REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1899-1900 OF 2011

MOHAMMED AJMAL MOHAMMAD
AMIR KASAB @ ABU MUJAHID … APPELLANT

VERSUS

STATE OF MAHARASHTRA … RESPONDENT

WITH

CRIMINAL APPEAL NO.1961 OF 2011

STATE OF MAHARASHTRA … APPELLANT

VERSUS

FAHIM HARSHAD MOHAMMAD YUSUF
ANSARI & ANOTHER … RESPONDENTS

AND

TRANSFER PETITION (CRIMINAL) NO.30 OF 2012

RADHAKANT YADAV … PETITIONER

VERSUS

UNION OF INDIA & OTHERS … RESPONDENTS

J U D G M E N T

Aftab Alam, J.

1. The appellant, Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid (hereinafter referred to as 'the appellant' or as '*Kasab*'), who is a Pakistani national, has earned for himself five death penalties and an equal number of life terms in prison for committing multiple crimes of a horrendous kind in this country. Some of the major charges against him were: conspiracy to wage war against the Government of India; collecting arms with the intention of waging war against the Government of India; waging and abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; criminal conspiracy, common intention and abetment to commit murder; committing murder of a number of persons; attempt to murder with common intention; criminal conspiracy and abetment; abduction for murder; robbery/dacoity with an attempt to cause death or grievous hurt; and causing explosions punishable under the Explosive Substance Act, 1908. He was found guilty of all these charges besides many others and was awarded the death sentence on five counts, life-sentence on five other counts, as well as a number of relatively lighter sentences of imprisonment for the other offences.

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2. Apart from the appellant, two other accused, namely *Fahim Ansari* and *Sabauddin Ahamed*, both Indian nationals, were also arraigned before the trial court and indicted on the same charges as the appellant.

3. At the end of the trial, however, the appellant was convicted and sentenced to death as noted above (*vide* judgment and order dated May 3/6, 2010 passed by the Addl. Sessions Judge, Greater Mumbai in Sessions Case No. 175 of 2009). The other two accused were acquitted of all charges. The trial court gave them the benefit of the doubt as regards the charges of conspiracy and abetment of other offences by conspiracy, and further held that the prosecution completely failed to establish those other charges that were made directly against them.

4. The judgment by the trial court gave rise to a reference to the Bombay High Court under Section 366 of the Code of Criminal Procedure (CrPC), registered as Confirmation Case No. 2 of 2010. In addition to the reference, two appeals also came to the High Court from the judgment and order passed by the trial court, one by the appellant against his conviction and sentences (Criminal Appeal No. 738 of 2010) and the other by the State of Maharashtra against the acquittal of the other two accused (Criminal Appeal No. 606 of 2010). The High Court, by its judgment and order dated February 21, 2011, confirmed the death sentences given to the appellant by the trial court and dismissed both the appeals. The High Court upheld

the judgment and order passed by the trial court in all material aspects: it sustained the appellant's conviction and confirmed the punishments given him by the trial court, but at the same time it did not interfere with the acquittal of the other two accused.

5. From the judgment of the High Court two appeals have come to this Court: one is a jail appeal by *Kasab* and the other is by the State of Maharashtra. The State's appeal seeks to challenge the acquittal of the other two accused by the trial court and affirmed by the High Court. The other two accused are impleaded in the State's appeal as Respondents No. 1 and 2. *Kasab* was unrepresented in the appeal preferred by him from jail and this Court, therefore, appointed Mr. Raju Ramachandran, senior advocate, assisted by Mr. Gaurav Agrawal, to represent him. He was thus able to get legal assistance of a standard and quality that is not available to a majority of Indian nationals approaching this Court against their conviction and sentence.

6. We may also state here that since it is a case of death sentence, we intend to examine the materials on record first hand, in accordance with the time-honoured practice of this Court, and come to our own conclusions on all issues of facts and law, unbound by the findings of the trial court and the High Court.

7. According to the prosecution, a sinister conspiracy was hatched in Pakistan and in furtherance of that conspiracy a savage attack was unleashed on Mumbai by a team of ten terrorists, including *Kasab*, who landed on the city's shores via the Arabian Sea. The attack began on November 26, 2008 at about 9.15 PM and it ended when the last of the attackers, who was holed up in Hotel Taj Mahal Palace, was killed by Indian security forces at about 9.00 AM on November 29. The brutal assault left Mumbai scarred and traumatized and the entire country shocked. The terrorists killed one hundred and sixty-six (166) people and injured, often grievously, two hundred and thirty-eight (238) people.[1] The loss to property resulting from the terrorist attack was assessed at over Rupees one hundred and fifty crores (Rs. 150 Cr.). The dead included eighteen (18) policemen and other security personnel and twenty-six (26) foreign nationals. The injured included thirty-seven (37) policemen and other security personnel and twenty-one (21) foreign nationals. Of those dead, at least seven (7) were killed by the appellant personally, seventy-two (72) were killed by him in furtherance of the common intention he shared with one *Abu Ismail* (deceased accused no.1) and the rest were victims of the conspiracy to which he was a party along with the nine (9) dead

[1] A complete list of people killed and injured is appended at the bottom of the judgment as Schedule No. I, forming part of the judgment.

accused and thirty-five (35) other accused who remain to be apprehended and brought to court.[2]

8. The case of the prosecution is based, of course, on investigations by the police, but a good deal of it also comes from the confessional statement of the appellant recorded under Section 164 of the CrPC. The confession of the appellant may be broadly divided into two parts, one relating to the conspiracy, planning and preparation for the attack, and the other relating to the actual attack on Mumbai, in execution of the conspiracy of which the appellant along with his "*buddia*"[3], the accomplice *Abu Ismail*, was a part. So far as the attack on Mumbai is concerned, every statement made by the appellant is corroborated over and over again by objective findings and evidences gathered by the prosecution. But the conspiracy and the preparation for the attack took place in Pakistan and, therefore, it was impossible for any agency of this country to make investigations in regard to that part of the case. Nevertheless, the investigators have been able to gather extensive material to corroborate even that part of the appellant's confession.

9. It would thus be convenient to present the case of the prosecution by beginning with the appellant's confessional statement.

[2] A complete list of the accused in three categories, i.e., (i) the three who faced the trial, (ii) the nine who died in course of commission of the crimes and (iii) the thirty five (35) who remain to be apprehended is appended at the bottom of this judgment as Schedule No. II, forming part of the judgment.

[3] A term used by the appellant; vernacular adaptation of buddy.

THE RECORDING OF THE CONFESSIONAL STATEMENT:

10. The appellant was brought before the Chief Metropolitan Magistrate, Mumbai, on February 17, 2009, to make his confessional statement. The Chief Metropolitan Magistrate referred him to Mrs. Sawant-Wagule, Addl. Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, before whom he was presented for recording his confessional statement in CR No. 198/08 of Detection of Crime Branch, Mumbai (one of the twelve (12) cases registered in connection with the offences committed by the invading group of terrorists) at 10.45 AM on the same day.

11. Mrs. Sawant Wagule proceeded to take his statement very slowly and with great circumspection. First of all, she had the appellant completely insulated from the police. She explained to him that from that point he was in her custody and not in the custody of the police. She asked him whether he was ill-treated or abused by the police in any manner and why he wanted to make the confessional statement. To her first question the appellant replied in the negative, and as for the reasons for him making a confession he said he would explain everything when his statement was recorded in detail. The magistrate further satisfied herself that the appellant was willing to make the confessional statement voluntarily and not under any pressure, coercion or allurement by the police or anyone else. Nonetheless, she did not take his statement on that day but told him that she wanted him to reflect

further on the matter, for which purpose she was giving him 24 hours' time. She then remanded him to judicial custody where he was not accessible to the police or any other agency.

12. When the appellant was brought back to her on February 18 at 11 AM, she had another long exchange with him. In the preliminary exchanges on the previous day she had found that the appellant had no difficulty in following or speaking in Hindi; thus, the interaction between the magistrate and the appellant took place, in question and answer form, in simple, everyday spoken Hindi. The magistrate, having satisfied herself that the police had no contact with the appellant in the past 24 hours, began by telling the appellant that she had no concern with the offences for which he was arrested or any connection with the police that had arrested him. She explained to him that he was under no compulsion to make the confessional statement and further, that whether he made the confessional statement or not, he would not be handed back to the police. She confirmed once again that the appellant wished to make the statement of his own volition and not under any influence.

13. The appellant told her his name and gave his address of a place in Pakistan. She asked him about his education and where, when and how he was arrested by the police. She asked him why was he brought to her and in reply he said that he

wanted to make a confessional statement. She asked for which offence he wanted to make confession. He replied that on November 26, 2008, he and his accomplices made a *Fidayeen* attack on Mumbai city and he wanted to make a confession about the attack and the conspiracy behind it. She asked when he felt like making a confession. He told her that the thought of making the confession came to him when he was arrested by the police. He added that he had absolutely no regret for whatever he had done. He wanted to make the confession to set an example for others to become *Fidayeen* like him and follow him in his deeds. The magistrate cautioned him by saying that he should make the statement only if he wished to do so. She further cautioned him by saying that any confessional statement made by him would be taken down in writing and it would be used as evidence against him and that might lead to his conviction. The appellant said he was aware of the consequences. The magistrate again asked him whether the police had given any inducement to him to make the confessional statement, such as by offering to make him an approver. He replied in the negative. She then asked if he needed an advocate while making the confession. Once again, he answered in the negative.

14. Even after this lengthy and detailed interaction, the learned magistrate did not take his confession on that day but gave him a period of 48 hours for further reflection, telling him that during that period he would not be in police custody but would be kept in jail in her custody. She advised him to reconsider the matter with

a composed mind. She then remanded him to judicial custody with the direction that he be produced before her on February 20, 2009, at 11 AM.

15. The appellant was produced before the magistrate as directed, on February 20 at 10.40 AM. The magistrate repeated the entire gamut of explanations and cautions at the end of which the appellant said that he still wanted to make his confession. It was only then did the learned magistrate proceed to record the statement made by the appellant under Section 164 of the Code of Criminal Procedure. The statement could not be fully recorded on February 20 and it was resumed on February 21 at 10.40 AM. On that date, the recording of the statement was completed. The learned magistrate has maintained a meticulous record of the proceedings before her on all those dates, duly signed by the appellant. After recording his statement, she also gave such certificates as required under sub-section 4 of Section 164 CrPC.

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16. Coming now to the main body of the confessional statement, it is in the form of a statement made by the appellant with only minimal interjections by the learned magistrate. She occasionally asked the appellant to clarify the meaning of some uncommon words or code words used in the conspiracy. The appellant's statement, made before the magistrate over two days, is long and rambling, at points repetitive and full of seemingly superfluous details that would appear quite unnecessary if

one is to take a limited view of the case and judge the culpability of the appellant only on the basis of the events in Mumbai. To that end, it would be quite simple and convenient to give a brief summary of the appellant's confessional statement. But such an approach will not do justice to the case and we intend to take a look at the full statement of the appellant with all its repetitions and details. We do so to be fair to both the prosecution and the appellant. The details given by the appellant have a bearing on the prosecution case, according to which conspiracy, conspiracy to wage war against India and waging war against India are some of the main crimes in the case, and the details given by the appellant throw a great deal of light on the commission of those crimes. Further, the details in the appellant's statement are relevant to the submission that the confessional statement is not truly voluntary but that the appellant was manipulated into making that statement. It is submitted on behalf of the appellant that no accused making an admission of his guilt would refer to those unnecessary details and that the great detail of the confessional statement only shows that it was not the appellant but the prosecution that was speaking through his mouth. We, therefore, scan the confession as it is, in full, unabridged and unadorned.

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THE KASAB NARRATIVE:

Family background:

17. The appellant started by giving his name as Mohammed Ajmal Mohammad Amir Kasab. He was born on September 13, 1987. He lived in Pakistan where his address was village Faridkot, tehsil-Dipalpur, district Okara, Punjab province, Pakistan. He attended the Urdu-medium Faridkot Government Primary School up to class 4. He lived in the village with his *Abbu* Mohammad Amir Shaban Kasab, his *Ammi* Noor-e-Elahi, younger brother Munir and younger sister Surraiya. He gave his father's mobile phone number. He had an elder sister and an elder brother, both of whom were married. The sister lived with her husband at a village in Pathankot, district Okara, and the brother lived in Lahore with his wife. He gave the names of the spouses of the elder sister and the elder brother and their respective addresses.

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18. After the immediate family he gave the names of his three paternal uncles, elder to his father, and their sons, who lived in village Mohammad Yar Chishti, Pathankot, district Okara, Pakistan. He also named a fourth paternal uncle, younger to his father, who lived with the appellant's father.

19. He then gave the names of his *Mamoon* (mother's brother) and his three sons and a daughter and their address; and the name of his *Khaloo* (mother's sister's husband), his address and mobile phone number.

20. He gave the name of another sister of his mother whom he called '*Mamo'* and her address.

21. He had two paternal aunts who were married. He gave their names and their addresses. He said that his *Mamoon* and *Mousi* (mother's brother and sister) had grown-up children.

22. Kasab added that his house at Faridkot had been taken by his father who earned his livelihood by plying carts. Kasab was fond of watching TV and Hindi movies; he named a number of popular Indian films that he had seen many times. He was in the habit of chewing tobacco. He was good friends with the village doctor, Mazhar, who had a dispensary near Faridkot bus stop.

23. After dropping out of school in the year 2000, Kasab and his friend Dittu started working as labourers in Faridkot. In 2001, he and his *Abbu* went to Lahore in search of employment. In Lahore he lived with his father and uncle, Ghulam Rasool, in a house they rented from Haji Qamar. He gave the detailed address of the house. On his father's instructions, Kasab started working as a labourer at "Mazdooron Ka Adda". He worked there for about five years. In the year 2005, his

father and uncle returned to their village. Kasab continued to stay in Lahore alone, living in rented accommodation. During this period he used to visit his village home. On one such visit, he quarreled with his *Abbu* over the money earned by him. After the quarrel he left the home and started living at Ali Hajveri Dargah in Lahore. Kasab's friend Shafique got him a job in Welcome Tent Service. He gave the full address of the establishment, the name of its owner and the mobile phone numbers of the owner and his son. He added that the owner of the establishment used to call him "*Balka*". It was here that Kasab met and befriended Muzaffar Lal Khan, who also worked there.

Induction into *Lashkar-E-Toiba*, Indoctrination and Training for "*Jihad*":

24. In November 2007, Kasab and Muzaffar Lal Khan went to Rawalpindi in search of better employment and took rented accommodation in Bangash Colony. It was here, around the month of December, that they saw members of *Lashkar-e-Toiba* going from door to door under the name of *Jamaat-ul-Dava*, collecting hides of goats sacrificed on *Eid-uz-Zoha*. They were asking people to donate the goat hides to help achieve independence for Kashmir. Kasab and his friend developed great respect for those people. They thought that those people were fighting for the liberation of Kashmir and they, too, should do something for their people. When they were working at Sarai Alamgir members of *Jamat-ul-Dava* were organising

camps at different places where they would go to listen to their speeches. He explained that after *Lashkar-e-Toiba* was banned in 2002, it started its activities in the name of *Jamat-ul-Dava.* At this time, Kasab and Muzaffar Lal Khan first thought of undergoing training for *Jihad*.

25. In December 2007, they took the address of the office of *Lashkar-e-Toiba* from a *moulvi* and reached its office at Raja Bazar, Rawalpindi. He added that the office was near Bangash Colony. There were two persons in the office who asked them the purpose of their visit. They replied that they wanted to undertake *Jihad*. The office people took their address in full and asked them to come the following day, with their clothes and other belongings. They returned the following day. On that day, a person in the office gave them a slip of paper with "*Daura-E-Suffa, Markaz-e-Toiba, Muridke*" written on it. He gave them directions for Muridke and told them to go there. They left for Muridke and, after traveling by bus for six hours, they reached Muridke bus stand. From there, they walked for about a kilometer and a half to reach the camp site. To the person there, they showed the letter and said that they had come for *Daura-e-Suffa*. After subjecting them to a search, he took them inside the office. There they showed the letter to a person called Fahadullah (wanted accused No. 8). He wrote down their names and addresses and admitted them for the training.

26. *Daura-e-Suffa* training lasted twenty one (21) days. There were thirty (30) other boys, apart from Kasab and his friend, doing the training. During this, they were first converted from Sunni (sect of Islam) to *Ahl-e-Hadis* and were given lessons in the Hadis (a study of the things said by the Prophet Muhammad and descriptions of his daily life). An *Ustad* conducted physical exercises. Besides, they were given lectures and lessons on *Jihad*. In those sessions Fahadullah and Mufti Sayeed (wanted accused No. 13) were the *Ustad*. The training took place between December 2007 and January 2008. In the course of the training, *Ustad* Abu Kafa (wanted accused No. 5) introduced them to Hafiz Sayeed, the *Ameer* of *Lashkar-e-Toiba* (wanted accused No. 1), Operational Commander Zaki-ur-Rehman Lakhvi (wanted accused No. 2), Area Commander Abu Al-Kama (wanted accused No. 4), Muzzamil alias Yusuf (wanted accused No. 6), Training-in-charge Abu Umar Sayeed (wanted accused No. 18) and Abu Hamza (wanted accused No. 3). Kasab added that Zaki-ur-Rehman Lakhvi was known as '*Chacha*' and Lakhvi. At that time Kafa told them that Abu Umar Sayeed arranged the training camps of *Lashkar-e-Toiba*.

[At this point the learned magistrate interrupted him to ask the meaning of the word *Ameer*. He said it meant leader].

27. Kasab said that *Ameer* Hafiz Sayeed exhorted them by saying that all *Mujahedeens* must fight for the independence of Kashmir; Zaki-ur-Rehman announced that the time had come for *Jihad*, adding that their orgainsation had been fighting in Kashmir for the last fifteen (15) years but the Hindustani Government was not allowing Kashmir to be independent. It had, therefore, become necessary to fight a war against Hindustan to capture Kashmir. Zaki-ur-Rehman Lakhvi asked them if they were ready to wage the war. They all said they were ready for the war. At that time, Abu Al-Kama told them that they had to attack the major cities of Hindustan; that they would wage war against Hindustan from within, so that it is weakened from the inside. He added that anyone who would die in this war would go to paradise. In response, Kasab and all his associates said that they were ready to launch an attack on Hindustan.

28. In February 2008, they were selected for *Daura-e-Amma* training. *Ustad* Fahadullah gave them a letter saying "*Bhai Vasool Daura-e-Amma*", and sent them to Mansera Markaz Aksa. They traveled for twelve (12) hours by bus to reach Mansera bus-stand from where they had to walk into the hilly region. There, at the entrance to the camp they were subjected to a search. They showed Fahadullah's note to the person at the gate and were allowed into the office. The person in the office wrote down detailed information concerning them in a register. After staying there for the day, they were taken to Buttel village in a van. From there the driver

of the van led them to the top of the hill on foot – a walk of about thirty (30) minutes.

29. In this second training of twenty-one (21) days they did physical exercises and practiced running and climbing over mountains. They were also given training in dismantling and assembling '*Kalashan*', rifles and pistols and taught how to fire these weapons.

[Here the magistrate asked him the meaning of '*Kalashan*'. He said '*Kalashan*' meant AK 47 rifle].

The Saving of Muzaffar:

30. During this training, Muzzafar's elder brother came and took him from there.

Further Training:

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31. Kasab told the magistrate that after the *Daura-e-Amma* training a *Mujahid* could go home if he so wished; alternatively, he could remain for three months of '*Khidmat*'.

[The magistrate asked him what '*Khidmat*' meant, to which he replied that it meant keeping watch on the new *Mujahids* who came for training, preparing food for them in the kitchen and generally looking after them].

32. He said that he remained to do '*Khidmat*' of the *Mujahedeens*. The '*Ustad*' for the trainees who came there during Kasab's '*Khidmat*' were Abu Abdul Rehman (wanted accused No. 9), Yusuf (wanted accused No. 15), Abu Anas (wanted accused No. 10) and Abu Bashir (wanted accused No. 11). Kasab did '*Khidmat*' during March, April and May, 2008.

33. Kasab's '*Ustad*', Abu Abdul Rehman, then asked him to go along with the other '*Mujahedeens*' to the office of *Lashkar-e-Toiba* at Model Town, District Okara for '*Daura-e-Khassa*'. As instructed, they went to Mansera bus-stand in the '*Lashkar-e-Toiba*' van. After traveling from there by bus for twelve (12) hours they reached Lahore Lorry Adda (bus-stand). From there they went to Okara bus-stand by bus and, after walking for about one kilometer, they reached the office of '*Lashkar-e-Toiba*' near a Masjid at the corner of a lane in Model Town. They told the people there that they had come to obtain the note for '*Daura-e-Khassa*'. After making inquiries of them and after making verifications on the telephone, the person present there wrote a letter saying "*Bhai Vasool*". He stamped this with the

flag of the '*Lashkar-e-Toiba*' and gave it to them. He also gave them the address of the '*Lashkar-e-Toiba*' training camp at Muzzafarabad.

34. All of them travelled 16/17 hours in a bus to Muzzafarabad. Kasab added that Muzzaffarabad is in POK. From there they walked for about an hour and, passing through a '*Lashkar-e-Toiba*' hospital called *Neelam Dariya*, they reached Sevai Nala. At that place there were 10/12 houses and a masjid of *Lashkar-e-Toiba* and the settlement was called '*Baitul Mujahedeen*'. They gave the *Rukka* (chit) to a person called Sayeed and entered the training camp, which was also called 'Maskar Aksa'. The camp was situated on Chehalbandi Hills of Muzzaffarabad. There was high security in this training camp and restrictions on moving in or out of the camp without the permission of the '*Ustad*'. Abu Muavia (wanted accused No. 28) was the '*Ustad*' of this training, which was conducted in the months of May, June and July, 2008.

35. Kasab told the magistrate that this training was of two and a half months in course of which they were turned into solid '*Jihadis*'. They were given lessons in Hadis, *Namaz* and Quran. In addition, they were taught to dismantle and assemble *Kalashans* and many kinds of rifles and pistols, and to fire from those weapons, to operate rocket launchers and the use of hand grenades. They were also given training in the use of satellite phones, GPS systems and map-reading. The physical

exercise comprised staying without food for 60 hours while climbing mountains with heavy loads on the back. He added that the training was very arduous, so much so that ten (10) *Mujahedeens* fled the training camp. Abu Muavia and Abu Hanzala (wanted accused No. 31) were the '*Ustad*' for this Daura.

36. During that training, a person unknown to Kasab visited the camp. At that time, *Ameer* Hafiz Sayeed, Zaki-Ur-Rehman Lakhvi and Kafa were present there. *Ameer* Hafiz Sayeed and Zaki-Ur-Rehman Lakhvi embraced the visitor, and '*Ustad*' Abu Muavia and Abu Hanzala saluted him in soldier style. Kafa introduced him to the trainees as Major General Saab (wanted accused No. 20) adding that the persons who were giving them training were his men. Major General Saab asked them their names and inquired about their training. He asked whether they had any complaints. They all answered that they had none. Major General Saab left after talking to them for about an hour.

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[At this point, the magistrate asked Kasab for the name of Major General Saab. He said they were not told his name]

37. Kasab said that after completion of the training his '*Ustad*' Muavia gave him Rupees one thousand and three hundred (Rs.1,300/-) and asked him to go home and then to *Ameer* Hafiz Sayeed's office at *Baitul Mujahedeen*.

Preparation for attack on India:

38. Kasab stayed at his village for one week and then, towards the end of July, 2008, he reached the office of Hafiz Mohammad Sayeed at *Baitul Mujahedeen*. From there '*Ustad*' Muavia took him to Selection Point at Sevai Nala, where 20/22 *Mujahedeens* like him were already present. Also present were *Ameer* Hafiz Mohammad Sayeed, Muzammil, Abu Hamza, '*Ustad*' Muavia, Kafa and Abu Al-Kama. The *Mujahedeens* were shown a CD on the laptop demonstrating how Salauddin had made a '*Fidayeen*' attack in Kashmir. Thereafter, Abu Al-Kama explained to them in detail how '*Fidayeen*' attacks were made in Kashmir.

39. *Ameer* Hafiz Sayeed selected them and gave them new names. He named Kasab 'Abu Mujahid' and Imran Babar from Multan of Punjab region 'Abu Aqsa'; Nasir of Faisalabad was named 'Abu Umar' and Nazir Ahmed 'Abu Omair'; Hafiz Arshad of Multan Road, Punjab, was called Abdul Rehman 'Bada' alias Hayaji; Abdul Rehman (Chhota) of Multan Road, Arabwala, was called 'Saqib'; Soheb from Narowala, Shakkar Garh, Punjab, was given the name 'Abu Soheb'. Some other colleagues of Kasab, who came from different places in Pakistan and whose names he did not recall but whom he identified with reference to the places from which they came, were similarly given pseudonyms by Hafiz Sayeed.

40. On the same day in the evening they were taken to the office of *Baitul Mujahedeen*.

41. The fifteen (15) selected persons then left for Markaz-e-Toiba, Muridke, for the *Daura-e-Ribat* training. In this session, which lasted one month, they were given intelligence training, such as gathering knowledge about the target, keeping watch on him, following him and dodging if someone were to follow them. Kasab described one of these tricks to the magistrate, telling her that if they suspected that they were being followed, they would switch on the indicator light on the right and then suddenly take a left turn. That is how they would find out if they were being followed. They learnt how to use fake identities while on a mission. Training in-charge Abu Sayeed gave special attention to this training. He would frequently come to them and make queries about the training.

42. During the training two of Kasab's colleagues, Nasad and Abu Muavia, left the camp and went away.

43. Abu Kafa and Imran (wanted accused No. 12) were the *Ustad* of this Dauara. During this training, Major General Saab came there twice. He watched them train and encouraged them. The Daura was completed in the end of August, 2008. At that time Muzammil alias Yusuf and Abu Al-Kama had also come there. Major Saab asked them if they could swim, to which they answered in the affirmative. Then Major Saab asked Kafa to give them marine training. Kafa said he would do so.

44. A few days later, in September, 2008, Kafa took them to Karachi by train. There they were lodged in a house in Azizabad *mohalla*. It was there in the month of September, 2008, that Ramzan started. Kafa took all the thirteen (13) *Mujahedeens* to the creek from where they all sailed to the sea at Karachi on two small boats. Here, they were put on a boat with an engine attached to it. On that boat a person called Hakim Saab (wanted accused No. 14) gave them three days' marine training. During the marine training they were taught to read and use maps, to fathom the depths of the sea, to use GPS for marine-ways, to cast fishing nets and to sail.

[At this point the magistrate asked Kasab why they were taught to cast fishing nets. He replied that in order to deceive the naval officers of the enemy they would say they were fishermen].

45. After the marine training, Kafa took them back to *Baitul Mujahedeen*. There, *Ameer* Hafiz Sayeed and Zaki-ur-Rehman Lakhvi asked them about the marine training.

46. Three days later, *Ameer* Hafiz Sayeed and Zaki-ur-Rehman Lakhvi sent six (6) *Mujahedeens* from among them (whose names Kasab told the magistrate) for a '*Fidayeen*' attack in Kashmir. On the following day, Abu Hamza introduced three men to their group: Ismail Khan from Dera Ismail Khan, Punjab, Fahadulla, and

Javed from Okara, Punjab. Hafiz Sayeed named them Abu Ismail, Abu Fahadullah and Abu Ali. Abu Hamza told the group that these three were '*Fidayeens*' like them; they had also taken training like them and they were also going with them to carry out the attack on Hindustan.

47. On the thirteenth (13th) Roza Hafiz Sayeed, Zaki-ur-Rehman Lakhvi, Muzammil alias Yusuf, Al Kama, Abu Hasan, Abu Kafa and Abu Umar Sayeed called them into the office of Baitul *Mujahid*. *Ameer* Hafiz Sayeed addressed them there. He said that the time for '*Jihad*' had come and they were now required to consider how best to launch the attack on Hindustan. After him Zaki-ur-Rehman Lakhvi spoke and said that the economic strength of Hindustan lay in Bombay and it was therefore necessary to direct the attack on Bombay. He added that they had taken good marine training and hence they would attack Bombay from the sea route. Major General Saab also came to this meeting. He embraced *Ameer* Hafiz and Zaki-ur-Rehman Lakhvi and they talked to each other at some distance from the rest of the group. After a while they came to the group and Zaki-ur-Rehman Lakhvi said that Major General Saab wanted to see their preparedness. Immediately, each of them was given a '*Kalashan*' and a loaded magazine. Major General Saab asked *Ameer* Hafiz to have the targets fixed at which *Ameer* Hafiz directed Kafa to fix ten (10) targets. Major General Saab said that when he shouted

"fire" they should fire a single shot and when he shouted "fire" twice they were to make 'rapid firing'.

48. All of them took position. Major General Saab watched them taking position and then he shouted "fire". Each of them fired a single shot. Except Imran Babar, everyone shot the target. *Ameer* Hafiz Sayeed rebuked Imran Babar severely. Major General Saab, too, told Imran Babar to practice shooting properly. Major General Saab then asked everybody to take position. They all resumed position and Major General Saab shouted "fire" twice. All of them emptied their magazines. Major General Saab then walked upto the targets and inspected them closely. He asked who had fired at (target) No.4. Kasab said it was he. Major General Saab complemented him saying that he had destroyed the target entirely. He told the others that they had to destroy the target fully using minimum bullets and then, pointing at Kasab, he told the others that this is the way firing should be done. He then left and went away.

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49. Then Kafa introduced them to a person called Zarar Shah (wanted accused No. 7). Kasab and Ismail asked him about Zarar Shah, at which he told them that Zarar Shah and Ibrahim were the *Ameer* of the media wing of their organization. Zarar Shah was a computer expert. He could use computer technology to make a call from Pakistan appear, deceptively, as if it was being made from some other

country. Zarar Shah and Ibrahim had set up a high technology media room. In this room they had collected maps, CDs and other information concerning the major cities of every country in the world on the basis of which they selected the targets and advised Zaki-ur-Rehman Lakhvi.

50. *Ameer* Hafiz Sayeed and Zaki-ur-Rehman Lakhvi then divided the ten (10) '*Mujahedeens*' into five (5) '*buddiyas'*.

[The magistrate asked what a '*Buddiya*' was. Kasab said '*Buddiya'* meant a pair].

51. The Buddiyas were: 1. Kasab & Ismail Khan; 2. Imran Babar & Nasir; 3. Soheb & Nazir Ahmed; 4. Hafiz Arshad alias Hayaji & Javed; and 5. Abdul Rehman (Chhota) & Fahadullah.

52. Then, Zaki-ur-Rehman Lakhvi told them that on the twenty-seventh (27^{th}) Roza they were to go and make the "*Fidayeen*" attack on Bombay. *Ameer* Hafiz Sayeed said to them that for going from Karachi to Bombay, a Hindustani boat would have to be hijacked and they would go to Bombay by that Hindustani boat. He added that the "*maali halat*" of Hindustan was based on "*videshi sailaniyon*". Therefore, in order to weaken the "*maali halat*" of Hindustan it was necessary to attack, among other places, those places frequented by "*videshi sailaniyon*".

[At this point the magistrate interrupted to ask the meanings of "*maali halat*" and "*videshi sailani*". Kasab translated the two expressions as "money power" and "foreign tourists"].

53. *Ameer* Hafiz Sayeed told them that they would fire from "*Kalashan*" while also throwing hand grenades at VTS, Malabar Hill, Taj Hotel at Colaba, Leopold Hotel, Oberoi Hotel and Nariman House Building where Israelis stayed in Bombay. He added that while firing they should specially target the Americans, the British and the Israelis because those people had greatly oppressed the Muslims. At VTS there would be a very large crowd and while firing there they should not think of whether their targets were Muslims or Hindus. They should just open 'brush fire' without any thought as to who they targeted. However, while firing at the hotels they should take care that no Muslim was killed in their attack. Then, Zaki-ur-Rehman Lakhvi asked the two "buddies" who were assigned the attack on the Taj Hotel and the Oberoi Hotel to set the two hotels on fire and to cause damage to them on a large scale. Zaki-ur-Rehman Lakhvi said that before launching the attack they must fix the RDX bombs around their targets. The bomb blasts would cause traffic jams and slow down the movement of the police coming to the rescue, and would thus make it easier for them to kill the policemen, besides many other people.

54. *Ameer* Hafiz Sayeed fixed the time for the attacks at 7.30 PM. When Kasab asked why the attack should take place at that particular time, Hafiz Sayeed explained that this was the time when the targeted places would be most crowded, and insisted that the attack must take place at 7.30 PM. Kafa told them that the ten (10) "*Mujahedeens*", would be given ID cards with fake Hindu names and that they would go to Hindustan with those fake ID cards. On the way, they would also tie sacred threads around their wrists like Hindus do. When Ismail asked about the need for ID cards and threads, Kafa replied that with those ID cards nobody could stop them and they would be easily successful in their mission. And the threads on their wrists would deceive the police.

55. Continuing his story, Kasab told the magistrate that at that meeting they decided that he and Ismail would begin firing at VTS to make piles of dead bodies. From VTS they would go to Malabar Hill and start firing there. Hafiz Arshad and Javed would do the firing at Hotel Taj; Fahadullaah and Abdul Rehman (Chhota) at Hotel Oberoi; Imran Babar and Nasir at Nariman House; while Soheb and Nazir would begin firing at Hotel Leopold and then join Hafiz Arshad and Javed at the Taj Hotel. Further, while going to VTS he would plant an RDX bomb under the driver's seat in the taxi; Nazir Ahmed and Javed would similarly place the bombs in the taxis they would hire to Leopold Hotel and Taj Hotel respectively. The taxis used by them would thus explode at some other place and no one would have any

clue regarding how they came and where they came from. The Buddiyas at Nariman House, Oberoi Hotel and Taj Mahal Hotel would talk to the media and falsely tell them that they had taken some people hostage and (on that strength) would ask the Hindustan Government to allow Kashmir to be free. They would deceive the media into believing that they were Hindustani Muslims in large numbers and would thus generate fear.

56. *Ameer* Hafiz said Abu Hamza would teach them how to plant RDX bombs and how to cause blasts.

57. *Ameer* Hafiz Sayeed, Zaki-ur-Rehman Lakhvi, Muzammil alias Yusuf, Abu Al-Kama, Abu Umar Sayeed, Kafa, Abu Hamza and Zarar Shah then took the ten (10) "*Mujahedeens*" to a big hall. In that hall there were two or three TVs. Zarar Shah told them that this was the control room of the media wing. Zarar Shah showed them the different roads of Bombay and their different targets on a big TV screen. He showed VTS and Malabar Hill to Kasab and Ismail Khan on a CD. He also gave them detailed information about the roads leading to VTS and Malabar Hill. Kafa used Google Earth on a laptop to show them how to go from Badhwar Park in Mumbai to VTS and from VTS to Malabar Hill. Kafa also showed them some maps that were drawn by hand and told them that *Fahim Ansari* and *Sabauddin Ahmed* in *Hindustan (Accused 2 &3) had prepared those maps and sent*

them from there. He said that with the help of those maps they would easily reach the places targeted by them. Having told them how the maps were obtained, Kafa explained the maps to them. Kasab asked where Sabauddin and Fahim were. Kafa said both of them were arrested in Hindustan. Kasab asked why they were arrested, to which Kafa replied that they were arrested in connection with an attack made on a police camp at Rampur in India. Then, on the basis of one of the maps, he explained how long it would take them to go from Badhwar Park to VTS and from there to Malabar Hill. Kafa told them that Cooperage Ground and Azad Maidan fall on the way to VTS and told them to mention those places to the taxi driver. Kafa gave similar information to the other "Buddiyas" on the basis of the CD, Google Earth and the maps sent by *Sabauddin and Fahim*.

58. On the day of the fifteenth (15th) Roza, Abu Hamza and Kafa took the ten (10) *Mujahedeens* to the hills of Muzaffarabad. There they practiced how to take position and fire with *Kalashans*. They were also taught how to make the tiffin bomb from RDX, how to fix a blast timer into it and how to set off the bomb. At that time, on the instructions of *Ameer* Hafiz Sayeed, Abu Hamza and Kafa gave more firing practice to Imran Babar.

59. The same night they returned to *Baitul Mujahedeen*.

60. On the day of the sixteenth (16th) Roza, Kafa asked them to shave and cut their hair. They were given new clothes, shoes and socks. On Kafa's instruction they cut off the labels of the new clothes. Kafa also gave them watches set to Indian time. On the same day, Kafa had their photographs taken.

61. On the day of the seventeenth (17th) Roza, Kafa took them to Karachi city by train and there they went to a house in Azizabad *mohalla*. Lying in the house was an Urdu magazine called "*Taibat*" that featured the names of the six (6) "*Mujahedeens*" who had gone on the Kashmir Mission and been martyred there. Kasab asked Kafa about them. Kafa said that their colleagues had become martyrs in the encounter with the Hindustani army and that Allah would rest their souls in heaven.

62. On the day of the eighteenth (18th) Roza, Kafa brought ten (10) timers and explained to them how to fix a battery in the timer and how to set the time. On Kafa's instructions they affixed their names on one timer each, after which Kafa took the timers back from them. At that time, according to the plan, Kafa also gave all of them ID cards with their Hindu names. Kasab's ID card showed him as Sameer Choudhary son of Dinesh Choudhary of Arunodaya Degree College, Bangalore. Ismail's ID card described him as Naresh Verma son of Vilas Verma of Arunodaya Degree College, Hyderabad. All the ID cards were of Arunodaya

College. Kasab listed the different fake Hindu names given to the rest of his colleagues.

63. Kafa took them back to the Karachi harbour and they stayed on the sea for one day. On that expedition, Hakim Saab taught them how to dismantle, assemble and run a small inflatable boat. He showed them how to take out the sea valve and sink a boat. He explained to them about "*tul*" and "*chourai*".

[Here the magistrate asked him to explain "*tul*" and "*chourai*". He explained that "tuls" were the vertical and "chourais" were the horizontal lines on a map]

64. On the twentieth (20th) day of Roza, Lakhvi came there and said that the work had been stopped for some time. At this Kasab said to Lakhvi that there was no need for them to wait. He could make their mission successful, according to the plan, and there was no need for him to worry. Kasab further said that he had longed for it for so many years and asked Lakhvi not to create any obstructions. At this, Zaki-ur-Rehman Lakhvi started laughing and said that he knew from the beginning that he was a firm "*Jihadi*", but he asked him to wait for some time. The next day Zaki-ur-Rehman Lakhvi left, though the *Mujahedeens* continued to stay in the Azizabad house. During those days Imran Babar would make them repeat the names on their ID cards. Of them, Imran Babar alone was properly educated and he could, therefore, read and write English.

65. They celebrated 'Ramzan Eid' in the Azizabad house. During this period Abu Hamza taught them how to plant a bomb under the seat in a moving car and gave training to Kasab, Javed and Nazir Ahmed on how to plant a bomb under the (driver's) seat while sitting in the back seat of the car. They were in the Azizabad house for almost a month and a half. On November 18, Kafa left, taking Nasir and Nazir Ahmed with him.

Arming for the Invasion:

66. On November 21 they were driven from Azizabad in a car to a house near a creek. Zaki-ur-Rehman Lakhvi, Zarar Shah, Abu Hamza, Kafa, Nasir and Nazir Ahmed were already present there. Zaki-ur-Rehman Lakhvi had made Ismail Khan the '*Ameer*' of the mission. In the house near the creek there were a number of boxes containing the 'goods'. Those boxes were opened in their presence and all the 'goods' were handed over to Ismail. The 'goods' were *Aslaha*, *barood* (explosives) and eatables.

[The magistrate asked what "Aslaha" is. Kasab replied: weapons].

67. Abu Hamza had explained to Ismail how the "Aslaha" and "Barood" were to be distributed. Ismail noted down all the instructions in his diary and took all the articles in his possession. Thereafter Abu Hamza gave Kasab and Ismail Rupees ten thousand and eight hundred (Rs.10800=00) in Indian currency. They divided it between themselves. All the other 'buddies' were also given Indian money. Then Zarar Shah gave each of them a mobile phone. Ismail asked which place the numbers belonged to. Zarar Shah replied that those numbers were of Hindustan. He added that they had obtained the SIM cards from Hindustan by tricking some people there. He added that the SIM cards would get activated on reaching Bombay. He asked them to use the phones on reaching Bombay. Kasab asked about the numbers on which they could talk to them. Zaki-ur-Rehman Lakhvi said that Zarar had fed their numbers in the mobiles and that on punching the green button twice the phone would be connected to them and they would be able to report to them about the work.

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68. He then gave some (telephone) numbers to Ismail and asked him to note down those numbers in his diary. Ismail noted down the numbers in the diary which he always kept with him. Zaki-ur-Rehman Lakhvi also gave the names of some areas of Bombay, like Colaba, WTC etc., which names, too, Ismail noted down in his diary. During the training, Abu Hamza had given them some codes so that no one would suspect while they communicated on the phone. Ismail had

those codes and the details of "*tul*" and "*chourai*" also noted in his diary. Thereafter, Zaki-ur-Rehman gave a satellite phone to Ismail and left.

69. Ismail then distributed the weapons and the explosives. He gave a large sack to all the "*Mujahedeens*". He also gave each of them one (1) '*Kalashan*', eight (8) magazines, two hundred and forty (240) rounds, eight (8) hand grenades, one bayonet (Kasab called it "*Sangeen*"), one (1) pistol with three (3) magazines, twenty-one (21) rounds, one (1) water bottle, one (1) Kg raisins, one (1) headphone and three (3) nine (9) volt batteries along with a charger. He also gave each of them an RDX bomb of eight (8) Kg that was kept in a tiffin box in a small sack. He also gave each 'buddy' a GPS system and a small pouch to everyone to tie around the waist.

70. All of them took their goods and cleaned and serviced the "*Kalashan*" and the pistol; put thirty (30) rounds in each magazine of their "*Kalashan*" and seven (7) in those of the pistol. As trained, they joined two (2) magazines together with tape so as to easily replace the magazine being emptied while firing from "*Kalashan*". They then packed all the "aslaha", the other goods and their new clothes in the large sack. Everyone's sack, containing the bombs and the goods, was kept for the night in the *Lashkar-e-Toiba*'s car. Ismail asked all of them to

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keep their ID cards with Hindustani names in their pockets, and they did as instructed.

71. At night, Abu Hamza and Kafa told Ismail to note down the "tul" and "chourai" while on their way to Bombay so that they could reach Bombay with the help of GPS without difficulty. Ismail made the notes in his diary, as instructed by them, in Kasab's presence.

The Journey to Mumbai by Sea:

72. On November 22, they woke at six (6) in the morning and offered Namaz. Then they left for Karachi, along with Kafa and Abu Hamza, to make the "*Fidayeen*" attack on Bombay. After walking for about thirty (30) minutes they reached a creek. Zaki-ur-Rehman Lakhvi was present there. He told them that the "Aaqa" (master) Hafiz Sayeed and all of them had worked very hard for that mission. Their efforts must bear fruit. They had been trained fully in every skill. They must not be let down. That was their responsibility. Zaki-ur-Rehman further told them to switch on the mobile phones on reaching Bombay. He said that the "buddiyas" targeting Nariman House, Taj Hotel and Oberoi Hotel would communicate with the media. They (Zaki-ur-Rehman and the other conspirators) would tell them afterwards what to say to them. They (Zaki-ur-Rehman and the other conspirators) would also send e-mail to the media and challenge the

Hindustani government. *Zaki-ur-Rehman then handed over to each 'buddy' the maps sent by Sabauddin and Fahim.* Ismail kept the map that showed the way to reach VTS and Malabar Hill. Zaki-ur-Rehman instructed them to tear up the maps after reaching their destinations. Thereafter, Zaki-ur-Rehman prayed for them saying that he put them under the protection of Allah and Allah would protect them. He further prayed that Allah might let them complete the desired work fully. He then gave instruction to Ismail to take out the sea valve before leaving the Hindustani boat so that it would sink into the sea. Zaki-ur-Rehman then took Ismail aside and talked to him privately.

73. At around seven (7:00 AM) in the morning a small wooden boat arrived to take them. After sailing in that boat for an hour and a half, they were transferred to a bigger boat and the small boat went back. Hakim Saab and his three colleagues were also there in the big boat. At about 9:00 PM they boarded an even bigger vessel, Al-Hussaini, while Hakim Saab and his three colleagues returned in the second boat. There were seven (7) persons on the Al-Hussaini from before, of whom three were called Murshad (wanted accused No. 16), Aaquib (wanted accused No. 17) and Usman (wanted accused No. 19). They were all members of *Lashkar-e-Toiba*. Murshad gave them the sacks containing the bombs, and the "*Kalashan*" that were packed in the Karachi house. Murshad also gave Ismail a rubber speed boat, a pump to fill air in the rubber boat, life jackets, blankets, rice,

flour, oil, pickle, milk powder, match boxes, detergent powder, tissue papers, bottles of Mountain Dew cold drink, dental cream, spray paint, towels, shaving kits, tooth brushes, etc.

They spent that night on Al-Hussaini.

74. [At this point the court time was over but Kasab's statement was incomplete. The magistrate, therefore, sent him back to judicial custody. He was again produced before her on the following day, February 21, 2009, at 10.40 AM. The magistrate once again satisfied herself that he had been insulated from any external influence and would make the statement completely voluntarily. She then resumed taking down his statement].

75. Continuing the narrative where he stopped on the previous day, Kasab said that on November 23, at about 12.00 PM they had traveled by Al-Hussaini for about half an hour (sic) when they saw a boat coming towards them. Usman waved a broken engine belt, indicating to the people on that boat that they were in need of help and, on the pretext of seeking their help in changing the broken belt, they approached that boat and captured it. The name of the Hindustani boat was "Kuber". Four persons on that boat were taken hostage by Hakim Saab and Usman and were brought aboard the Al-Hussaini. They also brought from the Kuber TV set and VCR and some other articles lying on it to the Al-Hussaini. Then all ten

(10) "*Fidayeens*" along with all their belongings boarded the Kuber. The "Nakhva" (navigator) of "Kuber" was also put in their custody. Then, on Hakim Saab's instructions, Ismail checked the amount of diesel on Kuber. The "Nakhva" told him that there were seven hundred (700) liters of diesel in its tank and another four (4) drums filled with diesel on board. Ismail asked him whether that would be sufficient to take them to Bombay to which he replied that that may not be sufficient to carry them to Bombay. Hakim Saab told Ismail that there might arise the need for more diesel, and asked his three colleagues to transfer the iron drums and plastic cans filled with diesel from Al-Hussaini to Kuber.

76. Thereafter, according to plan, they sailed for Bombay, with the help of GPS and the "*tul*" and "*chourai*" that were given to them, and with the assistance of Amarchand Solanki, the Nakhva of Kuber.

77. On Kuber, Imran Babar was assigned the work of cooking and the other nine (9) men were divided by Ismail in groups of three each for guard duty. Kasab was in the group with Ismail Khan and Nasir. Each group was given guard duty for two hours on rotation basis. Ismail also noted down in his diary the hours assigned to each group, mentioning the members of each group by the names given to them by Hafiz Sayeed.

78. After sailing for some distance, they tied the "Nakhva's" hands, blindfolded him and made him sit near the engine. The three groups guarded the Kuber against any unfriendly intrusion round the clock and they also kept a watch on Amarchand, the "Nakhva". Ismail and Javed were sailing the boat with the help of the "Nakhva". During the voyage they were talking to Abu Hamza on the satellite phone. And Ismail was verifying with the aid of GPS that they were sailing in the right direction. They were also feeding the "Nakhva". They filled diesel in the engine of the Kuber thrice on the journey to Bombay, with help from the "Nakhva".

79. On November 26, at 11.00 AM, according to plan, they tied red-yellow coloured threads around their wrists. Around 4.00 PM on that day they neared Bombay and its tall buildings came within into sight.

Kasab shames the Butcher:

80. According to plan, Kasab called Abu Hamza on the satellite phone. He told him that they had reached Bombay and asked what was to be done with the "Nakhva". Abu Hamza laughed and said he should do whatever he wanted. Kasab then told Ismail that it would be better to kill the "Nakhva". Ismail agreed with him. Kasab then asked Soheb and Nasir to hold the "Nakhva" by the legs in the

engine room. He himself yanked him by the hair and pulling his head down cut his neck. He then hid his body in the engine room.

81. Meanwhile, Ismail, Fahadullah, Javed and Nazir Ahmed began inflating the rubber speed-boat with the pump. After half an hour, when the boat was filled with air, it was lowered into the sea. They wore the new clothes purchased from the market in Karachi. Kasab put on a red T-shirt and, over it, a blue T-shirt with a cap attached to it and green cargo pants. Like him, the others also put on the new clothes purchased from the market in Karachi. They all put on red life jackets and yellow waterproof trousers. They left behind the clothes they had travelled in on the Kuber. Kasab left a white shalwar and a white shirt that he had been wearing earlier. All of them offered namaz and then, according to plan, they all took out their mobile phones from the bags and switched them on. But there was no network on the sea. They unloaded all the articles for the attack on to the speed-boat. While they were engaged in moving from the Kuber to the speed-boat, they saw a boat approaching. They thought it was a 'navy' boat. Alarmed, they quickly got into the speed-boat and set sail. In his haste, Ismail forgot to take out the sea valve of the Kuber. He also forgot his satellite phone on the Kuber.

82. They left the Kuber at a distance of about four (4) nautical miles from Bombay and sailed for Bombay on the speed-boat. Ismail was sailing the speed-

boat. The speed-boat had the engine of Yamaha Company. Nazir Ahmed, with the aid of GPS, was showing the way to Bombay. On the way, Ismail said that first he and Kasab would leave for VTS by taxi, then Soheb and Nazir Ahmad would go to Leopold Hotel by taxi, and then Javed and Hafiz Arshad would go to the Taj Hotel by taxi. Imran Babar and Nasir would walk to Nariman House. Last of all, Fahadullah and Abdul Rehman (Chhota) would go to Oberoi Hotel in the speed-boat. Ismail asked Kasab, Soheb and Javed to place RDX bombs, according to plan, under their taxi drivers' seats. He told the others to place their bombs near the targets.

83. After sailing for about an hour and a half or two hours they reached the Bombay shore. According to plan, Abu Ali jumped out and anchored the boat to the shore. First, Ismail and Kasab alighted from the speed-boat. They took their bags. Both Ismail and Kasab removed their life jackets and waterproof trousers and threw them into the sea. After getting off the boat, Kasab put on his shoes. Following Kasab and Ismail, the others also got off the speed boat. At that time it was about 9.00 PM and according to the plan they were late by about an hour and a half.

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84. On getting down from the boat they came across two persons. They asked them who they were and from where had they come. Kasab told them that they were students. Ismail had an altercation with them.

The Attack:

85. Ismail and Kasab took their bags and walked up to the road. They took a taxi. Ismail sat in the front and Kasab sat in the back seat. Ismail asked the driver to take them to VTS. He started talking to the driver. Meanwhile Kasab fixed two nine (9) volt batteries to the wire of the timer in the bomb in the bag. He placed this bag, containing the bomb, under the driver's seat. He had set the time of explosion for after an hour and fifteen minutes.

86. They reached VTS within fifteen to twenty minutes and were annoyed to find the crowd at the station far less than what they had seen on the CD. Ismail tried to communicate with Abu Hamza on his mobile but the mobile did not show any network. Ismail then tried to make the call from Kasab's mobile but his mobile, too, did not work. Ismail kept Kasab's mobile with him and both of them entered and came inside the passage. They saw the stairs going upwards. The people there had come with large bags and from that they gathered that this platform was for long-distance trains. There was a toilet nearby. Kasab gave his bag to Ismail and went to the toilet. When he came back, Ismail went to the toilet

carrying the small bag containing the bomb with him. Inside, according to plan, he fixed the batteries in the bomb and came out with the bag containing the bomb. Ismail put the bag containing the bomb among the passengers' luggage. They then signaled to each other and decided to open fire. Kasab took out the '*Kalashan*' from his bag and Ismail took out a hand grenade from his bag. He removed its clip and threw it at the people. At the same time both Kasab and Ismail started firing on the people present there. After a while, Ismail threw another grenade at the people. They continued firing from their '*Kalashans*'. As a result of the firing, many people were killed on the station. The people at the station were frightened and started running in all directions. Within a short time, the entire station was empty. Meanwhile the police had started firing on them. Both of them fired back at the police, giving cover to each other.

87. The police continued to fire at them and tried to stop them. Ismail and Kasab shot the policemen dead and came out of VT station through the stairs. (He refers to the foot-overbridge on the side of platform No.1 of the local lines). Kasab said that he fired almost six magazines at the station.

88. After coming down from the overbridge they looked for a taxi in the lane (Badruddin Tayabji Marg). But they found none. They tried to open the cars parked in the lane but were unable to open any car. They moved ahead in the lane.

They both fired in that lane. At that time heavy police firing started and they decided to enter the opposite building (which happened to be Cama Hospital), climb to its terrace and kill the policemen by firing and throwing grenades at them from this higher position.

89. They jumped over a closed gate, entered the building and climbed up its floors. The police followed them into the building. They fired at the police and the people and also threw hand grenades at them. At that time the police was also firing at them. They shot the policemen dead. Then, as the firing stopped, they came down. They were in that building for almost an hour. Then they came to know that the building was a hospital. They could hear the screams of women and cries of children coming from the rooms of the building. They decided to enter every room of the building and to kill the women and children there. They tried to open the doors of the rooms but all the doors were closed from inside and the iron-grill doors outside were also closed. They were unable to open any of the doors. They decided to get out from that building and go to their last target. They came down from the building and moved ahead, taking cover of a wall. After moving ahead, they jumped over the wall and came out on the road.

90. They moved ahead on the road, keeping on the right side, taking cover of the wall. They saw a policeman coming. Kasab pointed his '*Kalashan*' at him and

fired, killing the policeman on the spot. At that time they were fired at from the opposite direction. They fired in retaliation and entered a lane. They saw a white car with a red beacon light in the lane moving backwards. Kasab fired at the car. The car moved for a little distance and stopped. Ismail threw a hand grenade at the car and Kasab again fired at it with a view to make the car move away from there. But when they reached near the car and tried to open its door they found all the window glasses raised and the doors locked and the driver lying dead inside the car. They tried to open the door of the car but were unable to open it.

91. Then they saw a car with a yellow light coming towards them from the opposite direction. Seeing that car, both of them hid in the bushes, taking the cover of the wall behind them. As soon as that car came near them, they fired at it; at the same time shots were fired from the car, hitting Kasab on both his hands. When the firing from the car stopped they looked at the car and found that the persons inside the car were policemen and all of them were dead. They tried to open the car's rear door but it did not open. Kasab was injured and he stood leaning on the vehicle, shaking his hands, while Ismail fired a round of 'brush fire' on the road behind the car. Ismail then went near the car and pulled out the dead bodies of the driver and the policeman sitting behind the driver. Kasab pulled out the dead body of the policeman sitting next to the driver and threw it on the ground. There were no rounds left in Ismail's '*Kalashan*' and, therefore, he picked up the policeman's

'*Kalashan*' from the car. He started the car and drove at full speed. He told Kasab that bullets had hit him on the legs and in the armpits.

92. After some time they reached the chowk and found a large crowd comprising both policemen and the public. Ismail fired at the policemen and the public while continuing to drive the car. After some time it appeared that the back right tyre of their car was punctured. Ismail was, nevertheless, driving the car at a very high speed. Then, on seeing a white car approaching from the opposite direction, Ismail stopped their car. Kasab fired from his '*Kalashan*' in the air and both of them got out of the car. He went towards the white car and, pointing the '*Kalashan*' at the driver, asked him to stop the car. The driver immediately stopped the car. Ismail pulled him out. At the same time the person sitting next to the driver and the woman sitting on the back seat also got out. All this while, Kasab was giving cover to Ismail. Having thus snatched the car, Ismail sat on the driver's seat and Kasab quickly sat next to him and they left. At this point Kasab asked Ismail where they had to go. Ismail said they had to go to Malabar Hill. Kasab further asked where exactly in Malabar Hill. Ismail said he would tell him on reaching Malabar Hill.

93. After going for some distance, Kasab saw that they were traveling on a road going along the sea and then he realized that this road was shown in the map by

Sabauddin and Fahim as going towards Malabar Hill. While they were driving at full speed, going in the direction of Malabar Hill, they saw the barricade on the road and policemen standing around the barricade. The policemen had seen their car moving at great speed from a long distance and were asking them to stop by raising their hands and blowing their whistles. Realizing that it was impossible to cross the barricade by smashing against it, Kasab asked Ismail to stop the car at some distance from the barricade and to keep the headlights on so that the policemen would not be able to see either them or the number of their car. Ismail stopped the car at some distance from the barricade and kept the headlights on. The policemen were shouting at them and were asking them to switch off the headlights.

94. Looking around, Kasab saw that the road divider on his right was very low and thought they could cross it by driving the car at very high speed. He advised Ismail accordingly. Ismail immediately switched on the water spray on the wind screen and started the wiper. He took the car a little ahead and turned it to the right in the direction of the road divider. He drove at full speed but the car did not go over the divider and stopped there. At the same time the policemen charged at them from both sides. Realizing the gravity of the situation they both raised their hands. But the policemen kept coming at them. Seeing this Ismail tried to pick up the '*Kalashan*' but it was kept below and he couldn't take it out. He then picked up

his pistol, which was kept on the seat, and fired at the policemen. At the same time, Kasab saw a policeman coming towards him; he opened the door of the car and got hold of his '*Kalashan*'. The police had started firing. A policeman tried to snatch the '*Kalashan*' from him. In the struggle, Kasab fell down but he had his finger on the trigger and he pressed it. The bullets hit a policeman holding a rifle and he collapsed on the ground. The other policemen beat him with lathis and snatched the '*Kalashan*' from his hands. Ismail was injured in the police firing and he too was overpowered.

95. Kasab said that he and Ismail were then brought to the hospital in an ambulance. In the hospital he learnt that Ismail died by police bullets. He gave his and Ismail's names to the police and the doctors and also told them that they were Pakistanis.

96. He concluded his statement before the magistrate by saying that the doctors in the hospital cleaned and bandaged his wounds and got him admitted in the hospital. There the doctors took away his blood-smeared clothes and gave him hospital clothes to wear. When the police asked him about his colleagues and how they reached Bombay he told them everything.

97. This is the appellant's account, as told by him to the magistrate. We now propose to take a brief look at the violent crimes committed by the appellant and

his group of terrorists in Mumbai through Indian eyes. And for that we shall follow the bloody trails of the appellant and those of the other members of the terrorist group.

THE LANDING:

98. The inflatable rubber dinghy on which the terrorists came to Mumbai landed at a place called Badhwar Park. The dinghy's arrival at that particular place could not possibly be by accident or by chance. Badhwar Park was evidently selected as the landing site for the terrorists with great care and with consideration of its immense strategic potential for the attack on their chosen targets. It is also clear that the selection of Badhwar Park as their landing place was not made by the attackers themselves but by someone else among the conspirators. The selection of the landing place for the dinghy was clearly based on a good deal of reconnaissance and survey work; and whoever selected the spot for landing had undoubtedly made himself fully familiar not only with the Mumbai shore line but also the city.

99. Badhwar Park is a settlement of fishermen and at that place the sea comes more deeply into the land mass, forming a kind of a vesicle. Hence, the water is calm and, this being a fishermen's colony, a group of young people arriving from the sea is not likely to arouse any suspicion or even attract much attention. Further,

the place abutts a main road. A sandy slope from the water, not more than ten (10) metres in length, takes one to the road where taxis are readily available. The CST railway station is at distance of 3.5 kms from Badhwar Park and by a taxi it takes fifteen to twenty (15-20) minutes to reach there. The Taj Hotel is at distance of 1 km and Leopold Café nine hundred (900) metres. Nariman House, to which the two (2) terrorist went walking, is at a distance of 0.5 km. Nariman Point, where the last pair took the dinghy by sea after the other eight had alighted at Badhwar Park, is 0.55 nautical miles (1 km) from there; and from the point where the last pair got off the dinghy, Oberoi Hotel and Trident Hotel are at a distance of three hundred (300) metres. The last pair walked to these hotels.

100. *Kasab* had said to the magistrate that on getting down from the boat they had come across two persons. They had enquired about them and even while *Abu Ismail* tried to rebuff them Kasab told them that they were students. One of these two men that *Kasab* met was **Bharat Dattatray Tamore (PW-28)**. He lived in the Fisherman Colony, Cuffe Parade. He was a permanent employee of Hotel Taj Mahal, Colaba, where he worked as *Mukhadam*. He lived in Chawl no.2 which was situated very close to the sea shore at about fifteen (15) minutes walking distance from the Taj Hotel. He deposed before the court that since his Chawl was very close to the shore, for going anywhere he had to go along the shore quite close to the water. On November 26, 2008, he left his house at about 9.15 PM for the hotel,

where his duties commenced at 10.00 PM and ended the following morning at 7.00 AM. On the way to the hotel he saw an inflatable boat on the shore. In the boat there were ten (10) people who were in the age group of twenty to twenty five (20-25) years. He saw eight out of them alighting from the boat. Each of them was carrying a sack and a hand-bag. Two of them proceeded towards the main road ahead of the others. They appeared strangers to the place and he asked them where they came from. One of them said they were students while the other responded by roughly asking in reply as to how he was concerned about them. He added that the two persons who had not alighted took the boat towards Nariman Point. He returned to his home next morning at about seven (7:00 AM). On way he came across four (4) policemen near the Badhwar Park Railway Officers' Colony who were talking about the inflatable boat. He then told them what he had witnessed the previous evening. He later identified the appellant in the test identification parade held on December 28, 2008. He also identified the dead body of the other person at the mortuary of J.J. Hospital. He also identified the appellant while deposing in court, as one of the persons who had alighted from the boat.

101. There is another person called **Prashant Hemnath Dhanu (PW-29)** who lived in the fishermen's colony. He was twenty-four (24) years old and a fisherman by profession. He stated before the court that he had a fishing boat and on November 26, 2008, at about 9.15 PM he, along with a few relatives, had gone out

to sea on his boat to fish. On nearing Nariman Point around 9.45 PM they saw a seemingly abandoned rubber boat. There were some life jackets in the boat and it was fitted with a Yamaha engine. Buffeted by the sea waves, it was bouncing against the tetrapod. Lest the owner of the boat might suffer its loss they towed it to their fishing trawler and brought it to the jetty near the fishermen's colony at Badhwar Park (that is, to the point where it had first landed!). He informed the coast guard about the abandoned boat found by him. He further said that the police had arrived there and they took charge of the boat under a *Panchnama*. We shall deal with the seizure of the boat by the police and the articles found in it in due course. Suffice here to note that the rubber boat (Article 156) was shown to the witness in court and he duly identified it as the one that he had found abandoned at Nariman Point and had towed back to the Fishermen's Colony, Badhwar Park. He also indicated the yellow strip of paint on the black body of the boat, on the basis of which he was able to identify it.

102. From Badhwar Park the appellant, *Kasab*, and his accomplice, *Abu Ismail*, took a taxi and proceeded to CST. *Kasab* told the magistrate that he occupied the back seat of the taxi and, on the way to CST, had put the RDX bomb under the driver's seat, setting the time of blast for after an hour and fifteen minutes. We shall see the fate of the taxi, its driver and the passenger, who occupied it after *Kasab* and *Abu Ismail*, presently under the marginal heading "The Vile Parle

Blast". But, for the present, the appellant and his 'buddy' are on a spree of mass killings at CST.

Slaughter at CST: Fifty two (52) dead and One hundred and nine (109) injured:

103. In regard to the CST episode, like all other parts of the case, the prosecution has gathered a very large amount of evidence: ocular, forensic and of other kinds, e.g., CCTV recordings.[4] They have documented practically every action and movement of the two killers from the point when *Abu Ismail* threw the first hand grenade[5] at the passengers on the platform till they went out of CST through the foot-overbridge on the side of platform no.1 of the local lines (and thereafter….). On the basis of the ocular evidence alone (not taking into account for the moment the other evidences) the prosecution has presented before the court a vivid and photographic (figuratively and actually) account of the CST events. Here we propose to examine in slightly greater detail four witnesses whose evidence, in one

[4] To reconstruct the events at the CST the prosecution has examine fifty-three (53) witnesses. Leaving aside the forensic experts and other witnesses of a formal nature such as *panch* witness, the number of eye witnesses who gave ocular accounts of the events is not less than twenty-five (25). Out of these, ten (10) are policemen and members of Railway Protection Force (RPF) and Home Guard; among them three (3) are injured witnesses. Of the remaining fifteen(15), nine (9) are passengers, of whom eight (8) are injured witnesses. Of the remaining six (6), four (4) are railway employees, of whom two (2) are injured. The remaining two (2) are photographers from the *Times of India*, one of the prime English dailies of the country.

[5] According to the appellant's confessional statement before the magistrate, before lobbing the hand grand at the crowd of passengers, *Abu Ismail* had placed the bag containing the RDX bomb, with the timer set for blast, among the passengers' luggage. Fortunately, however, the bomb failed to explode. The bomb along with the bag was later seized after it was diffused by the bomb disposal squad, but that forms part of the forensic evidence to which we will advert in due course.

way or another, has some special features, and then to take an overview of some more witnesses to construct a broad picture of the massacre at CST.

104. Before proceeding to examine the witnesses it may be appropriate to say a word about the way most of the witnesses identified the appellant. The appellant, *Kasab*, and his accomplice, *Abu Ismail*, seemed to make an odd pair in that *Abu Ismail* was quite tall, about six (6) feet in height, and *Kasab* is barely over five (5) feet. The difference in their height appears to have struck almost anyone who saw them together. Although different witnesses described them by their complexion (both *Abu Ismail* and *Kasab* are described as fair), age (*Abu Ismail* is said to be between 22 and 25 years and *Kasab* between 22 and 24 years), built of body (*Abu Ismail* as medium built, *Kasab* as strongly built), their apparel and the bags they were carrying, almost everyone referred to their heights, calling *Abu Ismail* as "the taller" and *Kasab* as "the shorter" one. Many witnesses called them "*lamboo*" (tall) and "*butka*" or "*tingu*" (short).

105. Now the witnesses:

Bharat Ramchandra Bhosale (PW-49) is the Informant in connection with the offences committed at CST. At the time of the assault on CST he was an Assistant Inspector of Police attached to the CST Railway Police Station. The police station is situated within the premises of CST in the passage between the

main hall of local lines and the main hall of main lines. On the night of November 26 and 27, he was on duty at the police station and he reported for duty at 20.30 hours. At about 21.50 hours, while he was coming out of the PS, he heard the sound of firing from the main hall of the main line railway station. The main hall is at a distance of about fifty to sixty (50 – 60) feet from the PS. He proceeded to the main hall from the side of the taxi stand (north). Police Inspector Shashank Shinde (one of the policemen killed in the attack), who was also on duty at that time, proceeded to the hall from the side of the SBI ATM (south). On coming to the main hall he saw the two terrorists indiscriminately firing from AK-47 rifles at the passengers sitting in the main hall. Many people were lying injured in pools of blood; many of them were crying. Those who were still on their legs were trying to flee the main hall. *Bhosale* said that he first saw the two terrorists when they were firing from a spot near the public toilet. He described the location of the public toilet and went on to say that when he first saw the two terrorists they were in the main hall at a distance of about forty (40) feet. There was sufficient light in the main hall for him to see them.

106. *Bhosale* then proceeded to give a description of the two terrorists. He said that one of them was short, aged about twenty-two to twenty-four (22–24) years with long hair that came down to his neck; he had a fair complexion and was strongly built. He was wearing a blue T-shirt and was carrying a rexine bag. He

was holding an AK-47 rifle. The other terrorist was taller than the first one. He was also fair and of medium built. He was aged about twenty-two to twenty-five (22–25) years. He was wearing a black T-shirt and he too was carrying a rexine bag. He was also carrying an AK-47 rifle.

107. At this point, the witness paused in his narration to identify the appellant as one of the two terrorists who was described by him as short, strong built and who was wearing a blue T-shirt.

108. The witness was then shown the identity card recovered from *Abu Ismail* (Article 61)[6]. He identified the photograph as that of the other terrorist, the accomplice of the appellant.

109. The witness proceeded with his narration and said that he rushed back to the police station to ask for additional force. As he came near the entrance door of the police station he was fired at by the terrorists. One of the bullets pierced through his right upper arm and struck the wall near the table of the police station's House Officer. He intimated the railway police helpline about the assault by the terrorists and asked for additional force.[7] He also intimated the Commissioner of Police, Railways, on his walkie-talkie.

[6] The fake identity card with Hindu name given to each member of the group of terrorists by *Abu Kafa* before leaving for Mumbai

[7] Independently established through mobile phone call records

110. He then came back to the main hall accompanied by Police Constable Nalawade who had a carbine with him. He saw Police Inspector Shinde lying injured near the SBI, ATM. Also lying injured in the main hall were about one hundred to one hundred and twenty-five (100-125) passengers.

111. By the time he came back to the main hall of the main lines, the two terrorists had moved in the direction of the main hall of the local railway station. Constable Nalawade fired three rounds towards them from his carbine. **Constable Nardele (PW-58)** also fired eight rounds at them from the main hall of the main lines while the terrorists were in the main hall of the local lines. The appellant and his associate were, however, not hit and they continued to proceed towards platform No. 1 of the local lines. By then, the additional police force had come and the public had also come to their help. The injured persons were being taken to hospitals. The witness himself was admitted to St. George's Hospital for treatment of the firearm injury in his right upper arm.

112. He later came to learn that Police Inspector Shinde and MN Chaudhary of the RPF were also among those who were killed as a result of the firing by the two terrorists. He also learnt that the appellant and his associate had also used hand-grenades at the railway station.

113. His statement was recorded at the hospital and on that basis a formal FIR was drawn up in regard to the CST episode. He identified his statement (Ext. no. 219) and the formal FIR (Ext. no. 220).

114. He further told the court that he had earlier identified the appellant in the test identification parade held at Arthur Road Prison on December 28, 2008.

115. In reply to a court question, *Bhosale* said that though he was carrying a 9mm pistol, loaded with nine rounds, he did not fire at the terrorists because there was a strong risk of the passengers getting killed or injured by his firing.

116. **Vishnu Dattaram Zende (PW-65)** is the railway announcer. His job is to make announcements of the arrival and departure of trains on a public address system. For that purpose he sits with his colleagues in a cabin on the mezzanine floor, almost at the centre of the main hall of the local lines, facing the full expanse of the main hall and beyond it up to platforms 1 to 7 of the local lines. Perched in his office *Zende* had a completely unobstructed view through the glass screen of his cabin and he was able to see all that happening down below in the main hall and the local lines' platforms on the fateful evening of November 26, 2008. Here it must also be noted that showing great devotion to duty and remarkable presence of mind *Zende* saved countless people from death or injury by constantly announcing on the public address system that the railway station was under terrorist assault and

by advising passengers alighting from local trains that continued to arrive at the station while the attack was underway to not go towards the main hall but to exit through the rear side of the local lines' platforms.

117. Deposing before the court, he began with a succinct description of CST from inside. He then proceeded to tell the court that on November 26, 2008, he was on duty from 3.00 PM to 11.00 PM. At about 9.55 PM he heard a big explosion. He guessed that it was a bomb and looked outside the window of his cabin. He saw passengers from the main line hall running towards the local lines. Among them some were bleeding. Some were trying to rescue others who were unable to flee or move on account of injuries.

118. He further stated before the court that he saw two terrorists coming from the direction of platform no.7. He could see one of them from a distance of 15 to 20 feet as he came near the entry gate of platform no. 4. The other was following him. Both were firing. At that point he suspended his announcements because the terrorists, from where they were at that time, could see him and fire at him. He then saw the shorter of the two terrorists sit down on the floor of the main hall, load his gun with a magazine, throw his bag in the hall and resume firing.

119. *Zende* added that, to avoid being shot at by the terrorists, he and his colleagues sat down on the floor of their cabin. Nonetheless, shots were fired in the

direction of their cabin and one of the bullets smashed the glass pane and went right through, piercing the plywood partition at the back of the cabin. They continued sitting on the floor for about an hour and a half. All the while they were in contact with their officers on the telephone.

120. He then gave a description of the two terrorists and identified *Kasab* as the person who loaded his rifle sitting down on the floor of the main hall and who threw away his bag. He was then shown the identity card, Article 61. He identified the photograph as that of the taller terrorist who was accompanying the appellant. He was shown a black haversack, Article 219. He identified it as the bag that the appellant had thrown away in the main hall of the local lines.

121. While dealing with the CST episode we must take note of two other witnesses. Their evidence is extraordinary in that they did not only witness the incidents but also made a visual record of the events by taking pictures of the two killers in action and also of their victims. The pictures taken by these two witnesses, without anything else, are sufficient to conclude the issue of identification of *Kasab* and *Abu Ismail* (deceased accused no.1) as the killers of CST. Both the witnesses are professional photographers working with the *Times of India* group. Both of them, caring little for their own safety and displaying exemplary professionalism, followed the killers practically at their heels. Their

ocular testimony together with the photographs taken by them provides a graphic picture of the carnage at CST.

122. **Sabastian Barnal D'Souza (PW-61)** is one of the two photographer witnesses. He stated before the court that on the evening of November 26, 2008, he was in his office on the fourth floor of the *Times of India* Building, which stands opposite the CST railway station. The main gate of the *Times of India* Building faces platform no.1 of the local railway station and one gate of CST railway station opens in front of the *Times of India* Building. At about 9.50 PM he came to know from one of his colleagues that a gunman had entered Taj Hotel and was firing there randomly. On this information, two photographers immediately proceeded to the Taj Hotel. *D'Souza* and his colleague also came out of the office. As they came out of the main gate of the building, they heard the sound of firing at CST railway station. *D'Souza* jumped over the road divider and entered platform no.1 of the local railway station, carrying a Nikon digital camera. The railway station was deserted and there were no passengers on the platforms. A local train was standing on platform no.1. He crossed through the train and reached platform no.2. There were no trains on platforms no. 2 and 3. He proceeded to the main hall of the local railway station and walked up to the exit of platform no.6 in the main hall. There he found one policeman in uniform and another person accompanying him in plain clothes. They were looking towards the passage between the main line and the

local line. It was at this point that he saw, at a distance of about one hundred (100) feet, in the passage between the main lines and the local lines, two persons who were firing from guns held by them. They were near the booking window of local railway line in front of CST police station while he himself was at the exit of platform no.6 of the local line. At this juncture, one of the policemen[8] fired at the two gunmen.

123. At a nearby book-stall, the owner started to pull down the shutter and, as he was doing so, he was hit by a bullet and fell down. *D'Souza* took a picture of the fallen book-stall owner.

124. *D'Souza* then described the two gunmen and the way they were dressed. He identified the appellant in the dock as the shorter of the two gunmen. He added that both were carrying guns.

125. He further said to the court that he wanted to take photographs of the gunmen and, therefore, he entered one of the compartments of the train standing on platform no.6. The policeman in uniform and the other person accompanying him in plain clothes were still there. He thought the man in plain clothes was also a policeman. He saw the plainclothesman[9] taking the gun from the policeman in

[8] As we shall see presently this was Assistant Sub-Inspector *Sudama Aba Pandarkar* (PW-62)

[9] As we shall see presently this was Police Constable Ambadas Pawar (one of the policemen falling down to the terrorists' bullets)

uniform and taking position to fire at the appellant and his companion. He took pictures of the policeman in uniform and the plainclothesman. He asked the two policemen to enter the train compartment because he thought they had taken a position that was quite dangerous.

126. He further said that since the gunmen were coming towards the local lines, he went to platform no.4. He told the court that during the course of the incident he took over one hundred (100) photographs but most of them were blurred. He was not using the flash-gun and the light was not good for taking photographs. In course of the deposition he was shown the photographs taken by him and he identified those photographs.

127. The photograph showing the book-stall owner felled by a bullet was marked Ext. no. 238. A set of three photographs showing the policeman in uniform and the plainclothesman taking aim with the rifle was marked collectively as Ext. no. 239. A set of three photographs of the appellant taken by D'Souza from behind a pillar was collectively marked Ext. no. 240[10]. A set of four photographs in which *Kasab* is shown with the other gunman *Abu Ismail* (deceased accused no.1) was marked collectively as Ext. no. 241. A photograph showing two persons lying dead or

[10] All the three pictures clearly show *Kasab*, carrying a haversack on his back and an AK-47 in his hands. In the first picture he is shown moving forward, with the left hand raised and the right hand holding the AK-47 with the barrel pointing downwards. In the second picture he is raising the gun with the right hand and the left hand is coming down towards the gun for providing support. In the third picture he is stepping forward with both hands holding AK-47 at waist level in firing position.

injured was marked Ext. no. 242[11]. A set of 10 photographs taken by him after the gunmen had gone over to platform no.1 of the local lines, showing dead or wounded passengers lying in the main hall of the main lines, was collectively marked as Ext. no. 243.

128. He told the court that pictures taken by him were saved in the memory card of his camera. He had prepared a CD of the photographs from the memory card, to produce in court. The print-outs were taken from the CD. He produced the memory card before the court (which the court, after it was marked as Article 216, directed to be returned to the witness for safe custody until further orders).

129. He said that the CD was produced by him before the police on January 7, 2009, in presence of *panch* witnesses and then it was sealed. The CD was taken out of a sealed packet (bearing no. 204) and was marked by the court as Article 217.

130. Significantly, he also said before the court that while at the station he heard the announcement on the public address system warning passengers of incoming local trains not to alight from the train and, in case they had to go out, not to come to the main hall but to exit through the rear gate.

131. **Sriram Ramakant Vernekar (PW-102),** the other photographer witness**,** works as a press photographer with the *Times of India*. He stated before the court

[11] As we shall see presently these two were Police Inspector Shashank Shinde and Police Constable Ambadas Pawar (who fell down to the terrorists' bullets).

that on November 26, 2008, he was in the office at the *Times of India* Building, opposite CST railway station. At about 10.00 PM, on hearing the sound of firing, he picked up his camera and rushed towards CST station. He approached the station from the subway gate. He saw two persons firing in the directions of the railway office and booking office. He took pictures of the two gunmen from near the entrance to the main hall from the subway porch. As they were moving in his direction, he got out of the station and, crossing the road divider, came on the side of the *Times of India* Building.

132. He told the court that he had seen the two gunmen in front of platform no.6 when he took their first photograph. He produced before the court four enlarged print-outs of the photographs taken by him which were collectively marked, for the purpose of identification only, as Ext. no. 410.

133. He also produced the original memory card of his Nikon D200 camera containing more than ten (10) pictures taken by him with that camera. The memory card was marked, for the purpose of identification, as Ext. no. 411. The witness explained that the three photographs bearing Ext. no. 410-A, Ext. no. 410-B and Ext. no. 410-C[12] were the first photographs of the two gunmen taken by him.

[12] Ext. nos. 410-A, 410-B and 410-C are pictures taken when *Kasab* and *Abu Ismail* were at CST. All the three pictures appear to be taken from the front. In the pictures they appear behind what appears to be the frames of a set of two metal detectors. In Ext. no. 410-A *Kasab* and *Abu Ismail* are standing about three ft. apart peering ahead; in Ext. no. 410-B they appear standing close together in the frame of the metal detector looking ahead. In Ext. no. 410-C *Abu Ismail* is hidden behind a pillar but *Kasab* is clearly shown carrying a haversack on his back and an AK-47 in both hands.

He further stated before the court that one of them lobbed a hand grenade while they were proceeding from the main hall to platform no.1. The hand grenade was thrown on DN Road in front of MCGM building. He went on to say that he saw the two gunmen going from platform no.1 to the foot-overbridge. Both of them were carrying bags on their shoulders. He was in front of the *Times of India* Building at that time. Both of them were firing towards the *Times of India* Building from the foot-overbridge. They were lobbing hand grenades also. He wanted to take their photographs and, therefore, he went to the second floor of the *Times of India* Building from where the foot-over bridge is clearly visible. He took about three to four (3-4) photographs from there. Since the quality of photographs was not satisfactory, he took another photograph by using flash. As a result, the shorter man, who was moving in front, got alerted and he fired three to four (3-4) rounds at the *Times of India* Building. The witness identified the fourth photograph (Ext. no. 410-D[13]) as the photograph taken by him by using flash. He further said that the photograph was taken when the shorter fellow was getting down from the overbridge towards Badruddin Tayabji Road.

[13] Ext. no. 410-D clearly shows *Kasab* coming down form the foot-over-bridge. The picture was taken with a flash and, therefore, it shows *Kasab* both startled and angry with the haversack hanging from the shoulder and the AK-47 held in both hands ready to fire.

134. *Vernekar* then identified the appellant as "the shorter fellow". He also identified the appellant's partner from the photograph in the Identity Card Article 61.

135. Among the rest of the CST witnesses we shall take a brief look first at some of the policemen and then at some of the passenger witnesses.

136. *Jilu Baddu Yadav* (PW-54), *Mammath Motiral Nardele* (PW-58), *Harshad Punju Patil* (PW-59), *Geetanjali Krishnarao Gurav* (PW-60), *Sudama Aba Pandarkar* (PW-62), *Pandurang Subrao Patil* (PW-63) and *Sandeep Tanaji Khiratkar* (PW-66) are policemen or members of the Railway Protection Force. At the time of occurrence, they were on duty at different places in the vast premises of CST. On hearing the explosion and the gun shots and on seeing the passengers fleeing for their lives, they realized that a terrorist attack was underway at the railway station and proceeded from their respective stations towards the spot where the assault was launched. On the way, some of them came across each other. A few were lucky to escape unharmed and some survived even after receiving grave injuries to tell the story before the court; some others laid down their lives while trying to tackle the assailants either completely unarmed or carrying antiquated weapons that failed them at the most crucial moment.

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137. **Harshad Punju Patil (PW-59)** was a police constable and on that date he was on patrolling duty in the ladies' compartment in the local trains. He was carrying a .303 rifle and ten (10) rounds. When the terrorists' attack took place, he was waiting for the train on which he was on duty near the Police Help Center in the main hall of the local lines, in front of platform no.3. Soon after the firing started, Police Inspector Shashank Shinde of the CST Railway Police Station came there and told them that two terrorists were firing in the main hall of the main station. Police constables *Nardele* and Gavit were also there. Both of them were carrying carbines. Shashank Shinde proceeded towards the main line station accompanied by *Nardele* and Gavit. *Patil* started loading the ten (10) rounds in his rifle. He then saw the two terrorists coming towards the local railway station from the main lines' side. Taking cover of the Police Help Centre he fired one round at them. But the shot misfired because the cartridge was defective; the bolt was jammed and he was unable to open it. By that time, the terrorists had come in front of platform no.3 of the local lines. At that point, **Jillu Baddu Yadav (PW-54),** a head constable of the RPF, also arrived there, proceeding from his place of duty at the General Manager Gate of the CST Railway Station. He himself was unarmed but he saw *Patil* carrying a rifle with him. He saw one of the assailants sitting down on the floor of the main hall of the local station and loading his rifle with a magazine. *Yadav* asked *Patil* to fire at the terrorist. He did not know that *Patil's*

rifle bolt had jammed and it would not open. Thinking that *Patil* was trying to avoid firing at the terrorist, *Yadav* took the rifle from him and tried to fire at the terrorist who was sitting down on the station floor, loading the magazine into the rifle, but the rifle did not fire as it had locked. Meanwhile, the other terrorist also arrived at the spot and they fired in the direction of *Yadav* and *Patil*. He and *Patil* then took cover behind a pillar from where he threw one plastic chair towards the two terrorists. In retaliation they again fired back towards them while proceeding in the direction of platform no.1 of the local railway station.

138. *Patil* identified the appellant as the one whom he had described as the shorter of the two terrorists. He identified *Abu Ismail* (deceased accused no. 1) from his photograph on the fake identity card, Article 61. He said before the court that he had earlier identified the appellant in the test identification parade held on January 14, 2009, at Arthur Road Prison. *Yadav* identified the appellant as the person who was firing at him from his AK-47 rifle and at whom he had thrown the plastic chair. *Yadav* also identified *Abu Ismail* from Article 61.

139. **Mammath Motiral Nardele (PW-58)** was a police constable and on that date he was on anti-sabotage duty on the foot-overbridge at platform no.1, opposite the *Times of India* building. He was carrying a carbine with ten (10) rounds. At about 9.45 PM, leaving his two other colleagues on duty, he came to take his meal

at the Police Help Centre situated in front of platform no.3 of the local railway station. No sooner had he reached there that he heard the noise of a bomb explosion and gun shots from the direction of the main hall of the main lines and saw passengers running away from there. Shashank Shinde came there and alerted him saying that terrorists were firing in the main hall of the main line. Shinde asked *Nardele* to accompany him. *Nardele* started loading the ten (10) rounds in his carbine but Shinde proceeded towards the main line without waiting for him. *Nardele* saw Shinde proceeding in the direction of the main hall of the main line accompanied by ASI *Pandarkar*[14], a police constable[15] and a photographer[16]. He went after them and heard the sound of firing on platform no.7. He entered a compartment of a local train on platform no.6 and from there he saw two terrorists, each carrying an AK-47 rifle and a hand-bag on their shoulders, proceeding towards the local railway station. He fired eight (8) rounds from his carbine (but the shots did not hit them). They retaliated but he was safe inside the rail compartment. He again tried to fire, but in the meanwhile his carbine was locked. He could not fire from it any longer. He then went to the armory, got his carbine unlocked and loaded it with more rounds. But by the time he came back to the main hall of the local lines, the terrorists had already left the local railway station.

[14] PW-62, Injured: shown in photograph Ext. no. 245

[15] Ambadas Pawar, killed; shown lying down with Shashank Shinde in photograph Ext. no. 242

[16] PW-61, *D'souza*

140. *Nardele* identified the appellant in court as the shorter of the two terrorists. He also identified the clothes worn by the two assailants. He also identified *Abu Ismail* (deceased accused no.1) from Article 61. He further told the court that he had earlier identified the appellant in the test identification parade held on December 28, 2008, at Arthur Road Prison, Mumbai. He had also identified the dead body of the deceased accused no.1 at the mortuary of JJ Hospital on January 6, 2009.

141. **Sudama Aba Pandarkar (PW-62)** was an Assistant Sub-Inspector of police and on November 26, 2008, he was on patrolling duty on the local trains. He was carrying a .303 rifle and ten (10) rounds. The train on which he was on duty arrived at CST on platforms no. 4 or 5 at 9.45 PM. He went to the Police Help Center and made the entry concerning his patrolling duty. Within a few minutes the explosion took place followed by firing, and he saw many passengers running wildly. In the meantime, Shashank Shinde came to the Police Help Center. He told them that the railway station was under attack by terrorists. Shinde asked *Pandarkar* to load his .303 rifle. *Pandarkar* accompanied Shinde towards the main line. He saw a terrorist who was about 6 feet in height coming from the side of the taxi stand and firing towards the railway police station. At that time he was standing in front of the railway police station. He fired two rounds at him from his .303 rifle but the shots did not hit him. At this point, Police Constable Ambadas

Pawar, who was also accompanying Shinde, took the rifle from *Pandarkar* and fired one round at the terrorist. At the same time *Pandarkar* saw the other terrorist (the appellant) coming towards them from the side of platform no.8 (main line). He was shorter in height than the other terrorist. He was firing from his AK-47 rifle. *Pandarkar*, Constable Ambadas 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 from AK-47 rifles. One of the bullets pierced through *Pandarkar's* left chest and exited from the back. He fell down as a result of the bullet injury. Shashank Shinde and Ambadas Pawar too were hit by the terrorists' shots and unfortunately they were not as lucky as *Pandarkar*. They succumbed to their injuries.

142. In the course of his deposition *Pandarkar* was shown the three (3) photographs collectively marked Ext. no. 239. He identified himself and the slain Constable Ambadas Pawar in those photographs. In the photograph Ext. no. 242, he identified Shashank Shinde and Ambadas Pawar lying prone after being shot by the terrorists. In one of the photographs from Ext. no. 243 (collectively) he identified himself and *Lau Kharat* (PW-57), who worked at the railway station, who is holding him by the arm after he was shot and helping him to be taken to St. George's Hospital. This particular photograph from Ext. no. 243 (collectively) was separately marked Ext. no. 245.

143. *Pandarkar* identified the appellant as the shorter of the two terrorists. He identified *Abu Ismail* from his photograph on Article 61. He had earlier identified the appellant in the test identification parade held on January 14, 2009.

144. **Sandeep Tanaji Khiratkar (PW-66)** was an Inspector in the Railway Protection Force. At the time of the occurrence he was at his residence and was informed about the attack by *Jadhav* (PW-54) by telephone. He rushed to the police station on his motor-cycle and arrived there in five to seven (5-7) minutes. He went to the RPF armory on the ground floor of the General Manager Office building and took out a .303 rifle and twenty (20) rounds from the armory. He came out of the station from the GM Porch abutting DN Road. SI *Bhosale* (PW-68) and Inspector Kshirsagar were with him. They took position in the GM Porch. At that time they saw two terrorists coming towards the porch situated near the subway. Both the terrorists fired at them. They also retaliated and fired back at the terrorists. The firing by *Khiratkar* and his men forced the terrorists to re-enter the railway station and move in the opposite direction towards platform no. 1 from where they went out of the railway station through the foot-overbridge. When *Khiratkar* and his men reached near the gate of the foot-overbridge they were informed that the terrorists had already left the railway station. *Khiratkar* then went to the control room of the CCTV cameras in the RPF office. There he found that on that date the CCTV cameras of the main lines were shut down for maintenance but

the movements of *Kasab* and *Abu Ismail* were recorded by the CCTV cameras in the main hall and platform no.1 of the local lines. At about 11.30 PM on the same day, he was informed by Constable *Jadhav* that the movements of the terrorists had been recorded on the Data Visual Recorder. Immediately thereafter he prepared from the DVR a CD of the visuals captured by CCTV cameras of the main hall and other places wherever the movements of the terrorists had been seen. The CD was sealed by him immediately and it was later handed over to an officer of DCB CID, Mumbai. He further stated before the court that the recording on the DVR is stored for a period of seven days. At the end of the seventh day the first day's recording would get deleted to make space for the recording of the eighth day.

145. *Khiratkar* identified the appellant as the shorter of the two terrorists. He identified *Abu Ismail* (deceased accused no.1) from his photograph on Article 61. He had earlier identified the appellant in the test identification parade held on December 28, 2008, at Arthur Road prison, Mumbai.

146. **Pandurang Subrao Patil (PW-63)** was an Assistant Sub-Inspector of Police on duty carrying a lathi. He told the court that he was fired at by the shorter terrorist (i.e., the appellant). The bullet hit his left thigh and, passing through it, pierced his right thigh and exited from the exterior portion of his right thigh. He

simply collapsed on to the floor. He further said that he had seen the two terrorists from a distance of twenty-two to twenty-five (22 to 25) feet.

147. *Patil* identified the appellant as the shorter of the two terrorists. He also identified *Abu Ismail*, (deceased accused no.1) from his photograph on Article 61.

148. **Geetanjali Krishnarao Gurav (PW-60)** was on duty at the CST local railway station near main gate no. 3. On hearing the explosion and the gun shots she along with Shinde (killed), API *Bhosale* (PW-49), PSI Khandale and other policemen went towards the main hall of the main lines. She saw two terrorists in the main hall and she saw the taller of the two throwing a hand grenade at a crowd of passengers. The grenade exploded, causing injuries to a large number of passengers. Both terrorists were continuously firing from AK-47 rifles. She and *Bhosale*, therefore, proceeded towards the railway police station to call for additional force. While on way to the police station, *Bhosale* was hit by a bullet in his left upper arm and he fell down. She tied a handkerchief to his wound and helped him in getting back on his feet. At that time, she saw both the terrorists proceeding in the direction of the local railway station. More than hundred (100) passengers lay badly injured in the main hall of the main lines.

149. *Geetanjali Gurav* identified the appellant as the shorter of the two terrorists. She also identified *Abu Ismail* (deceased accused no.1) from his photograph on

Article 61.

150. Now, some of the passengers:

Natwarlal Gigaji Rotawan (PW-50) and his daughter *Devika Natwarlal Rotawan*, aged about ten (10) years, (PW-51)[17]; *Farooqi Nasiruddin Khaliluddin* (PW-52); *Nafisa Shadab Qureshi* (PW-53); *Sangeeta Niranjan Sardar* (PW-86) and her husband *Niranjan Sadashiv Sardar* (PW-87); and *Ansar Alabaksha Mohd. Hanif Saudagar* (PW-88), are some of the passenger witnesses. They were in the main hall of the main lines waiting for their respective trains. They were jolted out of whatever they might be doing or thinking at that moment by the explosion of the first grenade thrown by *Abu Ismail* (deceased accused no.1) and from that moment they watched, in abject horror, the appellant and his companion firing indiscriminately at the group of passengers in the main hall; *Abu Ismail* throwing the second grenade and then the two moving around on the platforms in different directions until the spray of bullets and the shrapnel from the exploding grenades hit them or one of their group.

151. **Natwarlal Rotawan (PW-50)** was lucky to escape unhurt but his daughter, **Devika Rotawan (PW-51)**, was hit by a bullet on her right leg. She was treated as

[17] Though *Devika* was not examined by the police earlier and she was only a child aged 10 years, on an application made by the prosecution the trial court by order dated June 10, 2009 allowed her to be examined as one of the prosecution witnesses under oath after being satisfied that she was capable of understanding the meaning of oath. We feel that the trial court was quite justified in examining *Devika* as one of the witnesses of the occurrence.

an indoor patient in the hospital for about a month and a half and thereafter remained bedridden for four to six (4-6) months. When she came to depose in court after about 6 months of the occurrence, she was still unable to walk properly.

152. *Natwarlal* identified the appellant as the "shorter one" and said that his companion was not present in court. *Devika* identified the appellant as the person who was firing at the VT railway station.

153. **Farooqi Nasiruddin Khaliluddin (PW-52)** was at the station with his son. Both of them were injured, the son far more badly than the father, by the splinters from the second grenade thrown by *Abu Ismail* (deceased accused no. 1). *Khaliluddin* told the court that the firing by the terrorists continued for about fifteen to twenty (15-20) minutes. He further said that the taller man had paused in the firing as he took out a bomb from his bag and threw it in their direction but that the other man (that is, the appellant) continued with the firing and he appeared to be in a "joyous mood" on seeing the lethal effect of his firing. Identifying the appellant in court, he once again said that he was the same person whom he had seen in "joyous mood".

154. **Nafisa Qureshi (PW-53)**, who worked as a maid-servant, lost her six (6) year old daughter Afrin to the terrorists' bullets. She was hit by a bullet on the back and died at the spot. *Nafisa* herself sustained a bullet injury on her left leg.

155. She identified the appellant as one of the two persons who were firing at CST in all directions. The appellant was the person whom she had, earlier in her deposition, referred to as the "shorter one".

156. **Sangeeta Sardar (PW-86)** and her husband **Niranjan Sadashiv Sardar (PW-87)** also sustained injuries as a result of the firing and throwing of grenades. *Sangeeta* was hit by steel balls (from the hand grenade) that pierced her body, and some of which were still lodged inside her body as she deposed. Her husband, *Niranjan*, sustained two (2) bullet injuries, one on the right side of the head and the other below the right ear. Both of them remained indoor patients in the hospital for weeks.

157. *Sangeeta* identified the appellant as the "*butka*" who was firing at the CST railway station. She identified the "*lamboo* fellow" from his photograph on the identity card Article 61.

158. **Ansar Alabaksha Mohd. Hanif Saudagar (PW-88)** was hit by a bullet on his right leg, below the knee joint. In court, *Saudagar* was asked to identify the appellant from among the three (3) accused in the dock. He identified the appellant as the "*butka*" firing at the passengers at the CST railway station. He also identified the person who was accompanying the appellant from the photograph on Article 61.

Cama In[18]: Seven (7) dead and ten (10) injured[19]

159. *Kasab* and *Abu Ismail* were seen exiting CST via the foot-overbridge and coming down the bridge in the evidence of *Vernekar* (PW-102) and in the photograph of *Kasab* (Ext. no. 410-D) taken by him. On descending from the foot-overbridge, they came to Badruddin Tayabji Marg, which is a long, meandering road, a part of which runs along the premises of Cama Hospital. Cama Hospital has large premises, on which there are a number of buildings including a six-storey structure called the New Hospital Building. The entry to Cama Hospital is from Mahapalika Road on its western side, and Badruddin Tayabji Marg runs along the back of its premises. The prosecution, with the aid of eleven (11) eye-witnesses, has traced practically every step taken by *Kasab* and *Abu Ismail* from the moment they came out of CST, entered Cama hospital and eventually left the hospital. We, however, propose to examine only some of these steps, to get a broad idea of how the two were moving around killing people, completely mindlessly.

160. **Bharat Budhabhai Waghela (PW-103)** worked as a *Safai Kamgar* with Voltas. He lived in a hut off Badruddin Tayabji Marg. At about 9.30 PM on

[18] For this part of the case the prosecution examined thirty-two (32) witnesses. Leaving aside the doctors, forensic experts and other witnesses of a formal nature, such as *panch* witnesses, the number of eye witnesses who gave an ocular account of the events is not less than eleven (11). Of the eleven (11), two are policemen both of whom received injuries at the hands of *Kasab* and *Abu Ismail*, five (5) are from the public of whom one (1) is injured, and four (4) are hospital staff of whom two (2) are injured.

[19] The number relates to the persons killed and injured by *Kasab* and *Abu Ismail* both in the lane before they entered Cama hospital and inside the hospital.

November 26, 2008, he was sitting near the back gate of Cama Hospital on Badruddin Tayabji Marg engaged in small talk with his friends *Sandeep Waghela* (PW-105), who lived on the premises of Cama Hospital, and Bhagan Shinde, who lived in the same hutments as *Waghela*. Gupta *bhel*-vendor was also near the gate selling snacks of *bhel-puri*. At about 10.30 PM they saw two persons coming on to Badruddin Tayabji Road from the direction of the *Times of India* Building. One of them was '*lamboo'* (tall) and the other was '*butka'* (short). Both were carrying bags on their shoulders. Suddenly, they started firing. The *butka* man fired straight at them, and he shot *Gupta bhelwala* in full view of *Waghela*. *Waghela* was frightened and ran towards his hut. His friends also ran away from the spot. Back in his hut, *Waghela* told his mother about the incident. He shut the doors of his hut and peeped out from the little gap between the frame of the door and the panels. He saw the *butka* fellow standing near his brother's shanty, adjoining *Waghela*'s own hut, and firing at it. He heard his brother cry out. He saw the *lamboo* fellow firing in the lane. After some time, he saw both of them going towards the gate of Cama Hospital.

161. After a while, *Waghela* went to his brother, Thakur Waghela's shanty. He found his brother lying in a pool of blood. His five (5) year old son was also there but his wife was not present. *Waghela* took his brother to the GT Hospital where

he was declared dead by the doctors. Five minutes later, *Bhagan Shinde* was brought to the hospital. He was also declared dead.

162. *Waghela* identified the appellant as the gunman who had shot *Gupta bhelwala* and fired at his brother's shanty. He said before the court that he had identified the accused in the test identification parade on December 27, 2008. He had also identified the dead body of the "*lamboo*" when it was placed among six (6) other dead bodies at the mortuary of JJ Hospital. He then identified him from the photograph on the identity card, Article 61.

163. **Anjali Vijay Kulathe (PW-101)** worked as a staff nurse at Cama Hospital. On November 26, 2008, she arrived for duty at 8.00 PM. She was on duty on the first floor of the New Building. At about 10.30 PM she heard the sound of firing from the back of the hospital. She looked out from the back window of the ante-natal care unit and saw two persons climbing over the steel gate at the back of the hospital. One of them was '*lamboo'* (tall) and the other was '*butka'* (short). She could see them clearly in the light from the street lights. She further said that the gate was at the distance of ten to fifteen (10-15) feet from the window from where she saw the intruders.

164. The two men jumped inside the Cama Hospital premises. The tall man fired towards the window from where she was looking at them. One of the bullets hit the

right wrist of a hospital servant, Hira Jadhav. She was immediately removed to the casualty ward on the ground floor of the hospital. *Kulathe* further said that she informed the CMO on duty, Dr. Archana, that two terrorists had entered the hospital building. She then rushed back to her ward and closed all the doors from inside. She also locked the ward's collapsible (iron grill) gate. Moreover, since the ward had windows on all sides, all twenty (20) patients who were in the ANC ward at that time were moved to the pantry for their safety.

165. She further stated before the court that the noise of firing and explosions went on for about two hours. She and all the patients were frightened due to the continuous noise of explosions and firing. She and the patients stayed inside the pantry till 4.00 AM the following morning, when senior officers came and took them out.

166. She then identified the appellant as the *butka* man who, along with his tall partner, had entered the Cama Hospital premises by jumping over its back gate. She identified the tall partner of the appellant from the photograph on the identity card, Article 61. She further told the court that she had identified the appellant in the test identification parade on December 27, 2008, held by "judge" (sic) *Sharad Vichare*. *She further said that, on being identified by her, the appellant had said that he was in fact Ajmal Kasab and she had correctly identified him*.

167. **Raosaheb Changdev Funde (PW-107)** is an ex-serviceman and he worked as an unarmed security guard at Cama Hospital. On November 26, 2008, his shift ended at 10.00 PM but he learnt that some incidents had taken place at CST and, therefore, decided not to go home but to stay back for the night at the hospital. He stated before the court that, on learning about the CST incidents, he returned to Cama Hospital's main (front) gate, near the collapsible gate. Another security guard, Baban Ugade, was also there. As *Funde* was standing with Ugade near the collapsible gate, he saw the appellant and one other person coming towards them. The appellant fired a shot at Ugade from his rifle. The shot hit Ugade in the abdomen and he fell down. *Funde* was scared and ran up the stairs to the fifth floor, where he took shelter in a ward, hiding behind a stand which is used for drying clothes. The appellant, however, followed him there and, putting the barrel of his rifle on his head, ordered him, "*Utho*" (get-up). The appellant then asked *Funde* to proceed towards the bathroom. *Funde* saw one person lying in a pool of blood in front of the bathroom with a tall man standing near him. The appellant made him enter the bathroom where three (3) persons were already confined[20]. The bathroom was then bolted from outside. After two to three (2 or 3) hours, the police arrived there and opened the bathroom. *Funde* narrated the incident to the police.

[20] They were 1.*Timesh Narsing Chinnekar* (PW-123) whose wife *Gracy* was admitted in the hospital on November 22, 2008, for delivery; 2. *Thomas Sidhappa Uledhar* (PW-108), brother-in-law of *Chinnekar*; and 3. *Soman*, a friend of *Uledhar*

168. *Funde* then identified the appellant's partner from the photograph on the identity card, Article 61. He further told the court the he had identified the appellant at the test identification parade on December 27, 2008. He had also identified the dead body of the appellant's partner on January 7, 2009, at JJ Hospital.

169. **Harishchandra Sonu Shrivardhankar (PW-106)** was the person whom *Funde* had seen lying in a pool of blood near the door of the bathroom. His encounter with the two terrorists has something uncanny about it. Fate seemed to force his every step towards meeting the terrorists and when he actually stood face-to-face with them, quite certain of death, he did not go down without fighting. Tough, two and a half times the age of his opponents, completely unarmed and untrained in any kind of fighting, he put up a fight nonetheless. Unfortunately, his attempt could not succeed against an armed and trained killer. He was stabbed and shot and left behind by the terrorist in the belief that he was dead or would soon die. *Shrivardhankar***,** however, survived to tell the story and to identify his assailant.

170. *Shrivardhankar* worked as a Senior Clerk at the *Mantralaya* at the time. Apparently a devotee of *Hazrat Sayyed Shah Baba* (a Muslim saint), after leaving his office at 6.00 PM on November 26, 2008, *Shrivardhankar* went to the *Urs* at

the saint's *Durgah* (shrine), situated behind Metro Cinema. He left the *Durgah* at 10.30 PM and proceeded to CST via the Metro subway and St. Xavier's College to catch a train home. On approaching the gate of Cama Hospital at Mahapalika Road, *Shrivardhankar* saw many people running in panic and learnt about the incident of firings at CST. To avoid getting caught in the firing, he sought refuge in Cama Hospital. On entering the gate of the hospital he saw a dead body (Ugade) lying in front of the entrance to the main building. On seeing the dead body he was scared and, suspecting that some incident must have taken place on the premises of the hospital, he entered the main building through the collapsible gate. There was complete silence in the building and he found all the doors closed. He went up to the fourth floor; all the floors appeared to be deserted and the doors of all the wards were closed.

171. As soon as he reached the fifth floor, the luckless man found himself standing in front of a man holding a gun and a knife, and carrying a bag on his shoulder. He was about five feet six inches (5' 6") tall and had short hair. He was wearing a jacket. He put his knife on *Shrivardhankar's* neck. *Shrivardhankar* realised that the man would kill him in any case and, therefore, decided to fight. He tried to hit the man in the groin with his knee and also attempted to hit him with his bag. The bag, however, slipped out of *Shrivardhankar's* hand and the killer struck him two (2) times on the neck with his knife, causing bleeding. The killer caught

hold of *Shrivardhankar's* collar and pushed him down. He inflicted a third knife blow on his back and also shot a bullet in his back. By that time, *Shrivardhankar* had lost any strength to resist and fell unconscious. He regained consciousness after three to four (3-4) days at JJ Hospital and was treated as an indoor patient for about three (3) months.[21]

172. *Shrivardhankar* vividly recounted his encounter with one of the terrorists. He also told the court that in the fight with the killer his spectacles had fallen down. At that time he was wearing brown slippers (footwear). *Shrivardhankar* told the court that his footwear and spectacles were lost and he did not find them on regaining consciousness at JJ Hospital.

173. He then identified his assailant at Cama Hospital from the photograph on the identity card, Article 61. He also identified the assailant in the photographs Ext. no. 410-A & Ext. no. 410-B (part of Ext. no. 410 collectively).

174. He also identified his spectacles, Article 310 (recovered and seized from Cama Hospital and produced in court as one of the case articles) but said that the slippers shown to him as Article 309 did not belong to him.

[21] The only issue on which the two judges hearing the case were unable to agree completely was what would be the witnesses' feelings towards the saint. The author of these lines felt that he would never again go to the shrine holding him responsible for getting nearly killed on November 26. The other judge, on the other hand, maintained that the occurrence would have greatly enhanced his devotion for the saint, whom the witness would see as his savior.

175. ***Chandrakant Dnyandev Tikhe (PW-109*)** was the lift operator at Cama Hospital. On November 26, 2008, he was on duty as Generator Operator from 10.00 PM in the evening till 7:00 AM the following morning. The generator room is situated on the terrace of the building. At about 10:00 PM, when he was on the terrace, *Tikhe* heard the sound of firing from the ground floor. On hearing the gunshots he immediately went inside the enclosure where the solar system is installed and locked its collapsible gate. He was still inside the enclosure when, around 11:00 PM, the two terrorists arrived on the terrace. He saw them clearly in the light of the electric bulb of 200 watts that was lit on the terrace. One of them was taller and the other was shorter. The "*butka"* (short) fellow pointed his rifle towards *Tikhe* and asked him to come out or else he would blow him to bits ("*Aage aao warna uda dunga").* Therefore, *Tikhe* opened the gate and came out of the enclosure. The tall man was also holding a gun. *Tikhe* then identified the appellant as the short man who had pointed his gun at him.

176. When *Tikhe* came out of the enclosure, the appellant asked him the way out from the hospital. *Tikhe* told them that there was only one staircase that alone could be used to exit the hospital. The tall fellow, who was keeping a watch, suddenly shouted "Police!" and started firing towards the stairs. The appellant held his gun against *Tikhe's* back and pushed him towards the stairs. The appellant and his tall partner brought *Tikhe* to the landing between the sixth floor and the terrace.

From there, *Tikhe* saw three to four (3-4) policemen in front of the lift on the sixth floor. *Tikhe* raised his hands apprehending that he might be killed by the police if they suspected him of being a terrorist. A staff member of Cama Hospital, namely *Kailash* (PW-111), was also with the policemen and he identified *Tikhe* to the police as one of the hospital staff. The police fired at the appellant and his tall partner forcing them to retreat to the terrace. In that time, *Tikhe* escaped and came down to the sixth floor landing. He told the police that there were two terrorists.

177. The appellant then started firing at them from above. He also threw a hand grenade on to the sixth floor. The splinters from the hand grenade hit *Tikhe* on his neck and he sustained a bleeding injury. Some policemen were also injured from the explosion of the hand grenade. The appellant and his tall partner kept firing at the policemen. *Tikhe* saw a police officer and another policeman getting shot and falling down in front of the lift. After some time, the terrorists again threw down a hand grenade and fired indiscriminately in the direction of the lift. The other policemen and the officers were also injured by the second explosion and the firing.

178. At this point, *Tikhe* came down to the second floor. He was accompanied by two policemen and by *Kailash*. One of these policemen went further down but the other stayed with them. After being given first aid they were shifted to GT

Hospital. From there, *Tikhe* was taken to KEM Hospital for treatment as hand grenade splinters were lodged in his neck. He was treated as an indoor patient for seven (7) days.

179. He also told the court that he had identified the appellant in the test identification parade on December 27, 2008.

180. **Sadanand Vasant Date (PW-118)** is an IPS Officer and, at the material time, he was posted as Additional Commissioner of Police, Central Region, Mumbai. On November 26, 2008, at about 10.00 PM, he was at his residence when the assault at CST took place. CST did not come within his jurisdiction but, on the request of his colleague Dr. Vankatesham whose jurisdiction included CST, *Date* came out like any dutiful police officer. He first went to the Malabar Hill Police Station, which was close to his residence, and collected one carbine and twenty (20) rounds. On the way to CST he got information about the movements of the terrorists and, in light of this information, he and his team reached Cama Hospital a little after 11.00 PM. *Date* came to learn that the terrorists had gone up to the terrace of Cama Hospital building and, therefore, he took the lift to the sixth floor landing, from where stairs led up to the terrace[22]. There, he had an encounter with

[22] The New Hospital building of Cama Hospital had two lifts, apart from the stairs, for going to the upper floors. The lifts could take one up to the sixth floor but the stairs would go beyond, right up to the terrace of the building.

the two terrorists who were at that time on the terrace of the building, holding *Tikhe* there.

181. On reaching the sixth floor, instead of rushing to the terrace, *Date* picked up an iron object lying there and threw it towards the door of the terrace, to check the position of the terrorists. In response, a burst of firing from an automatic weapon came from the terrace door. Shortly thereafter, *Date* saw a bulky person (*Tikhe*) coming down to the landing on the stairs between the terrace and the 6th floor. *Date* challenged the bulky person but *Kailash* (PW-111) identified him as a member of the hospital staff. The bulky person indicated that there was somebody behind him. *Date* asked him to bend down and then fired over his head towards the terrace. That forced the terrorists to go back to the terrace. Taking advantage of the situation, *Tikhe* came down to the sixth floor landing. In the meantime, a grenade was thrown from the terrace. It exploded on the sixth floor in front of the lift causing injuries to some police officers, including *Date*, and also to *Tikhe*.

182. *Date's* team comprised seven (7) police officers and policemen. All of them were armed with firearms. *Date's* operator Tilekar and police constable Khandelkar had one carbine each. *Date* himself was wearing a bullet-proof jacket and he had a carbine with twenty (20) rounds. But all this did not prove sufficient to take out *Kasab* and *Abu Ismail* or even to stop them. The two terrorists were

able to overcome the police and to escape from the tight spot in which they had landed – the terrace that had only one (1) exit by the stairs. This was because, besides having superior fire power, they had the great advantage of hand grenades. Grenades exploding in the very small landing area badly injured the policemen who had no cover or shelter there.

183. *Date* stated before the court that, after the first hand grenade exploded, his officers continued to fire towards the terrace. But shortly afterwards, another hand grenade was thrown, which caused injuries to almost all officers who were present there, including *Date*. The injured police officers, policemen and staff members of Cama Hospital were asked to go down. More (killed) could not go down because he was badly injured and unconscious. Police constable Khandekar (killed) also could not go down as he, too, was badly injured. *Date* said before the court that he continued to fire towards the terrace in retaliation of the firing from there. The exchange of fire went on for about forty (40) minutes during which he had taken cover behind a wall situated in front of the right side lift. After some time he sensed some movement and, as he came out from behind the wall which he was using for cover, he found that two persons had already gone down towards the fifth floor. He fired two shots towards the two persons going away but was unable to say whether or not they were hit. He was unable to pursue them because of his leg injury.

184. He said it would be 11.50 PM at that time.

185. Accordingly, *Date* informed his superiors that two persons had gone down from the sixth floor of the building and that they had automatic weapons and hand grenades.

186. *Date* further said that the help came at about 00.45 AM and he was shifted to KEM Hospital, where he was admitted for three (3) days. Apart from several minor injuries he had sustained injuries from splinters and fragments of the hand grenade in his right eye and on the left side of chest just below armpit, and in his throat, right knee and left ankle.

Cama Out[23]: Nine (9) dead, seven (7) injured[24]

187. *Date* on the sixth floor landing was unable to stop *Kasab* and *Abu Ismail* and, while he took shelter against the hail of bullets and shrapnel from the grenades behind a wall, the two managed to sneak down the stairs.

[23] For this part of the case the prosecution examined eighteen (18) witnesses. Leaving aside the doctor, forensic expert and other witnesses of a formal nature, such as *panch* witnesses, the number of eye witnesses who gave an ocular account of the events is not less than seven (7). Out of the seven (7), six (6) are policemen one (1) of whom received injuries at the hands of *Kasab* and *Abu Ismail* and one (1) is the driver of a car who received gunshot injuries when his car was fired upon by the terrorists.

[24] The number relates to the persons killed and injured by *Kasab* and *Abu Ismail* from the point they came out of Cama hospital and until they snatched the Skoda car.

188. **Suresh Shantaram Kadam (PW-138)** and **Yashwant Shankar Thorawade (PW-128)**[25] next saw *Kasab* and *Abu Ismail* coming out of Cama Hospital from its front side on Mahapalika Road and immediately gunning down a police officer.

189. *Thorawade* was a Police Inspector and, on the evening of November 26, 2008, in the absence of the senior police inspector, he was holding charge of Azad Maidan police station. *Kadam* was a constable attached to the same Police Station. As Azad Maidan police station received information that terrorists had entered CST and were firing there, the policemen proceeded to the railway station in two police vehicles. On the way, they learnt that the terrorists had left the railway station and were seen going in the direction of Metro Cinema. Accordingly, they came to Metro junction where they came across Additional Police Commissioner *Date* (PW-118). *Date* asked them to go back and collect bullet-proof jackets and arms and ammunition from Azad Maidan police station as information had arrived by then that the terrorists had reached the terrace of Cama Hospital building and were firing from there. As directed by *Date, Kadam, Shelke* (PW-141) and some

[25] *Thorawade* (PW-128) was earlier examined on July 14, 2009, before *Kadam* (PW-138) who was examined on July 27, 2009. But on July 14, 2009, he only stated before the court that, from November 28, 2008, he was handling the investigation of Crime No.245-08 till it was taken over by DCB, CID, on December 2, 2008. Later, *Kadam*, in his deposition before the court, stated that *Thorawade* was also among the policemen stationed in front of the entrance to Cama Hospital when *Kasab* and *Abu Ismail* came out of the Hospital, and he too had witnessed the whole incident. Thereupon, the court recalled *Thorawade* and he was re-examined by the court on November 23, 2009.

others went back to Azad Maidan police station where they collected two bullet-proof jackets and some fire-arms and ammunition.

190. Returning to the scene of firing, they decided to go to the front gate of Cama Hospital (instead of going to the back side), expecting the terrorists to exit the hospital from its main gate. *Kadam* stated that he was accompanied by *PI Thorawade* (PW-128), *PSI Shelke* (PW-141), and police constables Utekar and Rathore. Constable *Gawade* was driving the Bolero vehicle (called Peter-I[26] Azad Maidan) in which they came there. The vehicle was parked on the left side of the road facing Metro junction and they took position by the side of the vehicle.

191. At about 11:45 PM, the policemen saw two persons coming out of Cama Hospital. *Kadam* first saw them on the footpath of Cama Hospital and *Thorawade* when they were near the gate of St. Xavier's College adjoining the hospital. *Kadam* said that one of them was '*lamboo'* (tall) and the other was '*butka'* (short). In the meantime, they saw a motor-cycle driving on Mahapalika Road from Metro junction towards CST. It was driven by a police constable and a police officer was on its pillion. The officer got down near the gate of St. Xavier's College and, according to *Kadam*, the motor-cycle went ahead. (According to *Thorwade*, the constable made a u-turn and went back towards Metro). The officer who got down

[26] Peter Mobile is the name given to a vehicle fitted with a wireless system. One such Peter Mobile is provided to each police station under the direct control of the Sr. PI in charge of the police station.

from the motor-cycle started directing people coming from the direction of CST to return. He seemed to have asked the *lamboo* and the *butka* also not to proceed further but to go back. But they continued moving towards him and fired at him from a distance of about fifteen to twenty (15-20) feet. The officer collapsed to the ground. This confirmed to *Thorawade* and *Kadam* that the two persons who had come out from Cama Hospital were the terrorists whom they had been watching for. *Thorawade* started firing at them from his service pistol. *Kadam* also fired one round from his pistol and then he stopped because *Thorawade* was firing at the terrorists. The terrorists fired back in retaliation.

192. *Thorawade* told the court that he tried sending messages to South Control from the wireless installed in his Bolero police vehicle but, due to heavy traffic on the network, he was unable to send the message. Therefore, *Thorawade* went to the Metro junction where two to three (2-3) police vehicles were available. The message was sent from the wireless set of one of those vehicles.

193. There were many people at the metro junction. After a short while, one police vehicle (Qualis) appeared from Badruddin Tayabji Road and took right turn on Mahapalika Road towards Metro junction. *Thorawade* saw the two terrorists in that vehicle. The person who was sitting on the right side was firing at the large

crowd assembled at Metro junction. One policeman and another person were injured due to firing from that vehicle.[27]

194. In the meanwhile, *Kadam* had remained in front of Cama Hospital. He went on to state before the court that he saw a white car with a red beacon approaching Mahapalika Road from Badruddin Tayabji Road but, immediately thereafter, he saw the car going backwards on Badruddin Tayabji Road. The *lamboo* and the *butka* fired at that car. One of them also threw a hand-grenade towards the white car. Thereafter, both of them proceeded towards Rang Bhavan Lane on (BT Road). The officer who was shot near the gate of St. Xavier's College was later identified from the name plate on his uniform as Durgude. *Kadam* then identified *Kasab* in the dock as the *butka* who had fired at *Durgude* and who was accompanying the *lamboo*. *Kadam* further stated that he had earlier identified the appellant in the identification parade on December 27, 2008, and had also identified the dead body of the *lamboo* on January 6, 2009, at the JJ Hospital mortuary.

195. **Maruti Madhavrao Phad (PW-139)** was the driver of the "white car with red beacon" which *Kadam* had seen coming from Badruddin Tayabji Road towards Mahapalika Road and then going in the reverse direction. It was actually a white Honda City car, a government vehicle allotted to one *Bhushan Gagrani*, IAS,

[27] *Abu Ismail* was firing at the crowd assembled at the Metro junction while driving the Qualis police vehicle which the two terrorists had snatched after killing all but one of its occupants. Actually both the two persons, namely, police constable driver *Chitte* and a civilian *Surendra Bindu Ram*, were killed, *vide* PW-654 (*Ashok Dattatraya Khedkar*, Assistant Police Inspector)

Secretary Medical Education and Drugs Department (PW-140). *Phad* was the driver on duty for the vehicle. On November 26, 2008, at 6.30 PM the car was, as usual, parked in the premises of "High Rise Building" situated on Badruddin Tayabji Road. Between 11:30 and 11:45 PM, *Phad* received a call on his mobile from *Gagrani*, asking him to bring the car to his residence to take him to Mantralaya to attend an emergency meeting that seems to have been called as news broke of the terrorists' attack on Mumbai. As directed, *Phad* took the car from its parking place on Badruddin Tayabji Road and proceeded towards Mahapalika Road on his way to *Gagrani's* residence. As he approached Mahapalika Road, *Phad* saw two persons, one tall and the other short, firing on the road. He, therefore, stopped the car and began to reverse. At this, those two persons fired at his vehicle. *Phad's* right hand was on the steering wheel. Two bullets pierced the car's windscreen and hit him on his right hand. He continued to reverse the vehicle, ducking down to save himself from the volley of bullets, but a third bullet hit him on the left side of his waist. He also realized that the left front wheel of the car was punctured. He, therefore, locked all four doors of the car by means of the central locking switch and, pretending to be dead, lay down on the driver's seat. At this time, he heard an explosion near the car. A little while later, the two terrorists came near his car and tried to open its doors but they were unable to do so as the doors were locked. After some time, he saw them from the rear windscreen of the

car near the SBI office behind him. His car was standing on the road in a slanting position but there was enough space on both sides for vehicles to pass. As the two terrorists approached "High Rise Building", they took cover behind bushes abutting that building. At the same time, *Phad* saw a police vehicle approaching his vehicle from behind, i.e., from the side of the SBI office on Badruddin Tayabji Road. As soon as the police vehicle came close to the two persons hiding in the bushes, they started firing indiscriminately at the police vehicle. At the same time, the shorter fellow seemed to have sustained a bullet injury, probably from the firing from the police vehicle. His gun fell down. The *butka,* however, picked up the gun and resumed firing at the police vehicle.

196. Firing from the police vehicle stopped, and the taller man went to the vehicle and opened its right front door, pulling the driver on to the road. He also pulled down another person from the vehicle's middle seat. The *butka* fellow went to the left side of the vehicle and pulled down the person sitting on the left front seat. The *lamboo* fellow occupied the driver's seat and the *butka* took the front left seat.

197. *Phad* stated before the court that he had witnessed the above incident from a distance of about one hundred and fifty (150) feet. The police vehicle thus taken over by the two terrorists proceeded towards Mahapalika Road. Apprehending danger from those two persons, *Phad* pretended to be dead and continued lying in

his vehicle. That vehicle crossed *Phad's* vehicle and went towards Mahapalika Road. It was a Qualis vehicle.

198. Phad stated before the court that as a result of the injuries sustained by him he lost the ring finger on his right hand and two other fingers were not functioning properly. He was no longer able to drive auto vehicles.

199. *Phad* gave a description to the court of the two persons whom he had seen firing on Badruddin Tayabji Road. The *lamboo* was six (6) feet in height, of fair complexion, and was aged about twenty-two to twenty-five (22-25) years. The *butka* was five feet three inches (5' 3") inches in height, of fair complexion and strongly built. *Phad* said he could identify both of them and added that one of them was present in court, identifying the appellant as the *butka.* He further said that he had identified the appellant in the identification parade on December 27, 2008. He had identified the appellant from amongst seven (7) persons put in line with him. SEO*, Vichare* was conducting the test identification parade. He then identified the *lamboo* from his photograph (Article 61) and stated that earlier he had identified his dead body at the JJ mortuary from amongst ten (10) dead bodies.

200. In cross-examination *Phad* said that as he approached Mahapalika Road he had seen a police vehicle parked near the bus-stop on Mahapalika Road and had also seen the two terrorists firing on the police officers standing near the vehicle.

201. **Bhushan Ashok Gagrani**, who was examined as **PW-140**, stated before the court that he called *Phad* between 11.30 and 11.45 PM, to bring the car to his residence at Yashodhan Building and take him to Mantralaya. When the car did not come, he again called *Phad* but he did not turn up. Therefore, *Gagrani* went to Mantralaya in his personal vehicle. At about 12.15 AM he tried to contact *Phad* once again. This time, he got a response from the driver who told him that he had been fired at in the car; that the car was stranded in the vicinity of Rang Bhavan; and that he was lying injured inside it. *Gagrani* then tried to contact the police control room but could not get through as the number was continuously engaged. He then contacted the Superintendent of GT Hospital and requested him to provide help to *Phad*. After an hour he was informed that *Phad* had been admitted to the hospital with bullet injuries.

202. All the phone calls made by *Gagrani* from his mobile phone to the mobile phone of *Phad* and to the hospital were independently established from the mobile phones records.

203. **Arun Dada Jadhav (PW-136)** is a very special witness. He was in the extraordinary position of actually traveling with the two terrorists, lying badly injured in the back side of the Qualis vehicle that the terrorists had hijacked after

killing three (3) senior police officers and three (3) policemen on Badruddin Tayabji Road.

204. In the time that Additional Commissioner of Police *Date* (PW-118) was engaged in the encounter with the terrorists on the sixth floor landing of the New Cama Hospital Building, a number of senior officers and policemen had gathered at the back of the hospital. At that time, an injured policeman emerged from the back of the hospital. He told the assembled officers that *Date* and some other police officers were lying injured on the higher floors of the hospital. Thereupon, Kamate, Additional Commissioner of Police (East Region), Karkare, Joint Commissioner of Police (ATS) and Salaskar, Senior Police Inspector, decided to go to the front gate of Cama Hospital, anticipating that the terrorists would go out from that side. They took a Qualis police jeep of Pydhonie Division[28] that was standing there. Salaskar took the driver's seat, Kamate occupied the front left seat and Karkare sat on the middle seat of the vehicle. *Jadhav*, who was attached to the Anti-Extortion Cell of which Salaskar was the chief, sat in the extreme rear of the vehicle. The driver of the vehicle, Bhosale (killed), sat alongside *Jadhav*. Two constables, namely Yogesh Patil (killed) and Jaywant Patil (killed), occupied the rear seat, opposite *Jadhav* and Bhosale. Yogesh Patil was the wireless operator on

[28] Pydhonie Division Jeep was assigned to *Shantilal Arjun Bhamre*, Assistant Commissioner of Police, Pydhonie Division (PW-133) and he had come there on that Jeep.

duty for that vehicle and Jaywant Patil was the wireless operator of Kamte's vehicle.

205. As they proceeded on Badruddin Tayabji Road towards the SBI office, a message was received on wireless that the two terrorists were hiding on Rang Bhavan Lane near a red vehicle. Rang Bhavan Lane begins from the SBI office. Kamate directed Salaskar to slow down the vehicle and proceed cautiously. *Jadhav* told the court that there were bushes on the right side of the road, about five to five and a half (5-5.5) feet in height. As the Qualis came near the bushes, it was greeted by a burst of gun-fire. *Jadhav* looked out from the vehicle's window and saw one *lamboo* and one *butka* firing at their vehicle with AK-47 rifles. *Jadhav*, Karkare, Kamate and Salaskar also fired at the *lamboo* and the *butka* from the windows of the vehicle. *Jadhav* sustained bullet injuries on his right elbow and left shoulder. Because of the injuries, the carbine fell from his hands on the vehicle's floor. The terrorists continued to fire at them. By now, all the policemen had suffered gunshots and were injured. *Jadhav* was unable to pick up his carbine.

206. After some time, the firing stopped and the *lamboo* tried to open the vehicle's rear side door. However, the door did not open. *Jadhav* tried to pick up his weapon once again but could not. The driver Bhosale was also badly injured and he had fallen down on *Jadhav*. Yogesh Patil and Jaywant Patil were also

unable to move. Realising that it was not possible for him to retaliate, *Jadhav* pretended to be dead. At this time he heard a door of their vehicle opening and also heard the noise of the vehicle starting. He realised that the vehicle was being driven, and he then saw that the driver's seat was occupied by the *lamboo.* Karkare, Salaskar and Kamate were no longer in the vehicle.

207. At the metro junction, *Jadhav* heard the sound of firing but he continued pretending to be dead. He realised that one of the vehicle's wheels was punctured. After some time, he also realised that even the tube and tyre had come off the punctured wheel. He could sense this as he was himself an experienced driver.

208. The vehicle stopped on the road behind the Vidhan Bhavan. There was more firing and then he saw the two terrorists leaving the Qualis and going to a car that had stopped. They left in the other car, which looked like a Honda City. He could see them clearly in the street light.

209. After the terrorists had left, *Jadhav* informed the Police Control Room on the vehicle's wireless that the two terrorists had run away in a car and that he was lying injured in the vehicle of Pydhonie division (Able) in front of the State Bank of Mysore. He was rescued by a team of policemen including *Amrute*, Senior Police Inspector (PW-137).

210. *Jadhav* went on to describe the two terrorists. He said that the *lamboo* was six (6) feet tall, of strong built and fair complexion, and aged twenty-two to twenty-five (22-25) years. The *butka* was about five feet three inches (5' 3") tall, of medium built and fair complexion, and aged twenty to twenty-two (20-22) years. He identified the appellant in court as the *butka.* He added that he had identified the appellant in the identification parade held on December 27, 2008, at Arthur Road Prison. On January 6, 2009, he had identified the dead body of the *lamboo* from amongst seven (7) dead bodies.

211. He also identified the carbine and the magazine (Article 444 collectively) which he had in his possession at the time of the occurrence.

212. In cross-examination on behalf of the appellant, *Jadhav* stated that while proceeding on Badruddin Tayabji Road he had seen one white car with a red beacon. The exchange of fire between the occupants of the police vehicle and the terrorists had taken place in front of the ATM centre. He further stated that, at the time of the exchange of fire, his carbine was on single fire mode and he had no opportunity to put it on burst fire mode. *Jadhav*, Salaskar, Karkare and Kamate had fired at the terrorists in retaliation. The AK-47 held by the appellant had fallen down from Jadhav's firing. The appellant, however, picked up the gun and resumed firing at them. *Jadhav* also said that while the Qualis was being driven by

the terrorists, Yogesh Patil was lying on his knee. At that time Patil's mobile rang. The appellant, who was sitting on the front left seat, shot a burst of bullets with the barrel of his gun pointing backwards. The bullets pierced the middle seat and riddled the body of Yogesh Patil and he died as a result. *Jadhav* was not injured in that firing. *Jadhav* said that the appellant must have fired ten to fifteen (10-15) shots in that burst. He also stated that the *lamboo* had pulled Salaskar and the appellant had pulled Kamate out of the vehicle. Karkare was pulled out by the *lamboo* assisted by the appellant. While pulling him down from the vehicle the appellant had cursed him, using foul language, saying that he was wearing a bullet-proof (jacket). He further said that the whole incident, from the beginning of firing by the terrorists until they took the vehicle lasted three to four (3-4) minutes.

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

THE SKODA ROBBERY[29]:

213. **Sharan Arasa (PW-144), Samit Vijay Ajgaonkar (PW-147)** and his wife *Megha* were the three occupants of the white Skoda car that Kasab and *Abu Ismail*

[29] For this part of the case the prosecution examined six (6) witnesses. Of these three (3) are policemen. One of them is formal, the other recorded the statement of the person from whom the car was taken away at gun-point and, since he was not the jurisdictional policeman, he handed over the recorded statement to the jurisdictional policeman who is the third police witness. Of the remaining three (3), two (2) are the occupants of the car and the third is the person whom they were going to rescue after he was evacuated from Oberoi Hotel.

snatched at gun-point, and which *Arun Dada Jadhav* (PW-136), lying in the back seat of the police Qualis, had thought to be a white Honda City car.

214. *Arasa* and *Ajgaonkar* had a common friend *Siddharth Umashankar* (PW-238) who worked as Sales Manager in Oberoi Hotel. When the two terrorists, namely *Abdul Rehman (Chhota)* and *Fahadullah*, entered Oberoi Hotel and started shooting there, *Umashankar*, along with other guests and staff members, escaped through the exit door in the lobby area. They went to Inox multiplex, which is a few minutes' walking distance from the Oberoi. When *Ajgaonkar* called him on the telephone, *Umashankar* asked him to come to Inox and take him away from there. *Ajgaonkar* contacted *Arasa* and asked him to come with his car so that they could go to Inox to fetch *Umashankar*. Thus, *Arasa* took the Skoda Car (of which his father was the registered owner) and came to *Ajgaonkar's* house at Mahim. From Mahim they proceeded to Inox with *Arasa* driving, *Ajgaonkar* occupying the front left seat and his wife *Megha* sitting in the back. They were going to rescue *Umashankar* but they themselves had a brush with death when they came across the two terrorists face-to-face.

215. They reached Rajani Patel Road, Nariman Point, at about 00.15 hours on November 27, 2008. They saw a Qualis police vehicle approaching them from the opposite direction. When the Qualis was about sixty (60) feet away, someone from

the police vehicle shouted at them to stop. Simultaneously, a shot was fired in the air from that vehicle. The Qualis stopped and two persons got down from it and approached their car. The person who had got out from the left side of the police vehicle came in front of their car. He asked *Arasa* to get out of the vehicle. The other person, who had been driving the Qualis, pulled *Arasa* out of the Skoda car, holding him by his collar. In the meantime, *Samit* and *Megha* had already left the car and were sitting on the footpath. As *Arasa* got out of the car, he realised that he was carrying the key. He, therefore, immediately threw the key away.

216. The person who had come out of the Qualis from the left side was shorter than the other person. *Arasa* identified the appellant in court as the same short person who had come to him and asked for the car's key. When *Arasa* had thrown away the key, it had landed near the car's rear right wheel. *Arasa* picked up the key and gave it to the appellant. The two men drove away in the car: the appellant sat in the front left seat and his partner drove the car.

217. Let us now see the description of the occurrence by *Ajgaonkar*. He stated in his deposition before the court that, when the Qualis stopped, two persons got down from it and approached their car. One of them was taller and the other was shorter. He identified the appellant as the shorter person who approached their car along with his associate who was taller than him. The taller man approached *Arasa*

while the appellant stood in front of the car. The appellant ordered them to get out of the car ("*Gadi se bahar aao*"). The taller fellow pulled *Arasa* out by his collar. In the meantime, *Ajgaonkar* and his wife got down from the car and went to the footpath on the left side of the car. The taller fellow occupied the driver's seat and the appellant sat on the front left seat. The taller fellow, however, could not find the car keys and, hence, the appellant got down from the car and demanded the key from *Arasa*. *Arasa* picked up the key which he had thrown near the car and gave it to the appellant. Thereafter, both of them drove away in the Skoda car. The terrorists proceeded towards Inox theatre.

218. *Arasa* further told the court that, at about 3:00 PM on November 27, 2008, he received a phone call from PSI *Zende* (PW-148) of Marine Drive police station, asking him to come to the police station. Accordingly, he went and reached there at about 3:45 PM. He was taken to the spot from where the car was taken from him. A *Panchnama* was drawn up by the police.

219. He was finally shown his vehicle on December 25, 2008, in the premises of the office of DCB CID. There was a bullet hole on the right front door. The car was badly damaged on the right side. He told the court that the car was in proper condition when it was snatched away from his custody.

220. As seen above, both *Arasa* and *Ajgaonkar* identified the appellant in court. Both said that they had earlier identified him in the test identification parade. *Arasa* was one of the witnesses in the test identification parade held on December 28, 2008, and *Ajgaonkar* on January 14, 2009. Both had identified him in a group of seven (7) persons of similar height and built. The identification was made in the presence of the SEO and two *panchas*.

VINOLI CHOWPATY[30]: ONE DEAD, ONE INJURED

221. *Kasab* and *Abu Ismail* along with eight (8) others (the dead accused) were seen landing on the shore of Mumbai on November 26, 2008, between 9.15 and 9.30 PM. *Kasab* and *Abu Ismail* snatched the Skoda car near Vidhan Sabha around 12.15 AM on November 27. They came to Mumbai armed to the teeth; they had the great advantage of complete surprise and were also aided by a lot of luck. They were thus able to have a free run for over three (3) hours, killing innocent people and policemen at will. However, their run would soon come to end as a team of policemen were waiting, determined to stop them, caring little for their own lives. *Abu Ismail* was killed in their last encounter with a police team, but *Kasab* was taken alive in custody.

[30] For this part of the case the prosecution has examined ten (10) witnesses. Leaving aside two (2) *panch* witnesses and a formal police witness, there are seven (7) police witnesses of whom three (3) are members of the team that overpowered *Kasab* and *Abu Ismail* and took them in custody (one of them is injured), two (2) reached the spot after *Kasab* was apprehended and had taken him and *Abu Ismail* to hospital, one (1) maintained the police logs and the last secured the area after the incident.

222. We propose to examine here three (3) witnesses who were members of the police team that stopped *Kasab* and *Abu Ismail* travelling in the stolen Skoda car and took them in custody.

223. **Bhaskar Dattatray Kadam (PW-1)** was a Sub-Inspector of Police attached to DB Marg Police Station. On November 26, 2008, at about 22.00 hours, Senior Police Inspector Nagappa Mali told him that terrorists had attacked some parts of South Mumbai and directed him to go to Girgaon (Vinoli) Chowpaty along with members of the Crime Detection Branch and to do a *nakabandi* there by putting up barricades. As directed by Mali, *Kadam* proceeded to Vinoli Chowpaty accompanied by six (6) members of the Detection Branch. On reaching there, he found API *Hemant Bavthankar* (PW-3), Peter Mobile Operator Sanjay Patil, Peter Mobile Driver Chandrakant Kamble, Girgaon Chowpaty Beat In-charge ASI Pawar, ASI Kochale, Head Constable Chavan, PN Naik and some other policemen already present there and barricades already put up. *Kadam* and the members of the Detection Branch joined the police team already present there. After some time, API *Govilkar* (PW-2; injured) and ASI Tukaram Ombale (killed), along with some other policemen, also arrived at the *nakabandi*.

224. The police team was receiving messages regularly through wireless on the Peter Mobile Van. They received a message that two terrorists were proceeding

towards Chowpaty from Vidhan Bhawan via Marine Drive in a Skoda car. At about 00.30 hours they spotted a Skoda car on Marine Drive coming from South Bombay towards Chowpaty. Having been alerted in regard to the Skoda, all the policemen, including *Kadam*, signalled to the driver to stop the car. The car stopped at a distance of about fifty (50) feet from the barricades. The police team shouted to tell the driver that there was a *nakabandi* and they would check the car. They asked the driver to put off the head lights and to put on the inside lights of the car. Instead of following these directions, the driver of the car did just the opposite. Not only were the head lights kept on but the wipers and the water spray on the windscreen were also switched on. Therefore, it became difficult to see anything inside the car. Then, in a bid to escape, the driver tried to take a u-turn just before the barricades. However, the car could not climb over the road divider; it dashed against it and stopped. *Kadam* and six (6) other policemen rushed towards the car and surrounded it. The driver and the other person who was sitting on the front left seat raised their hands pretending surrender but, when *Kadam* approached the driver, he started firing at him through the lowered window. *Kadam* fired back from his service revolver. At that time *Kadam* was about ten to twelve (10-12) feet from the driver of the car. *Kadam* told the court that he shot the driver of the Skoda car and injured him.

225. The other occupant of the Skoda car, who was sitting on the front left seat, opened the door on his side and got out of the car. While getting out, he deliberately fell on the road. ASI Tukaram Ombale and API *Sanjay Govilkar* were proceeding towards the car's front left door. The person who had got out of the car from the front left door started firing at *Tukaram Ombale* with an AK-47 rifle. Even as he was being fired at, Tukaram Ombale threw himself bodily upon his assailant. Tukaram Ombale and *Govilkar* were injured by shots from the AK-47 rifle. Other members of Ombale's and *Govilkar's* team started hitting the assailant with *lathis*. They succeeded in disarming him. His AK-47 rifle was snatched away from him by policemen and he was taken into custody.

226. Within ten (10) minutes of this occurrence, Senior PI Mali, PI *Sawant* (PW-31), PI Surulkar, API Yadav, API *Gawade* (PW-4), PSI *Gaikwad* (PW-24) and PSI *Warang* (PW-27) reached the spot. Two (2) ambulances also reached there within the same time.

227. Ombale and *Govilkar*, who had sustained injuries, were sent to hospital in the Peter Mobile Van. PI Surulkar and API *Gawade* took one of the two terrorists (*Abu Ismail*) to hospital in one of the ambulances and the other terrorist (*Kasab*) was taken to hospital by PSI *Warang* (PW-27) and some other policemen.

228. *Kadam* further told the court that, on reaching the DB Marg Police Station, he received a call from *Gawade*, speaking from Nair Hospital, informing him that one of the terrorists (*Abu Ismail*) had been declared brought dead by the hospital and that the other terrorist (*Kasab*) had been admitted for treatment. *Gawade* also informed *Kadam* that the terrorist who was alive had disclosed his name as *Ajmal Amir Kasab*, gave his age as 21 years and address as Faridkot, Taluka Jipalpura, District Ukhad, Punjab State, Pakistan. He also gave the name and address of the deceased terrorist as *Abu Ismail*, aged 25 years, resident of Dera Ismail Khan, Punjab State, Pakistan. Station diary entries (Ext. no. 150A) were made on the basis of the information received from *Gawade*. After some time, API Yadav called from Harkisandas Hospital to inform that ASI Ombale had died as a result of injuries sustained by him. Station diary entry was also made in regard to this information.

229. The FIR of *Kadam* was recorded by PI *Sawant* at 2.10 hours, giving rise to CR no. 305/2008 (later converted into DCB CID CR no. 182/2008). The FIR was shown to him in the course of his deposition. He identified it and also identified his signatures on all the pages. The FIR was then marked Ext. no. 57.

230. *Kadam* then identified the appellant in court as the terrorist who was sitting on the Skoda's front left seat. He also described the terrorist who was driving the

car. He said that he was strongly built and about six (6) feet in height; he had shallow complexion and was clean shaven. He had black hair. He was wearing an ash-coloured T-shirt and blue cargo trousers.

231. He identified a pair of blue cargo trousers (Article 3) and an ash-coloured T-shirt (Article 5) in court as the same as those that the deceased driver of the Skoda car was wearing at the time of the occurrence.

232. He then identified the appellant as the terrorist who had fired at the deceased Ombale. He further said that the appellant was wearing green cargo pants and a blue half T-shirt. On these articles being produced in court, he identified the green cargo trousers (Article 7) and a blue T-shirt (Article 9) as those that the appellant was wearing at the time of the occurrence.

233. *Kadam* further said that in all four firearms (two AK-47 rifles and two pistols) were seized from the place of the occurrence. Both the pistols were found on the road, one was lying on the right side of the driver's seat on the road and the other was lying on the left side of the car near the front left door. One of the AK-47 rifles was found in the leg space below the driver's seat and the other was found lying on the road on the left side of the car. He claimed that he could identify the AK-47 rifle with which the appellant had fired at the deceased Tukaram Ombale.

234. *Kadam* identified the AK-47 rifle (Article 10) in court as being the same AK-47 rifle with which the appellant had fired at the deceased Tukaram Ombale. He also identified the other AK-47 rifle (Article 12) as the same AK-47 rifle that was found in the leg space below the driver's seat of the Skoda car. He added that Article 10 was found loaded with one magazine and that another magazine was attached to the first one with cellophane tape.

235. *Kadam* further claimed that he could identify the pistols seized from the spot. He identified the 9 mm pistol (Article 14) and another 9 mm pistol that bore the name of its maker 'Diamond Nedi Frontiar Arms Company' Peshawar (Article 16) as the same two pistols seized from the place of occurrence by PI *Sawant* (PW-31) under a *Panchnama*.

236. *Kadam* proceeded to identify another 9 mm pistol (Article 18) along with one (1) empty magazine (Article 20), five (5) live cartridges (Article 21 collectively), two (2) empty cartridge cases (Article 22 collectively), and two (2) bullets (Article 23 collectively) as the service pistol *Kadam* was carrying and from which he had fired three rounds at the time of the occurrence.

237. He also said that he had identified the appellant in the test identification parade held on December 27, 2008, at Arthur Road Prison. He had also identified the dead body of the deceased terrorist at the JJ Hospital mortuary on January 6,

2009. He had identified the dead body of the deceased driver from amongst seven (7) dead bodies shown to him.

238. He also said that the operation lasted for about four (4) minutes and it was over by 00:30 hours or 00:35 hours.

239. The appellant and the deceased driver (*Abu Ismail*) were taken to hospitals in two different ambulances.

240. **Sanjay Yashwant Govilkar (PW-2)** was another member of the police team at Vinoli Chowpaty that took *Kasab* in custody. On the direction of Senior PI Mali, he arrived at Chowpaty in front of Ideal Café for *nakabandi* around 00.05 hours on November 27, 2008. His deposition was similar to that of *Kadam* (PW-1): the arrival of the Skoda car at the barricades at about 00:30 hours, the attempt by the occupants of the car to confuse the police team by keeping the headlights on and switching on the windscreen wipers and water spray, and the unsuccessful bid to escape by taking a u-turn before the barricades. *Govilkar* told the court that when the car stopped after dashing against the road divider, he, ASI Tukaram Ombale and other policemen proceeded towards the left side of the car. Simultaneously, API *Bavthankar* (PW-3), PSI *Bhaskar Kadam* (PW-1) and other policemen went towards the driver's side.

241. Though *Govilkar* was a Police Inspector, he was not carrying any weapon at the time of the occurrence. He had come to DB Marg Police Station only a few days ago and had earlier been working in the immigration department where officers are not provided with any official firearms. He was yet to get a weapon when the occurrence took place. Tukaram Ombale was also unarmed. In short, these unarmed policemen proceeded to tackle a desperate terrorist armed with an AK-47 rifle and a pistol.

242. When *Govilkar* and Tukaram Ombale reached near the car's front left door, the terrorist sitting on that side opened the door and came out holding an AK-47 rifle in his hand. *Govilkar* and Tukaram Ombale attempted to catch hold of the weapon. The terrorist fell down on the road and started firing at them while lying down on the road. Both *Govilkar* and Tukaram Ombale sustained injuries from the firing. Tukaram Ombale was seriously injured. *Govilkar* sustained only one injury on the right side of his waist. Both policemen were bleeding from their injuries. In the meanwhile, the other policemen hit the fallen terrorist with *lathis* and it was only then that he was brought under control and could be disarmed. The AK-47 rifle was snatched away by *Govilkar* and other policemen. *Govilkar* could see the terrorist clearly in the street light. He claimed that he could identify the terrorist and he identified the appellant as the terrorist who was holding the AK-47 rifle and who had fired at him and ASI Tukaram Ombale. *Govilkar* was then shown AK-47

rifles (Articles 10 and 12). He identified Article 10 as the AK-47 rifle that the appellant was holding and from which he had fired at them.

243. *Govilkar* further stated before the court that the appellant was wearing a blue T-shirt and green cargo trousers. He was also wearing grey sports shoes. When these were produced in court, *Govilkar* identified the pair of shoes (Article 25 collectively) as the same that were worn by the appellant at the time of the occurrence.

244. *Govilkar* and Tukaram Ombale were taken to Harkisandas Hospital in Peter Mobile van. Tukaram Ombale died there. *Govilkar* remained admitted in the hospital till November 29, 2008.

245. *Govilkar* told the court that he had identified the appellant in the test identification parade held on December 27, 2008, at Arthur Road Prison. Special Executive Officer *Vichare* conducted the parade.

246. In cross-examination on behalf of the appellant, *Govilkar* said that while getting out of the car, the appellant had fallen down deliberately. *Govilkar* added that he continued to hold the appellant's rifle despite sustaining injuries, and that Tukaram Ombale had thrown himself bodily over the appellant even after being shot. Replying to a question in the cross-examination, *Govilkar* said that he

identified the AK-47 rifle (Article 10) as belonging to the appellant because it had no sling while the other AK-47 rifle (Article 12) had a sling.

247. **Hemant Anant Bavthankar (PW-3)** was another Assistant Police Inspector present at the *nakabandi* at Vinoli Chowpaty on the direction of Senior Police Inspector *Mali*. He had arrived at the *nakabandi* at about 21:55 hours on November 26, 2008. His narration of events during the occurrence was similar to that of *Kadam* and *Govilkar*: the arrival of the Skoda car at the *nakabandi* at about 00:30 hours on November 27, 2008; the driver's attempt to flee the barricades by trying to make a u-turn; and the car getting stuck on the road divider. *Bavthankar* added that he was standing on the road divider when the car hit against the divider. The divider was about two and a half (2.5) feet high and made of RCC. He was on the right side of the car at the divider. *Kadam* (PW-1) was about fifteen (15) feet away from him on the eastern side of the road meant for south-bound traffic.

248. Shouting at the terrorist, they tried to approach the car. The driver of the car fired from his pistol at *Bavthankar*, *Kadam* and other policemen who were trying to approach him. The bullets missed *Bavthankar* and he did not sustain any injury. At that time he was on the road meant for north-bound traffic. He went behind the Skoda car and fired three rounds from his service pistol at the car's rear windscreen. *Kadam* (PW-1) also fired at the driver at the same time. The driver

was injured due to their firing. He was taken into custody by the police officers/policemen who were present on the spot. In the meantime, *Bavthankar* moved to the front left door of the car. The person sitting on the front left seat had fired at ASI Tukaram Ombale, API *Sanjay Govilkar* and other policemen. Ombale and *Govilkar* had both been shot and injured by this person. The other policemen, who were with *Govilkar* and Ombale, disarmed and apprehended him. *Bavthankar* told the court that he could identify the person sitting on the left front seat of the car. He said he was present in court and he identified the appellant as the same person who had fired at Ombale and *Govilkar*. He further said that he saw the whole incident in the street lights.

249. *Bavthankar* further stated before the court that, in the course of inspecting the car, the Bomb Detection and Disposal Squad (BDDS) found one (1) hand grenade and two (2) magazines of AK-47 rifle in a jacket lying on the rear seat of the car. One AK-47 rifle was found in the leg space beneath the driver's seat. PSI *Ghodse* (PW-9) of the BDDS removed the hand grenade and proceeded towards Girgaon Chowpaty. *Bavthankar* told the court that he could identify the AK-47 rifle found in the leg space of the car. Articles 10 and 12 were shown to the witness. He identified Article 12 as the AK-47 that was found in the leg space below the driver's seat, and Article 10 as the AK-47 rifle which was held by the appellant.

250. He then proceeded to give a description of the driver. He said that the driver had wheatish complexion, was strongly built and was aged twenty-four to twenty-six (24-26) years. He was about six (6) feet tall and was wearing an ash-coloured half T-shirt and blue cargo trousers. *Bavthankar* further said that he had identified the dead body of the driver at the mortuary of JJ Hospital on January 6, 2009. He had identified the dead body from amongst seven (7) dead bodies placed for identification. He added that he had identified the appellant in the identification parade held on December 27, 2008, at Arthur Road Prison.

251. On these articles being produced in court, *Bavthankar* identified one (1) pistol (Article 29), one (1) magazine (Article 30), five (5) live cartridges (Article 31 collectively), two (2) empties (Article 32 collectively), and two (2) bullets (Article 33 collectively), and said this was the same pistol that he had used at the time of the occurrence and which he had handed over, along with the rounds, to PI *Sawant* (PW-31)

252. In cross examination, *Bavthankar* said that bullets fired by him had hit the driver. He further said that he could not say how many bullets might have hit him. The driver also sustained injuries from firing by PSI *Kadam* (PW-1)[31]. The driver

[31] According to the Post-Mortem of Abu Ismai (Ext. no. 97) there were six (6) bullet wounds on his person; among the other parts of the body, he was hit on the right eye and on the rear side of head, the front portion of the arm of the right hand shoulder and also at a distance of seven (7) cm down from the right hand shoulder. It would thus appear that he was hit by shots fired by both, *Kadam* and *Bavthankar*.

was removed from the seat by them. He was unconscious at that time as he was injured by the bullets.

It needs to be clarified here that Article 12, the AK-47 rifle which was identified by *Kadam* (PW-1), *Govilkar* (PW-2) and *Bavthankar* (PW-3) as having been recovered from the leg space below the driver's seat of the Skoda car actually belonged to the slain police officer Ashok Kamte, Additional Police Commissioner. *Abu Ismail* evidently picked it up while switching from the Qualis to the Skoda, leaving his own AK-47 rifle in the damaged Qualis.

253. **Arun Balkrishna Jande (PW-7)** who was working at Naigaon Police Armoury at the relevant time deposed before the court that Article 12, the AK-47 rifle and the magazine were issued to Ashok Kamte, Additional Commissioner of Police on August 4, 2008. He identified Article 12, the AK-47 rifle from the number on its butt (94) and the body (LY8860) on the basis of the entry (Ext. no. 76) made in the register maintained in the armoury. The empty magazine with it also bore the same number.

254. On the other hand the AK-47 rifle along with a magazine (labelled Articles 427 and 428 respectively) that was recovered from the damaged Qualis police vehicle under seizure Panchnama (Ext. no. 529) belonged to *Abu Ismail* and he had carried it with him from Pakistan. This becomes clear from the ballistic analysis of

the bullets recovered from dead bodies which shows that one Ashrafali, who was killed at CST and Ashok Kamte, who was killed in the Qualis police vehicle were hit by bullets fired from the AK-47 rifle, Article 427.This is also in conformity with what the appellant stated in his confession before the magistrate that as they left the Qualis police vehicle, *Abu Ismail* left behind his AK-47, the magazines of which had emptied by then and picked up the AK-47 of one of the officers lying dead in the vehicle.

VILE PARLE BLAST: TWO DEAD, THREE INJURED

255. Before concluding the narration of crimes directly committed by *Kasab* in the company of *Abu Ismail*, we must take note of another event. A taxi bearing registration number MH-01-G-7792 was blown up by a bomb blast on western express highway, Vile Parle (East), near Swan City Club at slightly after 10:45 PM on November 26, 2008. The explosion destroyed the vehicle and instantly killed its two occupants (the driver and a passenger).

256. The explosion was witnessed by **Shyamsunder Rambharat Choudhary (PW-171)**, **Balkrushna Ramchandra Bare (PW-490)** and **Sheldon Alman (PW-491)**. As a result of the explosion, *Choudhary* suffered a bleeding injury on his right shoulder, *Bare* sustained injuries on his face below the eyelid, and on the forehead, nose and ear, and *Alman* on his left hand. *Choudhary* and *Bare* were

admitted as indoor patients and treated at Cooper Hospital, and *Alman* at Holy Spirit Hospital.

257. The two occupants of the taxi, i.e., the driver and the passenger, who lost their lives in the explosion, were Umar Shaikh and Laxminarayan Goyal[32] respectively.

258. In the narration of this painful and gory tale, one comes across brutal and mindless killings at every step but there are some killings, like the present one, that stand out as especially sorrowful. Shaikh was a taxi driver eking out a livelihood by plying a taxi of which he was not even the owner, and Goyal was a lawyer from Hyderabad who had come to Mumbai in connection with some professional work. The only fault of the taxi driver was that he was hired by the two messengers of death to carry them from Badhwar Park to CST and of the passenger that on that chaotic night in Mumbai, when death seemed to be lurking around every corner, he had thought that a taxi would be a safer mode of transport than the local trains.

259. As noted above, Goyal had come to Mumbai in connection with some professional work and he was due to go back to Hyderabad by a train leaving CST in the evening of November 26, 2008. He reached CST but missed the train. His sister-in-law **Usha Sharad Chaudhary (PW-168)** lived in Mumbai at Charkop,

[32] Their identity was established by DNA profiling of the remains of the bodies found in the destroyed taxi.

Kandivali (W). Goyal called her from his mobile[33] phone to tell her that there was some incident of firings at CST and he had missed his train and he was coming back to her place. On account of the city being under terrorist attack, she asked him not to travel by any local train but to take a taxi. After five (5) minutes, he called her again to tell her that he had boarded a taxi and left CST.

260. *Usha Sharad Chaudhary* was quite anxious and called *Goyal* from her mobile phone again at about 10:30 PM. He told her that he had reached Dadar. At about 11:45 PM, *Usha Sharad Chaudhary* received a phone call from Goyal's daughter Diksha, who stayed at Walkeshwar, Mumbai, saying that she had last spoken to her father at about 10:45 PM and thereafter her father's phone was not reachable. That was the last anyone spoke to or heard from Goyal. His mutilated body was later found at Cooper Hospital.

261. Umar Sheikh, too, while carrying Goyal in his taxi, was called by his friend **Irshad Ahmed Shaikh (PW-169)** on his mobile at about 10:00 PM on November 26, 2008. *Irshad* had given his driving licence for renewal to Umar (the deceased) and he was enquiring whether it had been renewed. Umar told him that the friend to whom he had given the licence for renewal had not brought it back and added that in view of all the disturbances in the city it was good that he (*Irshad Ahmed Shaikh)* would not be driving on that night. At this *Irshad,* asked him why, in that

[33] All calls established through mobile call records.

case, was he proceeding to Kandivali with a passenger in his taxi? Umar told him that it was only because the passenger seemed to be in trouble and he had made a very earnest request to take him to Kandivali by any means. In the morning of November 27, 2008, *Irshad Shaikh* learnt from TV news that there had been a bomb blast in a taxi at Vile Parle. He and some friends went in search of Umar Shaikh and found his dead body at Coroner's Court at Cooper Hospital.

BEYOND VINOLI:

262. The above is a broad account of the havoc wrought by *Kasab* and *Abu Ismail* over a period of slightly more than three (3) hours, beginning with their arrival at Badhwar Park and ending with their being apprehended at Vinoli Chowpaty. It must, however, be made clear that the above account is based only on part of the ocular evidence led by the prosecution before the trial court. Besides the depositions referred to above, the prosecution has an enormous volume of other evidence such as: articles recovered and seized from places through which the two terrorists passed, and the places where they stopped; the vehicles they used until they were finally caught; medical and forensic reports, CCTV recordings, phone call records, Station Diary entries, police logs, etc. We see no reason, however, to refer to all that evidence since, on the basis of the ocular evidence discussed above alone, we have no doubt that the appellant, personally and jointly with *Abu Ismail*,

is directly responsible for killing at least seventy-two (72) people[34] and causing injuries of various kinds to one hundred and thirty (130) people[35].

263. All the witnesses discussed above (except those relating to the Vile Parle and Mazgaon Taxi blasts) had a life and death encounter with the appellant and his associate, *Abu Ismail* (deceased accused no.1), at close quarters. The physical appearance of the two terrorists was etched on their minds. All the witnesses gave a detailed description of the two terrorists to the court. They described them by their complexion, age, body-built and height, stating that one of them was tall and the other was short. All of them identified the appellant in court as the shorter of the two assailants. They also identified *Abu Ismail* from the photograph on the fake identity card Article 61. They also stated before the court that they had identified the appellant in the test identification parades held. We accept their testimony without any hesitation.

JUDGMENT

264. From the forensic evidence it further appears that of the seventy-two (72) dead, **at least** six (6) persons fell to shots fired by the appellant.[36] We, therefore,

[34] One (1) the "*Nakhva*" on the Kuber; fifty-two (52) at CST; seven (7), "Cama in"; nine (9), "Cama out"; one (1) at Vinoli Chowpaty; and two (2) in the Vile Parle taxi blast.

[35] One hundred and nine (109) at CST; ten (10), "Cama in"; seven (7), "Cama out"; one (1) at Vinoli Chowpaty; and three (3) at Vile Parle taxi blast.

[36] From the ballistic analysis of the AK-47 bullets recovered from dead bodies, (**only such that were not fragmented and were capable of identification)**, it came to be established that at least six (6) persons, namely, Sitaram Sakhare, Rahamtulla Ibrahim, Vinod Madanlal Gupta, Ambadas Ramchandra Pawar, Abbas Rajab Ansari (at CST) and Tukaram Gopal Ombale (at Vinoli Chaupaty) were hit by shots from the AK-47 rifle, Article 10, held by the appellant. Ashok Kamte, according to the forensic evidence, was hit by shots fired from Article 427, the AK-47 rifle used by *Abu Ismail*.

see no difficulty whatsoever in holding him guilty of multiple murder, murder with common intention and abetment, attempt to murder with common intention and abetment, abducting in order to murder, robbery with attempt to cause death or grievous hurt, and several other allied offences under the Penal Code (IPC), committing terrorist act punishable under Section 16 of Unlawful Activities (Prevention) Act, 1967, as well as offences under the Explosives Act, 1884, Explosive Substances Act, 1908, and Arms Act, 1959.

265. Nothing will please Mr. Raju Ramachandran, senior counsel appearing for the appellant, more than stopping at this stage. As a matter of fact, he made a fervent plea to segregate the case of the appellant from the other eight (8) dead accused. He urged that, for the purpose of this appeal, the court need not go into the offences committed by the eight (8) other dead terrorists who, though, arrived together with the appellant and *Abu Ismail* at Badhwar park, but went their separate ways from there. The learned Counsel submitted that the appellant's culpability should be judged, and the commensurate punishment for him should be determined only on the basis of the offences directly attributable to him. In other words, he would like to confine the case only to acts committed by the appellant along with the dead *Abu Ismail* from the time the two landed at Badhwar Park until they were caught at Vinoli Chowpaty.

266. Mr. Gopal Subramanium, learned senior advocate appearing for the State of Maharashtra, was quite shocked by the suggestion made by Mr. Ramachandran. Mr. Subramanium submitted that stopping at this stage of the case would amount to shutting out the prosecution unheard. Learned Counsel submitted that the offences committed by the appellant in the company of the dead *Abu Ismail* can never be properly appreciated in isolation. The appellant and his companion, the dead *Abu Ismail*, were part of a close-knit team of ten (10) terrorists who arrived together on the soil of Mumbai in a highly organised way and attacked their various targets in furtherance of a common conspiracy. The learned Counsel submitted that the full magnitude of the case would only be clear as the prosecution unfolds the evidence relating to conspiracy. He submitted that, as the evidence relating to the other aspects of the case and the five (5) other venues of violence is set out before the court, it would become clear that a much larger and ominous conspiracy was hatched in Pakistan, the aim of which was to destabilize the country and to wage war against the Government of India. It would also be clear that all ten (10) terrorists, including *Kasab* and *Abu Ismail*, who spread out from Badhwar Park in pairs, were acting in concert and in execution of the larger conspiracy. Seen thus, the appellant would appear equally culpable for the carnage and other offences committed by the other terrorists of the team at different places, though admittedly he was not physically present at the venues of those crimes. Mr.

Subramanium submitted that the course suggested by Mr. Ramachandran would do grave injustice to the prosecution, nay to the people of the country who came under a completely unprovoked attack and suffered a war waged against them that was encouraged, monitored, and guided from minute to minute from a command post based in a foreign land.

267. We are of the view that Mr. Subramanium is clearly right. The suggestion made by Mr. Ramachandran that the appellant should only be held liable for acts committed by him in the company of *Abu Ismail* is based on the premise that the appellant and *Abu Ismail* were acting independently and separately from the other terrorists who, on arriving at Mumbai, went to four different targets. It is contended that though all ten (10) terrorists arrived in Mumbai together, on the same inflatable rubber dinghy, each of the five pairs into which they divided themselves must be held liable for the actions of the pair alone and not for what the other four pairs might have done, because each pair went in a different direction from the landing site. The underlying **assumption** is that the five pairs were not connected to each other by a common conspiracy and that they were not acting in furtherance of a conspiracy that was keeping them bound together even after they had separated physically in order to execute their assigned roles under the conspiracy. We find no basis for such an assumption, even in light of the prosecution evidence discussed so far. Further, it would be wrong to proceed on

such an assumption even without taking into account the evidence of conspiracy that the prosecution has to present with reference to the other aspects of the case and the other venues of the terrorist attack.

268. We, therefore, deem it necessary to proceed with the matter further and to examine the other venues of carnage. But we propose to scrutinise the other aspects of the case and visit the other four places of terrorist violence primarily with the view to see what the prosecution has to offer by way of evidence of conspiracy and in support of the various other charges against the appellant. We do not propose to discuss the evidence relating to the offences committed by the other eight (8) dead terrorists at those places in any great detail for the simple reason that, being dead, they were not on trial.

269. After landing at Badhwar Park, the appellant and *Abu Ismail,* the leader of the group (deceased accused no.1), went to CST by a taxi. At the railway station they killed as many people as they could and then left via the foot-overbridge to Badruddin Tayabji Marg. They overcame any efforts by the police to stop them on the sixth floor of the Cama Hospital building, at the main front gate of the hospital and on Badruddin Tayabji Marg near Rang Bhavan Lane. In the process, they killed, among many others, three (3) senior police officers and grabbed the Qualis vehicle in which they were trying to intercept the two terrorists. They were unable

to go very far in the Qualis as one of its wheels was destroyed in the gun fire. They then commandeered another vehicle, a Skoda, from its occupants at gun-point. They were driving the Skoda on Marine Drive when they were finally caught at Vinoli Chowpaty.

270. The road on which they were travelling goes to Malabar Hill and their car was headed in that direction. In his statement before the magistrate, the appellant had said that as they sat in the Skoda after seizing it from its occupants he had asked *Abu Ismail* where they had to go. *Abu Ismail* said they had to go to Malabar Hill. The appellant further asked where exactly in Malabar Hill, but *Abu Ismail* said that he would tell him on reaching Malabar Hill. There is no other evidence that their destination was actually Malabar Hill. It is also not clear as to where exactly they intended to go once they reached Malabar Hill or who was/were their target(s) there. But it is worth remembering that the Governor and the Chief Minister of Maharashtra as well as the Chief Justice of Bombay High Court all reside on Malabar Hill. It is quite possible that the two desperados had anyone among them as their next target.

271. Following the appellant and *Abu Ismail, Nazir Ahmad @ Abu Omair* (deceased accused no.4) and *Shoaib @ Abu Soheb* (deceased accused no. 9) took a taxi from Badhwar Park for Leopold Café. They were followed by *Abdul Rahman*

'Bada' @ Hajazi (deceased accused no.5) and *Javed @ Abu Ali* (deceased accused no.8) who went to Hotel Taj by taxi. After them, *Imran Babar @ Abu Aqsa* (deceased accused no.2) and *Nasir @ Abu Umar* (deceased accused no.3) went to Nariman House on foot. After these eight (8) men had left, the remaining two, namely, *Fahadullah* (deceased accused no.7) and *Abdul Rahman 'Chhota' @ Saqib* (deceased accused no.6) sailed the rubber boat to Nariman Point from where they just walked into Hotel Oberoi.

272. Here it needs to be made clear that the nine (9) dead accused could only be known by their respective names after the appellant identified them through photographs of their dead bodies[37]. Later he also named them and referred to their respective roles in his confessional statement before the magistrate. Further, the fact that the four terrorists at Hotel Taj were called Abu Soheb, Omair, Rahman and Abu Ali also comes in the evidence of *Sunil Rajaram Jadhav* (PW-224) and *Nivruti Tukaram Kadam* (PW-242). Also, the names of the terrorists who went to Hotel Oberoi and Nariman House come through in the transcripts of their intercepted phone calls, in which they are talking with their collaborators and to which we shall advert in due course.

Leopold Café: eleven (11) dead and twenty-eight (28) injured and the Mazgaon blast: three (3) dead and nineteen (19) injured

[37] See letter dated January 5, 2009 from the Chief Investigating Officer to the Police Surgeon, Mumbai, Article 991

273. *Nazir* (deceased accused no.4) and *Shoaib* (deceased accused no.9) launched an attack on Leopold Café with grenades and gunfire from AK-47 rifles and left it within minutes, leaving behind eleven (11) dead (of whom two (2) were foreign nationals) and twenty-eight (28) injured (of whom nine (9) were foreign nationals). They walked to Hotel Taj, which is at a distance of about hundred (100) metres to join *Abdul Rahman 'Bada'* and *Javed* who had gone directly to the Hotel by taxi from Badhwar Park.

274. *Nazir* and *Shoaib* were carrying two RDX bombs, one of which they had planted in the taxi they took from Badhwar Park to Leopold Café.[38] The bomb in the taxi exploded at about 10:30 PM while it was going through the Wadi Bunder Road in the Mazgaon Area of the city, killing its driver, *Fulchandra Ramchandra Bind*, and its two passengers, *Zarina Shamsuddin Shaikh* and her daughter *Reema Mohammad Rabiul Shaikh* (the mother-in-law and wife, respectively, of *Mohammad Shaikh* (PW-176)) and causing injuries to nineteen (19) people on the road.

275. The other RDX bomb they planted while on way from Leopold Café to Hotel Taj, in Gokul Wine Shop Lane behind Hotel Taj, near Gokul Restaurant in front of the State Bank of Hyderabad. The bomb, however, did not explode and it was finally recovered and seized under the *Panchnama* Ext. no. 736.

[38] See *Wasim Ahmed Bashiruddin Shaikh* (PW-225) and *Mohammad Rabiul Mohammad Kiramal Shaikh* (PW-176)

Hotel Taj: thirty-six (36) dead and thirty (30) injured

276. *Abdul Rahman 'Bada'* (deceased accused no.5) and *Javed* (deceased accused no.8), on reaching Hotel Taj, first put their RDX bomb near a tree at a distance of about fifty (50) metres from the porch of the New Taj Hotel. This bomb, too, did not explode and was recovered and seized along with the bomb planted by the Leopold-team under the *Panchnama* Ext. no. 736. They then entered the lobby of the hotel and started firing with their AK-47 rifles on burst mode. Leaving the commotion behind, they went to the upper floors of the hotel using its wide winding stairs.[39] On the fifth floor of the hotel they planted the second RDX bomb, placing it under the central dome so as to cause maximum damage to the building. Next, they proceeded to the sixth floor where they took **Kuttalam Rajgopalan Ramamoorthy (PW-184)** into captivity. *Ramamoorthy* was the non-Executive Chairman of ING Vysya Bank[40] and he had gone to Mumbai in connection with a

[39] All this can be witnessed in the CCTV recordings of the Hotel.

[40] After having taken *Ramamoorthy* captive, the terrorists were talking with their handlers and collaborators from across the border on a mobile phone. The collaborators asked them to find out *Ramamoorthy's* identity so as to ascertain whether he was sufficiently important to be used for any bargains or negotiations with the Indian authorities. *Ramamoorthy* first said that he was a teacher at which the terrorists mocked him, saying how could he stay at the Taj on a salary of Rupees twenty thousand a month. They sarcastically asked him whether he was a smuggler and whether he was teaching his pupils how to kill Muslims. *Ramamoorthy* finally disclosed his true identity.

Before he was able to escape, *Ramamoorthy* had a most harrowing time with his captors, and one may appreciate his plight by recalling a few verses from a contemporary poem reflecting the feelings of a person taken as one of the hostages by the terrorists.

"I feel entrapped
Just like you do.
You by your acts
and I by you.

board meeting of one of the companies. He was staying at Hotel Taj Palace in Room no.632 on the sixth floor.

277. *Abdul Rahman 'Bada'* and *Javed* also took four employees of the hotel as hostages, namely, **Adil Rohinton Irani**[41] **(PW-188)**, **Sunil Jadhav (PW-224)**, Rajendra Bagade and Swapnil. In room no.632, *Abdul Rahman 'Bada'* and *Javed* were joined by *Nazir* and *Shoaib,* coming from Leopold Café. At about 2.15 AM (on November 27, 2008) all four terrorists came down to the fifth floor, bringing with them all five hostages, with their hands tied behind their backs, and went into room no.520. While they were in that room, a call came from *Adil's* wife on his mobile phone. *Adil* was then held captive by the terrorists who had also taken away his mobile phone. The terrorists talked to his wife menacingly and asked her to stop security forces acting against them otherwise they would not only kill *Adil* but wreak havoc. All the while, they were engaged in a long conversation with their

"You target me
yet you are blind
product of an
imprisoned mind.

Your freedom comes
with your last breath
for me, when I
escape from death.

No questions asked
when you will die
those mourning me
will question why."

(from 'Retaliate' by Kapil Sibal, in *My World Within*)

[41] On being questioned by the terrorists, *Adil Rohinton Irani* gave his name as *Adil*, and said that he was a Muslim, in the hope that this would endear him to his captors. On the contrary, it only provoked the ire of the terrorists, who were particularly rough with him, calling him a "traitor Musalman".

collaborators and handlers on a mobile phone; these handlers were constantly urging them to throw grenades and to set fire to the hotel building. While they were trying to build a fire by setting ablaze inflammable articles in the room like sofa(s), foam mattresses, curtains, bed sheets, etc., there was a major blast somewhere in the hotel building[42] and heavy smoke started to fill the room. When it became difficult to breathe inside the room, the four terrorists came out of the room and in that confusion the four hotel staff were able to escape through room's window by tying up bed sheets and curtains into a rope for climbing down. *Ramamoorthy* was unable to climb down by this 'rope' but he too was able to escape and to reach a window from where he was finally rescued by the fire brigade personnel. Having lost their hostages, the four terrorists settled down in the hotel, taking position for a long-drawn battle with security forces and continued their attempts to set fire to the hotel and to destroy it by whatever means they could. They gave a tough fight to the security forces till they were finally killed on the morning of November 29, 2008. The last of the four terrorists at Hotel Taj (*Abdul Rahman 'Bada'*) was shot by security forces at 9:00 AM on November 29, 2008. By that time, the four men had killed thirty-six (36) people (of whom nine (9) were foreign nationals) and caused injuries of various kinds to thirty (30) others (of whom five (5) were foreign nationals).

[42] This was in all probability the explosion of the RDX bomb placed by the terrorists themselves on the fifth floor of the hotel.

Nariman House: nine (9) killed and seven (7) injured

278. *Imran Babar @ Abu Aqsa* (deceased accused no.2) and *Nasir @ Abu Umar* (deceased accused no.3) had gone to Nariman House from Badhwar Park on foot. On reaching near Nariman House they first planted an RDX bomb at the Express Petrol Pump on SBS Road, Colaba. From there they proceeded to Nariman House, where they planted the second RDX bomb near the staircase on the ground (parking level area).[43]

279. They then entered the upper floors of Nariman House without difficulty. Nariman House is a six (6) storied (ground plus five) building. It is a residential-cum-prayer house used by Israeli people for temporary accommodation. An Israeli priest called Gabriel Holtzberge lived there permanently with his wife Rivka and their two (2) year old son Moshe. They had two (2) employees. One was **Kazi Zakir Hussain (PW-239)**, who was provided accommodation on the ground floor, and the other was a woman called Sandra. Besides these two, they had a watchman called Kesari who, however, was not present at the time of the occurrence on November 26, 2008.

280. On the date of the occurrence there were four guests, two males and two females, staying with the *Holtzberge* couple at Nariman House.

[43] Both the bombs planted by the terrorists exploded causing considerable damage; see *Rambuval Chandrapati Yadav* (PW-202).

281. Dinner, on November 26, 2008, was over by 8.00 PM. And by 9.45 PM *Hussain* was going down to his accommodation after he and *Sandra* had finished their day's work. On the stairs he saw a person armed with a gun standing on the landing area between the first and second floors. The gunman fired a shot at *Hussain* but he was not hit. *Hussain* immediately returned to the first floor where Sandra was still in the hall. On entering the first floor hall, *Hussain* shut the door from inside. Gabriel, Rivka and their four guests were at that time on the second floor. *Hussain* and Sandra hid themselves in the store room, bolting the door from inside and putting off the lights. They came out of the store room at 11.00 AM on November 27, 2008. All through the night and in the morning there had been sounds of gunshots being fired from inside the building. While they were trying to get out of the building, they heard the child Moshe crying on the second floor. They went up and found Moshe on the second floor hall. Sandra picked up the boy and brought him out with them. On coming out of Nariman House they were immediately taken to Colaba Police Station.[44]

282. It was their exemplary courage, humanity and loyalty to their employers that saved the child Moshe from certain death at the hands of the two terrorists.

283. The Nariman House episode indeed presents a shining example of good and proper human conduct in the face of grave personal danger, but there were also

[44] See the evidence of *Kazi Zakir Hussain* (PW-239).

many tragic killings of innocent people at Nariman House. The two terrorists took Gabriel, Rivka and their guests as hostages. They first tried to use them as bargaining chips to start some sort of negotiation with the Indian authorities but, when they were unable to start any negotiation and as they came under the heat of the security forces' operation, they simply killed all their hostages as being expendable baggage and encumbrances in their fight against the security forces.

284. Apart from the inmates of Nariman House, two other people lost their lives in the most tragic circumstances.

285. **Mohammad Salim Harharwala (PW-206)** lived along with his family at 73/4 Faridun Court Building, SBS Road, Colaba, which is very close to Nariman House. Apprehending danger and feeling insecure at Faridun Court because of the incident of firings in Nariman House, he shifted with his family to a flat on the fourth floor of Colaba Court, which is situated in front of Nariman House. This, unfortunately, turned out to be a fatal decision. In the Colaba flat, he and his parents were standing near a window facing Nariman House when, at about 10:30 PM, his parents were hit by bullets fired directly from Nariman House. They were taken to ST George's hospital where they were declared dead.

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286. From Nariman House the terrorists made random firings in all directions and threw hand grenades at adjoining buildings, roads and lanes that resulted in many injuries.

287. There is another aspect of the Nariman House episode to which we shall advert in greater detail in the latter part of the judgment. From Nariman House the two terrorists, *Imran Babar* in particular, were in regular contact on the mobile phone with their handlers and corroborators across the border. At one stage, the controllers even tried to use one of their hostages, Norma Shvarzblat Robinovich (a Mexican citizen, later killed), as an intermediary in an attempt to start some sort of 'negotiation' with the Indian authorities. The collaborators tried to tutor her as to what she should speak to the Indian authorities on the telephone. She was told not to disclose her own position or the position of her captors inside the house and further not to disclose the number of hostages taken by them but to persuade the Indian authorities to stop the operation by the security forces and to negotiate with her captors in order to save the lives of the hostages.

288. Apart from the collaborators and handlers, *Imran Babar* also engaged in dialogues with India TV, a popular news channel in the country, and with one Levi from the US who apparently intervened as a self-styled mediator to try and save the lives of the Jewish hostages.

289. The two terrorists holed up in Nariman House, *Imran Babar @ Abu Aqsa* and *Nasir @ Abu Umar*, were finally killed by security forces in the night of November 28, 2008. But, by then, they had been able to kill nine (9) people (of whom five (5) were foreign nationals) and injure seven (7) people.

Hotel Oberoi: thirty-five (35) dead twenty-four (24) injured.

290. *Fahadullah* (deceased accused no.7) and *Abdul Rahman 'Chhota' @ Saqib* (deceased accused no.6) entered Hotel Oberoi at about 21:55 hours on November 26, 2008 and started burst firing in the hotel lobby. In the CCTV recording one can clearly see a hotel-staff opening a door, coming out and going around the reception desk. He gets hit by shots fired by the two terrorists and slumps down to the floor. They next went to Tiffin Restaurant, situated in the main lobby of the Hotel, and fired indiscriminately from their AK-47 rifles. The hotel staff in Kandhar Restaurant, situated on the mezzanine floor, heard and saw them firing in Tiffin Restaurant. At that time there were fifty to sixty (50–60) guests in Kandhar Restaurant. The staff members closed the door of Kandhar Restaurant and bolted it from inside and started taking out the guests from the rear (service) door. From Tiffin Restaurant the two terrorists proceeded towards Kandhar Restaurant but they found the restaurant's entrance door locked from inside. They fired at the closed doors. One of the shots pierced through the glass pane and hit Dinaj Sharma, one

of the hotel staff, on her right forearm. They eventually succeeded in breaking open the door and entering Kandhar Restaurant but by that time, fortunately, all the guests in the restaurant had been evacuated and the two terrorists found only two hotel employees, namely Jorden and **Pradeep Rammurthy Bengalorkar (PW-212)**. They threatened them that they would kill them if they tried to run away. Then they asked *Bengalorkar* to pour liquor on the tables and other items of furniture from the bottles in the bar counter and handed a lighter to Jorden, telling him to set fire to the furniture soaked with liquor. The lighter did not work and they asked Jorden to make the fire with matchsticks. Jorden took out a matchbox from his pocket and tried to set fire to the table cloth. The poor fellow was so nervous that he was unable to start the fire but, in the process, he burnt his own hands. As he was wringing his hands and crying that his hands were burnt, one of the two terrorists, evidently annoyed at his lack of efficiency as an arsonist, fired a burst of bullets, killing him on the spot. They then asked *Bengalorkar* to set the furniture on fire. He somehow succeeded in setting fire to a table. The terrorists then asked him to take them to the floor where the hotel's VIP guests were staying. *Bengalorkar* entered the lift, as bidden by the terrorists, but as their attention was momentarily diverted in throwing hand grenades he quickly pressed the down button of the lift. The lift door thus closed and the lift started descending even as

the terrorists fired at its closed door. *Bengalorkar* thus gave the slip to the terrorists and saved himself by his presence of mind.

291. *Fahadullah* and *Abdul Rahman 'Chhota'* then went to the upper floors of the hotel in search of any VIP guests staying there. They were unable to find any but they got holed up there and fought the security forces till they were finally killed at about 7.00 AM on November 28, 2008. A complete and ocular account of the final encounter of the two terrorists with the National Security Guard (NSG) Commando may be seen in the evidence of **Rajesh Ganpat Kadam (PW-215)** who was the Assistant Chief Security Officer, Hotel Oberoi, and who was accompanying the NSG Commandos headed by Colonel Rathi and Lt. Colonel Sharma in the final encounter with the terrorists. Before *Fahadullah* and *Abdul Rahman 'Chhota'* were killed, they had left behind thirty-five (35) people as dead (of whom ten (10) were foreign nationals) and twenty-four 24 injured (of whom seven (7) were foreign nationals).

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THE FIREPOWER, THE TENACITY:

292. Just to have an idea of the fire power the terrorists were carrying, we propose to take a look at the seizure *Panchnamas* from Hotel Taj and we note below only some of the firearms and ammunitions seized under those *Panchnamas*:

293. Exhibit No. 744

1. Seven (7) magazines of black colour. Of them, six (6) contained live rounds and one (1) was empty
2. One (1) cotton bag containing one hundred and thirty-two (132) live cartridges
3. Five (5) hand grenades
4. One (1) bullet bayonet

294. Exhibit No. 746

1) One hundred and fifty (150) pistol empties
2) Six (6) big empties
3) Twenty-eight (28) bullets
4) Ten (10) small empties
5) Twelve (12) big empties
6) Five (5) bullets
7) One (1) grenade pin
8) One (1) small empty

295. Exhibit No. 751

1. Three (3) empties

296. Exhibit No. 752

1. One (1) pistol with magazine
2. One (1) pistol with empty magazine

297. Exhibit No. 757

1. One (1) tin box of size two by four (2x4) inches of explosives
2. Seven (7) empties

298. Exhibit No. 760

1. Four (4) AK-47 (damaged) rifles – one (1) rifle was with magazine
2. Eight (8) magazines of AK 47
3. Two (2) pistols of Star make with one (1) magazine each
4. One (1) separate pistol magazine
5. Eight (8) 9 mm loose cartridges
6. Six (6) 7.62 mm cartridges
7. One (1) 7.62 mm empty

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299. Exhibit No. 763

1. One (1) bayonet
2. Two (2) magazines were found in a bag lying in the debris. One of the magazines contained five (5) live rounds and another magazine contained two (2) live rounds.

300. Exhibit No. 910

1. Twenty-one (21) empty cartridges
2. Three (3) live cartridges
3. Six (6) metal pieces

301. Exhibit No. 1125

1. One (1) pistol manufactured by Khyber Arms Manufacturing Company, Peshawar
2. Five (5) magazines of AK-47 rifle, two (2) of them tied with plastic adhesive tape and the other three (3) loose and in rusted condition
3. Twelve (12) live cartridges
4. Two (2) bayonets

302. The seizure *Panchnamas* from the other venues of violence are no less full.

303. It may also be noted here that once the terrorists had taken position at their respective targets of attack it did not prove easy to neutralise them or to take them out. The Maharashtra police was quite unequal to the task and, consequently, MARCOS (Naval) Commandos were called in at Hotel Taj. Finally, the whole operation at all the three places, Hotel Taj, Hotel Oberoi and Nariman House, was handed over to the National Security Guards who were able to clear the sites but not before the terrorists gave them a stiff resistance. The second of the two

terrorists at Hotel Oberoi was killed at about 7.00 A.M. on November 28, 2008. Nariman House was cleared in the night of November 28 and Hotel Taj, thereafter, at about 9:00 AM on November 29.

304. The prosecution has documented the episodes at Leopold Café, Hotel Taj, Hotel Oberoi, and Nariman House, as well as the Mazgaon Taxi Blast as exhaustively as it has documented the incidents at CST, "Cama in", "Cama out", Skoda robbery and "Vinoli Chowpaty" relating to the appellant and his dead companion *Abu Ismail*.

305. In regard to Leopold Café, the prosecution examined ten (10) witnesses besides producing other kinds of evidence. Of the ten (10) witnesses, three (3) are eye-witnesses of whom **Nilesh Mahendra Gandhi (PW-478)** and **Prakash Bharvani (PW-479)** are injured witnesses. **Sudhakar Dattu Deshmukh (PW-179)** is a Police Sub-Inspector of Colaba Police Station who arrived at the spot shortly after the terrorists had left the place and gone towards Hotel Taj.

306. In regard to the incidents at Hotel Taj, the prosecution examined twenty-seven (27) witnesses besides two (2) witnesses summoned by the trial court. Three of them, namely, *Kuttalam Rajgopalan Ramamoorthy* (PW-184), *Sunil Rajaram Jadhav* (PW-224) and *Adil Rohintan Irani* (PW-188), are witnesses who were taken hostage by the terrorists and who also suffered injuries at their hands. **Annie**

Irani (PW-255) is the wife of *Adil Rohintan Irani* who had called *Adil* on his mobile while he was held captive and to whom the terrorists had talked threateningly. **Prakash Sampatrao Bhoite (PW-182)** is a Police Inspector who discovered the two unexploded bombs planted near Hotel Taj. Another substantive witness is **Captain Anil Jhakar (CW-3)** who is an NSG Commando. The rest are formal witnesses and *panch* witnesses.

307. Regarding Nariman House, the prosecution examined nine (9) witnesses of whom *Kazi Zakir Hussain* (PW-239), **Kamal Liladhar Singh (PW-201)**, **Rambuval Chandrapati Yadav (PW-202)** and **Hanmant Vishnu Bhandalkar (PW-200)** are substantive eye-witnesses. Another substantive witness is *Mohd. Salim Harharwala* (PW-206), whose parents, as we have seen above, succumbed to shots fired by the terrorists.

308. Regarding Hotel Oberoi, the prosecution examined fourteen (14) witnesses of whom *Pradeep Bengalorkar* (PW-212), *Rajesh Kadam* (PW-215) and **Lisa Ringner (PW-250)** are substantive witnesses who had personal encounters with the terrorists. The Police Inspector **Bhagwat Kachru Bansode (PW-208)** is another substantive witness. The rest are formal witnesses and *panch* witnesses.

309. Having thus examined the other venues of the terrorists' violence, we fail to see how it can even be suggested that the appellant and his dead accomplice, *Abu*

Ismail, were acting separately and that their actions were not connected in any manner with the offences committed at the other places by the other eight (8) terrorists with whom they jointly made the sea journey to Mumbai's shore. To us it is obvious that all five (5) teams were bound together and each team was acting in execution of a common conspiracy.

310. Earlier it was observed that the landing site for the terrorists at Badhwar Park was selected with great care. Here it must be added that the selection of the targets for attack was made with even greater care. CST is a place where people would be present in large numbers, completely defenseless and helpless, within a relatively small and confined space. The appellant and *Abu Ismail* went to CST for numbers and, according to plan, they were able to kill fifty-two (52) and wound one hundred and nine (109) people. The intention was plainly to shock and create terror.

311. From CST, the appellant and *Abu Ismail* were headed for Malabar Hill, presumably with the intent to take captive some very important person there, which would put enormous pressure on the Government of Maharashtra and the Central Government.

312. Of the other two teams, one went to Leopold Café and then to the Taj Hotel, and the other to the Oberoi Hotel. Leopold Café is a highly popular eating and

drinking establishment, frequented not only by *Mumbaikars* but also by domestic and international tourists in large numbers. The Café is open to the pavement, and it is known as a place where one can sit at leisure over a cup of coffee or a glass of beer, and watch bustling Mumbai pass by on the pavement and road just outside. The attack on Leopold's was meant to kill in large numbers, including foreign tourists.

313. Hotel Taj is an iconic hotel, part of the history of Mumbai[45]. Hotel Oberoi is a modern, super-luxury hotel. These are places where the upper crust of the country rubs shoulders with its colleagues and peers from across the globe. The attack at those two hotels and at Leopold Café had a dual purpose. First, the killing of wealthy and powerful Indians and foreigners would not only send shock waves across this country but would also attract international attention, which is the greatest prize and inducement for any terrorist group. Secondly the terrorists hoped to take some 'very important people' as hostages[46] there; this would, they believed,

[45] It is reported that it was at the Taj Mahal Hotel ballroom that, on February 20, 1918, at her eighteenth birthday party, Ruttie had accepted Mr Jinnah's hand in marriage while the band was playing the Chopin tune, *So Deep is the Night*. It is also reported that both Mr. Jinnah, the creator of Pakistan, and Mrs. Sarojini Naidu, the President of the Indian National Congress, often held court at Taj Mahal Hotel.

Mr. Jinnah also had an intimate connection with Mazgaon, where the bomb planted by two terrorists in a taxi exploded, killing three (3) and wounding nineteen (19) people. It is reported that Mr. Jinnah devoted Thursday afternoons to visiting the grave of his wife Ruttie at the Khoja Shiite Isna'ashri Cemetry, situated at Mazgaon, Mumbai.

One wonders what Quaied-e-Azam would have thought of the terrorist attack on his favourite city in the subcontinent and especially on Taj Mahal Hotel, with which he had a personal relationship of a very intimate kind.

[46] In conversations (Talks no.3 and 4) on mobile phones between the terrorists at Hotel Taj and their collaborators from across the border, the latter gleefully tell the former that a minister was trapped inside the hotel and that, on the orders of the Prime Minister, a helicopter was likely to come to his rescue, and further that the terrorists should find

enable them to negotiate with the Indian authorities regarding some highly vague and fantastic demands.

314. The attack at Nariman House was intended to somehow involve Israel in the matter and to further internationalize the issue by killing the Jewish and Israeli citizens living there. For a short while, the terrorists who had taken possession of Nariman House seemed to be succeeding in their objective as they were able to establish contact with someone called Levi in the US, who appears to have rushed in as a self-styled intermediary, negotiating to save the lives of the people taken hostage by the terrorists.

315. Thus seen, the attacks at all five targets appear to be integrally connected with each other and the appellant and *Abu Ismail* are as much part of the offences committed at the other places as they are responsible for the offences committed by them directly. It may even be said that even if the appellant was apprehended without firing a single shot and without personally committing any offence on the soil of India, he would still have been connected through conspiracy to the offences committed by the other four teams of terrorists in whose company he came to Mumbai. But the above discussion is meant only to reject the contention made on behalf of the appellant that, for the purpose of this appeal, there is no need to go beyond the acts directly attributed to him and his dead associate, *Abu Ismail.*

and catch him and not allow him to flee.

The real and far more tangible evidence of conspiracy is yet to unfold in the following part of the judgment.

KUBER:

316. To look for evidence of conspiracy, let us go back to the beginning, i.e., the MV Kuber.

317. It is seen above that the identity of the appellant and his companion who was killed in the encounter with the police at Vinoli Chowpaty first came to light when he made a statement at Nair Hospital at 01:30 hours on November 27, 2008, disclosing his name, age and address and those of his accomplice, the dead *Abu Ismail*.

318. In the morning of November 27, 2008, at 11:00 hours, **Chandrakant Jabardast Jadhav (PW- 42)** came to Nair Hospital to interrogate the appellant, as directed by **PI Vinod Pandurang Sawant (PW-31)** who was till then the Investigating Officer of the case relating to the occurrence at Vinoli Chowpaty. At that time, **PI Prashant Kashinath Marde** of CB-CID **(PW-48)** was also present at the hospital having gone there on the direction of his superiors. *Jadhav* obtained the necessary permission from the doctor treating the appellant and, at 13:00 hours, recorded his disclosure statement in the presence of *Marde* and two *panch*

witnesses, namely, Pravin Ashok Hargude and **Bhavesh Mahadeo Takalkar (PW-25)**. The statement made by the appellant that first led to the recovery of the Indian boat on the sea and then to the recovery of the dead body of its navigator, Amar Singh Solanki, and of the satellite phone, the GPS and the notebook is as under:

> "My nine Pakistani associates and I, with an intention to make Fidayeen attack in India started from Karachi Creek in one small boat on the twenty-second of this month. We got Al-Husaini boat in the sea. There were seven persons in Al-Husaini boat. Next day, in the afternoon, we caught Indian boat. We dumped four persons of Indian boat into Al-Husaini boat. My nine associates and I reached close to Mumbai about four nautical miles away in Indian boat with the 'Nakhva' (Navigator) of Indian boat, on the date twenty-sixth in the afternoon. There my associates Abu Soheb and Ismail and I took 'Nakhva' to engine room and tied his hands and legs and covered his eyes with black strip and I slit the neck of 'Nakhva' by a knife and killed him. **I have hidden 'Nakhva's dead-body there only. We have kept our Satellite phone, G.P.S. and Note-Book in the very Indian boat and have left the said Indian boat in the sea.** My nine associates and I with the rifles, bombs and grenades bags boarded the rubber boat and reached the shores of Mumbai. **I will show the Indian boat in which dead-body of 'Nakhva', Satellite phone, G.P.S. and note-book are there and the place where 'Nakhva's dead-body is hidden and will take out Satellite phone, G.P.S. and note-book.**"
>
> (Emphasis added to indicate admissibility under Section 27 of the Evidence Act)

319. The disclosure statement recorded by *Jadhav* was signed by him and the two *panchas*. The memo does not bear the signature of the appellant but there is a certificate by **Dr. Vikaskumar Kashinath Kesari (PW-13)** stating that the

appellant was unable to hold the pen due to injuries in his right hand (the writing hand) and he was not, therefore, in a position to put his signature on paper.

320. On the basis of the information received from the appellant a search was mounted for "the abandoned Indian boat" and it was found and brought to Sassoon Dock in Mumbai with the assistance of the Coast Guard. The abandoned boat was first sighted at 16:40 hours at a distance of six (6) nautical miles (south-west) from the Mumbai shore by **Commandant Malhotra (PW-26)** of the Coast Guard, who made a reconnaissance by helicopter at the request of the Additional Commissioner of Police **Jagannathan (PW-37)**. He kept a watch over the abandoned boat till the Coast Guard ship "Sankalp-46" arrived there and brought the boat to Sassoon Docks in Mumbai.[47]

321. "The abandoned boat" was undeniably an Indian fishing boat called 'MV Kuber'. It was registered with the port authorities at Porbandar, Gujarat, and bore the registration no. PBR2342. Its registered owner was one Heeralal Masani of Porbandar.[48]

322. **Deepakkumar Vishwanath Dave (PW-46)**, who was the Superintendent of Customs, Porbandar, testified before the court that Creek Pass No. CH/PBR/174

[47] See the evidence of Additional Commissioner of Police *Saravanaswamy Jagannathan* (PW-37) and Commandant *Prabhdeep Singh Malhotra* (PW-26), and Exhibits no. 172A and 140.

[48] See Exhibit no. 160, the office copy of the original registration certificate.

was issued to the fishing vessel Kuber on August 16, 2008, for the period August 16 to December 31, 2008. He produced the office copy of the Creek Pass bearing his signature (Exhibit 201). He further stated that the owner of the vessel was one Hiralal Masani and its Tandel was Amarsingh Solanki.

323. **Vinod Babulal Masani (PW-43)** stated that his was a fishing family and owned six (6) boats, including MV Kuber. He added that he looked after the family business. *Masani* further stated that the Kuber and another fishing boat of the family called *Maa* had gone out to the sea on November 14, 2008. Both boats were scheduled to return to Porbandar within ten (10) to twelve (12) days. The boat *Maa* returned to Porbandar on November 25 but there was no information about the Kuber. The *Tandel* of *Maa* only said that the two boats had separated as a result of a storm in the sea. *Masani* first heard of the Kuber's fate at 5:00 PM on November 27, 2008, on getting a phone call from a Coast Guard officer in Mumbai who made a detailed enquiry from him about the boat and asked him to come over to Mumbai. He went to Mumbai on December 2, 2008, and found the boat anchored at Melat Bandar, Sewree, Mumbai, and came to learn that the *Nakhva* of the boat, Amar Singh Solanki, had been killed by the terrorists who had captured his boat on the sea.

324. While the Kuber was being searched and brought to Sassoon Docks, the investigation of the case was assigned to the Crime Branch and, at 21:25 hours on November 27, 2008, when the appellant was discharged from Nair Hospital, *Marde* took him in his custody. *Marde* brought the appellant to the office of the DCB-CID, Unit 3, Lower Parel, where the appellant was formally arrested by him between 22:30 and 22:45 hours in CR No.182/2008 (*vide* Arrest Memo Ext. no. 215). At 22:45 hours, *Marde* received a call from *Jadhav* requesting him to bring the appellant to DB Marg Police Station where information was received in the meanwhile that the vessel Kuber had been brought to Sassoon Docks. *Marde* reached DB Marg Police Station along with the appellant at 23:10 hours and, at 23:30 hours, *Marde* and *Jadhav*, along with the appellant and the two witnesses of the disclosure statement *Panchnama*, namely, Pravin Ashok Hargude and *Bhavesh Mahadeo Takalkar* (PW-25), left for Sassoon Docks and reached there at 00:00 hours.

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325. On reaching Sassoon Dock, they went near a wooden boat brought from the sea that was anchored near the jetty, alongside a launch of the Yellow Gate Police Station called 'Amboli'. On seeing the two, the appellant identified the wooden boat as "the Indian boat" in which he, along with his nine associates, had approached the Mumbai shore and on which he had killed the '*Nakhva*' of the boat, whose body he had kept in the engine room. The appellant then led the police team

and the *panchas* to the engine room and showed them the dead body of a male that was kept in the corner near the ladder. The body's hands were tied at his back and the body was kept in a supine position. The appellant then proceeded to take out a satellite phone, a GPS and a notebook that were kept concealed under a wooden plank in the engine room on the left side of the dead body. He took out these three articles and handed them to the police team. The articles that were taken out and produced by the appellant from the engine room of the Kuber and were seized under the *panchnama* (Ext. no. 138) may be described as follows:

1) One satellite phone in black cover, make: *HUGHES, THURAYA* 7101; IMEI no.352884-00-054152-6; assembled in EU; MCN: 8008211-0006; SIM CARD-*THURAYA* 89882 05980 80530 6377; the battery had the words 'Assembled in France' inscribed on it.

2) One black colour GPS, make: GARMIN; model-GPS 12 MAP S/N 98205626; made in Taiwan.

3) One notebook with cover in faded green with writings and jottings in Urdu on various pages.

326. Another seizure *Panchnama*, Exhibit no. 182, in respect of all the other articles found on the boat, was drawn up in the presence of *panchas*. *Chandrakant Jabardast Jhadhav* (PW-42) deposed that nearly 145 articles were seized and enumerated under the *Panchnama* Ext. no. 182. He also gave a list to the court of

those articles recovered from the Kuber that are not normally found on a fishing boat. This list of articles given by *Jhadhav* to the court is as under:

1) Six (6) pieces of foam of pink colour

2) Fourteen (14) blankets

3) Two (2) shawls

4) One (1) mattress

5) One (1) empty bottle of cold drink*

6) One (1) scarf used at the time of *Namaj*

7) Four (4) caps

8) Six (6) T-shirts

9) Six (6) pants (one of the pants was branded with the name of a Pakistani manufacturing company, i.e., "South Pole")

10) One (1) shirt[49]

11) Fifteen (15) jackets

12) Seven (7) tooth brushes

13) Shaving razors

14) One (1) tube of shaving cream*

15) One (1) tube of tooth paste *

16) One (1) empty sugar bag*

[49] It may be stated here that the witness was giving the list of the articles from his memory. At this stage, in answer to a court question, he sought permission to refer to the *Panchnama* Ext. no. 182 and, on referring to the *Panchnama*, he said that there were fourteen (14) to fifteen (15) shirts.

17) One (1) empty paper bag of wheat flour*

18) Two (2) air pumps

19) Four (4) packets of detergent powder (Brand name 'PAK')*

20) Empty containers of Nestle milk powder*

21) Eight (8) cans of oil having a capacity of fifty-five (55) litres each (One of the cans had markings of 'Gulf' and 'Karachi')

22) Five (5) barrels of diesel (One of them was empty)

23) Five (5) containers of colour spray

24) One (1) dagger

25) One (1) knife

26) One (1) pair of scissors

27) Three (3) boat covers made of tarpaulin

28) Floor cleaning brush (made in Pakistan)*

327. Of course, the *panchnama* Ext. no. 182 contains a much longer list of articles that were recovered from the Kuber and seized under the *Panchnama*. The following articles listed in the *Panchnama* may be added to the list given by *Jadhav* (PW-42), of articles that are not expected to be found on a fishing boat of Indian origin:

[50]* A reference to the *panchnama*, Ext. no. 182 would show that each of these articles had markings/writings that unmistakably indicated that all the articles originated in Pakistan.

1) Six (6) inch steel spanner with writings thereon in Urdu, and spanners having pictures of a gun, as well as a big knife with a four (4) inch wooden hilt

2) Empty packets of fifty (50) bullets for 30 bore pistol, made in China

3) Nylon rope meant for unloading goods from the big ship to the small one, having a round knot on one side

4) Pieces of silver foil used to consume drugs

5) One match-box with the mark 'Hockey' of Fazal Sons match industries, Pakistan

6) One (1) white plastic container with a red lid inscribed with the words 'National Food', and with its contents listed in both English and Urdu

7) One (1) khaki-coloured paper cover with writing in Urdu

328. It may be added here that *Vinod Babulal Masni* (PW-43), on being shown the satellite phone, the GPS and the other articles recovered from Kuber and seized under the two *Panchnamas* (Ext. nos. 138 and 182), told the court that those articles did not belong to him nor were those articles on board when the boat had sailed out to sea from Porbandar on November 14, 2008.

329. One of the three articles that were produced by the appellant before the police after taking them out from their hiding place on the Kuber, and that were then seized under the *Panchnama* Ext. no. 138, is a thin notebook, loosely stitched with a faded green cover (Ext. no. 174).

330. The first page of the notebook contains the guard duty roster under the heading '24 Hours – Entire Journey'. The guard roster is made in the following manner:

Fahadulla + Saqib + Sohaib –	morning 6 to 8
Ali + Hejazi + Umer –	morning 8 to 10
Ismail + Mujahid + Umar –	morning 10 to 12

331. At 12:00 PM, the first team would again take over for the next two (2) hours followed by the second and third teams for two-hour shifts each, and the roster would thus go on till the next morning.

332. On the second page on the right side there is a list of the following articles:

1) Biscuit (Candy + Bakery)

2) *Sewayyan*[51] fine

3) Flour red

4) Drum (for luggage with lock)

[51] Vermicelli

333. On the left side there is another list of the following:

1) Phone number of this place

2) Satellite number of this place

3) Photocopies of maps

4) SIMs for mobile sets

5) T-T Pistol 2 in number

6) Mineral water Aquafina

7) Dates good (quality) 10 kilo

8) Current store charger

9) GPS or navigator

10) Satellite + Phone card

334. The third page contains a list of code words:

1) Halat theek hain *(All is well)*	Macchli lag rahi hai (*Fish are coming*)
2) Civil Boat	Bhai log *(Brothers)*
3) Navy Boat	Yaar log *(Friends)*
4) Navy Ship	Yaar logon ka group *(Group of friends)*
5) Engine	Machine
6) Madad *(help)*	Maal *(Goods)*

7) Safar *(journey)* Barf *(Ice)*

335. Below the above codes it is written that the one who gives GR would add three and the taker would himself deduct three.

336. And below that there is a reminder that the satellite is to be kept open (10:00 AM to 10:00 PM).

337. On the next page there is another list of the following articles:

1) Gun – 1 in number
2) Magazine – 8 in number
3) Grenade – 8 in number
4) GPS – Group – 1
5) Dagger – 1 in number
6) Additional rounds
7) Mobile + Batteries

338. On the next two pages there are some figures indicating degrees, minutes and seconds.

339. On the next page, there is the number 23270972879217 written on the top and below it the names of the following places in Mumbai:

Qulaba Cuff Parade Macchlimaar Nagar Rajabhai Tower Regal Chowk Nathalal Marg Nariman Point WTC Regal Cinema.

340. On the last page there are once again some figures indicating degrees, minutes and seconds.

341. The *Thuraya* satellite phone and the *GARMIN* GPS recovered from MV Kuber, along with four other GPS devices recovered from the other sites of terrorist violence, were sent for forensic examination to the United States Federal Bureau of Investigation (FBI)[52] where the data stored in the GPS devices were analyzed by **Daniel Jackson (PW-152)** who was working in the FBI as Electronic Engineer/Forensic Examiner. He had vast experience in his field of specialty, particularly mobile phones, GPS devices, I-pods, etc., and he stated before the court that before examining the devices sent by the Mumbai Police he had examined over a thousand electronic devices in the Bureau's laboratory. He had marked the satellite phone and the five (5) GPS devices sent for data retrieval and analysis as Q119, Q120, Q121, Q122, Q123 and Q124. Q119 and Q120 were marks given by him to the satellite phone and the *GARMIN* GPS device recovered

[52] It may be noted here that among the one hundred and sixty-six (166) persons killed in the terrorist attack, six (6) were US citizens. Consequently, FBI case no.LA252196 was instituted and investigations were also made in America. This facilitated some coordination between the investigating agencies in the two countries. The FBI rendered some forensic assistance to investigators in India and also responded to some letterogatories sent by the Indian court (See PW-153, *Geoffrey Maron*, Special Agent, FBI).

from MV Kuber. Q123 and Q124 were the other *GARMIN* GPS devices that were recovered from Taj Hotel. Q121 was, in all probability, recovered from Nariman House and Q122 from Oberoi Hotel. Q121 and Q122 were *Magellan* GPS devices and the data in those devices were irretrievable as the internal batteries of the two devices had discharged.

342. *Jackson* stated before the court that his examination of the satellite phone and the five GPS received by him from the Mumbai Police commenced from February 11, 2009, and was completed on February 18, 2009. He explained to the court that to retrieve the data from a GPS device, the device must be connected to a computer and the data is then copied on the computer. Software is then used to examine the data copied on the computer. He stated that he had made his report after examining all the devices. He had copied the data from the GPS devices on the computer and, from the computer, recorded the data on a CD. He identified the CD, Article 517, in court. He also identified the physical copy ("Derivative 2") that bore his signature and was marked Ext. no. 601 collectively. He further explained to the court that the waypoints on the GPS were locations that might be latitude and longitude and those waypoints could be saved on the GPS. He further stated that he had prepared the maps with the help of the *GARMIN* software on the basis of the waypoints retrieved from the GPS Q120.

343. *Jackson* said that "JALA 1" and "JALA 2" were the names used by the user of GPS Q120. The waypoints list of Q120 showed that the waypoints between Karachi and Mumbai were saved on the device. The route shown on page No.36 of the annexure to his report showed the intermediate waypoints stored by the user and those waypoints were between Karachi and Mumbai. The first waypoint was in the ocean of the Gulf of Karachi and the last waypoint was in Mumbai. He added that page No.38 of the annexure to his report showed the track back route from Mumbai to the Gulf of Karachi. Page No.38 showed the waypoints of the journey of the user from 'OCEN1' to 'OCENA'. He explained that 'OCEN1' was the coast of Pakistan and 'OCENA' was the coast of Mumbai.

344. The maps prepared by *Jackson* (PW-152) were based on printouts of computer generated images. To make the maps even more explicit, the prosecution examined **Sandeep Siddhlilngappa Shivangi (PW-161)**. *Shivangi*, who had completed the course of Master Marine in the year 1998, was working at the relevant time as Professor (Nautical Officer) in Lal Bahadur Shastri College for Advance Maritime Studies and Research. He stated before the court that, on February 24, 2009, he was called to the office of DCB CID where Inspector Chavan had shown him the printouts taken from two GPS devices. The printouts showed the waypoints. He was required to plot those waypoints on maps. He had brought two maps from his college and one printed map was purchased from the

market. On being shown pages No.3 & 54 of Ext. no. 601 collectively, he stated before the court that on page No.3 of the Exhibit, the waypoints were described as JALA 1, JALA 2, JALA 3 and JALA 4. He was required to plot those waypoints on a printed map. He had plotted those waypoints by means of a parallel ruler. The maps on which those points were plotted by him were shown to him in court. He said that the points were in his handwriting and the map bore his signature. The map was marked as Ext. no. 651. To have a closer view of the waypoints, he had also plotted waypoints no. JALA 3 and JALA 4 on another map (marked Ext. no. 652). The waypoints described as OCENS1, OCENS2, OCENS3 and OCENSA were also plotted on the map Ext. no. 651. He explained that the 'OCENS' waypoints showed the route from south of Pakistan to south Mumbai. The JALA waypoints showed the route from Gujarat to South Mumbai.

THE DNA CONNECT:

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345. It is seen above that among the articles recovered from Kuber were a number of blankets, shawls and many other items of clothing. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA profiling and, excepting *Imran Babar* (deceased accused no.2), *Abdul Rahman Bada* (deceased accused no.5), *Fahadullah* (deceased accused no.7) and *Shoaib* (deceased accused no.9), the rest of the six accused were connected with various articles found and

recovered from the Kuber. The appellant's DNA matched the DNA profile from a sweat stain detected on one of the jackets (see report Ext. no. 205-F). A chart showing the matching of the DNA of the different accused with DNA profiles from stains on different articles found and recovered from the Kuber is annexed at the end of the judgment as Schedule No. III.

THE INFLATABLE RUBBER BOAT:

346. From Kuber, in order of sequence, we come to the inflatable rubber dinghy on which the appellant and the other nine dead accused landed on Mumbai's shore. It is seen above that *Prashant Hemnath Dhanu* (PW-29) had found the rubber dinghy abandoned at Nariman Point and had towed it back to Badhwar Park between 9:45 PM and 10:00 PM, on November 26, 2008, and informed the Coast Guard regarding the dinghy. At 23:00 hours on the same day, the dinghy and the articles found in it were seized by Sub-Inspector of Police *Anil Kamble* in the presence of two *panch* witnesses, namely, **Parshuram Kashinath Meher (PW-34)** and *Prakash Krishna Naik* under *Panchnama* Ext. no. 162. From the seizure *Panchnama* it appears that fourteen (14) articles were seized along with the rubber dinghy. Of these, we may take note of the following:

1. A Yamaha Enduro outboard motor of 40 horsepower, fitted to the dinghy.

2. Eight (8) life jackets of saffron (red) colour on which was written "Made in China, MYC 86-5 model, make year 2006" bearing serial numbers 0404663, 0404725, 0404731, 0404766, 04404847, 0404974, 0404869 and 0404996.

3. One (1) red fuel box on which was written "GASOLINE".

4. One (1) glue tube in one (1) plastic bag, on which was written "Samad Rubber Pvt. Ltd., Ferozpur Road, Lahore, Pakistan".

5. One (1) blue oil can with "Shell, Advance Sport HT 20 W 50 Motorcycle oil" written on it, of 0.7 litre and one (1) plastic bag containing tools for repairing a boat.

The Yamaha outboard machine that was fitted to the rubber dinghy is of special significance for the case.

347. **Gatala (PW-30)**, who was a Marine Engineer and who was working as Service Supervisor in George Maijo Industries (P) Ltd., stated before the court that his company was the authorized importer of Yamaha outboard machines (OBMs) in India. The head office of the company maintained record of all the OBMs imported and sold in India. He further stated before the court that he was called to the Crime Branch Office of the Mumbai Police and there he had inspected one Yamaha OBM. He was shown an inflatable rubber speed boat and the OBM of

Yamaha make by Inspector **Kale (PW-47)**. He had inspected the OBM and on examination he had found certain numbers on different parts of the engine. He had noted down the numbers in his diary and he had brought the diary to the court and he could tell those numbers from his diary (Ext. no. 147). He stated before the court that the Engine Bracket Number of the OBM shown to him was 67602E-3; the CDI number was 6F6-01F 8 T 411727 Y 09; and the sticker on the unit showed engine number as 1020015. The size of propeller was 11x15-G. He further stated that his company was the *sole* authorized importer and dealer of Yamaha OBMs in India. The verification of those numbers from the company's head office confirmed that the engine examined by him was not imported and sold by their company. He identified in court the OBM, Article 157 that was examined by him.

348. The other witness in this connection was **Pat Williams (PW-154)**, whose evidence was recorded through audio-video linkage while he was sitting in the office of the FBI at Los Angeles, USA. One **Geoffrey Maron (PW-153)** who was working as a Special Agent of FBI identified *Paul Orphanides* as an FBI Agent of Los Angeles Office. *Paul Orphanides*, in turn, identified *Pat Williams* to the court. *Pat Williams* stated to the court that he was working as Senior Product Specialist in Yamaha Motor Corporation. The head office of his company was situated at Cypress California, US, and they were manufacturers of outboard machines, motor cycles, scooters, etc. Some of those items were manufactured at the US

manufacturing unit but outboard machines were manufactured in Japan, not the US. He further stated that the outboard machine could be identified on the basis of the serial numbers on the motor bracket and the engine, and that the last seven (7) digits of the number identified the motor boat. There would never be more than one OBM having the same last seven (7) digits of serial number for the same size of machine. He further stated that Yamaha outboard machine Enduro 40 bearing serial number #1020015 was dispatched to 'Business and Engineering Trend' from Japan to Karachi Sea Port in Pakistan on January 20, 2008.

349. A letter dated February 17, 2009, written on the letter head of Yamaha Customer Support Group under the signature of one *Michelle Tejeras* (Assistant Manager – Service Support) and addressed to the US Department of Justice, Federal Bureau of Investigation, was shown to *Williams*. On being shown the letter *Williams* stated to the court that he knew Ms. *Michelle Tejeras* who was the Assistant Manager (Service) of Yamaha Motor Corporation, US, and with whom he had been working for at least six to seven (6-7) years. He could identify her signature and he proceeded to identify the signature of Ms. *Tejeras* on the aforesaid letter dated February 17, 2009, whereupon it was marked Ext. no. 604. The letter of Ms *Tejeras* Ext. no. 604 was as under:

"February 17, 2009

U.S. Department of Justice

Federal Bureau of Investigation
11000 Wilshire Blvd., 17th Floor
Los Angeles, CA 90403
Attention: Special Agent Geoffrey Maron

Re: File No. LA-252196

Dear Mr. Maron,

This letter is to confirm the conversation on February 13, 2009 between our Yamaha representative and representatives from your location.

We have contacted Yamaha Motor Co., Ltd. regarding Yamaha Outboard Enduro 40, model E40JMHL serial # 1020015 to confirm the following:

Country of production:	Japan
Destination for export:	Islamic Republic of Pakistan
Distributor:	Business and Engineering Trend (BET)

Within the scope of my employment with Yamaha Motor Corporation, I am authorized to provide this information.

Sincerely,

Michelle Tejeras
Asst. Manager-Service Support
Cc: SR# 1-9130852."

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THE PINK-COLOURED FOAM, THE TERRORISTS' SIGNATURE:

350. From the rubber dinghy that touched Mumbai's shore at Badhwar Park, we return to CST. We have earlier seen the absolute mayhem created by the appellant and his associate, the dead *Abu Ismail*, at CST railway station. We now re-visit the place looking for any evidence of conspiracy that might bind them with the other

eight terrorists who were on a similar murderous spree at other venues in the city. What we find at CST appears quite innocent, something as ordinary as a piece of foam, pink coloured foam. But that piece of foam inseparably connects the appellant to the other eight terrorists. As we proceed further, we will find the pink foam running like a thread through all the episodes and connecting them as integral pieces of one single, horrible drama.

351. We may recall here that the pink foam first appeared among the many articles found and seized from MV Kuber. In Ext. no. 182, the seizure *Panchnama* regarding the articles found and seized from the Kuber, it is listed at serial no. 10 as "Six (6) pieces of pink colour foam of different sizes". Serial no.13 of the *Panchnama* mentions a "six (6) inch stainless steel pair of scissors".

352. The pink foam is also present at CST. While dealing with the attack on CST in the earlier pages of the judgment, it was noted that before opening fire from his AK-47 rifle, *Abu Ismail*, the dead companion of the appellant *Kasab*, had put a bag carrying the RDX bomb among the passengers' luggage in the waiting hall. Luckily, however, the bomb did not explode. After the carnage was over, the authorities collected the passengers' unclaimed belongings, lying scattered all over CST Railway Station, and put them all at one place. It appears that the bag containing the bomb was also picked up and was kept along with this collected

baggage. In the process of returning the luggage pieces to their respective owners who came forward to claim their belongings by-and-by, a suspicious red-and-black sack-bag was discovered lying in the baggage. When the bag was inspected by police officials, it was found that it contained explosives which were later diffused by personnel of the Bomb Detection and Disposal Squad. A seizure *Panchnama*, Ext. no. 269, was drawn up on December 3, 2008, at 19:00 hours in the presence of two *panchas*, namely, David Raj Thomas and Sham Ratan Dhake. From the *Panchnama* it appears that inside the red-and-black nylon sack bag, there was a locked square tin box containing the indigenous explosive device (IED). **The tin box was covered on all sides by a piece of pink colour foam!**

353. From CST, the appellant and his dead associate had gone to the terrace of the Cama Hospital building where they had an encounter with *Sadanand Vasant Date* (PW-118) and his team. After the episode was over, a search was made and a large number of articles were collected and seized from the premises of the hospital and from different parts of the hospital building, particularly its terrace, from where the appellant and his dead accomplice had battled *Date* and his team. The seizure of the articles found on the building's terrace was made under the *Panchnama* dated November 27, 2008, Ext. no. 486. One of the articles seized from the terrace of the Cama Hospital building was a blue, purple and black coloured rexine bag that could be carried on the back by fastening the belts around

the shoulder and the waist. The bag had the words "*CHANGING THE TIDE*" printed on it. Inside the bag, there were several articles **including a pink foam piece "51 c.m. x 193 c.m. x 1 c.m. in size**".[53]

354. It may further be noted that two (2) other bombs placed by the terrorists near and around Taj Hotel had failed to explode. One bag containing the explosive was picked up from near a tree near Quni Tourism Chowki at a distance of fifty (50) metres from the porch of New Taj Hotel; and the other was found near Gokul Restaurant in Gokul Wine Shop Lane in front of the State Bank of Hyderabad. Both the bags containing explosives were seized under the *Panchnama* dated November 27, 2008, Ext. no. 736, in the presence of *panchas* Hiteshchandra Vijaykumar Awasthi and Amarnath Ramvilas Yadav. In the *Panchnama* the description of the first explosive is given as follows:

> "One black colour carrying bag containing rectangular metal container approximately measuring 10" -10" 0-2, 5" with a metal cover on the top and latch on the side, **covered by pink colour foam from all sides**. The firing mechanism electronic timing device, one white paper written in Urdu and English stuck upon the electronic timer, two 9-V durasale (sic.) batteries, 2 electrical detonators……."

355. The description of the second explosive is as follows:

> "One rectangular metal container approximately measuring 10"-10"-0-2.5" with a metal coveres (sic.) on the top and latch on the side. **Covered by pink colour foam from all sides**. The firing mechanism electronic timing device, one white paper written in Urdu and English

[53] The full description of the pink foam piece is given at Exhibit no. 32, in the *Panchnama* dated November 27, 2008, Ext. no. 486.

stuck upon the electronic timer, two 9-V durasale (sic.) batteries, 23 electrical detonators……"

356. The pink foam reappears in one of the bags of blue and dark-blue colour that was found in Wasabi Harbour Bar 1933 of the Taj Mahal Hotel. This bag is one of the articles seized under the *Panchnama* dated November 29, 2008, Ext. no. 749, in the presence of the *panchas Ishwar Mahadeo Kolekar* and *Vaibhav Vilas Patil*. In the *Panchnama* the bag is described as follows:

> "One blue and dark blue colour bag, of the height of about, two and quarter feet and 1 foot in width having two belts (strips) for carrying on the back and a blue (strip) of 5 inch in width for tying around the waist bearing the words in English as "CHANGING THE TIDE" in black colour and a picture in saffron, parrot green and blue colour on the bag **and light pink colour foam of the size of about 2 feet in length and 1½ feet in width in the bag**."

357. It is obvious that the foam was used to provide padding and cushion to the IEDs and the hand grenades kept in the bags so as to prevent them exploding accidentally while the terrorists were carrying them on their person.

358. The foam pieces recovered from the Kuber and found in the bags that were picked up from CST, the terrace of the Cama Hospital building and the two bags containing unexploded IEDs found near Hotel Taj and seized under the *Panchnama*, Ext. no. 736, were sent for chemical examination at the Forensic Science Laboratory.

359. **Rajendra Ramchandra Mavle (PW-247)** is the forensic expert who deposed before the court that all the foam pieces tallied with each other in respect of hue (appearance) and physico-thermal characteristics. He further stated to the court that the foam pieces were examined by him under 'Differential Thermal Analyser' and that they were found to be similar in thermal characteristics. *Mavle* concluded that the source of all the foam pieces was the same. He identified his report before the court, marked as Ext. no. 1013.[54]

INTERCEPTED PHONE CALLS RECORDS:

360. The most clinching evidence regarding conspiracy comes from the recordings of intercepted telephone calls between the terrorists and their co-conspirators and collaborators sitting in a foreign land that, in light of the over all facts and circumstances of the case, can only be Pakistan. Unlike the appellant and his dead companion, *Abu Ismail* (deceased accused no.1), who were constantly on the move, the other terrorists had gone to Hotel Taj, Hotel Oberoi and Nariman House and were holed up there, even taking hostages for some time. From their respective positions they were in regular contact with their collaborators and were

[54] See Ext. no. 182 and PW-41 *Gorakh Nalawade* (for seizure of the foam pieces on Kuber), Ext. no. 269 and PW-74 *Pandharinath Yeram* (for seizure of the foam pieces from CST), Ext. no. 486 and PW-115 *Nazimuddin Sheikh* (for seizure of the foam pieces from Cama Hospital) & Ext. no. 736 and PW-182 *Prakash Bhoite* (for seizure of the foam pieces from Hotel Taj): The foam pieces were numbered in the forensic science laboratory as Ext. no. 75 of DNA-443B-08 in Ext. no. 1011 (on Kuber), Ext. no. 1 M.494-08 in Ext. no. 1012 (from CST), Ext. no. 53 of BL No. 990/C/08 in Ext. no. 1009 (from Cama Hospital) and Ext. no. 1 of M.516-08 & Ext. no. 3 of M.516-08 in Ext. no. 1010 (from Hotel Taj): And finally see the deposition of the Forensic Examiner *Ramchandra Mavle* (PW-247) and his report Ext. no. 1013

constantly receiving moral support, tactical advice and guidance from them by means of mobile phones.

361. The phone calls made by the terrorists from Hotel Taj, Nariman House and Hotel Oberoi came to be noticed and were intercepted by a watchful member of the Anti Terrorist Squad.

362. **Nivruti Tukaram Kadam (PW-242)** was an Inspector of Police attached to the Anti Terrorist Squad (ATS), Mumbai. He was looking after the technical wing of the ATS, which was assigned the tasks of collecting intelligence, phone interceptions and data analysis. On the night of November 26 to November 27, 2008, he was on duty in his office at Nagpada, Mumbai. At midnight of November 26, 2008, he received information that terrorists were making regular calls from mobile phone no.**9910719424**.

363. In normal circumstances, a telephone interception can only be done after getting sanction from the Government but in an emergency, interception is permissible with the approval of the immediate superior who, in this case, was the officer in-charge of the ATS.

364. *Hemant Karkare*, Special IG, was the chief of the ATS and, as seen above, he was killed by the appellant and *Abu Ismail* around midnight of November 26, 2008, when the two terrorists had snatched a Qualis police vehicle after killing him

and two other officers and policemen who were travelling in that vehicle. Following the killing of *Karkare*, **Param Bir Singh (PW-241)**, Additional Commissioner of Police and *Karkare's* deputy, had assumed charge in his place. Hence, *Kadam* (PW-242) obtained *Param Bir Singh's* written permission for intercepting calls from mobile phone No.9910719424. The permission granted by *Param Bir Singh* was later accorded *post-facto* sanction by **Chitkala Zutshi (PW-253)**, who was at that time the Additional Chief Secretary, Home Department, Government of Maharashtra.

365. On the basis of the permission granted for interception, directions were given to the service provider of the aforesaid phone number (Bharti Airtel) and to all other service providers, since the number was in 'roaming', to transfer all calls from or to that number to the police landline number 02223053162. The calls made from or to the aforesaid mobile number thus diverted to the police landline could then be heard on headphones or the speaker of a computer with the aid of appropriate software. The ATS office had software called 'Shogie' installed in the office computer for that purpose.

366. *Kadam* stated before the court that the first conversation recorded by him from that mobile number commenced at 01:04 hours on November 27, 2008, and the last call from that mobile number was recorded by him at 10:27 hours of

November 27, 2008. He further stated before the court that the conversation was being heard by him personally and being recorded on the hard disk of the computer simultaneously. The recordings from the hard disc of the computer were copied on to CDs and the conversations recorded on the CDs were later transcribed on paper.

367. He further told the court that, from the conversations made from mobile phone number **9910719424**, he could make out that the callers from that phone were speaking from Hotel Taj and that their names were *Ali*, *Umar*, *Abdul Rehman* and *Shoeb*. The two persons on the other end were called *Vashibhai* and *Kafabhai*.

368. In course of the night, *Kadam* came across two other mobile phone numbers, **9820704561** and **9819464530**. The first of these two was being used by the terrorists at Hotel Oberoi and the second by those at Nariman House. After obtaining the necessary permissions in regard to those two phone numbers following the same procedure, *Kadam* intercepted and recorded the conversations made from those two phone numbers also. He stated that the interception of these calls by him commenced at 01:04 hours on November 27, 2008, and the last call from one of these numbers concluded at 08:52 hours on November 28, 2008. The total recordings of intercepted phone calls were spread over twelve (12) hours and thirty-three (33) minutes.

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369. The CDs recording the intercepted phone conversations were played in court on a laptop and, on comparing the recorded voices with the written transcripts, *Kadam* told the court that, except for a very few minor errors, the transcripts were accurate. He then proceeded to identify all the different CDs recording conversations from the three different mobile numbers and the transcripts of conversations made from those CDs.

370. Significantly, *Kadam* told the court that all the calls from the above three mobile phones were made to a single number, **012012531824**, which later investigation revealed to be the number of private Corporation based in New Jersey, USA, with the domain name *Callphonex*.

THE CALLPHONEX:

371. *Kadam* (PW-42) told the court that the collaborators of the terrorists appeared to be speaking from telephone number **012012531824**. As the international code would indicate, the number was based in the US. Clarification about the number comes from the evidence of **Nizar Al Sharif**, who was examined by the prosecution as **PW-156.**

372. The evidence of this witness was recorded through audio-video linkage. The witness was sitting in room no.222 of Hotel Fairfield Inn, Sudbury, Ontario, Canada, where video conference facility was available. *Geoffrey Maron*, the Special Agent of FBI who was earlier examined as PW-153, first identified one *David Shea* on the screen as the FBI Agent in Los Angeles. *Shea* in turn identified *Nizar Al Sharif* to the court on the screen.

373. *Al Sharif* stated before the court that he was the owner of International Connection Services (ICS) which was a Private Corporation incorporated in the year 1993 and registered in the State of Delaware. The office of the Corporation was situated in New Jersey. The brand name as well as the domain name of the Corporation was *Callphonex*. The *Callphonex* telephone number, in the month of November, 2008, until January 6, 2009, was **(201)253-1824**. *Al Sharif* further stated before the court that they were providing Voice over Internet Protocol (VoIP) Services in wholesale as well as in retail. Any person, who wanted to avail of their services, in case he was not in the US, could contact them through their website. The customer had to register through email. After getting the email from the customer, they would set up services in accordance with the customer's requirement. Pre-payment was necessary in all cases. He further stated that ordinarily, in case a customer availing their services made a call to any phone that displayed caller ID, the screen would display the *Callphonex* number (which, as

noted above, was (**201)253-1824** in November, 2008). He explained that the carrier could suppress the number but the user had no control over their number [(**201)253-1824**]. He further said that they had numbers from different countries. Some of them were US-based and their customers could make calls to mobile numbers through VoIP.

374. He further said before the court that one person calling himself **Kharak Singh (wanted accused No. 21)** had contacted them through email and had told them that he was a reseller of VoIP services. *Kharak Singh* had contacted them on October 20, 2008, by email. After correspondence with *Kharak Singh* on email they had provided him fifteen (15) PC2Phone accounts, ten (10) Common Client accounts and five (5) DID Austrian phone numbers. The email ID of *Kharak Singh* was *Kharak-telco@yahoo.com*. No specific address was provided by *Kharak Singh*. He had only said that he was from India. The mails received from *Kharak Singh* were replied to by *Nizar Al Sharif* personally. The first payment made by *Kharak Singh* was of 250 US dollars and it was received through Moneygram from Pakistan. The payment was made by some Mohammed Isfaq. On being shown a copy of the receipt of the Moneygram, *Al Sharif* identified it and it was then taken in evidence as Article 530. The second payment of 229 US dollars was received through Western Union. He identified the receipt of this payment as well, which was marked Article 531.

375. More importantly, *Al Sharif* stated to the court that the services provided by him to *Kharak Singh* were used most heavily from November 24 to 27, 2008. The initial use was only for testing. He further informed the court that he had supplied the following details to the FBI along with his letter of February 13, 2009 (Ext. No. 614).

> "1) Call Detail Records for sub-account 310000xx and 400000xx for client Mr. Kharak Singh;
>
> 2) Callphonex Call Detail Records for calls to 5 DID numbers;
>
> 3) Voxbone Call Detail Records to DID numbers (that Callphonex has access to and obtained on its own);
>
> 4) Three (3) chat logs between a representative of Callphonex and Mr. Kharak Singh;
>
> 5) Copy of MoneyGram receipt dt. 27th October, 2008, and copy of Western Union receipt dt. 25th November, 2008.
>
> 6) E-mails between Mr. Kharak Singh and Callphonex."

376. He further deposed before the court that the last mail received by him from *Kharak Singh* was on November 25, 2008, at 12:08 PM and thereafter there was no contact between him and *Kharak Singh*. The account of *Kharak Singh* was closed after December 25, 2008.

377. It does not require much imagination to see that "*Kharak Singh*", claiming to be from India, was a fake identity created for the sole purpose of obtaining the VoIP services from *Callphonex*. But this was made very clear by the investigation

made by the FBI as would appear from a communication dated February 18, 2009, from the Special Agent of the Bureau (PW-153) in response to the letter-o-gatory issued by the Court of the Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, on Miscellaneous Application No.1/2009. The communication from the FBI dated February 18, 2009, is Ext. no. 617-A and it states the following with regard to the two payments made to Callphonex from *Kharak Singh's* account:

> "Two payments were made to Callphonex for Singh's accounts. On October 27, 2008, the initial payment of $250.00 was wired to Callphonex via MoneyGram, receipt number 80700471903880005473. The sender for this payment was Muhammad Ishfaq. The sender used MoneyGram agent Paracha International Exchange located at Road Anarkali Fayazuddin in Lahore, Pakistan. According to MoneyGram records, Ishfaq provided an address of Postoffice Mall Awn Teh Gujar K, Peshawer, Pakistan and telephone number 03455698566. Copies of the MoneyGram receipts are attached.
>
> On November 25, 2008, the second payment of $229.00 was wired to Callphonex via Western Union, receipt number 8364307716-0. The sender of this payment was Javaid Iqbal. The sender used Western Union agent Madina Trading, located in Bescia, Italy, to make the payment to Callphonex. For identification, Iqbal provided Madina Trading with Pakistani passport number KC092481.
>
> The owner of Callphonex noticed that neither of the wire transfers were sent from India. On November 25, 2008, he emailed Singh and asked why the transfers were not coming from India, however, he received no response."

378. As to *Kharak Singh* being an Indian in the aforesaid communication, the FBI Agent made the following observations:-

"The FBI determined that the kharak_telco@yahoo.com account was created on October 20, 2008, via Internet Protocol (IP) address 66.90.73.125. Between October 20, 2008, and November 28, 2008, a user with access to this account logged in from the following IP addresses, which, according to open-source information, resolve to the corresponding geographic locations:

IP Addresses	Location
58.27.167.153	(Pakistan)
66.90.73.125	(U.S. – apparent proxy)
67.159.44.63	(U.S. – apparent proxy)
80.78.132.155	(Kuwait)
82.114.138.18	(Russia – apparent proxy)
82.114.141.99	(Russia – apparent proxy)
118.107.140.138	(Pakistan)
203.81.224.201	(Pakistan)
203.81.224.202	(Pakistan)
203.81.224.203	(Pakistan)

Singh's Callphonex account has been inactive since November 28, 2008. Callphonex closed Singh's account because there has been no payment, no activity and no communication from him since November 28, 2008."

379. It is noted above that among the documents furnished by *Nizar Al Sharif* to the FBI there were three chat logs between a representative of Callphonex and *Kharak Singh* and the e-mails between *Kharak Singh* and Callphonex.

380. Mr. Gopal Subramanium, in his meticulous and painstaking way, took us through the three chat logs and the e-mails exchanged between *Kharak Singh* and Callphonex. We have no doubt that even in the three chat logs it is not the same person who is chatting under the fictitious name of *Kharak Singh*. That the persons

chatting as *Kharak Singh* are different persons is evident from the different styles of language and their use of slang.

381. Perhaps *Nizar Al Sharif's* commercial interest got the better of his sense of discretion, or perhaps he was too naïve to see through the clear deception. His services were thus used by a bunch of terrorists for the mass killing of innocent people. According to him, he realized that a false account was opened with him for unlawful purposes only after the massacre in Mumbai.

MOBILE NUMBERS 9910719424, 9820704561 AND 9819464530 AND THE MOBILE PHONES USING THOSE NUMBERS:

382. We have seen how the collaborators of the terrorists killing innocent people in India hid behind the phone number of Callphonex and tried to conceal the locations from which they were making calls. We shall now take a brief look at the three numbers from which the terrorists holed up in at Hotel Taj, Hotel Oberoi and Nariman House were calling or receiving calls from their collaborators.

383. A great many mobile phones were collected and seized from the various places through which the terrorists had passed as also from the vehicles used by the appellant and his dead companion, *Abu Ismail*, for moving through the city. But of interest to us are only five (5) mobile phones, two (2) of which were recovered from Hotel Taj, two (2) from Nariman House and one (1) from Hotel Oberoi. The

two phones that were recovered from Hotel Taj are mentioned in Exhibit nos. 749 and 760. Both were Nokia 1200 and silver-and-black in colour. One of them had the IMEI No.353526024049451 and an Airtel's Sim No.8991310000200898887842. This phone was never used by the terrorists. The other Nokia 1200 phone had the IMEI No. 353526025840890. It had a Sim card purchased from Delhi in the name of one Suresh Prasad and, on calls being made from this phone, the number that was displayed on the receiving phone would be **9910719424**, the first number that had come to the notice of *Kadam* (PW-242). The investigation later revealed that the Sim card for this phone was purchased from **Gurvinder Singh Bakshi (PW-259)**, a retailer in Delhi, by producing fake identity documents. Suresh Prasad was a fictitious person.

384. Two Nokia 1200 phones were also recovered from Nariman House and they found mention in Exhibit no. 771. One of the phones had the IMEI No.353526025828739. The phone was without a Sim card and it was never used. The other Nokia 1200 phone had the IMEI No.353526025842235. It had a Sim card belonging to Gabriel Holtzberg, who was first taken hostage and was later killed by the terrorists. It appears that the terrorists had taken away the mobile phone of Gabriel Holtzberg, took out the Sim card from his mobile and put it in their own mobile phone. A call made through the Sim card of Gabriel Holtzberg

would display this number on the receiving phone: **9819464530**. This was one of the two numbers that later came to the notice of *Kadam* (PW-242).

385. The fifth Nokia 1200 of silver-and-black colour was recovered from Hotel Oberoi *vide* Ext. no. 790. Its IMEI number was 353526025933620. This mobile phone had a Sim card issued in the name of one Rita Agarwal. She was among those killed by the terrorists at Hotel Oberoi. It appears that, as with Gabriel Holtzberg, Rita Agarwal's mobile phone was also taken away by the terrorists at Hotel Oberoi, who took out the Sim card from her mobile and used it to make calls from their own mobile. Any call made through the Sim card of *Rita Agarwal* would display the number **9820704561** on the receiving phone. This was the third number that had come to the notice of *Kadam* (PW-242).

386. It is thus clear that the terrorists at Hotel Taj were using a Sim card that was obtained in India under a fictitious name Suresh Praad on the basis of fake identity documents. The terrorists at Nariman House and Hotel Oberoi used Sim cards snatched from their respective victims, which they used to make calls from their own mobile phones.

387. From the materials brought on record, it is evident that all the aforementioned five Nokia 1200 mobile phones were manufactured in DongGuan, China, and were shipped to Pakistan. Exhibit no. 606 is a communication dated

February 12, 2009, from **Mary Lozano**, ACP, Enforcement Manager / Americas Nokia Inc. **(PW-155)** addressed to SA *Geoffrey Maron* of the Federal Bureau of Investigation (PW-153). In the aforesaid communication it is stated as follows:-

"February 12, 2009.

SA Geoffrey Maron
Federal Bureau of Investigation
11000 Wilshire Blvd
Los Angeles, CA 90024

In response to the FBI's request via United States legal authority, Nokia provides information from our records concerning the following specific Nokia devices:

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: I2 Pakistan (Pvt.) Ltd.

3. Nokia 1200, IMEI # 353526025842235
Manufactured: DongGuan, China
Date shipped: June 26, 2008
Country shipped to: Pakistan
Vendor product sold to: I2 Pakistan (Pvt.) Ltd.

4. Nokia 1200, IMEI # 353526025840890
Manufactured: DongGuan, China
Date shipped: June 26, 2008
Country shipped to: Pakistan
Vendor product sold to: I2 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

Further, our records reflect that at the time of shipment, I2 Pakistan (Pvt.) Limited's address was:

I2 Pakistan (Pvt.) Limited
2nd Typical Floor, Executive Tower
Dolmen City, Block 4, Clifton
Karachi Pakistan

Within the scope of my employment with Nokia, and in compliance with United States law, I am authorized to provide the above listed information derived from Nokia's records.

Sincerely,

Mary Lozano, ACP
Enforcement Manager/ Americas
Nokia Inc.
6021 Connection Drive, MS 2-5-520
Irving, Texas"

388. We have seen the mobile phones and the SIM cards by means of which the terrorists holed up in the places targeted by them were calling their collaborators across the border and also the medium through which the exact location of the collaborators was hidden. Now we come to the substance of the conversations between the terrorists and their collaborators.

THE TALKS:

389. The attack on Mumbai killing and wounding scores of innocent people was a wicked act, and the conversations between the terrorists and their collaborators while the attack was underway appear to be its ugliest and most hateful part. Those conversations unveil warped minds conceiving perverted objectives and trying to realize those objectives through vicious and dastardly means.

390. In an early talk[55] that took place between 01:15:01 to 01:16:42 hrs. on November 27, 2008, between one of the terrorists from Hotel Taj and the collaborators, the latter appear quite anxious that the hotel building should be set on fire. They constantly urge the terrorist to start the fire but this man seems to be a little nervous as he finds himself alone holding a hostage (*Ramamoorthy*) while his other partners, who had gone on reconnaissance and in search of more hostages, are delayed in returning. Every time the collaborators ask him to start the fire and throw grenades he complains that his partners have not come back even though he had told them to come back quickly. The collaborators ask him many questions about the sea journey and get answers that would not have made them very happy as everything did not go as per instructions. The terrorist in Hotel Taj told them that the Indian boat was not sunk in the sea but was left afloat. What is more, *Abu Ismail's* satellite phone and a GPS too were left in the boat. The only information that seems to have pleased the collaborators was that the navigator of the Indian boat was killed by cutting his neck. [But on that score also the happiness was not complete because his body was not thrown into the sea but left on the boat itself.] In the midst of getting all this information the collaborators keep pressing the terrorist to start the fire but this man appears unequal to the task.

[55] Described in the transcripts of intercepted calls from Hotel Taj: Talk no.2

391. In another conversation between the terrorists at Nariman House and the collaborators, one of the hostages, a Mexican citizen called Norma Shvarzblat Robinovich, is brought to the phone and is threatened by the collaborators that if she wanted to remain alive she must do their bidding and talk to the Indian authorities as dictated by them. The poor woman agreed to do all that they demanded and yet she was killed at the end without the slightest qulams. As noted above, the recording of the intercepted conversation extend over twelve and a half (12.5) hours. The transcripts of the recorded conversations are accordingly long. We propose to take a look at a few excerpts as samples under the following heads.

1. Exhortation to fight in the name of Islam against heresy, and the allurement of martyrdom.
2. Deception that the terrorists were Indians and were venting the grievance of the Indian Muslims; also an attempt to involve Israel.
3. Rejoicing over the killing of the high police officers.
4. Advising the terrorists on tactics to deal with the security forces, who were called in to neutralize them.
5. Killing of the hostages

Exhortation to fight in the name of Islam against heresy, and the allurement of martyrdom

392. (1) TRANSCRIPTS FROM HOTEL TAJ

Talk No. 3 (Ext. no. 970 Collectively)

(The collaborator talking from across the border is marked as 'UK' and the terrorists holed up in Hotel Taj are marked as 'T')

UK 2: Allah yaar aapka kaam kabool kare. Bahot saare logon ke zakhm par marham rakha gaya hai. Jo dua aapko batayee thee na wo bhoolni nahi hai. Jahan bhi baitho teen baar dua zaroor padhni hai.

[My friend, may Allah accept your deed. Balm has been put on the wounds of many people. Do not forget the prayer that we made you learn; wherever you sit recite the prayer three times.]

UK 2: Baaki bhaiyon ko salaam kehna. Mazboot rehna apni baaton mein, apni baaton mein mazbooti paida karo. Aapne duniya ko chhoda hai. Jannat Insha-allah iss se bahut behtar hai. Apne vaade zaroor poore karna jo sachhe vaade hain. Hamare liye bhi dua karna.

[Tell my 'Salaam' to the rest of the brothers. Be strong in your actions; in your actions instill strength. You have left this world. Paradise is far better than this world. You must fulfil your promises, which are true promises. Pray for us too.]

TRANSCRIPTS FROM HOTEL OBEROI

Talk No. 4 (Ext. no. 979)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Hotel Oberoi are marked as 'T')

UK: Insha-allah, pata matlab yeh hai ki iss waqt Islam aur Kufr ka mamla hai. Hum woh bande hain jisko Allah ne apne deen ke jahaan ke liye bheja hai. Matlab shahadat ki maut toh badi hai. Lekin hai shahadat ka andaaz hai ki dushmanon ke dil mein khauf bitha dein. Aur sahi andaaz hai matlab shahadat. Matlab, na darne ki baat hai, shaheed ka paigaam aage rakhna hai.

[God willing, you know, what I mean is at this time the issue is between Islam and heresy. We are the slaves of God whom he has sent for expansion of the true faith. I mean, death as a martyr is a big thing. But the style of martyrdom should be such as to put fright in the heart of the enemies and that is the style of martyrdom. What I mean is there is nothing to fear, the message of the martyr must be put forward.]

UK: Dua karo, dua ka waqt hai. Sahi Allah ke saath kiye vaade poore karein. Theek hai.

[Pray. It is time for prayer and keep your promise to Allah. All right!]

UK: Aisa ladna hai ki unhein maloom pade ki Allah ka sher mere peechey pada hai.

[Fight in such a way, they should feel that Allah's lion is after them.]

T-II: Insha-allah.

[God willing.]

UK: Insha-allah. Matlab Shaheed.

[God willing. What I mean is martyr.]

T-II: Insha-allah. Dua karo.

[God willing. Pray for me.]

UK-II: Unko bada maan hai Hindu bhai ko, unka maan khaak mein mila dein.

[They have great pride those Hindu bhais. Let their pride be trampled in mud.]

T: Insha-allah.

[God willing.]

UK-II: Sahi hai. Zikr karo Insha-allah kaamyaabi har taraf se aapki hai. Aapki yeh kaamyaabi Allah kabool karle, theek hai. Sahi Insha-allah,

Allah-tala ne Jannat bilkul clear kar di. Aapke liye shareer mahi hai. Insha-allah sabne jaana wahin par hai. Jis raste se aap chal rahe ho woh himmatwala rasta hai. Insha-allah, himmatwala kaam karna hai.

[Remember Him and God willing success will be of yours. May God accept your success. That is right. Right, God willing. Allah has completely cleared paradise for you. Everyone has to go there. The path on which you are treading that is the path of strength. God willing. You have to do the courageous deed.]

T: Insha-allah.

[God willing.]

Talk No. 11 (Ext. no. 981)

(This is towards the conclusion perhaps the last minutes of Fahadullah).

T: Assalaam-Valeykum.

[Assalaam-Valeykum.]

UK: Valeykum Salaam, kya haal hai Fahadullah, mere yaar khairiyat hai?

[Valeykum Salaam. How are you Fahadullah, my friend are you all right?]

T: Abdul Rahman Bhaiyya Allah ko pyaare ho gaye.

[Abdul Rahman Bhaiyya has been taken away by God.]

UK: Achha, aapke paas hi hain?

[Well, is he near you?]

T: Haan jee; paas hi hain.

[Yes. He is near me.]

UK: Allah kabool kare. Mere veer sabr karna hai, himmat karni hai aur muquabla karna hai datt ke.

[May Allah accept him. My brother have forbearance. Be brave, you have to fight unrelentingly.]

T: Insha-allah.

[God willing.]

UK: Haan. Allah madad karega.

[Yes. Allah will help you.]

SUPREME COURT OF INDIA
JUDGMENT

UK: Theek hai mere yaar, himmat karo. Muquabla karo, josh se lado. Theek hai. Dua karo, iss waqt karo, iss waqt ki dua badi kabool hoti hai.

[All right my friend. Be brave. Fight, fight with passion. Alright. Pray, pray. Prayer at this time is very readily accepted.]

Talk No. 12 (Ext. no. 982)

UK: Giraftaari waali shakl nahin hone deni. Yeh baat yaad rakhni hai.

(There cannot be the eventuality of arrest. You have to remember this.)

T: Nahin. Insha-allah, Insha-allah.

(No. God willing, god willing.)

UK: Himmat karni hai mere veer, ghabraana nahin hai, Insha-allah; goli lage toh kaamyaabi hai. Allah intezaar kar raha hai.

(My brother you have to be strong. Do not be afraid. God willing. If you are hit by a bullet, in that is your success. God is waiting for you.)

T: Haan jee. Insha-allah.

(All right. God willing.)

Deception that the terrorists were Indians and were killing people to vent the grievance of the Indian Muslims; also the attempt to involve Israel

393. (2) TRANSCRIPTS FROM NARIMAN HOUSE

Talk No. 7 (Ext. no. 984)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Nariman House are marked as 'T')

UK-III: Aap woh poochhenge aap kahan ke hain. Kehna mein Hyderabad Deccan ka hoon.

[Now they will ask where do you belong to? Say, I am from Hyderabad Deccan.]

T: Jee.

[Yes.]

UK-III: Hyderabad city ka theek hai.

[City of Hyderabad, understand.]

T: Hyderabad Deccan.

UK-III: Hyderabad city ka Hyderabad city ka hoon aur chowki ka mera area hai.

[Hyderabad city, I am from Hyderabad city, from the Chowki area]

T: Chowki

UK-III: Tolee Chowki. Tolee Chowki.

T: Tolee Chowki theek hai.

[Tolee Chowki, all right.]

UK-III: Aur phir poochhey toh kehna Mujahedeen Hyderabad Deccan se mera talluk hai. Theek hai.

[And if they ask further, say that you are associated with Mujahedeen Hyderabad Deccan.]

T: Theek hai.

[All right]

UK-III: Mujahedeen Hyderabad Deccan ise hasi sangeen (sic tanzeem) se mera taluk hai. Aur agar weh kehte hain ye action kyon ki hai. Hum hukumat ki doshi policy hukumat ki dohri policy hukumat peeth thapthapati hai. Aur prashasan sar pe tole marti hai.

[Mujahedden Hyderabad Deccan is the organization to which I belong. And if they say why did you do this action. (say) against the wrong policy of the Government, the dual policy of the Government. The Government pats the back and the administration knocks on the head.]

T: Hukumat ki doshi policy. Hukumat peeth thapthapati hai.

[The wrong policy of the Government. The Government pats the back.]

UK-III: Hukumat peeth thapthapati hai.

[The Government pats the back.]

T: Peeth thapthapati hai.

[Pats the back.]

UK-III: Aur prashasan jo hai sar par tole maarta hai.

[And the administration, such as it is, knocks on the head.]

T: Aur prashasan.

[And administration.]

SUPREME COURT OF INDIA
JUDGMENT

UK-III: Sar par tole maarta hai. Uski taaza misaal Sachhar Committee ki shifarishein, uski taaza misaal.

[Knocks on the head. Its recent example (is) the recommendations of the Sachhar Committee.]

T: Uski taaza misaal.

[*Its recent example*.]

UK-III: Sachhar Committee shifarish. Jis taraf hukumat jo ye ailaan karti hai aur darasal vajah prashasan Muslim yuvkon ko pakad pakad kar giraftaar karti hai.

[Sachhar Committee recommendations. On the one hand the Government makes this announcement and in reality in order to harass them, the administration pursues Muslim youths and arrests them.]

T: Hukumat koi aur insaan karti hai.

[The Government makes another announcement.]

UK-III: Prashasan uska amal Muslim yuvkon ko giraftaar karke deta hai. Saabit karta hai.

[(And) the administration implements it by arresting the Muslim youth. This just shows.]

T: Muslim.

UK-III: Muslim yuvkon ko, Muslim jawaanon ko.

[The Muslim youth, the young Muslim.]

T: Nau jawaanon ko.

[The youngsters.]

UK-III: Giraftaar karke sabit karta hai.

[Makes it clear by arresting them.]

T: Haan.

[Yes.]

UK-III: Unka future barbaad karti hai. Unko ye ultimatum de denge hamra abhi toh trailor hai abhi asal film to baaki hai. Hukumat ye jaan le yeh trailor hai, asal film to baaki hai.

[Destroys their future. Give them the ultimatum that this is only the trailor and the main film is yet to come. The Government should know that this is only the trailor and the main film still remains.]

T: Hukumat ye jaan le sarkaar ye jaan le yeh trailor hai asal film to baaki hai.

[The Government should know, the Government should know that this is the trailor and the real film is still remaining.]

UK-III: Yeh to abhi trailor hai.

[This is only the trialor.]

T: Yeh to abhi trailor hai.

[This is only the trialor.]

UK-III: Yeh to chhotta sa udaharan hai mein. Chhota sa example hai. Trailor hai.

[This is only a small example, is a small example, is only the trailor.]

T: Yeh trailor hai.

[This is only the trialor.]

UK-III: Yeh chhotta sa humne aapko dikhaya hai.

[We have shown you only this little thing.]

T: Film to abhi saara pada hai.

[The whole film is still there.]

UK-III: Unko kaho ye chhota sa namoona hai. Abhi hukumat ko dekhna hai. Aage aur kya kya hota hai.

[Tell them this is only a small sample. The Government is yet to see what happens in the time to come.]

T: Abhi hukumat dekhegi kya hota hai.

[The Government will see what happens now.]

UK-III: Theek hai.

[Alright.]

T: Theek hai. Theek hai.

[*Alright. Alright.*]

UK-III: Woh kahenge na aapka demand kaya hai. Hello.

[They will say what is your demand. Hello.]

T: Haan jee, haan jee.

[Yes jee, yes jee.]

SUPREME COURT OF INDIA
JUDGMENT

UK-III: Jitne bhi jailon mein musalman qaid hain unko riha kiya jaaye. Ek number.

[All the Musalmans who are languishing in jails should be released. Number one.]

T: Saare musalman riha.

[All the Musalmans released.]

UK-III: Jitne bhi jailon mein band musalman hain unko riha kiya jaaye.

[All the Musalmans who are locked up in jails should be released.]

T: Theek hai.

[Alright.]

UK-III: Theek hai. Number do.

[Alright. Number two.]

T: Jee.

[Yes.]

UK-III: Muslim state, Muslmanon ke hawaale kiya jaaye.

[Muslim state should be handed over to the Musalmans.]

SUPREME COURT OF INDIA
JUDGMENT

T: State Musalmanon ke hawaale kiya jaaye.

[State should be handed over to the Musalmans.]

UK-III: Number teen. Kashmir se fauj bulayee jaaye. Unko unka haq diya jaaye. Kashmiriyon ko unke haq diya haaye (jaaye).

[Number three. The Army should be withdrawn from Kashmir. They should be given their rights. Kashmiris should be given their rights.]

T: Theek hai.

[Alright.]

UK-III: Babri Masjid ki jagah par fauran masjid ka kaam shuru kiya jaaye. Uss Jagah ko musalmanon ke hawaale kiya jaaye.

[At the site of Babri Masjid, work should immediately commence for construction of the mosque. That spot should be handed over to the Musalmans.]

T: Theek hai. Theek hai.

[Alright. Alright.]

UK-III: Uss jagah ko musalmanon ke hawaale kiya jaaye. Israel ke saath gathbandhan na kiya jaaye.

[That spot should be handed over to the Musalmans. There should be no collaboration with Israel.]

T: Israel ke saath gathbandhan na kiya jaaye.

[There should be no collaboration with Israel.]

UK-III: Israel ke saath gathbandhan na kiya jaaye.

[There should be no collaboration with Israel.]

T: Jee

[Jee.]

UK-III: Hello

[Hello.]

T: Haan jee.

[Yes jee.]

UK-III: Israel ko ye ultimatum diya jaaye ya bawar [beware] kiya jaaye ki woh musalmanon par zulm na kare. Philippines udhar zulm jaati bandh kare.

SUPREME COURT OF INDIA
JUDGMENT

[An ultimatum should be given to Israel; it should be made to realize not to oppress the Musalmans and Philippines too should stop oppressing and harassing.]

T: Israel ko.

[To Israel.]

UK-III: Philippines ki musalmanon ke upar jaatati [jyadati] bandh kiya jaaye.

[The harassment of the Musalmans of Philippines should stop.]

T: Israel musalman ke khoon se khelna chhod dein.

[Israel should stop playing with the blood of Musalmans.]

UK-III: Ha. (Whispers: Oberoi mein dhamakon ki awwaz) Theek hai.

[Ha. (Whispers to the colleagues with him: Sound of explosion in Oberoi. Alright.]

T: Jee, Jee.

[Jee, Jee.]

UK-III: Agar Israel uss tarah nahin karegaa toh poore… Yahi hai bus theek hai.

[If Israel does not do like this then all this… That is it and alright.]

T: Jee, Jee.

[Jee, Jee.]

UK-III: Yahi kehna hai. Bus yahi kehna hai.

[This is to be said. Only this is to be said.]

T: Jee, Jee.

[Jee, Jee.]

UK-III: Israel jo yeh bharat ke musalmanon ke beech mein dakhal andaazi nahin karein.

[Israel should not interfere with the Musalmans of Bharat.]

T: Theek hai.

[Alright.]

UK-III: Theek.

[Right.]

T: Salaam-Valeykum.

UK-II: Valeykum-assalaam.

394. And it was exactly on these lines that the terrorists from Nariman House talked to India TV as the transcripts of those interviews would indicate.

395. The deception, the falsehood that the terrorists were Indian Muslims coming from Hyderabad and were connected with some fictitious organization called Mujaheddin, Hyderabad Deccan, is one of the most ominous and distressing parts of the conspiracy. If the appellant had not been caught alive and the investigating agencies had not been able to unravel the conspiracy fully and in all its devious ways, the terrorists might have passed as Indian Muslims and that would have led to devastating short-term and equally debilitating long-term consequences. It would have caused a cleavage of distrust and suspicion between communities and disturbed the communal peace and harmony of the country. It is not impossible that conflagrations would have erupted in different parts of the country which the governments would have found difficult to contain.

JUDGMENT

396. In this regard, the selection of CST as one of the targets for carnage assumes great importance. Trains leave for many parts of the country from CST. Thus, as news of the carnage spread across the country through the media, travelers would start arriving in different parts of the country, some having lost their near and dear ones at CST, some with a wounded companion and others shell-shocked by the experience of a terrorist attack on the railway station. Their first-hand, eye-witness

accounts of the carnage added to reports in the print media and visuals in the electronic media could be highly inflammable and could easily evoke communal violence that would be difficult to contain.

397. The deception was ominous because it aimed at destabilising Indian society and its governments. But it was equally distressing for being so deeply untruthful. Indian Muslims may have a long list of grievances against the establishment. Some of the grievances may be fanciful, some may be of their own making and some may be substantive. Nevertheless, no Indian Muslim would even think of venting his grievance like an animal, killing, maiming and wounding innocent people; his own countrymen. This is because he is not only loyal to his faith and community but equally loves his country and fellow countrymen.

Rejoicing over the killing of high police officials

398. (3) TRANSCRIPTS FROM HOTEL TAJ

Talk No. 3 (Ext. no. 970)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Hotel Taj are marked as 'T')

UK: Koi masla nahin mere yaar, pareshaan nahin hona mere yaar. Aap kaam karo, Allah ki dua se saari Bombay mein tabahi mach gayi

hai. 260 bandhe zakhmi hain aur kayee officer mare gayee hain, pachaas fidayeen ghusey hain. Har terah choudah jagah firing ho rahi hai. Sahi Allah ke dua se mahaul bana raha hai. Koyee pareshaani ki baat nahin.

[There is no problem my friend, don't get worried my friend. You do your work. By the blessing of God there is destruction all around in the whole of Bombay. Two hundred and sixty (260) people are wounded and many officers are killed. Fifty (50) fidayeens have entered. Firing is going on at thirteen-fourteen (13-14) places. By the blessing of God the right atmosphere is developing. There is nothing to worry.]

T: Pareshaani wah bass hai. Do bhai gaye hain. Who jaldi aa jaayein. Unko mein baar baar kehta hoon. Jaldi aa jaao, jaldi aa jaana.

[The only worry is two brothers have gone. They should come quickly. I told them repeatedly:Come quickly, come quickly.]

UK: Aapke yahan shayad koyee helicopter aayega. Kyonki aapke yahan koyi wazeer fansey hain hotel mein? Hotel mein bhi media bata rahe hain ki wazeer fansey hain.

[A helicopter may come to your place. Because there is some Minister trapped in the hotel? The media too informs that some Minister is caught in the hotel.]

T: Achha.

[Very well.]

UK: Ab wazeer alam ye kaha hai. Helicopter bhejkar woh wazeer logon nikalo. To aap aag laga do darwaza nahin khol rahe hain. Parde nikalkar aag lagao. Kamron ko aag lagao to wazeer jale. Aur unki jaan jaayen.

[Now the Prime Minister has asked for sending a helicopter to get that Minister (those Ministers?) out. Then you set fire (if) they are not opening the doors. Take the curtains and set them on fire. Set the rooms on fire so that the Minister should burn. And get killed.]

T: Chalo koshish karte hain. Woh aa jaaye na yaar to yeh masla hai. Hum donon rumaaliyon ke paas bethe hain, woh aa jaate hain to hum ikattha koshish karte hain.

[Very well, we'll try. The problem is that they're not coming. I am sitting with the two hostages. When they come back, we shall try (to start the fire) together.]

UK: Aur ek Commissioner maara gaya hai Allah ki dua se. Aapko kaha hai ek hathoda opener dhoondo.

[And one commissioner is killed by the blessing of God. I told you to find a hammer or an opener.]

T: Nahin, nahin mila.

[It is not found.]

UK: Mere bhai jahan bhi deewaron par cylinder aag bujhane ko lagaayein hain, udhar hathoda latkaay rehtey hain. Har hotel mein rehta hai. Har manzil pe rehta hai, har gali mein hota hai.

[My brother at all the points where cylinders are fixed for extinguishing fire a hammer would also be hanging. It is there in every hotel. It is there on each floor, it is in every corridor.]

T: Woh kis liye hota hai.

(Whisper) Sabse zyada zulm karnewala Commissioner maara gaya.

[What is its purpose.]

[(Whisper) The Commissioner who oppressed most is killed.]

UK: Achha mere veer mere bhai jaldi se aag lagao jaise maahol banega. Aur log ghabra jaayengein, aag ke sholey bahar nazar aa jaayengein.

[Alright my veer, my brother, please start the fire quickly. That would set the scene and people will panic, the flames would be visible from outside.]

UK: Haa, Maine kaha yahan ka Bombay ka police. …

[Yes I said of this place, of Bombay police.]

T: Haa haa Pathan hai.

[Yes yes, he is pathan.]

UK: Yeh Bombay ka Chief maara gaya.

[The Bambay Chief is killed.]

T: Whisper (to the handler): Maharashtrya hai. (to the hostage) Tu kidhar ka hai. Kis ilake ka hai tu kidhar ka hai.

[Whisper (to the handler): He is Maharashtrian. (To the hostage) Where do you belong? From which region, which place?]

UK: Chief maara gaya hai. ATS chief maara gaya hai.

[The chief is killed. The ATS chief is killed.]

TRANSCRIPTS FROM NARIMAN HOUSE

Talk No. 18 (Ext. no. 988)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Nariman House are marked as 'T')

T: Woh toh keh raha tha do bhai surrender ho gaye.

[He was saying two brothers have surrendered.]

UK: Nahi bakwaas kar rahe hain.

[No they are talking nonsense.]

T: Jee

[Jee]

UK: Surrender ho gaya. Bakwaas kar raha hai. Kal se lekar aaj tak unse koyi bhi jagah clear nahin hui hai.

[Surrendered! He is talking rubbish. From yesterday till today no place has been cleared by them.]

T: Aur kya naam lete hain. Uska. Baaki bhai kahan tak pahunch gaye hain.

[And what other names do they take. His. Till where the rest of the brothers have reached.]

UK: Sab jahaan jahaan apni apni jagah par gaye they na.

[They all went where they were meant to go.]

T: Haan jee.

[Yes jee.]

UK: Udhar hain. Allam Dulla woh toh sahi behtreen ladh rahe hain. Kaam jaari hai. Insey ab tak koyi bhi jagah clear nahin hui. Yeh koyi na kahe rahe humne yeh jagah chudwa lee hai.

[They are there. Allah be praised they are fighting excellently. The work is in progress. They have not been able to clear any place. No one is saying that they have got this place freed.]

T: Achha Achha dua karein, shahadat kee maut kubool karein. Dua

[Well well pray for me, the martyr's death may be accepted. Pray…]

Advising the terrorists on the tactics to deal with the security forces who were called in to neutralize them

399. (4) TRANSCRIPTS FROM HOTEL TAJ

Talk No. 3 (Ext. no. 970)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Hotel Taj are marked as 'T')

UK2: Baat suno.

[Listen.]

T3: Haan jee.

[Yes jee.]

UK2: Jahan se aap mudhkar aaye ho, aapka munh samudr ke baaju hua.

[The spot from where you have returned, you should be facing the sea.]

T3: Haan haan.

[Yes yes.]

UK2: Hello.

[Hello.]

T3: Haan jee. Mein sun raha hoon.

[Yes jee. I am listening.]

UK2: Jis taraf aap mude ho aapka munh samudr ke paas hua. Wahan mod ke road ke upar ek building hai civil logon ki. Woh asal mein Navy ki hai. Woh civil ko di hai. Uskey taraf do jagah police waale khade hain. Woh position lekar aapke upar shisht lekar firing kar rahe hain. Jis tarah aap gaye hain. Uske peechey se aakar aapko fire karna padhega. Theek hai.

[The way you have turned, you should be facing the sea. There, at the corner of the road, there is a building of civilian people. In reality that belongs to the Navy. It is given to the civilians. Over there, policemen are standing at two places. They have taken position and, taking aim at you, they are firing at you. The way you have gone you would have to come from behind and fire at them. You understand?]

T3: Theek hai.

[All right.]

Talk No. 8 (Ext. no. 972)

UK: Kyaa haal mere yaar? Shift ho gaye neechey.

[How are you, my friend? Have you shifted below?]

T: Haan ji shift ho gaye hein aur doosare kamron mein chale hain clear karne ke liye.

[Yes jee, we have shifted and are moving to clear the other rooms.]

UK: Upar aag laga di hai?

[Have you set fire upstairs?]

T: Grenade fenka hai. Grenade.

[We have thrown a grenade. Grenade.]

UK: Grenade ki awaaz aa gayi hai. Grenade unhone dikha diya hai. Dhamaka hua hai. Aadmi zakhmi hue hain.

[The sound of the grenade has come. They have shown the grenade. The explosion has taken place. People are wounded.]

T: Toh aag lagane lagey hain.

[So, (you) have started to lit the fire.]

UK: Jis kamre se nikal kar aaye ho upar waali manzil hai na?

[The room from where you've come (is) on the upper floor?]

T: Haan jee, haan jee.

[Yes jee, yes jee.]

UK: Usko mere yaar jaakar aag lagao.

[My friend, go and set fire to it]

T: Haan jee bhai.

[Yes jee, bhai.]

UK: Kamron ke beech pardey hain gadde hain unko ikathha karke aag laga do.

[In the rooms there are curtains and cushions, Put them together and set them on fire.]

T: Asal aag lagane mein bhi utni der lagati hai aur rumaali dhondhne ko utni der lagati hai. Bataao ki hum kya karein. Aage ki toh mauj laga denge masha-allah.

[Actually it takes some time to start a fire, and it takes as long to find hostages. Tell us what to do. We'll create real fun, presently.]

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

UK: Aag laga do, aag laga do mere yaar, kamra koyi naya clear karne lage ho.

[Set fire, set fire my friend; are you clearing any new rooms?]

T: Haan jee.

[Yes jee]

UK: Pehle chalo aag lagao mere yaar upar ek banda bas ho gaya. Aag lagake neechey aa jaao. Ek banda hai na.

[First go and set a fire, my friend. One fellow (is caught) upstairs, that is enough. Set fire and come down. You have one fellow, don't you?]

T: Nahin do bandey hain.

[No there are two men.]

UK: Nahin do bandey toh upar, party poori bhej do unke paas phone hai na doosra.

[No, two men are upstairs. Send the whole party to them. You have the other phone?]

T: Haan jee.

[Yes jee.]

UK: Dono ikkatha karke aag lagake aao.

[Put them together and set the fire and come.]

T: Asal mein hum seediyon ke paas ek kamra liya hai bada jabardast, ek banda seediyon ke paas ek banda andar mein baitha hai roomali ke saath aur do bande baahar khyal rakhenge.

[Actually, we have taken a room near the stairs that is great. One man is near the stairs, one man is sitting inside with the hostage, and two men are keeping watch outside.]

UK2: Fire hua hai.

[There has been a fire]

T2: Haan fire hua. Abhi apna darwaaza band rakhein?

[Yes, there has been a fire. Should we keep our door closed?]

UK: Nahin aap chaaron ek kamre mein nahin ikkatha hongein. Woh yaad rakhein aapke kareeb koyi pahunchega toh aapke hain na jo aapke paas baithey hue.

[No, all four of you should not be together in one room. Keep in mind, if anyone comes close to you then those (hostages) who are sitting with you…]

T2: Haan.

[Yes]

UK: Jab aapko lage koyi hamarey kareeb pahunch gaye hain aur hamare liye mushkil ho rahi hai. Tab unko aapne khadka dena hai.

[When you feel someone has reached close to you and its getting difficult for you, then you have to kill them (the hostages).]

T2: Haan haan. Insha-allah. Khadka denge. Insha-allah chaaron hum ek hi kamre mein hain hum log.

[Yes yes. God-willing, we shall kill them. God-willing all four of us are in the same room.]

UK: Haan yeh baat suno. Chaaron ek kamrey na hon. Do kamron mein aapne intezaam karna hai.

[Yes, listen to this. All four of you, don't be in one room. Make arrangements in two rooms.]

UK2: Yeh aap kis manzil par hain aap.

[On which floor are you?]

T2: Hum sabse upar waali chhodkar neecheywale pe.

[On the topmost but one.]

UK2: Sabse ooperwali chhodkar neechey wale pe. Bande kitne hain aapke paas.

[On the topmost but one. How many hostages are with you?]

T2: Ek minute jee. Sohaib ko fire maara hai unhon ne toh pehle band karte hain phir aapse raafta (baat kartey hain) kartey hain.

[One minute jee. Sohaib has been fired at by them so we stop this talk and get connected with you later on.]

UK2: Line mat kato hum sun rahe hain.

[Don't cut the line, we are listening.]

T2: Ek minute.

[One minute.]

UK2: Position badlo. Position badlo.

[Change your position. Change your position.]

T2: Achha achha. Sohaib ne maara hai un bandon ko fire.

[All right, all right. Sohaib has shot at those men.]

UK2: Allam Dulla jagah badlo, position badlo, ikkattha mat baitho. Jahan se aa rahe hain wahan grenade fenko. Teesri manzil pe baithe hain.

[Allah be praised, changed your place, change your position, don't sit together. Throw a grenade at (the direction from) where they are coming. They are on the third floor.]

TRANSCRIPTS FROM HOTEL OBEROI

Talk No. 4 (Ext. no. 979)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Hotel Oberoi are marked as 'T')

UK: Aapki building ke upar fauji apni position bahut mazboot kar rahi hain. Number ek.

[On the top of your building the soldiers are making their position very strong. Number one (1).]

T: Jee, Jee.

[Jee, Jee.]

UK: Agar aapko manzil pe aawaaz aa rahi ho toh chhupo andar.

[If noises are coming on your floor then hide inside.]

T: Haan jee.

[Yes jee.]

UK: Aapko aawaaz nahin aa rahi ho to aap nikal kar jahah aapko movement nazar aati hai wahan par fire karo.

[If there are no noises coming to you then come out and fire at the spot where you see any movements.]

T: Aawaaz to khair aa rahi hai bahut jyaada balki dhamaka bhi kiya hai.

[Definitely, there is a lot of noise, and there has also been an explosion.]

UK: Pehli manzil par aa rahi hai aawaaz. Dhamaka, dhamaka, kaun sa hua hai?

[The noise is coming on the first floor? Explosion, explosion, what explosion happened?]

T: Pata nahin kaun sa hai.

[I don't know what (explosion) is this.]

UK: Army ne kiya na?

[Is it by the Army?]

T: Haan jee.

[Yes jee.]

UK: Saamne aapke manzil par se aa rahi hain kya aawaazein?

[Are noises coming from the front side of your floor?]

T: Haan jee, aa rahin hain.

[Yes jee, (noises) are coming.]

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UK: Haa, phir aap mazboot hokar dono iss tarah se position lekar agar do – teen bande andar ikkathha aate hain toh… aapke paas magazine kitni hai?

[Ha, then be strong and the two of you should take positions in a manner that in case two or three men come inside together then… how many magazines do you have?]

T: Char – paanch hain.

[Four-five (4-5) are there.]

UK: Aapki magazine ko burst pe kar lo. Char char hain naa?

[Put your magazine on 'burst' mode. Each of you have four (4), right?]

T: Haan jee.

[Yes jee.]

UK: Aap magazine ko load kar, aap apni gun ko burst par kar lo. Jab bhi fire karna hai.

[You load the magazine and put your gun on burst when you have to fire.]

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T: Sahi.

[Right.]

UK: Phir control karke chhota karna hai kyonki jab entry hogi toh ek ke baad doosra, doosre ke baad teesra, aisa aana hai unhonein. Tab burst fire karna hai. Zarase bhi nazdeek aayenge to grenade fenko aur jaise grenade fenkoge tab aapne bahar nikal kar saamne daayein baayein firing karni hai toh phir Fadullah.

[Then you have to control and make it smaller because when they enter, the second would come after first and the third after the second. They would come like this. Then you have to fire the 'burst'. If they come any closer, then throw the grenade and as soon as you throw the grenade come out and fire in the front and to the right and left and then… Fadullah!]

UK: Theek hai naa, hausle dena. Mere dost gun burst par karlo. Matlab bilkul position set karke baitho. Aap kissi aad se baithe ho ya khule baithe ho?

[Is it all right, give courage. My friend put the gun on 'burst'. I mean sit in perfect position. Are you sitting behind some cover or are you exposed?]

T: Side par baithe hain.

[We are sitting at one side.]

UK: Aise baithen ke andar aate hain, aapke upar nazar nahin pade. Aap kissi sofe ke peechhey bairal gun ki nikaal kar baitho. Yeh ek andaaza hai. Khada banda nazar aa jaata hai. Aaap aise position leke baitho, unko andar aate hi unhein nazar ghumani pade, unko clear karna pade, woh kamre clear kar rahe hain. Sabse pehle unhone clear karna hai. Aapke kamre mein bed aur saamaan kitna hai?

[Sit in a manner that you may not be within the sight of someone coming inside. Sit behind some sofa with the barrel of the gun sticking out. This is only a suggestion. A standing man is easily sighted. Sit at a position that on coming inside they may have to look around, they may have to make clear. They are clearing the rooms. First of all they have to clear. How many beds and other articles are there in your room?]

T: Haan jee hai.

[Yes jee it is there.]

UK: Aapke kamre mein bed saamaan hai na unki aad leke baitho toh aap uske peechhey dekhkar baithna. Bahar jab aap grenade fenkna hai toh aap ek bandene peechhey ho jaana hai. Achha, jaise grenade khatam hoti hai bahar nikal ke dono taraf se fire shuru karna. Jitna dushman marna ya bhaagna, poora floor kaabu kar lena, Insha-allah. Uske baad ladhai chaalu hogi.

[In your room there is bed and other articles. Make sure that you sit behind them. When you are throwing grenade outside, then one of you should stand behind the other. And as the grenade's explosion dies down, go out and start firing on both sides. Kill as many of the enemy as possible or make them flee, control the entire floor, God-willing and then the battle will begin.]

T: Insha-Allah, theek hai.

[God-willing alright.]

UK: Matlab position safe rakho, agar aapke aage bed hai na foam wagaira kaa, lakkad ka foam ka sofa hai. Aisi cheez se aadh milegi

agar aapko grenade fenkna padta hai to fenko. Matlab aisa darwaza kholkar fenko apne pairon mein nahin fenk lena. Lekin yeh option hai. Magazine laga ke sab tarah se taiyar rakho. Insha-allah jo ek banda milta hai Insha-allah chhodna nahin hai.

[I mean keep your position safe. If you have a bed in front of you of foam etc. or a sofa of foam or wood. Such things will provide you cover, if you have to throw the grenade then throw. I mean open the door and throw it and don't throw it on your own feet. But there is an option. Fix the magazine and be ready in all ways. God-willing, if you get hold of a person God-willing he is not to be spared.]

Talk No. 12 (Ext. no. 982)

UK: Salaam vaaleykum. Fahadullah mere veer; ladayee ki koyi shikast banti nahin ki aap bahar aakar ladain. Grenade fenk kar wahan se nikalne ki koshish karein, kahin aur jaa sakein.

[Salaam vaaleykum Fahadullah my brother. You should come out and fight. Throw the grenade and try to come out so that you may change your position.]

T: Grenade fenk diye hain donon.

[I have thrown both the grenades.]

UK: Grenade fenk diye hain?

[Have you thrown the grenades.]

T: Haan jee.

[Yes jee.]

UK: Ab kalashan magazine kitni hain tumhare paas?

[How many kalashan magazines do you have?]

T: Mere paas do hi hain.

[I have only two.]

UK: Giraftaari waali shakl nahin hone deni. Yeh baat yaad rakhni hai.

[There should be no situation of arrest. You must remember that.]

T: Nahin. Insha-alla, Insha-allah.

[No. God-willing, God-willing]

UK: Aur ladhna padhega toh hi maamla seedha hoga, aisa na ho ki woh dhooein ka bomb fenk kar aap behosh kar dein aur jaayein aur aapko uthalein.

[And it is only by fighting that the situation will be straightened out. There should not be a situation that they make you unconscious by throwing a smoke bomb and later take you (alive).]

T: Nahin.

[No.]

UK: Woh badha nuksaan hai. Aap aagey badhkar ladhein, aapko kaheen se bhi nazar aa jaate hain. Khidkiyon se aap nahin dekh sakte, nazar aate hi aap fire karo. Fire karo, burst maaro. Uske saath halchal mach jayeegi toh aap nikalne ki koshish karo.

[That would be a great loss. You come forward and fight if you see (them) from anywhere. Cannot you see from the window? Fire as soon as you see (them). Fire, shoot a burst. That would cause a commotion and then you can try to get out.]

T: Chalo, try karte hain, Insha-allah.

[Very well, I will try, God-willing.]

UK: Haan mere veer; gun ki barrel nikalein, burst nikalein, ussi burst ke saath dono side nikale aur aap nikal kar jagah badalne ki koshish karo.

[Yes my brother, put the barrel of the gun outside and fire a burst and with the firing of the burst come out and fire on both sides and try to change your place.]

T: Theek hai jee.

[All right jee.]

UK: Jahaan baithe hain aapko pata hai ki fire aata hai udhar dono taraf se? Pandrah-bees goli nikal jaaye, poori magazine khaali ho jaaye aur doosari magazine aapke haath mein hai woh laga do aur aap wahan se nikal jaao.

[From where you are sitting do you know that shots are coming (at you) from both sides? Fire 15-20 bullets, empty your whole magazine, load the other magazine that is in your hand, and get away from that spot.]

T: Theek hai, Insha-allah.

[All right, God-willing]

UK: Himmat karni hai mere veer, ghabraana nahin hai, Insha-allah; goli lagey toh kaamyaabi hai Allah intezaar kar raha hai.

[Be brave, my bother, don't worry. God-willing, getting shot by a bullet is to be successful. Allah is waiting for you.]

Killing of hostages

400. (5) TRANSCRIPTS FROM NARIMAN HOUSE

Talk No. 26 (Ext. no. 990)

(The collaborator talking from across the border has been marked as 'UK' and the terrorists holed up in the Nariman House are marked as 'T')

UK.II : Achha, aap yeh khyaal rakhna; jo bandhi hain naa, yeh jab tak aapke paas hain tab tak yeh aapke upar fire nahin karenge. Samjha meri baat?

[Well keep this in mind, that as long as these hostages are with you, they will not fire at you. You understand me?]

T: Jee jee.

[Yes, yes]

UK.II: Inka faayda tabtak hai jabtak aapke upar fire aane se rok raha hai.

[They are useful only until they are stopping any firing at you.]

T: Fire jab open ho jaayga.

[When the firing starts.]

UK.II: Fire jab open ho jaayga toh aap unko khatm kar do.

[When the firing starts, finish them.]

T: Jee Jee

[Yes, yes]

UK.II: Baat samajh aayi aapko? Fire jab open ho jaayga to aap unko khatm kar do. Theek hai.

[Do you understand? When the firing starts, then finish them. All right.]

T: Insha-allah.

[God-willing]

UK.II : Jab aapne dekha ke aapke upar dabaav aa raha hai sabse pehle inhein khatm karo.

[When you feel that you are coming under pressure, then first of all finish them]

T: Insha-allah.

[God-willing]

UK.II: Kisi army ka yeh daava hota hai ki koyi bhi bande ko taqleef na hote hue kaam karna hota hai.

[Every army has this commitment to do their job without causing any harm to anyone.]

T: Insha-allah. Insha-allah.

[God-willing, God-willing]

UK.II: Abhi baat yeh hai ki inn logon ko bachane ke liye approach aa rahi hai. Agar yeh log maare jaate hain toh unke desh ke saath taalukaat kharab ho sakte hain. Shor bhi mach jaayga.

[Now the fact is that approaches are being made to save those people (hostages). If they are killed the relationship with their countries is likely to get strained. There may be a lot of noise too.]

T. Insha-allah. Insha-allah.

[God-willing, God-willing.]

401. **In view of the enormous evidence of all possible kinds it is clear that the terrorist attack on Mumbai was in pursuance of a larger conspiracy of which**

the appellant was as much part as the nine dead accused and the other wanted accused. It will be futile even to suggest that the appellant while he was shooting at CST and at the other places along with *Abu Ismail* had no connection with the attacks taking place at the other targets by the other eight (8) members of the terrorist group. From the evidence on record it is further clear that the conspiracy did not stop with the group of 10 terrorists leaving the Pakistani shore. It continued developing and growing even while the larger conspiracy was under execution. In course of execution of the larger conspiracy by the ten terrorists in Mumbai, they were being advised and guided to meet the contingencies arising at those three different places. In other words, newer conspiracies were being hatched even in course of execution of the larger conspiracy and the conspiracies came to an end only when all the remaining eight terrorists were killed at the three places where they were holding up.

JUDGMENT

AN OBITER:

Role of the media:

402. Before parting with the transcripts, we feel compelled to say a few words about the way the terrorist attacks on Taj Hotel, Hotel Oberoi and Nariman House were covered by the mainstream, electronic media and shown live on the TV screen. From the transcripts, especially those from Taj Hotel and Nariman House,

it is evident that the terrorists who were entrenched at those places and more than them, their collaborators across the border were watching the full show on TV. In the transcripts there are many references to the media reports and the visuals being shown on the TV screen. The collaborators sitting in their hideouts across the border came to know about the appellant being caught alive from Indian TV: they came to know about the killing of high ranking police officers also from Indian TV. At one place in the transcript, the collaborators and the terrorists appear to be making fun of the speculative report in the media that the person whose dead body was found in Kuber was the leader of the terrorist group whom his colleagues had killed for some reason before leaving the boat[56]. At another place in the transcript the collaborators tell the terrorists in Taj Hotel that the dome at the top (of the building) had caught fire. The terrorists holed up in some room were not aware of this. The collaborators further advise the terrorists that the stronger they make the fire the better it would be for them[57]. At yet another place the terrorists at Hotel Taj tell the collaborators that they had thrown a grenade. The Collaborators reply, "the sound of the grenade has come, they have shown the grenade, the explosion has taken place, people are wounded"[58]. At yet another place the collaborators tell the terrorists at Hotel Oberoi that the troops were making their position very strong on

[56] Nariman House, Talk No. 26 (Ext. no. 990)

[57] Hotel Taj, Talk No. 4 (Ext. no. 971)

[58] Hotel Taj, Talk No. 8 (Ext. No. 972)

the roof of the building[59]. At yet another place the collaborators tell the terrorists at Taj Hotel the exact position taken by the policemen (close to a building that belonged to the navy but was given to the civilians) and from where they were taking aim and firing at them (the terrorists) and advised them the best position for them to hit back at those policemen.[60] There are countless such instances to show that the collaborators were watching practically every movement of the security forces that were trying to tackle the terrorists under relentless gun fire and throwing of grenades from their end.

403. Apart from the transcripts, we can take judicial notice of the fact that the terrorists attacks at all the places, in the goriest details, were shown live on the Indian TV from beginning to end almost non-stop. All the channels were competing with each other in showing the latest developments on a minute to minute basis, including the positions and the movements of the security forces engaged in flushing out the terrorists. The reckless coverage of the terrorist attack by the channels thus gave rise to a situation where on the one hand the terrorists were completely hidden from the security forces and they had no means to know their exact position or even the kind of firearms and explosives they possessed and on the other hand the positions of the security forces, their weapons and all their

[59] Hotel Oberoi, Talk No. 4 (Ext. no. 979)

[60] Hotel Taj, Talk No. 3 (Ext. No. 970)

operational movements were being watched by the collaborators across the border on TV screens and being communicated to the terrorists.

404. In these appeals, it is not possible to find out whether the security forces actually suffered any casualty or injuries on account of the way their operations were being displayed on the TV screen. But it is beyond doubt that the way their operations were freely shown made the task of the security forces not only exceedingly difficult but also dangerous and risky.

405. Any attempt to justify the conduct of the TV channels by citing the right to freedom of speech and expression would be totally wrong and unacceptable in such a situation. The freedom of expression, like all other freedoms under Article 19, is subject to reasonable restrictions. An action tending to violate another person's right to life guaranteed under Article 21 or putting the national security in jeopardy can never be justified by taking the plea of freedom of speech and expression.

406. The shots and visuals that were shown live by the TV channels could have also been shown after all the terrorists were neutralized and the security operations were over. But, in that case the TV programmes would not have had the same shrill, scintillating and chilling effect and would not have shot up the TRP ratings of the channels. It must, therefore, be held that by covering live the terrorists attack

on Mumbai in the way it was done, the Indian TV channels were not serving any national interest or social cause. On the contrary they were acting in their own commercial interests putting the national security in jeopardy.

407. It is in such extreme cases that the credibility of an institution is tested. The coverage of the Mumbai terror attack by the mainstream electronic media has done much harm to the argument that any regulatory mechanism for the media must only come from within.

ARGUMENTS

I. Denial of Due Process

Mr. Raju Ramachandran:

408. In the face of the evidence stacked against the appellant, overwhelming both in volume and in weight, Mr. Ramachandran took a course that would neatly side-step everything. He struck at the root. Mr. Ramachandran submitted that the appellant did not get a fair trial and added that the denial of fair trial, for any reason, wittingly or unwittingly, would have the same result: it would render the trial a nullity and no conviction or sentence based on such a trial would be legal or enforceable. Mr. Ramachandran prefaced his submissions by gently reminding the

court that, having taken the path of the rule of law, we must walk the full mile; we cannot stop halfway and fall short of the standards we have set for ourselves.

409. The learned Counsel submitted that the right to fair trial is an integral part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India, and that the fundamental right under Article 21 was inalienable and there can be no question of any waiver of the right by any person. In support of the first limb of his submission, he referred to the decisions in *Zahira Habibullah Sheikh (5) v. State of Gujarat*[61], *T. Nagappa v. Y.R. Muralidhar*[62], *Noor Aga v. State of Punjab*[63], *NHRC v. State of Gujarat*[64] , *Jayendra Vishnu Thakur v. State of Maharashtra*[65] and *G. Someshwar Rao v. Samineni Nageshwar Rao*[66]; and in support of the second limb he relied upon the decisions in *Behram Khursheed v. State of Bombay*[67] and *Olga Tellis v. Bombay Municipal Corp*.[68].

410. Proceeding from the premise that fair trial is an inalienable right of every person, Mr. Ramachandran submitted that in case of the appellant the

[61] (2006) 3 SCC 374 (paragraphs 33-39 with special reference to paragraph 38

[62] (2008) 5 SCC 633 (paragraph 8, page 636)

[63] (2008) 16 SCC 417 (paragraphs 71, 113, 114)

[64] (2008) 16 SCC 497 (paragraph 5, page 499)

[65] (2009) 7 SCC 104 (paragraph 53, page 127)

[66] (2009) 14 SCC 677 (paragraph 10, page 680)

[67] (1955) 1 SCR 613 (page 653, 2nd paragraph, 654)

[68] (1985) 3 SCC 545 (paragraph 28 and 29, page 569, 570)

Constitutional guarantee remained unsatisfied because of denial to him of two valuable Constitutional rights/protections: first, the right to counsel at the earliest, as provided under Article 22 (1) of the Constitution; and secondly, the right to protection against self-incrimination as stipulated by Article 20(3) of the Constitution.

411. Elaborating the first submission regarding the right to counsel at the earliest, Mr. Ramachandran said that the appellant was not made aware of his Constitutional right to counsel under Article 22(1) of the Constitution at the time of his arrest and production before the Judicial Magistrate in remand proceedings. Mr. Ramachandran submitted that **a mere offer of legal aid is not the same as being made aware that one has the Constitutional right to consult, and to be defended by, a legal practitioner, and that simply the offer of legal aid does not satisfy the Constitutional requirement**. He stated that until the appellant was produced before the Additional Chief Metropolitan Magistrate on February 17, 2009, for recording his confession, he was not informed of such a right.[69]The learned magistrate also did not tell him that under the Constitution he had the fundamental and inalienable right to consult and be represented by a lawyer, but simply asked him whether he wanted a lawyer. This, according to Mr.

[69] This statement is factually inaccurate but in fairness to Mr. Ramachandran it must be stated that, as the facts unfolded and the correct picture emerged, he immediately corrected himself and adapted his submissions, as we shall see in due course, to the correct facts.

Ramachandran, resulted in the confession being recorded without the appellant being made aware of his Constitutional right against self-incrimination under Article 20(3). Mr. Ramachandran further submitted that the repeated cautioning administered by the learned magistrate to the appellant and her admonitions to him about making the confession undoubtedly satisfied the requirements under Section 164 of the Code of Criminal Procedure, but they fell far short of higher Constitutional standards. The learned Counsel maintained that telling the appellant that he was not bound to make the confession and that it could be used against him did not amount to Constitutional compliance. The magistrate was required to inform him of his rights under Article 22(1) and 20(3) of the Constitution. It is only if an accused is so informed that he can be said to have made a ***Constitutionally acceptable choice*** either to have or not to have a lawyer or to make or not to make a confession.

412. The learned Counsel sought to buttress his submission by referring to the decision in *Nandini Satpathy v. P. L. Dani*[70] and through *Nandini Satpathy* to the decision of the US Supreme Court in *Miranda v. Arizona*[71]. He referred to paragraphs 42 to 44 of the judgment that contain the discussion regarding the stage at which the right under Article 20(3) comes into operation; paragraphs 62 to 65

[70] (1978) 2 SCC 424

[71] 384 US 436 (1966)

that deal with the stage at which the accused gets the right to have the assistance of a lawyer; and put particular stress on paragraphs 21 to 34 of the judgment, where the right under Article 20(3) of the Constitution and the provisions of Section 161(2) of the Code of Criminal Procedure (said to be the parliamentary gloss on the constitutional clause!) are seen through the *Miranda* prism.

413. Apart from *Nandini Satpathy*, Mr. Ramachandran relied upon the decision of this Court in *Khatri (II)* v. *State of Bihar*[72] relating to the infamous case of blinding of prisoners in Bihar. In *Khatri*, this Court reiterated that the right to free legal aid is an essential ingredient of due process that is implicit in the guarantee of Article 21 of the Constitution.

414. Mr. Ramachandran also relied upon the decision of this Court in *State (NCT of Delhi)* v. *Navjot Sandhu*[73]. He referred to paragraphs 159 to 164 of the judgment where the Court discussed the decision in *Nandini Satpathy* and the US decision in *Miranda* and found that the safeguards and protections provided to the accused under Sections 32 and 52 of the Prevention of Terrorism Act, 2002 (POTA), apart from stemming directly from the guarantees enshrined in Articles 21 and 22 (1) of the Constitution and embodying the guidelines spelt out in the earlier decisions of

[72] (1981) 1 SCC 627

[73] (2005) 11 SCC 600

this Court in *Kartar Singh* v. *State of Punjab*[74] and *D.K. Basu* v *State of West Bengal*[75], were in complete harmony with the observations of this Court in *Nandini Satpathy* as well as the *Miranda* rule enunciated by the U.S. Supreme Court. Mr. Ramachandran also referred to paragraphs 181, 182 and 185 of the judgment, where the Court eschewed the confessional statement of the accused from consideration on the grounds that they were not apprised of the right to consult a legal practitioner either when they were initially arrested or after POTA was introduced in the case. The learned Counsel contended that the reasons for which the Court held that strict compliance with the Constitutional safeguards was necessary in *Navjot Sandhu* would hold equally good in the present case as well. As observed in that case, the protections under Sections 32 and 52 of the POTA ultimately flow from Articles 20(3), 21 and 22(1) of the Constitution. It would, therefore, be incorrect to contend that the magistrate recording a confession under Section 164 of CrPC had no obligation to comply with the *Miranda* rule or the requirements of Sections 32 and 52 of the POTA only because *Miranda* and *Navjot Sandhu* are cases in which confessions to police officers were admissible while, under the normal law of the land, confession to police officers are not admissible in evidence. It is precisely because the police cannot be expected to inform the accused of his Constitutional rights that the magistrate must be required

[74] (1994) 3 SCC 569

[75] (1997) 1 SCC 416

to do so when the accused is brought for recording his/her confession. Mr. Ramachandran submitted that in *Navjot Sandhu* the Court actually **implanted the right to information within articles 20(3), 21 and 22(1)** and submitted that in order to give any meaningful content to those three articles it was necessary to read them along with Article 19(1) (a) of the Constitution. He submitted that unless a person is informed, in clear terms, that it is his basic right to be defended by a lawyer he would not be in a position to exercise the right under Article 22(1) in any informed and effective manner. He contended that it should be obligatory for every authority responsible for deprivation of liberty of a person to inform him of his rights. It, thus, followed that a magistrate, at the stage of recording a confession under Section 164 CrPC, should mandatorily make the accused aware of his rights under Articles 20(3) and 22(1). Mr. Ramachandran submitted that in this case, though the magistrate (PW-218) asked the appellant whether he required a lawyer, she was also bound to find out whether he was made this offer earlier. He further submitted that even strict compliance with Section 164 CrPC would not fulfil the Constitutional requirements in the absence of a 'Constitutional' choice by the accused to avail or not to avail of a defence lawyer. He pointed out that Section 304 of the CrPC makes it mandatory to provide a defence lawyer at the trial stage and this requirement of law cannot be waived by the accused. In the same way, he argued, the administration of justice mandates the provision of a defence lawyer at

the earliest because a lawyer provided at the trial stage would be disabled from offering any effective defence if he is presented with a *fait accompli* in the form of a confession in which the accused condemns himself. It is, therefore, imperative that a Constitutionally acceptable choice is made by the accused before a point of no return is reached. He further submitted that a statutory caution administered by a magistrate, howsoever carefully done in letter and spirit, cannot be a substitute for a lawyer's advice. By the very nature of their differing professions, a judge and a lawyer perform different roles in this context. A judge is required to be detached and can therefore only administer cautions. The nature of legal advice is entirely different.

415. Mr. Ramachandran further submitted that the omission to make the appellant aware of his Constitutional right to consult, and be defended by, a legal practitioner resulted in the denial of protection against self-incrimination guaranteed under Article 20(3) of the Constitution. In support of the submission, he relied upon a recent decision of this Court in *Selvi and others* v. *State of Karnataka*[76]. He referred to paragraphs 92 to 101 under the marginal heading "Historical origins of 'the right against self-incrimination'"; paragraphs 102 to 112 under the marginal heading "Underlying rationale of the right against self-incrimination"; paragraphs 113 to 119 under the marginal heading "Applicability of Article 20(3) to the stage

[76] (2010) 7 SCC 263

of investigation"; and paragraphs 120 to 144 under the marginal heading "Who can invoke the protection under Article 20(3)?".

Mr. Gopal Subramanium:

416. In reply to the submissions made on behalf of the appellant, Mr. Subramanium submitted that all Constitutional rights of the appellant, including the right to be defended by a lawyer and protection against self-incrimination, were fully secured and up-held and it is incorrect to say that the trial of the appellant was vitiated by denial of any Constitutional right or privilege to him. Mr. Subramanium agreed that the Constitution of India indeed accorded a primary status to the rights of a person accused of committing any offences. Article 21 of the Constitution guaranteed the right to life and personal liberty in the widest amplitude, and other related provisions in the Constitution provided for the safeguards essential to preserve the presumption of innocence of the accused, as well as for the trial of the accused in an adversarial system. He further pointed out that the rights, privileges and protections accorded by the Constitution to a person accused of committing a criminal offence were comprehensively translated into the statutory scheme framed by Parliament; and that the relevant provisions of the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, were crafted in such a way as to translate the Constitutional promises to the accused into reality and to ensure that the rights,

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privileges and protections given to the accused are, in fact, available to him in actual practice.

417. The Constitutional rights and protection referred to by Mr. Ramachandran are to be found in Articles 20(3), 21 and 22(1) which are as follows:

> "20. Protection in respect of conviction for offences.
> ... ...
>
> (3) No person accused of any offence shall be compelled to be a witness against himself.
>
> 21 – Protection of life and personal liberty. — No person shall be deprived of his life or personal liberty except according to procedure established by law.
>
> 22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

418. Mr. Subramanium submitted that the Constitution prescribed values and norms and set out standards of socio-political life, but for actual enforcement those norms and standards were manifested in the provisions of the CrPC. He submitted that in order to understand the true import and contents of the provisions of the CrPC, one must look for the Constitutional norms and standards incorporated in those provisions. Thus viewed, the provisions of the CrPC would appear to be the Constitutional guarantees at work.

419. He referred to Section 161 of CrPC that provides as follows:

> **161. Examination of witnesses by police.—** (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
>
> (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, *other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*
>
> (3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:
>
> Provided that statement made under this sub-section may also be recorded by audio-video electronic means.
>
> (Emphasis supplied)

420. He pointed out that the provisions of sub-section (2) of Section 161 that disallow incriminating answers to police interrogations, are clearly an extension and application of the principle enshrined in Article 20(3).

421. A similar position obtains from the provisions of Section 162, which reads as follows:

> "**162. Statements to police not to be signed: Use of statements in evidence.—** (1) *No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as*

hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

(Emphasis supplied)

422. Mr. Subramanium stated that sub-section (1) of Section 162, insofar as it makes any statement, in any form, made to police officers inadmissible, is a mirror reflection of the right against self-incrimination contained in Article 20(3). He pointed out that sub-section (2) of Section 162 carves out only limited exceptions to sub-section (1), to the extent of statements falling under the provisions of Sections 32(1) and 27 of the Evidence Act, 1872.

423. Section 163 of CrPC is also significant in its import:

"**163. No inducement to be offered.—** (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in Section 24 of the Indian Evidence Act, 1872 (1 of 1872).

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of Section 164"

(Emphasis supplied)

424. Mr. Subramanium submitted that sub-section (1) of Section 163 contains the universally accepted principle, enjoining against inducement or coercion etc.; but it is sub-section (2) that rounds off and completes the provision by introducing the distinction between a statement obtained by inducement, coercion etc., and another made freely and voluntarily and separating the one from the other; sub-section (2) upholds the individual volition of an accused person to confess to an offence, as an attribute of his *free will*.

425. Mr. Subramanium further submitted that the scheme of Sections 161 to 163 needs to be understood in the context of the investigation process in India. He stated that the inadmissibility of statements by the accused to the police and the resultant distancing of the police from the accused are meant to adequately protect and uphold the rights and liberty of the accused. Though primarily providing a

procedural framework, the Code also contained provisions meant to be substantive safeguards for an accused person. Under Indian law, there is no concept of incriminatory statements whilst in the course of police investigation (except as contemplated under Section 162(2)). The law contemplates only judicial confession, recorded in accordance with Section 164 CrPC, to be admissible as evidence.

426. Section 164 CrPC is another statutory incorporation of the Constitutional privilege against self-incrimination and it reads as follows:

> "**164. Recording of confessions and statements.—** (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:
>
> 1[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:
>
> Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]
>
> *(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.*
>
> *(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession,*

the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and *the Magistrate shall make a memorandum at the foot of such record to the following effect:—*

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.

Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried."

(Emphasis supplied)

427. Mr. Subramanium pointed out that sub-section (1) of Section 164 provides for the recording of a confession *during the course of an investigation* under Chapter XII of CrPC; sub-section (2) of Section 164 mandates the magistrate to administer the *pre-confession* caution to the accused and also requires the magistrate to be satisfied, as a judicial authority, about the confession being made voluntarily. Further, sub-section (2) has to be read with sub-section (3), wherein it

is provided that if, at any time before the confession is recorded, the person appearing before the magistrate states that he is not willing to make the confession, *the magistrate shall not authorise the detention of such person in police custody*. The *post-confession* safeguard is incorporated under sub-section (4), wherein the magistrate is required to make a memorandum at the foot of the confession regarding the caution administered to the accused person and a certificate to the effect that the confession as recorded is a *full and true* account of the statement made.

428. The protection of the privilege of the accused against self-incrimination is thus cast as a mandatory duty upon the magistrate, a judicial authority, under sub-sections (2), (3) and (4) of Section 164.

429. Mr. Subramanian further submitted that the confession of the accused under Section 164 CrPC is not a statement recorded under oath and, therefore, the proceedings retain their adversarial character and do not take any inquisitorial colour. He contrasted the recording of a confession under Section 164 with the examination of the accused as a witness in support of his own case (under Section 315 CrPC), wherein the accused is examined on oath, and pointed out that the voluntary character of the judicial confession is, thus, ascertained at three stages:

i) Under Section 164(2), by the magistrate prior to the recording of the confession;

ii) Under Section 164(4), by the magistrate subsequent to the recording of the confession; and

iii) Upon the examination of the magistrate, who recorded the confession, on oath in course of the trial.

430. Mr. Subramanium argued that Indian law, in regard to the investigation of crimes, recognised and put into application the extremely important distinction between an involuntary statement obtained by inducement or coercion and a voluntary statement. The former was condemned and completely excluded from consideration as a piece of evidence but the latter was accepted as a sign of respect for the expression of *free will*. Thus, on the one hand, a confession or a statement cannot be obtained by means of inducement, threat or promise, as prohibited by sub-section (1) of Section 163, but, on the other hand, a confession made voluntarily as an expression of *free will* and volition cannot be disallowed as provided in sub-section (2) of Section 163 and Section 164.

431. Here Mr. Subramanium referred to the decision of this Court in *State of Bombay* v. *Kathi Kalu Oghad*[77], in which an eleven-Judge Bench of this Court

[77] [1962] 3 SCR 10

examined the true import of Article 20(3) and held that *"an accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody without anything more"*; and that *"the mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'"*.

432. In light of the decision in *Kathi Kalu Oghad*, Mr. Subramanium submitted that voluntary statements are not proscribed by Article 20(3) and do not amount to violation of the privilege against self-incrimination.

433. Having thus established the connections between the provisions of the CrPC and the relevant Articles of the Constitution, Mr. Subramanium contended that the provisions of Section 161, 162, 163 and 164 CrPC are mirror images of the Constitutional safeguards provided under Articles 20(3) and 21, **and that compliance with the statutory provisions would amount to effective compliance with the Constitutional provisions**. The provisions of the CrPC could naturally be tested against these Constitutional safeguards, and the manner in which the CrPC provisions are to be interpreted would be informed by the Constitutional safeguards in Articles 20 to 22, **but once the CrPC provisions stand complied with, there is no scope for a separate and distinct species of Constitutional compliance.** Thus, the provisions of the CrPC would be amenable

to be tested on the grounds of 'due process', **but having passed such a test, compliance with the CrPC would entail compliance with the various Constitutional safeguards. The purpose of placing such safeguards in the Constitution is not to create a separate level of compliance, but to emphasize the importance and enduring nature of these protections by giving them Constitutional status**.

434. Dealing with the right to legal assistance, Mr. Subramanium submitted that the right to legal aid and the stage when the right comes into effect are to be found in Article 22(1) of the Constitution, which states that "*no person who is arrested ... ... shall be denied the right to consult, and to be defended by, a legal practitioner of his choice*". According to Mr. Subramanium, Article 22(1) has thus two significant facets:

i) The enablement of an arrested person to *consult* a legal practitioner of his choice;

ii) The right of an arrested person to *be represented* by a legal practitioner of his choice.

435. He submitted that the phrase "*to be defended*" made it clear that the character of the right guaranteed under Article 22(1) transforms from an enablement to a positive right **only when an arrested person is put on trial**.

436. In this regard, he made a reference to the provisions of Section 304 CrPC. He called the provisions of Section 304 CrPC as the statutory enablement of the right to legal aid and pointed out that the Section provides that, *in a trial* before the Court of Session, a pleader may be assigned to the accused for his defence if the accused is not represented by a pleader and it appears to the court that he may not have sufficient means to engage a pleader. The effectiveness of the right to legal aid at the stage of trial is also buttressed by the provisions of Section 169 CrPC, wherein an accused may be discharged upon the completion of the process of investigation if there is insufficient evidence or no reasonable ground of suspicion to justify the forwarding of the accused to a magistrate.

437. He added that the rationale behind the provision of the right to legal aid must be understood in the context of the Indian system of investigation. Unlike certain foreign jurisdictions, Indian procedural and evidence laws do not permit statements made to the police to be admissible, and only judicial confessions made to a magistrate in compliance with the provisions of Section 164 are admissible. The same position does not obtain in certain other jurisdictions, for example, the United States of America and the United Kingdom, where statements made to police officers are fully admissible and used as evidence against the accused. There are, therefore, consequences attached to statements made whilst in custody of the

police in such jurisdictions; however, the same consequences do not attach under the Indian scheme of investigation of crimes.

438. Dealing with the *Miranda* decision, Mr. Subramanium submitted that the US decision was rendered in the context of a system in which statements made to police officers are admissible and it has, therefore, no application insofar as the Indian criminal process is concerned. Under Indian law, *vide* chapter XII of the CrPC, read with Sections 24 and 25 of the Evidence Act, 1872, statements made before the police are *per se* inadmissible and a confession is considered as admissible only if made to a magistrate, in accordance with the provisions of Section 164 of the CrPC. Indian law, therefore, completely excludes the possibility of an extra-judicial confession extracted by the police in the course of incommunicado interrogation in which the accused is subjected to threat, inducement or coercion.

439. The learned Counsel further submitted that the *Miranda* rule was substantially diluted even in the US and the *Miranda* decision has not been consistently and uniformly followed in the United States itself. In support of this submission, he referred to the judgment of the US Supreme Court in *Davis v. United States*[78], in which it was held by that Court that the suspect must *unambiguously* request for counsel and that the police were not prohibited from

[78] 512 US 452 (1993)

continuing with the interrogation if the request for counsel by the suspect did not meet the requisite level of clarity. Significantly, it was observed by the US Supreme Court that "*a suspect who knowingly and voluntarily waives his right to counsel after having that right explained to him has indicated his willingness to deal with the police unassisted.*"

440. Mr. Subramanium further submitted that the principle of waiver of the privilege against self-incrimination and the right to counsel was further elaborated upon by the US Supreme Court in its recent judgment in the matter of *Berghuis, Warden v. Thompkins*[79]. In the said judgment, the US Supreme Court reiterated the requirement of an *unambiguous* invocation of the *Miranda* rights by an accused person in order to avoid difficulties of proof and to provide guidance to officers.[80] The US Supreme Court has therefore developed a parallel jurisprudence with respect to the assessment of the waiver by the accused of his *Miranda* rights and has stated in *Berghuis* that a waiver must be voluntary, i.e. the product of a free and deliberate choice rather than of intimidation, coercion or deception, and made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

[79] 130 S.Ct. 2250 (2010) [State Compilation 1, pg. 138]

[80] 130 S.Ct. 2250 at 2260 (2010) [State Compilation 1, pg. 151]

441. Mr. Subramanium also submitted that the *Miranda* principles that gave the accused the right to silence and an absolute right to counsel at the stage of police interrogation have not been uniformly followed in several other jurisdictions. He pointed out that the *Miranda* principle has been held to be inapplicable in Australia in a judgment of the High Court of Australia in *Dietrich* v. *R.*[81]. In this regard, he also referred to the judgment of the Supreme Court of Canada in *R.* v. *Sinclair*[82]. He also referred to a decision of the European Court in *Salduz* v. *Turkey*[83], and two decisions of the UK Supreme Court in *Ambrose* v. *Harris (Procurator Fiscal, Oban) (Scotland)*[84] and *McGowan, (Procurator Fiscal, Edinburgh)* v. *B (Scotland)*[85].

442. Mr. Subramanium also referred to a number of academic articles and papers to contend that, in the United States itself, the *Miranda* principles have been considerably eroded by later case laws.

443. Next, dealing with the issue of the right to counsel, as claimed on behalf of the appellant in light of the decision in *Nandini Satpathy,* Mr. Subramanium pointed out that at least in two cases, namely, *Poolpandi* v. *Superintendent,*

[81] [1992] 177 CLR 292

[82] [2010] 2 S.C.R. 310

[83] (2009) 49 EHRR 19

[84] [2011] UKSC 43

[85] [2011] UKSC 54

Central Excise[86] and *Directorate of Revenue Intelligence* v. *Jugal Kishore Samra*[87], this Court had expressly declined to follow *Nandini Satpathy*.

444. *Miranda* and *Nandini Satpathy*, which draws heavily upon the former, are, of course, referred with approval in *D.K. Basu* and in *Navjot Sandhu*, but those decisions were in completely different contexts. In *D.K. Basu*, the Court was dealing with the use of compulsion during investigation and the need to insulate the accused from any coercive measures. It was in that connection that this Court issued guidelines incorporating the requirements that *"the arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation"*. Mr. Subramanium submitted that the decision in *D.K. Basu* has construed Article 22(1) as an enablement and not as a mandatory right.

445. *Navjot Sandhu* was the case of a terrorist attack on the Parliament of India and, in that case, this Court considered the import of the right to counsel in the context of the provisions of the Prevention of Terrorism Act, 2002. Mr. Subramanium submitted that a comparison of the provisions of the POTA with the *Miranda* principle was quite apt, in that the statutory scheme of the POTA, like US law, allowed confessions made to police to be admissible. With respect to the right

[86] (1992) 3 SCC 259

[87] (2011) 12 SCC 362

to counsel, this Court made the following observation in paragraph 160 of the judgment, after analyzing the judgments in *Miranda* and *Nandini Satpathy*:

> "Based on the observations in Nandini Satpathy case it is possible to agree that the constitutional guarantee under Article 22(1) only implies that the suspect in the police custody shall not be denied the right to meet and consult his lawyer even at the stage of interrogation. In other words, if he wishes to have the presence of the lawyer, he shall not be denied that opportunity. Perhaps, Nandini Satpathy does not go so far as Miranda in establishing access to a lawyer at the interrogation stage."

446. Mr. Subramanium submitted that the *Miranda* principle has no application to normal criminal procedure in India because similar safeguards and precautions with respect to the rights of the accused are expressly recognized in India under the law. He emphasized that the rights of the accused (including the right against self-incrimination and the right to legal representation) have been placed on a much higher pedestal in Indian law, even prior to such judicial developments in the United States. The learned Counsel submitted that the Constitutional provisions of Article 20(3) and Article 22(1), read with the statutory protections under Sections 161, 162, 163 and 164 CrPC as well as Sections 24 and 25 of the Evidence Act, 1872, make the rights of an accused sacrosanct.

447. He also referred to the decision in *Selvi*, relied upon on behalf of the appellant, and submitted that in *Selvi* this Court made the following observations:-

> "In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. *In short, there is no*

requirement of additional diligence akin to the administration of Miranda warnings."

448. Summing up his submissions, Mr. Subramanium formulated them into the following points:-

i) The right to legal assistance under Article 22(1) is not a mandatory right upon arrest, but an enablement to be exercised by the person arrested.

ii) The right against self-incrimination under Article 20(3) does not proscribe voluntary statements made in exercise of free will and volition.

iii) The right against self-incrimination under Article 20(3) has been statutorily incorporated in the provisions of CrPC (i.e. Sections 161, 162, 163 and 164) and the Evidence Act, 1872, as manifestations of enforceable due process, and thus compliance with statutory provisions is also compliance with Constitutional requirements.

iv) The right to counsel as contemplated in the judgment of *Miranda* has not been followed in either the United States or in other jurisdictions, particularly due to the qualification of *intelligent* and *voluntary waiver.*

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THE COURT:

449. Let us first put aside the *Miranda* decision that seems to have entered into the discussions of this case as a red herring. The *Miranda* decision was rendered under a system of law in which an utterance made by a suspect before the police could lead to his conviction and even the imposition of the death penalty. From the judgment in the *Miranda* case it further appears that the police would subject the suspect to incommunicado interrogation in a terribly oppressive atmosphere. The interrogator would employ all the intimidation tactics and interrogations skills at his command, not to find out the truth but to somehow crack the suspect and make him 'confess' to his guilt. It was in such a situation that the US Supreme Court evolved the *Miranda* rules, in order to provide necessary protection to the accused against self-accusation and to ensure the voluntary nature of any statement made before the police, and came to hold and direct as under:

> "To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. **He must be warned prior to any questioning that he has the right to remain silent; that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.**

> **After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."**
>
> (Emphasis Added)

450. We have not the slightest doubt that the right to silence and the right to the presence of an attorney granted by the *Miranda* decision to an accused as a measure of protection against self-incrimination have no application under the Indian system of law. Interestingly, an indication to this effect is to be found in the *Miranda* judgment itself. Having set down the principle, extracted above, that Court proceeded in the next part (Part IV) of the judgment to repel the arguments advanced against its view and to find support for its view in other jurisdictions. Part IV of the judgment begins as under:

> "A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court ……"

451. Rejecting the argument, the Court pointed out that very firm protections against self-incrimination were available to the accused in several other jurisdictions, in which connection it also made a reference to Indian laws. The Court observed:

> "The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. … … …

> ….. In India, confessions made to police not in the presence of a magistrate have been excluded by rule of evidence since 1872, at a time when it operated under British law."

452. The Court then noticed Sections 25 and 26 of the Indian Evidence Act and then referred to the decision of the Indian Supreme Court in *Sarwan Singh* v. *State of Punjab*[88] in the following words:

> "To avoid any continuing effect of police pressure or inducement, the Indian Supreme Court has invalidated a confession made shortly after police brought a suspect before a magistrate, suggesting: "[I]t would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession."

453. The US Supreme Court, thus, clearly acknowledged and pointed out that the measures to protect the accused against self-incrimination evolved by it under the *Miranda* rules were already part of the Indian statutory scheme.

454. Moreover, a bare reference to the provisions of the CrPC would show that those provisions are designed to afford complete protection to the accused against self-incrimination. Section 161(2) of the CrPC disallows incriminating answers to police interrogations. Section 162(1) makes any statements, in any form, made to police officers inadmissible excepting those that may lead to discovery of any fact (*vide* Section 27 of the Evidence Act) and that may constitute a dying declaration (*vide* Section 32 of the Evidence Act). Coupled with these provisions of the CrPC is Section 25 of the Evidence Act that makes any confession by an accused made

[88] AIR 1957 SC 637 (644)

to a police officer completely inadmissible. Section 163 of the CrPC prohibits the use of any inducement, threat or promise by a police officer. And then comes Section 164 CrPC, dealing with the recording of confessions and statements made before a magistrate. Sub-section (1) of Section 164 provides for recording any confession or statement in the course of an investigation, or at any time before the commencement of the inquiry or trial; sub-section (2) mandates the magistrate to administer the pre-confession caution to the accused and also requires him to be satisfied, as a judicial authority, about the confession being made voluntarily; sub-section (3) provides one of the most important protections to the accused by stipulating that in case the accused produced before the magistrate declines to make the confession, the magistrate shall not authorize his detention in police custody; sub-section (4) incorporates the post-confession safeguard and requires the magistrate to make a memorandum at the foot of the confession regarding the caution administered to the accused and a certificate to the effect that the confession as recorded is a full and true account of the statement made. Section 164 of the CrPC is to be read along with Section 26 of the Evidence Act, which provides that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person.

455. It is thus clear to us that the protection to the accused against any self-incrimination guaranteed by the Constitution is very strongly built into the Indian statutory framework and we see absolutely no reason to draw any help from the *Miranda* principles for providing protection against self-incrimination to the accused.

456. Here it will be instructive to see how the *Miranda* decision has been viewed by this Court; in what ways it has been referred to in this Court's decisions and where this Court has declined to follow the *Miranda* rules.

457. Significant notice of the *Miranda* decision was first taken by a three-Judge bench of this Court in *Nandini Satpathy*. The appellant in that case, a former Chief Minister of Orissa, was summoned to the police station in connection with a case registered against her under Section 5(1) and (2), Prevention of Corruption Act, 1947, and Sections 161/165, 120-B and 109 of the Penal Code, and was interrogated with reference to a long string of questions given to her in writing. On her refusal to answer, a complaint was filed against her under Section 179 of the Penal Code and the magistrate took cognizance of the offence. She challenged the validity of the proceedings before the High Court. The High Court dismissed the petition following which the Chief Minister came to this Court in appeal against the order passed by the High Court. It was in that context that this Court made a

glowing reference to the *Miranda* decision; however, in the end, this Court refrained from entirely transplanting the *Miranda* rules into the Indian criminal process and, with regard to the Indian realities, "suggested" certain guidelines that may be enumerated as under:

> "(a) Under Article 22(1), the right to consult an advocate of his choice shall not be denied to any person who is arrested. Articles 20(3) and 22(1) may be telescoped by making it prudent for the police to permit the advocate of the accused to be present at the time he is examined. Over-reaching Article 20(3) and Section 161(2) will be obviated by this requirement. But it is not as if the police must secure the services of a lawyer, for, that will lead to 'police station-lawyer' system with all its attendant vices. If however an accused expresses the wish to have his lawyer by his side at the time of examination, this facility shall not be denied, because, by denying the facility, the police will be exposed to the serious reproof that they are trying to secure in secrecy and by coercing the will an involuntary self-incrimination. It is not as if a lawyer's presence is a panacea for all problems of self-incrimination, because, he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried and to caution his client where incrimination is attempted and to insist on questions and answers being noted where objections are not otherwise fully appreciated. The lawyer cannot harangue the police, but may help his client and complain on his behalf. The police also need not wait for more than a reasonable time for the advocate's arrival.
>
> (b) Where a lawyer of his choice is not available, after the examination of the accused, the police officer must take him to a magistrate, a doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, in which case he should be transferred to judicial or other custody where the police cannot reach him. The collocutor communicate the relevant conversation to the nearest magistrate."

458. In later decisions, *Nandini Satpathy* guidelines and the *Miranda* rule are referred to, approved and followed in an ancillary way when this Court moved to protect or expand the rights of the accused against investigation by lawless means, but we are not aware of any decision in which the Court might have followed the core of the *Nandini Satpathy* guidelines or the *Miranda* rule.

459. In *Poolpandi*, the appellants before this Court, who were called for interrogation in course of investigation under the provisions of the Customs Act, 1963, and the Foreign Exchange Regulation Act, 1973, claimed the right of presence of their lawyer during interrogation, relying strongly on *Nandini Satpathy*. The question before the Court was thus directly whether a person summoned for interrogation is entitled to the presence of his lawyer during questioning. But a three-judge bench of this Court rejected the appeal, tersely observing in paragraph 4 of the judgment as under:

> "Both Mr. Salve and Mr. Lalit strongly relied on the observations in *Nandini Satpathy* v. *P.L. Dani*. We are afraid, in view of two judgments of the Constitution Bench of this Court in *Ramesh Chandra Mehta* v. *State of W.B.* and *Illias* v. *Collector of Customs, Madras*, the stand of the appellants cannot be accepted. The learned counsel urged that since *Nandini Satpathy* case was decided later, the observations therein must be given effect to by this Court now. There is no force in this argument."

460. More recently in *Directorate of Revenue Intelligence*, (to which one of us, Aftab Alam J., is a party) the question before the Court was, once again, whether a

person summoned for interrogation by the officers of the Directorate of Revenue Intelligence in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985, had the right of the presence of his lawyer at the time of interrogation. The Court, after discussing the decision in *Nandini Satpathy* and relying upon the decision in *Poolpandi*, rejected the claim; but, in light of the decision in *D.K. Basu* and with regard to the special facts and circumstances of the case, directed that the interrogation of the respondent may be held within sight of his advocate or any person duly authorized by him, with the condition that the advocate or person authorized by the respondent might watch the proceedings from a distance or from beyond a glass partition but he would not be within hearing distance, and the respondent would not be allowed to have consultations with him in the course of the interrogation.

461. But, as has been said earlier, *Nandini Satpathy* and *Miranda* may also be found referred quite positively, though in a more general way, in several decisions of this Court. In *D.K. Basu*, this Court, while dealing with the menace of custodial violence, including torture and death in the police lock-up, condemned the use of violence and third-degree methods of interrogation of the accused, and described custodial death as one of the worst crimes against the society. In paragraph 22 of its judgment, the Court observed:

> "…..Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise……The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law."

462. In that connection, the Court examined international conventions and declarations on the subject and visited other jurisdictions, besides relying upon earlier decisions of this Court, and laid down a set of guidelines to be strictly followed in all cases of arrest or detention as *preventive measures*. While dealing with the question of striking a balance between the fundamental rights of the suspect-accused and the necessity of a thorough investigation in serious cases that may threaten the very fabric of society, such as acts of terrorism and communal riots etc. this Court, in paragraph 32 of the judgment, referred to the opening lines of Part IV of the judgment in *Miranda.*

> "A recurrent argument, made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. [See e.g., *Chambers* v. *Florida*[89], US at pp. 240-41: L Ed at p. 724: 60 S Ct 472 (1940)]. The whole thrust of our foregoing discussion demonstrates that *the Constitution has prescribed the rights of the individual* when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. *That right cannot be abridged*."
>
> (Emphasis Original)

[89] 309 US 227: 84 L Ed 716: 60 S Ct 472 (1940)

463. *Navjot Sandhu* is a case under the Prevention of Terrorism Act, 2002 (in short "POTA"). The law of the POTA is a major departure from the ordinary mainstream criminal law of the country. Under Section 32 of the Prevention of Terrorism Act, 2002, contrary to the provisions of the CrPC and the Evidence Act, as noted above in detail, a confession made by an accused before a police officer, not lower in rank than a Superintendent of Police, is admissible in evidence though subject, of course, to the safeguards stipulated in sub-sections (2) to (5) of Section 32 and Section 52 that lay down the requirements to be complied with at the time of the arrest of a person. Insisting on a strict compliance with those safeguards, the Court in *Navjot Sandhu* pointed out that those safeguards and protections provided to the accused were directly relatable to Articles 21 and 22(1) of the Constitution and incorporated the guidelines spelled out by this Court in *Kartar Singh* and *D.K. Basu*. In that regard, the Court also referred in paragraph 55 of the judgment to the decision in *Nandini Satpathy*, and in paragraph 63 to the *Miranda* decision, observing as follows:-

> "In the United States, according to the decisions of the Supreme Court viz., *Miranda* v. *Arizona*[90]*; Escobedo* v. *Illinois*[91] the prosecution cannot make use of the statements stemming from custodial interrogation unless it demonstrates the use of procedural safeguards to secure the right against self-incrimination and these safeguards include a right to counsel during such interrogation and warnings to the suspect/accused of his right to counsel and to remain silent. In Miranda case (decided in 1966),

[90] 384 US 436: 16 L Ed 2d 694 (1966)

[91] 378 US 478: 12 L Ed 2d 977 (1964)

> it was held that the right to have counsel present at the interrogation was indispensable to the protection of the Vth Amendment privilege against self-incrimination and to ensure that the right to choose between silence and speech remains unfettered throughout the interrogation process. However, this rule is subject to the conscious waiver of right after the individual was warned of his right."

464. As we see *Navjot Sandhu*, it is difficult to sustain Mr. Ramachandran's submission made on that basis. **To say that the safeguards built into Section 32 of the POTA have their source in Articles 20(3), 21 and 22(1) is one thing, but to say that the right to be represented by a lawyer and the right against self-incrimination would remain incomplete and unsatisfied unless those rights are read out to the accused and further to contend that the omission to read out those rights to the accused would result in vitiating the trial and the conviction of the accused in that trial is something entirely different . As we shall see presently, the obligation to provide legal aid to the accused as soon as he is brought before the magistrate is very much part of our criminal law procedure, but for reasons very different from the Miranda rule, aimed at protecting the accused against self-incrimination. And to say that any failure to provide legal aid to the accused at the beginning, or before his confession is recorded under Section 164 CrPC, would inevitably render the trial illegal is stretching the point to unacceptable extremes**.

465. What seems to be overlooked in Mr. Ramachandran's submission is that the law of the POTA is a major departure from the common criminal law process in this country. One can almost call the POTA and a few other Acts of its ilk as exceptions to the general rule. Now, in the severe framework of the POTA, certain constitutional safeguards are built into Section 32, and to some extent in Section 52, of the Act. But the mainstream criminal law procedure in India, which is governed by the CrPC and the Indian Evidence Act, has a fundamentally different and far more liberal framework, in which the rights of the individual are protected, in a better and more effective manner, in different ways. It is, therefore, wrong to argue that what is said in context of the POTA should also apply to the mainstream criminal law procedure.

466. We are also not impressed by Mr. Ramachandran's submission that providing a lawyer at the stage of trial would provide only incomplete protection to the accused because, in case the accused had already made a confession under Section 164 CrPC, the lawyer would be faced with a *fait accompli* and would be defending the accused with his hands tied.

467. The object of the criminal law process is to find out the truth and not to shield the accused from the consequences of his wrongdoing. A defense lawyer has to conduct the trial on the basis of the materials lawfully collected in the course of

investigation. The test to judge the Constitutional and legal acceptability of a confession recorded under Section 164 CrPC is not whether the accused would have made the statement had he been sufficiently scared by the lawyer regarding the consequences of the confession. The true test is whether or not the confession is voluntary. If a doubt is created regarding the voluntariness of the confession, notwithstanding the safeguards stipulated in Section 164 it has to be trashed; but if a confession is established as voluntary it must be taken into account, not only constitutionally and legally but also morally.

468. In light of the above discussion, we are in agreement with the submissions of Mr. Subramanium as formulated in paragraphs II and III of his summing up. We accept that the right against self-incrimination under Article 20(3) does not exclude any voluntary statements made in exercise of *free will* and volition. We also accept that the right against self-incrimination under Article 20(3) is fully incorporated in the provisions of the CrPC (Sections 161, 162, 163 and 164) and the Evidence Act, 1872, as manifestations of enforceable due process, and thus compliance with these statutory provisions is also equal compliance with the Constitutional guarantees.

469. But on the issue of the right of the suspect or the accused to be represented by a lawyer, we find Mr. Subramanium's submissions equally unacceptable. Mr. Subramanium contends that Article 22(1) merely allows an arrested person to

consult a legal practitioner of his choice and the right to be defended by a legal practitioner crystallizes only at the stage of commencement of the trial in terms of Section 304 of the CrPC. We feel that such a view is quite incorrect and insupportable for two reasons. First, such a view is based on an unreasonably restricted construction of the Constitutional and statutory provisions; and second, it overlooks the socio-economic realities of the country.

470. Article 22(1) was part of the Constitution as it came into force on January 26, 1950. The Criminal Procedure Code, 1973 (Act 2 of 1974), that substituted the earlier Code of 1898, came into force on April 1, 1974. The CrPC, as correctly explained by Mr. Subramanium in his submissions, incorporated the Constitutional provisions regarding the protection of the accused against self-accusation. The CrPC also had a provision in Section 304 regarding access to a lawyer, to which Mr. Subramanium alluded in support of his submission that the right to be defended by a legal practitioner would crystallize only on the commencement of the trial.

471. But the Constitution and the body of laws are not frozen in time. They comprise an organic structure developing and growing like a living organism. We cannot put it better than in the vibrant words of Justice Vivian Bose, who, dealing

with the incipient Constitution in *State of West Bengal* v. *Anwar Ali Sarkar*[92] made the following observations:-

> "I find it impossible to read these portions of the Constitution without regard to the background out of which they arose. I cannot blot out their history and omit from consideration the brooding spirit of our times. They are not just dull, lifeless words static and hide-bound as in some mummified manuscript, but, living flames intended to give life to a great nation and order its being, tongues of dynamic fire, **potent to mould the future** as well as guide the present**. The Constitution must, in my judgment, be left elastic enough to meet from time to time the altering conditions of a changing world with its shifting emphasis and differing needs.** I feel therefore that in each case Judges must look straight into the heart of things and regard the facts of each case concretely much as a jury would do; and yet, not quite as a jury, for we are considering here a matter of law and not just one of fact: Do these 'laws' which have been called in question offend a still greater law before which even they must bow?"

472. In the more than four decades that have passed since, true to the exhortation of Justice Bose, the law, in order to serve the evolving needs of the Indian people, has made massive progress through Constitutional amendments, legislative action and, not least, through the pronouncements by this Court. Article 39-A came to be inserted in the Constitution by the Constitution (42nd Amendment Act, 1976) with effect from 3.1.1977 as part of the 'Directive Principles of the State Policy'. The Article reads as under:-

> "Article 39-A. **Equal justice and free legal aid**: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that

[92] AIR 1952 SC 75

opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

473. In furtherance to the ideal of Article 39-A, Parliament enacted the Legal Services Authorities Act, 1987, that came into force from 9.11.1995. The Statement of Objects and Reasons of the Act, insofar as relevant for the present, reads as under:-

> "Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, **to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.**
>
> (Emphasis Added)

474. Sections 12 and 13 in Chapter IV of the Act deal with entitlement to legal services, and provide for legal services under the Act to a very large class of people, including members of Scheduled Castes and Scheduled Tribes, women and children and persons in receipt of annual income less than Rupees nine thousand (Rs 9,000/-) if the case is before a court other than the Supreme Court, and less than Rupees twelve thousand (Rs 12,000) if the case is before the Supreme Court. As regards income, an affidavit made by the concerned person would be regarded as sufficient to make him eligible for entitlement to legal services under the Act. In the past seventeen (17) years since the Act came into force, the programme of legal aid had assumed the proportions of a national movement.

475. All this development clearly indicates the direction in which the law relating to access to lawyers/legal aid has developed and continues to develop. It is now rather late in the day to contend that Article 22(1) is merely an enabling provision and that the right to be defended by a legal practitioner comes into force only on the commencement of trial as provided under Section 304 of the CrPC.

476. And this leads us to the second ground for not accepting Mr. Subramanium's submission on this issue. Mr. Subramanium is quite right and we are one with him in holding that the provisions of the CrPC and the Evidence Act fully incorporate the Constitutional guarantees, and that the statutory framework for the criminal process in India affords the fullest protection to personal liberty and dignity of an individual. We find no flaws in the provisions in the statutes books, but the devil lurks in the faithful application and enforcement of those provisions. It is common knowledge, of which we take judicial notice, that there is a great hiatus between what the law stipulates and the realities on the ground in the enforcement of the law. The abuses of the provisions of the CrPC are perhaps the most subversive of the right to life and personal liberty, the most precious right under the Constitution, and the human rights of an individual. Access to a lawyer is, therefore, imperative to ensure compliance with statutory provisions, which are of high standards in themselves and which, if duly complied with, will leave no room for any violation of Constitutional provisions or human rights abuses.

477. In any case, we find that the issue stands settled long ago and is no longer open to a debate. More than three decades ago, in *Hussainara Khatoon (IV)* v. *Home Secretary, State of Bihar*[93], this Court referring to Article 39-A, then newly added to the Constitution, said that the article emphasised that free legal aid was an unalienable element of a "reasonable, fair and just" procedure, for without it a person suffering from economic or other disabilities would be deprived from securing justice. In paragraph 7 of the judgment the Court observed and directed as under:

> "7……..The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just", procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. **This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.** We would, therefore, direct that on the next remand dates, when the under-trial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such under-trial prisoners and if any application for bail is made, the Magistrates should dispose of the same in accordance with the broad outlines set out by us in our judgment dated February 12, 1979. The State Government will report to the High Court of Patna its compliance with this direction within a period of six weeks from today."

[93] (1980) 1 SCC 98

478. Two years later, in *Khatri (II)* relating to the infamous case of blinding of prisoners in Bihar, this Court reiterated that the right to free legal aid is an essential ingredient of due process, which is implicit in the guarantee of Article 21 of the Constitution. In paragraph 5 of the judgment, the Court said:

> "This Court has pointed out in *Hussainara Khatoon (IV) case*[94] which was decided as far back as March 9, 1979 that the **right** to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer."

479. Then, brushing aside the plea of financial constraint in providing legal aid to an indigent, the Court went on to say:

> "Moreover, **this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.**"

[94] *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1980) 1 SCC 98

480. In paragraph 6 of the judgment, this Court further said:

> "**But even this right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced informs him of such right**. …. ….. ……. ……. ..... **The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State**……. **We would, therefore, direct the Magistrates and Sessions Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State.** Unless he is not willing to take advantage of the free legal services provided by the State, he must be provided legal representation at the cost of the State……."
>
> (Emphasis Added)

481. The resounding words of the Court in *Khatri (II)* are equally, if not more, relevant today than when they were first pronounced. In *Khatri (II)* the Court also alluded to the reasons for the urgent need of the accused to access a lawyer, these being the indigence and illiteracy of the vast majority of Indians accused of crimes.

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482. As noted in *Khatri (II)* as far back as in 1981, a person arrested needs a lawyer at the stage of his first production before the magistrate, to resist remand to police or jail custody and to apply for bail. He would need a lawyer when the chargesheet is submitted and the magistrate applies his mind to the chargesheet

with a view to determine the future course of proceedings. He would need a lawyer at the stage of framing of charges against him and he would, of course, need a lawyer to defend him in trial.

483. To deal with one terrorist, we cannot take away the right given to the indigent and under-privileged people of this country by this Court thirty one (31) years ago.

484. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

485. It needs to be clarified here that the right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the chargesheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial. It is thus to be seen that the right to access to a lawyer in this country is not based on the *Miranda* principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice.

486. At this stage the question arises, what would be the legal consequence of failure to provide legal aid to an indigent who is not in a position, on account of indigence or any other similar reasons, to engage a lawyer of his own choice?

487. Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the Constitutional duty of the court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused (see *Suk Das v. UT of Arunachal Pradesh*[95]).

488. But the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent magistrate liable to disciplinary proceedings, or giving the accused a right to claim compensation against the State for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial stage had resulted in some material prejudice to the accused in the course of the trial. That would have to be judged on the facts of each case.

[95] (1986) 2 SCC 401

489. Having thus enunciated the legal position, we may examine the facts of the appellant's case. As noted in the earlier part of the judgment (under the marginal heading "Kuber"), the appellant was arrested by *Marde* (PW-48) at DCB-CID, Unit III, on November 27, 2008, at 10.45PM. At the time of his arrest the appellant stated that he was a Pakistani national and he did not have any friend or relative in India. *Marde*, accordingly, made a note in "the Record of Formalities to be Followed at the time of Arrest"[96] that intimation of his arrest could not be given to anyone in India but information about his relatives was being procured for giving intimation to them (in Pakistan). He added that information about his arrest was duly given to the Crime Branch, the Control Room and the superior officers. He also noted in the *Arrest Panchnama* that the appellant belonged to an economically weaker section, with an annual income of under Rupees twenty thousand (Rs.20,000/-) per annum. What is important for the present, however, is the note in "the Record of Formalities ….." that the appellant refused the offer of legal aid made to him.

490. We were also shown an undated letter written by the appellant to the Pakistani Consulate/High Commission ("*Pakistani Wakalat*"), New Delhi. The letter is in broken Urdu and is written in half-literate handwriting. The appellant handed over the letter to *Marde* on December 10, 2008. *Marde* passed the letter to

[96] A detailed form prescribed after this Court's decision in *D.K. Basu*, which every police officer in Maharashtra is required to fill up at the time of making arrest in compliance with the directions of this Court.

his superiors, and the ACP (Crime), Mumbai, forwarded it to the Joint Secretary (Foreigners), Ministry of Home Affairs, Government of India, on December 11, 2008, with a request to arrange Consular access for the appellant. In this letter, the appellant asserts his Pakistani identity and nationality, and states that after having received armed training at different places in Pakistan, he and his associates made an attack on India. In the exchange of firing with the police, *Ismail* was killed and he received gun-shot injuries. He requested legal aid and asked that the Pakistani authorities should make arrangements to take the dead body of *Ismail* to his home. He signed the letter as "Yours Patriotic" ("Aapka Watan Parast") Mohammad Ajmal.

491. Further, on December 26, 2008, on being produced before the Additional Chief Metropolitan Magistrate, he handed a similar letter, written by him in Urdu, to the magistrate. In this letter, he once again asserted his Pakistani identity and nationality, and requested a Pakistani lawyer. **In this letter, he clearly said that he did not want any Indian lawyer for his defence.** He also said that he had already written a letter to the Pakistani Consulate/High Commission, requesting a lawyer, but he failed to get any reply from there. He requested the magistrate to make a request on his behalf to the Pakistani Consulate/High Commission for providing him legal aid. On that date, the court remanded him to magisterial custody for the purposes of an identification parade, recording in the order sheet

that the appellant had requested a Pakistani lawyer. On December 29, 2008, the Additional Chief Metropolitan Magistrate 37th Court, Esplanade, Mumbai, took the rather unusual step of directly forwarding the appellant's letter to the "Hon'ble Ambassador, Pakistan", with a covering letter under his seal and signature. Unfortunately for the appellant, the country of his nationality was in a mode of complete denial at that stage, and there does not seem to be even an acknowledgement of his letters requesting a Pakistani lawyer. On February 17, 2009, the appellant was produced before the Additional Chief Metropolitan Magistrate for recording his confession under Section 164 of the CrPC, and we have already seen in great detail the proceedings of the next four dates till February 21, 2009. On February 25, 2009, a chargesheet was submitted in the case, and on March 23, 2009, the appellant was produced before the Sessions Court through electronic video linkage for the first time. He then made a request to be given a lawyer at the expense of the State. On March 30, 2009, the court appointed Ms. Anjali Waghmare to represent the appellant from the panel of lawyers maintained by the court. Moreover, since the appellant was charged with offences carrying the death penalty, under legal-aid rules he was entitled to be defended by a senior lawyer assisted by a junior. The court, therefore, appointed Mr. Pawar as the junior counsel to represent the appellant on April 1, 2009. At this stage, one Kaikhushru Lam, who had been clamouring for some time to be allowed to represent *Kasab*,

filed a petition against the appointment of Ms. Anjali Waghmare, stating that she was representing a victim of the terrorist attack and a potential witness in the trial for compensation for the victim, in a separate civil proceeding. When this fact came to light, the trial judge revoked the appointment of Ms. Anjali Waghmare by a reasoned order passed on April 15, 2009, observing that there was a possibility of conflict of interests. Then, after careful consideration and consultations with a number of senior advocates, the court finally chose Mr. Abbas Kazmi, advocate, to represent the appellant. The court selected Mr. Kazmi in consultation with the President of the Bar, and taking into account the magnitude of the case and the competence and experience of Mr. Kazmi. Mr.Kazmi was then provided a chamber on the first floor of the court building and was given all the facilities to conduct the case properly and without any difficulty (including round-the-clock armed security!).

492. On April 17, 2009, the confession of the appellant recorded by the Judicial Magistrate was opened before the court and copies were given to the Special Public Prosecutor and Mr. Kazmi. On that very day, Mr. Kazmi submitted an application (Exhibit 18) stating that the appellant retracted from the confession recorded before the magistrate. On the same day, the prosecution opened its case. It is another matter that, towards the end of the trial, Mr. Kazmi picked repeated quarrels with the court. From the orders passed by the court in that regard, it is

clear that Mr. Kazmi was bent upon delaying the trial proceedings and was raising groundless objections at every step, trying to make it impossible for the court to proceed with the trial. As a result, the court was eventually forced to remove Mr. Kazmi from the trial. Mr. Kazmi challenged the court's order removing him from the trial before the High Court, but the High Court affirmed the order of the trial court. It may be noted here that even Mr. Ramachandran did not find any fault with the decision of the court to remove Mr. Kazmi from the court proceedings. From that stage, the appellant was represented by Mr. Pawar, who seems to have handled the case as well as anyone could have done in face of the evidence against the appellant.

493. On the basis of the appellant's two letters in which he sought the help of the Pakistani Consulate/High Commission to provide him with a Pakistani lawyer, Mr. Ramachandran submitted that it is clear that the appellant wanted a lawyer but he wanted a lawyer who should be Pakistani. He contended that it was, therefore, the duty of the court either to make arrangements for him to be represented by a Pakistani lawyer or to tell him clearly that his request could not be acceded to, but that under the Constitution of India he had the right to be defended by a lawyer and, in case he so wished, he would be given adequate legal representation. He argued that apart from the Constitutional and legal principles, the rules of natural justice demanded that the appellant be so informed.

494. We feel that Mr. Ramachandran is taking the matter to unacceptable extremes. It is seen above that the appellant was offered a lawyer at the time of his arrest by the police officer making the arrest. He declined the offer. He then wrote a letter to the Pakistani High Commission asking to be provided with a lawyer. He made a similar request in a second letter that was handed over to the Additional Chief Metropolitan Magistrate. In the second letter, there is an assertion that he did not want to be represented by an Indian lawyer. It is thus clear that, in his mind, the appellant was still at war with India, and he had no use for a lawyer from the enemy country. Moreover, the negative assertion that he did not want an Indian lawyer itself implies that he had received offers of legal counsel. But those offers were not acceptable to him.

495. The appellant's refusal to accept the services of an Indian lawyer and his demand for a lawyer from his country cannot be anything but his own independent decision. The demand for a Pakistani lawyer in those circumstances, and especially when Pakistan was denying that the appellant was even a Pakistani citizen, might have been impractical, even foolish, but the man certainly did not need any advice from an Indian court or authority as to his rights under the Indian Constitution. He was acting quite independently and, in his mind, he was a "patriotic" Pakistani at war with this country.

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496. On March 23, 2009, the appellant finally asked for a lawyer, apparently convinced by then that no help would come from Pakistan or anywhere else. He was then immediately provided with a set of two lawyers.

497. In the aforesaid facts we are firmly of the view that there is no question of any violation of any of the rights of the appellant under the Indian Constitution. He was offered the services of a lawyer at the time of his arrest and at all relevant stages in the proceedings. We are also clear in our view that the absence of a lawyer at the pre-trial stage was not only as per the wishes of the appellant himself, but that this absence also did not cause him any prejudice in the trial.

Too little time allowed to the lawyer for preparation:

498. Mr. Ramachandran submitted that after Mr. Kazmi was appointed by the court to represent the appellant, he filed an application on April 21, 2009, requesting for grant of four weeks' time to prepare a reply to the submissions made by the Special PP under Section 226 CrPC. His application was only partly allowed and he was given only eight days' time, till May 2, 2009, to prepare a reply to the address of the Special PP. On that date, Mr. Kazmi submitted an application raising the issue of the juvenility of the appellant, which was rejected by the court after it held an enquiry into the matter. Mr. Ramachandran submitted that the time of eight days given by the trial court to the court-appointed lawyer

was unreasonably short, considering that Mr. Kazmi had made a reasonable request for four weeks' time. The learned Counsel submitted that justice is not only to be done but also to be seen to be done, and the short time granted to the defence counsel fell foul of this principle and thus affected fair trial. He pointed out that while appointing Mr. Kazmi the court itself recognized that he was a lawyer of some standard and would be required to adjust his other commitments. Mr. Ramachandran, therefore, submitted that the trial procedure was also vitiated and that it cannot be said to be just, fair and reasonable because of the denial of sufficient time to the defence lawyer to prepare his case.

499. In support of the submission, Mr. Ramachandran relied upon an unreported decision of this Court in *Owais Alam v. State of U.P.*[97], in which this Court observed that an *Amicus* may feel hesitation in asking for time but the court itself must allow adequate time to him for preparing the case. He also relied upon the decision of this Court in *Bashira v. State of U.P.*[98]. In that case, the court had proceeded with the trial on the same day on which it appointed the *Amicus* to represent the accused. This Court held that the defence was not given sufficient time and, accordingly, set aside the judgments of the courts below and remanded the case for re-trial. Mr. Ramachandran relied upon yet another decision of this

[97] Criminal Appeal No.284 of 1968, decided on December 17, 1968

[98] (1969) 1 SCR 32

Court in *Ranchod Mathur Wasawa v. State of Gujarat*[99]. In this case, though this Court held that sufficient time was given to the counsel representing the accused, it observed that the courts should adopt a sensitive approach to see that the accused felt confident that the counsel chosen for him by the court has had adequate time and material to defend him properly.

500. Mr. Kazmi was appointed to represent the appellant on April 16, 2009, and he made an application for time on April 21, 2009. The court allowed him eight (8) days' time, which cannot be said to be unreasonable. It is true that during those eight (8) days some very brief hearings were held on 2-3 days on the issue of the juvenility of the appellant. But that does not mean that the counsel for the appellant was not given sufficient time to prepare for the case.

501. Mr. Subramanium gave us a chart showing not only the day-to-day developments in the trial but also giving details of the hours of the court proceedings on each day, and from this chart we are satisfied that Mr. Kazmi was allowed ample time for preparation.

502. It would be pertinent to note here that Mr. Kazmi himself never complained about not being given sufficient time. We may further note that, from the record of proceedings of the trial court, Mr. Kazmi does not appear to be the non-

[99] (1974) 3 SCC 581 (para 1)

complaining type, one who would suffer silently or take things lying down. In the later stages of the trial, Mr. Kazmi raised all kinds of objections and left no opportunity to noisily protest against the procedural decisions of the trial court, yet he never complained that he was given insufficient time for preparation.

503. We further find that, in the course of the trial, when Mr. Kazmi requested for adjournment for cross-examination of some important witnesses, the court accommodated him on most occasions. We are, therefore, unable to agree with Mr. Ramachandran that the defence was not allowed sufficient time for preparation of the case and that denial of sufficient time vitiated the trial.

II. The charges not established

504. Mr. Ramachandran feebly submitted that the evidence adduced by the prosecution did not fully establish all the charges against the appellant. But finding us not inclined to even listen to this he moved on to his other submissions trying to chip away at the prosecution case in different ways.

III. Confession Not Voluntary and Liable to be Eschewed from Consideration

505. Mr. Raju Ramachandran submitted that the confession by the appellant was not voluntary but that it was a tutored statement to suit the prosecution's case. The very language, tone and tenor of the confession showed that it was not voluntary in nature. There were many indicators in the confession itself showing that it was made at the instance of the investigating agency. Mr. Ramachandran submitted that the confession was inordinately long and it was full of unnecessary details that were completely out of place, as those had no connection or relevance to the offences in regard to which the confession was being made. The learned Counsel pointed out that the confession started by giving the address of the village where the appellant was born and where he spent his childhood. The appellant then gave the names of his parents and the mobile phone number of his father; the names of his younger siblings who lived with his parents and those of his elder brother and sister who were married and lived at different places, along with their addresses. After the names of the immediate family, he went on to give the names and addresses of his uncles and aunts and cousins, both on the paternal and maternal sides. Those were people whom the appellant had left long before joining the *Lashkar-e-Toiba* and taking on the mantel of a *Jihadi*. Mr. Ramachandran submitted that there was no reason to mention all of them in a confession regarding

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the terrorist attack on Mumbai. He further pointed out that the appellant seems to exhibit a phenomenal memory in the confessional statement, naming a large number of persons with their aliases and their home towns, with street names as well as the names given to them by the *Jihadi* group, along with the Hindu names assigned to them for the purpose of the attack on Mumbai. In regard to his visits to the different offices of the *Lashkar-e-Toiba* at different places, the appellant would mention not only the mode of transport but also the time taken in travelling from one place to another. He would give the name of the person whom he met at the gate of the office and then of the person whom he met inside the office. He would say what was written on the slips of paper given by one office while sending him to the other office or training camp. According to Mr. Ramachandran, all those details were quite unnecessary in a confession and a person making a confession with regard to the Mumbai attack would normally not go into all those particulars on his own unless prompted by some external agency.

506. He further submitted that the confession as recorded by the magistrate was too tightly organized, well-structured and properly sequenced to be the true and honest narrative of the appellant, who was merely a semi-literate rustic. The confession started with the childhood days of the appellant at his village Faridkot, tehsil Dipalpur, district Okara, Punjab Province, Pakistan, and ended with his arrest at Vinoli Chowpaty in Mumbai, and all the intervening circumstances were

detailed one after the other in a highly structured and properly sequenced manner. He submitted that a person of the appellant's education, when making an oral confessional statement, was bound to slightly ramble and many parts in the narrative would be out of sequence, but that was not so in the appellant's confessional statement as produced before the court.

507. Mr. Ramachandran next pointed out that there were certain words occurring in the confessional statement which could not possibly have been used by the appellant and which show that the confessional statement was not in his own words. For instance, he referred to the record of proceedings dated February 18, 2009, before the learned magistrate, Mrs. *Sawant-Wagule* (PW-218), who recorded his confessional statement. The magistrate asked (*vide* question number 14) him the offence about which he wanted to make a confessional statement. In reply, the appellant is shown to have said that he wanted to make the confessional statement in connection with the *Fidayeen* attack on Bombay by him along with his associates on November 26, 2008, as well as the "*Sahzish"* behind the attack. Mr. Ramachandran said that "*Sahzish"* is an Urdu word which would be roughly translated into English as "conspiracy" but that it has negative connotations. To the appellant, the preparation and the training for launching the attack on India were a patriotic duty and not "*Sahzish"*. He also referred to the passage in the confession about the training camp at Muzzaffarabad. In the confessional statement the

appellant is shown to have described Muzaffarabad as being situated in "POK". Mr. Ramachandran submitted that for the appellant, unlike for an Indian, this region was not "POK" (Pakistan Occupied Kashmir) but rather it was "*Azad* Kashmir", and contended that the appellant could not have used the words "*Sahzish"* or "POK" and several other similar words that occur in his confessional statement.

508. Mr. Ramachandran further submitted that operations of the kind in which the appellant was involved work strictly on a "need to know basis", such that individual operatives are given information limited to what is essential for execution of the role assigned to them. This is for their own safety and for the safety of the larger group, as also for the success of the conspiracy. But in this case it would appear that, in the course of his training, the appellant was being freely introduced to all and sundry in the organization and was also told about their respective positions in the hierarchy of the organization and their special skills. As an instance, Mr. Ramachandran referred to the passage in the confessional statement where the appellant is taken to the media room of the organization and *Kafa* tells him about *Zarar Shah* being the head of the media wing of the organization.

509. Mr. Ramachandran pointed out that the appellant describes a number of events in the course of his training in Pakistan in the minutest detail. He not only recalls what someone said at that time but actually reproduces long statements made by someone else in direct speech, which is recorded by the magistrate within inverted commas. The learned Counsel submitted that this feature of the confessional statement was itself sufficient to discredit it.

510. He further pointed out that, at several places, in course of some discussion in a group, the appellant asks a question to elicit an answer that would fit exactly into the prosecution's case. Mr. Ramachandran submitted that, if viewed objectively, those parts of the confession would appear quite out of place and contrived. He also referred to some other passages in the confessional statement, like the one where the members of the terrorist squad are told that the SIM cards for their mobile phones were procured from India by fooling some people there, and characterised these passages as quite contrived and out of place.

511. Mr. Ramachandran further submitted that the introduction of *Fahim* and *Sabauddin* (accused 2 and 3) with the maps allegedly prepared by them, in the

confessional statement, was clearly fabricated. He said that the other two accused were mentioned in the confession at three places and at each place the reference appeared to be more incongruous than at the other.

512. Mr. Ramachandran submitted that, beginning from the Kuber right up to his being taken into custody at *Vinoli Chowpaty*, the appellant seems to be narrating events so as to confirm all the findings of the investigation. Mr. Ramachandran referred to the passage where *Abu Ismail* and the appellant proceed in the Skoda car, having snatched the vehicle from its owner at gun-point. At this point, the appellant asks *Abu Ismail* where they are going and *Abu Ismail* vaguely replies that they are going to Malabar Hill and, on being asked again, tells the appellant that he would tell him the exact destination only after reaching Malabar Hill. And then, as they pass through the road by the sea, the appellant recalls that this was the same road as was shown in the maps prepared by the other two accused, as going towards Malabar Hill. Mr. Ramachandran said that if Malabar Hill was actually the area they were headed for, it is impossible to believe that he would not know their exact target there, or that *Abu Ismail* would hold it back from him till they reached there. The learned Counsel contended that the whole passage was clearly an untrue insertion for filling up the blanks in the prosecution case.

513. Mr. Ramachandran also referred to two other passages in the confession, one relating to the terrorists' encounter with two persons as they came ashore at Badhwar Park, and the other regarding the appellant's planting of an RDX bomb in the taxi by which the appellant and *Abu Ismail* came to CST. Mr. Ramachandran submitted that the first passage was intended to prop up the evidence of *Bharat Dattatrya Tamore* (PW-28), who was just a chance witness and whose credibility was otherwise wholly unsupported; and the other passage was to foist the killings in the taxi blast at Vile Parle on the appellant, for which also there was otherwise no evidence.

514. Mr. Ramachandran further submitted that the appellant had wanted to make a confession as soon as he was apprehended (see his answer to question no. 9 by the magistrate in the record of proceedings dated February 18, 2009, before *Mrs. Sawant-Wagule*, PW-218). Even **Ramesh Padmanabh Mahale**, the Chief Investigating Officer **(PW-607)**, said in his deposition in court that he realised in the first week of December 2008 that the appellant was willing to give a confession before a magistrate (*vide* Paragraph 25 of his deposition before the court). And yet, he was brought before the magistrate for making the confession as late as February 17, 2009. That the appellant was produced before the magistrate only after the investigation was complete is evident from the fact that the recording of the confession was completed on February 21, 2009, and the chargesheet was filed on

February 25, 2009. Mr. Ramachandran submitted that after the investigation was over, the police wanted the appellant to confirm all the findings made in course of the investigation and that the appellant was produced before the magistrate with that objective.

515. Mr. Ramachandran submitted that for the reasons pointed out by him, this Court should keep the appellant's confessional statement completely out of consideration. And if the confessional statement is put aside then his conviction, at least for the murder committed on the Kuber and the killings in the Vile Parle taxi blast, cannot be sustained.

516. We have read the appellant's confession a number of times in light of its denunciation by Mr. Ramachandran as not being a voluntary statement. But we find it impossible to hold that the confession is not voluntary and is liable to be thrown out for that reason. Indeed, some of the criticisms by Mr. Ramachandran appear, at first sight, quite convincing, but a little reflection would show that there is not much force in any of those criticisms. Before proceeding further, however, we may state that his censure regarding the mentions of the other two accused in the confessional statement is quite justified, and we too find the references to accused 2 and 3 at three (3) places in the confessional statement highly unsatisfactory. We are also of the view that the reference to their destination being

Malabar Hills when *Abu Ismail* and the appellant were caught at *Vinoli Chowpaty* is equally vague, and that also is perhaps mentioned to establish a connection with the alleged maps prepared by accused 2 and 3. But so far as the rest of the very detailed confession is concerned, there is absolutely no reason to doubt that it was made voluntarily and without any influence or duress from any external agency.

517. Taking Mr. Ramachandran's criticisms one by one, the detailed references by the appellant to his parents and a larger number of his relatives, their addresses and the mobile phone numbers of some of them, and his references to the different places in Pakistan, appears to us to be directed against the Pakistani authorities. It is the appellant's assertion, made consciously or subconsciously, of his Pakistani identity and nationality. It is noted above that, shortly after his arrest, he had sent two letters (one undated, handed over to *Marde*; the other dated December 26, 2008, and handed over to the Additional Chief Metropolitan Magistrate; both addressed to the Pakistani High Commission asking for a Pakistani lawyer). Those two letters were not even acknowledged and, for all intents and purposes, he was disowned by the country to which he belongs. Thus, in the statement that he made before the magistrate on February 20, 2009, the appellant was making it clear that he was a Pakistani by birth and by citizenship, and was making assertions that no one could deny.

518. Proceeding to the structure of the statement the sequence of events narrated therein and the use of some words that *prima facie* seem unnatural in his mouth. It needs to be kept in mind that the appellant was making the statement after being in police custody for several months. The police, in the course of countless sessions of interrogations, would have turned him inside out, and he would have earlier made the very same statements in the same sequence before the police many a times. Under relentless police interrogations, he would have recalled the smallest details of his past life, specially relating to the preparation and training for the attack on Mumbai. (The statements made before the police were not, however, admissible in evidence as being barred by the various provisions of the CrPC and the Evidence Act, as discussed in detail above.) But when the appellant went to the magistrate to make his confession, everything would be completely fresh in his mind. He would also have unconsciously picked up those words pointed out by Mr. Ramachandran from his interrogators, and these would have become part of his own vocabulary. We, therefore, find nothing surprising in his uttering words like "*Sahzish*" or "POK".

519. As to his knowing the names of many people in *Lashkar-e-Toiba*, their respective positions in the hierarchy and their roles in the organization, again there is nothing unusual about it. It is to be noted that the appellant was not a mercenary hired for the operation. He was a highly committed and devoted member of the

organization and, therefore, there is nothing strange or wrong in his coming to know many people in the organization during the course of his training. Further, it is to be kept in mind that his being caught alive was not part of the plan of the handlers. According to the plan, he, like the other nine terrorists in the team, was supposed to die in the course of the attack, and with his death everything would have remained unknown.[100] It was only thanks to the fact of his being caught alive (which, as the phone transcripts indicate, made his handlers quite anxious) that the Indian authorities were able to learn the names of the other people in the organization, their specific roles and their positions in the organization. As to the recording of certain statements within quotes by the learned magistrate, that is only a manner of how the appellant spoke. The appellant would say a long sentence and then add that this was what so-and-so said. The magistrate would then record the statement within inverted commas even though the sentences would be made by the appellant himself, paraphrasing the words of others. Further, to say that the confessional statement was intended to confirm the findings of the police investigation is actually to blame the police for an excellent investigation. If the confessional statement confirms the findings of the investigation that should go to the credit of the investigation, and it cannot be said that the confessional statement was recorded to confirm the police investigation.

[100] We may recall here the injunction by the collaborators to the terrorists against being caught alive as appearing in the transcripts of their phone calls.

520. Finally, the production of the accused before the magistrate on February 17, 2009, even though he had expressed his willingness to make the confessional statement in early December, 2008, is equally legitimate and understandable. The police could not afford to lose custody of the appellant at that stage, as it was essential in connection with their investigation, which was still incomplete to a very large extent at that time. Once the appellant was produced for recording of the confession under Section 164 of the CrPC, the law ordained the magistrate to send him to judicial custody and not back on police remand. In those circumstances, the police was fully justified in producing the appellant for confession only after completing its own investigation, when it no longer needed the appellant in its custody.

521. Leaving aside Mr. Ramachandran's criticisms, the proof of the voluntariness and the truthfulness of the confessional statement comes directly from the appellant's own statements. It is noted in the earlier part of the judgment that, on February 18, 2009, when the appellant was brought before the magistrate, she asked him when he first felt like making a confession, to which he had replied that the thought of making the confession came to him when he was arrested by the police; he then added that **he had absolutely no regret for whatever he had done.** At another stage in the proceedings, the magistrate once again asked why he wished to make the confessional statement, to which he replied that **he wanted to**

set an example for others to follow and to become *Fidayeen* like him. It is thus clear that he was not making a confessional statement from any position of weakness or resignation, or out of remorse. He was a hero in his own eyes, and in those circumstances it is not possible to hold that the confession was not voluntary. It may further be noted that, though Mr. Ramachandran questioned the voluntariness of the confession, he did not say that the statements made therein were untrue in any manner.

522. It needs to be noted here that, in the course of the trial, after fifty-eight (58) prosecution witnesses had been examined and the next witness, Police Sub-Inspector *Chavan* was about to enter the witness box on July 20, 2009, the appellant in the dock expressed a desire to have a word with his Counsel. After a brief consultation that lasted for about half a minute, Mr. Kazmi informed the court that the appellant wanted to say something to the court directly. On being asked to speak by the court, the appellant said that he was accepting his guilt. The Special Public Prosecutor objected to entertaining any plea of guilty at that stage, on the grounds that the stage of Section 229 CrPC was already over. The court, however, rightly overruling the objection, allowed the appellant to make a statement, which was recorded after giving him due caution.

523. This is once again a long statement but it does not have the organized structure that Mr. Ramachandran pointed out in respect of the confessional statement recorded by the magistrate. In his statement before the court the appellant began the story from CST station, where both he and *Abu Ismail* fired from AK-47 rifles and *Abu Ismail* threw hand grenades at a crowd of passengers. Starting from CST he went up to Vinoli Chowpaty, where he and *Abu Ismail* were finally caught. From there, he went back to the point when they had started their sea journey from Karachi for Mumbai, recounting their journey first on the small boat, then on the larger vessels Al-Hussaini and Kuber, until he came to the landing at Badhwar Park on the inflatable rubber boat. He then went back again to the various kinds of trainings that he had received at different places in Pakistan. *However*, what is of importance is that, though structurally and sequentially the statement made in the court is completely different from the confessional statement made before the magistrate, it has broadly the same contents. It is true that in the confessional statement he presents himself as the central figure in almost all the episodes while in the statement before the court he appears to be perceptibly retreating to the background. The lead role in and the overt acts are attributed to others rather than to himself. In all the offences that he committed in Mumbai along with *Abu Ismail*, it is now the latter who is in the lead and he himself is simply following behind him. The killing of Amarchand Solanki on the boat Kuber

that he owned up to almost with pride before the magistrate is now assigned to *Abu Soheb* with *Kasab* not even present in the engine room. Significantly, however, as regards his joining of *Lashkar-e-Toiba*, the formation of the conspiracy, the preparation and training for the attack on Mumbai, as well as the identities of the men in the organisation, there is hardly any omission in the appellant's statement made in the court.

524. Further, in the statement to the court, though there is mention of the hand-prepared maps, there is no mention of their source. There is no reference to *Fahim* and *Sabauddin* (accused nos. 2 and 3) as the maker and the deliverer (respectively) of those maps.

525. In the appellant's statement before the court there is no reference at all to his family but the reason for this is not far to seek. In paragraph 40 of the statement recorded by the court the appellant said as follows:

> "I wanted to confess the offence. Since Pakistan had been disowning, I was not confessing. I have now learnt that Pakistan has accepted that I am Pakistani National and that they are ready to prosecute the offenders. Therefore, I am voluntarily confessing to the charges framed against me. I have made the statement voluntarily without being influenced by any extraneous source or reason."

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526. His Pakistani identity and nationality having been acknowledged[101] there was no need for the appellant to remind the Pakistani establishment of his nationality by giving details of his family and their addresses.

527. The court, of course, did not accept the statement that was sought to be made as the plea of guilty because it was a very diluted and partial admission of only some of the charges. It, accordingly, proceeded with the trial.

528. While dealing with the statements made by the appellant, it may also be noted that, finally, in the statement recorded under Section 313 of the CrPC, he denied the entire prosecution case and also retracted his two previous statements. It is evident that by the time the statement under Section 313 was recorded towards the end of December 2009, the *Jihadi* sheen had worn off and the desire to live was again exerting its pull on the appellant.

529. In light of the discussions made above, we are unable to accept Mr. Ramachandran's submission to eschew the appellant's confessional statement made before the magistrate completely from consideration. We are clearly of the view that the confessional statement recorded by the magistrate is voluntary and

[101] On an enquiry made by the court as to how the appellant, being under judicial remand, came to learn that Pakistan had acknowledged him to be his national, it came to light that the appellant learnt about the fact from the guards on duty.

Actually, on February 12, 2009, the Interior Minister of Pakistan acknowledged that the appellant is a citizen of Pakistan in a press conference. But the appellant came to know about it much later and used it as an excuse to make a statement before the court.

truthful, except insofar as it relates to the other two accused, namely, *Fahim* and *Sabauddin*.

IV. Conspiracy

530. Mr. Ramachandran submitted that the charge of conspiracy cannot be said to have been fully established against the appellant. He pointed out that the appellant was charged with a larger conspiracy and he was alleged to have:-

1) Attempted to destabilize the Government of India by engineering violence in different parts in India;

2) Attempted to create instability in India by the aforesaid subversive activities;

3) Terrorized 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 lethal weapons;

4) Conspired to weaken India's economic might;

5) Conspired to kill foreign nationals with a view to cause serious damage to tourism business of India;

6) Conspired to adversely affect harmony between various communities and religions in India.

531. The learned Counsel submitted that if the appellant's confession is excluded from consideration there is not enough evidence brought by the prosecution to prove the aforesaid allegations beyond all reasonable doubts. He further submitted that the transcripts of the telephonic conversation which have been pressed by the prosecution to prove the charges relating to conspiracy cannot be used against the appellant.

532. We find no force in the submission. Earlier it is found that the confession by the appellant was quite voluntary and there was no violation of any Constitutional or legal right of the appellant in the recording of the confession. Hence, there is no reason for not taking the confession into consideration to judge the charges against the appellant. Moreover, in the earlier pages of this judgment we had examined the evidence of conspiracy in considerable detail, which may be broadly classified under three heads: (i) the confessional statement by the appellant; (ii) the objective findings in the vessel Kuber, the inflatable rubber dinghy, the different places of attack by the other groups of terrorists and the locations of bomb explosion in the two taxis; and (iii) the transcripts of the phone conversations between the terrorists and their collaborators and handlers from across the border. In our view, evidence under any of these three heads is sufficient to bring home the charges relating to conspiracy against the appellant.

533. At this stage, however, we must address Mr. Ramachandran's point regarding the admissibility of the transcripts in evidence against the appellant. Mr. Ramachandran submitted that the transcripts begin from 01.04 AM on November 27, 2008, whereas the appellant was taken into custody at 00:30 hours on that date. In other words, the transcripts begin after the appellant was in police custody. He contended that with the arrest of the appellant his link with the other alleged conspirators was snapped, and it could no longer be said that he continued to be a part of the conspiracy. In that situation, the conversation among the alleged co-conspirators cannot be used against the appellant. In support of the submission, he placed reliance on a three-Judge Bench of this Court in *State v. Nalini*[102]. We find no force or substance in the submission, and the reliance placed on the decision in *Nalini* is quite misconceived. In *Nalini,* the Court was examining the question whether a confession made by an accused and recorded under Section 32 of TADA, though a substantive evidence against the maker thereof, could be used with the same force against a co-accused being tried in the same case. The Court considered the question first in light of the amendment of TADA by Act 43 of 1993, and came to hold and find that while a confession is substantive evidence against its maker, it cannot be used as substantive evidence against another person, even if the latter is a co-accused, and can only be used as a piece of corroborative

[102] (1999) 5 SCC 253 (para 111)

material to support other substantive evidence. The State then fell back on Section 10 of the Evidence Act, arguing that the width of the provision is so large as to render any statement made by a conspirator as substantive evidence if it satisfies the other conditions of the Section. Rejecting the State's submission, the Court pointed out that a confession can normally be made when an accused is under arrest and his contact with the other conspirators has snapped, and it was in that context that the Court held and observed in paragraph 111 of the judgment as under:-

> "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 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 to confabulate with the other conspirators and persist 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 be cut off with his arrest."

534. In the case in hand the situation is entirely different. The phase of planning the attack and training for it, which form the core of the conspiracy, took place in Pakistan, and the terrorists, including the appellant, came to Mumbai in execution of the main objects of the conspiracy. The appellant was apprehended while he was on a killing spree in execution of the objects of the conspiracy and the transcripts of the phone conversation of the other terrorists, associates of the appellant and

their foreign collaborators, relate to a time when the speakers were not only free but were actively involved in trying to fulfil the objects of the conspiracy. The transcripts are by no means any confessional statements made under arrest and they are fully covered by the provisions of Section 10 of the Indian Evidence Act. There is no reason not to take them into consideration in support of the charge of conspiracy against the appellant.

V. Waging War Against the Government of India

534. The appellant has been convicted on the charge of waging war against the Government of India and is awarded the death penalty under Section 121 of the Penal Code. In addition, he is separately convicted, under Section 121A, for conspiracy to commit offences punishable by Section 121 of the Code and Section 122 for collecting arms with intention of waging war against the Government of India, and given life sentences under these two Sections. Mr. Ramachandran stated that the conviction under Section 121A pertains to the incidents at venues where the appellant was not present, and in that regard he has already made his submissions while dealing with the question of conspiracy. In regard to the

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conviction under Section 121, therefore, he would confine his submissions to the offences directly attributable to the appellant.

535. Mr. Ramachandran was anxious to somehow rescue the appellant from the grave charge of waging war against the Government of India. His anxiety in regard to this particular charge stems from the fact that the conviction for the offence of "waging war" has been viewed by the High Court as the most aggravating factor for awarding the death sentence to the appellant. Mr. Ramachandran evidently hoped that if he succeeded in getting the appellant acquitted of the charge of "waging war" he would be in a better position to plead before the Court for mitigation of the punishment and commutation of his sentence to life imprisonment.

536. Mr. Ramachandran argued that killing of people, even though in large numbers, within the precincts of CST, or the other offences committed by the appellant, earlier described under the heads "Cama in", "Cama out", "Skoda robbery" and "Vinoli Chowpaty", by no means amount to "waging war" within the meaning of Section 121 of the Penal Code. To constitute the offence of "waging war", there must be a challenge to the sovereign authority of the Government of India, which is completely absent in the present case. The learned Counsel submitted that the acts said to have been committed by the appellant may constitute

a terrorist act within the meaning of Section 15 of the Unlawful Activities (Prevention) Act, 1967, but not "waging war". He further submitted that if the views of the trial court and the High Court were to be upheld, it would amount to equating every terrorist act with waging war.

537. Mr. Ramachandran submitted that even assuming that the words "Government of India" in Section 121 of the Penal Code are to be read as synonymous with the Indian State, that would not make the attack on CST Station "waging war" within the meaning of that Section. The attack on CST was not an attack directly targeting any important symbol of the State or any vital establishment of the State or any important functionaries of the State. The intent to weaken or terrorize the State may render such an act a 'terrorist act' but it would still not satisfy the ingredients of Section 121 of the Penal Code. The learned Counsel went on to contend that, in any event, after the enactment of the very comprehensive provisions in Chapter IV of the Unlawful Activities (Prevention) Act, 1967, the provisions of Section 121 of the Penal Code would cease to apply to terrorist attack on the Indian State on principles analogous to those governing the implied repeal of statute.

538. Mr. Ramachandran further submitted that, similarly, the mindless killing of persons in a public place would not constitute the offence of "waging war" against

the Indian State. Any argument that an attack on a place which is no more than the hub of a public transportation system amounts to an attack on the State is, according to Mr. Ramachandran, quite fallacious in the context of a criminal statute. The learned Counsel submitted that to say that an attack on a very important and busy railway station or an attack on India's financial capital or economic might would be an attack on the State would amount to giving a greatly extended, expansive and liberal meaning to a criminal statute, which is not permissible.

539. Mr. Ramachandran further submitted that on the question of "waging war" the present case was not comparable to the cases of *Navjot Sandhu* and *Mohd. Arif v. State of Delhi*[103]. In *Navjot Sandhu* and *Mohd. Arif*, the targets of attack were the Parliament building and the Red Fort, which this Court held were clearly symbols of the Indian State and its sovereignty. According to Mr. Ramachandran, the same could not be said of CST, which is only a public building.

540. The offences concerning "waging war" are in Chapter VI of the Penal Code under the heading "of offences against the State". Section 121 uses the phrase *'Government of India'* and it provides as follows:-

> "**121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.** – Whoever, wages war against the Government of India, or attempts to wage such war, or abets the

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waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine."

541. Section 121A makes a conspiracy to commit offences punishable by Section 121 *per se* an offence punishable with imprisonment for life or for a period that may extend to ten (10) years. The explanation to the Section makes it clear that the offence is complete even without any act or illegal omission occurring in pursuance of the conspiracy. This Section uses the expression 'the Central Government or any State Government'. The Section reads as under:-

> "**121A. Conspiracy to commit offences punishable by Section 121**. – Whoever within or without India conspires to commit any of the offences punishable by Section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.
>
> *Explanation.*- To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

542. Section 122 similarly makes collection of arms with intention of "waging war" *per se* an offence, regardless of whether or not the arms were put to actual use. This Section again uses the expression "Government of India" and it reads as under:-

> "**122. Collecting arms, etc., with intention of waging war against the Government of India.** – Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be

punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

543. Section 123 deals with 'Concealing with intent to facilitate design to wage war against the Government of India'. Section 125 deals with 'Waging war against any Asiatic Power in alliance with the Government of India', and Section 126 deals with 'Committing depredation on territories of Power at peace with the Government of India'.

544. Here it may also be noted that Section 39 CrPC read with Section 176 of the Penal Code makes it an offence for any person who is aware of the commission of, or of the intention of any person to commit, an offence under Sections 121 to 126, both inclusive (that is, offences against the State specified in Chapter VI of the Code), to omit giving any notice or furnishing any information to any public servant. Moreover, Section 123 of the Penal Code makes it an offence to conceal, whether by act or omission, the existence of a design to "wage war" against the Government of India, when intending by such concealment to facilitate, or knowing it to be likely that such concealing will facilitate, the waging of such war.

545. The question that arises for consideration, therefore, is what is the true import of the expression "Government of India"? In its narrower sense, Government of India is only the executive limb of the State. It comprises a group

of people, the administrative bureaucracy that controls the executive functions and powers of the State at a given time. Different governments, in continuous succession, serve the State and provide the means through which the executive power of the State is employed. The expression "Government of India" is surely not used in this narrow and restricted sense in Section 121. In our considered view, the expression "Government of India" is used in Section 121 to imply the Indian State, the juristic embodiment of the sovereignty of the country that derives its legitimacy from the collective will and consent of its people. The use of the phrase "Government of India" to signify the notion of sovereignty is consistent with the principles of Public International Law, wherein sovereignty of a territorial unit is deemed to vest in the people of the territory and exercised by a representative government.

546. It is important to note here that earlier the word used in Section 121 (as well as all the other Sections referred to above) was "Queen". After the formation of the republic under the Constitution it was substituted by the expression "Government of India" by the Adaption of Laws Order of 1950. In a republic, sovereignty vests in the people of the country and the lawfully elected government is simply the representative and a manifestation of the sovereign, that is, the people. Thus, the expression "Government of India", as appearing in Section 121, must be held to mean the State or interchangeably the people of the country as the repository of the

sovereignty of India which is manifested and expressed through the elected Government.

547. An illuminating discussion on the issue of "Waging war against the Government of India" is to be found in this Court's decision in *Navjot Sandhu*. In paragraph 272 of the judgment P. Venkatarama Reddi, J., speaking for the Court, referred to the report of the Indian Law Commission that examined the draft Penal Code in 1847 and quoted the following passage from the report:

> "We conceive the term ' wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means **as a foreign enemy** would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous."

548. To us, the expression, "in like manner and by like means as a foreign enemy" (highlighted by us in the above quotation), is very significant to understand the nature of the violent acts that would amount to waging war. In "waging war", the intent of the foreign enemy is not only to disturb public peace or law and order or to kill many people. A foreign enemy strikes at the sovereignty of the State, and his conspiracy and actions are motivated by that animus.

549. In *Navjot Sandhu*, the issue of "waging war" against the Government of India has also been considered in relation to terrorist acts and in that regard the Court observed and held as follows:

"275. War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them……

276. It has been aptly said by Sir J.F. Stephen:

"Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilized society is, in each of the cases mentioned, disturbed either by actual force or at least by the show and threat of it."

277. To this list has to be added "terrorist acts" which are so conspicuous now-a-days. 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. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.

278. It is seen that the first limb of Section 3(1) of POTA-

> "with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever".

and the acts of waging war have overlapping features. However, the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war. Yet, the demarcating line is by no means clear, much less transparent. It is often a difference in degree. The distinction gets thinner if a comparison is made of terrorist acts with the acts aimed at overawing the Government by means of criminal force. Conspiracy to commit the latter offence is covered by Section 121-A."

550. This answers Mr. Ramachandran's submissions to the effect that if an offence comes within the definition of "terrorist act" under Section 15 of the Unlawful Activities (Prevention) Act, it would automatically fall out of Section 121 of the Penal Code, as also his rather extreme submission that the incorporation of Chapter IV of the Unlawful Activities (Prevention) Act, 1967, should be viewed as deemed repeal of Section 121 of the Penal Code. As explained in *Navjot Sandhu*, a "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and vice-versa. The provisions of Chapter IV of the Unlawful Activities (Prevention) Act and those of Chapter VI of the Penal Code, including Section 121, basically cover different areas.

551. Coming back to the facts of the case in hand, we find that the primary and the first offence that the appellant and his co-conspirators committed was the offence of waging war against the Government of India. It does not matter that the target assigned to the appellant and *Abu Ismail* was CST Station (according to Mr. Ramachandran, no more than a public building) where they killed a large number of people or that they killed many others on Badruddin Tayabji Marg and in Cama Hospital. What matters is that the attack was aimed at India and Indians. It was by foreign nationals. People were killed for no other reason than they were Indians; in

case of foreigners, they were killed because their killing on Indian soil would embarrass India. The conspiracy, in furtherance of which the attack was made, was, *inter alia*, to hit at India; to hit at its financial centre; to try to give rise to communal tensions and create internal strife and insurgency; to demand that India should withdraw from Kashmir; and to dictate its relations with other countries. It was in furtherance of those objectives that the attack was made, causing the loss of a large number of people and injury to an even greater number of people. Nothing could have been more "in like manner and by like means as a foreign enemy would do".

552. In this connection Mr. Gopal Subramanium has referred to the transcripts of the conversations between the terrorists and their collaborators across the border. The learned Counsel referred from the appellant's confessional statement made before the magistrate to the passages where instructions are given by *Amir Hafiz Sayeed* (wanted accused no. 1), *Zaki-ur-Rehman Lakhvi* (wanted accused no. 2), and others in connection with the main purpose of the attack. He also referred to a number of passages from the transcripts of conversations between the terrorists and their collaborators across the border (which we have already referred to in the earlier part of the judgment), to show that the attack was clearly an enemy action. We are of the view that the submission of Mr. Subramanium is well-founded and fit to be accepted.

553. On a careful consideration of the submissions of the two sides and the materials on record we have no hesitation in holding that the appellant has been rightly held guilty of waging war against the Government of India and rightly convicted under Sections 121, 121A and 122 of the Penal Code.

VI. The Question of Sentence

554. The trial court has awarded five (5) death sentences to the appellant for the offences punishable under:

(i) Section 120B IPC read with Section 302 IPC for conspiracy to commit murder;

(ii) Section 121 IPC for waging war against the Government of India;

(iii) Section 16 of the Unlawful Activities (Prevention) Act, 1967;

(iv) Section 302 IPC for committing murder of 7 persons;

(v) Section 302 IPC read with Section 34 and Section 302 IPC read with Sections 109 and 120-B IPC.

555. The High Court confirmed the death sentences given to the appellant by the trial court.

556. Mr. Ramachandran, however, submitted that in no case should the appellant be given the death penalty. The learned Counsel submitted that no person can be deprived of his life except according to procedure established by law. It is now well-established that the "procedure" must be fair, just and reasonable, in other words following the "due process of law". Hence, the Court must refrain from awarding the extreme penalty of death, irrevocable and irreversible in nature, in a case where there is the slightest doubt regarding the complete fairness of the trial. The learned Counsel submitted that the appellant's trial was compromised on due process and, therefore, he should not be given the death sentence.

557. Mr. Ramachandran's contention that the trial of the appellant was less than completely fair is based on the same grounds that he earlier advanced to suggest that the trial was vitiated and nullified. He submitted that the appellant's confession was recorded without adhering to the constitutional safeguards and that the lawyer nominated to represent him was not given a reasonable time to prepare the case. The learned Counsel submitted that an unhappy compromise was struck between the demands of speedy trial and the requirements of a fair trial in this case, and in that situation, prudence would demand that this Court should not confirm the death penalty given to the appellant but change it to life sentence.

558. In the earlier parts of the judgment we have already considered in detail both the submissions and found them not worthy of acceptance. We have held that there was no lowering of the standard of fairness and reasonableness in the appellant's trial and it, therefore, follows that no mitigation in punishment can be asked for on that score.

559. Mr. Ramachandran next submitted that the High Court has committed a serious error in balancing the aggravating and the mitigating circumstances against the appellant. The High Court has viewed the appellant's conviction for "waging war" as the most aggravating circumstance for awarding him the death penalty after wrongly holding him guilty of the charge relating to waging war against the Government of India. Further, the High Court wrongly held the appellant "individually responsible" for the murder of seven (7) persons, including Amarchand Solanki. The High Court erroneously relied upon the testimony of a single witness (PW-52) who said that while firing at the crowd of passengers at CST the appellant was in a "joyous mood" (a fact which the witness did not mention in his statement before the police)

560. As to the charge of waging war against the Government of India and the appellant being personally responsible for the killing of seven (7) people, including Amarchand Solanki, those are fully in accord with our own findings, arrived at

independently, and hence, the High Court was quite justified in taking those facts into account for determining the punishment for the appellant. As regards the statement of PW-52 that the appellant was in "joyous mood", nothing depends on that and we asked Mr. Ramachandran to address us on the issue of sentence keeping that statement by PW-52 completely aside.

561. Mr. Ramachandran submitted that the strongest reason for not giving the death penalty to the appellant was his young age; the appellant was barely twenty-one (21) years old at the time of the commission of the offences. And now he would be twenty-five (25) years of age. It is indeed correct that the appellant is quite young, but having said that one would think that nothing was left to be said for him. Mr. Ramachandran, however, thinks otherwise and he has many more things to say in the appellant's favour. Mr. Ramachandran submitted that the Court cannot ignore the family and educational background and the economic circumstances of the appellant, and in determining the just punishment to him the Court must take those, too, into account. The learned Counsel submitted that here is a boy who, as a child, loved to watch Indian movies. But he hardly had a childhood like other children. He dropped out of school after class IV and was forced to start earning by hard manual labour. Soon thereafter, he had a quarrel with his father over his earnings and that led to his leaving his home. At that immature age, living away from home and family and earning his livelihood by

manual labour, he was allured by a group of fanatic murderers seemingly engaged in social work. He thought that he too should contribute towards helping the Kashmiris, who he was led to believe were oppressed by the Indian Government. Mr. Ramachandran submitted that, seen from his point of view, the appellant may appear completely and dangerously wayward but his motivation was good and patriotic. Mr. Ramachandran further submitted that once trapped by *Lashkar-e-Toiba* he was completely brain-washed and became a tool in their hand. While executing the attack on Mumbai, along with nine (9) other terrorists, the appellant was hardly in control of his own mind. He was almost like an automaton working under remote control, a mere extension of the deadly weapon in his hands.

562. Mr. Ramachandran submitted that, viewed thus, it would appear wholly unjust to give the death penalty to the appellant. The death penalty should be kept reserved for his handlers, who, unfortunately, are not before a court till now. If the submission of Mr. Ramachandran is taken one step further it would almost appear as if it was a conspiracy by destiny that pushed the appellant to commit all his terrible deeds, and all those who were killed or injured in Mumbai were predestined to be visited by his violence. We have no absolute belief in the philosophical doctrine of predetermination and, therefore, we are completely unable to accept Mr. Ramachandran's submission. In this proceeding before this Court we must judge the actions of the appellant and the offences committed by

him as expressions of his free will, for which he alone is responsible and must face the punishment.

563. We are unable to accept the submission that the appellant was a mere tool in the hands of the *Lashkar-e-Toiba*. He joined the *Lashkar-e-Toiba* around December 2007 and continued as its member till the end, despite a number of opportunities to leave it. This shows his clear and unmistakable intention to be a part of the organization and participate in its designs. Even after his arrest he regarded himself as a "*watan parast*", a patriotic Pakistani at war with this country. Where is the question of his being brain-washed or acting under remote control? We completely disagree that the appellant was acting like an automaton. During the past months while we lived through this case we have been able to make a fair assessment of the appellant's personality. It is true that he is not educated but he is a very good and quick learner, has a tough mind and strong determination. He is also quite clever and shrewd.[104] Unfortunately, he is wholly remorseless and any feeling of pity is unknown to him. He kills without the slightest twinge of conscience. Leaving aside all the massacre, we may here refer only to the casualness with which the appellant and his associate *Abu Ismail* shot down Gupta Bhelwala and the shanty dwellers Thakur Waghela and Bhagan Shinde at

[104] Recall here the "plea of guilty" statement made by him in the midst of his trial. In this statement he artfully and very subtly changed his earlier statement, recorded under Section 164 CrPC, thus cleverly offering himself for conviction but trying to escape the extreme penalty.

Badruddin Tayabji Marg; the attempt to break into the wards of Cama Hospital to kill the women and children who were crying and wailing inside; and the nonchalance with which he and *Abu Ismail* gunned down the police officer Durgude on coming out of Cama Hospital.

564. The saddest and the most disturbing part of the case is that the appellant never showed any remorse for the terrible things he did. As seen earlier, in the initial weeks after his arrest he continued to regard himself as a "*watan parast*", a patriotic Pakistani who considered himself to be at war with this country, who had no use for an Indian lawyer but needed a Pakistani lawyer to defend him in the court. He made the confessional statement before the magistrate on February 17, 2009, not out of any sense of guilt or sorrow or grief but to present himself as a hero. He told the magistrate that he had absolutely no regret for whatever he had done and he wanted to make the confession to set an example for others to become *Fidayeen* like him and follow him in his deeds. Even in the course of the trial he was never repentant and did not show any sign of contrition. The judge trying him had occasion to watch him closely and has repeatedly observed about the lack of any remorse on the part of the appellant. The High Court, too, has noticed that the appellant never showed any remorse for the large-scale murder committed by him. This, to our mind, forecloses the possibility of any reform or rehabilitation of the appellant. The alternative option of life sentence is thus unquestionably excluded

in the case of the appellant and death remains the only punishment that can be given to him.

565. Coming back to the legalese of the matter:

The Constitutional validity of death penalty was tested in *Bachan Singh v. State of Punjab*[105] and in that case a Constitution Bench of this Court, while upholding the Constitutional validity of death sentence, observed that the death penalty may be invoked only in the rarest of rare cases. This Court stated that:

> *"209. ....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."*
>
> (Emphasis Supplied)

566. The *Bachan Singh* principle of the 'rarest of rare cases' came up for consideration and elaboration in *Machhi Singh v. State of Punjab*[106]. It was a case of extraordinary brutality (from normal standards but nothing compared to this case!). On account of a family feud Machhi Singh, the main accused in the case along with eleven (11) accomplices, in the course of a single night, conducted raids on a number of villages killing seventeen (17) people, men, women and children, for no reason other than they were related to one Amar Singh and his sister Piyaro

[105] (1980) 2 SCC 684

[106] (1983) 3 SCC 470

Bai. The death sentence awarded to Machhi Singh and two other accused by the trial court and affirmed by the High Court was also confirmed by this Court.

567. In *Machhi Singh* this Court observed that though the "community" revered and protected life because "the very humanistic edifice is constructed on the foundation of reverence for life principle" it may yet withdraw the protection and demand death penalty. The kind of cases in which protection to life may be withdrawn and there may be the demand for death penalty were then enumerated in the following paragraphs:

> "32. … It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:
>
> *1. Manner of commission of murder*
>
> 33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,
>
> (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.
>
> (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
>
> (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.
>
> ***II.*** *Motive for commission of murder*

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. *Anti-social or socially abhorrent nature of the crime*

35. (a) When murder of a member of a Scheduled Caste or minority community, etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. *Magnitude of crime*

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. *Personality of victim of murder*

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

568. The above principles are generally regarded by this Court as the broad guidelines for imposition of death sentence and have been followed by the Court in many subsequent decisions.

569. If we examine the present case in light of the *Machhi Singh* decision, it would not only satisfy all the conditions laid down in that decision for imposition of death sentence but also present several other features that could not have been conceived of by the Court in *Machhi Singh*. **We can even say that every single reason that this Court might have assigned for confirming a death sentence in the past is to be found in this case in a more magnified way**.

570. This case has the element of conspiracy as no other case. The appellant was part of a conspiracy hatched across the border to wage war against the Government of India and lethal arms and explosives were collected with the intention of waging war against the Government of India. The conspiracy was to launch a murderous attack on Mumbai regarding it as the financial centre of the country; to kill as many Indians and foreign nationals as possible; to take Indians and foreign nationals as hostages for using them as bargaining chips in regard to the terrorists' demands; and to try to incite communal strife and insurgency; all with the intent to weaken the country from within.

571. The case presents the element of previous planning and preparation as no other case. For execution of the conspiracy, the appellant and the nine (9) other dead accused, his accomplices, were given rigorous and extensive training as combatants. The planning for the attack was meticulous and greatly detailed. The route from Karachi to Mumbai, the landing site at Mumbai, the different targets at Mumbai were all predetermined. The nature of the attack by the different teams of terrorists was planned and everyone was given clear instructions as to what they were supposed to do at their respective targets. All the terrorists, including the appellant, actually acted according to the previous planning. A channel of communication between the attacking terrorists and their handlers and collaborators from across the border, based on advanced computer technology and procured through deception, was already arranged and put in place before the attack was launched.

572. This case has the element of waging war against the Government of India and the magnitude of the war is of a degree as in no other case. And the appellant is convicted on the charge, among others, of waging war against the Government of India.

573. This case has shocked the collective conscience of the Indian people as few other cases have.

574. The number of persons killed and injured is not only staggeringly high but also as in no other or in extremely few cases. The terrorists killed one hundred and sixty-six (166) people and injured, often grievously, two hundred and thirty-eight (238) people. The dead included eighteen (18) policemen and other security personnel and twenty-six (26) foreign nationals. The injured included thirty-seven (37) policemen and other security personnel and twenty-one (21) foreign nationals. Of those dead, at least seven (7) were killed by the appellant personally, about seventy-two (72) were killed by him in furtherance of the common intention he shared with one *Abu Ismail* (deceased accused no. 1), and the rest were victims of the conspiracy to which he was a party along with the nine (9) dead accused and thirty-five (35) other accused who remain to be apprehended and brought to court.

575. The number of policemen and members of security forces killed and injured in course of their duty by the appellant and his accomplice *Abu Ismail* and the eight (8) other co-conspirators would hardly find a match in any other cases. Tukaram Ombale was killed by the appellant personally at Vinoli Chowpaty. Durgude, Hemant Karkare, Ashok Kamte, Vijay Salaskar and the other policemen in the Qualis van were killed jointly by the appellant and *Abu Ismail.* The policemen at Cama Hospital were injured, several of them grievously, jointly by the appellant and *Abu Ismail*. The rest of the policemen and law enforcement officers, including

the NSG Commando Major Sandeep Unnikrihsnan, were killed as part of the larger conspiracy to which the appellant was a party.

576. The loss of property caused by the attack is colossal, over Rupees one hundred and fifty crores (Rs. 150Cr.), again of a scale as in no other case.

577. The offences committed by the appellant show a degree of cruelty, brutality and depravity as in very few other cases.

578. The appellant, as also the other nine (9) terrorists, his co-conspirators, used highly lethal weapons such as AK-47 rifles, 9 mm pistols, and grenades and RDX bombs.

579. As to the personality of the victims, all the persons killed/injured at CST, Badruddin Tayabji Marg and Cama Hospital were harmless, defenceless people. What is more, they did not even know the appellant and the appellant too had no personal animus against them. He killed/injured them simply because they happened to be Indians.

580. It is already seen above that the appellant never showed any repentance or remorse, which is the first sign of any possibility of reform and rehabilitation.

581. In short, this is a case of terrorist attack from across the border. It has a magnitude of unprecedented enormity on all scales. The conspiracy behind the

attack was as deep and large as it was vicious. The preparation and training for the execution was as thorough as the execution was ruthless. In terms of loss of life and property, and more importantly in its traumatizing effect, this case stands alone, or it is at least the very rarest of rare to come before this Court since the birth of the Republic. Therefore, it should also attract the rarest of rare punishment.

582. Against all this, the only mitigating factor is the appellant's young age, but that is completely offset by the absence of any remorse on his part, and the resultant finding that in his case there is no possibility of any reformation or rehabilitation.

583. In the effort to have the appellant spared of the death penalty Mr. Ramachandran also relied upon several observations and remarks made by this Court in a number of judgments. He cited before the Court: (i) *Mohd. Mannan V State of Bihar*[107]*;* (ii) *Swamy Shraddananda (2) v. State of Karnataka*[108]*;* (iii) *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[109]; (iv) *Mohd. Farooq Abdul Gafur v. State of Maharashtra*[110]; (v) *Rameshbhai Chandubhai Rathod v. State of Gujarat*[111]*;* (vi) *Rameshbhai Chandubhai Rathod (2) v. State of*

[107] (2011) 5 SCC 317, paras 23-24

[108] (2008) 13 SCC 767, para 43, 48-53

[109] (2009) 6 SCC 498, para 64-66, 71-72, 80-89

[110] (2009) 11 SCALE 327, para 11-23: (2010) 14 SCC 641

[111] (2009) 5 SCC 740, para 83-84, 107-110

Gujarat[112]; (vii) *Mulla and another v. State of Uttar Pradesh*[113]*;* (viii) *Dilip Premnarayan Tiwari v. State of Maharashtra*[114]*;* (ix) *R S Budhwar v UOI*[115]*;* and (x) *State of Maharashtra v. Bharat Chaganlal Raghani*[116].

584. The observations relied upon by Mr. Ramachandran were made in the facts of those cases. As a matter of fact, in some of the cases relied upon by Mr. Ramachandran, the Court actually confirmed the death penalty given to the accused. Moreover, the facts of those cases are totally incomparable to the facts of the case in hand, and those decisions are of no help to the appellant.

585. Putting the matter once again quite simply, in this country death as a penalty has been held to be Constitutionally valid, though it is indeed to be awarded in the "rarest of rare cases when the alternative option (of life sentence) is unquestionably foreclosed". Now, as long as the death penalty remains on the statute book as punishment for certain offences, including "waging war" and murder, it logically follows that there must be some cases, howsoever rare or one in a million, that would call for inflicting that penalty. That being the position we fail to see what case would attract the death penalty, if not the case of the appellant. To hold back

[112] (2011) 2 SCC 764

[113] (2010) 3 SCC 508, para 80

[114] (2010) 1 SCC 775, para 66-67

[115] (1996) 9 SCC 502, para 15

[116] (2001) 9 SCC 1, para 1, 63

the death penalty in this case would amount to obdurately declaring that this Court rejects death as lawful penalty even though it is on the statute book and held valid by Constitutional benches of this Court.

586. We are thus left with no option but to hold that in the facts of the case the death penalty is the only sentence that can be given to the appellant. We hold accordingly and affirm the convictions and sentences of the appellant passed by the trial court and affirmed by the High Court.

587. The appeals are accordingly dismissed.

CRIMINAL APPEAL NO.1961 OF 2011

588. This appeal is filed at the instance of the State of Maharashtra against the acquittal of *Fahim Ansari* and *Sabauddin Ahamed* (accused Nos. 2 and 3 respectively) recorded by the trial court and affirmed by the High Court. As noted, in the judgment in Criminal Appeal Nos.1899-1900 of 2011, these two accused faced the trial along with and on the same charges as *Kasab*.

589. Their connection with the other accused in the case, according to the prosecution, was through conspiracy. *Fahim Ansari* is said to have prepared, by hand, maps of various places of Mumbai to facilitate the attack by the terrorists who landed in the city. One such map was recovered from the trouser pocket of

Abu Ismail (deceased accused no.1) during inquest and was seized under the seizure panchnama (Ext. no. 99).

590. According to the prosecution case, *Fahim Ansari* handed over the maps prepared by him to *Sabauddin Ahamed* in Kathmandu, Nepal and the latter sent or delivered those maps to the perpetrators of the crime in Pakistan.

591. This part of the prosecution case is based on the testimony of **Naruddin Shaikh (PW-160)**.

592. It is further alleged that in order to provide ancillary logistical support to the terrorists landing in Mumbai, *Fahim Ansari* had made arrangements for his stay in Colaba area of South Mumbai. In order to stay in close proximity to Badhwar Park he was searching for a place of residence in fishermen's colony there and he had taken admission in a Computer Institute viz., "Softpro Computer Education" situated at Fort, Mumbai, as an excuse for staying in that area.

593. However, when the attack took place on November 26, 2008, neither *Fahim Ansari* nor *Sabauddin Ahamed* were present in Mumbai. They were in the custody of U.P. Police, having been arrested earlier in connection with a terrorist attack on the RPF Camp at Rampur.

594. In support of the second part of its case, the prosecution has examined a number of witnesses, namely, Police Inspector *Prashant Marde* (PW-48), **Jivan Gulabkar (PW-35)**, **Rajendra Bhosale (PW-38)**, **Ms. Shantabai Bhosale (PW-40)**, Police Inspector *Shripad Kale* (PW-47), **Jayant Bhosale (PW-146)**, *Sharad Vichare* (PW-265), **Shivaji Shivekar (PW-14)**, API *Subhash Warang* (PW-27), **Ashok Kumar Raghav (PW-213)**, **Manpreet Vohra (PW-254)**, **Krantikumar Varma (PW-61)** and **Dr. Shailesh Mohite (PW-23)**.

595. We have gone through the evidence of *Naruddin Shaikh* and the other witnesses very carefully. We are of the view that the evidence of *Naruddin Shaikh* is completely unacceptable. The evidences of the other witnesses also do not inspire confidence insofar as these two accused are concerned.

596. The trial court and the High Court have considered the evidences relating to these two accused in far greater detail. Both the courts have analysed the prosecution evidence in regard to the two accused at great length and have given very good reasons to hold the prosecution evidence unworthy of reliance to hold such grave charges against the two accused. We are in full agreement with the reasons assigned by the trial court and the High Court for acquitting the two accused of all the charges. The view taken by the trial court and the High Court is not only correct but on the facts of the case, that is the only possible view.

597. We find no merit in the appeal and it is, accordingly, dismissed.

TRANSFER PETITION (CRIMINAL) NO.30 OF 2012

598. In view of the judgment in Criminal Appeal Nos. 1899-1900 of 2011, the Transfer Petition does not survive and it is, accordingly, dismissed.

THE POSTSCRIPT

599. The decision in the appeal is over. But there are still a few things for us to say before we finally close this matter.

600. At the beginning of the hearing of the appeal, Mr. Gopal Subramanium avowed that, though appearing for the prosecution, he would like the best for the appellant. He wished that the case of the appellant be presented before the Court at the highest level and that it should receive the most careful scrutiny by the Court. The solemnity and sincerity of his declaration set the tone for the proceedings before the Court. The discourses were luminous, warm and stimulating but completely free from heat, rancour or anger, leave alone any vengefulness. Mr. Subramanium, erudite and sensitive, was full of restraint; always down-playing the prosecution case a notch or two and never making a statement of fact unless absolutely certain of its correctness. Mr. Ramachandran, cool and clinical, gently tried to persuade the Court to his point of view. In the course of the hearing of the

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case, which was spread over 13 weeks, not once were the voices raised, not once was the Counsel of the other side interrupted and contradicted on a statement of fact. In my twenty years on the bench I have not heard a serious case debated in such a congenial atmosphere as created by Mr. Subramanium and Mr. Ramachandran in this case.

601. Mr. Ramachandran, appearing for the appellant, was assisted by Mr. Gaurav Agrawal and a small team of juniors. Mr. Subramanium, representing the State of Maharashtra, was assisted by Mr. Ujjawal Nikkam, the Spl. PP who conducted the trial and a team of juniors. The juniors' teams also showed remarkable preparation and resourcefulness. Any query on facts was answered in no time with reference to volume number and page number from the records that appeared like a small mountain. We are indebted to Mr. Subramanium and Mr. Ramachandran and their respective teams and we put our gratitude on record.

602. In this case we came across heroes like Tukaram Ombale, Hemant Karkare, Ashok Kamte, Vijay Salaskar and Sandeep Unnikrishnan, who lost their lives in the fight against terrorism. We salute every policeman, every member of the security forces and others who laid down their lives saving others and helping to catch or neutralise the ten terrorists. We have great admiration for the courage and sense of duty shown by the policemen and the members of the security forces who

received injuries in discharge of their duties and we extend our deepest sympathies to them for their injuries. We compliment all those who showed great presence of mind and professionalism and, caring little for their own safety, saved countless lives or photographed the terrorists on their killing spree thus providing unimpeachable evidence for the court. We mourn the death of 148 civilians, both Indians and foreign nationals, who fell victim to the orgy of terror unleashed on the city, and extend our heart-felt condolences to their families. We also extend our deepest sympathies to all the 238 people who suffered injuries at the hands of the terrorists. We also greatly complement the resilient spirit of Mumbai that, to all outward appearances, recovered from the blow very quickly and was back to business as usual in no time.

603. In the course of hearing of the appeal we also came to know the trial Judge Shri *Tahiliani*. From the records of the case he appears to be a stern, no-nonsense person. But he is a true flag bearer of the rule of law in this country. The manner in which he conducted the trial proceedings and maintained the record is exemplary. We seriously recommend that the trial court records of this case be included in the curriculum of the National Judicial Authority and the Judicial Authorities of the different States as a model for criminal trial proceedings.

604. We direct the Maharashtra Government to pay a sum of Rupees eleven lakh (Rs.11 Lakhs) to Mr. Raju Ramachandran and Rupees three lakh fifty thousand to Mr. Gaurav Agrawal (Rs 3.5 Lakhs) as token remuneration for their very valuable assistance to the Court. The payments should be made within two months from today.

605. With this we come to the close of the matter and we end here.

..... J.
(Aftab Alam)

..... J.
(Chandramauli Kr. Prasad)

New Delhi,
August 29, 2012

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SCHEDULE I

LIST OF PERSONS KILLED

Sr. No.	NAME	POLICE/ SECURITY FORCE/ CIVILIAN	NATIONALITY
KUBER			
1	Amarchand Naran Solanki	Civilian	Indian
CST			
2	Shashank Chandrasen Shinde	Police (Inspector)	Indian
3	Hamina Begum Hamid Shaikh	Civilian	Indian
4	Ashraf Ali Allahrakha Shaikh	Civilian	Indian
5	Ajij Nabilal Rampure	Civilian	Indian
6	Aakash Akhilesh Yadav	Civilian	Indian
7	Mukesh Bhikaji Jadhav	Home Guard	Indian
8	Sitaram Mallapa Sakhare	Civilian	Indian
9	Rahamtulla Ibrahim	Civilian	Indian
10	Mishrilal Mourya Shri Garib	Civilian	Indian

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	Mourya		
11	Vinod Madanlal Gupta	Civilian	Indian
12	Sunil Ashok Thackare	Civilian	Indian
13	Haji Ejaj Bhai Imamsaheb Dalal	Civilian	Indian
14	Mira Narayan Chattarji	Civilian	Indian
15	Shirish Sawla Chari	Civilian	Indian
16	Sushilkumar Vishwambhar Sharma	Civilian	Indian
17	Murlidhar Laxman Choudhary	Railway Protection Force (Constable)	Indian
18	Ambadas Ramchandra Pawar	Police (Constable)	Indian
19	Jaikumar Durairaj Nadar	Civilian	Indian
20	Deepali Janardhan Chitekar	Civilian	Indian
21	Raju Janardhan Chitekar	Civilian	Indian
22	Aditya Ashok Yadav	Civilian	Indian
23	Isibul Raheman Faizuddin Raheman Shaikh	Civilian	Indian
24	Prakash Janath Mandal	Civilian	Indian

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25	Harakha Lalji Solanki	Civilian	Indian
26	Mohamed Amanat Mohamad Ali	Civilian	Indian
27	Sarafraz Sallauddin Ansari	Civilian	Indian
28	Ayub Yakub Qureshi	Civilian	Indian
29	Afarin Shahadab Qureshi	Civilian	Indian
30	Avadesh Sudama Pandit	Civilian	Indian
31	Chandulal Kashinath Tandel	Civilian	Indian
32	Manohar Sohani	Civilian	Indian
33	Mohamad Hussain Mohamad Alamgir Shaikh	Civilian	Indian
34	Murtaza Ansari Sallauddin Ansari	Civilian	Indian
35	Mohamad Arif Mohamed Islam Ansari	Civilian	Indian
36	Mohamad Mukhtar Malik	Civilian	Indian
37	Abbas Rajjab Ansari	Civilian	Indian
38	*Unknown Male person*	Civilian	Indian
39	Mrs.Gangabai Baburao Kharatmol	Civilian	Indian
40	Narul Islam Ajahar Mulla	Civilian	Indian

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41	Murgan Palaniya Pillai	Civilian	Indian
42	Rakhila Abbas Ansari	Civilian	Indian
43	Nitesh Vijaykumar Sharma	Civilian	Indian
44	Fatmabi Rehaman Shaikh	Civilian	Indian
45	Meenu Arjun Ansari	Civilian	Indian
46	Mohamad Itihas Ansari	Civilian	Indian
47	Mastan Munir Qureshi	Civilian	Indian
48	M.V. Anish	Civilian	Indian
49	Upendra Birju Yadav	Civilian	Indian
50	*Unknown Male person*	Civilian	Indian
51	Poonam Bharat Navadia	Civilian	Indian
52	Baichan Ramprasad Gupta	Civilian	Indian
53	Nathuni Parshuram Yadav	Civilian	Indian
CAMA-IN			
54	Prakash Pandurang More	Police (Sub-Inspector)	Indian
55	Vijay Madhukar Khandekar	Police (Constable)	Indian
56	Baban Balu Ughade	Civilian	Indian

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57	Bhanu Devu Narkar	Civilian	Indian
58	Thakur Budha Waghela	Civilian	Indian
59	Bhagan Gangaram Shinde	Civilian	Indian
60	Shivashankar Nirant Gupta	Civilian	Indian
CAMA-OUT			
61	Hemant Kamlakar Karkare	Police (Joint Commissioner, ATS)	Indian
62	Ashok Marutirao Kamate	Police (Additional Commissioner – East Region)	Indian
63	Vijay Sahadev Salaskar	Police (Inspector)	Indian
64	Bapurao Sahebrao Durgude	Police (Sub-Inspector)	Indian
65	Balasaheb @ Nana Chandrakant Bhosale	Police (Assistant Sub-Inspector)	Indian
66	Arun Raghunath Chite	Police (Constable)	Indian
67	Jayawant Hanumant Patil	Police	Indian

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		(Constable)	
68	Yogesh Shivaji Patil	Police (Constable)	Indian
69	Surendrakumar Bindu Rama	Civilian	Indian
VINOLI CHOWPATY			
70	Tukaram Gopal Ombale	Police (Assistant Sub-Inspector)	Indian
VILE PARLE BLAST			
71	Mohabbat Umer Abdul Khalid	Civilian	Indian
72	Laxminarayan Goyal	Civilian	Indian
LEOPOLD CAFÉ			
73	Subhash Vanmali Vaghela	Civilian	Indian
74	Pirpashi Mehboobali Shaikh	Civilian	Indian
75	Shahabuddin Sirajuddin Khan	Civilian	Indian
76	Harishbhai Durlabbhai Gohil	Civilian	Indian
77	Hidayatullah Anwarali Kazi	Civilian	Indian
78	Malyesh Manvendra Banarjee	Civilian	Indian
79	Gourav Balchand Jain	Civilian	Indian

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80	P.K. Gopalkrishnan	Civilian	Indian
81	Kamal Nanakram Motwani	Civilian	Indian
82	Jurgen Hienrich Rudolf	Civilian	German
83	Daphne Hilary Schmidt	Civilian	German
MAZGAON BLAST			
84	Mrs. Jarina Samsuddin Shaikh	Civilian	Indian
85	Fulchandra Ramchandra Bind	Civilian	Indian
86	Mrs. Reema Mohamad Rabiul	Civilian	Indian
HOTEL TAJ			
87	Major Sandip Unnikrishnan	Security Force	Indian
88	Rahul Subhash Shinde	Police (Constable)	Indian
89	Zaheen Sayyed Nisar Ali Jafary Mateen	Civilian	Indian
90	Andres Don Livera	Civilian	British
91	Gunjan Vishandas Narang	Civilian	Indian
92	Vishandas Giridharidas Narang	Civilian	Indian
93	Vijayrao Anandrao Banja	Civilian	Indian

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94	Sadanand Ratan Patil	Civilian	Indian
95	Thomas Verghese	Civilian	Indian
96	Ravi Jagan Kunwar	Civilian	Indian
97	Boris Mario Do Rego	Civilian	Indian
98	Satpakkam Rahmatulla Shaukatali	Civilian	Indian
99	Faustine Basil Martis	Civilian	Indian
100	Kaizad Naushir Kamdin	Civilian	Indian
101	Neelam Vishandas Narang	Civilian	Indian
102	Rupinder Devenersing Randhava	Civilian	Indian
103	Eklak Ahmed Mustak Ahmed	Civilian	Indian
104	Maksud Tabarakali Shaikh	Civilian	Indian
105	Feroz Jamil Ahmed Khan	Civilian	Indian
106	Teitelbaum Aryeh Levish	Civilian	Israeli
107	Duglas Justin Markell	Civilian	Australian
108	Chaitilal Gunish	Civilian	Mauritius
109	Willem Jan Berbaers	Civilian	Belgium
110	Nitisingh Karamveer Kang	Civilian	Indian

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111	Samarveer Singh Karamveer Singh Kang	Civilian	Indian
112	Udaysingh Karamveer Singh Kang	Civilian	Indian
113	Sabina Saigal Saikia	Civilian	Indian
114	Hemlata Kashi Pillai	Civilian	Malaysian
115	Rajiv Omprakash Sarswat	Civilian	Indian
116	Gutam Devsingh Gosai	Civilian	Indian
117	Rajan Eshwar Kamble	Civilian	Indian
118	Burki Ralph Rainer Jachim	Civilian	German
119	Hemant Pravin Talim	Civilian	Indian
120	Shoeb Ahmed Shaikh	Civilian	Indian
121	Michael Stuart Moss	Civilian	British
122	Elizabeth Russell	Civilian	Canadian
NARIMAN HOUSE			
123	Salim Hussain Harharwala	Civilian	Indian
124	Mehzabin @ Maria Salim Harharwala	Civilian	Indian
125	Rivka Gavriel Holtzberg	Civilian	Israeli

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126	Rabbi Gavriel Noach Holtzberg	Civilian	Israeli
127	Gajendra Singh	Security Force	Indian
128	Ben Zion Chroman	Civilian	Israeli
129	Norma Shvarzblat Robinovich	Civilian	Mexican
130	Rajendrakumar Baburam Sharma	Civilian	Indian
131	Yokevet Mosho Orpaz	Civilian	Israeli
HOTEL OBEROI			
132	T. Suda Hisashi	Civilian	Japanese
133	Murad Amarsi	Civilian	French
134	Loumiya Hiridaji Amarsi	Civilian	French
135	Scherr Alan Michael	Civilian	American
136	Neomi Leiya Sher	Civilian	American
137	Sandeep Kisan Jeswani	Civilian	American
138	Lo Hawei Yen	Civilian	Singapore
139	Jhirachant Kanmani @ Jina	Civilian	Thailand
140	Altino D' Lorenjo	Civilian	Italian
141	Brett Gilbert Tailor	Civilian	Australian

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142	Farukh Dinshaw	Civilian	Indian
143	Reshama Sunil Parikh	Civilian	Indian
144	Sunil Shevantilal Parekh	Civilian	Indian
145	Ajit Shrichand Chabriya	Civilian	Indian
146	Sanjay Vijay Agarwal	Civilian	Indian
147	Rita Sanjay Agarwal	Civilian	Indian
148	Mohit Kanhaiyalal Harjani	Civilian	Indian
149	Monika Ajit Chabriya	Civilian	Indian
150	Harsha Mohit Harjani	Civilian	Indian
151	Ravi Dara	Civilian	Indian
152	Uma Vinod Gark	Civilian	Indian
153	Pankaj Somchand Shah	Civilian	Indian
154	Ashok Kapoor	Civilian	Indian
155	Anand Suryadatta Bhatt	Civilian	Indian
156	Rohington Bajji Mallu	Civilian	Indian
157	Kannubhai Zaverbhai Patel	Civilian	Indian
158	Ami Bipinichandra Thaker	Civilian	Indian

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159	Jordan Geigy Fernandise	Civilian	Indian
160	Neeta Prakash Gaikwad	Civilian	Indian
161	Shaunak Jayawant Chemburkar	Civilian	Indian
162	Wilson Baburao Mandalik	Civilian	Indian
163	Sarjerao Sadashiv Bhosale	Civilian	Indian
164	JasminMahendrasingh Burji	Civilian	Indian
165	Sanjy Sambhajirao Surve	Civilian	Indian
166	Bimolchand Maibam	Civilian	Indian

LIST OF INJURED PEOPLE

Sr. No.	NAME	POLICE/ SECURITY FORCE/ CIVILIAN	NATIONALITY
CST			
1	Mukesh Bhagwatprakash Agarwal	Civilian	Indian
2	Nisha Anilkumar Yadav	Civilian	Indian
3	JangamVithalrao Bokade	Civilian	Indian

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4	Parasnath Ramsoman Giri	Railway Protection Force (Head Constable)	Indian
5	Firoz Khan Khushnur Khan Ghouri	Railway Protection Force (Constable)	Indian
6	Raziyabegum Noor Qureshi	Civilian	Indian
7	Sarita Shantaram Harkulkar	Civilian	Indian
8	Neeta Gajanan Kurhade	Civilian	Indian
9	Ajamat Ali Narhu Sha	Civilian	Indian
10	Maltidevi Madan Gupta	Civilian	Indian
11	Sulochana Chandrakant Lokhande	Civilian	Indian
12	Vijay Ramchandra Khote	Civilian	Indian
13	Mumtaz Mohd. Yusuf Khan	Civilian	Indian
14	Pappu Laldev Jawahar Laldev	Civilian	Indian
15	Shabir Abdul Salam Dalal	Civilian	Indian
16	Laxman Shivaji Hundkeri	Civilian	Indian
17	Akshay Tanaji Supekar	Civilian	Indian
18	Nimba Shampuri Gosavi	Civilian	Indian

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19	Mahadev Datta Petkar	Civilian	Indian
20	Santoshkumar Faujdarsing Yadav	Civilian	Indian
21	Miraj Alam Ali Mulla Ansari	Civilian	Indian
22	Abdul Rashid Abdul Aziz	Civilian	Indian
23	Abdul Salam Shaikh S. Qureshi	Civilian	Indian
24	Akhilesh Dyanu Yadav	Civilian	Indian
25	Ramzan Sahrif Kadar Sharif	Civilian	Indian
26	Mohd. Siddiqu Mohd. Sagir Alam	Civilian	Indian
27	Sachinkumar Singh Santoshkumar Singh	Civilian	Indian
28	Tejas Arjungi	Civilian	Indian
29	Shamshad Dalal	Civilian	Indian
30	Baby Ashok Yadav	Civilian	Indian
31	Shital Upendra Yadav	Civilian	Indian
32	Asha Shridhar Borde	Civilian	Indian
33	Vatsala Sahadev Kurhade	Civilian	Indian
34	Chandrakant Ganpatirao	Civilian	Indian

	Lokhande		
35	Abdul Razak Farukh Nasiruddin	Civilian	Indian
36	Afroz Abbas Ansari	Civilian	Indian
37	Dadarao Rambhoji Jadhav	Civilian	Indian
38	Suryabhan Sampat Gupta	Civilian	Indian
39	Jagendrakumar Kailashkumar Mishra	Civilian	Indian
40	Gopal Julena Prajapati	Civilian	Indian
41	P. Nirmala	Civilian	Indian
42	P. Ponuraj	Civilian	Indian
43	Mohan Bharti	Civilian	Indian
44	Sushant Nityanand Panda	Civilian	Indian
45	Annasaheb Ambu Waghmode	Civilian	Indian
46	T. Thavasi Parnal	Civilian	Indian
47	Anand Bhimrao Arjun	Civilian	Indian
48	Kanhayya Kedarnath Sahani	Civilian	Indian
49	Vibha Ashokkumar Singh	Civilian	Indian
50	Beti Alfonso	Civilian	Indian

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51	Indraraj Luise	Civilian	Indian
52	Jayram Harilal Chawan	Civilian	Indian
53	Sunita Upendra Yadav	Civilian	Indian
54	Sushama Akhilesh Yadav	Civilian	Indian
55	Raviranjan Shriram Virendra	Civilian	Indian
56	Priyanka Chitaranjan Giri	Civilian	Indian
57	Imran Shakur Bhagwan	Civilian	Indian
58	Rekha Shyam Rathod	Civilian	Indian
59	Barjrang Jaykaran Prajapati	Civilian	Indian
60	Satyanand Karunakaro Behra	Civilian	Indian
61	Manoj Prafulchandra Kanojia	Civilian	Indian
62	Balaji Baburao Kharatmol	Civilian	Indian
63	Mehboob Abbas Ansari	Civilian	Indian
64	Asif Abdul Rafik Shaikh	Civilian	Indian
65	Raghvendra Banvasi Singh	Civilian	Indian
66	Ashok Keshwanand Singh	Civilian	Indian
67	Radhadevi Bodhiram Sahani	Civilian	Indian

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68	Tapasi Taramniggam Nadar	Civilian	Indian
69	Sayyed Shahnavaz Sayyed Salim Mujawar	Civilian	Indian
70	Arvind Gopinath Bhalekar	Civilian	Indian
71	Shivram Vijay Sawant	Civilian	Indian
72	Ashok Shivram Patil	Civilian	Indian
73	Bharat Ramchandra Bhosale	Government Railway Police (Assistant Inspector)	Indian
74	Devika Natvarlal Rotawan	Civilian	Indian
75	Farukh Nasiruddin Khaliluddin	Civilian	Indian
76	Nafisa Sadaf Qureshi	Civilian	Indian
77	Kishor Vinayak Kale	Civilian	Indian
78	Sudama Aba Pandarkar	Government Railway Police (Assistant Sub-Inspector)	Indian
79	Pandurang Subrao Patil	Government Railway Police (Assistant Sub-Inspector)	Indian
80	Punamsingh Santosh Singh	Civilian	Indian
81	Vishal Prakash Kardak	Civilian	Indian

82	Sangita Niranjan Sardar	Civilian	Indian
83	Niranjan Sadashiv Sardar	Civilian	Indian
84	Ansarallh Saudaarallh Baksh Mohd. Hanif	Civilian	Indian
85	Harshada Suhas Salaskar	Civilian	Indian
86	Pappusing Mannusingh	Civilian	Indian
87	Habibul Mohd. Sukurddin Khan	Civilian	Indian
88	Anilkumar Rajendra Yadav	Civilian	Indian
89	Laji Jagganath Pandye	Civilian	Indian
90	Sanjay Nemchandra Yadav	Civilian	Indian
91	Ratankumarji Kanhayaprasad Yadav	Civilian	Indian
92	Shambunath Munai Yadav	Civilian	Indian
93	Ganesh Sitaram Sakhare	Civilian	Indian
94	Ashok Bhimappa Renetala	Civilian	Indian
95	Alok Harilal Gupta	Civilian	Indian
96	Ganpat Gangaram Shigwan	Civilian	Indian
97	Fakir Mohd. Abdul Gafoor	Civilian	Indian

98	Murlidhar Chintu Jhole	Police (Head Constable)	Indian
99	Balu Bandu More	Police (Constable)	Indian
100	Prakash Sohanlal Phalore	Civilian	Indian
101	Ramji Yabad Napit	Railway Protection Force (Assistant Sub-Inspector)	Indian
102	Vishveshwar Shishupal Pacharane	Home Guard	Indian
103	Adhikrao Gyanu Kale	Government Railway Police (Head Constable)	Indian
104	Uttam Vishnu Sasulkar	Home Guard	Indian
105	Vijaya Ramkomal Kushwah	Civilian	Indian
106	Bharat Shyam Nawadia	Civilian	Indian
107	Anilkumar Dyanoji Harkulkar	Civilian	Indian
108	Sadahiv Chandrakant Kolke	Civilian	Indian
109	Prashant Purnachandra Das	Civilian	Indian

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CAMA-IN			
110	Harischandra Sonu Shrivardhankar	Civilian	Indian
111	Chandrakant Gyandev Tikhe	Civilian	Indian
112	Kailash Chandrabhan Ghegadmal	Civilian	Indian
113	Vijay Abaji Shinde	Police (Assistant Inspector)	Indian
114	Sadanand Vasant Date	Police (Additional Commissioner)	Indian
115	Vijay Tukaram Powar	Police (Assistant Inspector)	Indian
116	Sachin Dadasaheb Tilekar	Police (Constable)	Indian
117	Mohan Gyanoba Shinde	Police (Head Constable)	Indian
118	Hirabai Vilas Jadhav	Civilian	Indian
119	Vinayak Chintaman Dandgawhal	Police (Constable)	Indian
CAMA-OUT			
120	Arun Dada Jadhav	Police (Naik)	Indian

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121	Maruti Mahdevrao Phad	Civilian	Indian
122	Anil Mahadev Nirmal	Civilian	Indian
123	Shankar Bhausaheb Vhande	Police (Constable)	Indian
124	Prashant Sadashiv Koshti	Civilian	Indian
125	Mohd. Asif Abdul Gani Memon	Civilian	Indian
126	Kalpanth Jitai Singh	Civilian	Indian
VINOLI CHOWPATY			
127	Sanjay Yeshwant Govilkar	Police (Assistant Inspector)	Indian
VILE PARLE BLAST			
128	Roldan Glandson Ayman	Civilian	Indian
129	Shyam Sunder Choudhary	Civilian	Indian
130	Balkrishna Ramchandra Bore	Civilian	Indian
LEOPOLD CAFÉ			
131	Munira-ul Rayesi	Civilian	Oman
132	Faizal Miran Sabil-ul Gidgali	Civilian	Oman
133	Asma-un Rayesi	Civilian	Oman

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134	David John Kokar	Civilian	Australian
135	Harnish Patel	Civilian	British
136	Micheal Charles Murphy	Civilian	British
137	Riyan Michael Murphy	Civilian	British
138	Anamika Bholanath Gupta	Civilian	Indian
139	Minakshi Raghubhai Dattaji	Civilian	Indian
140	Bhaskar Paddu Dewadiga	Civilian	Indian
141	Benjamin Jerold Methis	Civilian	German
142	Pravin Pandurang Sawant	Police (Naik)	Indian
143	Kunal Prakash Jaiswani	Civilian	Indian
144	Ransale Gilbert Santhumayor	Civilian	Indian
145	Ijas Abdul Karupadan Kuddi	Civilian	Indian
146	Nilesh Mahendra Gandhi	Civilian	Indian
147	Prakash Satan Bharwani	Civilian	Indian
148	Ramchandra Selumadhav Nair	Civilian	Indian
149	Bharat Sasuprasad Gujar	Civilian	Indian
150	Rasika Krushna Sawant	Civilian	Indian

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151	Mohd. Parvez Aslam Ansari	Civilian	Indian
152	Mohd. Ayub Mohd. Abdul Ansari	Civilian	Indian
153	Manoj Bahadur Thakur	Civilian	Indian
154	Fanishang Misha Bhishum	Civilian	Indian
155	Naresh Mulchand Jumani	Civilian	Indian
156	Prashant Vasant Tambe	Civilian	Indian
157	Nivrutti Baburao Gavhane	Police (Naik)	Indian
158	Katherin Austin	Civilian	Australian
MAZGAON BLAST			
159	Rajendraprasad Ramchandra Maurya	Civilian	Indian
160	Abdul Salim Shaikh	Civilian	Indian
161	Shahbaz Juber Khan	Civilian	Indian
162	Sabira Majid Khan	Civilian	Indian
163	Sohel Abdul Shaikh	Civilian	Indian
164	Kabir Bablu Shaikh	Civilian	Indian
165	Kulsum Babu Shaikh	Civilian	Indian

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166	Jasmin Babu Shaikh	Civilian	Indian
167	Imran Mohd. Shafi Pathari	Civilian	Indian
168	Manoharabegum Ali Ahmed Shaikh	Civilian	Indian
169	Hawa Abdul Salim Shaikh	Civilian	Indian
170	Sanju Kurshna Ghorpade	Civilian	Indian
171	Manorabagum Ali Akbar Shaikh	Civilian	Indian
172	Saiddiqui Firoz Shaikh	Civilian	Indian
173	Shamin Rauf Shaikh	Civilian	Indian
174	Rahaman Ali Akbar Shaikh	Civilian	Indian
175	Heena China Shaikh	Civilian	Indian
176	Mukhtar Shriniwas Shaikh	Civilian	Indian
177	Kanhaikumar Harikishor Paswan	Civilian	Indian
HOTEL TAJ			
178	Deepak Narsu Dhole	Police (Inspector)	Indian
179	Samadhan Shankar More	State Reserve Police Force	Indian
180	Sanjay Uttam Gomase	State Reserve Police	Indian

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		Force	
181	Rafal Godas	Civilian	Spanish
182	Maria Roza Romero	Civilian	Spanish
183	Simond Helis	Civilian	British
184	Eyujin Tan Jhonsi	Civilian	Philippines
185	Hanifa Bilakiya	Civilian	Indian
186	Anjum Gaful Bilakiya	Civilian	Indian
187	U.T Bernad	Civilian	German
188	Vinay Keshavaji Kuntawala	Civilian	Indian
189	Deepak Pramod Gupta	Civilian	Indian
190	Pragati Deepak Gupta	Civilian	Indian
191	Mohanlal Pratap Taware	Civilian	Indian
192	Sunil Kumar Jodha	Security Force	Indian
193	Vishvanath Maruti Gaikwad	State Reserve Police Force	Indian
194	K.R. Rammurthi	Civilian	Indian
195	Adil Rohengtan Irani	Civilian	Indian
196	Ashish Ankush Patil	Civilian	Indian

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197	Nitin Digamber Kakade	Police (Sub-Inspector)	Indian
198	Naushir Firoz Sanjana	Civilian	Indian
199	Jagdish Waman Gujran	Civilian	Indian
200	Nitin Satishkumar Minocha	Civilian	Indian
201	Sajesh Narayan Nair	Civilian	Indian
202	Rakesh Harischandra Chawan	Civilian	Indian
203	Amit Raghnuath Khetle	Police (Constable)	Indian
204	Ashok Laxman Pawar	Police (Naik)	Indian
205	Arun Sarjerao Mane	Police (Naik)	Indian
206	Saudagar Nivrutti Shinde	Police (Constable)	Indian
207	Shankar Shamrao Pawar	Police (Constable)	Indian
NARIMAN HOUSE			
208	Prakash Rawji Surve	Civilian	Indian
209	Bablu Rajsing Yallam	Civilian	Indian
210	Sanjay Laxman Katar	Civilian	Indian

211	Vijay Ankush Falke	Civilian	Indian
212	Ashok Babu Sunnap	Civilian	Indian
213	Pradosh Prakash Perekar	Civilian	Indian
214	Anil Sakharam Varal	Civilian	Indian
HOTEL OBEROI & HOTEL TRIDENT			
215	Shabbir Tahirna Naruddin	Civilian	Indian
216	Amardeep Harkisan Sethi	Civilian	Indian
217	Sidharth Rajkumar Tyagi	Civilian	Indian
218	Drrissuz Sobizutski	Civilian	Poland
219	Linda Oricistala Rangsdel	Civilian	American
220	Alisa Micheal	Civilian	Canadian
221	Andolina Waokta	Civilian	American
222	Helan Connolly	Civilian	Canadian
223	Jahid Jibad Mebyar	Civilian	Jordanian
224	Shi Fung Chen	Civilian	Japanese
225	Reshma Sanjay Khiyani	Civilian	Indian
226	C.M. Puri	Civilian	Indian

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227	Capt. A.K. Singh	Security Force	Indian
228	Camando Manish	Security Force	Indian
229	Apurva Natwarlal Parekh	Civilian	Indian
230	Dinaj Puranchand Sharma	Civilian	Indian
231	Chandresh Harjiwandas Vyas	Civilian	Indian
232	Imran Jan Mohd. Merchant	Civilian	Indian
233	Appasaheb Maruti Patil	Civilian	Indian
234	Anil Bhaskar Kolhe	State Reserve Police Force	Indian
235	Gangaram Suryabhan Borde	Civilian	Indian
236	Ranjit Jagganath Jadhav	State Reserve Police Force	Indian
237	Joseph Joy Pultara	Civilian	Indian
238	Virendra Pitamber Semwal	Civilian	Indian

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SCHEDULE II

LIST OF ACCUSED PERSONS

SR. No.	NAME
ACCUSED ON TRIAL	
1	Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid
2	Fahim Arshad Mohammad Yusuf Ansari @ Abu Jarar @ Sakib @ Sahil Pawaskar @ Sameer Shaikh@ Ahmed Hasan
3	Sabauddin Ahmed Shabbir Ahmed Shaikh @ Saba @ Farhan @ Mubbashir @ Babar @ Sameer Singh @ Sanjiv @ Abu-Al-Kasim @ Iftikhar @ Murshad @ Mohammad Shafik@Ajmal Ali
ACCUSED WHO DIED IN COMMISSION OF OFFENCE	
1	Ismail Khan @Abu Ismail
2	Imran Babar @ Abu Aqsa
3	Nasir @ Abu Umar
4	Nazir @ Abu Omair
5	Hafiz Arshad @ Abdul Rehaman Bada @ Hayaji
6	Abadul Reheman Chhota @ Saqib
7	Fahad Ullah
8	Javed @ Abu Ali
9	Shoaib @ Abu Soheb

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WANTED ACCUSED	
1	Hafeez Mohammad Saeed @ Hafiz @ Hafiz Saab
2	Zaki-Ur-Rehaman Lakhvi
3	Abu Hamza
4	Abu Al Kama @ Amjid
5	Abu Kaahfa
6	Mujjamil @ 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

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18	Abu Umar Saeed
19	Usman
20	Major General Sahab – Name not known
21	Kharak Singh
22	Mohammad Ishfak
23	Javid Iqbal
24	Sajid Iftikhar
25	Col. R. Saadat Ullah
26	Khurram Shahdad
27	Abu Abdur Rehaman
28	Abu Muavia
29	Abu Anis
30	Abu Bashir
31	Abu Hanjla Pathan
32	Abu Saria
33	Abu Saif Ur Rehman

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34	Abu Imran
35	Hakim Saheb

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SCHEDULE III

DNA EVIDENCE

SR. NO.	NAME OF THE TERRORIST	FORWARDING LETTER TO FSL FOR DNA PROFILING	ARTICLES SEIZED DURING INVESTIGATION IN M.V. KUBER	OPINION
1.	Kasab	Exhibit No. 658	Jacket (Art. 186 Colly.)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected in jacket – report is Exhibit No. 205-F
2.	Abu Ismail	Exhibit No. 216	Blanket (Art. 184 Colly.)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected on blanket – report is Exhibit No. 205-B
3.	Imran Babar	Exhibit No. 683	–	–
4.	Abu Umar	Exhibit No. 683	Monkey Cap (Art. 187 Colly.)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected on Monkey cap – report is Exhibit No. 205-E

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5.	Abu Omair	Exhibit No. 671 Colly	Jacket (Art. 186 Colly.)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected on jacket – report is Exhibit No. 205-G
6.	Abdul Rehman Bada	–	–	–
7.	Abdul Rehman Chhota	Exhibit No. 665	Israeli Cap (Art. 187 Colly.)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected on Israeli cap – report is Exhibit No. 205-D
8.	Fahadullah	Exhibit No. 666	–	–
9.	Abu Ali	Exhibit No. 671 Colly.	Handkerchief (Art. 206)	The DNA profile from the control sample ***matched*** with the DNA profile from sweat detected on handkerchief – report is Exhibit No. 205-C
10.	Abu Soheb	Exhibit No. 671 Colly.	–	–

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1899-1900 OF 2011

MOHAMMED AJMAL MOHAMMAD AMIR KASAB @ ABU MUJAHID .... APPELLANT

VERSUS

STATE OF MAHARASHTRA ... RESPONDENT

WITH

CRIMINAL APPEAL NO. 1961 OF 2011

STATE OF MAHARASHTRA .... APPELLANT

VERSUS

FAMHIM HARSHAD MOHAMMAD YUSUF ANSARI & ANOTHER ... RESPONDENTS

WITH

TRANSFER PETITION (CRIMINAL) NO. 30 OF 2012

RADHAKANT YADAV .... APPELLANT

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

JUDGMENT

CHANDRAMAULI KR. PRASAD,J.

I agree.

However, I wish to add few words of my own.

In all human affairs absolute certainty is myth. Prof. Brett puts it, " all exactness is fake". Ordinarily, E.L.Dorado theory of "absolute proof" being unattainable, the law accepts for it probability as a working substitute.

Hardly one come across a case, where Court does not resort to "certain probability" as working substitute for proof beyond all reasonable doubt. However, in the case in hand, from the evidence, oral and documentary, reference of which have copiously been made in the judgment by my noble and learned Brother Aftab Alam, J. make me believe that "absolute certainty" may not necessarily be a myth or fake in all cases and can be a reality.

The present case is an exception. Here, I am more than certain that the planning and conspiracy to commit the crime were hatched in Pakistan, the perpetrators of crime were Pakistani trained at different centres in that country, and the devastation which took place at various places in the city

of Mumbai, were executed by the appellant in furtherance thereof.

……J.

(CHANDRAMAULI KR. PRASAD)

NEW DELHI,

AUGUST 29,2012.

SUPREME COURT OF INDIA

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