

SUPREME COURT OF INDIA

Abubucker Siquique

Vs.

The State represented by The Deputy Superintendent of Police, CBI/SCB/Chennai, Tamil Nadu

CrI.A.No.1374 of 2007

(B.Sudershan Reddy and Surinder Singh Nijjar JJ.)

06.12.2010

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. These appeals have been filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act') against the final judgment and order dated 21st June, 2007 passed by the designated Court No. II TADA Act, 16(S)/93/CBI/SCB/MAS, whereby the learned Judge convicted the appellants under Section 120-B IPC read with Sections 153A, 201, 302, 326, 324, 419, 436 IPC, Section 9(B)(1)(b) of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosives Substances Act and Section 3(2)(i) and (ii) and Section 3(3) of the TADA Act and they were sentenced to undergo imprisonment for life.

2. The prosecution case in brief was as follows: After the demolition of the Babri Masjid in the month of December 1992, there were numerous violent incidents in various parts of the country attributed to Muslim fanatics against Hindu organizations, places of religious worship and other institutions. During the period from December 1992 to October 1993, the appellants entered into a criminal conspiracy at Madras, Vaniyam Padi Melapalayam, Madurai, Bangalore, Tumkur, Anchal and other places to commit illegal acts by inciting Muslim youths to commit acts of violence and terrorism. Such acts included manufacturing of bombs, exploding them in various Hindu organizations, places of worship and other religious institutions, committing murder of persons likely to be present in the offices of such organizations and places of worship, to cause hurt to the inmates therein, to escape after the commission of such acts, to provide accommodation and shelter to the conspirators to carry out the object of the conspiracy, to go into hideouts, to harbour the offenders involved in such violent acts and to screen the offenders from the clutches of law. Ahmad Ali (A9) addressed public meetings and incited Muslim youths to fight against Hindu Munnani and RSS leaders and also to indulge in acts of violence to promote enmity between Hindu and Muslims.

3. On 8th July, 1993, A14 Hyder Ali (posing himself to be Ravi) and A15 Imam Ali (posing himself to be Sivakumar) visited Vadacherry (located in the outskirts of Vaniyambadi-Vellore District, Tamil Nadu) with the intention of causing bomb blasts at a public meeting addressed by one of the Hindu Munnani leaders Sridhar (PW 118). However they could not execute their plan since the meeting was over by the time they reached Vadacherry and the bomb remained unused. However they met Sridhar and after introducing themselves as Ravi and Sivakumar, expressed their desire to meet him at Chennai. The unused bomb was dismantled and kept in the house of A18 Mushtaq Ahmed at

Jaffarabad in Vaniyambadi which is nearer to Vadacherry. Afterwards the duo returned to Chennai. On 29th July, 1993, A5 Abubucker Siddique, A14 Hyder Ali, A15 Imam Ali and A17 Kaja Nizamuddin went to a house in Porur and ordered a remote control device. Thereafter they went to the house of A18 Mushtaq Ahmed (absconding accused) at Jaffarabad. Together all the aforesaid accused went to Gudiyatham and purchased gelatin and detonators and brought it to the house of A18 Mushtaq Ahmed. It is further the case of the prosecution that A15 Imam Ali conducted a trial blast at the house of A18 Mushtaq Ahmed and thereafter left for Chennai on the following day. They collected the remote control ordered earlier from the Porur house and checked the same. They then purchased pen torch cells, one battery box, quartz timer, switch and some other items required for blasting suitcase bomb. On 30th July, 1993 A15 Imam Ali and A17 Kaja Nizamuddin along with A5 Abubucker Siddique and A14 Hyder Ali went to the RSS office Chennai for surveying the place. While A15 Imam Ali and A17 Kaja Nizamuddin were inside the RSS office A5 Abubucker Siddique and A14 Hyder Ali remained outside. A15 and A17 could not meet Sridhar as he was out of office.

However they met other office bearers and informed him that they were running a cassette recording company in Alandur, Chennai and made an official entry of an incorrect/ non-existent address in the register kept as a record of visitors to the RSS office. On 6th August, 1993 all the above four accused went to RSS office, Chennai with suitcases containing bombs. On the way, A15 and A17 got down near a temple, applied Vibhooti (white ash) and kum (tilak) on their forehead, stuck photos of Lord Krishna on their suitcases. Again A15 and A17 went inside the RSS office carrying the suitcases containing bombs and A5 and A14 remained outside. A5 and A17 enquired about Sridhar from Shanmugam, a RSS worker. A15 and A17 had also talked to Jawahar, another RSS worker and handed over a letter addressed to Sridhar. Thereafter they came out of the office leaving behind the suitcase bombs and waited for about half an hour at a tea shop. However the bombs did not explode. A15 and A17 went inside and brought the suitcase bombs outside and took it back to the godown of A1 Rafiq Ahmed. On 7th August, 1993, they purchased new battery cells, cells for torch light and plastic covers which do not conduct electricity. These were brought for rectification and then the bombs were again kept ready in both the suitcases. On 8th August, 1993 at about 11-12 am all the above four accused went again with the two suit cases containing the bombs. Again A5 and A14 remained outside, A15 and A17 went inside the RSS office carrying the suitcases the bombs. Inside the RSS office they met PW1 Srinivasan and asked about Sridhar. After that they came out of the building leaving behind the suitcase bombs. At about 1:45 pm there was loud explosions which resulted in the death of 11 persons, injuries to 7 others and also complete demolition of the building.

4. Instant case was registered by Mr. A. Rajaram, Inspector, Chetput, F-5, Police Station, Chennai in crime No. 1137 of 1993 under Section 120-B, 302 326, 153 A IPC, Section 9B(1)(b) of The Indian Explosive Act, 1884 and Sections 3 And 4 of The Explosive Substances Act, 1908 against unknown persons. Initially the investigation was started by CBCID, Metro, Chennai. Later on, the investigation was transferred to CBI on 26th August, 1993 and registered in R.C No. 16 (S) 93-CBI/SCB/Chennai and investigated by Mr. M.S. Sundarajan DSp, CBI/SCB/Madras. After the completion of the investigation, charge sheet dated 8th June, 1994 was filed against 18 accused under Sections 120-B IPC read with Sections 153-A,201,302,326,324,419,436 IPC, Section 9(B)(1)(b) of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosives Substances Act and Section 3 of the TADA Act.

5. The Designated Court No. II TADA Act, 1987 (hereinafter referred to as the Trial Court) by

order dated 21st June, 2007 convicted A1 Rafiq Ahmed under Section 153A read with Section 109 IPC, A2 Shahabudeen under Section 201 IPC, A4 Abdul Rahim under Section 3(4) TADA Act, A5 Abubucker Siddique under Section 120B read with Sections 153 A, 201, 302, 326, 324, 419, 436 IPC, Section 9(B)(1)(b) of Explosive Act, Sections 3, 4, 5 & 6 of Explosives Substances Act, Sections 3(2) and 3(3) of TADA Act, A7 Ahmed Gnaiyar under Section 3(4) TADA Act, A10 Md. Moosa Mohideen under Section 3(4) TADA Act, A11 Syed Md Buhari under Section 3(4) TADA Act, A12 S.K. Md.Ali under Section 3(4) TADA Act, A14 Hyder Ali under Section 120B read with Sections 153A,201,302,326,324,419,436 IPC, Section 9 (B)(1)(b) of Explosive Act, Sections 3, 4, 5 & 6 of Explosives Substances Act, Sec 3(2), 3(3) of TADA Act, A15 Imam Ali (dead), A17 Kaja Nijammudin under Section 120B read with Sections 153 A,201,302,326,324,419,436 IPC, Section 9 (B)(1)(b) of Explosive Act, Sections 3, 4, 5 & 6 of Explosives Substances Act, Sections 3(2), 3(3) of TADA Act. The following persons were acquitted namely A3 Mukhtar Ahmed, A6 S.A.Basha, A8 Ameenuddin Sheriff and A13 Abdul Aslam. Aggrieved by the said judgment, A5 Abubucker Siddique and A14 Hyder Ali filed Criminal Appeal No. 1374 of 2007. A17 Kaja Nizamuddin filed Criminal Appeal No. 552 of 2008 and the State filed Criminal Appeal No. 1271 of 2009.

6. We have heard Mr. Natarajan, learned Senior Advocate for the appellants Mr. P.P. Malhotra on behalf of the respondent State.

7. Mr. Natarajan has submitted that the trial court has committed a grave error in convicting the appellants. According to the learned counsel, there was no legal evidence on the record to indicate that the appellants were involved in the explosion which was the subject matter of the charge sheet of 8th August, 1993. The entire body of evidence, according to Mr. Natarajan, relied upon by the prosecution, consists of various confessional statements recorded by the authorities under Section 15 of TADA Act. According to him, these confessions would show that:-

(i) All the accused had entered into a conspiracy as alleged in the charge sheet.

(ii) In pursuance of this conspiracy, Abubucker Siddique A5, Imam Ali (A15) Hyder Ali (A14) and one Mushtaq Ahmed were engaged with the task of procuring explosives and its accessories, making bombs with them.

(iii) They went to Vaniyampadi in North Arcot District. There, they associated Mustaq Ahmed who helped them in procuring the explosive substance namely gelatin sticks and detonators. They, thereafter, travelled to Gudiyatham and contacted a licenced dealer Kamalnathan, PW.112, through a cycle shop owner Jayasekhar, PW.111 and illegally purchased the aforesaid explosives. According to the learned counsel, five of the accused persons have given a confession on this point. In all, they purchased 8 kgs. of gelatin on 30th July, 1993 and 5 kgs. on 1st August, 1993. The 13 kgs. of gelatin alongwith the detonators were required for manufacturing the two bombs.

(iv) On 6th August, 1993, the effort to blow up the RSS Office did not succeed as the bomb did not detonate. In that attempt, A5, Abubucker Siddique and A14, Hyder Ali stood outside the RSS Office. A15, Imam Ali and A17, Kaja Nizamuddin went inside the RSS Office. On 7th August, 1993, both the bombs were brought to the godown of Rafeeq Ahamed, A1. There, the two bombs were repaired. On 8th August, 1993, the same two bombs were again taken to the RSS Headquarters for causing the explosion as narrated above.

8. According to Mr.Natarajan, the entire foundation of the prosecution, as narrated above, is

destroyed by the results of examination of the bomb site, by the committee of experts headed by the committee of experts headed by the Director of Central Forensic Laboratory (CFSL) and the evidence of Investigating officer, M.S. Sundarrajan PW 223 and K. Sundarrajan PW 189. He submits that :-

(1) After the explosion, the bomb site was examined by the experts of the prosecution. The evidence of these experts, consisting of five volumes of exhibits is on the record. The expert report (Ex.P316) has clearly concluded that the Improvised Explosive Device (IED) used was prepared from high explosives. The explosive devices did not contain gelatin but was/were made of RDX and PETN.

(2) Investigating Officer M.S. Sundarrajan (PW 223) and K. Sundarrajan (PW 189) have also stated that at the site only the presence of RDX and PETN was detected in the bomb used on 8th August, 1993 and gelatin was not used.

(3) Mr. Natarajan then submitted that since the conspirators had only procured gelatin, it was for the prosecution to establish the source from where RDX was brought. It was also for the prosecution to establish as to what has happened to gelatin, which was allegedly procured by the conspirators.

(4) Since the prosecution is unable to answer either of the two questions, the very substratum of the prosecution case is destroyed. Apart from the building, even from the remains of the dead bodies and the clothes, only traces of RDX and PETN were found.

(5) In the confessional statements, there is no mention of any other explosive being procured by the conspirators. The expression used was other materials. This expression referred only to the other materials which were required to assemble the bombs.

(6) The trial court erred in law in reading "other materials" to mean "other explosives". In support of his submission, he relied on the evidence of Mr. M.S. Sundarrajan, the investigating officer, PW.223. According to Mr. Natarajan, this witness has admitted in the cross examination that during the investigation, he was unable to find out the origin of RDX and PETN. He also pointed out to the cross-examination of Mr. K. Sundarrajan, PW.189, who stated that PETN and RDX are different explosives. This witness also stated that in gelatin sticks RDX will not be found.

(7) Even the trial court had noticed that the evidence of experts shows that the explosion was caused only by RDX and PETN and not by gelatin sticks.

(8) The trial court also accepts that even the confessional statements revealed that what was purchased at Gudiyatham was only gelatin and not RDX or PETN. Mr. Natarajan submitted that the conclusion, therefore, reached by the trial court is without any legal basis.

(9) The trial court has misconcluded the legal position while excluding from consideration the exculpatory part of the confession. In support of this, the learned counsel relied on Chhittar Vs. State of Rajasthan [1995 Supp (4) SCC 519]; Aghnoo Nagesia Vs. State of Bihar [(1966) 1 SCR 134] and Devku Bhikha Vs. State of Gujarat [(1996) 11 SCC 641].

(10) So far as A17 is concerned, Mr. Natarajan submitted that he was not identified. His confession was not recorded. A memo was filed in Court on 17th June, 1998 stating that he had died. Therefore, charge against him had abated.

9. Mr.P.P.Malhotra, learned senior counsel on the other hand submitted that the terms used by the defence are scientific terms. The accused had merely said that they have purchased explosives. They were not scientists and therefore even if they call the explosives as gelatin instead of RDX would not be fatal to the case of the prosecution. He further submitted that the confessions have to be read from the point of view of a layman. It was also submitted that merely because the prosecution has not been able to prove the source of the bomb making material does not mean bombs were not used or that they were not planted by them. Thus the case of the prosecution as roughly summarized by the learned senior counsel was that there was a conspiracy hatched; bombs were manufactured using explosive substances. These bombs were used to destroy the RSS headquarters. It was further submitted that the prosecution had established that explosives were used, the planting of the bombs were also proved and it was for that reason that the prosecution was not required to prove what kind of explosives were used. It was further submitted that the prosecution case is that the explosive chemicals were used for causing the bomb blast. The confession of A5 and others clearly indicate that explosive substances were procured. Recovery of high explosive chemical PETN was also made from the godown of A1, from the well located in the house of A2 as well as from the grey colour pant of A17 as per recovery mahazars. It is not the prosecution case that only gelatin and detonators were used but the prosecution case is that explosive chemicals were used. On the basis of the confessional statement of A5 some of the sources of explosives and other materials were traced. It was further submitted that PETN which was found from the debris of the bomb blast site was also recovered from the dust sweep collected from the godown of A1 where the bomb was prepared, from the well in the house of A2 as well as from the grey colour pant of A17. As per the expert opinion of Sh. K Sundararajan PW 189, PETN itself is a highly explosive substance and not simply a booster as claimed. It was further submitted that the meeting between Sridhar and A14 & A15 at Vadacherry was confirmed by A15's own letter left at the office of RSS office on 6th August, 1993 and hand writing expert opinion. The visiting card given by Sridhar to A15 on 8th July, 1993 at Vadachery recovered from the residence of A3 Mukhtar Ahmed at Bangalore confirms the connection between A15 and A3. The visit of A15 Imam Ali posing himself as Sivakumar in the RSS office on 30th July, 1993 and the entry made in the register giving false non existing address found to be of his own hand writing corroborates the fact that he visited the RSS office on 30th July, 1993. It was further submitted the accused persons had made an attempt to blast a bomb on 8th July, 1993 at Vadachery but in vain. A5 in his confession statement had indicated that explosives were procured in addition to gelatin and detonators and the same could be RDX/PETN. Merely because the source was not proved it cannot be held that the same were not used considering the fact that traces of RDX/PETN were found in the bodies at the scene of crime. It was further submitted that the contention of the defence was totally fallacious that RDX can be found only in the Indian Military. During the 'Bombay Bomb Blast' about 50 kgs of RDX were smuggled to India. Further RDX is also used for selective industrial applications like demolition of structures etc. RDX exists in the form of plasticine putty and it may not leave any trace or residue like a liquid or powder substances as in the case of PETN. According to Mr. Malhotra, the conclusions recorded by the Trial Court are based on the correct analysis of the entire evidence. The conviction recorded against the appellants does not call for any interference.

10. We have considered the submissions of the learned counsel

11. Undoubtedly, in this case there is no direct evidence of the crime. The prosecution case hinges on circumstantial evidence. It is an accepted proposition of law that even in cases where no direct evidence is available in the shape of eye-witnesses etc. a conviction can be based on circumstantial

evidence alone. The hypothesis which can form the basis for conviction purely on circumstantial evidence was stated by this Court in the case of Hanumant Govind Nargundkar Vs. State of M.P.,[1952 SCR 1091]. In the aforesaid judgment, Mahajan, J. speaking for the Court stated the principle which reads thus:-

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused." The aforesaid proposition of law was restated in the case of Naseem Ahmed v. Delhi Admn., (1974) 3 SCC 668 by Chandrachud J. as follows:

"This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the over-all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect."

12. The trial court accepts that:- (i) The entire case of the prosecution is based on circumstantial evidence and confessions recorded under Section 15 of TADA Act.

(ii) The confessional statements voluntarily made under Section 15 of TADA Act are admissible in evidence. (iii) Having held the confessional statements to be admissible yet the trial court discards part of the confessional statement on the ground that they are not truthful to some extent in respect of the conspiracy aspect of all the accused and involvement of all the accused.

(iv) After analyzing the entire evidence, the trial court concludes that the evidence indicates that the explosion was caused only by RDX and PETN. (v) It is also concluded that gelatin sticks were not used.

(vi) It is also accepted that in Gudiyatham only gelatin sticks were purchased and not RDX or PETN.

(vii) The trial court accepted that the aforesaid will have a serious bearing on acceptability of the confessional statement of the accused and their involvement of all accused in the conspiracy. (viii) In spite of the aforesaid, it is concluded that there is sufficient evidence to show that the appellants committed the overt act of causing the explosion as claimed by the prosecution. The discrepancy between the material found at the bomb site and the material purchased by the conspirators is held

to be not of much importance.

13. On the basis of the aforesaid, the trial court concluded that the A5, A14, A15 and A17 were liable for the charges with which they were charged. All the other accused were liable only for their act of either promoting enmity among the religious groups or harbouring the accused before or after the blast.

14. In our opinion, the contents of the confessional statements if true, would indicate that all the accused mentioned above and the appellants, in particular, had entered into a conspiracy for committing the violent and terrorist acts against a particular Hindu organization and Hindu places of religious worships, religious institutions and places frequented by Hindus in general. In order to strike terror in the minds of the Hindus, they had decided to cause explosions and commit crimes of violence, such as murder. They were also intent to cause destruction to the property belonging to the Hindu community. In furtherance of this aim, the participants in the conspiracy, the appellants in particular, and their accomplices had been charged with the task of procuring high explosives. For that purpose, they went to Gudiyatham and procured 13 kgs of gelatin as narrated herein above. From the explosive material collected by the conspirators, two dangerously explosive bombs had been assembled. The first attempt to explode such a bomb did not fructify as the intended target had already left the premises in which the bomb was to be exploded. The bomb was dismantled and kept in the house of A18 Mushtaq Ahmed (absconding). The second attempt for exploding these bombs also failed as the detonator was short circuited. It was the third attempt in which the conspirators succeeded. This attempt took place on 8th August, 1993 when A15 Imam Ali and A17 Kaja Nizamuddin carried the two bombs into the building. They deposited the bombs in the building and exited there from. They waited outside for half an hour till the bomb exploded. This is the sum total of the sequence of events leading upto the explosion that destroyed the RSS, Headquarters on 8th August, 1993.

15. Quite some time after the explosion, upon investigation, certain arrests were made. A5 Abubucker Siddique was arrested on 24th October, 1993. A14 Hyder Ali was arrested in some other case but was produced before the Trial Court on PT warrant on 16th August, 1995. A15 has died. A17 Kaja Nizamuddin was arrested in some other case and produced before the Trial Court on 13th March, 2000 on PT warrant. We may notice here that A14 Hyder Ali and A17 Kaja Nizamuddin were also arrested in some other case and that too after two years and 7 years respectively. On interrogation, they made confessional statements.

16. Excepting for the confessional statements, admittedly, there is no other independent evidence with regard to the participation of the accused in the conspiracy and the particular role played by them. According to these confessions, A15 Imam Ali and A17 Kaja Nizamuddin had carried the two suitcases inside the building. Therefore, it is apparent that even according to the prosecution version, they could have only carried bombs made from gelatin. The lid on the prosecution case is blown away by the report of forensic experts and the traces of the explosive material collected at the Bomb site.

17. Upon investigation and according to the evidence, which has been recorded in the trial court itself, it has been established that the bomb which caused the damage consisted only of RDX and PETN. This is also the conclusion in the 'Report on the Investigation of the Bomb blast which occurred at Chetput, Madras on August 8th, 1993' submitted by T.R. Baggi, Director, CFSL, Hyderabad. Relevant extracts of the aforesaid report are as under:-

"The State Head quarters of R.S.S. is located at No. 2, M.V. Naidu Street, Chetput, Madras - 8. On Sunday, the 8th August, 1993 at about 1345 hours, the three storied building was damaged by a loud blast killing 11 persons and injuring 5. On Monday, the 9th August, 1993, Shri J.N. Saksena, IPS, Director General, Bureau of Police Research & Development (BPR&D), New Delhi alerted Dr. T.R. Baggi, Director, Central Forensic Science Laboratory (CFSL), Hyderabad and permitted the CFSL team to visit Madras to help the Tamil Nadu Police in the investigation if a request is received from them. Later Shri B. Perumalswamy, IPS, Additional Director General of Police (Crime), Madras contacted the Director, CFSL, Hyderabad and requested him to visit Madras and help the Tamil Nadu Government in the investigation of the Bomb blast at R.S.S. Head quarters building at M.V. Naidu Street, Chetput, Madras. Accordingly, a team consisting of Dr. T.R. Baggi, Shri Nagraj Shankpal, Shri V Suresh and Shri M Vara Prasad of CFSL, Hyderabad reached Madras on the morning of 10th August, 1993 to provide the necessary help in the investigation.

This report presents the details of the extent of damage to the structure, human life, property, neighbourhood due to the explosion while discussing the structural failure pattern. The report also presents the details of the post- explosion laboratory investigations particularly fixing the seat of explosion in the building and the chemical nature of Improvised Explosive Device (IED) used in the blast." "(B) LABORATORY ANALYSIS FOR THE EXPLOSION RESIDUES:

It was reported that the police officers collected several material objects (exhibits) immediately after the blast as clue materials to be sent to Forensic Science Laboratory for analysis. Later the Forensic Science Laboratory personnel also collected several exhibits for analysis. The material recovered from the dead bodies, which consisted of debris material, which had entered the bodies like metal pieces, stone pieces, glass pieces, plastic material, wooden pieces etc., were also sent for analysis. Portions of the burnt skin of the deceased and the clothings of the deceased persons were also sent for analysis. The debris which was removed by the bulldozer to extricate the dead bodies was piled up in the open space in front of the building. As most of the crucial clues must be lying in this debris, it was suggested to the senior officers of the Tamil Nadu Police to transport the entire debris after removing big boulders and stones, etc., to the Forensic Science Laboratory (FSL) premises, so that the debris could be served for parts of any IED initiating devices and explosion residues. Accordingly, about 30 lorry loads of debris was transported to FSL premises and sieving process was undertaken. Preliminary spot tests and Thin Layer Chromatographic (TLC) tests carried out on the select exhibits cited above gave positive tests for Penta Erythritol Tetra Nitrate (PETN) initially and no positive response was obtained for other propellants, low and high explosives. Based on these findings, it was suggested by FSD/Police Officers of Madras that PETN alone could have been used in the IED. However, the CFSL, Hyderabad did not agree with this view and conveyed that the literature indicates that only in few cases PETN alone is used for causing small explosions like safe-cracking or blasting an automobile etc. Therefore, it was suggested that as PETN was always used as an initiator/booster for other high explosives such as Cyclotrimethylene trinitramine (RDX), Trinitro toluene (TNT), 2,4,6 - trinitrophenylmethyl nitramine (Tetryl), Nitroglycerine (NG), Cyclotetramethylene tetramine (HMX) etc. An analytical search could be carried out systematically for one of these high explosives. Accordingly, some more screening tests were conducted on large number of exhibits sent by the police/medical officers and the debris received in FSL by using larger quantities and clean-up procedures. In this screening procedure positive response was obtained for both PETN and RDX in some of the exhibits. It was also noted that few exhibits gave positive tests only for PETN, some exhibits gave positive tests only for RDX and some exhibits gave positive tests for both PETN and RDX. However, many exhibits did not give positive tests for

any of the explosives."

"It can be seen that the retention times of RDX and PETN in various exhibits analysed are tallying with the retention times of the standard runs on RDX and PETN, confirming the presence of RDX/PETN in the respective exhibits.

As a further confirmation, two representative exhibit extracts were injected into the column, later, the same exhibits were spiked with RDX and PETN and chromatographed. Corresponding increase in peak heights was noted in each case confirming that the peaks were essentially of RDX and PETN.

Further the analysis was carried out at two different wave lengths namely 210nm and 230nm to get better sensitivities for individual components. It was noted that the chromatograms at both these wave lengths gave positive response for the presence of RDX/PETN correspondingly.

The comparison of TLC results and HPLC results also indicates that in some of the exhibits only PETN is present, in some of the exhibits only RDX is present and in some of the exhibits both PETN and RDX are present.

"Based on the site visits, discussions with Chief Engineer, PWD, visiting team of IIT Structural Engineers, the medical officers, the police officers and chemical analysis, the following conclusions are drawn:-

- a) The origin of the blast is in the ground floor.
- b) The seat of the blast is slightly to the north of the centre of the entry hall/reading room-library.
- c) The seat of explosion is located at a place above the ground level.
- d) The primary damage from the blast is the failure of the four walls, roof of the entry hall followed by the failure of the roof of the prayer hall, east and west walls of the prayer hall and the two storied porch. e) The secondary failures consisted of severe cracking of walls, shattering of door/window frames and glass panes.
- f) The IED used was prepared from high explosives.
- g) The IED contained cyclotrimethylene trinitramine (RDX) as high explosive and Penta Erythritol Tetra Nitrate (PETN) as initiator/booster.
- h) Seeing the damage, the RDX charge in the IED used could be roughly assessed to the order of about one (1) kg."

18. Mr. Natarajan, in our opinion, correctly formulated the two vital questions, viz., (i) where did the RDX come from? and (ii) what happened to the Gelatin? Since the evidence of the prosecution itself clearly indicates that the explosive material used in the bomb explosion was RDX and PETN, it was necessary for the prosecution to satisfactorily answer the aforesaid two questions.

19. The Trial Court was well aware of the legal position which is evident from the following

observations: "With regard to the contention of the defence in respect of RDX, PETN etc., it is true that when it is the specific case of the prosecution that the explosives and other materials were procured from Gudiyatham, Chennai and other places, it is the duty cast upon the prosecution to prove the specific allegation beyond doubt in a very cogent manner without missing any link in the chain of circumstances. The prosecution says that gelatin sticks were procured from Gudiyatham at Vellore District, but the relevant witnesses were treated as hostile witnesses. However, Ex.P.298 and Ex.P.316 and the conclusions reached therein by the team of experts shows the usage of RDX in blasting the building in question.

Presence of high explosives namely RDX, PETN and other lethal and Hazardous substances were detected from the dead bodies and other materials recovered from the debris and also seized from the accused when subjected for chemical examination."

20. Having recorded the aforesaid conclusion, the trial court, without any cogent evidence, accepted the submission of the prosecution that only two persons knew about the procurement of RDX, PETN etc, namely A15 Imam Ali and A18 Mushtaq Ahmed (absconding accused). Thereafter, the trial court quite erroneously observed that A5 Abubucker Siddique in his confessional statement had indicated that gelatin sticks, detonators and "other explosives" were procured. Having said so, the trial court without any basis goes on to accept the contention of the prosecution that other explosives could have been RDX, PETN and merely because the source could not be proved it cannot be said that such explosives were not used. This conclusion is reached by the trial court inspite of the evidence of the investigating officer Mr. M.S. Sundarrajan, PW-223. His statement was as under:-

".....During the course of my investigation, I could not find out the origin from where RDX or PETN was obtained by the accused for causing blast of RSS Office building in this case because the main accused Imam Ali and Hyder Ali were not available to me for my investigation at the relevant point of time to throw light about this. From the examination of other accused persons, I could not get details about the particulars of RDX or PETN." So also during the cross-examination of PW 189 Mr.K. Sundarrjan has stated as under:-

".....PETN and RDX are different articles. In Gelatin sticks RDX will not be found....."

21. Upon noticing the aforesaid evidence the trial court quite rightly concludes that "a conjoint reading of the above shows that RDX and PETN are different materials in composition, differing from that of gelatin. In Gelatin sticks RDX or PETN will not be found. Therefore, the prosecution ought to have investigated the case in the angle of the usage of the RDX, PETN etc., in the instant bomb blast."

But having recorded the aforesaid conclusion, the trial court again proceeds to record a conclusion which would be wholly without any basis. This conclusion is as under:-

"However, it will not affect the merits of the case as high explosives were also stated to have been procured and used in addition to Gelatin sticks. But the source from where these materials were purchased is said to have been within the exclusive knowledge of Mustaq Ahamed (absconding accused) and A15 Imam Ali (since dead), it will have some bearing on the reliability and acceptability of the confession statements of the accused to some extent as aforesaid."

22. The aforesaid conclusion does not explain as to what happened to 13 Kgs of Gelatin, which was procured from Gudiyatham. It also does not explain as to why only traces of RDX were found in

dead bodies, clothes and parts of the building. Not a trace of Gelatin was found in the building. It is worth noticing here that in none of the confessional statements, has it been stated about any other explosives being procured, yet the trial court concludes that other explosive material has also been procured. The conclusion is clearly without any factual basis nor supported by any evidence.

23. We may reiterate here that it is admitted by Mr. Sundarrajan that the origin from where the RDX or PETN was obtained by the accused were not discovered. He also emphatically stated that PETN and RDX are different articles. It is also stated in his cross-examination that in Gelatin sticks, RDX will not be found. On a conjoint reading of the entire evidence, the trial court clearly recorded the conclusion that only RDX and PETN and not Gelatin sticks as claimed by the prosecution were used for the explosion. It is also noticed that the confessional statements reveals that what was purchased were only Gelatin sticks from Gudiyatham and not RDX and PETN. Such evidence would clearly destroy the very foundation of the prosecution case, which proceeds on the basis that the gelatin and the detonators were procured in Gudiyatham was the material from which the bombs were manufactured, which were responsible for the explosion on 8th August, 1993. Even according to the trial court, the exploding bomb consisted of RDX and PETN. Having recorded the aforesaid conclusion that trial court without any justification concludes such evidence would only affect the evidentiary value and truthfulness of the confessional statements. We may notice here the conclusion as recorded by the trial court as follows:-

"Now a conjoint reading of the confessional statements of the accused already said above, searches made and recoveries effected from the respective places of the accused, material seized from the scene of crime, recovery seizure and observation mahazers therefore and consequential chemical examination and its result and the evidence of the experts therefore shows that what was used for the explosion was only RDX and PETN and not gelatin sticks as claimed by the prosecution. The confessional statements reveals that what was purchased was only gelatin sticks from Gudiyatham and not RDX or PETN which has got a serious bearing on the acceptability of the confessional statements of the accused and their involvement of all the accused in the conspiracy. According to the learned Special Public Prosecutor only two persons namely A15 Imam Ali (died) and absconding accused Mustaq Ahamed knew about it. It follows that the other three accused namely A5 Abubucker Siddique, A14 Hyder Ali and A17 Kaja Nizamuddin who were closely associated with them also knew about it. It goes without saying that they only conspired together and did everything for bomb blast."

24. In our opinion, the trial court having correctly recorded the conclusion in the earlier part of the paragraph, unnecessarily and without any basis diluted the same and restricted it only to the reliability of the confessional statement. We are of the considered opinion that the Trial Court correctly observed that "the prosecution ought to have investigated the case in the angle of the usage of the RDX, PETN etc." Even after making such an observation, the Trial Court erroneously goes onto convict the appellants who had procured only Gelatin and Detonators from Gudiyatham.

25. We are unable to accept the submission of Mr. P.P. Malhotra that the appellants not being scientists, referring to the explosive substance as gelatin as opposed to RDX would not be fatal. According to him, the confessional statements should be read from the point of view of a layman. We may refer to certain extracts from the confessional statement of A5 Abubucker Siddique, which is as follows:-

"Afterwards, we four went to see Mustaq of Vaniyampadi to purchase gun powder for the

preparation of bomb. They went to Gudiyatham and bought 8 Kgs. of Gelatin and some detonators. Imam Ali and Mustaq went outside and bought an iron box to be suitable for fitting in a two wheeler. At the house of Mustaq, Imam Ali conducted a Trial of blasting the gun powders by setting a timer. On the same day, we all of us along with Mustaq and his friend Shakil went to a theatre at Vaniyambadi and saw an English Film called "Armour for the action". While going to the cinema, Mustaq and Shakil kept the gun powder and other items in a house near the Theatre and after seeing the cinema, we took the items from that house and left for Chennai in the night and reached Chennai in the next day morning i.e., 30.07.93."

"On the next day after our return from Vaniyambadi, we went to Riche Street and bought the following items: some pen torch cells, one battery box, quartz timer, switch and some items which are required for blasting the bomb from a box/ suitcase."

"On 1.8.93, Imam Ali sent me to purchase 5 kgs of gun powder, a box made of iron for the purpose of making the second bomb and also told me to meet Mustaq at Jafrabad. He gave me Rs.275 for this purpose. He also told me to bring the gun powder from Mustaq's house which was bought from Mustaq's house which was bought for planting bombs at Hindu Munnani meeting at Vadacherry."

26. We are of the considered opinion that the observations of the trial court that 'other materials' could have been RDX and PETN is perverse. In our opinion, Mr. Natarajan had correctly submitted that the other items in addition to gun powder were the iron box, suit case, battery box, quartz timer, switch etc. The confessional statement of A5 Abubucker Siddique reveals that they had gone to Vaniyampadi to purchase "gun powder" for the preparation of the bomb. Then they went to Gudiyatham and procured 8 kgs of gelatine on 29.7.93. Later they had procured 5 kgs of "gunpowder" on 1.8.93. We are of the considered opinion that the confessional statement of A5 Abubucker Siddique only reveals that they had procured gelatine, gunpowder and certain other accessories required for blasting a bomb viz. detonators, switch, battery box, pen torch cells, quartz timer etc. It is not mentioned in the confessional statement as to how and when the appellants had procured RDX and PETN i.e. the materials with which the bomb made for blasting the RSS building situated at No. 1 M.V. Naidu Street was made.

27. It was vehemently argued before us by Mr. Malhotra that the charge has to be read along with the confessional statements. We may notice an extract of the charge relied upon by him. It reads as follows: "Fifthly: that you A-1, A-2, A-5, A-5 and A-8 in pursuance of the said criminal conspiracy during the said period and in the course of the same transaction and in the furtherance of the common intention of you A-1, A-2, A-5 and A- 8 and the absconding accused Imam Ali, Hyder Ali and Kaja Nizamuddin to commit murders and cause injuries to RSS and Hindu Munnani leaders and others who were likely to be present on 8.8.93 at about 1.45 pm at the RSS Headquarters building procured explosives and other materials required for preparing the two suitcase-bombs at godown no 21, Subaiah Street, Periamet, Madras belonging to A1..... " "

We are of the considered opinion that the most important portion of the aforesaid charge is "procured explosives and other materials". We have considered the confessional statements in extenso. It is not in dispute that explosives were procured from Gudiyatham. The confessional statement of A1 Rafiq Ahmed and A5 Abubucker Siddique are unequivocal that only gelatin sticks and detonators were bought from Gudiyatham from a licensed shop owner PW 112 Kamalnathan (declared hostile). The prosecution has not been able to ascertain as to how the appellants had access to RDX. The Trial Court had accepted that as only two persons namely A15 Imam Ali (died) and

absconding accused Mustaq Ahamed knew about the source from where RDX was procured, the other three accused namely A5 Abubucker Siddique, A14 Hyder Ali and A17 Kaja Nizamuddin who were closely associated with them also knew about it. The observation of the Trial Court is merely conjectural. In our opinion, the conclusion of the Trial Court that the "other materials" as mentioned in the charge sheet brings in its sweep other explosives like RDX and PETN is wholly without any basis. The evidence on the record clearly militates against such a conclusion.

Thus even if the charges are read along with the confessional statement, it would not, in any manner, improve the intrinsic value of the evidence led by the prosecution. Suspicion no matter how strong cannot take the place of legal proof.

28. As submitted by Mr. Malhotra, it is true that the prosecution case was that explosive substances were used to make bombs. It is not in dispute that the present case was registered against the 18 persons for blasting the RSS building situated at No. 1 M.V. Naidu Street. As noticed hereinabove the bomb was made of RDX and PETN but no trace of gelatin was found from the scene of crime. The prosecution could only prove that the appellant had procured gelatin sticks and detonators from Gudiyatham but the traces of said explosives could not be found from the scene of occurrence. Thus there is clearly no evidence to link the appellants with the explosion.

29. In the result the prosecution story as put forward does not inspire confidence on the basis of the material placed on record. Criminal Appeal No.1374 of 2007 and Criminal Appeal No.552 of 2008 filed by the accused appellants are, therefore, allowed and the conviction and sentence passed against the appellants are set aside. They shall be set free forthwith unless wanted in any other case.

CRIMINAL APPEAL NO.1271 OF 2009

1. In view of the judgment passed in the aforesaid two appeals, this appeal stands dismissed.