he can identify the said persons. He gave the same description of the said persons and identified the two persons in the visuals of Camera No.9 recorded at 4.19.8 at Hotel Taj when shown to him in the court, as the

same persons.

602. Identification parades of the arrested accused are held by the police after following the provisions of the High Court Criminal Manual. We have already dealt with those principles. The identification parade evidence is not a substantive piece of evidence. It helps the investigating agency to ascertain that it is on the correct track. It supports the identification of the accused made by witnesses in the court. In the nature of things such a course could not have been adopted in this case. But then it must be remembered that some of these witnesses have identified A1-Abu Ismail in the identification parade of dead bodies. When photograph of deceased A1-Abu Ismail (Art.61) was shown to them in the court, they have identified him as the same person. They are PW-136 Arun Jadhav, PW-139 Maruti Phad, PW-55 Dhananjay Gavli, PW-58 Mammat Nardele, PW-1 Bhaskar Kadam, PW-103 Bharat Waghela and PW-107 Raosaheb Phunde. Their identification, in our opinion, can be taken into

consideration because the nature of crimes committed by deceased A1-Abu Ismail is such that, witnesses who had opportunity to see him in action will never forget his face. On this aspect, we have already quoted the relevant Supreme Court judgments. We have already held that the witnesses had sufficient opportunity to see deceased A1-Abu Ismail.

603. So far as the other deceased accused are concerned, the prosecution witnesses to which we have made a reference hereinabove and, who were indeed present at the places of attack and who are truthful witnesses, only prove the presence of some of the accused at the places of attack because all of them have not been shown CCTV footages in the court. This piece of evidence gives some support to the prosecution case that as per the conspiracy, the accused did travel to the places which were their targets of attack.

IV. RECOVERY OF IDENTITY CARDS.

604. During investigation, the police recovered seven identity cards purportedly issued by Arunoday College, Bangalore. Following is the table indicating the article numbers of the identity cards, places of recovery, exhibit numbers of panchnamas and the names of police officers and panch witnesses.

1	2	3	4	5
Sr. No.	**Article 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) - Pancha 2) Mr.Vinod Sawant (PW-31)-Police officer	Vinoli
2	Art.No.104	27-11-08 (Ex.99)	1) Mr.Shivaji Shivekar (PW 14) – Pancha 2) Mr.Subhash Warang (PW-27)–Police officer	Vinoli
3	Art.No.123	29-11-08 (Ex.749)	1) Ishwar Kolekar (PW-189)- Pancha 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) – Pancha	Oberoi
5	Art.No.127	29-11-08 (Ex.771)	1) Mr.Sagar Prem Singh (PW 203) - Pancha	Nariman House
6	Art.No.128	29-11-08 (Ex.1220A)	1) Mr.Hemant Solanki (PW 350) - Pancha	Nariman House
7	Art.No.130	29-11-08 (Ex.1030)	1) Mr.Santosh Pawar (PW 134) Pancha 2) Mr.Sudhir Garud (PW-220) Police Officer	Oberoi (Marin Drive P.Stn.)

605. PW-19 is G. Radhakrishnan. He is the Principal of Arunoday College, Hyderabad, Andhra Pradesh. In his evidence, he has stated that Arunoday College issues identity cards to the students. At the request of prosecution, sealed packets (Nos.464 and Nos.465) containing identity cards seized during the investigation were opened in the court. The packets contained identity cards issued in the name of Raghuvir Singh (Art.123), identity card issued in the name of Rohit Patil (Art.126), identity card issued in the name of Arjunkumar, (Art.127) and identity card issued in the name of Dinaish Kumar (Art.128). The packets also contained one black pouch (Art.129) and one identity card issued in the name of Arun Sharma (Art.130). When shown to him, he stated that Art. 61, Art.104, Art.123, Art.126, Art.127, Art.128 and Art.130 were not issued by his college. He stated that those articles did not bear his signature. He further stated that the details which are required to be filled in the cards issued by Arunoday College were not mentioned in the

said cards and the said cards were totally different and appeared to have been prepared on computer. He further stated that the cards issued by Arunoday College were manually written by the concerned student himself. He further stated that he had gone through the admission register of his college from the year 2003 onwards but the students, whose names were mentioned in the identity cards shown to him, were not admitted in his college during the said period. In the cross-examination, he has denied the suggestion that the students whose cards were shown to him were students of his college.

606. PW-67 is Ms. Usha Shivakumar. She runs a proprietary firm under the name and style of 'AEGIS' at Bangalore. She stays at 172, Teachers' Colony, ISEC Road, Nagarabhavi, Stage-I, Bangalore-72 with her family, since the year 1999. She has stated that there are about 300 houses in the said colony and 254 Teachers' Colony is a vacant plot of which she is the owner. She has stated that the said plot was purchased by her on 27/3/2002 and

was lying vacant. She has produced relevant papers which are at Ex-252 (Colly.), to establish that she is the owner of the said plot. She has stated that there is no college by the name Arunodaya Degree and P.G. College at Bangalore. She has stated that vacant Plot No.254 was not given on rent or otherwise to anybody. There is no effective cross-examination of this witness.

607. PW-14 Shivaji Shivekar is a pancha to inquest panchnama (Ex-97) in respect of deceased A1-Abu Ismail. PW-14 Shivaji Shivekar is also pancha to panchnama (Ex-99) under which clothes of A1-Kasab and deceased A1-Abu Ismail were taken charge of. He has stated in his evidence that on 27/11/2008, he was at the Nair Hospital. The police requested him to act as pancha. He was taken to Trauma Ward No.28. Ward boy Daji Patil produced clothes of a person. They were seized by the police under panchnama (Ex-99). According to him, one cargo trouser of green colour (Art.7) was seized by the police. One identity card issued in the name of Samir Choudhary was

found in one of the pockets of (Art.7). He identified A1-Kasab in the court as the same person whose photograph was there on the said identity card. He stated that Art. 104 is the same identity card which was recovered from the pocket of cargo trouser (Art.7) under panchnama (Ex. 99). In the panchnama (Ex-99) it is stated that an identity card of Arunoday Degree and P.G. College issued in the name of Samir Choudhary s/o Dinaish Choudhary was recovered from the pant pocket of A1-Kasab. The address shown on Art.104 is, 254 Teachers' Colony, Nagarabhavi, Bangalore. At the cost of repetition, it may be stated that PW-67 Usha Shivakumar has stated that there is no college by name Arunoday Degree and P.G. College at Bangalore; that Plot No.254 at Teachers' Colony, Nagarabhavi, Bangalore belongs to her; that it is vacant and that she has not given it on rent to anybody. PW-19 G. Radhakrishnan, the Principal of Arunoday College, Hyderabad has stated that identity card (Art.104) showing name of Samir Choudhary is not issued by his college. It is, therefore, established that A1-Kasab

was carrying a fabricated identity card bearing his photograph.

608. PW-10 is Shashikant Pawar. He is a pancha to panchnama (Ex-80) of the scene of offence at Girgaum Chowpaty. He has inter alia stated that there was one silver colour Skoda car at the scene of offence and on the driver's seat of the said car, a black pouch (Art.53) was found. In the black pouch, one pistol magazine, seven live cartridges, one Nokia battery, one mobile charger, some Indian currency and an identity card (Art.61) purportedly issued by Arunoday Degree and P.G. College, Hyderabad were found. In the panchnama (Ex-80), it is stated that the words "Arunoday Degree and P.G. College, Vedere Complex, Dilsukh Nagar, Hyderabad - 500 060, Naraish Verma, 45, NH8A s/o Vilaas Verma, House No.20-B Mamta Nagar, Nigole Hyderabad", were printed on the said identity card. PW-31 PI Vinod Sawant has drawn this panchnama. PW-14 Shivaji Shivekar who had carried out inquest panchnama of deceased A1-Abu Ismail was shown

Art.61. He stated that the photograph on Art.61 is that of deceased A1-Abu Ismail. It is again necessary to mention that PW-19 G. Ramchandran, the Principal of Arunoday College, Hyderabad has stated that Art.61 is not issued by his college. Thus, the prosecution has established that deceased A1-Abu Ismail was carrying a fabricated identity card bearing his photograph. In his confessional statement, A1-Kasab has confirmed this case of the prosecution.

609. Finding of forged identity cards issued in Hindu names establishes that A1-Kasab and other accused wanted to mislead the people and authorities that they were students. This was obviously done to ensure that if necessary, they can represent that they are Indian students and carry out the object of conspiracy smoothly.

V. RECOVERY OF NINE HAVERSACKS.

610. The case of the prosecution is that each terrorist was

given one big haversack. However, the police could recovery only nine big haversacks. In this connection, it is necessary to refer to PW-70 Chandrakant Sarnobat. He is pancha to panchnama (Ex-257) which pertains to the scene of offence panchnama of CST. He has stated that the panchnama (Ex-257) was drawn in his presence on 27/11/2008. He has identified his signature on the said panchnama (Ex-257). The panchnama (Ex-257) discloses that a haversack (Art.219) was recovered from CST. PW-73 Dilip Gore has drawn this panchnama (Ex-257).

611. PW-115 Nazimuddin Shaikh is pancha to panchnama (Ex-486) which was drawn on 27/11/2008 inside the Cama Hospital. The panchnama (Ex-486) discloses that from the Cama Hospital, one haversack (Art.356) was recovered. It was drawn by PW-117 PI Borate.

612. PW-186 Nishant Gaikwad is pancha to panchnama (Ex-744), which was drawn on 27/11/2008 at Hotel Taj. According to him, haversack (Art.659) was recovered from

Hotel Taj. PW-199 PI Kadam has drawn this panchnama (Ex-744).

613. PW-189 Ishwar Kolekar is pancha to panchnama (Ex-749), which was drawn on 29/11/2008 at Hotel Taj. According to this witness, two haversacks (Art.663 and Art.664) were recovered from Hotel Taj. PW-190 Milind Kurade has drawn this panchnama (Ex-749).

614. PW-197 Anil Padghe is pancha to panchnama (Ex-763) which was drawn at Hotel Taj on 17/12/2008. According to this witness, one haversack (Art.689) was recovered from Hotel Taj. PW-198 Anil Dhole has drawn this panchnama (Ex-763).

615. PW-216 Bhupendra Dhamankar is pancha to panchnama (Ex-804), which was drawn at Hotel Oberoi on 28/11/2008. According to this witness, one haversack (Art. 814) was recovered from Hotel Oberoi. PW-217 PI Kiran Kale has drawn this panchnama (Ex-804).

616. PW-234 PI Maniksingh Patil has drawn panchnama (Ex-911) at Nariman House on 29/11/2008. According to this witness, one haversack (Art.949) was recovered from Nariman House under this panchnama. He has also drawn panchnama (Ex-780) of scene of offence at Nariman House on 29/11/2008. According to him, one haversack (Art.950) was recovered under this panchnama (Ex-780) from Nariman House.

617. It is pertinent to note that in his confessional statement A1-Kasab has stated that each terrorist was given one big haversack and one small sack of which the big haversack was to carry AK-47 rifle, magazines, hand grenades, pistols, rounds, etc. and the small sack was to contain 8 kg. of RDX kept in a tiffin box. Recovery of nine haversacks corroborates the prosecution case that A1-Kasab and other accused had came to Mumbai equipped with arms and ammunition to attack Mumbai as per their unlawful agreement. There is no clear

evidence of recovery of other sacks. It appears that probably, they got destroyed. But, recovery of nine haversacks is of great significance to the prosecution.

618. Following is the table in respect of haversacks containing the article number, the place of recovery and details of panchnama and panchas for ready reference.

Recovery of haversack.

Pancha witness PW	Name	Art.	PN	No.of H/S	Site	Date of Panchnama	**Drawer of panchnama** PW	Name
70	Sarnobat	219	257	1	CST	27/11/08	73	PI Gore
115	Shaikh	356	486	1	Cama In	27/11/08	117	API Borate
186	Gaikwad	659	744	1	Taj	27/11/08	199	PI Kadam
189	Kolekar	663 664	749	2	Taj	29/11/08	190	API Kurade
197	Pagade	689	763	1	Taj	17/12/08	198	PSI Dhole
216	Dhamankar	814	804	1	Oberoi	28/11/08	217	PI Kale
	Vinaykumar Singh	949 950	911 780	1 1	N.House	29/11/08 29/11/08	234 234	PI Patil
	TOTAL			**9**				

VI. RECOVERY OF FIVE GPS FROM VARIOUS PLACES.

619. According to the prosecution, in all five GPS were recovered from various places.

620. PW-25 Bhavesh Takalkar is pancha to panchnama (Ex-138) dated 27/11/2008 under which articles found in M.V. Kuber were seized. The panchnama (Ex-138) indicates that one Satellite of THURAYA Hughes make (Art.147) was found in M.V. Kuber. The panchnama (Ex-138) further states that one GPS of Garmin make (Art. 149) was also found in M.V. Kuber. PW-42 PSI Chandrakant Jadhav has drawn this panchnama. He has confirmed the above fact.

621. PW-203 Sagar Premsingh is pancha to panchnama (Ex-771) dated 29/11/2008. This panchnama (Ex-771) records the articles handed over by NSG Commando CW-4 Major Pavitar Prashant to the officers of Colaba Police

Station. The panchnama mentions that one GPS of black colour (Art.Q-121) was handed over by CW-4 Major Pavitar Prashant. CW-4 Major Prashant has stated that the said article was recovered from Nariman House. This panchnama was drawn by PW-234 PI Maniksingh Patil.

622. PW-134 Santosh Pawar is pancha to panchnama (Ex-1030) drawn at Hotel Oberoi on 29/11/2008. He has stated in his evidence that on 29/11/2008, NSG Commandos namely, Das and Teli handed over certain articles, which were recovered from Hotel Oberoi to the police under this panchnama (Ex-1030). PW-134 has stated that one GPS (Art.Q-122) was handed over by NSG Commandos to the police under this panchnama (Ex-1030). This panchnama (Ex-1030) was drawn by PW-220 PSI Sudhir Garud. PW-252 Deepak Padelkar has also stated that he was present when the articles including GPS (Art.Q-122) was handed over by NSG Commandos to the police.

623. PW-195 Raj Sarkania is pancha to panchnama (Ex-760), which was drawn at Hotel Taj on 29/11/2008. This panchnama (Ex-760) records that CW-3 Capt. Anil Jakhar handed over certain articles recovered by him from Hotel Taj to the Colaba Police. This witness has stated that amongst other things, one GPS (Art.Q-123) containing three batteries was handed over by CW-3 Capt. Anil Jakhar to the Colaba Police. CW-3 Capt. Anil Jakhar has corroborated the evidence of PW-195 Raj Sarkania. The panchnama (Ex-760) was drawn by PW-196 PSI Rahulkumar Naik. He has also corroborated the evidence of PW-195 Raj Sarkania.

624. PW-189 Ishwar Kolekar is pancha to panchnama (Ex-749) which was drawn at Wasabi Restaurant of Hotel Oberoi on 29/11/2008. He has stated that one GPS (Art.Q-124) was recovered from Wasabi Restaurant of Hotel Oberoi. The panchnama (Ex-749) records this fact. This pachnama (Ex-749) was drawn by PW-190 Milind Kurade. PW-190 has corroborated the evidence of PW-189

Ishwar Kolekar.

625. The data retrieved from GPS devices to which we shall immediately go shows that routes from Karachi to Mumbai, Mumbai to Karachi and route to Hotel Taj via Leopold were saved to facilitate the attackers to reach their destinations as per the conspiracy.

VII. RETRIEVAL OF DATA FROM GPS.

626. PW-152 Daniel Jackson was serving as a technician in the laboratory. He has stated that he has examined over a thousand electronic devices in the laboratory of FBI such as mobile phones, GPS devises, I-pod etc. According to him, GPS is the abbreviated form of Global Positioning System. It is used for navigation and other similar purposes. He has further stated that to retrieve data from GPS device, the same is required to be connected to a computer and the data is copied on computer. He has stated that he examined the data with the help of a

software copied on the computer. He has stated that he examined one satellite phone and five GPS devices received from Mumbai Police for examination and expert opinion. They were received in a sealed condition. There was a wax seal of Mumbai Police. According to him, they were received on 11/2/2009. He examined them in the the laboratory of FBI between 11/2/2009 and 18/2/2009. He has stated that after examination, they were sealed in pouches separately and tamper resistance seal was applied. He identified Q-119, Q-120, Q-121, Q-122, Q-123 and Q-124 when shown to him in the court as the same devices which he had examined in the laboratory. He submitted his report, which is at Ex-601. He has stated that he could not retrieve data from GPS Q-121 and Q-122 because the data was found deleted because of depletion of battery. According to him, Q-119 was THURAYA make Satellite Phone, Q-120, Q-123, Q-124 are GARMIN make GPS devices and Q-121 and Q-122 are MAGELLAN make GPS devices. He has deposed that the way points between Karachi and Bombay were stored in Q-120. He

has stated that the track back route at page No.38 of the annexure of his report shows the way points of journey of Mumbai to Gulf of Karachi. The CD is specified as 'Derivative evidence 1' and the physical copy is specified of 'Derivative evidence 2'. He has stated that the way points are the locations, may be, latitude and longitude. According to him, the way points can be saved on GPS. He has stated that at page No.3 of annexures to his report, way points retrieved from Q-120 have been mentioned by him. The maps were prepared with the help of software of GARMIN on the basis of way points retrieved from the GPS (Q-120). The maps are at Page Nos.4 to 19. According to him, the tracks mentioned at page No.21 of the annexures have been retrieved from Q-120. The maps of track have been prepared with the help of same software of GARMIN. They are from page Nos.22 to 38. He has stated that page No.23 shows list of track 2, page No.26 shows list of track 3 and page No.29 shows list of track 4. Track 5 is on page No.30. Track 6 is on page No.33. The route was shown on page No.35.

According to him, the list of way points was retrieved from the device Q-123 and Q-124 and maps were prepared with the help of GARMIN software. The nomenclatures JALA 1 and JALA 2 are the names used by the user of the devise. He has further stated that the way points list of Q-120 shows that the way points between Karachi and Mumbai were saved on the device. The route shown at page No.36 of annexure shows the intermediate way points stored by the user and these way points are in between Karachi and Mumbai. He has further clarified that the first way point is in the ocean of gulf of Karachi and the last way point is in Mumbai. Similarly, page No.38 of the annexure shows the track back route from Mumbai to Gulf of Karachi. According to him, page No.38 shows that the way points of journey of the user from 'OCEN1' to 'OCENA'. 'OCEN1' is coast of Pakistan and 'OCENA' is the coast of Mumbai. He has further stated that page No.52 of the annexure shows the list of way points of device Q-123 and page No.53 is the map of track. According to him, the track on page No.53 shows location in the city of

Karachi. Page No.55 is the map of way points shown on the devise Q-124. The map shows location in the city of Mumbai. Page Nos.59 and 60 are the log of track back route retrieved from the device Q-124. He has further stated that page Nos.1 and 2 of the annexure is the report in respect of user data stored in devise Q-119. At page No.2, he has mentioned the names stored in the phone book of Satellite phone i.e. Q-119. They were shown at phone book position Nos.2, 3, 4 and 5. According to him, he has also mentioned in the said report the call logs of missed calls, received calls and dialed calls. His cross-examination is totally ineffective. We have carefully perused the report submitted by this witness.

627. PW-161 is Sandeep Shivangi. According to him, he retired as a Chief Officer from Merchant Navy. Presently, he is working as Professor (Nautical Officer) in Lalbahadur Shastri College for Advance Maritime Studies and Research. He had, in fact, visited the office of DCB, CID

on 24/2/2009 to plot the way points on a map. He was shown a printout taken from two GPS and way points shown on those printouts and he was requested to plot those way points. He has stated that the GPS is one of the equipments for ascertaining position of the navigator. The navigator can see his position on screen of the GPS. The latitude and longitude positions of way points is required to be fed in the GPS instruments by using the menu available on the GPS itself. According to him, for feeding the said positions, it is necessary to have maps of the locations one has to reach. He was shown Ex-601 (Colly.), which is the report submitted by PW-152 Daniel Jackson. He has stated that on page No.3 of the said report, the way points are described as JALA1, JALA2, JALA3 and JALA4. He plotted those points by means of parallel ruler. He has stated that the printed maps are available in the market. The map is at Ex-651. He acknowledged his signature thereon. He stated that he plotted way points No.JALA3 and JALA4 on another map also to have a closer view of the way points. It is at

Ex-652. According to him, the way points described as OCENS1, OCENS2, OCENS3 and OCENSA have also been plotted on the map (Ex-651). According to him, the 'OCENS' way points show the route from South of Pakistan to South Bombay. The 'JALA' way points show the route from Gujarat to South Mumbai. According to him, page No.54 of the printouts [Ex-601 (Colly.)] show the way points of land route. He has stated that there are six way points on page No.54 of the printout. These points were also plotted by him on a separate map. According to him, after plotting the way points, it could be seen that the route was from JALA4 (Colaba) to Hotel Taj via Hotel Leopold. According to him, he was shown a diary (Ex-175), which was recovered from M.V. Kuber. According to him, the contents of page No.5 of the diary show four latitude positions and four longitude positions. The positions at page No.3 are shown in degree, minutes and decimal of minutes. The positions on page No.5 of the diary are shown in degrees, minutes and seconds. He has stated that if the seconds stated in the diary are

converted in decimal of minutes, they will show the way points JALA1, JALA2, JALA3 and JALA4. When the contents of page No.4 of the diary were shown to him, he stated that they are in degrees, minutes and decimal of minutes. He stated that they show the points in between JALA3 and JALA4. The way points JALA3 and JALA4 have already been plotted by him on the map (Ex-651). He has stated that the point JALA3 is about 4.5 nautical miles from point JALA4 and the way point JALA4 is at Colaba. Cross-examination of this witness is ineffective.

628. It is pertinent to note that in his confessional statement, A1-Kasab has stated that each pair was given one GPS. He has stated that deceased A1-Abu Ismail used to keep a diary with him. He has further stated that wanted A3-Abu Hamza and wanted A5-Kaahfa had told him to write longitudes and latitudes in the diary so that with the help of GPS, they can easily reach Mumbai and, as directed, deceased A1-Abu Ismail had written them in

the diary. He has also stated that after getting into M.V. Kuber with the help of GPS and details about the longitude and latitude and with the help of navigator Amarchand Solanki they proceeded towards Mumbai. He has also stated that while they were travelling in the speedboat with the help of GPS, one Nazir Ahmed was showing the route for Mumbai with the help of GPS. The confessional statement is corroborated by the recovery of satellite phone and GPS. In his plea also, A1-Kasab has stated that they had one Satellite phone. The above evidence, in our opinion, clearly establishes that the route between Karachi and Mumbai was saved in the GPS. That helped A1-Kasab and other deceased accused to successfully arrive in Mumbai. The route between South Mumbai to Hotel Taj via Hotel Leopold was also saved so as to facilitate them to reach Hotel Leopold and Hotel Taj. Track back route from Mumbai to Karachi was also saved. Thus, after achieving the unlawful object of the conspiracy, the conspirators wanted to go back to Pakistan. There is no doubt that all this planning was

done in Pakistan. This piece of evidence goes a long way in establishing the conspiracy, which was hatched in Pakistan.

VIII. RECOVERY OF RDX BOMBS IN METAL CONTAINERS COVERED WITH PINK FOAMS.

629. The prosecution has established that the accused brought with them 7 RDX bombs out of which four exploded. Three bombs were recovered in live condition. All the bombs were covered with pink foam. One live bomb was recovered at CST, one live bomb was recovered at Hotel Taj and one live bomb was recovered near Gokul Hotel which is located near Hotel Taj.

630. PW-41 Gorakh Nalawade, pancha to panchnama (Ex-182) under which articles from boat M.V. Kuber were seized, has noted the articles which were seized from M.V. Kuber. He has proved panchnama (Ex-182). The panchnama mentions that six pieces of pink foam were

recovered from M.V. Kuber. PW-42 PSI Chandrakant Jadhav, who has drawn panchnama (Ex-182), has also stated that from boat M.V. Kuber six pieces of pink foam were recovered. When six pieces of pink foam [Art.202 (Colly.)], were shown to him in the court, he identified them to be the same pink foam pieces which were seized from boat M. V. Kuber. In the cross-examination, he has remained firm.

631. PW-115 is Nazimuddin Shaikh, who is working as Administrative Officer at Cama Hospital is pancha to panchnama (Ex-486) of scene of offence drawn at Cama Hospital. In his evidence, he has stated that from the left side of the terrace of Cama Hospital, one rexine bag (Art. 356) was recovered. The bag, inter alia, contained one pink colour foam piece. This panchnama was drawn by PW-117 API Borate. He has also confirmed that one piece of pink colour foam was recovered from a bag which was found on the terrace of Cama Hospital.

632. PW-182 PI Prakash Bhoite had drawn panchnama (Ex-736) on 27/11/2008 between 11.15 a.m. and 1.00 p.m. In this panchnama, there is a reference to two bombs. One bomb was found in a consignment in front of New Hotel Taj where renovation of portion of Gateway of India was in progress. It was found at 1.00 a.m. Another bomb was found in a consignment near Gokul Hotel at 8.00 a.m. He has stated that both these bombs were defused by BDDS. Both the bombs were similar in nature, they were found in metal containers covered with pink forms.

633. PW-74 is PI Yeram, who was attached to CST Railway Police Station. He has drawn panchnama (Ex-269) in respect of seizure of articles found in one of the rooms of the Metropolitan Magistrate Railway Court on 3/12/2008. He has stated that one tin box of ash colour weighing about 1.42 kgs., was recovered from a bag which was found in the luggage. He has stated that pink foam pieces were found affixed to the said tin box. According to him,

the officers of BDDS were called. The BDDS was headed by CW-5 PI Anthony. The said bag was shown to the officers of BDDS. The BDDS dog “Prince” indicated that there were explosives in the said metal box. It may be stated here that the said bombs were defused by CW-5 PI Anthony of BDDS.

634. PW-432 Bharat Mandre has filed evidence on affidavit. He has stated that articles seized in DCB, CID C.R. No.186 of 2008 which pertains to the murder of Solanki on M.V. Kuber, were carried by him to the Forensic Science Laboratory.

635. PW-143, PI Shaikh had carried the pink foam pieces recovered at the Cama Hospital to the Chemical Analyzer. PW-436 Haribhau Jadhav is examined to establish that the articles recovered from near Hotel Gokul was sent to the Chemical Analyzer. PW-436 Haribhau Jadhav had also carried pink foam pieces recovered from Hotel Taj to the Chemical Analyzer.

636. PW-247 Rajendra Mavale is the Assistant Chemical Analyzer working in Forensic Science Laboratory. He has stated that he received pink foam pieces from the Ballistic Division for his examination and opinion. He opined that after examining the thickness and burning test, the foam pieces were found to be similar in appearance. The foam pieces were also examined in Differential Thermal Analyzer and they were found in similar characteristic. This establishes a link between the various bombs and supports the prosecution case that they were brought to India pursuant to one single conspiracy to wage war against India.

IX. RECOVERY OF AK-47 RIFLES.

637. According to the prosecution, eleven AK-47 rifles used by the terrorists out of which one belonged to Addl. C.P. Kamate, were recovered from various places of incidents. PW-210 is Edwin Saldana. He is pancha to panchnama (Ex-790), under which one AK-47 rifle was recovered from Hotel Oberoi. It was lying near the dead

body. PW-226 PSI Santosh Subalkar has drawn the said panchnama. He has identified his signature on the said panchnama. PW-216 is Bhupendra Dhamankar. He was working as Assistant Chief Security Officer at Hotel Oberoi. He is pancha to panchnama (Ex-804), under which Art.768 was recovered from Hotel Oberoi. He has stated that Art.768 was seized by the police from the passage of the 18th floor of Hotel Oberoi. When Art.768 was shown to him, he has identified the same to be the same AK-47 rifle which was lying near the dead body of one of the terrorists on the 18th floor of Hotel Oberoi and was seized by the police under panchnama (Ex-804). PW-217 PI Kiran Kale has drawn panchnama (Ex-804).

638. PW-134 is Santosh Pawar. He is pancha to panchnama (Ex-529), under which AK-47 rifle (Art.427) was recovered from Qualis vehicle bearing No.MH-01 BA-569 standing in front of Vidhan Bhavan. He has identified his signature on panchnama (Ex-529). PW-135 is PI Chavan. He has drawn panchnama (Ex-529). He has

stated that the said AK-47 rifle was recovered from the left front seat of Qualis vehicle bearing No.MH-01 BA-569.

639. PW-10 Shashikant Pawar is pancha to the panchnama of scene of offence at Girgaum Chowpaty. He has stated that AK-47 rifle (Art.12) was found in the leg space in front of driver's seat of Skoda car bearing No.MH-02 JP 1276. When the said rifle was shown to him, he has stated that it is the same rifle. He has stated that one more rifle was lying on the left side of the Skoda car. When AK-47 rifle [Art.10] was shown to him, he has stated that it was the same AK-47 rifle. He has identified his signature on panchnama (Ex-80). PW-31 is PI Vinod Sawant who has drawn panchnama (Ex-80). He has confirmed that two AK-47 rifles were seized during the panchnama (Ex-80), one of them was found in the leg space in front of the driver's seat and another was found on the left side of the said car.

640. PW-203 is Sagar Prem Sing. He is a pancha to

panchnama (Ex-771) under which the fact that CW-4 NSG Commando Major Pavitar Prashant had handed over to the police articles recovered at Nariman House is recorded. He has identified his signature on the said panchnama. When two AK-47 rifles being Art.694 and Art.695 were shown to him, he has stated that they were the same AK-47 rifles, which were handed over by CW-4 Major Pavitar Prashant, NSG Commando to Mr. Patil at Colaba Police Station. PW-234 PI Maniksing Patil has drawn panchnama (Ex-771). He has stated that two AK-47 rifles were handed over by Major Pavitar Prashant, NSG Commando. CW-4 Major Pavitar Prashant, NSG Commando has confirmed the above fact.

641. PW-195 is Raj Sarkania, who is pancha to panchnama (Ex-760), which was drawn at Colaba Police Station. Under this panchnama, handing over of articles which were recovered by CW-3 Captain Anil Jakhar of NSG from Hotel Taj to Colaba police has been recorded. He has stated that four AK-47 rifles in broken condition were

handed over to Colaba police by CW-3 Captain Anil Jakhar. They are Art.681, Art.682, Art.683 and Art.684. When those articles were shown to him, he identified the same to be the AK-47 rifles which were handed over by Captain Anil Jakhar to the Colaba police. PW-196 is PSI Naik, who has drawn panchnama (Ex-760). He has confirmed that four AK-47 rifles were handed over by Captain Anil Jakhar to Colaba Police Station. When those rifles were shown to him, he has identified them to be the same rifles.

642. The evidence on record establishes that out of two AK-47 rifles, which were seized at Girgaum Chowpaty, one AK-47 rifle being Art.10 was used by A1-Kasab, another AK-47 rifle being Art.12, which was seized from the leg space below the driver's seat of the Skoda car was the AK-47 rifle, which was issued to Addl. Commissioner of Police Kamate. PW-7 Arun Jande, the Armoury In-charge has identified the said AK-47 rifle as the one which was issued to Addl. C.P. Kamate from police armoury. The evidence on record also shows that one AK-47 rifle (Art.

427) which was seized from Qualis vehicle of the police was with deceased A1-Abu Ismail. He had left the same in the Qualis police vehicle and picked up AK-47 rifle belonging to Ashok Kamate, which is Art.12, when Qualis police vehicle was seized by him and A1-Kasab. This is how it was found in the leg space below the driver's seat of the Skoda car which was being driven by deceased A-1 Abu Ismail. This is also stated by A1-Kasab in his confessional statement.

643. The following table will summarize the place of recovery and brief opinion of the Ballistic Experts with regard to these AK-47 rifles:

Table No.11

Place of recovery and brief opinion of Ballistic Experts with regard to AK-47 Rifles.

Sr. No.	Details of AK-47 Rifle	Ballistic Expert and his Opinion.	Panchnama details
1.	Art.10 – AK 47 rifle (Accused Kasab) (BL 990A/08 Ex. 2)	PW-157 Vasudev Patil examined this rifle Art.10. It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.10 was found on left side of the car at Chowpaty when accused No.1 was apprehended. It was seized under spot panchnama Ex-80 dated 26/11/2008 and 27/11/2008. Panchnama 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)	PW-157 Vasudev Patil examined this rifle Art.12. It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.12 was found in the leg space of driving seat of the said car. It was seized under spot panchnama Ex-80 dated 26/112008. 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 990B/08 Ex. 7)	PW-151 Shyamsunar Munj examined this rifle Art.427. It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.427 was found on left front seat of the Qualis vehicle. It was seized under spot panchnama Ex-529 dated 27/11/2008 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)	PW-157 Vasudev Patil examined this rifle Art.681. 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 (CW-3) before Mr.Rahulkumar D. Naik, PSI (PW 196) and it was seized under panchnama Ex-760 dated 29/11/2008 in presence of panch witness Mr.Raj A. Sarkania (PW-195).
5	Art.682 – AK 47 rifle (BL 1095-08 Ex. 2)	PW-157 Vasudev Patil examined this rifle Art.682. 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 (CW-3) before PW-__ Mr.Rahulkumar D. Naik, PSI (PW-196) and it was seized under panchnama Ex-760 dated 29/11/2008 in presence of panch witness Mr.Raj A. Sarkania (PW-195).
6.	Art.683 – AK 47 rifle (BL 1095-08 Ex. 3)	PW-157 Vasudev Patil examined this rifle Art.683. 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 (CW-3) before Mr.Rahulkumar D. Naik, PSI (PW-196) and it was seized under panchnama Ex.760 dated 29/11/2008 in presence of panch witness Mr.Raj A. Sarkania (PW-195).
7.	Art.684 – AK 47 rifle (BL 1095-08 Ex. 4)	PW-157 Vasudev Patil examined this rifle Art.684. 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 (CW-3) before Mr.Rahulkumar D. Naik, PSI (PW-196) and it was seized under panchnama Ex-760 dated 29/11/2008 in presence of panch witness Mr.Raj A. Sarkania (PW-195).

8.	Art.694 – AK 47 rifle (BL 1123/08 Ex. 1)	PW-150 G.N. Ghadage examined this rifle Art.694. 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 (CW-4) before Mr.Maniksingh P. Patil, PI (PW 234) and it was seized under panchnama Ex-771 dated 29/11/2008 in presence of panch witness Mr.Sagar Prem Singh (PW-203).
9.	Art.695 – AK 47 rifle (BL 1123/08 Ex. 2)	PW-150 G.N. Ghadage examined this rifle Art.695. It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.695 produced by Mr.Pavitar Prashant (CW-4) before Mr.Maniksingh P. Patil, PI (PW 234) and it was seized under panchnama Ex-771 dated 29/11/2008 in presence of panch witness Mr.Sagar Prem Singh (PW-203).
10	Art.765 – AK 47 rifle (BL 1119-08 Ex. 1)	PW-150 G.N. Ghadage examined this rifle Art.765. 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 28/11/2008 drawn by PSI Mr.Santosh Subalkar (PW-226)
11	Art.768 – AK 47 rifle (BL 1119-08 Ex. 2)	PW-150 G.N. Ghadage examined this rifle Art.768. It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.768 lying near the dead bodies of one of the deceased accused on 18th floor of New Hotel Oberoi. It was seized under panchnama (Ex-804) dated 28/11/2008 by PW-217 PI Kale in the presence of pancha PW-216 Dhamankar.

644. Finding of AK-47 rifles strengthens the prosecution case that each terrorist was given one AK-47 rifles as per the plan of attack made in Pakistan. The confessional statement of A1-Kasab is corroborated by the recovery of these AK-47 rifles. Conspiracy theory of the prosecution is completely substantiated by this circumstance.

X. RECOVERY OF PISTOLS.

645. Another important circumstance is that the police had also recovered ten 7.62 mm/.30" pistols from various places during the course of investigations. Two pistols each were recovered from Girgaum Chowpaty, Nariman House and Hotel Oberoi and four pistols were recovered from Hotel Taj. The following table will summarize the place of recovery and brief opinion of the Ballistic Experts with regard to these pistols:

Table No.12

Place of recovery and brief opinion of Ballistic Experts with regard to Pistols.

Sr. No.	Details of pistol	Ballistic Expert and his Opinion.	Panchnama details
1.	Art.14 – 9 mm 7.62/.30" pistol (BL 990A/08 Ex-3)	PW-157 Vasudev Patil has examined this pistol (Art.14). 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 panchnama (Ex-80) dated 27/11/2008. It was drawn by PW-31 PI Vinod Sawant in presence of pancha PW-10 Shashikant Pawar.

2.	Art.16 – 9 mm 7.62/.30" pistol (BL 990A/08 Ex-4)	PW-157 Vasudev Patil has examined this pistol (Art.16). It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.16 was found lying on the road on right side of the Skoda car. It was seized under spot panchnama (Ex-80) dated 27/11/2008. It was drawn by PW-31 PI Vinod Sawant in presence of pancha PW-10 Shashikant Pawar.
3.	Art.686 – Pistol (BL 1095/08 Ex-6)	PW-157 Vasudev Patil has examined this pistol (Art.686). It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.686 was produced by CW-3 Anil Jakhar before PW-196 PSI Rahulkumar Naik and it was seized under panchnama (Ex-760) dated 29/11/2008 in presence of pancha PW-195 Raj Sarkania.
4.	Art.507 (Colly.) – Pistol with magazine (BL 1095-08 Ex-5)	PW-157 Vasudev Patil has examined this pistol (Art.507). It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.507 was produced by CW-3 Anil Jakhar before PW-196 PSI Rahulkumar Naik and it was seized under panchnama (Ex-760) dated 29/11/2008 in presence of pancha PW-195 Raj Sarkania.
5.	Art.696 – Pistol (BL 1123/08 Ex-3)	PW-150 G.N. Ghadage has examined this pistol (Art.696). It was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.696 was produced by CW-4 Pavitar Prashant before PW-234 PI Maniksingh Patil and it was seized under panchnama (Ex-771) dated 29/11/2008 in presence of pancha PW-203 Sagar Prem Singh.

6.	Art.697 – Pistol (BL 1123/08 Ex-4)	PW-150 G.N. Ghadage has examined this pistol (Art.697). was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.697 was produced by CW-4 Pavitar Prashant before PW-234 PI Maniksingh Patil and it was seized under panchnama (Ex-771) dated 29/11/2008 in presence of pancha PW-203 Sagar Prem Singh.
7.	Art.773 – Pistol (BL 1119/08 Ex-3)	PW-150 G.N. Ghadage has examined this pistol (Art.773). was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.773 was lying near the dead bodies of one of the deceased accused on 18th floor of Hotel New Oberoi. It was seized at the time of inquest panchnama (Ex-790) of the dead body on 28/11/2008 drawn by PW-226 PSI Santosh Subalkar.
8.	Art.896 – 7.62/.30" pistol (BL 1119/08 Ex-4A)	PW-150 G.N. Ghadage has examined this pistol (Art.896). was found to be in working condition. It was used for firing before the same was received in the laboratory.	Art.896 was produced by NSG Commandos Mr.Teli and Mr.Das. NSG Commandos brought this article from 18th floor of Hotel Oberoi. It was seized under panchnama (Ex-1030) dated 29/11/2008. It was drawn by PW-220 PSI Sudhir Garud in presence of pancha PW-134 Santosh Pawar.
9.	Art.946 – Pistol (BL 1122/08 Ex-1)	PW-157 Vasudev Patil has examined this pistol (Art.946). 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 Sunil Kudyadi had recovered Art.946 from the debris. He had handed over this article to PW-267 Nigade. It was seized under panchnama (Ex-1125) dated 18/12/2008.

10.	Art.677 (Colly.) – Pistol with magazine (BL 1122/08 Ex-2)	PW-157 Vasudev Patil has examined this pistol (Art.677). 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 Ajay Bhirade had recovered Art.677 (Colly.) from the debris. Art.677 (Colly.) were handed over to the police by Security Officer PW-268 Birhade. They were seized under panchnama (Ex.752) dated 30/11/2008.

646. As directed by us, these articles/pistols were shown to us. On one pistol (Art.946), the words “Kyber Arms Co. Peshwar”, are inscribed. On the other pistol (Art.16), the words “Diamond Nedi Frontier Arms Co., Peshwar, Cal.30” are inscribed. All other articles/pistols are similar in appearance, colour, size, and weight. We have, therefore, no manner of doubt that all these articles/pistols were brought by A1-Kasab and his associates from Pakistan as contended by the prosecution.

647. In his confessional statement, A1-Kasab has stated that each one of them was given one pistol. The recovery of pistols narrated in the above table corroborates the

confessional statement made by A1-Kasab. This is one additional strong circumstance which with other circumstances establishes conspiracy. It establishes a link between the conspirators which can be traced to Pakistan.

XI. GIST OF THE REPORTS OF BALLISTIC EXPERTS IN RESPECT OF AK-47 RIFLES AND PISTOL.

648. 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 prosecution has examined Ballistic Experts. The Ballistic Experts have given their opinion. The summary of total number of empties, their place of seizure, exhibit numbers of panchnama and opinion of the Ballistic Experts have been put in a tabular form by learned Sessions Judge. We have already reproduced it at page No.381 of this judgment. Since for establishing conspiracy, the gist of the

Ballistic Experts' reports is an important circumstance, we reproduce the said table being Table No.7 again.

TABLE NO.7

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 Bhavtankar

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 Ex257	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.-C 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 them-selves 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

649. The above table indicates that a large number of empties are empties of bullets fired from AK-47 rifles which were used by the terrorists. Some of them are empties of pistols used by the police officers while retaliating the terrorist attack. This evidence, inter alia, establishes the use of AK-47 rifles by A1-Kasab and other

terrorists to attain the object of criminal conspiracy. The finding of so many empties of AK-47 rifles also shows that a large scale preparation was made to mount attack on India in pursuance of the conspiracy.

XII. RECOVERY OF YAMAHA MOTOR ENGINE.

650. The inflatable boat by which A1-Kasab and others travelled from M.V. Kuber to Badhwar Park had one Yamaha engine. PW-34 Parshruam Meher is pancha to panchnama (Ex-162) under which inflatable boat (Art.156) was seized. He has stated that the said boat had Yamaha engine (Art.157). This fact is noted in panchnama (Ex-162).

651. PW-30 Gatala Rajkumar is Marine Engineer who was working as Service Supervisor in George Maijo Industries (P) Ltd. According to him, their company is the authorized Importer of Yamaha Out Boat Machines in India. Their Head Office is situated at 2B Apex Plaza, 5, Nunogambakkam High Road, Chennai-34. After

examination of the Yamaha engine (Art.157), he stated that the engine number was 1020015 and it was not imported and sold by their company.

652. PW-154 Pat Williams was working as Senior Product Specialist with Yamaha Motor Corporation, USA. He was examined through video linkage. He has clearly stated that the Yamaha out board machine Enduro 40 bearing Serial number was # 1020015 was dispatched to Business and Engineering Trend in Pakistan on 20/1/2008. It was shipped to Karachi. Thus, the above evidence clearly establishes that Yamaha Engine No.1020015 of inflatable boat used by A1-Kasab and others was imported to Pakistan from Japan. This establishes the attackers' link to Pakistan. This shows how planning was made pursuant to the conspiracy.

XIII. DNA PROFILING.

653. One of the circumstances on which the prosecution has heavily relied upon is that DNA profile obtained from

the parts of dead bodies of some of the accused and from the blood of A1-Kasab matched with the sweat found on the articles seized from boat M.V. Kuber.

654. As already noted, PW-41 Gorakh Nalawade is the pancha to panchnama (Ex-182) under which articles found on M.V. Kuber were seized. Panchnama (Ex-182) indicates that inter alia, 14 woolen blankets, 15 jackets and 4 caps were seized from MV Kuber. He has stated that all the articles were sealed by the police. Labels were affixed and signatures of the panchas were obtained. When two corrugated boxes were opened (DNA 433, B/08) in the court, they were found to contain 2 blankets [Art.185 (Colly.)], 12 blankets [Art.184 (Colly.)], 15 jackets [Art.186 (Colly.)], 4 caps [Art.187 (Colly.)] and 24 packets containing other articles. He stated that labels on all the four packets bear his signatures.

655. PW-42 is PSI Chandrakant Jadhav, who has drawn panchnama (Ex-182). He has confirmed that he has

signed panchnama (Ex-182). When Art.184 (Colly.) and Art.185 (Colly.) were shown to him, he stated that they were the same blankets which were seized from the boat M.V. Kuber. He stated that the labels on polythene bag containing blankets bore his signatures and those labels were affixed for sealing the articles. When he was shown Art.186 (Colly.), he stated that the said 15 jackets were also seized from the said boat. When he was shown Art. 187 (Colly.), he stated that the said 4 caps were also seized from the said boat.

656. PW-432 is PN Bharat Mandre attached to DCB, CID. He has stated that on 3/12/2008, as directed by PI Kale of DCB, CID., he handed over 65 articles in a sealed condition along with a forwarding letter dated 3/12/2008 to the FSL. The said articles pertain to articles seized in CR No.52 of 2008 registered at Yellowgate Police Station, which was, on transfer of investigation, renumbered as DCB, CID CR No.186 of 2008. It is pertinent to note that this case pertains to murder of navigator Amarchand

Solanki in boat M.V. Kuber. The blankets, caps and jackets seized from boat M.V. Kuber were forwarded by PW-432 Bharat Mandre to FSL for DNA profiling. The forwarding letter bears the acknowledgment of FSL.

657. PW-90 Dr. Baban Shinde is working as Government Medical Officer at the Nagpada Police Hospital. He has stated that on 8/12/2008 when he was on emergency duty, police had brought one person for collecting blood for grouping and DNA. He has produced letter (Ex-351) addressed to the police surgeon by DCB, CID. He identified A1-Kasab as the same person who was brought by the police and whose blood was collected. He has stated that A1-Kasab was brought to the hospital by PSI Naik and Police Naik No.3468. He collected the blood of A1-Kasab in four phials. Each phial contained 1.5 cc blood. He has stated that the letter addressed to the Chemical Analyzer and identification form along with blood samples were handed over to Police Naik No.3468. He has stated that the reports were directly dispatched to

the police by Forensic Science Laboratory.

658. Postmortem examination of deceased A1-Abu Ismail was conducted by PW-23 Dr. Mohite. His postmortem notes are at Ex-122. During the course of postmortem examination, he collected 5 cc blood, scalp hair about 10 to 20 gms. and muscle mass from thigh about 500 gms. for DNA analysis. As far as other deceased accused are concerned, their bodies were found at Hotel Taj, Hotel Oberoi and Nariman House. Four dead bodies of the accused were found at Hotel Taj, two dead bodies of the accused were found at Hotel Oberoi and two dead bodies of the accused were found at Nariman House. The number of dead bodies recovered from each place of incident tallies with the number of accused given by A1-Kasab in his confessional statement recorded by PW-218 Ms. Sawant-Waghule. The names were assigned to the dead bodies on the basis of the confessional statement of A1-Kasab. Dead bodies were sent for postmortem examination. Table No.13 containing the names of dead

bodies, the places where they were found and their ADR nos. is given below:

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
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

659. The postmortem notes in respect of postmortem examination of the above stated deceased are at Ex-1491 (ADR No.83 of 2008), Ex-1531 (ADR No.71 of 2008), Ex-1532 (ADR No.72 of 2008), Ex-1488 (ADR No.92 of 2008), Ex-1489 (ADR No.93 of 2008), Ex-1695 (ADR No.97 of 2008), Ex-458 (Colly.) (ADR No.84 of 2008) and Ex-459 (Colly.) (ADR No.85 o 2008).

660. The postmortem reports of dead bodies bearing ADR No.83 of 2008, 71 of 2008, 72 of 2008, 92 of 2008, 93 of 2008 and 97 of 2008 have been admitted by the defence. Their contents can, therefore, be read in evidence under Section 294 of the Code. The postmortem on dead bodies of deceased bearing ADR No.84 of 2008 and 85 of 2008 was conducted by PW-113 Dr. Sachin Sonawane. In the opinion of PW-113 Dr. Sonawane, the said accused died due to firearm injuries and burn injuries. The cause of death is stated to be death due to hemorrhage and shock due to firearm injuries. Some of the deceased had also sustained burn injuries. In some cases, the cause of death was given as firearm injuries and in some cases, the cause of death was given as death due to firearm injuries and burn injuries.

661. As far as contents of postmortem notes [Ex-458 (Colly.) and Ex-459 (Colly.)] are concerned, PW-113 Dr. Sonawane has been examined. However, there is no

challenge to the contents of those postmortem notes as far as preservation of certain parts of body for DNA finger printing analysis is concerned. We have already noted that the other six postmortem notes are admitted under Section 294 of the Code. 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.

662. PW-431 PN Bhausaheb Jadhav has stated that as directed by Sr.P.I. Prashant Marde of DCB, CID, he handed over a sealed packet to the FSL for preparing DNA profile. The forwarding letters are on record. The Chemical Analyzer was requested to opine whether the DNA profile obtained from the parts of dead bodies of the accused could match with the DNA profile of the sweats found on articles seized from boat MV Kuber. PW-163 Lade, the Chemical Analyzer has done the DNA profiling. It would be advantageous to have a look at Table No.14 which sums up his evidence in a tabular form.

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 (Panchanama 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)

1	2	3	4	5	6
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 (Panchanama Ex. 182)	Mr. Bharat Mandre (PW 432)	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 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)

1	2	3	4	5	6
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)

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)

663. The DNA profile (Ex-354) pertains to the blood sample of A1-Kasab. PW-163 Shrikant Lade has stated that DNA extracted from sweat detected on Ex-30 jacket of A1-Kasab [part of Art.186 (Colly.)] and DNA of blood of A1-Kasab (Ex-354) were identical and from one and the same source of male origin. He has further stated that the DNA profiles matched with the maternal and paternal alleles in the source of blood. The said report is at Ex-205F. He has further stated that DNA profile of sweat detected on blanket (Ex-13) [part of Ex-184 (Colly.)] and DNA profile of muscle and hair (Ex-217) of the deceased A1-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 said report is produced at Ex-205B.

664. He has further stated that he had obtained control DNA of sternum and buccal swab of the deceased in ADR

No.83 of 2008, control DNA of muscle and sternum of the deceased in ADR No.92 of 2008 and control DNA of muscle and tooth of the deceased in ADR No.97 of 2008. According to him, these preserved limbs of dead bodies were received by him under covering letter [Ex-671 (Colly.)]**.** This part of evidence of PW-163 Shrikant Lade is not challenged. He has stated that DNA extracted from sweat detected on handkerchief (Ex-25) (scarf - Art.206) and DNA of muscle and sternum of deceased in ADR No. 92 of 2008 were identical and were from one and the same source of male origin. According to him, the DNA profiles matched with the maternal and paternal alleles in the source of blood. The said report is produced at Ex-205C.

665. He has further stated that the DNA of sweat detected on Israeli cap (Ex-26) [part of Art.187 (Colly.)] and DNA of tooth pulp of deceased in ADR No.72 of 2008 were identical and were from one and the same source of male origin. According to him, the DNA profile matched with

the maternal and paternal alleles in the source of blood. The said report is produced at Ex-205D.

666. He has further stated that the DNA extracted from sweat detected on monkey cap (Ex-29) [part of Art.187 (Colly.)] and DNA of muscle and tooth of the deceased in ADR No.97 of 2008 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 said report is produced at Ex-205E.

667. He has further stated that the DNA profile extracted from sweat detected on jacket (Ex-40) [part of Art.186 (Colly.)] and DNA profile of muscle of the deceased in ADR No.93 of 2008 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 said report is produced at Ex-205G.

668. Thus, the evidence of PW-163 Shrikant Lade

establishes that the DNA of deceased A1-Abu Ismail, deceased A8-Javed @ Abu Ali, deceased A6-Abadul Reheman Chhota @ Shaikh, deceased A4-Nazir @ Abu Umer and deceased A5-Hafiz Arshad @ Abdul Rehaman Bada, matches with the DNA of sweat found on other articles seized from the boat Kuber. The DNA profile of blood of A1-Kasab matches with DNA profile of sweat extracted from one of the jackets found on boat Kuber.

669. Mr. Solkar has not been able to successfully challenge the evidence of PW-163 Shrikant Lade. He submitted that according to the confessional statement of A1-Kasab on which reliance is placed, A1-Kasab and deceased A1-Abu Ismail threw their jackets in the sea when they landed at Badhwar Park. Therefore, no jacket of A1-Kasab could have been sent to the chemical analyzer. He submitted that, therefore, the jacket is planted by the police. It is not possible for us to accept this submission. The jacket which A1-Kasab has thrown in the sea was lifesaving jacket. When A1-Kasab and others

entered in the inflatable boat, they removed their jackets and kept them in the boat M.V. Kuber and wore life saving jackets. Mr. Solkar submitted that the articles recovered from the inflatable boat should have been sent for DNA test, which has not been done. This argument also cannot be accepted. Since, the police had forwarded articles found in M.V. Kuber for DNA profiling, there was no need to send articles found in the inflatable boat for that purpose. Mr. Solkar submitted that under panchnama (Ex-182) 14 blankets were recovered. Therefore, there should have been 14 jackets. But according to the prosecution, 15 jackets were recovered. He submitted that, therefore, one jacket is planted by the police. We find no substance in this. It is pertinent to note that there were only 10 accused. Then, if we strictly go by Mr. Solkar's argument, there should have been only 10 blankets and 10 jackets. One cannot really go by the number of blankets and jackets. Mr. Solkar's argument must, therefore, fail. The prosecution has, in our opinion, established its case that the DNA profile of sweat found on

a jacket recovered from M.V. Kuber matches with the DNA profile of blood of A1-Kasab. The positive DNA profile report is also submitted about deceased A1-Abu Ismail and other accused mentioned hereinabove. This circumstance establishes that the accused were together on boat M.V. Kuber which they had hijacked as per the conspiracy.

XIV. INTERCEPTED TELEPHONIC CONVERSATION.

670. If we read the transcription of the conversation between the accused/attackers and their handlers, particularly the marked excerpts, we get clear idea of the conspiracy. Though there is enough other evidence to establish conspiracy, in our opinion, the charge of conspiracy could stick solely on the basis of the taped conversation. In this conversation, the names of wanted accused who are also the key players in the conspiracy figure. The entire plan of creating mayhem in the city after entering hotels and prominent places by killing and

injuring people, by firing and throwing hand grenades at them, the plan to take people hostages and then make demands such as handing over of predominantly Muslim areas to Muslims, the plan to avoid getting arrested and to do all this purportedly in the name of Islam because of the alleged atrocities committed by the Indian State on Muslims and much more is reflected in the talks. The attackers are seen constantly taking orders and advice from their mentors – the co-conspirators. We shall now refer to the relevant evidence in that behalf and thereafter quote certain relevant extracts.

671. But, before we go to that evidence, it is necessary to refer to the evidence which establishes that the police had taken the necessary permission for interception of conversation. PW-241 Param Bir Singh was, at the relevant time, working as Addl. C.P. (ATS), Mumbai. He has stated that he was working as Addl. C.P. (ATS) from November, 2006 to August, 2009. At that time, Hemant Karkare was Special I.G. in-charge of ATS. He has stated

that late in the night, he came to know that Hemant Karkare had been killed by terrorists. Being second senior most officer in ATS, he assumed charge of ATS. According to him, PW-242 PI Nivruti Kadam informed him on telephone that telephone No.99107 19424 was being used by the terrorists. PW-242 PI Kadam put up a note before him and he approved the same and requested the service providers to intercept the said telephone number. The office orders issued by him to the service providers are at Ex-955 and Ex-956. His evidence discloses that similar orders were issued by him to service providers in respect of interception of other telephones. All those orders were shown to him and he identified his signatures thereon. He has stated that Additional Chief Secretary, Home Department Ms. Chitkala Zutsi had issued orders ex post facto for intercepting the said telephone numbers. He has produced the said orders in the court which are at Ex-957, Ex-960, Ex-963 and Ex-966. PW-253 Ms. Chitkala Zutsi is Additional Chief Secretary, Government of Maharashtra. She has corroborated PW-242 PI Kadam and PW-241

Param Bir Singh. This interception was done after taking necessary permission.

672. PW-156 Nizar Al Sharif is the owner of International Connection Services (ICS). The ICS is a Private Corporation. It is registered in the State of Delaware and its office is situated at New Jersey. Callphonex is its brand name. Callphonex provides Voice Over Internet Protocol (VoIP) Services in wholesale as well as retail. According to this witness, the person who wants to avail the services of Callphonex and in case he is not in US, he has to contact Callphonex through its website. The customer has to register through e-mail. After getting email from the customer, Callphonex sets up services in accordance with the requirement of the customers and for that purpose, pre payment is necessary in all cases. According to him, in November, 2008, telephone number of Callphonex for the customers outside US was (201) 253-1824. He stated that ordinarily, Callphonex No.(201) 253-1824 would be displayed on the screen. In case, the customer availing

Callphonex services makes call to any phone which displays caller ID, the screen would display the above number. He has stated that the carrier can suppress the number but the user has no control over Callphonex number. He has further stated that the customers of Callphonex can make calls to mobile numbers through VoIP. According to him, one person who claimed to be Kharaksingh (wanted A21) had contacted Callphonex through e-mail and informed that he was reseller of VoIP services. He contacted Callphonex on 20/10/2008 by e-mail. Callphonex then provided him with fifteen PC2 phone accounts, ten Common Client accounts and five DID Austrian phone numbers. The e-mail ID of said Kharaksingh (wanted A21) was Kharak-telco@yahoo.com. No specific address was provided by wanted A21-Kharaksingh but he informed the Callphonex that he was from India. The first payment of 250 US dollars was made by wanted A21-Kharaksingh and it was received from one Mohammed Isfaq through Moneygram from Pakistan. Receipt thereof is on record at Art.530. The

second payment of 229 US dollars was received through Western Union. Copy of the same is at Art.531. This witness has stated that Callphonex services were used heavily between 24/11/2008 and 27/11/2008. He has stated that he had received letter dated 13/2/2009 from FBI and he supplied the following information as requested by them.

"1) Call Detail Records for sub-account 310000xx and 400000xx for client 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 Kharak Singh;

5) Copy of MoneyGram Receipt dated 27/10/2008 and copy of Western Union receipt dated 25/10/2008.

6) E-mails between Kharak Singh and Callphonex."

673. Copies of the record furnished by him to the FBI from page 25 to 287 are on record. They are at Ex-615 (Colly.). According to him, fifteen PC2 phone accounts provided to wanted A21-Kharaksingh are as follows:

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

674. The ten Common Client accounts provided to the said Khark Singh are as follows:

1) 3100000
2) 3100001
3) 3100002
4) 3100003
5) 3100004
6) 3100005
7) 3100006
8) 3100007
9) 3100008
10) 3100009

675. The five DID numbers provided to wanted A21-Kharaksingh are as follows:

1) 43720880764 --- 4000000
2) 43720880765 --- 4000001
3) 43720880766--- 4000002
4) 43720880767 --- 4000003
5) 43720880768 --- 4000004

676. When page Nos.59, 63, 67, 71 and 77 of Ex-615 (Colly.) were shown to him, he stated that the numbers shown on those pages were generated by the user.

According to him, the last e-mail received by Callphonex from the said wanted A21-Kharaksingh was on 25/11/2008 at 12.08 p.m. Thereafter, there was no contact with wanted A21-Kharaksingh. Wanted A21-Kharaksingh's account was closed subsequent to 25/12/2008.

677. His cross-examination does not help the defence. He has stated in the cross-examination that he suspended the services of Callphonex on 25/12/2008 after getting summons from the FBI. Thus, the evidence of this witness discloses that Callphonex had provided VoIP services to one Kharaksingh (wanted A21) and that during the period between 24/11/2008 and 27/11/2008, the services of Callphonex provided to wanted A21-Kharaksingh were heavily used. His whereabouts are not known. From the call data records, it will be clear that VoIP service provided to the said wanted A21-Kharaksingh 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/conspirators.

XV. IP ADDRESS OF WANTED A21-KHARAKSINGH LOCATED IN PAKISTAN.

678. PW-156 Nizar Sharif, owner of International Connection Services (ICS) has stated that e-mail ID of wanted A21-Kharaksingh is Kharak-telco@yahoo.com.

679. PW-159 is PI Mukund Pawar. He was attached to Cyber Crime Investigation Cell of DCB CID. He has stated that PW-607 Sr.PI Ramesh Mahale, the Chief Investigating Officer had given him ten Internet Protocol (IP) addresses to find out the geographical locations of those IP addresses. The IP addresses given by PW-607 Sr.PI Mahale 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. 203.81.224.201
9. 203.81.224.202
10. 203.81.224.203

680. According to PW-159 PI Pawar, to find out the geographical locations of the said ten IP addresses, he had visited the website www.all-nettools.com. He has stated that this website provides geographical location of IP addresses. He downloaded the information available on the said website in respect of ten IP addresses given to me by PW-607 Sr.P.I. Mahale. According to him, out of the above ten IP addresses, five addresses were found to be proxy. They are at serial Nos.2, 3, 4, 5 and 6 above. The addresses at serial Nos.1, 7, 8, 9 and 10 were found to be located in Pakistan. He has produced printouts taken by him from the said website. The printouts are Ex-645 (Colly.). In the cross-examination, he has admitted that

website 'all-nettools' is a private domain. However, he has stated that accuracy of the information provided by 'nettools' is 100%.

XVI. RECOVERY OF NOKIA MOBILE PHONES MODEL 1200.

681. We shall now refer to the evidence in respect of the mobile phones used by the terrorists. It is the case of the prosecution that every terrorist was given a Nokia 1200 mobile phone. The police could recover five Nokia 1200 mobile phones.

682. PW-203 Sagar Prem Singh is pancha to panchnama (Ex-771) under which CW-4 Pavitar Prashant of NSG handed over the articles recovered by him from Nariman House to the police. The said panchnama refers to two Nokia 1200 mobile phones and one Nokia mobile phone with IMEI No.355736/02/136996. The panchnama mentions that the mobile phone bearing above IMEI

number was recovered from a leather bag containing company card of Gavriel Hoiltzberg. PW-234 Maniksingh Patil has recorded this panchnama. The panchnama (Ex-771) mentions that two Nokia 1200 mobile phones were handed over by CW-4 Pavitar Prashant to the police. CW-4 Pavitar Prashant has corroborated this evidence.

683. PW-210 is Edvin Saldana. He is pancha to inquest panchnama (Ex-790) in respect of the dead body of a terrorist found in front of Room No.1880 of the 18th floor of New Oberoi Hotel. This inquest panchnama, inter alia, mentions that a Nokia 1200 mobile phone having IMEI No. 353526025933620 was found in the left side trouser pocket of the deceased terrorist. This panchnama was drawn by PW-226 PSI Santosh Subalkar. The panchnama mentions about the recovery of one Nokia 1200 mobile phone (Art.786).

684. PW-189 is Ishwar Kolekar, who is pancha to the scene of offence panchnama (Ex-749) made at Oberoi

Hotel. He has stated that one Nokia phone (Art.670) was recovered from the scene of offence at Oberoi Hotel. The panchnama (Ex-749) mentions that Nokia 1200 mobile phone having IMEI No.353526/02/584089/0 was found at the scene of offence at Hotel Oberoi.

685. PW-195 Raj Sarkania is pancha to panchnama (Ex-760). According to him, on 29/11/2008, CW-3 Capt. Anil Jakhar of NSG handed over articles recovered by him from Hotel Taj to the police. One of the articles recovered by him from Hotel Taj was one Nokia 1200 mobile phone with Airtel SIM card. In the panchnama, the IMEI of the said mobile phone is stated to be 353526/02/404945/1. This panchnama mentions that a Nokia 1200 mobile phone (Art.668) was handed over by CW-3 Capt. Anil Jakhar to the police. CW-3 Capt. Anil Jakhar has corroborated this evidence.

686. The prosecution has adduced evidence to show that the police contacted officers of Nokia and FBI to obtain

necessary information about Nokia 1200 mobile phones recovered by them and were successful in getting it. PW-155 is Mary Lozano. The evidence of this witness was recorded through audio-video linkage. She is the Enforcement Manager of Nokia. She has stated that Nokia manufactures mobile phones. IMEI number means International Mobile Equipment Identity Number. The IMEI number is the unique identifier for each mobile phone. According to her, in response to the request of Federal Bureau of Investigation (FBI) via United States Legal Authority, letter dated 12/2/2009 was addressed to FBI by her which is at Ex-606. The said letter mentions details of five Nokia 1200 mobile phones which are as under:

1. Nokia 1200, IMEI # 353526024049451
   Manufactured : DongGuan, China
   Date shipped : June 28, 2008
   Country shipped to : Pakistan
   Vendor product sold to : United Mobile

2. Nokia 1200, IMEI # 353526025828739
   Manufactured : DongGuan, China
   Date shipped : June 26, 2008
   Country shipped to : Pakistan
   Vendor product sold to : 12 Pakistan (Pvt.) Ltd.

3. Nokia 1200, IMEI # 353526025842235
   Manufactured : DongGuan, China
   Date shipped : June 26, 2008
   Country shipped to : Pakistan
   Vendor product sold to : 12 Pakistan (Pvt.) Ltd.

4. Nokia 1200, IMEI # 353526025840890
   Manufactured : DongGuan, China
   Date shipped : June 26, 2008
   Country shipped to : Pakistan
   Vendor product sold to : 12 Pakistan (Pvt.) Ltd.

5. Nokia 1200, IMEI # 353526025933620
   Manufactured : DongGuan, China
   Date shipped : June 28, 2008
   Country shipped to : Pakistan
   Vendor product sold to : United Mobile

She has stated in the letter that the record of her office disclosed that at the time of shipment, 12 Pakistan (Pvt.) Limited's address was :

12 Pakistan (Pvt) Limited,
2nd Typical Floor, Executive Tower,
Dolmen City, Block 4, Clifton,
Karachi, Pakistan.

According to her, all the five devices of which details were recorded in the said letter were manufactured at China and shipped to Pakistan in June, 2008.

687. PW-209 Bhabajit Chandra Nandi was working with Nokia India as Logistic Security Specialist. He has stated that one of the manufacturing units of Nokia India is situated at Dongguan, China. According to him, on 24/03/2009 he had received a letter (Art.762) from Asstt. Commissioner of Police Mr. Durafe. Nokia company was requested to provide details of five Nokia handsets. IMEI numbers were furnished to them through the said letter by Mr. Durafe. The said details were supplied to Nokia by their China factory. The said details were forwarded vide letter dated 2/4/2009 which is at Ex-785. When the said details of information of five handsets were shown to him, he stated that, that was the same information supplied by his company. He has identified his signature on those details being Ex-786, Ex-787 and Ex-788. The said documents are marked as Art.764 (Colly.). Ex-620 is letter dated 18/2/2009 addressed by the U.S. Department of Justice, FBI. The said letter is addressed by Special Agent of FBI. It, inter alia, states that FBI was

requested to supply information on identified GSM mobile phones:

1) Make : NOKIA MADE IN CHINA
MODEL : 1200
IMEI : 33526/02/584223/5

2) Make : NOKIA MADE IN CHINA
MODEL : 1200
IMEI : 353526/02/5828739

3) Make : NOKIA MADE IN CHINA
MODEL : 1200
IMEI : 353526/02/404945/1

4) Make : NOKIA MADE IN CHINA
MODEL : 1200
IMEI : 353526025840890

5) Make : NOKIA MADE IN CHINA
MODEL : 1200
IMEI : 353526025933620

The letter further states that following information was supplied about the identified GSM mobile phones:

1. Nokia White 1200 IMEI 353526/02/584223/5;
Nokia Inc.'s records reveal that this phone was manufactured in DongGuan, China, and on 06/26/2008, it was shipped to Pakistan. It was shipped to I2 Pakistan Ltd., 2nd Typical Floor, Executive Tower, Dolmen City, block-4, Clifton, Karachi, Pakistan.

2. Nokia White 1200 IMEI 353526/02/5828739;
Nokia Inc.'s records reveal that this phone was manufactured in DongGuan, China, and on 06/26/2008, it was shipped to Pakistan. It was shipped to I2 Pakistan Ltd., 2nd Typical Floor, Executive Tower, Dolmen City, block-4, Clifton, Karachi, Pakistan.

3. Nokia White 1200 IMEI 353526/02/404/945/1 ;
Nokia Inc.'s records reveal that this phone was manufactured in DongGuan, China, and on 06/26/2008, it was shipped to Pakistan.

4. Nokia White 1200 IMEI 353526/02/584089/0 ;
Nokia Inc.'s records reveal that this phone was manufactured in DongGuan, China, and on 06/26/2008, it was shipped to Pakistan. It was shipped to I2 Pakistan Ltd., 2nd Typical Floor, Executive Tower, Dolmen City, block-4, Clifton, Karachi, Pakistan.

688. The above evidence supports the prosecution case that five Nokia mobile phones being Art.688, Art.670, Art. 786 and Art.701 (Colly.) were exported from China to Pakistan and they were with the accused/terrorists.

689. PW-242 PI Nivruti Tukaram Kadam was attached to ATS, Mumbai. He was looking after technical wing of the

ATS. The technical wing looks after the work of phone interception, data analysis and collection of intelligence. According to him, he was on duty on 26/11/2008 and 27/11/2008. He has stated that in normal course, the telephone interception is done only after getting sanction from the Government. However, in urgent cases, interception is done after getting approval of immediate boss. As far as ATS is concerned, for this purpose, ATS used to take approval of Special Inspector General In-charge of ATS. He has stated that the service provider is given a particular telephone number for transferring the call from a particular land line or mobile number. Once the line is transferred to police number, the conversation can be heard on the headphone or speaker of the computer. A software required for this purpose is available in ATS office. He has stated that he had obtained approval of PW-241 Addl. C.P. Param Bir Singh for intercepting four telephone numbers because he had received information that the terrorists had been using them. We have already referred to the evidence of

PW-241 Addl. C.P. Param Bir Singh and PW-253 Addl. Chief Secretary Ms. Chitkala Zutsi. PW-242 PI Kadam had obtained necessary permission to intercept following numbers.

1	9910719424
2	9820704561
3	9819464530
4	0012012531824

690. Before we proceed further, it is necessary to refer to the evidence on record which takes us to the persons in whose names the mobile phones having the above numbers stood.

691. The prosecution has examined PW-250 Ms. Lisa Ringner. According to her, at the relevant time, she was occupying Room No.1856 situate on the 18th floor of the Hotel Oberoi. She has stated that her cell phone number was 97696 79723. She has stated that she left Room No.

1856 suddenly because of the incident of firing. She could not collect her belongings while leaving the room. PW-236 Changdeo Godse, the Assistant Nodal Officer of Vodafone has stated that the police had requested for details and call data record of cell phone No.97696 79723 which was issued in the name of Ms. Lisa Ringner who was staying in Room No.1856 of Hotel Oberoi. He has stated that he had provided to the police application form and xerox copies of the documents annexed thereto and call data record of the said cell number. The said documents are on record at Ex-924 (Colly.). He had also provided call data record of the said mobile phone for the period between 1/11/2008 and 30/11/2008. The printouts of the said record from page Nos.1 to 4, the certificate issued by him in respect of the data retrieved from the system, call data record and his covering letter are at Ex-925 (Colly.). It is clear, therefore, that the terrorists got hold of this mobile phone from Room No.1856 of Hotel Oberoi.

692. We now come to mobile number 98207 04561.

PW-236 Changdeo Godse, Assistant Nodal Officer, Vodafone has stated that on the request of the police, he had submitted documents pertaining to cell number 98207 04561 to PI Shengale of DCB, CID, Unit I. According to him, this cell phone number was issued to Ms. Rita Sanjay Agarwal. He has produced the application submitted by Ms. Rita Agarwal and xerox copies submitted along with it. The said documents are at Ex-920 (Colly.). The SIM card issued to Ms. Rita Agarwal for the above cell phone number was 8991200011481609060. According to him, the police had requested for call data record of the said cell phone number for the period between 1/10/2008 and 30/12/2008. The police had also requested for separate printouts of data for the period between 26/11/2008 and 28/11/2008. The said printouts of pages 35 to 38 are at Ex-921 (Colly.). Postmortem notes of Ms. Rita Agarwal are at Ex-1522, which state that Ms. Rita Agarwal died at Hotel Oberoi. Cause of death is stated to be “Hemorrhage and shock due to firearm injuries”. We have already referred to the evidence of PW-203 Sagar

Prem Singh, pancha to panchnama (Ex-771) under which CW-4 Pavitar Prashant of NSG handed over articles recovered from him from Nariman House to the police. That panchnama, inter alia, refers to the mobile phone of Gavriel Holtzberg. It is, therefore, evident that after killing Ms. Rita Agarwal at Hotel Oberoi, her mobile phone was taken over and used by the terrorists.

693. We must now go to mobile number 98194 64530. PW-236 Changdeo Godse has stated that the police had requested him to give details of SIM No. 8991200012731186867. The call data record requested by the police was for the period between 1/10/2008 and 30/12/2008. According to him, he provided the details to the police. He has stated that this SIM number pertained to cell phone No.98194 64530 issued in the name of Holtzberg Gavriel. The application form and xerox copy of driving licence of Holtzberg Gavriel are at Ex-926 (Colly.). The covering letter addressed by this witness to the police, call data record and the certificate issued by him in

respect of the data retrieved from the system are at Ex-927 (Colly.). The prosecution has successfully established the presence of Holtzberg Gavriel at Nariman House at the relevant time by leading evidence of the inmates of the Nariman House who were present when the incident occurred. We have already discussed the said evidence. PW-613 PC Sachin Thike carried the dead body of Holtzberg Gavriel to the J.J. Hospital from Nariman House. He has not been cross-examined. Postmortem notes of Holtsberg Gavriel are at Ex-457 (Colly.). Cause of death is stated to be “Hemorrhage and shock due to firearm injuries.” It is, therefore, evident that after killing Holtzberg Gavriel at Nariman House, his mobile phone was taken over and used by the terrorists.

694. It is now necessary to move on to mobile phone No. 99107 19424. The prosecution has examined PW-259 Gurvindersingh Bakshi, who is a vendor of SIM cards and owns a shop in Delhi. He was shown documents Art.987 (Colly.). He stated that application form submitted by one

Suresh Prasad was entertained by him and he had issued prepaid Airtel SIM card to him. According to him, the SIM card number mentioned in the application form is a part of Art.987 (Colly.). The mobile number of the said SIM card was 99107 19424. According to him, the subscriber had produced an identity card issued by Government of India, Urban Development Department. PW-264 Kanu Mohanta was serving as an Assistant in the Ministry of Water Resources Department, New Delhi. In his evidence he has stated that there was no person by the name of Suresh Prasad working in the Ministry of Water Resources Department or in the Urban Development Department. PW-260 PI Vilas Wankhade visited Delhi for investigation in this behalf. He stated that the address given by the applicant to PW-259 Gurvindersingh Bakshi was false and no person by name Suresh Prasad was found at the given address. PW-590 is Salil Saxena. He is the Deputy General Manager of BSES Limited, Delhi. He has stated that the xerox copies of bill Art.987 (Colly.) purported to have been issued to Suresh Prasad were fake and that no

consumer by name Suresh Prasad was staying at Vasant Kunj in Delhi. We have carefully perused the call record and we find that from Cell Phone No.9910719424, several calls were made to 0012012531824 during the period 10.20 p.m. of 26/11/2008 to 4.18 p.m. of 27/11/2008, which is the Callphonex number. It may be stated that PW-156 Nizar Al Sharif, who is the owner of Callphonex has stated that Callphonex provides VoIP services and in the month of November, 2008, Callphonex number was 2012531824. It may be stated here that “001” is the country code of U.S.A. He has further stated that one Kharaksingh had contacted Callphonex number and he was provided with the facility. He has further stated that the customer availing Callphonex services, if he makes call to any phone which displays caller ID, the screen would display the Callphonex number as 2012531824. Thus, wanted A21-Kharak Singh's number could be traced in the call record of the mobile phone No.9910719424 of fictitious person by name – Suresh Prasad. It is clear, therefore, that the terrorists used mobile phone having

number 9901719424 of a fictitious person to contact handlers through facility provided by Callphonex.

695. From the deposition of PW-242 PI Nivruti Kadam of ATS, Mumbai, a portion of which we have already quoted, it is clear that for the purpose of interception of a telephone, the service provider is given a particular telephone number for transferring the call received by the telephone which is to be subjected to interception to that number. Once the line is transferred to police number, the conversation can be heard on the telephone or speaker of the computer. For this exercise, necessary permission has to be obtained. PW-236 Changdeo Godse of Vodafone has stated that as requested by the police, phone No.98194 64530 (Holtzberg's number) was transferred to police No.022-2300 6174 and the calls of cell phone No.98207 04561 (Rita Agarwal's number) were diverted to police No.022-2300 6278. According to Mr. Godse, the police had requested him to give details of telephone Nos.98208 27323, 98334 03061, 98193 32822

and 99303 30310. He had provided call data record of the said telephone numbers for the period between 26/11/2008 and 28/11/2008. His covering letter, the certificate issued by him and the call data record are at Ex-929 (Colly.). There is no effective cross-examination of this witness.

696. PW-258 is Sunil Tiwari, Nodal Officer of Airtel. He has stated that as per the request of PW-241 Addl. C.P. Param Bir Singh, on 27/11/2008, mobile No.99107 19424 which was in the name of Suresh Prasad was diverted by him to police land line number 022-2305 3162.

697. The evidence of PW-236 Changdeo Godse and PW-258 Sunil Tiwari is corroborated by the further evidence of PW-242 PI Nivruti Kadam of ATS whose evidence discloses the interception of the above phone numbers after following the required procedure. He has further stated that the first conversation recorded by him commenced at 01.04 hours of 27/11/2008 and the last call

recorded by him was at 08.52 hours on 28/11/2008. The total recording amounted to twelve hours thirty three minutes. He stated that he heard the conversation personally. It was recorded on the hard disk of the computer. According to him five CDs were prepared in respect of the recording done by him. He handed over the CDs to PI Shengale under panchnama (Ex-818). He has identified his signature on the said panchnama. He stated that the CDs were sealed in his presence. He has identified the five CDs when they were shown to him in the court.

698. At this stage, it is necessary to refer to PW-221 Vijay Jaiswal. He is pancha to panchnama (Ex-818) under which five CDs containing recording of intercepted conversation were handed over to PW-270 PI Shengale of DCB, CID. The panchnama (Ex-818) records that conversation recorded concerning 26/11/2008 incident in respect of five CDs were handed over to PW-270 PI Shengale by PW-242 PI Kadam. The telephone numbers stated are

9910719924, 9820704561, 9819464530 and 0012012531824. One CD pertains to Airtel Gateway. The evidence on record has established that the first four mobile phones belonged to Ms. Lisa Ringner, Ms. Rita Agarwal, Holtzberg and Suresh Prasad respectively. PW-221 Vijay Jaiswal has stated that CD of phone No. 9910719924 is Art.852, CD of phone No.9820704561 is Art.853, CD of phone No.9819464530 is Art.854 and CD of phone No.0012012531824 is Art.855. It must be stated here that there was a typing mistake in the telephone numbers mentioned on the CDs and learned Sessions Judge after personally checking the contents has corrected the mistakes. Thus, Art.852 pertains to number 9910719424 instead of number 9910719924 and Art.853 pertains to number 9819464530 instead of number 9820704561 and Art.854 belongs to number 9820704561 instead of number 9819464530. According to PW-242 PI Kadam, these mistakes came to his notice when transcription was being prepared from the copies available in the office. Learned Sessions Judge after

noticing these mistakes directed that the mistakes be corrected and correct numbers were noted on the CDs which was done.

Thus the following would be the correct position:

Art.-852 - 9910719424

Art.-853 - 9819464530

Art.-854 - 9820704561

Art.-855 is correctly shown as pertaining to telephone No. 0012012531824.

699. PW-242 PI Kadam has further stated that in the midnight of 26/11/2008, he received information from a secret source that terrorists had been using mobile phone No.9910719424 (issued in the name of Suresh Prasad). After taking the necessary approval from Addl. C.P. Param Bir Singh, which is at Ex-955, he requested the service provider to divert the said number on police land line No. 02223053162. Accordingly, the service provider diverted

the said mobile number on police land line number. The recording started at 01.04 hours. He was listening to the conversation on headphone. The recording was concluded at 10.27 hours of 27/11/2008. All the incoming and outgoing calls were either from or to Telephone No. 012012531824. It may be stated at the cost of repetition that PW-156 Nizar Sharif, the owner of Callphonex has stated that in the month of November, 2008, the callphonex telephone number was (201)253-1824. According to PW-242 PI Kadam, he could hear voice of three persons making outgoing calls and two persons making incoming calls and he could gather from their conversation that the persons using Telephone No. 9910719424 (Suresh Prasad) were at Hotel Taj and Telephone No. 012012531824 (Callphonex) was of some other country. From the conversation, he could gather that the names of persons, who were at Hotel Taj were Ali, Umar and Abdul Rehman and Shoeb. According to him, the names of persons calling from outside were Vashibhai and Kafabhai.

700. We shall now turn to the prosecution case that the terrorists contacted TV channel pursuant to their conspiracy. PW-243 is Vinod Kapri. He was working as Managing Editor of India TV at the relevant time. He was the Head of News Operations of the said channel. He has stated that their channel is 24 hours' news channel. Their channel has mobile as well as land line numbers. He has stated that the whole incident of 26/11/2008 and 27/11/2008 was covered by their channel. During the broadcasting of news, they were flashing their Telephone No.9350593505 requesting their viewers to send any news they have, connected with the incident. According to him, the anchors of their channel at the relevant time, were Ms. Archana and Manish Bajpaye. According to him, at about 8.30 a.m. a call was received on telephone No. 9350593505 from a person who claimed to be a terrorist. He was informed about the said call. He spoke to the person who had called. According to him, from the information given by the caller, it appeared that he was

calling from Hotel Oberoi. He claimed that he was calling from Hotel Oberoi and disclosed his name as 'Shahdullaha'. It is pertinent to note that according to the prosecution, deceased A7-Fahad Ullah was at Oberoi. A decision was taken that talks between the studio and the said person should be aired on their news channel. However, there was no facility on Telephone No. 9350593505 of transferring the call and airing the same. The person manning the assignment desk told the said terrorist that their channel would be calling him on telephone number displayed as his caller ID. That number was 9769679723. It is necessary to recollect here that this was the mobile number of Ms. Lisa Ringner who was staying at Hotel Oberoi. In the meantime, Manish Bajpaye and Ms. Archana Singh were informed that such a call would be made on the particular number and the same would be required to be aired. One of their staff members called the Telephone No.9769679723 from news channel's Telephone No.0120-4051000 because recording facility was available on that number. The first talk went

on for about two to three minutes.

701. According to this witness, the second call was received from a person claiming to be Imran Babar calling from Nariman House, Mumbai. This call was also received on Mobile No.9350593505. The said person told the news channel that he wanted his talk to be broadcasted live Therefore, they decided to call him from 0120-4051000. Thereafter, they called him from the said land line number. The conversation went on for thirty minutes. This witness and his colleague Ms. Archana spoke to the said Imran. Talk No.17 from Art.853 was played in the court. This witness stated that voice of their staff member Jacob is there in the said conversation and he had been talking to the said Imran upto fourteen minutes thirty seconds. According to this witness, thereafter, he started conversing with the terrorist. He disclosed his name to the caller as ‘Najam Ali’. After sometime, the call was transferred to the studio and the conversation was aired as requested by Imran. According to this witness,

female voice in the conversation belongs to his colleague Ms. Archana Singh. The call was aired after talking to said Imran for twenty four minutes and two seconds. The conversation was aired live on 27/11/2008. This witness has not been cross-examined.

702. We have perused this record and it establishes that Holtzberg's mobile phone being 9819464530 was busy with telephone No.01204051000 of India TV between 16.00 hours of 27/11/2008 to 16.52 hours of 27/11/2008. We have seen the call data record in respect of mobile phone No.9819464530 of Holtzberg produced by PW-236 Godse and we find that on this mobile phone, the terrorists contacted DID number 437 20880 767 which was provided to the handlers in the name of wanted A21-Kharaksingh.

703. PW-244 is Ms. Archana Singh. She was working as anchor with India TV at the relevant time. According to her, on 27/11/2008, she was in the studio of India TV from

7.00 a.m. onwards along with other anchor Manish Bajpaye. The telephonic conversation between the terrorist Imran and India TV studio was aired live during the said period. Talk No.17 from CD Art.853 was played in the court. She confirmed that the female voice in the conversation was hers and the male voice was that of PW-243 Vinod Kapri. She stated that she was in the studio with PW-243 Vinod Kapri during the course of conversation which was aired live by India TV. She stated that Manish Bajpaye was also present and the male voices belong to Manish Bajpaye and PW-243 Vinod Kapri. This witness was not cross-examined.

704. The prosecution has successfully established that deceased Rita Agarwal's SIM card number was 98207 04561. The IMEI number of her handset was 356960015355980. The call data record [Ex-921 (Colly.)] shows that the SIM card of deceased Rita was removed from her cellphone and inserted by the terrorists in their Nokia 1200 handset bearing IMEI No.353526025933620,

which was brought by them from Pakistan. The call data record also shows that this number was used by the terrorists to contact their handlers in Pakistan on the DID/Callphonex numbers allotted by the Callphonex to wanted A21-Kharaksingh and also to contact the India T.V. The evidence of PW-156 Nizar Al Sharif, the owner of Callphonex and PW-155 Ms. Mary Lozano, NOKIA Enforcement Manager, corroborates the above fact.

705. The prosecution has also successfully established that Ms. Lisa Ringner's SIM card number was 97696 79723 and the IMEI number of her handset was 357966011600050. At the relevant time, she was staying in Hotel Oberoi. The call data record [Ex-925 (Colly.)] shows that the terrorists had used the above cell phone of Ms. Lisa Ringner for contacting their handlers in Pakistan on the DID/Callphonex numbers allotted by the Callphonex to wanted A21-Kharaksingh and also to contact the India T.V. This is corroborated by the evidence of PW-243 Vinod Kapri and PW-244 Archana

Singh.

706. The prosecution has also successfully established that deceased Holtsberg's SIM card number was 98194 64530 and the IMEI number of his handset was 358018009322610. The call data record [Ex-927 (Colly.)] shows that the SIM card of deceased Holtsberg, who was staying in Nariman House was removed by the terrorists and put in their Nokia 1200 handset bearing IMEI No. 353526025842235. The call data record also shows that this number was used by the terrorists to contact their handlers in Pakistan on the DID/Callphonex numbers allotted by the Callphonex to wanted A21-Kharaksingh and also to contact the India T.V. However, the IMEI number of the Nokia 1200 i.e. 353526025842235 does not tally with IMEI number appearing on the above call data record. The last digit of IMEI number in the call data record is “0” and the last digit of IMEI number of Nokia 1200 is “5”. We have already noted that during the investigation, the police have recovered 5 Nokia 1200

mobile phones which according to the prosecution, were brought by the terrorists from Pakistan. According to PW-155 Ms. Mary Lozanco, NOKIA Enforcement Manager, who was requested to furnish information about the Nokia 1200 recovered by the police from various places of incidents, these Nokia 1200 mobiles were manufactured in China and shipped to Pakistan in June, 2008. According to her, they were sent to 12, Pakistan (Pvt.) Limited, 2nd Typical Floor, Executive Tower, Dolmen City, Block 4, Clifton, Karachi, Pakistan. So far as the last digit of IMEI number shown in the call data record as “0” is concerned, it is pertinent to note that PW-236 Changdeo Godse, Assistant Nodal Officer, Vodafone has stated that each and every mobile equipment has International Mobile Equipment Identity (IMEI) number. The IMEI number is of fifteen digits. The first six digits are type of approval code. Next two digits are meant for factory approval code. Next six digits are individual serial number of the instruments and the last digit is software number and it is always '0' in the system of all GSM operators. He has

stated that the last digit on the instrument may be from 1 to 9 but when data is stored in the system pertaining to a particular instrument, the last digit is always stored as '0' and at the time of retrieval also the last digit of all IMEIs will be '0'. Thus, the change in the last digit of IMEI number '5' as “0” is explained by PW-236 Changdeo Godse and, there is no infirmity in the prosecution case on account of this.

707. This evidence completely establishes the prosecution case that the terrorists used Nokia 1200 instruments brought by them from Pakistan by putting the SIM cards of Holtsberg and Ms. Rita Agarwal, who were killed by them at Nariman House and Hotel Oberoi respectively. The terrorists also used the mobile phone and SIM number of Lisa Ringner to contact their handlers in Pakistan on their DID/Callphonex number. It is also evident that after establishing contact with their handlers in Pakistan, the terrorists also contacted India T.V.

708. PW-245 is PI Ms. Shalini Sharma. At the relevant time she was attached to Criminal Intelligence Unit of DCB, CID, Mumbai Police. According to her, she was inter alia carrying out the work of transcription of recorded conversation to assist the police in investigation of criminal cases. Her mother-tongue is Punjabi. According to her, she has experience of translating about 1500 to 3000 documents from Punjabi to Hindi and vice-a-versa. She has stated that she was requested by PW-270 PI Shengale to transcribe and translate the contents of five CDs containing, in all, 103 talks. She carried out this work in the confidential room of DCB, CID. She was assisted by staff members of DCB, CID. When five books of transcription work done by her of CDs provided by PW-270 PI Shengale being Art.852-B, Art.853-B, Art.854-B, Art. 855-B and Art.856-B were shown to her in the court, she stated that typing work was done by the police constable who knew how to type on computer. She has stated that talk in Hindi language was transcribed verbatim, as far as possible, and talk in Punjabi language was transcribed and

translated into Hindi language. According to her, the talk in English language was not translated into Hindi language. It was kept as it was. Only transcription thereof was done. The 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. She has stated that whenever the specific names were heard in the conversation, the names of the persons who appear to be party to the conversation are referred to in the transcriptions. She has been cross-examined by advocate for A1-Kasab. However, defence has not been able to elicit anything in the cross-examination which can shatter her evidence.

709. The prosecution drew the attention of the court to the relevant portions of transcription of the talks recorded in the CDs, done by PW-245 PI Shalini Varma. Printouts of the text file of those talks were also brought on record. To understand this, it is necessary to again turn to the

evidence of PW-242 PI Nivruti Kadam. During the examination-in-chief of PW-242 PI Nivruti Kadam, learned Special Public Prosecutor requested the court that the CDs may be played in the court so as to exhibit the relevant portions of the transcription of the recording. Learned Sessions Judge granted permission to play the CDs in the court and on the same being identified by PW-242 PI Kadam, the relevant portions of the transcriptions were exhibited. We may give gist of the evidence of PW-242 PI Kadam which shows how relevant portions of the transcription has been exhibited.

710. CD (Art.852) was played in the court. Relevant portion of transcription of Talk No.2 is marked as Ex-969. Relevant portions of transcription of Talk No.3 from pages 4 to 12 are marked as Ex-970 (Colly.). Relevant portions of transcription of Talk No.4 from pages 13 to 20 are marked as Ex-971 (Colly.). Relevant portions of transcription of Talk No.8 from pages 29 to 31 are marked as Ex-972 (Colly.). Printouts of text file of Talk Nos.2, 3, 4

and 8 are marked as Ex-973, Ex-974, Ex-975 and Ex-976 respectively.

711. CD (Art.854) was played in the court. Relevant portion of transcription of Talk No.4 is marked as Ex-979. Printout of the text file thereof is marked Ex-979A. Talk No.4 went for 17 minutes. The recording of this talk commenced at 13:13:29 and it was concluded at 13:30:44 on 27/11/2008. This call was incoming call to Telephone No.98207 04561. This telephone number belongs to Ms. Rita Agarwal and it was intercepted at 12:19:49. In all, twelve incoming calls were intercepted and the last call commenced at 20:24:28 and was concluded at 20:32:05 of 27/11/2008. Relevant portion of transcription of Talk No.6 is marked as Ex-980. Printout of the text file thereof is marked Ex-980A. The recording of this talk commenced at 14:53:59 and it was concluded at 14:56:14 on 27/11/2008. Relevant portion of transcription of Talk No. 11 is marked as Ex-981. Printout of the text file thereof is marked Ex-981A. The recording of this talk commenced

at 20:13:20 and it was concluded at 20:16:21 on 27/11/2008. Relevant portion of transcription of Talk No. 12 is marked as Ex-982. Printout of the text file thereof is marked Ex-982A. The recording of this talk commenced at 20:24:28 and it was concluded at 20:32:05 on 27/11/2008.

712. CD (Art.853) was played in the court. Relevant portion of transcription of Talk No.1 is marked as Ex-983. Printout of the text file thereof is marked as Ex-983A. The recording of this talk commenced at 12:41:59 and it was concluded at 12:58:21 on 27/11/2008. Relevant portion of transcription of Talk No.7 is marked as Ex-984. Printout of the text file thereof is marked Ex-984A. The recording of this talk commenced at 14:35:46 and it was concluded at 15:04:38 on 27/11/2008. Relevant portion of transcription of Talk No.14 is marked as Ex-985. Printout of the text file thereof is marked Ex-985A. The recording of this talk commenced at 15:35:30 and it was concluded at 15:43:08 on 27/11/2008. Relevant portion of

transcription of Talk No.16 is marked as Ex-986. Printout of the text file thereof is marked Ex-986A. The recording of this talk commenced at 15:54:02 and it was concluded at 15:56:01 on 27/11/2008. Relevant portion of transcription of Talk No.19 is marked as Ex-987. Printout of the text file thereof is marked Ex-987A. The recording of this talk commenced at 17:02:39 and it was concluded at 17:04:44 on 27/11/2008. Relevant portion of transcription of Talk No.18 is marked as Ex-988. Printout of the text file thereof is marked Ex-988A. The recording of this talk commenced at 16:50:38 and it was concluded at 17:01:33 on 27/11/2008. Relevant portion of transcription of Talk No.17 is marked as Ex-989. Printout of the text file thereof is marked Ex-989A. The recording of this talk commenced at 16:01:20 and it was concluded at 16:47:48 on 27/11/2008. Relevant portion of transcription of Talk No.26 is marked as Ex-990. Printout of the text file thereof is marked Ex-990A. The recording of this talk commenced at 19:43:29 and it was concluded at 19:59:15 on 27/11/2008. Relevant portion of

transcription of Talk No.28 is marked as Ex-991. Printout of the text file thereof is marked Ex-991A. The recording of this talk commenced at 21:50:56 and it was concluded at 22:03:25 on 27/11/2008.

713. CD (Art.855) was played in the court. Relevant portion of transcription of Talk No.17 is marked as Ex-992. Printout of the text file thereof is marked Ex-992A. The recording of this talk commenced at 2:25:19 and it was concluded at 2:33:44 on 28/11/2008. Relevant portion of transcription of Talk No.21 is marked as Ex-993. Printout of the text file thereof is marked Ex-993A. The recording of this talk commenced at 08:51:44 and it was concluded at 08:52:36 on 28/11/2008.

714. This evidence, inter alia, establishes how the terrorists used Nokia 1200 mobile phones which they had brought from Pakistan to contact their handlers by inserting SIM cards of those killed by them in the attack or of SIM obtained by them under fictitious name. It

establishes how the conspirator used Lisa Ringner's phone directly and how they had obtained VoIP and Five DID Austrian numbers from Callphonex to establish contact with the handlers. It shows how wide and deep the tentacles of conspiracy had spread. This evidence also establishes the international ramification of this conspiracy. If at all, any assurance is needed to our conclusion that a conspiracy was hatched in Pakistan to wage war against India, it is given in ample measure by the transcription of the intercepted conversation. It should put all speculations or doubts if any, to rest. We shall now turn to it.

715. Much as we would have liked to reproduce the entire transcription, it is not possible to do so for fear of increasing the length of this judgment. In the following paragraphs, we have referred to each CD and we have given the gist of every exhibited talk below it.

XVII. GIST OF TRANSCRIPT OF CD (ART.852) IN RESPECT OF HOTEL TAJ.

716. It is already established that Art.852 is CD of conversation between terrorists and the handlers which took place from Hotel Taj. The transcription is at Ex-852-B.

717. The exhibited portion of the transcription of Talk No.2 is Ex-969. According to the prosecution, at Hotel Taj, deceased A4-Nazir @ Abu Umer, A5-Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji, A8-Javed @ Abu Ali, A9-Shoaib @ Abu Soheb were present. Following is the gist of the said exhibited transcription.

> *The handlers are seen asking the terrorists whether they had opened valve of the launch. The terrorists informed the handlers that in a hurry, they left the launch and ran away because one boat was seen approaching them and everybody started saying Navy Navy. In a hurry, Ismail left his satellite phone in the*

launch. This is corroborated by the confessional statement of A1-Kasab. He has stated that when they were getting out of speed boat, they saw one boat approaching them. They felt that it was a naval boat and in a hurry they jumped out of the speed boat and Ismail forgot to ensure that the valve of the boat is opened and he left his satellite phone in the boat.

718. Pages 4 to 12 of Talk No.3 are at Ex-970 (Colly.) Following is its gist.

The handlers wanted to greet wanted A5-Kaahfa. It must be stated here that at several places in the confessional statement of A1-Kasab, wanted A5-Kaahfa is referred to. It is further seen that the handlers asked the terrorists whether they had killed the person who was in the boat. The terrorists replied to the handlers that they had killed him. The handlers asked the terrorists whether his body was thrown in the sea. The terrorists replied that the body was kept in the boat only. It is pertinent to note that the name of Abu Umer (deceased A4) is also reflected in this talk. The killing of the person (the

navigator) on the boat (MV Kuber) is stated by A1-Kasab in his confessional statement. The handlers are seen directing the terrorists to set fire to things.

719. Transcription of pages No.13 to 20 of Talk No.4 is exhibited at Ex-971 (Colly). The following is its gist.

The terrorists are seen informing the handlers that five persons were in their custody. The handlers told them that they should phone the residence of the person who appears to them to be a person of substantial means and tell them (those at home) that they should contact the police to stop the operation or else those in their custody would be killed. Instructions were given to blackmail the relatives of the persons in custody. The terrorists are seen telling the handlers that one Adil, who was working as a 'waiter' was with them. It appears that a call was received from Adil's house and, as directed by the handlers, the terrorists told the caller that if they want Adil, the operation should be stopped, otherwise the hotel would be destroyed. The terrorists are seen telling the

handlers that they had set fire to four rooms and they have captured five persons. The handlers asked them whether any foreigner was caught. The terrorists replied that the foreigner was shot dead. The terrorists conveyed to the handlers that one person from Bangalore was with them. After obtaining personal details of that person as directed by the handlers, the terrorists informed the handlers that he was one K.R. Ramamoorthy, 'a Brahmin'; that he claimed to be a blood pressure patient and he claimed that he was a teacher by profession. Not being satisfied with this answer, the terrorists further probed and found out that K.R. Ramamoorthy was the Chairman of ING Bank. After coming to know of this background, the handlers asked the terrorists whether Ramamoorthy's family members were contacted. The terrorists informed that he did not have any phone. This part of the conversation is corroborated by the evidence of PW-184 K.R. Ramamoorthy and PW-188 Adil.

720. Transcription of page Nos.29 to 31 of Talk No.8 is exhibited as Ex-972 (Colly.). The following is its gist.

The terrorists informed the handlers that four of them were in one room. The handlers informed them that all of them should not be in one room. The terrorists were asked to change positions and throw grenades in the direction from where they (police) were coming. The name of accused Soheb, who had joined the terrorists from Hotel Leopold figures in this conversation. The terrorists were also asked to collect curtains and pillows and set fire to them. The handlers are seen instructing the terrorists how to deal with counter attack launched by the police.

XVIII. GIST OF TRANSCRIPT OF CD (ART.853) IN RESPECT OF NARIMAN HOUSE.

721. CD (Art.853) and its transcript (Art.853-B) pertain to the conversation between the handlers, the terrorists and the Media which took place from Nariman House. According to the prosecution, at Nariman House, deceased A2-Imran Babar and A3-Abu Umar were present.

722. Transcript of Talk No.1 is at Ex-983. Its gist is as follows:

> *The handlers are seen trying to establish contact with one Mr. Levy. However, who is this Mr. Levy has not come on record. Some query is made whether the Jews in the Nariman House are safe and the terrorists replied that they are safe, but they will not be safe if demands of the terrorists are not met.*

723. Transcript of Talk No.7 is at Ex-984. Its gist is as follows:

> *The terrorists informed their handlers that they had thrown hand grenades. The handlers are seen instructing the terrorists at which direction they should fire. The handlers are seen telling the terrorists to ask a Mexican woman to talk to Media and request the Media to save her. The handlers are seen sending a message to the Indian Muslims that for the sake of Islam, they should sacrifice their youth. The handlers are also seen telling the terrorist that he should tell*

the Media that he was from Hyderabad Deccan and that they are reacting to the faulty policies of the Government. The handlers are also seen telling the terrorists that they should give ultimatum to the Government and tell that this was merely a trailer and the real film was yet to come. The handlers are seen telling the terrorists to demand that all the Muslims should be released from the jail; that the Muslim States should be handed over to the Muslims; that the army should be withdrawn from Kashmir; that the Government should have no relations with Israel and that the State of Israel should be given an ultimatum that the Muslims should not be ill-treated. The terrorists were given contact numbers of Zee News channel by the handlers. The handlers asked the terrorists to give them their mobile number and the terrorists gave their mobile number as 98194 64530. We have already noted that the evidence on record makes it clear that this number belongs to Holtzberg, who died in Nariman House because of firearm injuries.

724. Transcript of Talk No.14 is at Ex-985. Its gist is as follows:

The terrorists communicated to the handlers that one Mr. Levy was asking them as to how many people were still there and what they want. The handlers informed the terrorists that Mr. Levy should be told that their man, who was arrested with weapon should be released and should be brought before them. If that is done, everybody would be released and sent to Mr. Levy.

725. Transcript of Talk No.16 is at Ex-986. It's gist is as follows:

The handlers gave India TV number 93505 93505 to the terrorists. PW-243 Vinod Kapri confirms that this number belongs to India T.V.

726. Transcript of Talk No.17 is at Ex-989. Its gist is as follows:

The terrorists, who were at Nariman House are seen communicating with the India TV anchors.

One of the terrorists disclosed his name as Imran Babar (deceased A2) and as directed by his handlers, he said that he was from Hyderabad Deccan. He expressed that his interview should be aired live. It is pertinent to note that Imran Babar was one of the terrorists who was at Nariman House. When the India T.V. anchor asked the terrorists why they were behaving in this manner, the terrorists blamed the Government and stated that the Muslims are being harassed and ill-treated by the Government. The terrorists stated that the Government should give status to States occupied predominantly by Muslims. The terrorists also expressed anti-Jew and anti-Israel sentiments. The anchor asked the terrorists as to how many families were kept hostages. The terrorists informed him that they had kept 7 to 8 persons as hostages and they were foreigners who had families. The terrorists confirmed that they were in Nariman House. The terrorists told the anchors that they were prepared to fight commandos and teach the commandos and army a lesson. They told the anchors that they were not scared. They informed the anchors that all the persons in the Nariman House were Jews. One of the terrorists informed the anchors

that he is a medical college student and had left the college and come for this work. He stated that he was working with a multi-national company.

727. Transcript of Talk No.18 is at Ex-988. Its gist is as follows:

The terrorists are seen telling the handlers that they were handing over the phone to one Mexican woman. Her name appeared to be Norma. Accordingly, they handed over the phone to the Mexican woman. The handlers are seen telling her to speak to some News channel and tell them that they wanted to negotiate to solve problems but nothing has been done yet and that the Indian Government is not coming forward to solve the problems. The handlers are seen telling the Mexican woman that she should not be over smart and that she should not divulge as to how many hostages are kept there. They told her that they are giving her a chance to live but if she does not follow their instructions, she will lose the chance. It may be stated here that Norma was killed by the terrorists.

728. Transcript of Talk No.19 is at Ex-987. Its gist is as follows:

> *The terrorist Imran Babar (deceased A2) is seen contacting India TV. He introduced himself as Imran Babar and stated that he had earlier given an interview and that he should be allowed to speak to the journalist.*

729. Transcript of Talk No.26 is at Ex-990. Its gist is as follows:

> *The handlers are seen telling the terrorists that they have to fight and, therefore, they should save ammunition and that wanted A20-Major General had told them that they should do as their conscience dictates them but by morning the operation should be completed. They should keep their goal in mind till the end. There is a reference to wanted A5-Kaahfa and deceased A2-Abu Aakasha. The handlers are seen instructing the terrorists to keep magazines and grenades with them and are*

seen instructing them to use the grenades with care. The handlers are seen telling the terrorists that they are being approached for saving people who are kept as hostages (foreigners) and if they are killed then India's relations with their country would be spoiled and that would create tense atmosphere.

730. Transcript of Talk No.28 is at Ex-991. Its gist is as follows:

The terrorists are seen informing their handlers as to how they had killed two persons and the handlers are seen appreciating their work. The handlers are seen encouraging the terrorists to fight Hindu commandos and show them that they are Muslim youths and they have come to die for Islam.

XIX. GIST OF TRANSCRIPT OF CD (ART.854) IN RESPECT OF HOTEL OBEROI.

731. CD (Art.854) and its transcript (Art.854-B) pertain to

the conversation between the terrorists, who were in Hotel Oberoi and their handlers. According to the prosecution, at Hotel Oberoi, deceased A6-Abadul Reheman Chhota @ Saakib and A7-Fahad Ullah were present.

732. Transcript of Talk No.4 is at Ex-979. Its gist is as follows:

> *The handlers are seen encouraging the terrorists by telling them that this is a fight between Islam and non-believers. They are seen telling the terrorists to be ready for death, load their magazines and put the guns in burst mode. They are seen monitoring the operation. They are seen asking the terrorists to throw hand grenades. The handlers are seen assuring the terrorists that Allah was with them and that during the war, they should give message to their people. The terrorists are told that God will give them success and that, time has come for them to wage war with determination. The terrorists are told that the ego of the Hindus should be destroyed and they have to fight till*

the end and fight in a manner which will annihilate the enemy. The entire transcription is full of such talk.

733. Transcript of Talk No.6 is at Ex-980. Its gist is as follows:

The terrorists are seen telling the handlers that this was a small example which they had portrayed. The Government has to see what more is to follow. The handlers are seen telling the terrorists to throw hand grenades and that they should keep water with them to meet any situation created by use of teargas.

734. Transcript of Talk No.11 is at Ex-981. Its gist is as follows:

The terrorists are seen informing their handlers that one of the terrorists Abadul Reheman (deceased A6) was dead. The handlers are seen telling the terrorists to have patience and fight with determination and that Allah will help

them. The terrorists are seen telling the handlers that they have used 8 to 10 grenades. The handlers are seen asking one of the terrorists who was hiding in the bathroom as to why he was not going outside the room. The terrorist is seen telling them that a gun is fixed outside and while attempting to go out, Abadul Reheman (deceased A6) has lost his life. The handlers are seen telling the terrorists to be brave and fight.

735. Transcript of Talk No.12 is at Ex-982. Its gist is as follows:

The handlers are seen telling the terrorists that they should burst fire and empty all the magazines and get out and that they should never get arrested. The handlers warned them that by throwing the tear bomb, they may be made unconscious and apprehended, which they should not allow to happen. The handlers are seen telling the terrorists that if they suffer bullet injuries, they will be successful because Allah was waiting for them.

736. The transcript of the conversations establishes the nature, the depth and extent of the conspiracy.

737. It is true that as observed by learned Sessions Judge, there is no record to show that land line or local mobile phone of Pakistan is used by the co-conspirators for issuing instructions to A1-Kasab and others. The evidence indicates that the handlers contacted the terrorists either through the Common Client numbers or one of the DID numbers given by Callphonex. Thus, all this indicates that the Callphonex numbers were obtained by wanted A21-Kharaksingh from Pakistan through his e-mail ID viz. Kharak-telco@yahoo.com. PW-159 PI Mukund Pawar attached to Cyber Crime Investigation Cell of DCB, CID, has stated that the IP addresses used by wanted A21-Kharaksingh have geographical locations in Pakistan. It is clear from the evidence that the telephone calls which were received by the deceased accused at Hotel Taj, Hotel Oberoi and Nariman House were from these Callphonex

numbers and they had their origin in Pakistan. Besides, the entire attack was monitored by wanted A1-Hafeez Mohammad Saeed and wanted A2-Zaki-Ur-Rehaman Lakhvi of LeT. In fact, wanted A2-Lakhvi was very much present while the rigorous training was imparted to A1-Kasab and others in Pakistan. During the attack, they were constantly in touch with the terrorists. They were watching the television and keeping the terrorists posted with the progress of the attack. The evidence on record and the attendant circumstances clearly establish that the calls received by the accused at Hotel Taj, Hotel Oberoi and Nariman House had their origin in Pakistan.

FINDINGS ON CONSPIRACY

738. We have narrated all the important circumstances. As stated by the Supreme Court in the judgments, which we have quoted hereinabove, since direct evidence of conspiracy is not always available, it can be spelt out from circumstances prior to, during and after the occurrence.

The circumstances, however, must be strong, borne out by cogent evidence and convincing. In our opinion, the circumstances narrated by us fall in this category and they completely bear out the case of criminal conspiracy. They disclose that A1-Kasab and other accused had entered into an unlawful agreement in Pakistan to attack India, particularly Mumbai. The object of the criminal conspiracy was to wage war against the Government of India, inter alia, to allegedly liberate Kashmir. The whole attack was masterminded by LeT, a banned terrorist organization. A1-Kasab and others were given extensive training for that purpose. The entire operation was very well planned. Arms and ammunition were provided to them. They were equipped with RDX bombs, grenades, pistols and AK-47 rifles. They had entered India with similar type of weapons, ammunition and explosive materials. Inflatable boat with a Yamaha Outboard Machine imported in Pakistan from Japan was made available to the accused to enable them to travel upto the shores of Mumbai. GPS and satellite phones were

provided to them to enable them to find correct way through the sea and on the land. Nokia 1200 mobile phones were provided to them to enable them to contact their handlers. VoIP services and five DID Austrian numbers were obtained from Callphonex so that handlers and the accused could be in constant touch with each other. The call data record establishes how SIM cards of the inmates of Hotel Oberoi and Nariman House, who were killed by the terrorists, SIM card obtained under the fictitious name of Suresh Prasad and mobile phone of Lisa Ringner were used by the terrorists to contact the handlers or TV anchors pursuant to their unlawful agreement. Fake identity cards were prepared for the ten attackers in Hindu names showing that they are students of Arunodaya Degree College, Bangalore which does not exist. This was done to hoodwink the people and the authorities so that object of the conspiracy could be smoothly achieved. Some of the RDX bombs brought by the terrorists pursuant to the conspiracy exploded. Some were recovered in live condition and then defused. The

bombs were found covered with pink foam. This similarity establishes a link between various blasts, which occurred during 26/11/2008 and 27/11/2008 in Mumbai and the accused. The positive report of DNA profiling obtained from the Chemical Analyzer in respect of sweat found on the articles recovered from boat M.V. Kuber and the blood sample of A1-Kasab and body parts of deceased A1-Abu Ismail and some of the other deceased accused establishes the prosecution case that A1-Kasab and deceased A1-Abu Ismail and other deceased accused did hijack boat M.V. Kuber, pursuant to their unlawful agreement. They were all together and were on their journey to Mumbai to attain the unlawful object of the conspiracy.

739. The intercepted conversation makes it clear that the handlers were monitoring the attack. The terrorists were taking advice and guidance of their mentors/handlers at every crucial stage. The handlers were watching TV and keeping the terrorists posted about the events. The

intercepted conversation shows that the handlers were asking the terrorists to set fire to rooms, to fire and throw hand grenades to kill people but not to get arrested. The terrorists were asked to guard against the possibility of their being made unconscious and arrested. They were told to die, if necessary, because God was waiting for them and would reward them for they were fighting war for Islam. They were asked to keep foreigners as hostages, contact TV channels and make illegal demands to the Government such as, liberation of Kashmir and giving separate status to predominantly Muslim areas etc. Thus, they wanted the harmony between various religions in India to be adversely affected. The name of one Mr. Levy figures in the conversation. Though, the prosecution has not clarified who Mr. Levy was, it appears from the conversation that the terrorists were trying to strike a deal through him by promising to release Israeli hostages. The terrorists have expressed anti Jew and anti Israel feelings. They are seen asking the TV anchor to convey certain messages to Israel. The terrorists were also

misleading the TV anchor. The evidence on record to which we have made detailed reference establishes that the terrorists, in fact, confined people in hotel rooms. They held people hostages. They contacted TV channel and made demands which they wanted to convey to the Government. All this establishes conspiracy to the hilt. If at all, any assurance is needed to our conclusion that a criminal conspiracy was hatched in Pakistan to wage war against Government of India and the conspiracy had international ramifications, it is offered in ample measure by the intercepted conversation. For the purpose of understanding the nature of conspiracy, the transcription of the intercepted conversation is an important read. We have only reproduced a part of it. The entire exhibited text in our opinion, fully substantiates the prosecution case of conspiracy.

740. So far as waging of war is concerned, the law is very clear. We have already referred to the relevant Supreme Court judgments. Even a terrorist attack can partake the

character of the offence of ‘waging war’. Even a small group of terrorists, who may be foreign nationals can employ devious means and wage war against the Government. The object need not be to overthrow the existing Government. It can be to destabilize the Government so as to compel it to succumb to the illegal demands. When the sovereign authority of the Government is challenged, it would amount to ‘waging war’.

741. The group of terrorists involved in this case are Pakistani nationals. They came here pursuant to an unlawful agreement made in Pakistan to achieve their object of destabilizing India by attacking Mumbai, its commercial capital. They wanted to create instability in India by their subversive activities. They came here armed with pistols, AK-47 rifles, RDX bombs, grenades etc. They killed and injured people. They terrorized people by indulging in wanton killings and destruction of properties. They kept people hostages, contacted TV

channel and made illegal demands like alleged liberation of Kashmir and tried to create disharmony between various religions in India. Their target was foreigners. In the intercepted conversation, handlers are seen telling the terrorists that, if foreigners are kept hostages India's relations with foreign countries would be spoiled. The intercepted conversation reflects anti Jews and anti Israel sentiments. The terrorists wanted the Indian Government to convey their message to Government of Israel. They clearly appear to be unhappy about India's good relations with Israel. The terrorists attacked hotels where foreigners, India's esteemed guests stay because that would have adverse effect on India's relations with foreign countries. They attacked CST, a very crowded railway terminus which is under the control of the Central Government and thus challenged the authority of the Government of India. They expressed in their conversation that they are not scared of the Indian army, or NSG commandos or the police and were ready to take them on. They attacked policemen, several of whom were

killed. One NSG commando was killed. Thus, they virtually kept the NSG commandos and the police engaged in a battle. They challenged the Indian army and the State police. They attacked the sovereign authority of Government of India. They tried to overawe it with show of criminal force. Indeed, nothing more is required to establish the offence of conspiracy to wage war against Government of India.

742. Unlawful agreement disclosed in the confessional statement of A1-Kasab can be also inferred from the declarations, acts and conduct of the conspirators. All the ten conspirators knew each other. They joined the conspiracy together and each one of them was assigned role and they knew the role assigned to each other. The handlers were overseeing the entire operation and were constantly in touch with them. They were giving advice and instructions. The acts and conduct of the conspirators was in tune with the unlawful agreement entered into in Pakistan. There is evidence to establish

that the accused played a role, attended to things and took steps consistent with the common design underlying conspiracy.

743. We have, therefore, no hesitation in confirming the finding recorded by learned Sessions Judge that a criminal conspiracy was hatched in Pakistan by A1-Kasab and other accused to wage war against Government of India.

744. We have already noted the Supreme Court's observation that whether a particular accused ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of a particular case and it cannot be laid down as a proposition of law that a conspirator's connection with the conspiracy is necessarily cut off with his arrest. In this case, A1-Kasab was arrested on 27/11/2008 but even thereafter, the other accused continued with their acts of firing and killing people as planned. Talk No.14 of the CD (Art.-853) shows that the co-conspirators who were holed up at Hotel Taj were

informed about his arrest and they conveyed to the authorities that their man should be released. Following is the relevant part of the translation.

"UK-II - लेवीसाहब पुछ रहे है की आप चाहते क्या है ?

T - हम क्या चाहते है । हमारा कुछ मतलब है पुरा करो । लेवीसाहबको बोलो कैसा मजाक है । हमारा बंदा हत्यार के साथ पकडा है । छुडवाये इलाहीदी साहब को बोलो । ओ बंदा मेरे सामने पेश करे । मै सबको लेवीसाहब के पास छोडता है ।

UK-II - जी आपका दोस्त पकडा गया है । उसको छुडाने को कह रहे हो आप ?

T - हा ..... ।"

(UK-II - Levy saheb is asking what do you want?

T - What do we want? Our demands should be fulfilled. Ask Mr. Levy whether he is treating it as a joke? Our man with weapons is arrested. Tell Ilahidi Saheb to release him.

That person should be brought before me, I will send everybody to Mr. Levy.

UK-II - Your friend is arrested. You are asking that he should be released?

T - Yes.....).

745. This shows the conspirators' desire to get A1-Kasab released obviously with a view to involving him again in the acts of holding people hostages or injuring or killing them pursuant to the conspiracy. The accused had saved the routes to go back to Karachi on their GPS. Therefore, assuming they were prepared to die, if necessary, in the best facts scenario they would have liked to go back after achieving their object. In his confessional statement also, A1-Kasab has not expressed any remorse. He wanted to set an example before others. He wanted to encourage others. Therefore, he never really severed his connection with conspiracy but loudly proclaimed his association with

it. It is difficult to accept the submission that he was merely engaged to execute the plan and he was not aware of the conspiracy. The evidence on record and the confessional statement of A1-Kasab which is corroborated by it, shows that A1-Kasab knew the object of the conspiracy. He was part of the unlawful agreement and he had willingly joined the conspiracy.

746. Thus, after considering the entire evidence and above circumstances, we have no hesitation in holding that A1-Kasab, deceased A1 to A9, wanted wanted A1 to A11, A13, A15, A18, A20, A27, A28, A31, A34 and 35 had hatched a criminal conspiracy, inter alia, to wage war against India and in pursuance thereof, they committed several offences mentioned in the charge and A1-Kasab abetted the offences committed by the deceased accused by conspiracy. He also conspired with them to overawe Government of India and Government of Maharashtra by show of criminal force.

747. Since we have held that the prosecution has successfully proved the existence of a criminal conspiracy, in view of the evidence on record, we confirm the finding that A1-Kasab in pursuance of the said criminal conspiracy on 26/11/2008 at CST, B.T. Marg, inside the Cama Hospital, Northern Side of Cama Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction, Opp. Mittal Tower “B” Wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg, Mumbai and Opp. Ideal Cafe, underneath of foot over bridge, N.S. Purandare Marg North Bound Vehicular Road and Girgaum Chowpaty, Mumbai was in possession of a pistol, AK-47 rifle and ammunition without valid licence in contravention of the provisions of Section 3 of the Arms Act. The contravention of Section 3 of the Arms Act is punishable under Section 25(1B) (a) of the Arms Act.

748. We confirm the finding that A1-Kasab during the said period had acquired and possessed prohibited firearm,

AK-47 rifle and ammunitions at CST, B.T. Marg, inside the Cama Hospital, Northern Side of Cama Hospital, ATM Centre of Corporation Bank and Metro Cinema Junction, Opp. Mittal Tower “B” Wing, Near Usha Mehta Junction, Barrister Rajani Patel Marg, Mumbai and Opp. Ideal Cafe, underneath of foot over bridge, N.S. Purandare Marg North Bound Vehicular Road and Girgaum Chowpaty, Mumbai in contravention of the provisions of Section 7 of the Arms Act. The contravention of Section 7 and use of prohibited arms and ammunition is punishable under Section 27(2) of the Arms Act.

749. We confirm the finding that A1-Kasab at the abovementioned places used the said prohibited arms in contravention of the provisions of Section 7 of the Arms Act.

750. We have also noted that the object of the unlawful agreement was allegedly to liberate Kashmir. Therefore,

in view of the above analysis of the evidence, we have no hesitation in holding that the prosecution has proved that A1-Kasab took part in and committed unlawful activities as defined under Section 2(1)(O) of Unlawful Activities (Prevention Act, 1967).

751. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail on 26/11/2008 at about 22.15 hours at CST, unlawfully and maliciously caused explosion by lobbing hand grenades of a nature likely to endanger human life and cause serious injury to the property.

752. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail during the period between 26/11/2008 and 27/11/2008 in contravention of rules made under the Explosives Act, 1984 had imported, possessed, used and transported explosives at CST, Cama Hospital, B.T. Road, N. S. Purandare Road, Western Express Highway.

753. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail in between 26/11/2008 at about 22.20 hours and 27/11/2008 at about 00.15 hours at Cama 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.

754. We confirm the finding that A1-Kasab and deceased A1-Abu Ismail on 26/11/2008 at about 22.15 hours at CST 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.

755. We confirm the finding that A1-Kasab and nine deceased accused during the period between 26/11/2008 and 29/11/2008 in contravention of the rules made under the Explosives Act, 1984 without licence imported, possessed, used and transported explosives at CST,

Cama Hospital, B.T. Marg, N.S. Purandare Road, Western Express Highway, B.P.T., Mazgaon, Hotel Taj, Hotel Oberoi, Trident, Nariman House and Hotel Leopold.

756. Having regard to the fact that bombs and other explosives were used by A1-Kasab and the co-conspirators are concerned, we have no hesitation in holding that A1-Kasab along with nine deceased accused during the period between 26/11/2008 and 29/11/2008 at Mumbai and particularly at CST, Cama Hospital, B.T. Road, N.S. Purandare Road, Girgaum Chowpaty, Western Express Highwary, B.P.T., Mazgaon, Mumbai, Hotel Oberoi, Trident, Hotel Taj, Nariman House and Cafe Leopold committed terrorist act as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967 and that the said terrorist act resulted in death of 166 persons at the places mentioned hereinabove.

757. There can be no doubt that A1-Kasab and nine deceased accused being Pakistani nationals had entered into 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. There is therefore, contravention of the provisions of the Foreigners Act, 1946. The contravention is therefore, punishable under Section 14 of the Foreigners Act, 1946. We have, therefore, no hesitation in confirming that A1-Kasab and nine deceased accused, who are Pakistani nationals entered into India without valid passport, visa or travel document and thereby committed offence punishable under Section 3(3) of the Passport (Entry into India) Act, 1920 and the Foreigners Act.

758. There can be no doubt that A1-Kasab and nine deceased accused had smuggled into India prohibited arms, pistols and ammunitions and possessed the said contrabands which they knew or had reason to believe to

be liable to be confiscated under Section 111 of the Customs Act, 1962. This offence is punishable under Section 135 of the Customs Act. There can be no doubt that since these goods prohibited weapons are imported at Badhwar Park and not at the Customs Port, they are liable for confiscation. Therefore, we have no hesitation in confirming the finding that A1-Kasab and nine deceased accused had on 26/11/2008 around 10.00 p.m. smuggled into India, prohibited arms, pistols and ammunitions and possessed the said contrabands which they knew or had reason to beleive to be liable to be confiscated under Section 111 of the Customs Act, 1962.

759. No valid passport or visa or other travel document under which A1-Kasab and other nine deceased accused, who are Pakistani nationals could have entered India are on record. Under Rule 3 of the (Passport Entry into India) Rules, 1950, 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 Passport (Entry

into India) Act, 1920 punishes contravention of the said Rule.

760. We have also no hesitation in holding that A1-Kasab and nine deceased accused and wanted A1 to A11, A13, A15, A18, A20, A27, A28, A31, A34 and A35 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.

761. The prosecution has examined PW-530 to establish the damage caused to the police vehicles. The estimated damages is about Rs.23,000/-. PW-531 Bathute is examined to prove the damage caused to Cama Hospital. It is estimated to be about Rs.3,15,840/-. PW-532 Panad has been examined with regard to damage caused to the electrical installations at Cama Hospital. It is stated to be Rs.50,000/-. PW-534 Prakash Acharekar has stated that the damage caused to the tourism vehicle of police is to

the tune of about Rs.8,000/-. PW-529 Dilip Khale has stated that the damage caused to the Honda City car of the Government is about Rs.52,000/-. PW-535 Mahajan has stated that the damage caused to Western Express Highway belonging to Mumbai Metropolitan Region Development Authority (MMRDA) due to the bomb explosion in the taxi is to the tune of Rs.6,000/-. PW-536 Ashok Gungaonkar has stated that the estimated damage caused to to CST is to the tune of Rs.2,40,000/-. These witnesses have filed their affidavits evidence. These witnesses have not been cross-examined. We have, therefore, no hesitation in holding that the prosecution has proved that A1-Kasab and deceased A1, A2, A3, A4, A5, A8 and A9 during the period between 26/11/2008 and 29/11/2008 committed mischief by lobbing hand grenades and by exploding explosive substance and caused damage to the public property namely signals, telecommunication system and electronic items at CST, BMC Road, Opp. CST., part of 5th floor and door of conference hall at 6th floor of Cama Hospital, the shutter

of Corporation Bank ATM, at B.T. Road, police vehicle – Qualis bearing Reg.No.MH-01-BA-569, Bolero bearing Reg.No.MH-01-SA-3561, Honda City car belonging to Maharashtra Government 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 BMC Road near Nariman House and near Indian Oil Petrol Pump and Police Vehicle No.MH-01-SA-3722 at Hotel Leopold.

762. In view of the evidence of PW-536 that the estimated damage caused to CST is about 2,40,000/- and that there is no cross-examination to this witness, we have no hesitation in confirming the finding that A1-Kasab and deceased A1-Abu Ismail in furtherance of their common intention on 26/11/2008 at CST caused damage or destruction to the property of railways by lobbing hand grenades and by indiscriminate firing and thereby committed offence under the Railways Act.

APPEAL NO.606 OF 2010

763. Having considered the involvement of A1-Kasab in the incident of 26/11/2008, we shall now turn to the appeal filed by the State challenging the acquittal of A2-Ansari and A3-Shaikh. Before we deal with the rival contentions, it is necessary to go to the prosecution case.

PROSECUTION CASE AGAINST A2-ANSARI AND A3-SHAIKH.

764. In short, the prosecution case is that though A2-Ansari and A3-Shaikh did not take part in the actual training which was imparted to A1-Kasab and others in PoK and they had not taken part in actual attack, they had been part of conspiracy since beginning and their role was to assist the perpetrators of the crime mainly by providing sketch maps of various places of Mumbai so that the planned attack could be executed safely and in

the manner decided by the conspirators. It is alleged that A2-Ansari had prepared sketch maps of various locations of Mumbai city. He travelled to Nepal from Mumbai to handover the sketch maps to A3-Shaikh. It is further alleged that A3-Shaikh had sent or delivered the said maps to the perpetrators of the crime in Pakistan. The case of the prosecution is that PW-160 Naruddin Shaikh, a resident of Goregaon, who was a childhood friend of A2-Ansari had gone to Nepal in January, 2008 with one Bharat Thakur. He met A2-Ansari at New Road, Kathmandu. A2-Ansari took him to his hotel room. A3-Shaikh came there. A2-Ansari introduced him to PW-160 Neruddin Shaikh. A3-Shaikh asked A2-Ansari whether he had done the work given to him by Lakhvi. Thereupon, A2-Ansari handed over certain maps to A3-Shaikh which fell down. PW-160 Naruddin Shaikh saw them. He asked A2-Ansari as to whether he had started business of drawing maps to which A3-Shaikh replied that his friends from Pakistan wanted to visit Mumbai and for that purpose he had prepared the maps. It is further the case of the

prosecution that during the course of training to A1-Kasab and nine deceased accused in PoK, deceased A1-Abu Ismail was handed over one sketch map. It was one of the sketch maps which were handed over to A3-Shaikh by A2-Ansari at Kathmandu for the purposes of taking them to Pakistan. According to the prosecution, the said sketch map was recovered from the trouser pocket of deceased A1-Abu Ismail during inquest panchnama of his dead body after his death in an encounter with the police at Chowpaty, Mumbai. The specimen handwriting of A2-Ansari was taken during the course of investigation. The specimen handwriting and the sketch map were sent to the Government Document Examiner, who opined that the specimen handwriting and the handwriting on the sketch map are of one and the same author. It is also alleged that A2-Ansari was found in possession of a Pakistani passport issued in the name of Hassan Hammad. According to the prosecution, the said passport was issued by the Pakistani authorities on the basis of bogus documents produced by A2-Ansari. It is also the case of

the prosecution that A2-Ansari was arrested by U.P. Police on 10/2/2008 and A3- Shaikh was arrested by U.P. Police on 12/2/2008. According to the prosecution, several maps having locations of Mumbai were found in possession of A2-Ansari. When their involvement in the present case was disclosed, they were brought to Mumbai on a transfer warrant. They were arrested by Mumbai police on 18/12/2008.

765. It is also the case of the prosecution that in order to give logistic support to A1-Kasab and other accused, A2-Ansari wanted to stay in Colaba area of South Mumbai. He wanted to frequently visit Badhwar Park and, therefore, he was searching for a place of residence in fishermen's colony at Badhwar Park and he had taken admission in Computer Institute viz. “Softpro Computer Education” situated at Fort, Mumbai. In support of its case, the prosecution has examined PW-160 Naruddin Shaikh, PW-48 PI Prashant Marde, PW-35 Jivan Gulabkar, PW-38 Rajendra Bhosale, PW-40 Ms. Shantabai Bhosale, PW-47 PI

Shripad Kale, PW-146 Jayant Bhosale, PW-265 Sharad Vichare, PW-14 Shivaji Shivekar, PW-47 API Subhash Warang, PW-213 Ashok Kumar Raghav, PW-254 Manpreet Vohra, PW-61 Krantikumar Varma and PW-23 Dr. Shailesh Mohite. After perusing the evidence on record, learned Sessions Judge was of the opinion that A2-Ansari and A3-Shaikh must get the benefit of doubt. He, therefore, acquitted them.

GIST OF LEARNED SESSIONS JUDGE'S REASONING IN SUPPORT OF THE ACQUITTAL ORDER:

766. The evidence of PW-160 Naruddin Shaikh is not corroborated by any evidence. No documentary evidence has been produced by the prosecution to establish that PW-160 Naruddin Shaikh had gone to Nepal in the month of January, 2008. He has not been able to produce any documents of travel to Nepal or his stay at Kathmandu for three days. PW-160 Naruddin Shaikh has admitted that a record is maintained at Sonavali border with regard to

entry of persons into Nepal, but he has not produced entry slip or evidence about his stay in a hotel. The investigating agency has also not collected any evidence. There is nothing to show that the investigating officer had visited Sonavali border to collect information. In the circumstances, the prosecution ought to have examined Bharat Thakur with whom PW-160 Naruddin Shaikh claims he had gone to Nepal. Bharat Thakur was cited as a witness, but has not been examined. The prosecution has offered a feeble explanation that Bharat Thakur had disappeared. The prosecution should have applied for bailable or non-bailable warrant or could have initiated proceeding under Section 82 or 83 of the Code.

767. In ***Vadivelu Thever v. The State of Madras, 1957 SCR 981,*** the Supreme Court has classified oral testimony of witnesses into three categories namely (1) reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. The Supreme Court has held that in respect of the third category of cases the court has to be

circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. PW-160 Naruddin Shaikh falls in the third category i.e. he is neither wholly reliable nor wholly unreliable and, therefore, in the light of the Supreme Court's above stated judgment, corroboration to his testimony was necessary. The prosecution has not given reasonable explanation as to why Bharat Thakur is not examined and, therefore, the court cannot take the risk of relying on PW-160 Naruddin Shaikh. There are strong chances of miscarriage of justice if evidence of PW-160 Naruddin Shaikh about his meeting with A2-Ansari and A3-Shaikh at Kathmandu is accepted.

768. According to the prosecution, map (Art.101) was found in the trouser pocket of deceased A1-Abu Ismail and it was seized under panchnama (Ex-99). A2-Ansari and A3-Shaikh were arrested in December, 2008. The map was sent for opinion of Handwriting Expert. A2-Ansari has admitted his handwriting on map (Art. 101). As such, the

positive opinion of Handwriting Expert is of no significance.

769. The inquest panchnama (Ex-97) and panchnama in respect of seizure of clothes (Ex-99) are written by the same constable but are written with two different pens. This has been admitted by PW-14 Shivaji Shivekar who is pancha to both these panchnamas (Ex-97 and Ex-99). Both the panchnamas are written by two different pens and signature of Senior P.I. is in different type of ink which creates doubt. It was brought to the notice of PW-27 PI Warang who has drawn the said panchnamas that it is stated in Ex-99 that during the course of panchnama (Ex-99), photographs of all the articles were taken from different angles. PW-27 PI Warang admitted the contents of the said panchnama but added that this was so recorded due to inadvertence. The stand of the prosecution that no photographs were taken is highly doubtful.

770. PW-27 PI Warang has admitted that there were bloodstains on right side of cargo trouser (Art.3) but he has stated that there were more bloodstains on left side. The body of deceased A1-Abu Ismail was kept on a stretcher within a short time of his death. The stretcher is normally of “C” shape, therefore, blood must have collected in the center of the stretcher and the waistline area of undergarment and trouser of deceased A1-Abu Ismail must have been soaked with blood. The report of Chemical Analyzer (Ex-349) discloses that trouser (Art.3) was stained with blood. The Chemical Analyzer has cut small portions from the trouser to examine whether it was stained with blood. One such small portion of the trouser was cut from near the right side trouser pocket. Therefore, the blood must have reached right side pocket of the trouser where the map was allegedly found. Besides, the right side trouser pocket was having blood stains at various places and, hence, map (Art.101) should have been stained with blood.

771. According to the prosecution the map (Art.101) must have been put in the trouser pocket by deceased A1-Abu Ismail prior to 22/11/2008 when he left Pakistan. Thereafter, he travelled in Al Husseini, then in M.V. Kuber and then in the inflatable boat. Then, he went to CST, Cama Hospital, Metro Junction and Barrister Rajani Patel Marg and, thereafter, he was shot dead at Girgaum Chowpaty. Therefore, during the course of his movements, the map (Art.101) ought to have got wrinkled, particularly because the map (Art.101) is a thin sheet of paper. However, there are no wrinkles on the map (Art.101) which creates doubt about the prosecution story.

772. Learned Special Public Prosecutor has pointed out that A1-Kasab had stated in his confessional statement that wanted A5-Kaahfa had told him and deceased A1 to A9 that maps had been supplied by A2-Ansari and A3-Shaikh and this portion of the confessional statement can be accepted under Section 10 of the Evidence Act and it

will not be hit by the doctrine of hearsay evidence. But, it is not necessary to go into that aspect because the evidence in respect of the seizure of map, meeting of A2-Ansari and A3-Shaikh in Nepal and PW-160 Naruddin Shaikh meeting them in the hotel at Kathmandu, is rejected. In view of the fact that the story of recovery of map from deceased A1-Abu Ismail is disbelieved, there was no reason to consider the arguments based on Section 10 of the Evidence Act.

773. So far as the case of prosecution that A2-Ansari was in search of a residential place in South Mumbai is concerned, the prosecution has not examined Kumar Shivaji, the Estate Agent through whom he got the accommodation, and that is a missing link which creates doubt about the correctness of evidence of PW-38 Rajendra Bhosale and PW-40 Shantabai Bhosale. The prosecution has also not produced the original agreement allegedly executed between PW-40 Shantabai Bhosale and A2-Ansari. PW-40 Shantabai Bhosale has identified her

thumb impressions which are at Ex-180 (Colly.) to be her original thumb impressions. Further, she has not even bothered to see whether the agreement is original or xerox copy. She has stated in her evidence that the original agreement has been taken away by the police but the prosecution has not given any explanation as to why the original agreement is not produced. In the absence of original agreement, xerox copy cannot be taken on record as secondary evidence. The prosecution was under obligation to establish that the original agreement was not available and, therefore, they are producing the xerox copy of the agreement. Non-production of original document without any explanation and production of coloured xerox copy of the agreement is fatal to the prosecution case. The evidence of PW-35 Jeevan Gulabkar does not inspire confidence because there was no previous intimacy between A2-Ansari and him and there was no reason why A2-Ansari should contact him.

774. So far as the evidence of PW-36 Vivek Saxena and

the documents produced by him are concerned, PW-36 Vivek Saxena has not produced any record of his institute. He has not produced the muster roll. He has admitted that he did not belong to the teaching faculty and, therefore, he had no occasion to interact with the students frequently. He only stated that he had been taking rounds of the class and, as such, he had occasions to see A2-Ansari. What is missing in the investigation is that the police had not collected attendance sheet of the students. There is no explanation as to why these vital documents of the institute were 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 its business. The admission register maintained in regular course of business of institute should have been produced by the prosecution. Besides, the enquiry form (Ex-168) and the application form (Ex-169) were not seized under panchnama. They were collected from PW-36 Vivek Saxena during the course of recording of his statement.

775. The prosecution has examined PW-213 Ashok Kumar Raghav and PW-261 Krantikumar Varma to establish that A2-Ansari was found in possession of similar maps when he was arrested by Rampur Police of U.P. The prosecution has also examined PW-254 Manpreet Vohra to establish that A2-Ansari had obtained a Pakistani passport on the basis of bogus documents produced before Pakistan authorities. The court would have considered and examined the evidence of these three witnesses, had the evidence in respect of seizure of the sketch map (Art.101) been reliable. It would not be proper to give any finding with regard to handwriting on the documents which are seized in connection with another case by Rampur Police of U.P. It would not be proper to give any opinion with regard to Pakistani passport allegedly obtained by A2-Ansari on the basis of bogus documents because that issue is subjudice before learned Additional Sessions Judge, Rampur.

776. The prosecution has established charges against A1-Kasab. The prosecution has established that A1-kasab is guilty of abetment by conspiracy of the offences committed by deceased A1 to A9. The prosecution, however, has not been able to prove beyond reasonable doubt that A2-Ansari and A3-Shaikh were also involved in the offences. Since almost all the pieces of evidence adduced by the prosecution against A2-Ansari and A3-Shaikh are found to be doubtful, the benefit of doubt must go to the accused.

GIST OF THE ARGUMENTS OF MR. NIKAM, LEARNED SPECIAL PUBLIC PROSECUTOR ON BEHALF OF THE PROSECUTION.

777. The impugned judgment and order to the extent it acquits A2-Ansari and A3-Shaikh is perverse, unreasonable and contrary to the evidence on record. The findings in respect of the acquitted accused are based on surmises and conjectures. The findings are palpably

false and erroneous and there are compelling and substantial reasons to set aside the acquittal of A1-Ansari and A3-Shaikh. Reliance is placed on the judgments of the Supreme Court in ***Jaswant Singh v. State of Haryana 2000 SCC (Cri.) 991***, ***Allarakha K. Mansuri v. State of Gujarat 2002 SCC (Cri.) 519***, ***State of Punjab v. Lakhwinder Singh & Anr. (2010) 2 SCC (Cri.) 843***, ***Manu Sharma v. State (NCT of Delhi) (2010) 2 SCC (Cri.) 1385*** and ***Satyavir Singh v. State of Uttar Pradesh 2010 2 SCC (Cri.) 48***.

778. Learned Sessions Judge erred in acquitting A2-Ansari and A3-Shaikh because the evidence on record establishes that they are key conspirators in the crime. Both these accused have facilitated the attack by providing maps to wanted A2-Lakhvi and A5-Kaahfa, who in turn, have provided these maps to the attackers. One of these maps was seized from the cargo trouser of deceased A1-Abu Ismail on 27/11/2008. How and when this map was transported to Pakistan is within the

exclusive knowledge of A2-Ansari and A3-Shaikh. They have purposely withheld the details and the prosecution cannot be held responsible because those facts are not brought on record. But, one thing is certain that the prosecution has established beyond reasonable doubt that A2-Ansari and A3-Shaikh did provide logistic support to A1-Kasab and other accused. They have played a major part in the conspiracy by providing the accurate locations of the targets of attack.

779. PW-160 Naruddin Shaikh has established that A2-Ansari handed over the maps showing locations of Mumbai city to A3-Shaikh in Kathmandu in January, 2008. Learned Sessions Judge has held that PW-160 Naruddin Shaikh is neither a wholly reliable witness nor a wholly unreliable witness and, therefore, corroboration to his evidence is necessary. Learned Sessions Judge has committed a grave error. PW-160 Naruddin Shaikh is a wholly reliable witness on whose testimony alone the prosecution case should have been accepted and, in any

case, the evidence on record corroborates the version of PW-160 Naruddin Shaikh. According to PW-160 Naruddin Shaikh, he had visited Nepal in the month of January, 2008. His statement was recorded on 5/12/2008. It was natural for him not to retain the documents pertaining to his visit to Nepal because at that time, he could not have foreseen that something would happen in future for which his tickets and other record would be required to establish his visit to Nepal. As an ordinary tourist, there was no need for him to retain all those documents. To go to Nepal, passport is not required, therefore, PW-160 Naruddin Shaikh could not have produced any passport. Learned Sessions Judge's observation that PW-160 Naruddin Shaikh has no source of income is without any basis. The cross-examination of the investigating officer is silent on the aspect of non-disclosure of source of his income. Therefore, this circumstance cannot be taken against PW-160 Naruddin Shaikh. PW-160 Naruddin Shaikh has no axe to grind against A2-Ansari and A3-Shaikh. No enmity was either suggested or indicated in

the cross-examination nor it is stated by A2-Ansari or A3-Shaikh in their statement under Section 313 of the Code. The fact that PW-160 Naruddin Shaikh is a childhood friend of A2-Ansari is not disputed. PW-160 Naruddin Shaikh is the most natural witness.

780. Learned Sessions Judge has wrongly observed that statement of PW-160 Naruddin Shaikh is anti-dated because of a stray statement made by him in his evidence. Such a suggestion is not put to PW-48 PI Marde. Learned Sessions Judge has wrongly held that it was recorded after the arrest of A2-Ansari. The record clearly shows that A2-Ansari and A3-Shaikh were brought to Mumbai on transfer warrant. They were arrested on 18/12/2008. There is no reason to hold that PW-160 Naruddin Shaikh's statement recorded on 5/12/2008 is anti-dated by the prosecution. Terror attack took place on 27/11/2008. After obtaining leads during investigation, PW-160 Naruddin Shaikh's statement was recorded on 5/12/2008. In the peculiar circumstances of the case,

there is no delay in recording the statement.

781. The version of PW-160 Naruddin Shaikh is in conformity with the confessional statement of A1-Kasab which states that each pair was given one map. According to A1-Kasab they were told to destroy the map after reaching the target. A1-Kasab and deceased A1-Abu Ismail had to reach Malabar Hill which they could not reach and, therefore, that map was not destroyed. That is the reason why the police could recover only one map from the trouser pocket of deceased A1-Abu Ismail.

782. Learned Sessions Judge has held that the confessional statement of A1-Kasab is true and voluntary. Therefore, there was no reason for him not to believe that part of A1-Kasab's confessional statement where he says that each pair was given one map by wanted A2-Lakhvi and while handing over the map, wanted A5-Kaahfa told them that the maps were prepared by A2-Ansari and A3-Shaikh and sent to them. Learned Sessions Judge should

have appreciated that this statement was corroborated by the evidence on record. A1-Kasab has clearly stated that deceased A1-Abu Ismail retained a map with him and while proceeding in seized vehicle by the side of sea, he realized that this is the same road shown in the map by A2-Ansari and A3-Shaikh. Learned Sessions Judge has not stated why the confessional statement of A1-Kasab which pertains to involvement of A2-Ansari and A3-Shaikh cannot be believed when he has come to a conclusion that A1-Kasab's confessional statement is true and voluntary.

783. PW-160 Naruddin Shaikh's evidence is supported by certain clinching circumstances, PW-213 Ashok Kumar Raghav, Addl. S.P., U.P. Police has stated that in connection with a terror strike on CRPF camp, A2-Ansari was arrested at Rampur on 10/2/2008. During his search, a Pakistani passport issued in the name of Hassan Hammad, having photograph of A2-Ansari as its holder, one identity card issued by Hukumate, Pakistan, maps showing locations of Mumbai on ruled notebook papers

and two railway tickets were seized. PW-254 Manpreet Vorha, Deputy High Commissioner working in Indian High Commission at Islamabad has confirmed that passport was issued to A2-Ansari in the name of Hassan Hammad on the basis of fake identity and particulars. The date of issuance of the said passport is 10/11/2007 and the date of expiry of passport is 30/10/2012. The passport shows that A2-Ansari left for Kathmandu on 15/11/2007 and entered Nepal on the same day i.e. on 15/11/2007. The exchange of maps was in January, 2008. Thus, the passport (Art.801) is an important piece of evidence to support the presence of A2-Ansari in Nepal around January, 2008 and it corroborates PW-160 Naruddin Shaikh. When attention of A2-Ansari was drawn to the passport (Art.801) in his examination under Section 313 of the Code he denied the allegation as false. When he was asked about the maps found in his possession bearing his handwriting, he did not state that he was forced to prepare them. He stated that this allegation is false. Learned Sessions Judge, while recording his statement

under Section 313 of the Code, has not asked A2-Ansari to explain his photographs found on the passport (Art.801) and application form (Ex-169) and, therefore, in the interest of justice, this court should summon him in exercise of its powers under Section 367 of the Code, for the just decision of the case.

784. Learned Sessions Judge lost sight of the fact that the maps found in possession of A2-Ansari were having important locations of Mumbai city and when the map (Art.101) was shown to PW-160 Naruddin Shaikh, he has stated that the said map was similar to the maps which were handed over by A2-Ansari to A3-shaikh in January, 2008 in his presence and which he had seen. Learned Sessions Judge should have, therefore, held that PW-160 Naruddin Shaikh is a totally reliable witness and, in any case, sufficient corroboration was available to his evidence.

785. The conduct of A2-Ansari and A3-Shaikh is relevant

under Section 8 of the Evidence Act. The assertion made by A1-Kasab in his confessional statement that wanted A5-Kaahfa told him and the other accused that A2-Ansari and A3-Shaikh had prepared the maps and they were handed over to each pair by wanted A2-Lakhvi, is not hit by the doctrine of hearsay evidence. It must be treated as a confession of a co-accused, which can be used to prove the existence of criminal conspiracy under Section 10 of the Evidence Act. This is because, when A5-Kaahfa made this statement, the conspiracy was alive and its object was yet to be achieved and in pursuance of the conspiracy maps were handed over to A1-Kasab and others. Section 30 of the Evidence Act would also be attracted because it makes confession of one accused made against others which is duly proved, admissible against others in a joint trial. In support of this submission, reliance is placed on the judgments in ***Bhagwan Swarup v. State of Maharashtra 1965 (Cri.L.J. 608, Tribhuvan Nath v. State of Maharashtra, AIR 1973 SC 450, Firozuddin***

Basheeruddin & Ors. v. State of Kerala, 2001 SC (Cri.) 1341 and ***State of Tamil Nadu v. Nalini & Ors., 1999 Cri. L.J. 3124***.

786. Learned Sessions Judge was wrong in holding that non-examination of Bharat Thakur is fatal to the prosecution case. There is no challenge to the fact that Bharat Thakur is from Nepal. Assuming that corroboration to the evidence of PW-160 Naruddin Shaikh was necessary, the prosecution had made efforts to serve Bharat Thakur. The prosecution had submitted application for issuance of summons on 20/10/2009 and the summons was also issued, however, it returned unserved. To that effect, there is a report dated 9/11/2009 submitted by PC No.20068 to Senior PI, DCB, CID, Unit III, Mumbai with the remark that on 1/11/2009 when he visited Bharat Thakur's house, Bharat Thakur was not there. His wife was present. She stated that Bharat Thakur has gone to some other place since last three months for work. On 2/11/2009, similar effort was made

but no information could be gathered. In spite of the efforts made by the police, Bharat Thakur could not be served. Action under Sections 82 and 83 of the Code can be taken only in case, the warrant is not executed and, therefore, this section has no application to this case. In this connection, reliance is placed on the judgment of the Supreme Court in ***Sidhartha Vashisht @ Manu Sharma***. Learned Sessions Judge has drawn unwarranted inference that prosecution made no efforts to bring Bharat Thakur to depose in the court.

787. In any event, Bharat Thakur, admittedly, is not a witness to the exchange of maps. According to PW-160 Naruddin Shaikh, Bharat Thakur was unwell and, hence, he could not go to Kathmandu with him. He stayed back at Dahineshwar. He was not present when A2-Ansari handed over maps to A3-Shaikh. Therefore, he is not an important witness. His non-examination does not have adverse impact on the prosecution case.

788. Seizure of map (Art.101) from the possession of deceased A1-Abu Ismail under panchnama (Ex-99) is a very important circumstance in favour of the prosecution. A2-Ansari has not denied that the handwriting on map (Art.101) is his handwriting. He has falsely contended that he was forced to prepare it. It is pertinent to note that A2-Ansari and A3-Shaikh were handed over by the U.P. Police to DCB, CID, Mumbai on 17/12/2008. They were produced before the Magistrate on 18/12/2008. However, A2-Ansari made no complaint of ill-treatment to the Magistrate that he was forced to prepare the map (Art.101). Learned Sessions Judge has wrongly held that, if the prosecution case is to be accepted, map (Art.101) should have bloodstains or wrinkles. PW-23 Dr. Mohite, who had done postmortem of deceased A1-Abu Ismail has stated that there was no injury on the right leg of deceased A1-Abu Ismail. The postmortem notes of deceased A1-Abu Ismail show that there were abrasions on the right leg. PW-23 Dr. Mohite has also stated so. Inquest panchnama (Ex-97) also shows that deceased A1-

Abu Ismail had sustained injuries on left side. PW-14 Shivaji Shivekar, who is pancha to inquest panchnama (Ex-97) has stated that deceased A1-Abu Ismail had sustained injuries on the left side of his body. He has stated that there were bloodstains on the left side of the trouser. His cross-examination is silent on the aspect whether there were bloodstains on the right side of the trouser. The inquest panchnama (Ex-97) states that on the right leg of deceased A1-Abu Ismail there was only abrasion. No blood was seen oozing. Learned Sessions Judge has held that stretcher is 'C' shaped and, therefore, when the body of deceased A1-Abu Ismail was kept on the stretcher, blood must have accumulated in the curved portion and it must have percolated through the trouser and reached map (Art.101). This observation is based on conjectures and surmises. The right side pant pocket was on the front portion of the right thigh and, therefore, the blood allegedly collected in the curved portion could not have reached the map kept in the right side front pocket. PW-14 Shivaji Shivekar and PW-23 Dr. Mohite are

independent witnesses. They have no axe to grind against A2-Ansari and A3-Shaikh.

789. So far as the allegation that map (Art.101) should have wrinkles is concerned, in his confessional statement, A1-Kasab has stated that the accused changed clothes twice. Obviously, therefore, the map must not have been kept in the same pocket right from the beginning of the journey. Knowing its importance deceased A1-Abu Ismail must have preserved it properly. Moreover, the front portion of the trouser does not receive pressure and unless the pressure is exerted with hands it would not get crumpled. In the circumstances, absence of wrinkles should not have weighed with learned Sessions Judge.

790. As regards change in the ink on Ex-97 and Ex-99 is concerned, it is possible that the officer changed the pen while writing one panchnama. Certain documents of the same date written by the same officer which are on record, which are in different ink are relied upon. It is

submitted that there is nothing unusual about the change in the ink. So far as statement made in the panchnama (Ex-99) that photographs of the seized articles were taken is concerned, PW-27 PI Warang has given explanation that, that statement was an inadvertent error. PW-27 PI Warang has explained that photograph of map (Art.101) was not taken, but only photographs of identity card and dead body of deceased A1-Abu Ismail were taken. This inadvertent error does not vitiate the prosecution case.

791. Learned Sessions Judge was wrong in holding that when ready-made maps were available in the market there was no need for the attackers to carry manually drawn maps with them. Specific details are not available on the manually prepared maps or maps available on websites and, therefore, there is nothing abnormal in the accused carrying such maps with them. Besides, mechanical devices can fail. PW-161 Sandeep Shivangi, an Expert in maritime studies has stated that maps and GPS serve different purposes and GPS cannot be a

complete substitute for maps.

792. Prosecution has established that A2-Ansari was making movements in South Mumbai by adopting fictitious name 'Sahil Pawaskar'. He had taken a room on rent in fictitious name 'Sahil Pawaskar'. In that behalf, the prosecution has examined PW-35 Jeevan Gulabkar, PW-38 Rajendra Bhosale and PW-40 Shantabai Bhosale. Learned Sessions Judge has observed that PW-35 Jeevan Gulabkar was not an Estate Agent and, therefore, there was no reason why A2-Ansari should have gone to him; that there was no earlier intimacy between A2-Ansari and PW-35 Jeevan Gulabkar and, therefore, there was no reason why he should directly approach PW-35 Jeevan Gulabkar. Learned Sessions Judge has unnecessarily presumed that A2-Ansari had directly gone to this witness. It is possible that A2-Ansari had inquired with some other persons also. PW-35 Jeevan Gulabkar was a PCO owner. He also had a Paan shop. Therefore, it was natural for a person like PW-35 Jeevan Gulabkar to know whether there

is any vacant flat available in that area. A Paan shop and a PCO are always frequented by people in the area. Learned Sessions Judge was, therefore, wrong in making such observation. This witness has identified A2-Ansari in the identification parade and also in the court.

793. PW-38 Rajendra Bhosale has stated that Estate Agent Kumar Shivaji brought A2-Ansari to him, PW-38 Rajendra Bhosale took both of them to PW-40 Shantabai Bhosale, who resides in the same chawl where he resides because PW-40 Shantabai Bhosale wanted to rent her room as she wanted to repay the loan. Learned Sessions Judge has observed that Kumar Shivaji was not examined and that is a drawback in the prosecution story. Since PW-40 Shantabai Bhosale who had rented her house has been examined and she has identified A2-Ansari in the court, and she has corroborated PW-38 Rajendra Bhosale, it was not necessary to examine Kumar Shivaji. Learned Sessions Judge was, therefore, wrong in discarding the evidence of PW-38 Rajendra Bhosale on this ground.

PW-38 Rajendra Bhosale had identified A2-Ansari in the identification parade and also in the court. As regards his identification in the identification parade, A2-Ansari has falsely stated that he was never put up in the identification parade.

794. Learned Sessions Judge was also wrong in discarding the entire prosecution case that PW-40 Shantabai Bhosale had rented her room to A2-Ansari on the ground that the original agreement was not produced but a xerox copy thereof was produced. He submitted that learned Sessions was not called upon to decide the civil rights of the parties. He was only concerned with the question whether A2-Ansari represented that he was Sahil Pawaskar and took the premises on rent. The question was whether A2-Ansari resided in the house of PW-40 Shantabai Bhosale as her tenant in the assumed name 'Sahil Pawaskar'. Learned Sessions Judge should not have gone into the question of primary and secondary evidence. Even if the agreement is kept out of

consideration, the prosecution can succeed on the basis of evidence of PW-40 Shantabai Bhosale and PW-38 Rajendra Bhosale. That, only a photocopy of agreement was produced, was not a ground for discarding the testimony of PW-38 Rajendra Bhosale and PW-40 Shantabai Bhosale. The cross-examination is silent on the issue of photocopy. A2-Ansari's photograph is on the agreement. PW-40 Shantabai Bhosale has identified A2-Ansari in the court. Her evidence is, therefore, wrongly rejected.

795. The prosecution has conclusively proved that A2-Ansari took admission in Softpro Computer Education during the relevant period. PW-36 Vivek Saxena, Manager of Softpro Computer Education has stated that the inquiry form (Ex-168) and application form (Ex-169) were duly filled in and signed by A2-Ansari as 'Sahil Pawaskar' in his presence. He has identified A2-Ansari in the court. PW-47 PI Kale has denied the suggestion that he forced A2-Ansari to sign the inquiry form (Ex-168) and

application form (Ex-169). In any case, it is not the case of A2-Ansari that he was forced to sign Ex-168 and Ex-169. Learned Sessions Judge has disbelieved PW-36 Vivek Saxena because he did not produce record of his institute. According to learned Sessions Judge Ex-168 and Ex-169 are loose documents allegedly from the official record and they were not seized under any panchnama and, therefore, they cannot be taken into consideration. Learned Sessions Judge was wrong in drawing this conclusion because these documents are official documents which are from the record maintained by the institute run by PW-36 Vivek Saxena. These documents are not private documents and they were filled in by A2-Ansari in the presence of PW-36 Vivek Saxena. Therefore, learned Sessions Judge should have accepted those documents. Learned Sessions Judge has held that PW-36 Vivek Saxena did not produce the muster roll of the institute indicating that A2-Ansari attended the classes or no attendance certificate indicating that he did not attend the classes. A computer institute like Softpro Computer

Education, is not like a school or college. There is no compulsory attendance. Therefore, muster roll was not useful in proving the presence of A2-Ansari. The fact, that he took admission in the institute is proved and that is sufficient to establish that at the relevant time he was in South Mumbai.

796. The prosecution has successfully established that (i) on 1/7/2007, A2-Ansari was in Pakistan. This is proved by entry on passport (Art.801); (ii) the prosecution has proved that A2-Ansari left Karachi on 15/11/2007 and landed in Kathmandu on the same day i.e. on 15/11/2007. This is proved by the evidence of PW-254 Manpreet Vohra and entry on the passport (Art.801); (iii) A2-Ansari did not offer any explanation as to why he was in possession of Pakistani passport issued in the name of Hassan Hammad bearing his photograph as holder thereof; (iv) A2-Ansari visited South Mumbai area on 10/12/2007 and took admission in Softpro Computer Education; (v) It is deposed by PW-36 Vivek Saxena that A2-Ansari adopted

fictitious name 'Sahil Pawaskar'. This is proved by Ex-168 and Ex-169 and the evidence of PW-146 Jayant Aher, Handwriting Expert; (vi) A2-Ansari gave his false name as 'Sahil Pawaskar' and false address of Delhi to PW-35 Jeevan Gulabkar; (vii) A2-Ansari was in Mumbai during 10/12/2007 to 3/1/2008 and was making movements with fictitious name. Receipt (Ex-170) is proved by PW-36 Vivek Saxena. During this period, A2-Ansari stayed in PW-40 Shantabai Bhosale's house under the fictitious name 'Sahil Pawaskar'. This is proved by the evidence of PW-38 Rajendra Bhosale and PW-40 Shantabai Bhosale; (viii) A2-Ansari and A3-Shaikh met PW-160 Naruddin Shaikh between 4/1/2008 and 1/2/2008 at Kathmandu. A2-Ansari handed over maps to A3-Shaikh in the presence of PW-160 Naruddin Shaikh. PW-160 Naruddin Shaikh identified map (Art.101) as similar to the maps which he had seen at Kathmandu while A2-Ansari had handed over some maps to A3-Shaikh; (ix) the conversation which took place between A2-Ansari and PW-160 Naruddin Shaikh in January, 2008 spells out the happenings of future events

(Pakistani friends are coming); (x) on 10/2/2008 when A2-Ansari was arrested by PW-213 Ashok Kumar Raghav at Rampur, A2-Ansari was found in possession of 10 maps [Art.803 (Colly.)] showing different locations of Mumbai city, Pakistani identity card and passport, (xi) The handwriting on 10 maps is proved to be of A2-Ansari by PW-146 Jayant Aher; (xii) A2-Ansari did not offer any explanation as regards possession of 10 maps at Rampur showing various locations of Mumbai, (xiii) Art.101 which is in the handwriting of A2-Ansari was recovered from the possession of deceased A1-Abu Ismail on 27/11/2008 and (xiv) A2-Ansari admits his handwriting on map (Art.101).

797. Adverse inference needs to be drawn against A2-Ansari because he has taken false defence that the police had compelled him to prepare map (Art.101); because he gave a false answer in respect of seizure of Pakistani passport (Art.801); because he gave false answer in respect of identification parade held by PW-265 Sharat Vichare, SEO, in which he was identified by witnesses and

because of the false answer given by him in respect of his visit to Kathmandu.

798. In view of the above, it is clear that the impugned judgment to the extent it acquits A2-Ansari and A3-Shaikh, is perverse. The view taken by learned Sessions Judge could never have been taken on the basis of evidence which was before him. He has completely ignored the clinching evidence adduced by the prosecution which has led to miscarriage of justice. Just as an innocent person should not be convicted, the guilty also should not escape punishment. The impugned judgment, to the extent it acquits A2-Ansari and A3-Shaikh, be set aside and they may be convicted according to law.

GIST OF THE ARGUMENTS OF MR. MOKASHI, LEARNED COUNSEL APPEARING FOR A2-ANSARI.

799. Mr. Mokashi, learned counsel for A2-Ansari submitted

that learned Sessions Judge has rightly acquitted A2-Ansari. The order of acquittal cannot be called perverse and, hence, no interference is necessary with it. He submitted that PW-160 Naruddin Shaikh's evidence does not inspire confidence. His evidence cannot be relied upon. There is no corroboration to his evidence. It is doubtful whether he had gone to Nepal. He has not given any details of his travel such as time, expenditure, and name of the hotel in which he allegedly stayed. He does not remember the name of any guest house in which he stayed. He has not given description of the maps which according to him fell down from the hands of A2-Ansari while handing over to A3-Shaikh. Mr. Mokashi stated that according to the prosecution, A3-Shaikh asked A2-Ansari whether he had done the work of Lakhvi. Assuming this to be true, there is nothing on record to show that this is the same Lakhvi who is the leader of LeT. A3-Shaikh has also not given any particulars about his friends who were to allegedly come to Mumbai. PW-160 Naruddin Shaikh has not given source of income for his visit to Nepal. The

police have not made any investigation in this behalf. Mr. Mokashi submitted that admittedly Bharat Thakur's statement was recorded by the police; PW-160 Naruddin Shaikh deposed in the court on 29/9/2009, therefore the police knew the short-comings of his deposition. The police, therefore, should have made all efforts to secure the presence of Bharat Thakur. When police went to serve the summons, the record shows that the wife of Bharat Thakur was present. Therefore, it was not difficult for the police to secure the presence of Bharat Thakur. Adverse inference needs to be drawn against the prosecution because though the police had sufficient time, they did not secure the presence of Bharat Thakur. Mr. Mokashi submitted that the evidence of PW-160 Naruddin Shaikh is concocted. It is not understood how the police reached PW-160 Naruddin Shaikh. Mr. Mokashi submitted that the map (Art.101) does not show Arabian Sea. Therefore, assuming that A1-Kasab's confessional statement to be true and voluntary, his assertion that when he was passing by the road running by the side of

sea, he felt that it was the same road which was shown in the map prepared by A2-Ansari and A3-Shaikh, cannot be accepted. Mr. Mokashi submitted that A2-Ansari was forced to prepare the sketch map (Art.101). He submitted that if this sketch map is stated to be with deceased A1-Abu Ismail from the time he started from Pakistan till they landed at Badhwar Park and till he was shot dead, it would have got spoilt because of his movements. However, this map (Art.101) does not have any wrinkles. This story of the prosecution is, therefore, inherently improbable and, in fact, it is false.

800. Mr. Mokashi drew our attention to the appeal memo where it is urged that the map (Art.101) was found in the right side pocket of cargo trouser worn by deceased A1-Abu Ismail and only one corner of the right side pocket was stained with blood and on the other two sides of the pocket, there were few stains of blood on upper portion. A diagram is drawn to the above effect. Mr. Mokashi submitted that it is stated in the appeal memo that on

both sides, there were blood stains. He submitted that therefore, the cotton and the paper would have absorbed blood. Blood would have percolated from the cotton to the paper and the paper would have got some blood stains. Mr. Mokashi submitted that it is impossible to believe that the map (Art.101) which was allegedly in the right side pant pocket of deceased A1-Abu Ismail did not experience any rough handling. He submitted that considering the prosecution case and the manner in which deceased A1-Abu Ismail is stated to have acted and looking at the quality of paper of Art.101, the paper could not have remained free of wrinkles and blood stains. Mr. Mokashi submitted that judicial notice can be taken of the fact that the stretcher had a curve and, therefore, when the body of deceased A1-Abu Ismail was kept on the stretcher, blood must have accumulated in the curved portion and there was possibility of it's reaching the right side pant pocket of the trouser.

801. Mr. Mokashi submitted that there is nothing on

record to connect A2-Ansari with A3-Shaikh.

802. As regards the prosecution case that A2-Ansari had taken admission in Softpro Computer Education, Mr. Mokashi submitted that the prosecution has not produced any cogent evidence to establish this fact. The prosecution has merely produced the inquiry form and the admission form which are loose documents. They can be fabricated. The prosecution ought to have produced attendance register, however they chose not to do so because it is difficult to create the attendance register. He submitted that if A2-Ansari did not attend the class, non attendance certificate could have been produced. Since neither the attendance register nor the no attendance certificate is produced, the prosecution case that A2-Ansari took admission in Softpro Computer Education must be rejected.

803. So far as PW-40 Shantabai Bhosale is concerned, Mr. Mokashi submitted that the agreement produced by

PW-40 Shantabai Bhosale is a photocopy and should not have been marked as exhibit. Learned Sessions Judge has rightly not placed any reliance on that agreement under which A2-Ansari is stated to have stayed in the premises of PW-40 Shantabai Bhosale. Mr. Mokashi submitted that PW-40 Shantabai Bhosale's evidence does not inspire confidence. Mr. Mokashi submitted that the prosecution has miserably failed to prove its case against A2-Ansari. Mr. Mokashi submitted that in any event, the view taken by learned Sessions Judge is a reasonably possible view. The impugned judgment so far as it relates to A2-Ansari cannot be called perverse and, therefore, no interference is necessary with it.

GIST OF THE ARGUMENTS OF MR. NAQVI, LEARNED COUNSEL APPEARING FOR A3-SHAIKH.

804. At the outset, we must note that Mr. Naqvi learned counsel for A3-Shaikh has raised a preliminary objection that the appeal memo containing a prayer that leave to

appeal be granted, is affirmed and verified by Mr. Nikam, learned Special Public Prosecutor and, hence, it cannot be entertained. Mr. Naqvi has alleged malafides. We must note that this appeal was admitted by us on 12/8/2010. The appeal memo was served on A3-Shaikh on 27/8/2010. The objection should have been raised at the earliest. In any case, since we have admitted the appeal, it is not possible for us to now reverse our order. This objection is, therefore, rejected.

805. Mr. Naqvi drew our attention to the confessional statement of A1-Kasab and submitted that A1-Kasab has allegedly stated that on the next day of the incident he had disclosed everything to the police. Therefore, the police ought to have recorded the statement of PW-160 Naruddin Shaikh immediately. However, the police have recorded the statement after much delay i.e. on 5/12/2008. Mr. Naqvi submitted that PW-160 Naruddin Shaikh has stated that when his statement was recorded on 5/12/2008, A2-Ansari was arrested. But he has further

stated that A2-Ansari was arrested on 17/12/2008. Thus, he has contradicted himself. Mr. Naqvi submitted that learned Sessions Judge has rightly stated that the statement of PW-160 Naruddin Shiakh was anti-dated. Mr. Naqvi submitted that PW-160 Naruddin Shaikh is an uneducated person and he has no source of income. He has a large family to maintain. It is improbable, therefore, that he would go on a pleasure trip to Nepal. He submitted that the prosecution has not adduced any evidence to establish when PW-160 Naruddin Shaikh arrived in Nepal, where he stayed and when he left Nepal. Thus, the entire story of exchange of maps in Nepal is absurd.

806. Mr. Naqvi submitted that PW-213 Ashok Kumar Raghav of U.P. Police stated that on 10/2/2008 at the time of arrest of A2-Ansari, inter alia, two railway tickets and ten maps of Mumbai were recovered from him. One of the tickets was for journey from Delhi to Mumbai on 12/2/2008. It is clear, therefore, that with these ten maps

A2-Ansari was to go to Mumbai on 12/2/2008. If that is so, the prosecution case that A2-Ansari handed over maps to A3-Shaikh in Nepal for handing them over to the handlers in Pakistan so that they could be given to A1-Kasab and other accused is not correct.

807. Mr. Naqvi submitted that as per alleged confessional statement of A1-Kasab, wanted A1-Amir Hafeez Saeed gave them new names. He named A1-Kasab as Abu Mujahid. He further stated that wanted A5-Kaahfa gave them identity cards bearing Hindu names. Mr. Naqvi submitted that repeated change of names does not stand to reason. In his statement, A1-Kasab has stated that he has studied upto 4th standard in Urdu medium school. In that case, he could not have read the name of the boat 'M.V. Kuber'. Mr. Naqvi adopted the arguments of Mr. Mokashi as regards map (Art.101). He submitted that absence of blood and wrinkles on map (Art.101) makes the prosecution story suspect.

808. Mr. Naqvi submitted that A1-Kasab has allegedly said that all of them changed clothes twice, however, there is no mention that the accused transferred the maps from the old clothes to the new clothes. He submitted that A1-Kasab has allegedly stated that he and deceased A1-Abu Ismail threw their waterproof clothes in the sea when they arrived at Badhwar Park, but there is no mention that the maps were transferred to the inner clothes. Mr. Naqvi submitted that according to the prosecution, the handlers gave instructions to the accused to tear the maps but that is not reflected in the intercepted conversation. Mr. Naqvi submitted that two of the accused went ahead in the inflatable boat and got down in front of Hotel Oberoi. He submitted that the maps are available on Google website. It appears that the accused had got information about the locations of Mumbai from other sources. Therefore, the entire map story must be rejected.

809. Mr. Naqvi submitted that from the confessional statement of A1-Kasab, it appears that apart from Al

Husseini, there was one more boat. It is not understood what happened to that boat. Mr. Naqvi submitted that in the appeal memo, the prosecution has given several alias names of A2-Ansari. It is not understood from where they collected these names. This shows malafides of the prosecution. Mr. Naqvi submitted that there is also no explanation as to why PW-48 PI Marde did not obtain transfer warrant of A3-Shaikh with A2-Ansari.

810. Mr. Naqvi pointed out that in the panchnama (Ex-99) drawn in the trauma ward of Nair Hospital under which the clothes of deceased A1-Abu Ismail and A1-Kasab were taken charge of, it is stated that photographs of all the articles and clothes were taken. When this was pointed out to PW-27 API Warang, who has drawn the said panchnama, he stated that it is not the correct statement and that the said sentence is written due to inadvertence on his part. PW-27 API Warang has further stated that only the photographs of clothes of A1-Kasab and his identity card were taken during the course of panchnama

Ex-99. Mr. Naqvi submitted that PW-23 Dr. Mohite has stated that the photographs of deceased A1-Abu Ismail were taken during the course of postmortem examination. According to him, he had not seen any photographer in trauma ward. He has stated that no photographs were taken at the time of inquest panchnama (Ex-97) but he has not categorically stated that no photographs were taken at the time of drawing of panchnama (Ex-99). Mr. Naqvi submitted that this creates suspicion about the prosecution story. If the photographs of seized articles were taken, then photograph of map (Art.101) should have been produced by the prosecution in the court. Mr. Naqvi submitted that in any event there is absolutely no evidence against A3-Shaikh. In the intercepted conversation also, his name is not referred to. Mr. Naqvi submitted that learned Sessions Judge has, therefore, rightly acquitted him. The view taken by him is the only view which could have been taken on the basis of evidence on record. Mr. Naqvi submitted that, therefore, learned Sessions Judge's order acquitting A3-Shaikh

should not be disturbed.

EVIDENCE OF THE PROSECUTION WITNESSES AND REASONING:

811. We shall first go to the evidence of PW-160 Naruddin Shaikh, who is a resident of Goregaon. According to him, A2-Ansari is a resident of Motilal Nagar, Goregaon (West), Mumbai and he is known to him since childhood. According to this witness, one Bharat Thakur, who hails from Nepal and who is a rickshaw driver is also known to him. Bharat Thakur comes from Purana Dahineshwar, Pashupatinath Mandir, Kathmandu, Nepal. This witness has stated that in the month of January, 2008, he had gone along with Bharat Thakur to Kathmandu. According to him, Dahineshwar is at a distance of 30 kilometers from Kathmandu. He stayed with Bharat Thakur for about ten to twelve days at Dahineshwar. After about twelve days, Bharat Thakur fell sick. He therefore, told Bharat Thakur that he would visit Kathmandu alone. He stayed in a

small guest house, situated at New Road, Kathmandu. He stated that he did not remember the exact date of his departure from Mumbai and arrival in Nepal. According to him, while he was visiting places at Kathmandu, he suddenly met A2-Ansari at New Road. Both of them thereafter visited a hotel and had a cup of tea. On inquiry being made by A2-Ansari, he told him that he had come to Kathmandu on a pleasure trip. A2-Ansari asked him to visit his guest house so that they could chat. He, therefore, went along with A2-Ansari to his room in a guest house situated at New Road. According to this witness, at about 8.30 p.m. A3-Shaikh visited the room of A2-Ansari. A3-Shaikh was introduced to him by A2-Ansari. After sometime, A3-Shaikh inquired with A2-Ansari whether he had completed the work assigned to him by Lakhvi. A2-Ansari took out some papers from his bag and handed over the same to A3-Shaikh. According to him, while the papers were being handed over to A3-Shaikh, they fell down and he could see that they were maps. He, therefore, asked A2-Ansari whether he had started

business of preparing maps. A2-Ansari did not respond. However, A3-Shaikh told him that his friends from Pakistan wanted to visit Mumbai and, therefore, they wanted some maps. According to him, he told A3-Shaikh that the maps were freely available and why it was necessary to prepare the maps. A2-Ansari said that the information in the maps available in the market is not correct and, therefore, the maps had been prepared by him. He then had dinner with A2-Ansari and A3-Shaikh in the hotel room of A2-Ansari and left for his hotel at about 11.00 p.m.

812. According to this witness, on the next day, A3-Shaikh was seen by him on New Road. He inquired about A2-Ansari. A3-Shaikh told him that A2-Ansari had gone for some work. This witness claims that he stayed at Kathmandu for three days and left for Dahineshwar. He returned to Mumbai on 2/2/2008. He has stated that he could identify the maps which, he had seen in the hotel room of A2-Ansari. He has stated that he had seen maps

on 8 to 10 pages. They were on school note book papers. When map (Art.101) was shown to him, he stated that the said map looked like the maps seen by him in the hotel room of A2-Ansari when they were being handed over to A3-Shaikh.

813. This witness has been extensively cross-examined. He has stated in the cross-examination that his wife is working as a home-guard. He has admitted that two criminal cases were pending against his brother - Shafi. He has denied that his brother Lala was arrested in a rape case. He has stated that his brother Lala was never arrested by Goregaon police. He has denied all suggestions about his alleged involvement in robbery of ornaments from possession of owner of K.K. Jewellers, Kandivali, or that he was wanted by the police in any case. He has stated that he is a driver by profession and that he did not have any regular employment. He has admitted that he works on daily wages and the last job, which he had undertaken was in between 12/8/2009 and

15/8/2009. He has stated that he was not employed as a regular driver anywhere. He has denied that he had been visiting office of the Crime Branch since February, 2009 regularly and that he was being paid Rs.6,000/- per month by Crime Branch. According to him, he did not know that A2-Ansari had been arrested by U.P. Police about one year ago from the date of incident on 26/11/2008. He has stated that he knew that A2-Ansari had been arrested in this case before his statement was recorded by the police. He has stated that he read about it in a newspaper. He clarified that he does not read newspaper and he had been told about it by his friends who read newspapers.

814. He has further stated that he did not have any railway ticket or guest house receipt to establish that he visited Nepal. He has stated that the police did not ask him the date of his visit to Nepal, by which train he had travelled, the source of his expenditure or the name of guest house in which he had stayed. He has stated that he did not remember the name of the guest house where

he had stayed. He has stated that he had crossed from Sonavali border while going to Nepal and had exchanged currency there. He has admitted that a record is kept at Sonavali border with regard to entry of any person from the border but, he did not remember the entry number and the date of his visit. He did not have the entry slip. He has admitted that he had not given the name of the guest house in which A2-Ansari had stayed in Nepal, to the police. He has admitted that he had not stated to the police that A3-Shaikh had told him that his friends wanted to visit Mumbai. According to him, he had stated that A3-Shaikh had told him that his friends from Pakistan wanted to visit India. He has stated that he did not tell the police that A2-Ansari had said that the maps were prepared by him. According to him, he had stated before the police that there were 8 to 10 papers of school notebook and if those papers are shown to him, he would be able to identify them. He has stated that he cannot say why this fact is not stated in his statement. He has admitted that Bharat Thakur stays at Laxmi Nagar, Goregaon and his

family members were staying at his native place in Nepal, but Bharat Thakur does not have his own residence in Nepal. He has stated that he was approached by the Crime Branch on 5/12/2008 for recording of his statement and his statement was recorded on that day. He has stated that he was in Kathmandu for three days. However, he did not remember the dates. He has denied that he was an informer of Crime Branch and that A3-Shaikh was shown to him for the first time, when A3-Shaikh was in custody of Crime Branch. He has denied the suggestion that officers of Crime Branch told him that A3-Shaikh would be sitting at serial No.3 in a box and, therefore, he could identify A3-Shaikh.

815. PW-48 is PI Prashant Marde of DCB, CID. He has recorded the statement of PW-160 Naruddin Shaikh on 5/12/2008. He has stated that on 8/12/2008, he had applied for transfer warrants for A2-Ansari and A3-Shaikh, who were lodged in jail in connection with some other crime registered in U.P. A2-Ansari and A3-Shaikh were

handed over to DCB, CID by the concerned courts on 17/12/2008. They were produced before the Magistrate on 18/12/2008 and were remanded to police custody till 31/12/2008. According to him, he had recorded the statement of Bharat Thakur on 22/12/2008. He has further stated that there were two sealed packets in the property handed over to him by D.B. Marg police. One of the packets contained a sketch map recovered from the dead body of deceased A1-Abu Ismail. Since it was required for further investigation, after obtaining permission from learned Magistrate, he opened the sealed packet by following necessary procedure. The English writing on the sketch map was given identification mark from Q-1 to Q-12 by means of red ball pen. The sketch map, after giving identification marks to the writing thereon, was scanned and copy thereof was prepared on the scanner in the office of DCB, CID. The original sketch map was again sealed in the presence of panchas. He has identified his signature as well as the signatures of panchas on the panchnama (Ex-155) drawn in respect of this exercise.

When the sketch map (Art.101) was shown to him, he identified the same. He has stated that the identification marks in Marathi i.e. *क्यू–1 ते क्यू–12* are in his handwriting. He has stated that the specimen handwriting of A2-Ansari was taken on three occasions in the presence of panchas. The specimen handwriting of A2-Ansari and the questioned document (Art.101) were sent to the Government Document Examiner. The opinion of the Document Examiner was received on 26/3/2009. The forwarding letter and the opinion of the Document Examiner are at Art.294 (Colly.). In the cross-examination, he has denied the suggestion that the sketch map (Art.101) has been fabricated after the arrest of A2-Ansari by Mumbai police. He has denied that the panchnama (Ex.155) is also a fabricated document. He has denied the suggestion that he took the specimen handwriting of A2-Ansari on the pretext that the Magistrate had ordered to take specimen handwriting.

816 As we have already stated, it is the case of the

prosecution that in order to give logistic support to the co-conspirators, A2-Ansari was trying to secure accommodation in South Mumbai and he had even taken admission in a computer institute viz. Softpro Computer Education. We shall now come to that evidence.

817. PW-35 is Jeevan Gulabkar. He runs a PCO under the name and style of 'Kushal Communication Center'. He stays in Fishermen colony, Badhwar Park. According to him, in 2007, one person had visited his PCO in the evening to inquire as to whether any room is available on rental basis in the colony. He told him that he was not an Estate Agent and, therefore, he could not help him. Upon that, the person insisted that he should help him to get a room on rental basis as, he knows many persons in the locality due to the nature of his business. That person gave him Rs.5,000/-, which he could use to search for a room for him. Thereafter, that person was frequently visiting his PCO. Since, he was tired of his frequent visits and persistent inquiry, he refused to help him and

returned him Rs.4,500/-. He identified A2-Ansari in the court as the same person, who had visited the PCO and had given him Rs.5,000/-. According to him, A2-Ansari was reluctant to accept Rs.4,500/- back. He told him that he comes from Delhi and that his name was Sahil Pawaskar. Ultimately, A2-Ansari accepted Rs.4,500/- from him. According to him, in the identification parade held at Arthur Road Prison on 18/2/2009, he identified A2-Ansari as the same person who had come to him for finding a room in Badhwar Park locality. In the cross-examination, he has denied the suggestion that A2-Ansari never came to him and gave him Rs.5,000/-.

818. PW-38 is Rajendra Bhosale. He is a resident of Batata Chawl situate at Pathe Bapurao Marg, Mumbai. According to him, PW-40 Ms. Shantabai Bhosale is also staying in the same chawl in Room No.14. According to him, her son Mahadeo died in the year 2007. He has stated that PW-40 Shantabai had requested him to search for a tenant for her room as she was in need of money to

repay the loan. He has stated that one Kumar Shivaji who was working as Estate Agent had brought one person to him who wanted accommodation on rental basis. He took the said person to PW-40 Ms. Shantabai. PW-40 Ms. Shantabai took a deposit of Rs.60,000/- and monthly rent of Rs.3,000/- for the room. The said person agreed to the terms and conditions of deposit and rent. An agreement was prepared on next day. According to him, it was signed by the said person and PW-40 Ms. Shantabai put her thumb impression thereon. According to him, though PW-40 Ms. Shantabai had quoted Rs.50,000/- as deposit, she took Rs.60,000/- as deposit at the time of agreement. The deposit was paid by the said person who disclosed his name as 'Sahil Pawaskar'. This witness identified A2-Ansari in the court as the said Sahil Pawaskar. He has further stated that A2-Ansari stayed in the said room for about one month and left the room suddenly without demanding back the deposit amount.

819. PW-40 is Ms. Shanta Bhosale, who rented her room

to A2-Ansari. She has stated that she knew one Sahil Pawaskar, who was staying in her room at Batata Chawl as a tenant for about one month. According to her, he had given her deposit of Rs.50,000/- and had agreed to pay another sum of Rs.10,000/- after returning from his village. The monthly rent was fixed at Rs.3,000/-. She has stated that Sahil Pawaskar was staying in the main room. The agreement was signed for eleven months. Sahil Pawaskar was introduced to her by her nephew PW-37 Rajendra Bhosale and one Estate Agent. She had put her thumb impression on the agreement. According to her, Sahil Pawaskar had signed the agreement. She has stated that the original agreement was taken from her by the police. She identified A2-Ansari in the court as the same Sahil Pawaskar. She stated that A2-Ansari had left the room after staying there for about a month. However, he did not return. When the agreement was shown to her, she stated that the thumb impressions on the said agreement were her thumb impressions. The thumb impressions are at Ex-180 (Colly.). There is no

effective cross-examination of this witness.

820. We shall now turn to the witnesses who are examined to prove that A2-Ansari took admission in a computer institute at Fort Mumbai. PW-36 is Vivek Saxena. He was working as Manager since February, 2006 at Softpro Computer Education, situated at 2nd floor, Engineer Premises, 93, Mumbai Samachar Marg, Fort, Mumbai. According to him, there are many Diploma courses available in his institute. They are Diploma Information Technology (DIT), Desktop Publishing (DTP), Hardware (HW) and Diploma in Networking. According to him, one Sahil Pawaskar had taken admission in his institute. He identified A2-Ansari as the same Sahil Pawaskar. He has stated that A2-Ansari had visited his institute on 10/12/2007 and had taken admission for the abovestated four courses. According to this witness, the classes commenced on 12/12/2007. A2-Ansari had followed all the formalities while taking admission. When Inquiry form (Ex-168) was shown to him, he stated that it

bears the signature of A2-Ansari. He stated that A2-Ansari had signed it in his presence. He acknowledged his own signature also. He was shown the admission / application form (Ex-169). According to him, this form was filled in by A2-Ansari and it bears his signature. He acknowledged his own signature thereon. He stated that the photograph on the said application was of A2-Ansari. The said application is at Ex-169. When he was shown copy of receipt (Ex-170), he stated that it was prepared by him and signed by A2-Ansari. He stated that the receipt is in his handwriting and is signed by him. According to him, the original receipt was given to A2-Ansari. He has been cross-examined at length. In his cross-examination, he has denied that A2-Ansari had never been a student of Softpro Computer Education. He has denied that A2-Ansari had not filled in any application form in his presence. He has denied that he was deposing at the instance of the police.

821. PW-47 is PI Sripad Kale. According to him, the

specimen signatures and handwritings of A2-Ansari were taken on 10/2/2009, 11/2/2009 and 12/2/2009 in presence of two panchas. The documents A-1 to A-27 and B-1 to B-27 are the specimen handwritings and specimen signatures of A2-Ansari. According to him, each and every page of the specimen handwritings and signatures bears his signatures and the signatures of panchas. The specimen handwriting and signatures are at Ex-211 (Colly.). According to him, PW-265 Sharad Vichare conducted the identification parade in Arthur Road Prison on 18/2/2009 in which PW-35 Jeevan Gulabkar and PW-38 Rajendra Bhosale participated. On 24/2/2009, specimen handwritings and signatures of A2-Ansari and the questioned documents seized from PW-36 Vivek Saxena were sent to Addl. Chief State Examiner of Documents. The letter addressed to the Addl. C.P. along with the questionnaire are at Ex-213. He has not been cross-examined on this aspect.

822. PW-146 is Jayant Aher, who was working as State

Examiner of Documents. According to him, on 10/2/2009, he had received a letter from Addl. C.P. along with a letter of Sr. PI of DCB CID Prashant Marde. He had also received a list of documents and a questionnaire and one sealed packet. He produced both the letters, which are at Ex-571 (Colly.). The sealed envelope contained documents (Art. 101 and Art.102). When the said documents were shown to him, he has stated that Art.101 was the questioned document and Art.102 were the specimen handwritings. His findings are at Ex-572 and the opinion is at Ex-573.

823. According to him, on 25/2/2009, he had received a list of documents, questionnaire and one sealed packet. The sealed packet contained two questioned documents i.e. Ex-168 and Ex-169. It may be noted here that they are the inquiry form and the application form respectively of Softpro Computer Education, which were produced by PW-36 Vivek Saxena. According to him, the questioned writings were found to be marked by the police as Q-1 to Q-2 in Ex-169 and Q-3 and Q-4 in Ex-168. The markings

of police were in red ink. He had given similar markings to the questioned writings with green ink pen. According to him, he had also received specimen writings marked as A-1 to A-27 and B-1 to B-27. They were marked by him as S-1 to S-54 with green ink pen. He produced his findings which are at Ex-574. On the basis of the said finding, he came to the conclusion that the writings, figures and signatures in English marked Q-1 to Q-4 were written by the writer of S-1 to S-54. In the cross-examination, he has stated that the person who had written Q-1 to Q-12 in Art. 101 was not very good at English language. He has denied the suggestion that the writings i.e. Q-1 to Q-12 in Art.101 showed clear signs of duress.

824. PW-265 is Sharad Vichare, the SEO who had conducted the identification parade. He had conducted identification parade on 18/2/2009. According to him, the identifying witnesses were PW-38 Rajendra Bhosale and PW-35 Gulabkar and they identified A2-Ansari in the identification parade.

825. PW-14 is Shivaji Shivekar. He is pancha to panchnama (Ex-99) under which map (Art.101) was recovered from the right side pocket of cargo trouser (Art. 3) of deceased A1-Abu Ismail. He is also a pancha to inquest panchnama (Ex-97) of deceased A1-Abu Ismail. In the cross-examination, he has admitted that Ex-97 and Ex-99 were prepared one after another. He has admitted that two different pens were used for writing Ex-97 and Ex-99 and both the panchnamas (Ex-97 and Ex-99) were written by the same constable. He has denied that Ex-97 was prepared on 27/11/2008 and Ex-99 was prepared after about 2 to 3 weeks of the incident. He has denied that the police had not seized sketch map (Art.101) in his presence.

826. PW-27 is API Subhash Warang. He has drawn panchnamas (Ex-97 and Ex-99). He has identified Art.3 when shown to him in the court as the same cargo trouser, which was removed from the dead body of

deceased A1-Abu Ismail. He has stated that the inquest panchnama of dead body of deceased A1-Abu Ismail was drawn by him in the trauma ward in the presence of two panchas. He has stated that Dr. Mohite was present at that time in the trauma ward. According to him, there were in all, seven injuries on the dead body. There was one bullet injury on right side of the right eye. There was one injury on left rear side of the head. There were two injuries 5 cm below the right shoulder on front portion. There was one injury on right index finger. There were two injuries below the left armpit. There was one injury on left thigh 5 cm above knee joint. There were abrasions on the right knee. There were blood stains on rear side of the underwear of deceased A1-Abu Ismail. It was seized. He has acknowledged his signature on the panchnama (Ex-97). He has described the cargo trouser (Art.3) of deceased A1-Abu Ismail as under:

> *1) One cargo trouser of dark blue colour having label of 'RAPIDFIRE Landon'. There were blood stains at some places on the said trouser. Blood*

stains were on left portion of the trouser. There was small hole just above the knee portion of the trouser.

827. He has stated that there were six pockets to the cargo trouser. Two were on the rear side and two each were on left and right side. According to him, the sketch map was recovered from the right side pocket of the cargo trouser. It was just above the knee portion of the trouser. The sketch map shows various locations of Mumbai city. When Art.101 was shown to him, he identified the same as the same sketch map recovered from Art.3. He has stated that the said map was seized during the course of panchnama (Ex-99). In the cross-examination, he has stated that there was only underwear on the dead body of deceased A1-Abu Ismail. The other clothes were removed before commencement of inquest panchnama. He has accepted that in inquest panchnama, it is not stated as to where the clothes of deceased A1-Abu Ismail were kept or stored during the course of inquest panchnama. He has accepted that it is not stated in the panchanama that the underwear was wrapped in a

polythene bag and a label having his and panchas signatures was affixed on the polythene bag. He has admitted that in the panchnama, it is not stated as to whether the blood stains on the clothes of deceased A1-Abu Ismail were wet or dried. According to him, it took him around two to three minutes to complete examination of clothes of deceased A1-Abu Ismail. He has denied that there were wet blood stains on clothes of deceased A1-Abu Ismail. He has denied the suggestion that his hands were stained with blood during handling of clothes of deceased A1-Abu Ismail. He has stated that the statement made in the panchnama that the photographs of all the seized articles were taken from different angles is not correct. This witness volunteered and stated that it was written due to inadvertence on his part. He has further stated that the photographs of clothes of A1-Kasab and identity card were taken during the course of panchnama (Ex-99). No other photographs were taken during the course of panchnama (Ex-99). When the cargo trouser (Art.3) was shown to him, he stated that

there appear to be blood stains on the corners of the pocket. He admitted that it is not stated in the panchnama as to whether the sketch map was found in upper right pocket or lower right pocket. He has denied the suggestion that there were more stains on right side of the trouser as compared to left side. He has stated that the sketch map (Art.101) was found in the trouser pocket on which there was label of 'RAPIDFIRE'. He has admitted that there were stains on left corner of the said pocket. He has denied that there were stains on other portion of the said pocket. He has stated that he did not find it necessary to seize the clothes during the course of inquest itself. According to him, the sealing of clothes of deceased A1-Abu Ismail was completed around 4.00 a.m. on 27/11/2008. He has stated that the clothes of deceased A1-Abu Ismail were not seized under the panchnama (Ex-97) because they were wet. The clothes were kept on a stretcher below the ceiling fan for drying. According to him, the blood stains on the underwear had dried by the time, the inquest panchnama was drawn. He

has stated that there was no heavy blood on the stretcher where the dead body of deceased A1-Abu Ismail was kept. He has denied that the clothes had not dried till the time of panchnama. He has denied the suggestion that the clothes had not dried till 5.00 a.m. on 27/11/2008.

828. PW-213 Ashok Kumar Raghav is Addl. S.P. (Intelligence) of U.P. Police. At the relevant time, he was working as Addl. S.P., Special Task Force (STF) He was attached to Meerut Office of STF. He has stated that on 1/1/2008, there was a terror strike on CRPF camp. Seven CRPF jawans and one civilian were killed during the said attack. An offence was registered at Civil Lines Police Station, Rampur, vide Crime No.8-08. Since, he was attached to STF, he was to collect intelligence and to work out the case registered at Civil Lines Police Station, vide Crime No.8-08. During the course of investigation of the said crime, A2-Ansari was arrested near Rampur Bus Stand at 00.10 hours on 10/2/2008 along with two other persons. According to him, none of the persons from the

locality had come forward to act as pancha. According to him, personal search of A2-Ansari and his associates was taken on the spot. During the search, a Pakistani passport bearing No.BM 6809341 issued in the name of Hassan Hammad, having photograph of A2-Ansari as its holder, one identity card issued by Hukumate Pakistan which had identity card number, nine maps on ruled notebook papers and one map on a plain white paper, two railway tickets – one from New Delhi to Mumbai dated 12/2/2008 and other one from Bandra Terminus to Muzzafarpur dated 10/1/2008 were recovered. According to him, all the articles were seized and sealed and panchnama was prepared on the spot. The panchnama is at Ex-197. He identified A2-Ansari as the same person who was arrested by him on 10/2/2008 at Rampur. When the seized articles, inter alia, the passport, identity card, maps, two notebook papers containing information relating to computer, etc. were shown to him in the court, he identified them as the same articles seized by him from A2-Ansari under panchnama (Ex-197). In his cross-

examination, he has denied that the documents seized from A2-Ansari were never sealed in any envelop. He has denied the suggestion that the documents have been fabricated.

829. PW-254 is Manpreet Vohra. He was working as Joint Secretary of Ministry of External Affairs. He was working as Deputy High Commissioner in Indian High Commission at Islamabad, Pakistan from February, 2007 to August, 2009. He has stated that the Government of Pakistan and the Government of India have been exchanging information about terror attack on Mumbai dated 26/11/2008. He has produced in the court office copy of the Dossier of A2-Ansari which was given to Pakistan Government by the Indian Government. The relevant pages of Dossier are at Ex-1063 (Colly.). According to him, on 11/7/2009, he had visited the office of Director General (South Asia) in Foreign Ministry of Government of Pakistan. The Director General had handed over the Dossier to him which included information about passport

of Fahim Arshad Ansari @ Hammad Hassan issued by the Government of Pakistan. According to him, he was told that the passport bearing No.BM 6809341 was issued to Fahim Arshad Ansari (A2-Ansari) in the name of Hammad Hassan on the basis of fake identity and particulars. He produced the original Dossier given to him by the Director General (South Asia). He has produced the original Dossier. He has also produced the xerox copy of the cover page and paragraph No.31 of the Dossier. The original of the Dossier was returned to the witness. The xerox copy of note and xerox copies of cover page and paragraph No.31 of the Dossier are taken on record. They are at Ex-1064 (Colly.). There is no effective cross-examination of this witness.

830. PW-261 is Krantikumar Varma. He was working as Document Examiner at Forensic Science Laboratory, Lucknow. According to him, Dy. Inspector General of Police, Anti Terrorist Squad had sent him specimen handwritings and questioned documents for his opinion.

There were twelve questioned documents which were required to be compared with the specimen documents. They are at Art.803 (Colly.) and Art.804 (Colly). They were marked as Q-1 to Q-16. The specimen handwritings received by him from the Dy. I.G. A.T.S. were marked as S-1 to S-32. They are at Art.990 (Colly.). According to him, the photographer of the laboratory had taken photographs of all the documents with a digital camera and a CD was prepared thereof. Thereafter, he started examination of original documents. He had examined the questioned documents and specimen documents and come to the conclusion that the author of Art.990 (Colly.) i.e. S-1 to S-32 was also the author of Art.803 (Colly.) and Art.804 (Colly.) i.e. Q-1 to Q-16. His opinion is at Ex-1085 and his reasons are at Ex-1086. There is no effective cross-examination of this witness.

831. PW-23 is Dr. Shailesh Mohite, who had done the postmortem of deceased A1-Abu Ismail. He has given the nature of injuries suffered by deceased A1-Abu Ismail. We

have already noted the injuries of deceased A1-Abu Ismail. But, in the context of the present appeal, it is necessary to quote them again. They are as under:

> *"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 hemorrhage 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 hemorrhages 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 midaxillary 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 hemorrhages 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."

832. In the cross-examination, he has stated that he was in the trauma ward along with 8 to 10 police officers. The photographs of deceased A1-Abu Ismail were taken during the course of postmortem examination. However, the photographs were not taken at the time of inquest panchnama. He has stated that he had not seen any photographer in trauma ward. He has stated that considering the number and nature of injuries, it can be said that there might be loss of large amount of blood. He has further stated that none of the wounds mentioned as external injuries would lead to profuse bleeding. He has stated that the injuries mentioned at serial Nos.2 and 4 as external injuries would lead to cascading bleeding. According to him, the total blood loss due to the said injuries could be around 500 ml. to 1000 ml. and the white bed sheet, in which the body was wrapped after inquest panchnama, was found soaked with blood at places. He has denied the suggestion that there was profuse bleeding from head to toe when he had seen the

dead body in trauma ward. He has stated that there were blood stains only on left thigh. He has denied the suggestion that there were blood stains on both the thighs. He has stated that the stretcher was such that blood oozing from injuries would collect on the stretcher. He has further stated that the clothes were not immediately sealed after removal from the dead body.

GIST OF THE EXAMINATION OF A2-ANSARI AND A3-SHAIKH UNDER SECTION 313 OF THE CODE.

833. When A2-Ansari was asked while he was being examined under Section 313 of the Code, whether when he was arrested on 10/2/2008 by Rampur Police, Pakistani passport issued in the name of Hassan Hammad and identity card issued by Hukumate Pakistan having an identity card number, two railway tickets, one from New Delhi to Mumbai dated 12/2/2008 and the other from Bandra Terminus to Muzaffarpur dated 10/1/2008 and ten maps were recovered from him, he stated that it is false.

When he was asked that PW-213 Ashok Kumar Raghav of U.P. Police has identified the passport (Art.801), the identity card (Art.802) and the maps [Art.803 (Colly.)], he stated that it is false. When he was asked that PW-261 Kranti Kumar Verma, Handwriting Expert has after examination of specimen handwriting and the maps [Art. 803 (Colly.)] had come to the conclusion that the specimen handwriting and the handwriting on Art.803 (Colly.) were of the same person, he stated that it is false. When he was asked whether he had to say anything more about the case, he stated that he was apprehended at Lucknow on 1/2/2008 by the Special Task Force of U.P. Police, he was then brought to Mumbai and interrogated in Mumbai and then he was sent back to U.P. He stated that he is not concerned with the incident of 26/11/2008. According to him, he was beaten by the officers of the Crime Branch and was forced to prepare a sketch map (Art.101) after his arrest.

834. Similarly, when A2-Ansari was asked whether he was

in search of a residential accommodation at Colaba near Badhwar Park somewhere in the year 2007, whether he acquired a room belonging to PW-40 Shantabai Bhosale at Patthe Bapurao Marg, whether he had stayed in the said room for about one month, whether as stated by PW-36 Vivek Saxena, he had taken admission in the Softpro Computer Education situated at Fort, Mumbai by impersonating himself as Sahil Pawaskar, whether he had signed the inquiry form (Ex-168) and application form (Ex-169) in the presence of PW-36 Vivek Saxena and whether the signatures on Ex-168 and Ex-169 are his, he stated that all this is false. When he was asked whether his specimen signatures were taken and they were examined by PW-146 Jayant Aher, he stated that his specimen signatures were never taken. When he was asked whether the sketch map (Art.101) showing various locations of Mumbai city was recovered from the clothes of deceased A1-Abu Ismail on the intervening night of 26/11/2008 and 27/11/2008, he stated that it is false. When he was asked whether the said map and specimen

signatures were sent to the Handwriting Expert for his opinion, he stated that it is false. When he was asked whether PW-146 Jayant Aher, the Handwriting Expert opined that the handwriting on the sketch map (Art.101) and his specimen handwriting were written by one and the same person, he stated that it is false.

835. In his statement recorded under Section 313 of the Code, A3-Shaikh has also denied all the allegations made by the prosecution against him.

836. The evidence led by the prosecution so far as involvement of A2-Ansari and A3-Shaikh is concerned, did not find favour with learned Sessions Judge and he acquitted A2-Ansari and A3-Shaikh.

THE GUIDING PRINCIPLES IN RESPECT OF APPEAL AGAINST ACQUITTAL AND REASONINGS.

837. We must first consider what is the scope and extent

of powers of the High Court under Section 378 of the Code. The law in this regard is well settled by a catena of judgments of the Supreme Court. A Division Bench of this High Court in ***State of Maharashtra v. Haribhau Krishnaji 2003 (4) Mh.L.J. 1060*** considered two decisions of the Privy Council and relevant judgments of the Supreme Court from 1952 to 1996 and deduced the following principles:

> *"22. In our opinion, the scope and extent of powers of the High Court under section 379 of the 1978 Code is well defined and has been disclosed by the above referred judgment of the Supreme Court of India. In our opinion, the consistent and well settled law on the point is that the High Court can interfere with the order of acquittal only when:*
>
> 1. *The appreciation of evidence by the trial Court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence.*
>
> 2. *Where the application of law is improperly done.*
>
> 3. *Where there is substantial omission to consider the evidence on record.*
>
> 4. *The view taken by the acquitting*

> *Court is impermissible on the evidence on record.*
>
> 5. *If the order of acquittal is allowed to stand it will result the miscarriage of justice."*

838. In ***Jaswant Singh,*** the Supreme Court laid down the principles to be followed by the appellate courts while dealing with an appeal against acquittal. The Supreme Court observed that the order which is clearly unreasonable would justify interference. The relevant observations made by the Supreme Court read as follows:

> *" 21. The principle to be followed by appellate Courts considering an appeal against an order of acquittal is to interfere only when there are"compelling and substantial reasons" for doing so. If the order is "clearly unreasonable" it is a compelling reason for interference (See : Shivaji Sahabrao Bobade v. State of Maharashtra, [1973] 2 SCC 793). The principle was elucidated in Ramesh Babulal Doshi v. State of Gujarat:(SCC p. 229 para 7)*
>
> *"While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial*

> *court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions.*"
>
> *(See also George v. State of Kerala)*

839. In ***Allarakha K. Mansuri,*** the Supreme Court again had an occasion to deal with the scope of High Court's power of interference with the order of acquittal. The Supreme Court held that where two views are possible, the one favouring the accused's innocence should be adopted. However paramount consideration should be to avoid miscarriage of justice. The relevant observations of the Supreme Court read as under:

> *"7.The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an*

> *innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."*

840. In ***Aruvelu v. State (2009) 10 SCC (Cri.) 206***, the Supreme Court referred to its earlier judgment in ***Ghurey Lal v. State of U.P. (2008) 10 SCC 450*** and relying upon its other judgments observed as under:

> *"34. In **Ghurey Lal v. State of Uttar Pradesh [(2008) 10 SCC 450,** a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the appellate court in dealing with the cases in which the*

trial courts have acquitted the accused. The following principles emerge from the cases above:

1. *The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

2. *The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.*

3. *The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*

4. *The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

5. *If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts*

must rule in favour of the accused.

36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either `perverse' or wholly unsustainable in law."

841. In ***Satyavir Singh,*** the Supreme Court referred to its decision in ***Kunwar Bahadur Singh v. Shiv Baran Singh (2001) 9 SCC 149*** and to its decision in ***Aruvelu*** and observed that unless the conclusions reached by the Court are palpably erroneous or contrary to law or are likely to result in injustice, the High Court may be reluctant to interfere with the judgment of acquittal. The Supreme Court referred to its observations in ***Kunwar Bahadur Singh*** that the Court should not hesitate to examine the matter on merits merely because there is a

judgment of acquittal in favour of the accused and undue weightage should not be given if acquittal is based on surmises and conjectures and not substantiated by law and evidence on record. The Supreme Court concluded that the judgment of acquittal can be interfered with by the appellate court. However, exercise of judicial discretion would be guided by the settled principles. The Supreme Court further stated that it is neither permissible nor possible to enunciate any straitjacket formula which can be universally applied to all the cases. The court will have to exercise its discretion keeping in view the facts and circumstances of a given case.

842. In ***Lakhwinder Singh,*** while considering the judgment of the High Court acquitting the accused, the Supreme Court observed that the judgment of the High Court is based on surmises and conjectures and after re-appreciating the evidence on record, the Supreme Court came to the conclusion that there are sufficient cogent grounds to disturb the acquittal. Accordingly, the

judgment and order passed by the High Court was set aside and the order of trial court was restored. We shall examine this case in the light of the above principles.

843. The star witness of the prosecution is PW-160 Naruddin Shaikh. Learned Sessions Judge has not totally discarded his evidence but has held that he is neither a wholly reliable witness nor a wholly unreliable witness and, therefore, corroboration is necessary to his evidence. According to learned Sessions Judge, corroboration is absent in this case. We are inclined to agree with learned Sessions Judge. PW-160 Naruddin Shaikh is a resident of Goregaon. It appears that he stays in Goregaon with his family. He claims that A2-Ansari is his childhood friend. He is a driver by profession. He stays in a joint family. He has stated that he has not worked as a regular driver anywhere. He has stated that the last job he had undertaken was between 12/8/2009 and 15/8/2009 and that he does not have any regular employment anywhere. According to him, he works on daily wages whenever the

work is available. In view of this evidence, in our opinion, learned Sessions Judge is right in observing that his evidence does not disclose that he has any regular source of income. In our opinion, PW-160 Naruddin Shaikh's statement that he went to Nepal as a tourist with Bharat Thakur cannot be accepted without corroboration. It is not the case of the prosecution that Bharat Thakur with whom he is supposed to have gone to Nepal had borne the expenses of his visit to Nepal. It was the duty of the prosecution to bring particulars about the source of income of PW-160 Naruddin Shaikh on record. We are not inclined to accept Mr. Nikam's submission that either PW-160 Naruddin Shaikh or the Investigating Officer should have been asked questions on this point because, it was the duty of the prosecution to unfold its case properly.

844. It is also necessary to note that PW-160 Naruddin Shaikh has not given any particulars as to the date when he left Mumbai for Nepal, date of his arrival in Nepal, by

which train he went to Nepal and the name of the hotel where he stayed in Nepal. He has stated that at Sonavali border, a Register is kept where names of the persons crossing the border are noted. He has stated that he exchanged currency there. It was, therefore, the duty of the prosecution to bring relevant extract of the said Register on record or lead some other cogent evidence in that behalf. That, he exchanged currency at Sonavali boarder is also not substantiated by any evidence. Mr. Nikam is right when he says that being a tourist, PW-160 Naruddin Shaikh would not have foreseen that his ticket would be necessary for investigation in respect of some incident which might take place in future and, therefore, he was not expected to preserve the tickets. However, we are unable to accept Mr. Nikam's submission that PW-160 Naruddin Shaikh would not be able to remember even the name of the train by which he is alleged to have gone to Nepal or he would not remember the name of the hotel in which, according to him, he stayed. It is pertinent to note that he stayed in a hotel in Nepal for a sufficiently long

time. He does not appear to be a person who can afford to go on pleasure trips to foreign countries frequently. Therefore, in the nature of things, one would expect him to remember the name of the train by which he travelled to Nepal and the name of the hotel where, he says, he stayed. He has not even given the approximate time when he went to Nepal. The argument that PW-160 Naruddin Shaikh did not remember these particulars is not palatable because, normally a person who visits a foreign country that too, for the first time, would not forget details of the train by which he travelled or the name of the hotel in which he stayed. It was, therefore, necessary for the prosecution to lead some evidence to establish PW-160 Naruddin Shaikh's alleged visit to Nepal.

845. Bharat Thakur would have provided a very vital corroborative piece of evidence. According to PW-160 Naruddin Shaikh, Bharat Thakur comes from Nepal. It is true that this fact is not disputed by the defence. It is not disputed that though Bharat Thakur does not have his

own house in Nepal, his relatives reside in Nepal. If PW-160 Naruddin Shaikh went with Bharat Thakur to Nepal, then the prosecution should have examined Bharat Thakur particularly when his statement was recorded by the police. The prosecution has, in this connection, taken a stand that Bharat Thakur was unavailable though efforts were made to serve him and, therefore, the prosecution cannot be blamed for non-examination of Bharat Thakur. It is true that summons was issued to Bharat Thakur and effort was made to serve the summons on Bharat Thakur at his house. We have perused the record and we find that Bharat Thakur's wife was present when the summons was sought to be served. She appears to have told the police that Bharat Thakur had gone out. There is nothing on record to show that any further efforts have been made to contact Bharat Thakur.

846. Assuming that action under Sections 82 and 83 of the Code could not have been taken because warrant was not issued, the police could have made further attempts

to serve Bharat Thakur. Bharat Thakur has a house in Goregaon where he is staying with his wife. It was, therefore, not impossible for the police to serve summons on him. The police ought to have made further efforts. Deposition of PW-160 Naruddin Shaikh was recorded on 29/9/2009. The prosecution knew the shortcomings of the evidence of PW-160 Naruddin Shaikh and, therefore, in order to corroborate his evidence, the prosecution ought to have taken all the possible steps to examine Bharat Thakur. If PW-160 Naruddin Shaikh's evidence was of sterling quality, we would not have insisted on examination of Bharat Thakur. But, we agree with learned Sessions Judge that though the evidence of PW-160 Naruddin Shaikh cannot be discarded as wholly unreliable, the prosecution story cannot be accepted on his sole testimony. Corroboration was needed to his evidence, which is absent in this case.

847. Once it is held that PW-160 Naruddin Shaikh's visit to Nepal is not established, then the entire story that A2-

Ansari handed over the maps to A3-Shaikh which were similar to the map (Art.101) and PW-160 Naruddin Shaikh had occasion to see them and that he asked A2-Ansari whether he had started the business of preparing maps and that A3-Shaikh told him that his friends from Pakistan are coming and for that purpose, they needed the maps, cannot be held to be proved beyond doubt.

848. It must be noted, however, that learned Sessions Judge's conclusion that statement of PW-160 Naruddin Shaikh is anti-dated, is not correct. This conclusion is drawn on the basis of a stray statement made by PW-160 Naruddin Shaikh that A2-Ansari was arrested in this case before his statement was recorded by the police. PW-160 Naruddin Shaikh's statement was recorded on 5/12/2008. The evidence on record clearly establishes that A2-Ansari was arrested by Rampur Police on 10/2/2008 and he was arrested by the Mumbai Police in this case on 18/12/2008. This observation is, therefore, incorrect. We also find that there is no delay in recording his statement. Incident took

place on 26/11/2008 and 27/11/2008. After carrying out investigation and obtaining necessary leads, statement of PW-160 Naruddin Shaikh was recorded on 5/12/2008. In the circumstances of the case, and looking to the nature of the offence, we do not find that there is any delay in recording statement of PW-160 Naruddin Shaikh.

849. We will now examine whether there is sufficient corroboration to PW-160 Naruddin Shaikh's evidence from the other evidence on record. According to the prosecution, A2-Ansari was arrested by PW-213 Ashok Kumar Raghav of U.P. Police at Rampur on 10/2/2008 and on his arrest a Pakistani passport (Art.801) bearing his photograph as holder of the same issued in the name of Hassan Hammad and identity card issued by Hukumate, Pakistan and maps showing locations of Mumbai city [Ex-803 (Colly.)] and two train tickets, one from Delhi to Mumbai having travel date of 12/2/2008 and another from Mumbai to Muzafarabad having travel date of 10/1/2008 were recovered. The date of issuance of the said passport

is 10/11/2007 and the date of expiry of passport is 30/10/2012 and the entries on the said passport show that A2-Ansari left for Kathmandu on 15/11/2007 and he entered Nepal on the same day i.e. on 15/11/2007. According to the prosecution, the exchange of maps was in January, 2008. Thus, the passport (Art.801) supports the prosecution theory that near about the same time, the maps were exchanged by A2-Ansari to A3-Shaikh in Nepal. According to the prosecution, PW-213 Ashok Kumar Raghav is supported by PW-254 Manpreet Vohra, the Deputy High Commissioner in Indian High Commission, Islamabad, Pakistan.

850. We have carefully read the evidence of PW-213 Ashok Kumar Raghav, Addl. S.P. (Intelligence), Uttar Pradesh. It appears from his evidence that on 10/2/2008, A2-Ansari was arrested by Rampur Police in connection with terror attack on CRPF in which seven CRPF jawans and one civilian were killed. From A2-Ansari, a Pakistani passport issued in the name of Hassan Hammad (Art.801),

identity card (Art.802) and maps [Art.803 (Colly.)] were recovered. We have seen maps [Art.803 (Colly.)] and we find that the maps contain important locations of Mumbai city. Cross-examination of this witness is totally ineffective. We have no reason to disbelieve this witness. We have also carefully read the evidence of PW-254 Manpreet Vohra, the then Dy. Commissioner in Indian High Commission at Islamabad. He has stated that the Government of India and Government of Pakistan exchange information in connection with investigation of cases pertaining to the terror attack on Mumbai which took place on 26/11/2008. He has stated that the Director General (South Asia) in Foreign Ministry of Government of Pakistan had handed over Dossier to him which included information about passport of Fahim Arshad Ansari @ Hammad Hassan issued by Government of Pakistan. He has stated that he was told that passport was issued to A2-Ansari in the name of Hassan Hammad on the basis of fake identity and particulars. He produced in the court the original Dossier given to him by the Director General

(South Asia) in Foreign Ministry of Government of Pakistan. He produced xerox copy of the note, xerox copies of cover page and relevant paragraph 31 of the Dossier which are at Ex-1064 (Colly.). The original was returned to him. PW-254 Manpreet Vohra has also produced xerox copies of office copies of page Nos.11, 12 and 30 to 33 [Ex-1063 (Colly.)] of Dossier of A2-Ansari. Ex-1063 (Colly.) inter alia, contains the relevant pages of A2-Ansari's passport with photograph. It is indeed the photograph of A2-Ansari whom we have seen in the court. Cross-examination of this witness has not made any dent in his evidence. We have no reason to disbelieve this witness. While recording the statement of A2-Ansari under Section 313 of the Code, when he was asked that a passport issued in the name of Hassan Hammad and bearing his photograph as holder thereof and identity card issued by Hukumate, Pakistan were recovered from him, he stated that it is false. When he was asked that maps [Art.803 (Colly.)] were recovered from him and that PW-261 Krantikumar Varma, the Handwriting Expert, after

examination of specimen handwriting and the handwriting on the maps [Art.803 (Colly.)] has come to the conclusion that the specimen handwriting and the handwriting on the maps [Art.803 (Colly.)] were of the same person i.e. A2-Ansari, he stated that this case is false. Thus, when A2-Ansari was asked about the maps [Art.803 (Colly.)] and the passport (Art.801), he has not given any explanation.

851. Now the question is even if we find that the evidence of PW-213 Ashok Kumar Raghav and PW-254 Manpreet Vohra cannot be discarded, how far can that help the prosecution in this case. We have already noted that the prosecution has not been able to establish that A2-Ansari handed over maps to A3-Shaikh in January, 2008 in Kathmandu, Nepal. If that link is not established, then finding of maps showing locations of Mumbai and Pakistani passport with A2-Ansari will not help the prosecution to hold A2-Ansari guilty in this case. We are informed that in this connection, a criminal case is pending before the Rampur Court. That court will decide

as to whether A2-Ansari is guilty or not independently and in accordance with law. But, the prosecution cannot draw any advantage from this evidence in this case. The version of PW-213 Ashok Kumar Raghav and PW-254 Manpreet Vohra will have to be considered along with other evidence by the Rampur Court where the said criminal cases are pending.

852. Another circumstance on which great reliance is placed by the prosecution is that A2-Ansari wanted to give logistic support to the accused and, therefore, he was looking for a residential accommodation in South Mumbai and, in fact, he took residential accommodation on rent at Colaba near Badhwar Park somewhere in the year 2007 from PW-40 Shantabai Bhosale. The prosecution has adduced evidence of PW-35 Gulabkar, the PCO owner, who has stated that A2-Ansari had given him Rs.5,000/- and was constantly asking him to find a place for him. He has stated that he could not find a place for A2-Ansari and ultimately, he returned Rs.4,500/- to A2-Ansari. He has

stated that A2-Ansari had impersonated himself as Sahil Pawaskar. He identified A2-Ansari in the identification parade as well as in the court as the person who contacted him for the residential accommodation. The prosecution has also relied upon the evidence of PW-38 Rajendra Bhosale, who has stated that one Kumar Shivaji, an Estate Agent, had brought A2-Ansari to him because A2-Ansari wanted a place to stay in South Mumbai. He, therefore, took both of them to PW-40 Shantabai Bhosale, who wanted to let out her premises and, thereafter, a leave and licence agreement was executed between them. A2-Ansari paid a deposit of Rs.50,000/- and the rent was decided at Rs.3,000/- per month. PW-40 Shantabai Bhosale rented her premises to A2-Ansari. PW-40 Shantabai Bhosale has supported this case and stated that A2-Ansari had, in fact, stayed in her premises and had left abruptly without taking his deposit amount from her. Copy of the leave and licence agreement dated 10/12/2007 is on record. In this connection, learned Sessions Judge has observed that the prosecution failed to

bring on record the original leave and licence agreement. PW-40 Shantabai Bhosale has stated that she had handed over the original agreement to the police. Learned Sessions Judge has held that if that is so, the police ought to have produced the original agreement on record. Mr. Nikam submitted that learned Sessions Judge was not deciding a civil dispute and he should not have insisted on the original agreement. He should have only considered whether in fact, A2-Ansari stayed with PW-40 Shantabai Bhosale under the fictitious name of Sahil Pawaskar. In our opinion, even if this agreement is kept out of consideration, it is possible to hold on the basis of the evidence of PW-40 Shantabai Bhosale, PW-38 Rajendra Bhosale and PW-35 Jeevan Gulabkar that A2-Ansari did stay in the house of PW-40 Shantabai Bhosale under a fictitious name 'Sahil Pawaskar'. Examination of Estate Agent, Kumar Shivaji was not necessary considering the fact that PW-40 Shantabai Bhosale who rented her premises to A2-Ansari and PW-38 Rajendra Bhosale, who had taken Kumar Shivaji to her, have been examined.

PW-38 Rajendra Bhosale and PW-35 Jeevan Gulabkar have identified A2-Ansari in the identification parade as well as in the court. PW-40 Shantabi has identified him in the court. There is no reason to disbelieve these witnesses.

853. To this case of the prosecution, corroboration is available from further evidence which the prosecution has adduced. It is the prosecution case that during the relevant period, A2-Ansari took admission in Softpro Computer Education at Fort, Mumbai. In this connection, the prosecution has examined PW-36 Vivek Saxena who is the manager of Softpro Computer Education. He has produced inquiry form (Ex-168) and the admission form (Ex-169), which are stated to have been filled in by A2-Ansari. The photograph of A2-Ansari is seen on the admission/application form (Ex-169). On the request made by Mr. Nikam, we had called A2-Ansari to our court. We found that the photograph on Ex-169 is the photograph of A2-Ansari. The prosecution has also led evidence of PW-146 Jayant Aher, who had examined the

specimen handwriting of A2-Ansari and his handwriting on the inquiry form (Ex-168) and application/admission form (Ex-169) and has confirmed that they are in the handwriting of A2-Ansari. It is is not the case of A2-Ansari in the statement recorded under Section 313 of the Code that he was forced to fill in the inquiry form (Ex-168) and application/admission form (Ex-169) of Softpro Computer Education. He has merely stated that this case is false. It is pertinent to note that A2-Ansari has given PW-40 Shantabai Bhosale's address as his current address in the application/admission form (Ex-169).

854. We have no reason to disbelieve PW-36 Vivek Saxena, the Manager of Softpro Computer Education. He has stated that A2-Ansari had visited their institute on 10/12/2007. He has stated that A2-Ansari filled in the inquiry form (Ex-168). He has stated that A2-Ansari signed Ex-168 in his presence. He has also identified the signature of A2-Ansari on admission form (Ex-169). He has produced the receipt issued by him (Ex-170). In

the cross-examination, he has stated that there were only 30 students in the institute in December, 2007. He has admitted that he was not in the teaching faculty, but he used to take rounds of the institute. It is suggested that since PW-36 Vivek Saxena was working on the administrative side, he would not remember the students. It is difficult to accept this submission. There were only 30 students in the institute in December, 2007. Therefore, this institute does not appear to have many students. It was, therefore, not difficult for PW-36 Vivek Saxena to remember the faces of the students. A2-Ansari had signed (Ex-168) in the presence of this witness. Both Ex-168 and Ex-169 bear signature of this witness and signature of A2-Ansari. Receipt was also issued by this witness. There is, therefore, no reason to disbelieve him. Cross-examination of this witness has not made any dent in his evidence.

855. We find no substance in Mr. Mokashi's submission that instead of producing the loose sheets, the

prosecution should have produced the Register maintained by the Computer Institute, the muster roll and, if A2-Ansari had not attended the classes, a certificate to that effect from the said Computer Institute. Softpro Computer Education is not like a college or any other educational institution. Attendance in such classes is optional. It is not compulsory. When the inquiry form and admission form are produced, there was no need to produce the muster roll or attendance certificate.

856. It appears that in his examination under Section 313 of the Code, A2-Ansari was not confronted with his photograph on application/admission form (Ex-169). Mr. Nikam therefore requested us that we should put that question to him. We did not accede to his request. We are dealing with an appeal against acquittal. A2-Ansari has been asked whether as stated by PW-36-Vivek Saxena, he had taken admission in the Softpro Computer Education by impersonating himself as Sahil Pawaskar, whether he has signed the inquiry form (Ex-168) and

application/admission form (Ex-169) in the presence of PW-36 Vivek Saxena and whether the signatures on Ex-168 and Ex-169 are his signatures. He has answered that this case is false. Therefore, in our opinion, it is not necessary to ask him any question about his photograph. Even if that photograph is kept out of consideration, it is possible to hold that A2-Ansari took admission in the Softpro Computer Education. The question is whether assuming A2-Ansari took admission in Softpro Computer Education, this finding of ours will help the prosecution in this case. The answer to this question is in the negative. Assuming he had stayed in the house of PW-40 Shantabai Bhosale and had taken admission in Softpro Computer Education that does not help the prosecution. It does not in any way link A2-Ansari with A1-Kasab and other conspirators in this case. It is not the prosecution case that after the accused landed in Mumbai, A2-Ansari helped them. As we have already noted the handing over of maps in Nepal itself is not proved. Therefore, these circumstances even if held to be proved will not help the

prosecution.

857. That takes us to the map (Art.101) which according to the prosecution, was recovered from the right side pocket of cargo pant worn by deceased A1-Abu Ismail under panchnama (Ex-99). According to the prosecution, this map showed the locations of Mumbai city and it was handed over by wanted A5-Kaahfa to deceased A1-Abu Ismail in Pakistan as per the conspiracy.

858. Before we go to the merits of this part of the prosecution case, we must refer to the observations of learned Sessions Judge about the fact that inquest panchnama (Ex-97) and the seizure panchnama (Ex-99) are scribed in different ink. He has stated that that creates a doubt. We find no substance in this submission. Mr. Nikam has drawn our attention to various documents of the same day which are on record. They are prepared round about the same time. They are of the same police station. There is a difference in the ink used while writing

those documents. Therefore, it is possible that different pens are used for writing Ex-97 and Ex-99 also. It is pertinent to note that there is ten minutes' gap between these two panchnamas. Therefore, not much importance can be given to the difference in ink. We are also not inclined to accept learned Sessions Judge's reasoning that when maps are available on Google website, it was not necessary for the terrorists to carry them. Printed maps may confuse a person because of the vast information contained therein. Manually prepared maps which may focus on certain special locations may be more useful. But, the question is whether map (Art.101) was found in the pocket of deceased A1-Abu Ismail?

859. Learned Sessions Judge has disbelieved the prosecution case that map (Art.101) was found in the right side pocket of the cargo pant worn by deceased A1-Abu Ismail on the ground that considering the fact that deceased A1-Abu Ismail was carrying this map with him for a long period of time on his journey from Pakistan to

Badhwar Park, then to CST, then to Cama Hospital and then to Girgaum Chowpaty where he was shot dead, and considering the role played by deceased A1-Abu Ismail, the map (Art.101) would have been soiled. Since map (Art.101) is a thin paper, there would have been wrinkles on the map. According to him, deceased A1-Abu Ismail had received serious injuries and blood was oozing from those injuries, therefore, there would have been blood stains on the said map. He has observed that deceased A1-Abu Ismail was kept on a stretcher which is 'C' shaped. Therefore, the blood gathered in the curve of the stretcher must have percolated through the trouser and map would have got blood stains. Since there are no blood stains, the prosecution story must be rejected.

860. It is true that on the right leg of deceased A1-Abu Ismail, there were no injuries. There was only one abrasion. The postmortem notes, the inquest panchnama and evidence of PW-23 Dr. Mohite, and PW-14 Shivekar, the panch witness also indicate that there were no injuries

on the right leg of deceased A1-Abu Ismail. It is also true that since map (Art.101) was kept in the front pocket of the trouser, which is on the upper thigh, blood which might have collected in the curved portion of the stretcher could not have reached there. But, in order to understand the rival submissions, we had a look at the cargo pant (Art.3), particularly the pocket from where the map (Art. 101) was recovered. There are small spots of blood on the boarder of the pocket. We find that the appeal memo contains a sketch of the pocket. It shows that there were blood stains on the corner of the right side of the pocket. There are two spots of blood on the upper portion. This fact is admitted in the appeal memo. Thus, the prosecution has also come with the case that there were blood stains on the corner and upper portion of the right side pocket. In such circumstances, the view taken by learned Sessions Judge on this aspect cannot be called perverse. Merely because some other view is possible that view cannot be disturbed. It also cannot be disputed that deceased A1-Abu Ismail played a major role in the

attack. He threw hand grenades. He fired with AK-47 rifles. Along with A1-Kasab, he had jumped over the Cama Hospital rear gate. His movements were swift. It is true that the map (Art.101) may not be with A1-Abu Ismail right from the time it was given to him. Before he landed he has changed clothes twice. He must have kept it at a secured place looking to its importance. But once, they started from Badhwar Park, it was with him. We have seen map (Art.101). It is a map drawn on a thin paper. From Badhwar Park to Chowpaty, deceased A1-Abu Ismail's movements were packed with action. Therefore, the view taken by learned Sessions Judge that there should have been some wrinkles on the map (Art.101) cannot be called perverse or unreasonable. It is a reasonably possible view.

CONCLUSION

861. In the ultimate analysis, we feel that though evidence of PW-213 Ashok Kumar Raghav, the Addl. S.P.

(Intelligence), Uttar Pradesh and PW-254 Manpreet Vorha, the Deputy High Commissioner, Pakistan cannot be discarded and though on the basis of evidence on record, it is possible to hold that A2-Ansari did stay in PW-40 Shantabai Bhosale's house situate in South Mumbai by impersonating himself as Sahil Pawaskar and it is also possible to hold that he did take admission in Softpro Computer Education, Fort, Mumbai by impersonating himself as Sahil Pawaskar, this evidence does not help the prosecution in this case because the prosecution has not established beyond doubt the handing over of maps by A2-Ansari to A3-Shaikh in Kathmandu in January, 2008. Stay of A2-Ansari in PW-40 Shantabai Bhosale's house or his taking admission in Softpro Computer Education by itself is not sufficient to link him with A1-Kasab and other conspirators in this case. So far as absence of wrinkles and blood stains on map (Art.101) is concerned, the view taken by learned Sessions Judge is a reasonably possible view. The view taken by him that the prosecution has not been able to establish beyond reasonable doubt that

map (Art.101) was recovered from the right side pant packet of deceased A1-Abu Ismail because had it been recovered, it would have wrinkles and blood stains, cannot be called perverse. A2-Ansari's acquittal must, therefore, be upheld.

862. Once we come to a conclusion that the prosecution has not been able to establish its case against A2-Ansari beyond reasonable doubt, it must be held that the prosecution has also not been able to establish its case against A3-Shaikh. In fact, once we hold that PW-160 Naruddin Shaikh's evidence is not corroborated and, therefore, the prosecution case about the exchange of maps in Kathmandu, Nepal cannot be accepted, A3-Shaikh cannot be convicted in this case. As held by learned Sessions Judge, A2-Ansari and A3-Shaikh must get the benefit of doubt.

863. We have held that A1-Kasab's confessional statement is true and voluntary and can be relied upon

because, it is corroborated by other evidence. The question is whether part of the statement which relates to involvement of A2-Ansari and A3-Shaikh can be kept out of consideration. We have at the outset noted all the principles underlying the evidentiary value of judicial confession. It is open to the court to accept the inculpatory part of the confessional statement and exclude the exculpatory part. It is open to the court to accept a part of the confessional statement which is corroborated by other evidence on record and exclude that part which is not corroborated. In view of this, we find no difficulty in excluding that part of the confessional statement which refers to the involvement of A2-Ansari and A3-Shaikh as there is no sufficient corroboration to that part.

864. In an appeal against acquittal unless the view taken by the trial court is totally perverse and unsustainable, it cannot be disturbed. Undoubtedly, some other view of the prosecution case about involvement of A2-Ansari and

A3-Shaikh may be possible. But, merely because some other view is possible, if the view taken by the trial court is reasonably possible, it cannot be substituted by that other view. Examined on the touchstone of the principles which we have noted in the beginning, we are of the view that the view taken by learned Sessions Judge so far as involvement of A2-Ansari and A3-Shaikh in this case is concerned, cannot be called unreasonable, palpably false, manifestly erroneous and demonstratively unsustainable which merits our interference. The State Appeal will have to be, therefore, dismissed. We, however, make it clear that so far as the merits of the cases pending against A2-Ansari and A3-Shaikh in Rampur are concerned, we have not expressed any opinion. Nothing said by us in this judgment may be treated as our expression of opinion on the merits of those cases. The court seized of those cases shall dispose them of, independently in accordance with law. Having dealt with the State Appeal, we shall now go to the conviction and sentence of A1-Kasab.

865. We have dealt with each incident separately, we have confirmed the findings of learned Sessions Judge in respect of each incident after giving reasons for the same. We have held that the prosecution has successfully proved the offence of criminal conspiracy and waging war. We now proceed to the aspect of conviction and sentence.

(1) In view of the reasons stated hereinabove, we confirm the conviction of A1-Kasab of the offence punishable under Section 120-B read with Section 302 of the IPC.

(2) We confirm the conviction of A1-Kasab of the offence punishable under Section 121 of the IPC.

(3) We confirm the conviction of A1-Kasab of the offence punishable under Section 16 of the Unlawful Activities (Prevention) Act, 1967.

(4) We confirm the conviction of A1-Kasab of the offence punishable under Section 302 of the IPC for having committed murders of;

a) Amarchand Narav Solanki

b) Sitaram Mallapa Sakhare

c) Rahamutall Ibrahim

d) Vinod Madanlal Gupta

e) Ambadas Ramchandra Pawar

f) Abbas Rajjab Ansari

g) Tukaram Ombale

(5) We confirm the conviction of A1-Kasab of the offences punishable under Section 302 read with Section 34 of the IPC and under Section 302 read with Sections 109 and 120-B of the IPC.

866. For all these offence A1-Kasab is sentenced to death.

We have heard arguments of learned counsel for the State and learned counsel for A1-Kasab on the question whether death sentence of A1-Kasab should be confirmed or not. We will deal with that aspect after we deal with the conviction and sentence of other offences.

(1) We confirm the conviction and sentence of A1-Kasab for offences punishable under Section 307 read with Section 34 of the IPC and under Section 307 read with Section 109 read with Section 120-B of the IPC.

(2) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 392 read with Section 34 of the IPC.

(3) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 397 of the IPC.

(4) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 364 of the IPC.

(5) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Section 333 read with Section 34 of the IPC and under Section 333 read with Section 109 read with Section 120-B of the IPC.

(6) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Section 332 read with Section 34 of the IPC and under Section 332 read with Section 109 read with Section 120-B of the IPC.

(7) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Sections 121-A and 122 of the IPC.

(8) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Section 25(1B)(a), under Section 25(1A) and under Section 27 of the Arms Act.

(9) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 9-B(1)(a)(b) of the Explosives Act.

(10) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 3(b) of the Explosives Substances Act, 1908.

(11) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 151 and under Section 153 of the Railways Act.

(12) We confirm the conviction and sentence of A1-Kasab under Section 3(3) of Passport (Entry into India) Act, 1920.

(13) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 135(1)(a) of the Customs Act.

(14) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Section 342 read with Section 34 of the IPC and under Section 342 read with Section 109 read with Section 120-B of the IPC.

(15) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Section 343 read with Section 34 of the IPC and under Section 343 read with Section 109 read with Section 120-B of the IPC.

(16) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 436 of the IPC.

(17) We confirm the conviction and sentence of A1-Kasab for the offences punishable under Sections 3 and 4 of the Prevention of Damage to Public Property Act.

(18) We confirm the conviction of sentence of A1-Kasab for the offences punishable under Sections 13, 18 and 20 of Unlawful Activities (Prevention) Act , 1967.

(19) We confirm the conviction and sentence of A1-Kasab for the offence punishable under Section 14 of the Foreigners Act.

877. Learned Sessions Judge has not imposed separate sentence for offences which are minor in nature as the sentence of death has been awarded to the accused for the offences punishable under Section 120-B read with Section 302 of the IPC. He has made punishment for the

offences committed in furtherance of common intention and similar offences abetted by A1-Kasab punishable with one and the same punishment. He has not awarded separate sentence for the offence covered by Section 34 and Section 109 read with Section 120-B of the IPC.

878. We shall now consider the question whether death sentence should be awarded to A1-Kasab for the offences punishable under Sections 120-B of the IPC read with Section 302 of the IPC, Section 121 of the IPC and Section 16 of the Unlawful Activities (Prevention) Act, 1967.

879. Mr. Nikam, learned Special Public Prosecutor submitted that the death sentence awarded to A1-Kasab deserves to be confirmed. He submitted that there are special circumstances which should persuade this court to confirm the death sentence. According to him, A1-Kasab has exhibited exceptional cruelty and brutality. The mode and the manner in which the murders are committed by A1-Kasab and his abnormal behaviour

shocks the conscience. Mr. Nikam submitted that the murders are committed with previous planning. Evidence of the prosecution witnesses and A1-Kasab's confessional statement confirm this fact. Mr. Nikam submitted that extreme brutality is evident from the manner in which A1-Kasab killed navigator Solanki. It is not possible to say that A1-Kasab is a misguided soul or that he was brainwashed by his handlers. He has voluntarily joined the conspiracy. He has made it clear to PW-218 Ms. Sawant-Waghule, learned Magistrate who recorded his confessional statement that he wants more Fidayeens like him to be created. He waged war against the Government of India. He tried to overawe Government of India and the Government of Maharashtra by show of criminal force. Mr. Nikam submitted that such a person does not deserve any sympathy.

880. Mr. Nikam drew our attention to the judgment of the Supreme Court in ***Bachan Singh v. State of Punjab 1980 (2) SCC 684***, where the Supreme Court has noted

the aggravating and mitigating circumstances which the courts must consider while dealing with the question whether extreme penalty of death should be awarded to a person or not. He also drew our attention to the judgment of the Supreme Court in ***Machhi Singh & Ors. v. State of Punjab, 1983 (3) SCC 470*** where after following the guidelines laid down in ***Bachan Singh*** the Supreme Court has stated that balance sheet should be drawn of aggravating and mitigating circumstances and a just balance has to be struck before exercising option. Mr. Nikam submitted that in this case except young age, there is no other mitigating circumstances, however, insofar as the age is concerned, A1-Kasab's actions show that his mental age overrides his physical age. Though he knew the consequences of his actions he persisted in killing people and proclaimed that he is a Fidayeen and he wanted to set an example for people to follow. Mr. Nikam submitted that in any case young age is not always the decisive factor. In this connection he drew our attention to the judgments of the Supreme Court in ***Sevaka***

Perumal & Anr. v. State of Tamil Nadu, 1991 SCC (Cri.) 724 *and* ***Amrutlal Someshwar Joshi v. State of Maharashtra, 1994 (3) Crimes 726.*** Mr. Nikam submitted that assuming A1-Kasab was forced to join LeT that will also not be a ground for giving a lesser punishment because he could have easily contemplated the disastrous effect of his actions. In this connection, he relied on ***Adu Ram v. Mukna & Ors., 2005 SCC (Cri.) 1635*** *and* ***Krishna Mochi & Ors. v. State of Bihar, 2002 SCC (Cri) 1220***. He submitted that, if the extreme penalty of death is not awarded to A1-Kasab that would amount to mockery of justice. He submitted that if a balance sheet is drawn in this case aggravating circumstances would far outweigh the mitigating circumstances. Mr. Nikam submitted that A1-Kasab has killed women, children, senior citizens and policemen. He has never shown any remorse. There is no scope for rehabilitation for a person like him. Victim's cry for justice will also have to be taken into consideration by this court and if, in a case like this, death sentence is not awarded

there will be no deterrence. He, therefore, urged that the death sentence awarded to A1-Kasab be confirmed.

881. Mr. Solkar, learned counsel for A1-Kasab, on the other hand, submitted that A1-Kasab has no mind of his own. He acted like a robot. He was used as a tool by his handlers. He was brainwashed by the handlers. He was misguided and made to commit murders in the name of religion. He claims to be a Fidayeen. He is trained to die. Mr. Solkar submitted that his death will not deter people like him, but it will encourage them. He will become a martyr. In fact, A1-Kasab has stated that he wants to set an example for others. His death will fulfill his ideals and his religious beliefs and send signal across the border. Mr. Solkar submitted that the present trend in penology is to prefer rehabilitation to retribution. Considering A1-Kasab's age, which is a mitigating circumstance, it is possible to reform or to rehabilitate him. Mr. Solkar submitted that there are indications that A1-Kasab is mentally unstable. He committed the crime when he

appears to have been emotionally and mentally unstable and, therefore, this court should not give him death sentence. Mr. Solkar submitted that public abhorrence of crime or public reaction should not weigh with this court while considering the question of sentence. Mr. Solkar submitted that this is a fit case where this court should substitute life imprisonment for death sentence.

882. It is necessary to first refer to the relevant judgments of the Supreme Court to which our attention is drawn. The landmark judgment on this point is delivered in ***Bachan Singh's*** *case*. In that case, the Supreme Court laid down the mitigating and aggravating circumstances which the court has to consider when it is called upon to decide whether death sentence should be awarded to a person or not. It would be appropriate to quote them.

> *"**Aggravating circumstances** : A court may, however, in the following cases impose the penalty of death in its discretion:*
>
> *(a) if the murder has been committed*

after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure,k 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

*"**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.

The following observations of the Supreme Court are also material.

> *"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency – a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. 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."*

883. In ***Machhi Singh***, the Supreme Court reiterated the principles laid down in ***Bachan Singh*** and stated that 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 realized 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 Supreme Court further observed that 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. The Supreme Court emphasized that every member of the community owes a debt to the community for this protection and that 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 Supreme Court went on to observe that 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. The Supreme Court laid stress on '*the manner of commission of murder*' and observed that 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, the death penalty will be justified. It is pertinent to note that the manner in which the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death, was stated to be a ground for awarding death sentence. The Supreme Court then moved on to '*the motive for commission of murder*' and stated that the death penalty would be justified when the murder is committed for a motive which evinces total depravity and meanness. A cold blooded murder committed for an unlawful purpose or a murder committed in the course of betrayal of motherland were stated to be aggravating circumstances.

884. The Supreme Court then referred to `*anti-social or socially-abhorrent nature of the crime*'. The Supreme

Court stated that when a murder is committed not for personal reasons but in circumstances which arouse social wrath, which can terrorize people can also be considered as a ground for imposing death penalty. '*Magnitude of crime*' was also considered as one of the grounds which can prompt the court to impose the death penalty. The Supreme Court observed that when the crime is enormous in proportion for instance, when multiple murders 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, it would be good enough ground to impose death penalty. '*Personality of victim of murder*' will also be one of the circumstances. The Supreme Court laid down proposition which emerge from ***Bachan Singh's*** *case as under:*

(i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be

drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

885. The Supreme Court then stated that in order to apply the aforementioned guidelines, the following questions may be asked and answered.

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating

circumstances which speak in favour of the offender?

886. The Supreme Court concluded that if upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

887. In ***Devendra Pal Singh***, the accused had used bombs. Nine persons died due to the bomb blast, several persons were injured and a number of vehicles caught fire and were destroyed on account of the perpetrated acts. The Supreme Court observed that the dastardly acts were diabolic in conception and cruel in execution. “Terrorists” who are sometimes described as “death merchants” have no respect for human life. Innocent persons lose their lives because of mindless killing by them. The Supreme Court observed that any compassion

for such persons would frustrate the purpose of enactment and would amount to misplaced and unwarranted sympathy.

888. In ***Simon***, life imprisonment was awarded by the Sessions Court to the accused and it was confirmed by the High Court. The accused were members of Veerappan gang. They had killed 22 persons and injured several persons by blasting land mines. The Supreme Court enhanced the sentence of each of the accused from life imprisonment to death penalty. While doing so, the Supreme Court observed that there was nothing to show that the appellants therein were compelled to fall in line with the criminal activity of accused 1 therein or that they joined his group on account of any duress or compulsion. The Supreme Court further observed that the manner in which the crime was committed clearly show that any person can contemplate the disastrous effect of blasting of landmines. It was evident that the crime was diabolically planned. The Supreme Court observed that

the appellants therein are a threat and grave danger to the society at large. They must have anticipated that their activity would result in elimination of a large number of lives. The Supreme Court noted that as a result of criminal activities, the normal life of those living in the area has been totally shattered and it would be a mockery of justice if extreme punishment is not imposed. Having considered all the aggravating and mitigating circumstances, the Supreme Court held that there can hardly be a more appropriate case than the present one to award maximum sentence. The Supreme Court held that the court has to perform this onerous duty for self-preservation i.e. preservation of persons who are living and working in the area where the appellants therein and their group operate.

889. In ***Krishna Mochi***, a militant organization had attacked the members of a particular community in a village in Bihar and set fire to their houses. Thirty five persons were killed and several persons were injured.

The accused were awarded death sentence. The Supreme Court confirmed the death sentence. The Supreme Court while confirming the death sentence, held that there cannot be any manner of doubt that the villagers were done to death in an extremely diabolic, revolting and dastardly manner and had affected the normal tempo of life of the community in the locality. The Supreme Court observed that 35 persons belonging to one community were massacred. The Supreme Court held that after taking into consideration the balance sheet of aggravating and mitigating circumstances, in which 35 persons have been deprived of their lives by the accused persons who were thirsty of their blood, it had no doubt in holding that culpability of the accused persons assumes the proportion of extreme depravity and a special reason can legitimately be said to exist within the meaning of Section 354(3) of the Code and it would be mockery of justice if extreme penalty of death is not imposed.

890. In ***Amrutlal Someshwar Joshi***, the accused was

claiming to be a juvenile. After considering the evidence on record, the Sessions Court convicted the appellant under Section 302 of the IPC and sentenced him to death. The High Court confirmed the death sentence. His appeal was dismissed by the Supreme Court. The appellant filed review petition and requested that his young age may be considered as a mitigating circumstance and requested that the death sentence may be converted into life sentence. The Supreme Court upon considering the material on record came to the conclusion that he was 20 years of age on the date of the incident. The Supreme Court dismissed the review petition by holding that there is no inflexible rule that a criminal aged about 17 or 18 years should never be sentenced to death irrespective of other circumstances, however aggravating they may be.

891. In ***Sevaka Perumal***, the appellants therein had enticed innocent boys, taken them to far flung places and murdered them for gain in cold-blooded, premeditated and planned way. The Sessions Court sentenced them to

death. The High Court confirmed the death sentence. The Supreme Court dismissed the appeal. It was contended, inter alia, before the Supreme Court that the appellants therein were young boys and they were the breadwinners of their family and, therefore, compassionate view may be taken and their sentence may be converted into life. The Supreme Court rejected this submission and confirmed the death sentence. The Supreme Court held that the fact that the appellants therein are young men and they are the breadwinners of their family are compassionate grounds which are always present in most cases and they are not relevant for interference.

892. In ***Adu Ram***, the Supreme Court reiterated its observations in ***Sevaka Perumal*** and held that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law and society could no longer endure under such serious threats. The Supreme

Court observed that it is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

893. In the light of the Supreme Court judgments, we have now draw a balance sheet of aggravating and mitigating circumstances. After giving due weightage to mitigating circumstances, we must strike a just balance and exercise the option. For better appreciation, it would be appropriate to note the aggravating circumstances, which are clearly discernible.

(1) A1-Kasab is individually responsible for seven murders. He has committed more than 66 murders in furtherance of common intention of himself and deceased A1-Abu Ismail. He has committed rest of the murders by abetting them by conspiracy.

(2) All murders display extreme brutality and cruelty. They are committed after previous planning. Innocent people are mercilessly killed by A1-Kasab with use of AK-47 rifles and explosives. Those killed include women, children, aged people and policemen. The murders were committed in an extremely brutal grotesque, diabolical, revolting or dastardly manner so as to arouse extreme indignation of the community.

(3) The crime is enormous in proportion. The magnitude of the attack is indicative of the pre-planning. The attack unleashed such a wave of terror that several victims were not even ready to come forward and depose in the court. A1-Kasab is a threat to the society.

(4) A1-Kasab has exhibited extreme perversity and depravity. It was he who suggested that navigator Amarchand Solanki should be killed. Deceased A9-Shoaib and deceased A3-Nazir @ Abu Umar caught hold of the legs of Amarchand Solanki. A1-Kasab caught hold of his hair and slit his throat. The postmortem notes of Amarchand Solanki and confessional statement of A1-Kasab bear this out. This was a cold blooded murder.

(5) A1-Kasab planted RDX bomb in a taxi which exploded at Vile Parle killing the innocent passenger and the driver of the taxi and seriously injuring many.

(6) PW-52 Khaliluddin and his son were

seriously injured at CST due to firing and bomb blast. He identified A1-Kasab in the court as the person who was firing indiscriminately at the people at CST. He has stated that A1-Kasab, who was firing was in a joyous mood due to the result of his firing. He continued to fire at people for 15 to 20 minutes. It is evident that A1-Kasab took perverse pleasure in killing innocent people.

(7) Another incident of perversity of A1-Kasab is narrated by PW-108 Thomas Uledhar, who was in Cama Hospital at the relevant time. He had seen A1-Kasab from close quarters. He identified A1-Kasab in the court. He has stated that the terrorists could not attack the patients because they were hiding in the toilets and sister's check up room, but they were searching

for patients. In his confessional statement, A1-Kasab has stated that as they entered a building at B.T. Road to avoid police firing, they realized that it was a hospital because he could hear women screaming and children crying. They decided that they would go to hospital rooms and kill women and children. They, therefore, tried to open the doors of the rooms, but could not succeed because they were closed from inside. This is indicative of A1-Kasab's warped mental attitude. He had no qualms about killing patients admitted in hospital.

(8) Before recording his confessional statement, learned Magistrate PW-218 Ms. Sawant-Waghule asked A1-Kasab as to why he wanted to make a confessional

statement. He stated that he wanted to make a confessional statement because he was not sorry for what he had done. He stated that he wanted more Fidayeens like him to be created after taking inspiration from his work. Thus, he never showed any remorse or repentance for what he had done, but loudly proclaimed that he wanted to be a role model for others.

(9) In his confessional statement, A1-Kasab has stated that they had decided that he and deceased A1-Abu Ismail would go to VTS (CST), create heaps of dead bodies by firing at people and then they would proceed to Malabar Hill and fire. He has further stated that they reached Mumbai late by one and half hour. They found that the crowd at CST was much less than

what they were shown on the CD and, therefore, they were unhappy. A1-Kasab was obviously unhappy because they wanted to kill more people. He has, therefore, no value for human lives. He took devious pleasure in killing people.

(10) A1-Kasab was not compelled by LeT to fall in line with LeT's ideology. His confessional statement shows that he willingly and voluntarily joined LeT. He had decided to take training for jehad. He willingly took extensive training for jehad. When wanted A2-Zaki-Ur-Rehaman Lakhvi asked the trainees to stop the operation for a while, he told him that for years he wanted to successfully carry out the mission and he should not stop it now. He did not leave the camp when he was asked to go home for a while but

continued to serve the trainees. Therefore, it is impossible to say that he was misguided by LeT; that he did not have a mind of his own or that he was merely used by the handlers as a tool. He is not a misguided person. He knew the consequences of his actions and he wanted to be a part of the conspiracy and voluntarily joined it.

(11) Perhaps the weightiest aggravating circumstance is that A1-Kasab waged a war against the Government of India pursuant to a conspiracy which was hatched in Pakistan, the object of which was to inter alia, destabilize Government of India and to weaken India's economic might. He indulged in mindless killings of innocent people with a view to overawing Government of India and achieve

cessation of a part of Indian territory. There was an attempt to create ill-will and disaffection between different religions of India so as to damage its secular fabric. Waging war is a serious crime which calls for deterrent punishment.

(12) A1-Kasab along with co-conspirators killed policemen. He and his co-conspirators engaged the policemen and commandos in a battle. Effort was made by the conspirators to keep people hostages so as to make the Government of India helpless and accede to their unlawful demands. They challenged the Indian Army and the State Police. A1-Kasab targetted CST which is under the command of the Central Government. The terrorist attack made by A1-Kasab was not like any other terrorist attack

> which merely results in the breach of police tranquility. It was an attack on the Government of India whose stability is most essential and crucial for the very existence of democratic India. A1-Kasab challenged the sovereign authority of Republic of India which offence calls for the severest punishment.

894. The only mitigating circumstance is the age of A1-Kasab, but as stated by the Supreme Court in the aforementioned cases age is not always a decisive factor for giving lesser penalty of life imprisonment. Extreme brutality and diabolic nature of the crime which arouses public indignation can override this consideration. The brutality, perversity and cruelty exhibited by A1-Kasab by committing multiple murders of innocent men, women, children, aged persons and policemen without provocation for a motive which has no moral justification makes this case a gravest case of extreme culpability. The conduct

of A1-Kasab shows that his mental age overrides his physical age. He has never shown any repentance, but has loudly proclaimed that he wants to create more Fidayeen by setting an example by his conduct. It is impossible to agree with Mr. Solkar that A1-Kasab is mentally unstable or that he has committed these crimes because he was emotionally disturbed. This submission was rejected by us by our reasoned order dated 15/12/2010. That order has assumed finality. In any case, in our short interaction with A1-Kasab on Video Conferencing, we observed his demeanour. He did not appear to be repentant at all. He was perfectly sane. He was in proper frame of mind. All his actions, the manner in which he committed the crime, his cleverly trying to change his stand in the court and other attendant circumstances portray a scheming mind and not a mind of a mentally unstable person. It was argued that A1-Kasab is a Fidayeen, that he had come here to die, that his death will fulfill his desire, that he will become a martyr and that will encourage more people to take his path. We

unhesitantly reject this argument. It is important to note that on the GPS, the terrorists had saved the routes from Mumbai to Karachi. There was, therefore, a desire to go back after successfully achieving the despicable target and embark upon similar activities. We are of the confirmed opinion that any misplaced or unwarranted sympathy would be counterproductive. The argument that he will become a martyr and, therefore, death sentence should not be awarded to him does not deter us from confirming death sentence. We want those who are desirous of emulating him to know that Courts do not take a kindly view of such people.

895. There is hardly any scope for a person like A1-Kasab to be rehabilitated or reformed. In any event, in some cases, the harsh penalty of death is necessary to warn those who may want to take similar path. Strong arm of law must deal with A1-Kasab firmly otherwise a wrong signal will be sent that the courts are ineffective in dealing with crimes as serious as this. Soft handling of a

crime like this will erode the public confidence in the efficacy of law.

896. We remind ourselves of the observations of the Supreme Court in ***Dhananjay Chatterjee***, which are as under:

> *"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 state 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 befitting 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".*

897. Thus, the punishment must befit the crime. The punishment must reflect public abhorrence of the crime. The rights of the victims must also be kept in mind. Examined in the light of the settled principles and after

drawing the balance sheet, we are of the considered opinion that in this case, the lone mitigating circumstance i.e. young age of A1-Kasab must recede in the background. Even after according maximum weightage to the age factor, we feel that there is no alternative but to confirm the death sentence. This is, indeed, a rarest of rare cases involving uncommon and unprecedented crime for which sentence of life imprisonment is inadequate. We feel that we would never be as confident as we are today in confirming the death sentence. We are of the opinion that the death sentence must be confirmed. In view of this, we hold that learned Sessions Judge is right in not imposing sentences for minor offences. He is right in not awarding separate sentences for the offences covered by Section 34 and Section 109 read with Section 120-B of the IPC.

898. Before we part with the judgment, we must mention that in this terror attack, some brave policemen and one NSG commando have laid down their lives for the people.

Some of them were seriously injured while dealing with the terrorists. We will be failing in our duty if we do not acknowledge their sacrifice. We close this judgment by expressing our deepest sense of gratitude to them.

899. Hence, the following order:

O R D E R :

(A) The appeal field by A1-Kasab being Criminal Appeal No.738 of 2010 is dismissed.

(B) Death sentence of A1-Kasab is confirmed and Confirmation Case No.2 of 2010 is disposed of accordingly.

(C) The appeal filed by the State of Maharashtra being Criminal Appeal No.606 of 2010 is dismissed.

[SMT. RANJANA DESAI, J.]

[RANJIT MORE, J.]