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IN THE COURT OF THE SPECIAL JUDGE FOR NIA CASES, KERALA, ERNAKULAM

Present:-

Sri.S. Vijayakumar, B.Sc., LL.B., Judge, Spl.Court for NIA Cases
Thursday, the 11th day of August, 2011/20th Sravana, 1933

Sessions Case No.2/2010(NIA)

(Crime Nos.5/06 and 6/06 of NIA, New Delhi),

Crime Nos.183,184/CR/S-III/2006 of CBCID,

Crime No.80/2006 of Kasaba Police Station, Kozhikode &

Crime No.81/2006 of Nadakkavu Police Station, Kozhikode

Complainant: State represented by National
Investigation Agency, New Delhi

By Special Public Prosecutor Sri.K.N. Ravindran

Accused:

1. Thadiyantevida Naseer, (A1), @ Ummar Haji @
Haji, Sidhique, Naseer, Aged 33/09 years,
S/o Abdul Majeed, 'Baithu' Hilal',
Thayyil, Neerchal, Kannur Dist., Kerala.
2. Abdul Halim, (A3), @ Halim, Aged 33/09 years,
S/o Usman, 'Sakeenas', Thazhakath House,
Vazhakkatheru, Kannur. (now residing at
"Safiyabag", Thana, Kannookara, Kannur Dist.
3. Shafas, (A4), Aged 25/09 years,
S/o Shamsudhin,
"Shafnas", Thayyil, Pound Valapp,
Kannur.
4. Abubacker Yusuf, (A9), @ Yusuf Chettipady,
Aged 33/09 years, S/o Abubacker,
Nalagathu House, Neduva Village,
Tirurangadi, Tehsil, Malappuram.

(A2 and A8 are absconding and case against
them are split up. No charge against A5.
A6 died. A7 approver)

A1 & A4 By Senior counsel Sri. K. Ramakumar
and Adv. Sri. T.K. Kunhabdulla
A3 By Adv. Sri. T.K. Kunhabdulla
A9 By Adv. Sri. P.C. Moushad



Offence charged : Sections 120(B), 124(A), 153(A), 324 r/w 34
IPC, Sections 3 to 5 of the Explosive
Substances Act and Sections 16(i), 18 and 23 of
the Unlawful Activities (Prevention) Act 1967

Plea of accused : Not guilty

Finding of the court: A1 & A4 - Guilty
A3 & A9 - Not guilty

Sentence or Order:

A1 and A4 are sentenced as follows. For the offence under Section 18 of UAP Act both A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment of one year; for the offence under Section 16(i) of UAP Act A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment for one year; under Section 124(A) IPC A1 and A4 are each sentenced to undergo imprisonment for three years and to pay fine of Rs.10,000/- each (Rupees ten thousand only) with default sentence of three months; under Section 153(A) IPC A1 and A4 are each sentenced to undergo imprisonment for two years. In addition A1 is also sentenced under Section 4(b) of Explosive Substances Act to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of one year. It shall be sufficient if all the substantive jail sentences run concurrently.

It is further directed both the convicts shall be provided with the privilege of maintaining their beard at their choice as a mark of religious practice and A1 shall also be permitted to wear his cap on occasions of his choice. It is further provided that they shall be provided with physical labour and for that purpose if necessary they shall also be given vocational training so that they will realize dignity of labour. As an attempt to refine them, both the convicts shall also be provided with reading material such as vernacular version of biographies and autobiographies of great patriotic men of India and commentaries to the Constitution of India.

Description of accused

Sl. No.	Name	Father's name	Religion	Occupation
1	Thadeyantevida Nazeer(A1)	Abdul Majeed	Muslim	Private job
2.	Abdul Halim (A3)	Usman	"	"
3.	Shafas (A4)	Shamsuddin	"	"
4.	Abubacker Yusuff	Abubacker	"	"

Age	Residence
33/09 (A1)	'Baithul Hilal', Thayyil, Neerchal, Kannur Dist., Kerala.
33/09 (A3)	"Safiyabag", Thana, Kannookara, Kannur Dist.
25/09 (A4)	"Shafnas", Thayyil, Pound Valappu, Kannur.
33/09 (A9)	Naduva, Malappuram District

Date of

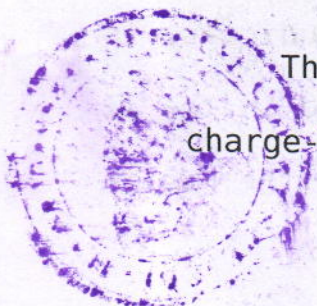
Occurrence	Complaint	Apprehension	Bail	Commitment

3.3.2006	2.8.2010	24.2.10 (A1)	-	-
		22.7.09 (A3)	2.8.2010(A3)	-
		24.7.09 (A4)	-	-
		15.1.10 (A9)	-	-
.....				
Commencement of trial		Close of trial	Sentence/Order	
.....				
20.1.2011		27.7.2011	11.8.2011	
.....				

This case finally heard on 2.8.2011 in the presence of Advocates for both sides and stood up for consideration to this date and on the same day the court delivered the following:-

JUDGMENT

This is the Kozhikode Twin Blast case investigated and charge-sheeted by the National Investigation Agency, New Delhi in



Crime Nos.5/09 and 6/09.

2.. Originally it was registered as Crime No.80/06 of Kasaba Police Station and Crime No.81/06 of Nadakkave Police Station, Kozhikode on 3.3.2006 for offences under the Explosive Substances Act. Then the cases were transferred to CBCID SIG III on 13.6.2006 and in the course of investigation offences under Sections 120(B), 124(A),153(A),324 r/w 34 IPC, Sections 15(a), 15(a)(i) (15(a)(ii)) of Unlawful Activities (Prevention) Act 1967 (and Sections 3,4 and 5 of the Explosive Substances Act) were included. Subsequently investigation, was taken over by the National Investigation Agency as per order of Government of India (MHA) vide order No.11034/31/2009-IS-VI dated 1.12.2009 and 4.12.2009 and Crime Nos.5/09 and 6/09 of NIA were registered culminating in the final report filed on 2.8.2010.

3.. In the charge-sheet, NIA reported that their investigation revealed that Naseer @ Ummer Haji, r/o Kannur (A1), Mohammed Ashar r/o Thalassery (A2), Abdul Halim @ Halim r/o Kannur (A3), Shafas r/o Kannur (A4), Fayiz r/o Kannur (A6), Shammi Firoz r/o Malappuram (A7), P.P. Yoosaf r/o Kannur (A8) and Yusuf Chettipady, Malappuram (A9), accused herein conspired, planned and executed the twin bomb blasts in KSRTC bus stand and Mofussil bus stand, Kozhikode city on 3/3/2006 as a retaliation against the perceived partisan attitude of the Executive and the Judiciary in not granting bail to the Muslim accused persons involved in the II Marad incident. So, in order to show the resentment of the Muslim

community these accused persons conspired among themselves and manufactured bombs which they subsequently exploded at two main bus stands of Kozhikode city causing panic, terror and hardship to general public thereby waging war against the establishment and the Government. By this act of terror, these accused persons wanted to create communal disharmony at busy places by which innocent persons would get injured and this would lead to further communal disturbances in the area.

4.. NIA further alleged that investigation also revealed that between the year 2002 and to 3rd March 2006, Naseer (A1), Mohammed Ashar (A2), Abdul Halim (A3), Shafas (A4), Fayiz (A6), Shammi Firoz (A7), P.P. Yoosaf (A8) and Yusuf Chettipady (A9) hatched conspiracy to make plant and explode bombs in KSRTC Bus stand and Mofussil Bus stand of Kozhikode City as a protest against the partisan attitude of the Executive and the Judiciary in not allowing bail to the Muslim accused involved in the II Marad (Near Kozhikode) Communal Carnage and thereby disturb the communal harmony, create terror and panic to common people. In pursuance of the above conspiracy, Naseer (A1) procured materials for making bombs including explosives with help of Mohammed Ashar (A2), Fayiz (A6) and P.P. Yoosaf (A8). Bombs were manufactured at Mohammed Ashar's (A2) hired premises in Tekki Bazar, Kannur by Naseer (A1) with the help of Mohammed Ashar (A2), Abdul Halim (A3), Fayiz (A6) and P.P. Yoosaf (A8). As per the chalked out plan on 3/3/2006 Naseer (A1), Mohammed Ashar (A2), Shafas (A4),

Fayiz (A6), P.P. Yoosaf (A8) and Yusuf Chettipady (A9) assembled at Kannur with an intention to plant and explode bombs at busy places of Kozhikode city; They then transported the bombs to Kozhikode City by bus. They reassembled at Markas Mosque, Kozhikode where they were joined by Shammi Firoz (A7), Naseer (A1) briefed the team of the plan of action and entrusted specific jobs to Shafas (A4) and Shammi Firoz (A7) to make telephone calls, intimating the planting of bombs, to Kozhikode Collectorate and Calicut Times. Then Naseer (A1) despatched two separate teams; one comprising of Mohammed Ashar (A2), Fayiz (A6) and PP Yoosaf (A8) with a bomb to be planted at Mofussil Bus Stand and the other team comprising Naseer (A1), Shafas (A4) and Yusuf Chettipady (A9) to plant the bomb at KSRTC Bus stand. The bombs were accordingly placed and both the bombs exploded. Due to the explosion of the bomb, window panes of Sagar Hotel near the KSRTC Bus stand were shattered and two persons namely Sri M.T. Unni and Sri K. Asharaf were injured at Mofussil Bus Stand, Kozhikode. Thus Naseer (A1), Mohammed Ashar (A2), Abdul Halim (A3), Shafas (A4), Fayiz(A6), Shmami Firoz (A7), P.P. Yoosaf (A8) and Yusuf Chettipady (A9) wilfully acted with intent to strike terror in the people by causing two blasts using IED's (Improvised Explosive Devises), with gelatin like explosives and caused terror, panic and injury to the public and the law enforcing agency. Therefore, their acts tantamount to a terrorist act as defined in the UAP Act (2004 Amendments), thereby attracting the offences punishable

under Sections 120(B), 124(A), 153(A), 324 r/w 34 IPC, Sections 3 to 5 of the Explosive Substances Act and Sections 16(i), 18 and 23 of the Unlawful Activities (Prevention) Act 1967 as against A1 to A4 and A7 to A9.

5.. In the course of investigation by NIA, A7 who was arrested on 19.3.2010 was produced in this court on 20.3.2010. On that day he filed Crl.M.P 437/10 disclosing his intention to reveal the role of himself and other accused in the crime. The Crl.M.P was posted to 23.3.2010 and A7 was remanded to judicial custody. As per order dated 22.3.2010 in Crl.M.P 408/10 filed by NIA police custody of A7 for three days was allowed for interrogation. On 25.3.2010 when he was surrendered in court after police custody, NIA filed Crl.M.P 436/10 praying to record statement of A7 under Section 164 Crl.P.C. and the same was allowed. Consequently his statement under Section 164 Crl.P.C. was got recorded through Chief Judicial Magistrate, Ernakulam. On 2.9.2010 A7 filed Crl.M.P 1056/10 stating that he has already given statement of true account of facts within his knowledge before the Magistrate and further requesting to make him an approver. On 14.6.2010 NIA filed Crl.M.P 735/10 praying to tender pardon to A7 and shift him to Central Prison Kannur for safety. On the strength of the application filed by A7 and the said Crl.M.P 735/10 after hearing the Prosecutor and A7 in person and going through his statement under Section 164 Crl.P.C. conditional pardon was tendered to A7 by me under Section 307 Crl.P.C. on

2.9.2010 and A7 accepted the pardon and he was sent to Central Prison Kannur. Finally he was released on bail as per order dated 14.10.2010 in Bail Application No.6203/2010 of the Hon'ble High Court.

6.. On receiving the final report filed by NIA cognizance was taken of offences under Sections 120(B), 124(A), 153(A), 324 r/w 34 IPC, Sections 16(i), 18 and 23 of the Unlawful Activities (Prevention) Act 1967 and Sections 3,4 and 5 of the Explosive Substances Act 1908 as against all the seven accused persons (A1 to A4 and A7 to A9).

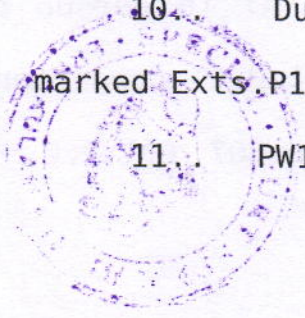
7.. On summons issued A3 appeared in court. On production warrant issued A1, A4 and A9 were produced in court. Since attendance of A2 and A8 could not be procured, on completion of necessary steps the case against them was split-up and numbered as SC 3/2010(NIA).

8.. A1, A3, A4 and A9 were supplied with copies of all relevant prosecution records. They have been defended by lawyers of their choice.

9.. After hearing both sides charge was framed against them all for all the offences alleged as stated above, read over and explained to them, to which all of them pleaded not guilty. The plea was recorded.

10.. During trial prosecution examined PWs 1 to 58 and marked Exts P1 to P98 and also identified M01 and M02 series.

11.. PW1 is A7 the approver to whom conditional pardon was



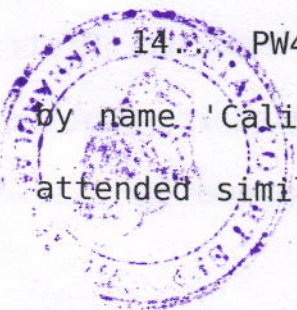
tendered. He is a native of Parappanangadi with no employment at present. He claimed to know the accused persons in court (A1, A3, A4 and A9) as also A2, A6 and A8. PW1 elaborated his acquaintance with A1 and disclosed the conspiracy involved in this case among the accused persons at Markas Church, Kozhikode. A1 had brought two black polythene covers containing bomb manufactured by him at Kannur and stated that they are to be planted at the Kozhikode Mofusal Bus Stand and the KSRTC Bus Stand in order to echo their protest in refusing bail to Muslims involved in the Marad case. He divided the accused persons into two groups. A1 instructed PW1 to make telephone call to Calicut Times and to inform them the matter of having placed bomb. Accordingly PW1 made the phone call to Calicut Times from a telephone booth at Gulf Bazar and informed them the fact. Subsequently blast occurred at both the bus stands. Ext.P1 petition (Crl.M.P.437/2010) is filed by him in court for making him accomplice. Ext.P2 the statement recorded under Section 164 Crl.P.C by Judicial First Class Magistrate, Ext.P3 application dated 2.9.2010 filed by him, Ext.P4 search memo under which Ext.P5 leave application and Ext.P6 plane tickets were seized from him and Ext.P7 memo dated 24.3.2010 under which he showed the different places and institutions at Kozhikode referred to him in his prosecution were all marked through him.

12... PW2 is V. Mohandas CW1, Camp Clerk to District Collector, Kozhikode who in the absence of District Collector Kozhikode sated to have received anonymous telephone call in the

District Collector's personal telephone at about 12 noon on 3.3.2006 to the effect that 'bomb was planted at KSRTC Bus Stand which will explode within a short while' and consequently when he attempted to inform the matter to the ADM over the intercom another phone call was also received from the same person stating the same fact and that immediately he informed the matter to the then ADM Mr Koyakutty (PW3) and further that as disclosed in the telephone call bomb blast occurred at the KSRTC Bus Stand and Mofussil Bus Stand.

13.. PW3 is Sri P. Koyakutty CW2, Additional District Magistrate, Kozhikode during the year 2006 who deposed to have received telephone call from PW2 at about 12 noon on 3.3.2006 over the intercom informing that somebody had telephoned PW2 and informed him that bomb was planted at KSRTC Bus Stand. Immediately PW3 informed the matter to Kozhikode North Assistant Commissioner over telephone who agreed to send police and party to the spot. PW3 also received information at about 1 p.m that a bomb had blasted at KSRTC Bus Stand. Immediately he went to the scene where District Collector and several policemen and others were present. When he reached there he received the further information that a bomb blast had occurred at Mofussil Bus Stand also, where also he visited.

14.. PW4 is Mrs. Shidha K.K. CW5, Reporter of evening daily by name 'Calicut Times' during early 2006 who testified to have attended similar anonymous telephone call in the office telephone

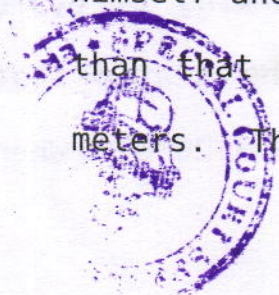


No.2700834 at about 12.30 p.m on 3.3.2006 in a male voice informing that bombs were planted at KSRTC Bus Stand and Mofussil Bus Stand, Kozhikode which will explode within five minutes. The caller also informed that it was a continuation of the Marad occurrence. PW4 conveyed the message to the office and on instructions she herself also informed the matter to the Special Branch and the Police Control Room. She also sent reporter by name Bijush to the spot. By the time Bijush reached the KSRTC Bus Stand blast had occurred there. When Bijush was contacted over telephone it was revealed that bomb blast had occurred at Mofussil Bus Stand also. Ext.P8 statement of PW4 was also got recorded by Judicial First Class Magistrate VI, Kozhikode on 19.9.2009. The news item regarding the bomb blasts was prepared by PW4 and others including the said Bijush and given in Ext.P9 edition of Calicut Times dated 3.3.2006. She stated that reference to the Marad incident was deliberately omitted in the news item published in the paper in order to avert any undesirable consequence that may arise in respect of such a news being published. She also clarified that it is in her anxiety and consequent panic, the incident being the first of its kind in her life, that in the place of five minutes within which the bomb was informed to blast, she happened to state it as within $\frac{1}{2}$ an hour in the news item.

15... PW5 is CW11 K. Balakrishnan who was working as Guard Grade II at KSRTC Depot, Kozhikode during 2006 who stated that there occurred a bomb blast at that bus stand on 3.3.2006. When

he was in the office adjoining the canteen on the eastern part of the bus stand at about 12.45 p.m, he heard the sound of an explosion which he thought as the blast of a tyre, which somebody described as the bursting sound of a gas cylinder. He went to the spot which is the south western part of the bus stand near Sagar Hotel precisely 3 meters inside to the wall separating KSRTC Bus Stand and Sagar Hotel and vehicle supervisor's rest room where he could see police officers and people. A pit to a depth and width of 1 foot was seen formed on the ground. After some time he also heard the news that a similar explosion had occurred at the Private Bus Stand.

16.. PW6 is Valsan CW15, Grease man of Mofussil Bus Stand, Kozhikode who testified to have witnessed the bomb blast at the Mofussil Bus Stand, Kozhikode. On 3.3.2006 at about 1 p.m when he was present in the bus stand policemen who came in a jeep jumped down and informed the public that a bomb was planted in the bus stand and everyone must vacate. There was a hue and cry and all went out. Policemen requested the witness and others to search for a black cover by the side. A black plastic/polythene cover to the size of a pumpkin was then seen near the waste water drain on the southern part of the bus stand whereupon the SI stated that it was bomb and wanted everybody to clear away. By the time himself and others moved away the bomb exploded with a sound more than that of a cracker and black smoke, rising to a height of 3 meters. The stone construction nearby was damaged. Paper pieces,



cloth pieces and glass pieces scattered were collected by the police.

17.. PW7 is K.P. Aboobacker CW24, a porter at Mofussil Bus Stand, Kozhikode who stated that on 3.3.2006 a bomb blast had occurred at that bus stand. At about 12.45 p.m policemen who came in a jeep made mike announcement that a bomb was planted somewhere in the bus stand that all should go out. Consequently the persons present there numbering upto 500 who became afraid ran out of the bus stand. Vehicles were also taken out and the shops closed. Police also conducted search of the bus stand. At the south eastern part of the bus stand near the waste water drain a black coloured plastic cover to the size of a pumpkin was seen. Police did not allow anyone to go near that. At about 1.05 p.m the bomb exploded with huge sound. There was heavy smoke. Pieces hit the body of one policeman and a porter by name Ashraf.

18.. PW8 is P. Sunil Kumar CW27 Freelance photographer hailing from Kottooly, Kozhikode who happened to be at the Mofussil Bus Stand at the time of the blast and hence could take in his digital camera Ext.P10 series photographs of different scenes relating to the blast. By about 12.30 p.m he had reached the bus stand to receive his friend Hari another photographer who was coming from Thrissur for the purpose of conducting an exhibition. He witnessed the mike announcement made by police, the fleeing away of people from the bus stand, the detection of black plastic cover, the blast of the cover and smoke rising to a

height of about 15 meters. Ext.P10(b) is stated to be the photograph showing the said black plastic cover. Ext.P10 is stated to show rising smoke. He also happened to take Ext.P10(c) photograph showing another black bag unattended by anyone on the thought that it also may be a bomb but which did not contain any bomb and was taken away by its owner.

19.. PW9 is Somadas CW45, a worker at Sagar Hotel situated on the eastern side of the KSRTC Bus stand who testified to have witnessed the scene of the bus stand immediately after the explosion. While he was on duty in the hotel and had gone inside to take food for supplying to the customers, at about 12.45 p.m he heard a big sound of an explosion from the KSRTC bus stand. Then immediately he came out and looked. He could see smoke and dust rising upto the sky. The scene of the blast was about 10 meters away from the hotel. He could not go there since some of the staff members of the hotel had gone to the Masjid. Two or three window glass panes in the first floor of the hotel had fallen down and got broken. Several people and policemen were assembled on the spot of explosion. Subsequently police prepared Ext.P11 scene mahazar. PW9 was called and his signature obtained in the mahazar as witness. Police had also collected cloth pieces and broken glass pieces from the scene.

20.. PW10 is Sudeep Jeevan CW56 hailing from Kapad, Kozhikode conducting computer training institute at Darusalam Complex, Mavoor Road imparting training on Microsoft Cisco

Certification and hardware from 2003 onwards. He is a partner of the institution with its Head Office at Ernakulam. He is in-charge of the Kozhikode branch. His version is that in the year 2006 there were about seven or eight staff members and 10-15 students. On 25.3.2010 he had under Ext.P12 production memo handed over Ext.P13 registration form in respect of PW1 Shammi Firoz prepared and obtained at the time when he joined the institution on 20.1.2006. He further stated that Shammi Firoz had joined in MCP, CCX IA and Hardware courses. The duration was three month with a total fee of Rs.10,000/- which Shammi Firoz had paid in three instalments as noted in Ext.P13 which also contains the writing "cleared" as written by PW10. Shammi Firoz studied there upto 2006 April last and stated that he was acquainted with him. He also stated that after completing the course Shammi Firoz was brought to the institute on 24.3.2010 which is the day just previous to Ext.P12 while in the custody of NIA whom he identified before the NIA officials as the student who studied in his institute. The attendance register of the institution used to be destroyed after a lapse of two years.

21.. PW11 is Subair CW62 residing at East Hill Road, Kozhikode presently conducting tea stall at Mavoor Road who was previously from 2003 to 2009 conducting STD booth and toy shop by name Sky Boy below the front staircase of Seena Tower. He stopped booth and the shop on account of loss. In his booth there were one land phone and a coin box of Reliance Company; the coin box

was having telephone number 3942906.

22.. PW12 is CW63 Mohammed @ Kunjumon of Kottamparamb, Kozhikode, a merchant of mobile phone in an institution by name '120NE' at M.A. Bazar, Kozhikode commenced in the year 2008. Previously he was conducting stationery and telephone booth – coin box in the same place with the name 'Graphline' owned by his brother-in-law Mohammed Mustaffa employed in Gulf and being looked after by the witness. There were two land phones and two coin box phones; land phone numbers were 2766010 and 2765869 of which one phone was in the name of the witness's brother-in-law and the other in the name of the brother-in-law's sister's daughter by name M(B)usharabi and the coin box Nos.2368683 and 2361583, one in the name of the brother-in-law and the other in the name of the said M(B)usharabi. The booth was on the Bank Road by western side with Gulf Bazar presently known as Dubai Bazar on the east. The witness also stated that M.A Bazar is also known as Dubai Bazar. He stated that he was questioned by NIA in connection with the bomb blast case in Kozhikode and that some accused was brought to his shop by police.

23.. PW13 is Ashraf CW30 a porter at Mofussil Bus Stand, Kozhikode who was injured in the blast. On 3.3.2006 at about 12.45–50 p.m while he was engaged in his work a police jeep came to the stand through western side and made mike announcement that somebody had planted a bomb in the bus stand premises and that all persons should go out. When PW13 accompanied the policemen in his

anxiety to know what it was, the police conducted search at different premises. At about 12.55- 1 p.m at the south-eastern part of the bus stand near the heap of waste a black plastic cover was seen and the police shouted to run away. When the witness reached about 15 feet away from the cover the same exploded and a metal piece struck his hand and he lost some blood. There was smoke in the area. A policeman was also injured. In the evening he went to the Beach Hospital and took injection. He continued treatment for a week.

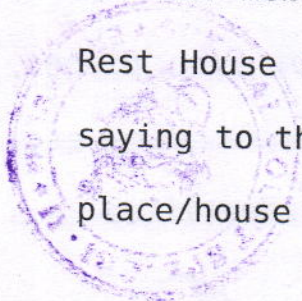
24.. PW14 is Mohandas CW66 Village Assistant at the Kozhikode Kasaba Village Office who on 6.5.2006 on the direction of the Village Officer went to the place of occurrence and prepared Ext.P14 sketch on the basis of the police mahazar describing the place of occurrence in Crime No.81/06 of Nadakkave Police Station showing the KSRTC bus stand building, the Hotel Sagar nearby and all other relevant details. The same day he also prepared Ext.P15 sketch relating to the place of occurrence in Crime No.80/06 of Kozhikode Police Station also based on the police mahazar clearly highlighting the exact place of occurrence near the drain at the Mofussil Bus Stand.

25.. PW15 is Abdul Khader CW48, porter at the Kozhikode New Bus Stand, an attesting witness to Ext.P16 scene mahazar. He witnessed the explosion there and the collection of iron pieces, plastic pieces, gunny bag pieces, small battery, small wire etc. by police and its packing and sealing. He identified his

signature available on the five packets marked M01 series.

26.. PW16 is Ashok Kumar CW67 a native of West Hill, Chungam, Kozhikode who testified to have gone to the PWD Rest House, Kozhikode where he could see A1 Naseer on 2.3.2010. He had gone there with his friend Pushprajan to meet their friend Vinu employed at the Rest House. At that time the NIA officials required him to be a witness to the Kozhikode Twin Blast case and he testified the fact that A1 was shown to him. The witness saw A1 Naseer in room No.11, where he was sitting along with the NIA officials. The officers were questioning A1 and recording the statement of A1. The witness and the said Pushparajan had signed in the said statement of A1 marked Ext.P17. The witness had also seen the NIA officials taking A1 to the Markas complex, KSRTC Bus Stand and Mofussil Bus Stand in respect of which separate memo marked Ext.P18 was prepared also signed by the witness. On 3.3.2010 the NIA men had taken A1 to Kannur particularly to Camp Bazar and Thekky Bazar for which the witness and the said Pushparajan had signed Ext.P19 memo.

27.. PW17 is Rijesh CW69, a driver hailing from Atholy, Kozhikode who identified his signature in Ext.P20 disclosure memo prepared and signed at the Kozhikode Rest House on the request of the NIA men. He had gone for the trip of NIA officials. At the Rest House he had seen NIA officials questioning A1. He heard A1 saying to the NIA officials including the SP that he will show the place/house wherefrom he purchased gelatin sticks. On the next



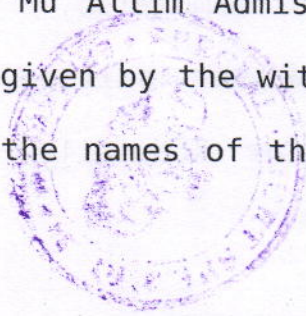
day the witness drove his vehicle carrying the NIA officials and A1 Naseer to Ernakulam and they reached the house of one Achayan at Kizhakkambalam when the eldest son of Achayan was there for which Ext.P21 memo was prepared which also was signed by the witness. The NIA officials had conducted search of that house but could not seize anything; Ext.P22 is the search list.

28.. PW18 is Subeesh CW76, collection agent of HDFC Bank who testified to know A4 Shafas whom he first saw at the PWD Rest House, Kozhikode on 10-3-2010 where he had gone to meet his friend working there. He saw the NIA officials including SP questioning A4 in a room on the first floor. He heard A4 disclosing that if they accompany him he would show Markas Masjid, the KSRTC bus stand where bomb was placed and the STD booth from where subsequently phone call was made to the Collectorate and the Pattalam Mosque where all accused had assembled. The said Ext.P23 statement of A4 was recorded by the NIA officials in which the witness also signed. Subsequently he also saw the accused showing those places, firstly the Markas Mosque, then the KSRTC bus stand where the bomb was planted and then after crossing the road proceeded through a bylane towards north and searched for the STD booth behind a corner building which could not be seen since some construction work was going on there and lastly the Pattalam Mosque. He is a witness to Ext.P24 pointing out memo also.

29.. PW19 is CW70 Nazeer T., taxi driver hailing from Koduvally, Kozhikode. His taxi is parked at Koduvally. He

testified to have gone to the office of the NIA and the PWD Rest House where he had seen Shammi Firoz, the accused (PW1) on 24.3.2010. He had gone to the PWD Rest House to undertake a trip of the KTDC. Then he was asked to go to the NIA office. There he was called to the room where he saw the said Shammi Firoz and two or three officials. The NIA officers were asking something to Shammi Firoz to which he was giving answers. The NIA officials including the SP had taken Shammi Firoz to five places in the vehicle of the witness, firstly they had gone to the Markas Masjid, then to the computer Centre at Darusalam Complex, then to Duabi Bazar then to Pattalam Mosque opposite to BSNL at Mananchira square and lastly to the Spoken English class in stadium building. Ext.P25 is the memo prepared in that regard and signed by the witness. The witness had also previously signed Ext.P7 statement of Shammi Firoz.

30.. PW20 is Chathoth Kamarudheen CW21 hailing from Thazatherur, Kannur. He was Secretary of Darussalam Madrassa where religious classes were taken under the syllabus of All Kerala Islam Religious Board. He claimed to know A2 Mohammed Ashar and A8 P.P. Yoosaf both absentees who worked as teachers of the Madrassa during the period from November 2005 to September 2006. He identified Ext.P26 teachers attendance register known as 'Mu Allim Admission Register' for the period from 2002 to 2008 given by the witness to the CBCID Crime Branch and said to contain the names of the said accused persons in serial Nos.165 and 166.



During the period when both the said accused worked in the Madrassa they were residing at some rented building at South Bazar though residential accommodation was available at the Madrassa.

31.. PW21 is Uwais Sathar V.P. CW53, a timber merchant at Kannur and co-owner of K.L. Arcade, Anakulam Road, Kannur, a three storied building in which out of the five rooms on the ground floor three were let out to one George for the stock and sale of pipes and plumbing material. The witness knew the said Mohammed Ashar (A2) and PP Yoosaf (A8) to whom Room No.4 on the first floor was rented out during 2005-06, they being the 'Usthad' (teachers) in the Madrassa near the shop of the witness where they lived for about two months. The room was so let out since the leg of Yoosaf was broken in a bike accident and they still wanted to take classes in the Madrassa. The witness also knew A1 Nazeer whom he identified in court. The witness had seen Naseer in the company of the said Yoosaf and Ashar near the shop of George, but subsequently the Dy.SP of NIA had brought A1 to the building and asked the witness whether he knew him and he happened to identify him. The witness had also seen A3 Halim in that building as taken by the Dy.SP. It was the witness who showed to the police the room by opening the room where A2 and A8 were residing.

32.. PW22 is M. Jayachandran CW54 who retired in May 2006 as Peon from Irrigation Department of the State Government and subsequently an employee in the said shop of George who had seen A3 Halim as brought by Police and the witness had affixed his

signature in Ext.P27 mahazar prepared for the said room No.4 on the first floor on 29.7.2009.

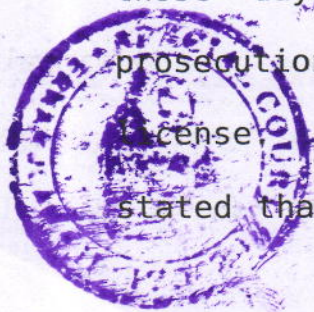
33.. PW23 is Abdul Nizar CW71 hailing from Kannur conducting shop by name Cannanore plastic house dealing in plastic items at M.A. Bazar who identified Al Naseer in court and stated that on 3.3.2010 the NIA Officers had taken him to the shop and asked whether he had purchased any material from there.

34.. PW24 is K.C. Varghese CW57, a native of Kizhakkambalam conducting metal crusher there who testified that for about 10 years he knew one Ismail (CW60) whose mother's house is near the witness's house as also one Ibrahim uncle of the said Ismail that while Ismail was in jail at Kannur in connection with the case relating to the attempt on the life of former Chief Minister Nayanar the witness had taken Ibrahim and the father of Ismail to the Cannanore jail to meet Ismail and subsequently after Ismail was freed from the jail he had come and met him to express his gratitude to the witness that Ismail had also offered his help to the witness. He stated that he knew Al Naseer whom he identified in court. He further deposed that in the year 2002 Ismail and Al had come to his house and Ismail stated to the witness that he needed some gelatin sticks for the purpose of blasting rocks in the well which had no water and since gelatin sticks were not with him at that time he introduced one Joy @ Peter (CW58) who was Supervisor in his crusher and asked Joy to provide some gelatin sticks to Ismail for the purpose of blasting rocks to which Joy

agreed and subsequently Joy had told him that he had obtained gelatin sticks from the house of Arackapady Mathai and provided it to Ismail.

35.. PW25 is CW58 the said Peter @ Joy a resident of Vilangu, Ernaklam near Kizhakkamabalam who had for about 10 years from 1992 to 2003 worked as Supervisor in the crusher of PW24 Varghese who was his neighbour. That crusher was at the place called Thaikavu about 1 Km. away from his house. He stated that he knew one Ismail who was introduced to him by PW24 Varghese in the year 2002. On one day morning when he was in the crusher PW24 Varghese had come there along with two persons. On the request of PW24 to provide some gelatin sticks to Ismail, he had gone to the house of his friend Mathai at Arackapady on his bike and since Mathai had quarry at that time there was stock of gelatin with him and he obtained six or seven gelatin sticks from Mathai on payment of price and gave it to Ismail in the presence of the said two persons and also informed Varghese of having provided the gelatin sticks.

36.. PW26 is CW59 the said Mathai @ Arackapady Mathai who was during the period 2000-03 conducting quarry and stated that he had no license for the conduct of quarry since it was difficult in those days to obtain license and there were two or three prosecution cases against him for having conducted quarry without license. However he got acquittal in all the cases. He further stated that while he was conducting quarry during 2002 Joy (PW25)



had come to his house and requested him for five or six gelatin sticks which he provided on accepting price for the purpose of blasting rocks in the well since he had stock of gelatin sticks.

37.. PW27 is K.B Venugopal CW3 who had worked as North Assistant Commissioner, Kozhikode from 1.3.2006 to 20.6.2006 who reinstated that both KSRTC and Mofussil bus stands were within his jurisdiction that at about 12.30 noon on 3.3.2006 the Kozhikode ADM had called him over telephone and informed him that an anonymous telephone call was received stating that a bomb was planted in the Kozhikode Bus Stand and immediately the witness had informed the matter to the Nadakkave C.I and the police control room as also to the superior officers and required C.I Abhilash to go to the spot and do the needful. Then he also proceeded to the KSRTC bus stand. Just before he reached the KSRTC bus stand the bomb blast had occurred there. He reached the bus stand at 12.45 p.m when Abilash and party were present, there. He inspected the place of occurrence. At that time he also heard that a blast had occurred at Mofussil bus stand. After entrusting the scene at the KSRTC bus stand to the C.I he went to the Mofussil bus stand and reached there at about 1.10 p.m and inspected the place of occurrence there, which was the south-eastern portion of the bus stand near waste water drain.

38.. PW28 is M.K. Bharathan CW7 who had worked as Additional SI, Nadakkave, Kozhikode in March 2006 under C.I. Abhilash. He was informed of the blast at KSRTC Bus Stand as stated by C.I

Abhilsah. While he was in law and order duty the CI told him that somebody had planted bomb at the KSRTC bus stand. He accompanied the CI to the bus stand. When they reached near Sagar Hotel at about 12.45 p.m, he heard huge sound of blast and saw smoke. Two police constables were also present along with them. People who were seen assembled there were removed from the blast and the scene was guarded. The exact place of occurrence is about 2 meters inside the wall separating the KSRTC and Sagar hotel.

39.. PW29 is Rajan Nair, CW73 who had worked as Commercial Officer in the office of the Sub Divisional Engineer, BSNL, Kozhikode during the period from 2005 to 2010. It is he who had issued Ext.P28 letter dated 26.3.2010 under which the customer details of six telephone numbers were furnished to the police on request. He had taken the details from the commercial files. There was one commercial file maintained for telephone numbers. The details furnished related to the telephone number 2371400 of which the customer is District Collector, Kozhikode, 2700834 is of Calicut Times Delhi, 2361583 in the name of one Mohammed Mustafa, 2368653 is of STD booth owned by Busharafi 0 and telephone No.2766010 is of Mohammed Asharaf.

40.. PW30 is P. Ramdas CW22 who was member of the investigation team in this case headed by Dy.S.P D. Rajan during 2009. The said Dy.SP Rajan had seized Ext.P26 'Mu Allim Admission Register' from PW20 in his presence under Ext.P29 seizure list which is signed by the witness.

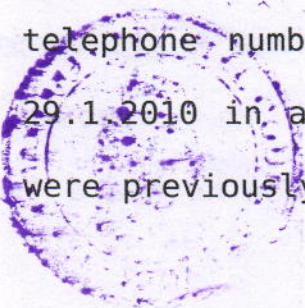
41.. PW31 is CW72 Subramanian, Divisional Engineer, Palayam, Kozhikode. He had furnished call details of six telephone numbers to the police. The concerned telephone numbers are 2700834, 2371400, 2361583, 2368653, 2766010, 2368046. Incoming call details and outgoing call details were separately furnished; incoming call details being Ext.P30 which is the computer print out and Ext.P31 for outgoing call details also computer print out both signed by the witness and containing seal. The witness stated that as per Ext.P30(a) entry on 3.3.06 at 12.30.18 a call came in telephone No.2371400 from telephone No.23942906 which lasted for 37 seconds. The witness further stated that under Ext.P30(b) entry a call had come to telephone No.2700834 at 12.33 hours from telephone No.2368653 which lasted for 40 seconds.

42.. PW32 is A.P. Shaukathalai CW18, who was Dy.S.P, CBCID, Kozhikode Crime Branch during the period from 3.9.2008 to 11.11.2009 has stated that himself was member of Thrikkakara Police Station Crime 1008/09 relating to Ernakulam Collectorate blast that he had also made enquiry regarding persons likely to have been involved in the present case and that while he was questioning A3 Abdul Halim whom he identified in court for the purpose of that case, he has divulged the information that he was involved in the Kozhikode Twin Blast case and accordingly the matter was informed to Dy.SP Rajan who was the Investigating Officer of that case who arrested A3 at Police Club, Ernakulam and also furnished Ext.P33 extract of the alleged confession statement

of Halim to Dy.S.P Rajan under Ext.P32 letter dated 22.7.2009.

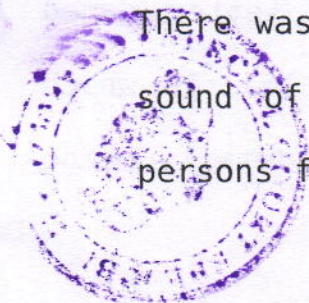
43.. PW33 is Dr. Mini Kamala CW34 who while working as Asst. Surgeon at Government General Hospital, Kozhikode on 3.3.2006, at about 1.20 p.m examined one Unni, male, 46 years with the allegation of injuries alleged to have been sustained in bomb blast at Mavoor Bus stand at 1.10 p.m on 3.3.2006 and on examination she noted the injuries such as (1) contused bruise over right upper arm 10x8 cm with central area of bruise and (2) contusion right thigh anterior area about 6x6 cm with central area of bruise, Ext.P36 is the wound certificate and stated that the injuries could be caused as alleged and that she had refer the case to the Medical College. She also proved the signature of Dr. Sreenivasan, her colleague as appearing in Ext.P37 wound certificate under which he had examined one Ashraf K, male, 30 years the same day at 4.25 p.m with the allegation as due to blast at Mofusil Bus stand at 1.05 p.m on that day and containing the description of one injury being lacerated wound 2x2cm left forearm and stated that these injuries could be caused as alleged.

44.. PW34 is CW74 P. Achuthan, Divisional Engineer, Vigilance at the office of the General Manager, BSNL, Kozhikode on 26.3.2010 under Ext.P38 covering letter furnished to the NIA Exts.P30 and P31 address details and call details of particular telephone numbers. He also proved Ext.P39(Ext.D9) letter dated 29.1.2010 in answer to Ext.P40 letter of NIA dated 15.1.10 which were previously furnished. Ext.P41 is the said call details being



computer print out furnished by him to the NIA under Ext.P39. He also testified that normally when call details are furnished the details of local call may not be available. He also stated that in Ext.P41 call details included only in respect of STD, ISD and mobile calls. He explained that the word "calling" in Ext.P41 denotes outgoing calls from one particular telephone number and that the word "called" shows the incoming calls to one particular telephone number. He also stated that in Exts.P30 and P31 local call details are not available and that on Ext.P42 request of NIA for local call details, those details were also furnished. He also stated that on the strength of Ext.P42 request dated 26.3.2010 of NIA for address particulars, he furnished Ext.P28 address particulars under Ext.P43 covering letter dated 31.3.2010.

45.. PW35 is S. Abhilash CW4 who while working as CI Nadakkave from 30.7.2004 onwards on receipt of information at 12.30 p.m on 3.3.2006 from North Assistant Commissioner that bombs were planted at Kozhikode New Bus stand and KSRTC bus stand immediately proceeded to the KSRTC bus stand along with Additional S.I. Bharathan (PW28) and police constables in police jeep. He stated that when they reached near Sagar Hotel at 12.45 p.m the sound of huge blast was heard from the KSRTC compound situated on the east of the Sagar Hotel. The team proceeded to the spot. There was a good amount of smoke and dust. He had heard bursting sound of window glass panes of Sagar Hotel. He removed the persons from the spot and guarded the scene. Then he heard from a



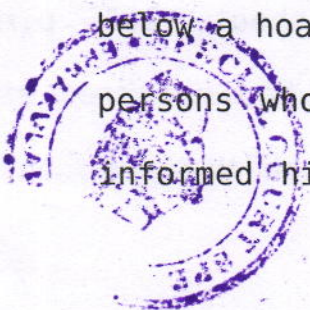
news paper Editor that a bomb was planted at the new bus stand. Immediately he sent the Kasaba SI and party to the private bus stand. The witness went back to the police station and registered crime under Ext.P44 FIR for offences under Explosive Substances Act. Then he came back to the scene of occurrence and at about 2 p.m. prepared Ext.P11 scene mahazar. He also collected remnants of the blast such as pieces of white cloth, pieces of plastic pasted cloth, glass pieces from the spot, sealed it and sent it to court.

46.. PW36 is Sri A. Ijas CW75, Judicial First Class Magistrate, Ernakulam who on 31.3.2010 recorded Ext.P2 statement of PW1 Shammi Firoz. Ext.P45 is the report prepared by the learned Magistrate in that regard. He recorded the statement pursuant to the direction in Ext.P46 order of the CJM. Before recording Ext.P2 statement an initial enquiry was conducted on 30.3.2010. The learned Magistrate had also taken several precautions and had also given sufficient time for reflection to the person before recording the statement. It is on the satisfaction that the statement of Shammi Firoz was voluntary in nature that the same was recorded.

47.. PW37 is CW29 T. Unni who on 3.3.06 while working as Police Constable at Kasaba Station, Kozhikode engaged in law and order duty at Mofussil bus stand, Kozhikode at about 12.45 p.m received a wireless information that a bomb blast had occurred at KSRTC Bus stand and that a bomb was planted at the Mofussil bus

stand. Consequently while himself and others were removing people from the Mofussil Bus stand, S.I Biju and team had come from the police Station and made mike announcement. On the search for any bomb planted in the area, at the south eastern corner of the bus stand near the waste water drain a black plastic cover was seen standing erect and on the suspicion that it may be bomb the SI informed the matter to the bomb squad. At about 1.15 p.m the cover blasted with huge sound of explosion on which a shred forcibly pierced his body and he sustained injury on right hand muscle and right thigh. He stated that a porter in the bus stand had also injured in the blast. He was taken to the Government General Hospital where the doctor examined him and after first aid referred to Medical college and after treatment he was discharged in the evening.

48.. PW38 is K.R. Biju CW32 who had worked as Principal S.I., Kasaba Police Station, Kozhikode. He stated that while himself and team were on patrol duty on 3.3.2006 at about 12.45 p.m when they reached the place called Puthiyara a wireless message was received that a bomb explosion had occurred near the KSRTC Bus stand, Kozhikode. Immediately himself and team proceeded to the KSRTC Bus stand where he found the Nadakkave CI Abhilash and others and noted that the place of occurrence was below a hoarding where rubbish and waste were seen scattered. Two persons who claimed to be reporters of "Calicut Times" came and informed him that bomb was planted in the Mofussil bus stand at



Kozhikode also. On the instructions of C.I Abhilash the witness and team went to the Mofussil bus stand where they reached by about 12.55 p.m. They made mike announcement requiring the people to quit the bus stand. He also conducted search with the help of employees. Then he found a fully loaded black plastic carry bag upon the stone construction of the drainage at the south-eastern corner of the bus stand. He informed the matter to CI Abilish and requested him to communicate it to the bomb squad and dog squad. By about 1.05 p.m the cover exploded in high sound to a height of about 20 meters. There was fierce smoke and pieces of cloth, plastic, battery etc. seen fallen down. The matter was also informed to the Town C.I. A.J. Babu. Unni the constable in his team also sustained injury and he was sent for medical treatment. He guarded the scene of the crime. Thereafter by 2 p.m he reached the station and registered crime as per Crime No.80/06 under Sections 3 to 5 of Explosive Substances Act, Ext.P47 being the FIR.

49.. PW39 is T.G. Sabu CW35 Police Photographer of DCRB who had under Ext.P48 production memo handed over Ext.P49 CD and Ext.P50 series 18 photographs. He also produced in court 17 negatives of the photographs marked Ext.P51 series. Out of the 18 photographs 6 pertain to the KSRTC bus stand and the remaining 12 pertain to the Mofussil bus stand, all taken by his Assistant Muraleedharan on 3.3.2006 itself.

50.. PW40 is the said Muraleedharan CW36, assistant of PW39

City Police Photographer who testified to have taken the photographs at about 1.45 to 2 p.m on 3.3.2006 highlighting the place of occurrence at both the bus stands.

51.. PW41 is A.J. Babu CW40, Town C.I., Kozhikode who was holding additional charge of Kasaba circle also as on 3.3.2006. He stated that on getting information that at about 12.45 p.m through wireless that a bomb blast had occurred at KSRTC Bus stand at Kozhikode and there was chance for explosion at Mofussil bus stand himself and team had gone to the Mofussil bus stand but that on their way when they reached stadium junction, at about 1.05 p.m he heard the sound of explosion from the premises of Mofussil bus stand precisely 150 meters away from the bus stand. On reaching the bus stand Kasaba S.I Biju and party were seen there. Immediately he made arrangement for crowd control and scene guard. With the help of bomb squad and dog squad a search was conducted in the premises for any bomb or explosive items, but nothing could be detected. He also sent PW38 Kasaba S.I to the station for registering crime. It is the witness who prepared Ext.P16 scene mahazar in the presence of witnesses. He stated that the exact place of occurrence is the south-eastern part of the Mofussil bus stand adjoining the waste water drain precisely 35 cms. north of the stone construction on the northern side of the drain. He noted that a portion of the stone construction on the eastern side of the place of occurrence was seen lying down as recently demolished. He could also see materials such as pieces of steel,

black pieces of fiber, pieces of plastic sack, pieces of white cloth, pieces of black plastic cover, Eveready pen torch battery, a charred piece of substance wrapped in white plastic and then with cellophane tape and a piece of red plastic wire protruding out, pieces of rubble were seen scattered to a diameter of 8 meters. He also collected five items from there in the presence of witnesses and packed them in covers with the writing S1 to S5 identified in court as M01 series which he subsequently produced in court under Ext.P52 form. The northern side of the place of occurrence is the bus parking area lying east-west at a length of 100 meters and a width of 80 meters.

52.. PW42 is Aneesh Kumar CW42 Police Constable in Kozhikode City Bomb Squad who on getting information as to the bomb blast at KSRTC bus stand on 3.3.2006 went to the place of occurrence along with his colleague Ashly and on reaching the place of occurrence helped CI Abhilash to collect remnants of the blast. Subsequently on getting information of the blast at the Mofussil bus stand he went there also with the members of the bomb squad and dog squad. He inspected the place of occurrence in the presence of Kasaba C.I Babu who was present there and then helped the CI to collect remnants of the explosion.

53.. PW43 is T.V. Kamalakshan CW64 who retired as S.P., Crime Branch, Kozhikode. It is himself who conducted investigation of the Kozhikode IInd Marad case registered as Beypur Police Station Crime 82/03 and filed charge-sheet against 142

persons on 31.7.2003. He stated that all those accused persons are residents at and around Marad and excepting one all the others were persons belonging to Muslim community. He also pointed out that that case was disposed of by judgment in December 2008. In the course of investigation he had arrested 136 accused persons and they were all in judicial custody for about 4 to 4 ½ years and some accused persons were let out on bail as per order of the Hon'ble High Court passed in December 2007, Ext.P53 being the true copy of that order dated 19.12.2007 whereby bail applications of two accused were disposed of.

54.. PW44 is V.K. Akbar CW65 presently Dy.SP Kerala Police Academy who had previously conducted investigation of Edakkad Police Station Crime No.356/08 and filed charge-sheet thereof before the Additional CJM Court, Thalassery presently pending in the Special Court for trial of NIA cases (this court). He testified that Fayiz who was A8 in that case and (A6 in the present case) was shown to have been killed in an encounter in Kashmir and a report was filed for abatement of the charge.

55.. PW45 is Mukesh Singh CW82 presently DIG National Investigation Agency, New Delhi who while working as Superintendent of Police NIA, in December 2009 registered two FIRs Exts.P56 and P57 as FIR Nos.5/09 and 6/09 of Police Station NIA dated 8.12.2009 under Sections 3 to 5 of Explosive Substances Act, Section 15(a), Section 15(a)(1) of UAP Act and Section 120(B), 124(A), 153(A), 324 r/w Section 34 IPC consequent to Exts.P54 and

P55 orders of Ministry of Home Affairs, Government of India directing the NIA to take up investigation of the said Crime Nos.80/06 of Kasaba Police Station and 81/06 of Nadakkave Police Station. He stated that after registering the crime investigation was entrusted to DSP Ravi Gambir that subsequently the witness himself along with his team conducted investigation and during such investigation A3 Halim was taken in police custody and interrogated in the course of which he had divulged some facts about the Calicut bomb blast and subsequently it was learnt that two more accused – A1 Naseer and A4 Shafas were in the custody of Bangalore police and on issuing production warrant from this court they were produced in the court by the concerned agency. He also filed Ext.P58 report in court on 12.1.2010 arraying Yusuf (A9) as accused. The witness and team conducted investigation till 19.2.2010 after which Superintendent of Police Sri Rajmohan was entrusted with the investigation.

56.. PW46 is Sreekumar CW51 Senior Reporter of CTV channel who had previously during 2004-07 worked in Calicut Times as Bureau Chief. He had on 21.1.2010 under Ext.P59 production memo handed over to the NIA copies of the daily Calicut Times dated 3.3.2006 and 4.3.2006 respectively marked Exts.P9 and P60. Ext.P9 contains news reports regarding both the bomb blasts. The witness further stated that at about 12.30 noon on 3.3.2006 PW4 Shidha had received an anonymous telephone call regarding the blast. What was informed by Shidha to the witness is that bombs

were planted in the KSRTC and New bus stands and it will blast within no time. Immediately the witness had deputed reporter by name Bijush to the spot. The witness had also informed the police regarding the telephonic message. The witness also clarified that in the news item in Ext.P9 the statement that the bomb will blast "within $\frac{1}{2}$ an hour" is an error which occurred due to the witness's own fault since there was only little time to prepare and publish news. The witness has also stated that though Shidha had told him that in the anonymous phone call the informer had stated that the planting of the bomb was continuation of the Marad occurrence, the witness did not explicitly refer Marad in the news paper and he wrote only that it was the continuation of the recent developments since any such writing would only help to arouse religious feelings.

57.. PW47 is N.B Bhardan CW79, Assistant Chemical Examiner to Government of India, New Delhi who as per direction of this court conducted examination of certain items of material objects and issued Ext.P61 report dated 30.3.2010. He testified that those items were received in his office through Messenger as contained in a sealed parcel on 8.3.2010 and he had conducted examination in his lab on 22.3.2010. He explained six items examined by him in his laboratory. Examination comprised physical examination and chemical examination. The finding based on such examination is that all the six items contained Nitroglycerin, Nitrocellulose and Ammonium Nitrate, which are components of

gelatin sticks which is an explosive substance.

58.. PW48 is A. Dey CW80, Principal Scientific Officer Ballistics Division, CFSL, New Delhi and Assistant Chemical Examiner to Government of India, CFSL New Delhi who on 8.3.2010 received from this court a sealed cover containing three separate sealed packets referred to as items 1, 2 and 3 being remnants of blast collected from the scene which on the basis of physical and chemical examination by the witness, in the laboratory with scientific aids were found not to contain any common explosive in it, but confirmed the presence of Nitroglycerin, Nitrocellulose and Ammonium Nitrate in all the three items, Ext.P62 being his report dated 31.3.2010.

59.. PW49 is Basil K Varghese, additional witness, son of PW24 Varghese who claimed to know A1 Naseer and stated that on 6.3.2010 A1 was brought to his residence and a search was conducted at his residence when his father was not present there but nothing was recovered.

60.. PW50 is K.T. Balan, additional witness, wood worker hailing from Kolavallur, Kannur who has been working at the house of Kunji Muhammed Haji of 'Purathally Veedu' who claimed to know A3 Abdul Halim and stated that the police had brought A3 to that house and prepared Ext.P63 mahazar on 25.8.09 in the presence of the witness who also affixed his signature therein.

61.. PW51 is Mubarak hailing from 'Maithanapally' an attesting witness to Ext.P64 mahazar dated 25.8.09 at the Sea

shore near his residence who turned hostile to the prosecution and stated that he affixed his signature in the mahazar while on the road.

62... PW52 is Veerendrakumar CW81, Under Secretary to Government OF India, Ministry of Home Affairs who issued Ext.P65 sanction order for prosecution dated 31.7.2010 in the name of President to India as authorized by the Authentication (Order and other Instruments) Rules 1958 as amended from time to time under which all the eight accused persons in this case have been allowed to be prosecuted for the offences alleged in this case in view of the requirement under Section 196 CrI.P.C., Section 45(1) UAP Act and Section 7 of the Explosive Substances Act after getting the order from the Competent Authority which consists of a Retired Judge of High Court and a Retired Secretary from Ministry of Law on perusal of the Investigation Report of NIA, Review Committee Report and other materials seized by the NIA and statement of witnesses.

63.. PW53 is T.F. Xavier CW33, Assistant Commissioner, DCRB Kozhikdoe City who conducted early part of the investigation during the period 3.3.2006 to 7.6.2006. He had examined several prosecution witnesses and recorded their statements. He had sent written request as also passed over telephonic and wireless messages to the expert at FSL, Trivadrum requesting him to inspect the scenes of the crime whereupon the expert inspected the scenes on 5.3.2006. He also gave letter to the Village Officer

for the purpose of preparing sketches in respect of the scenes of the crime, Ext.P66 being the copy of the letter. When the officers who collected MOs from the scenes produced it in court the witness filed in court forwarding notes for the purpose of sending the MOs to the FSL, Exts.P67 and P68 being office copies thereof. During the period of his investigation, he did not get any evidence against any person to implicate the said person.

64.. PW54 is D. Rajan, Dy.SP CW31 and Crime Branch CID, Kozhikode during the period from 2006 to 2009 who conducted investigation in this case for the period from 13.6.2006 to 17.12.2009. It is under Ext.P69 order of DGP ordering investigation of Crime No.80/06 of Kasaba Police Station and 81/06 of Nadakkave Police Station that investigation was entrusted with the Crime Branch. Under Ext.P70 order, ADGP (Crimes) ordered the conduct of investigation by Crime Branch, Kozhikode. Subsequently there was order of SP of Kozhikode Crime Branch based on which the witness took over investigation by renumbering the case as CBCID Crimes 183/06 and 184/06. There was a team of Circle Inspectors, Sub Inspectors and Police Constables including Detective Inspector Raja Sundaran and Asst. Commissioner of Police Jayendran to assist the witness in investigation. He has questioned witnesses PWs4, 20, 21, 22, 28, 30,32, 35 and 53 and recorded their statements. It is PW54 himself who arrested A3 Halim on 22.7.2009 at Ernakulam Police Club. When PW32 who had arrested A3 in the Kalamassery bus burning case questioned him, A3

allegedly revealed information regarding the present case pursuant to which PW54 on being informed came to the Ernakulam Police Club, questioned PW32 and A3, got satisfied of his involvement in the present crime and kept him under surveillance for the day and arrested him in the morning on 22.7.2009, Exts.P71 and P72 are the arrest memo and inspection memo regarding Crime No.80/06 and Exts.P75 and P76 are the arrest memo and inspection memo regarding the arrest in Crime No.81/06. The witness himself produced A3 before Judicial First Class Magistrate-III, Kozhikode and he was remanded. PW54 also claims to have filed report on 23.7.2009 including A1 to A5, on 28.7.2009 for including A6 and A7 and on 6.8.2009 for including A8 in this case. He also filed Exts.P73 and P74 reports for including Sections of law. PW54 also filed application for police custody of A3 and obtained such custody for the period from 24.8.2009 to 29.8.2009 in Crime No.81/06 from Judicial First Class Magistrate- IV, Kozhikode. During questioning it is alleged that A3 had made confessional statements and pointed out places mentioned in such confessional statements implicating himself and co-accused based in which Exts.P63 and P64 scene mahazars were prepared. He also seized under Ext.P29 mahazar Ext.P26 register from Darusalam Madrassa where A2 and A8 had worked as Usthad. Further investigation was conducted by NIA.

65. PW55 is Radhakrishna Pillai CW84, Inspector, NIA who was a member of the team assisting S.P Rajmohan, the Investigating

Officer. It is himself who questioned and recorded statements of PWs 21,22 and 24 to 26.

66.. It is PW56 Raja Sundram (additional witness) who was Detective Inspector, Kozhikode Crime Branch in 2006 being member of the investigation team under Dy.SP D. Rajan (PW54) who questioned and recorded statements of PWs 2 to 4, 6, 27, 41 and 42. He also identified signatures of the said Dy.SP as appearing in Exts.P77 to P82 inclusion reports of relevant accused in the two crimes in this case (Crime Nos.183/06 and 184/06).

67.. PW57 Ravi Gambir CW83 DSP, NIA being member of the investigation team under Chief Investigating Officer Sri Mukesh Singh IPS and then Sri Rajmohan SP had examined PWs 2 to 4, 10, 13,15, 33, 35, 37 to 42 and 46 and recorded their statements. It is himself who under Ext.P48 production memo collected Exts.P49 to P51 series from PW39, then under Ext.P59 production memo collected Exts.P9 and P60 documents from PW46 and then under Ext.P12 production memo collected Ext.P13 registration form in the name of Shammi Firoz from PW10. It is himself who by giving the original of Ext.P83 letter to Superintendent of Police, Interrogation Wing, Cochin Airport for permission, took along the accused Shammi Firoz who had arrived at that Airport in the early morning on that day from Abu Dhabi and produced him before the Investigating Officer for interrogation at Calicut and also issued Ext.P40 letter to BSNL requiring particulars of seven telephone numbers

68.. PW58 is CW85 T.K. Raj Mohan, Superintendent of Police NIA who conducted major part of investigation in this case and filed charge-sheet. After the initial investigation was conducted by S.P. Mukesh Singh (PW45), this witness and team conducted further investigation from 19.2.2010 onwards. In the course of investigation on getting information that accused Nos.1 and 4 were arrested by Meghalaya Police at India-Bangladesh Border and were under remand at Parapamhara jail, Bangalore he applied for production warrant in this court and those accused were produced in this court on 24.2.2010 and the witness himself recorded their arrest. Though A1 and A4 were remanded to judicial custody by this court, the witness sought and obtained police custody of A1 for 10 days from 1.3.2010 and he shifted A1 to Kozhikode camp office and questioned there. The witness further stated that on his questioning several disclosure statements were made by A1 voluntarily and he prepared Exts.P17 and P20 disclosure memos and when A1 showed the relevant places mentioned in the statement Exts.P18, Exts.P19 and P21 pointing out memos were prepared. Ext.P22 is the search list in respect of the house of K.C. Varghese and of his son Basil K Varghese (PW49) dealt in the statement and in the pointing out memo. The witness also obtained police custody of A4 for 4 days from 9.3.2010. He questioned A4 in the presence of witnesses and A4 also made valuable disclosures resulting in Ext.P23 disclosure memo and Ext.P24 pointing out



memo.

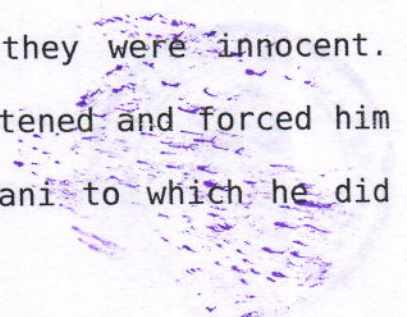
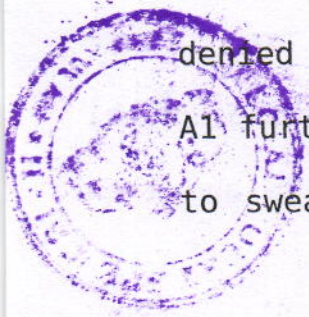


69.. The witness also conducted investigation regarding the whereabouts of A7 Shammi Firoz and when A7 landed at Nedumabssery Airport on 19.3.2010 he was taken before the witness through PW57 Ravi Gambir, Dy.SP whereupon the witness arrested A7, Ext.P4 being the arrest memo and Exts.P5 and P6 being passport and personal records collected from A7. On getting A7 in police custody for three days from 21.3.2010, when he was questioned on 24.3.2010 in the presence of witnesses, A7 also disclosed several material facts and resulted in Ext.P7 disclosure memo and subsequently A7 showed the several places referred to in the disclosure memo such as the staircase portion of Markas Masjid, the computer class room in Darusalam Complex, the place where telephone booth was situated at Dubai Bazar, the entrance gate of Pattalam Mosque and the spoken English class at Kozhikode Stadium building and he prepared Ext.P25 pointing out memo. When on further investigation PW58 got satisfied that the explosions at the two bus stations were with the help of high explosives such as gelatin sticks, but finding that the report of State Forensic Science Lab reported only the presence of chemicals such as Potassium Chlorate, aluminium powder, Sulphur and Carbon in order to further find out the proof he filed separate applications Exts.P88 and P90 in the court in Crime Nos.5/09 and 6/09 and Exts.P89 & P91 forwarding notes requiring the sending of remnants received back from State Forensic Science Lab to the Central Forensic Science Lab, Delhi along with item 3 in the MOs (Ext.P85) in Crime No.81/06 and then



obtained Exts.P61 and P62 reports from the Central Forensic Science Lab. This witness has also given Ex.P92 letter to the Divisional Engineer, BSNL,Kozhikode calling for the call details in respect of seven telephone numbers as on 3.3.2006 and obtained under Ext.P38 reply call details marked Exts.P30 and P31 in which Exts.P60(a) and P60(b) entries are significantly relevant. Exts.P93, P94, P95, P96 and P97 have been marked through this witness. Under Ext.P83 communication he was furnished with Ext.P97 address details of 18 telephone numbers including that of telephone No.2368383 shown to be that of Musharabi. It is this witness who himself questioned CW11, Pws11,12,14,16,17,18,19,21, 23,29,31,34,43 & 44 and recorded their statements. He has filed Ext.P98 application making the request to make A7 an approver as also to record Section 164 statement of A7. He concluded the investigation and prepared investigation report and submitted it to the review committee constituted under the NIA Act. The committee on approval of the same submitted it to the Ministry of Home Affairs, Government of India. After obtaining sanction PW58 laid the charge-sheet in court.

70.. After closing the prosecution evidence the accused were separately questioned under Section 313 CrI.P.C with reference to all the circumstances appearing in evidence against them. They denied the circumstances and contended that they were innocent. A1 further contended that the police had threatened and forced him to swear as witness against Abdul Nazar Madani to which he did



not agree and also on account of the enmity of police officers as he was an accused in the case relating to attempt to murder Nayanar, it is the police officers who are sympathizers of CPIM and agents of foreign forces bent upon to destroy India that he was falsely implicated in this case by making use of forged documents and false witnesses. He also contended that Shammi Firoz and other witnesses are false witnesses maintained by the police officers. He also contended that he believes that "Alla" alone deserves worship and no other deserves worship.

71.. A3 contended that he is in no way connected with the case and himself who is innocent has been falsely implicated. While he was appearing before C.I, Kannur City Police three times a week and affixing his signature as per the direction of the Hon'ble High Court, Dy.SP Showkathali took him to illegal custody and detained him for about five days and forced him to swear as witness against Soofiya Madani, Naseer and Madani to which he did not heed and in that enmity and the enmity on account of his family members having filed complaint before the Home Ministry, some top police officers who are agents of 'Mozad' conspired and brought him to Ernakulam police club and effected his arrest alleging that he agreed his role in this case. He further contended that his request for subjecting him to brain mapping was not accepted and that all the witnesses who have sworn to against him are false witnesses who deposed on the inducement teachings of NIA Officers.

72.. A4 contended that himself who is innocent was arrested due to his family relationship with Naseer, and threatened and induced to be an accomplice against Naseer and Madani and since he was not ready he was brutally beaten and was falsely implicated in almost all cases in which Naseer is an accused. He further contended that he has no previous acquaintance with PW1 and his deposition is false.

73.. A9 contended that Kerala Police had forced him to swear as witness against Abdul Nasar Madani and Soofiya and when he was not ready, in that enmity he was falsely implicated. He also contended that A7 has sworn-to falsehood in court on account of the threat and inducement of NIA.

74.. Both sides were heard under Section 232 CrI.P.C., but the accused were not acquitted.

75.. On the defence side Dws 1 to 3 have been examined and Exts.D1 to D26 marked.

76.. Heard both sides under Section 234 CrI.P.C.

77.. The points for determination are:

1. Have the accused persons or any of them entered into a criminal conspiracy to plant and explode bombs in the KSRTC and Mofussil bus stands at Kozhikode as alleged?
2. Has A1 in furtherance of the conspiracy procured materials for making bombs and manufactured bombs as alleged?
3. Has A1 in furtherance of the conspiracy transported bombs to Kozhikode city and then got the accused persons

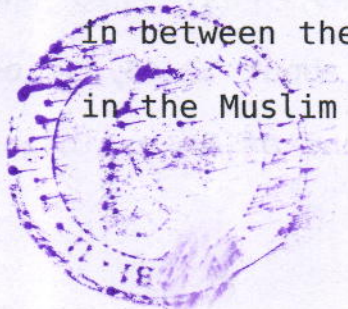
despatched into two separate teams as A2 along with A6 and A8 as also A1 along with A4 and A9 as alleged?

4. Have the accused persons in furtherance of the conspiracy after formation of the teams placed bombs at KSRTC Bus stand and Mofussil bus stand as alleged?
5. Have the bombs thus placed exploded causing injury to persons and damage to property as alleged and excited disaffection to any Government established by law in India as alleged or attempted to create communal disharmony and feelings of enmity between different religious communities?
6. Have the accused persons or any of them committed the 'terrorist act' as defined in Section 15 of the UAP Act and offences under Sections 3 to 5 of Explosive Substances Act?
7. What are the offences, if any, committed by the accused?
8. If found guilty, what shall be the sentence?

78.. Point Nos. 1 to 7 considered together:

In the facts of this case in order that repetition of evidence during discussion may be avoided and for the sake of convenience, all these points can be considered together.

79.. The precise case of the prosecution is that the accused persons in the leadership of A1 entered into a criminal conspiracy in between the year 2002 and on 3.3.2006, out of their frustration in the Muslim accused persons involved in the IIInd Marad communal



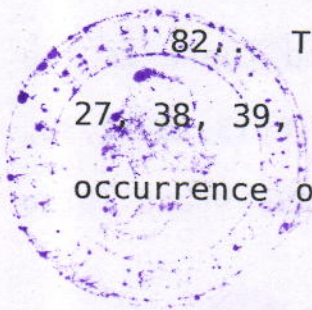
carnage not being let out on bail and as a mark of protest against the alleged partisan attitude of the Executive and the Judiciary in that regard, to disturb communal harmony and to create terror and panic to the common people and to exhibit disaffection towards the lawfully established Government of the Nation and to arouse feelings of enmity between different religious communities and in furtherance of the conspiracy A1 procured the necessary materials including gelatin sticks with the help of A2, A6 and A8 and manufactured bombs and with the help of the accused persons got divided into two groups, placed the bombs at Kozhikode KSRTC bus stand and Mofussil bus stand at noon on 3.3.2006 and both the bombs exploded resulting in injury to persons and damage to property and creating terror in the people and thereby committed the offences.

80.. As in every prosecution the entire burden of proof is on the prosecution and the same is also heavy, proportionate to the gravity of the offences alleged. The question is how far the prosecution has succeeded in discharging the burden. Before searching for the evidence connecting the accused with the alleged bomb blasts, let me first examine the evidence proving the blast itself.

81.. Regarding the blast at KSRTC bus stand there is the deposition of occurrence witnesses such as PW5, PW9, PW28 and PW35. PW5 Guard of the KSRTC bus stand has at about 12.45 p.m on 3.3.2006 while in his office heard the huge sound of an explosion

which he came to know was a bomb blast where a pit was also seen formed. PW9 who was waiter at Sagar Hotel situated on the western side of the KSRTC bus stand while being on his duty on the said date and time heard the huge sound of an explosion from the adjacent KSRTC Bus Stand and when in his anxiety he went out and looked he could see smoke and dust rising. PW28 Additional SI, Nadakkave Police Station, Kozhikode who was on law and order duty on 3.3.2006 consequent on getting information from his C.I Abhilash (PW35) that somebody had planted bomb at KSRTC bus stand accompanied the C.I to the KSRTC bus stand and by about 12.45 p.m when he reached near Sagar Hotel he heard the fierce sound of an explosion and also saw smoke. PW35 C.I of Police Nadakkave who at about 12.30 p.m on 3.3.06 received information from the North Assistant Commissioner that the RDO had, from the Collectorate, conveyed information that somebody had planted bomb at KSRTC bus stand, proceeded to the spot along with PW28, has, by rendering corroboration to the version of PW28, stated that when himself and PW28 on their way to the KSRTC bus stand reached near Sagar hotel, there occurred a fierce explosion inside the compound of the KSRTC and when they advanced further to the place of occurrence there was heavy smoke and dust and he also heard the sound of window glass panes of Sagar hotel falling down and getting broken.

82. There is the further statement of witnesses such as PWs 27, 38, 39, 40 and 42 who have reached the scene shortly after the occurrence of the blast. PW27 Assistant Commissioner, Kozhikode



North within whose jurisdiction fell both the bus stands and who was by about 12.30 p.m on 3.3.2006 informed by ADM, Kozhikode that a bomb was planted in the KSRTC bus stand as per anonymous telephone call received, after informing C.I Abhilash and the other officials had though proceeded to the KSRTC bus stand reached the bus stand only after 12.45 p.m by which time the blast had already occurred there and consequently visited the place of occurrence and saw an assembly of persons and policemen there. PW38 Principal S.I., Kasaba Police Station, Kozhikode and team while on patrol duty at about 12.45 p.m on 3.3.2006 on getting wireless information that a bomb explosion had occurred at the KSRTC bus stand immediately rushed to the bus stand and reached there, saw and identified the place of occurrence which was seen scattered with rubbish. PW42 Police Constable in Kozhikode City Bomb Squad on getting information of the blast rushed to the KSRTC bus stand along with his companion Constable Ashby and both of them helped C.I Abhilash to collect the MOs. PW40 Assistant Photographer to PW39 City Police photographer had on instructions taken Ext.P50 series 18 photographs of which Exts.P50(l), P50(m), P50(n), P50(o), P50(p) and P50(q) are scenes from the KSRTC bus stand photographed by him in between 1.45 and 2 p.m on the date of occurrence, Ext.P51 series being negatives.

83.. Regarding the blast at Mofussil bus stand there is the statement of occurrence witnesses such as PWs 6,7,8,13,15,37,38, 41 and 42. PW6 who was Grease man at the Mofussil bus stand (also

known as new bus stand or private bus stand) has stated that at about 1 p.m on 3.3.2006 some policemen who came in a jeep in a hurry jumped down and shouted that a bomb was planted in the bus stand and ordered everyone to quit the place. On search for the bomb a black plastic cover was detected as placed at the southern part of the stand and when on the apprehension that it was bomb, people ran away from that place, the cover exploded with the sound of a cracker and smoke was rising to a height of about 3 meters also causing damage to the stone construction nearby.

84.. PW7 Porter at the Mofussil bus stand has in corroboration to the version of PW6 testified the arrival of the police jeep, the mike announcement, the search for the bomb, the detection of black polythene cover at the south-eastern part of the bus stand near the drain and its explosion at about 1.05 p.m in huge sound and smoke also causing injury to one police constable (PW13) and a porter by name Ashraf (PW37). PW13 porter at the Mofussil bus stand is the person injured in the occurrence of the blast. At about 12.45-50 p.m on 3.3.2006 while he was engaged in his work he had witnessed the arrival of the police team through the western gate and making mike announcement to persons to quit and on the search that followed near the heap of rubbish on the south eastern part of the bus stand detected a black plastic cover and though police asked the people nearby to run, by the time when the witness reached 15 feet away from the cover it exploded whereupon a chip pierced into his hand and

injured him. PW15 porter employed at the Mofussil bus stand who is also a witness to Ext.P16 scene mahazar has by rendering full corroboration to the version of the above witnesses asserted the fact of the arrival of the police team, the mike announcement, hearing of the sound of blast and the collection of the materials by the police from the scene.

85.. PW8 Freelance photographer who at the said place and time was awaiting his friend Hari coming from Thrissur also witnessed the arrival of the police team and the mike announcement, detection of the black plastic cover which within moments exploded and smoke rising to a height of 15 feet. He had his camera with him and he took Ext.P10 series photographs of different scenes including picture of the said plastic cover just before the blast.

86.. PW37 a police constable at Kasaba Police Station, Kozhikode engaged in law and order duty in the Mofussil bus stand on 3.3.2006 had sustained injury in the blast. On receiving information at about 12.45 p.m that a bomb blast had occurred at the KSRTC bus stand and that a bomb was planted at the Mofussil bus stand, when himself and team were evacuating the area by making announcement, on the search conducted a black plastic cover standing erect was seen near the waste water drain on the south-eastern corner of the bus stand and by about 1.05 p.m the cover exploded in huge sound and some article thrown on the explosion hit him and he sustained burn injury on his right hand muscle and

right upper thigh and was subjected to medical treatment.

87.. PW38 who as stated above while at the scene of the blast at the KSRTC bus stand had received information from two persons who introduced themselves to be reporters of 'Calicut Times' that bomb was planted also at the Mofussil bus stand whereupon himself after informing CI Abhilash proceeded to the Mofussil bus stand and when they reached there by about 12.55 p.m police mike announcement was going on. The witness took part in evacuating people. On a search for the bomb a black plastic carry bag seen atop the stone construction adjoining the waste water drain at the south eastern part of the bus stand which was suspected to be bomb, blasted at about 1.05 p.m in huge sound creating smoke to a height upto 20 metres and scattering pieces of cloth, plastic, battery etc. PW42 who heard the news of explosion at the Mofussil Bus Stand while being present at the KSRTC Bus Stand rushed along with his companion Ashby to the Mofussil Bus Stand and noted the place of occurrence which is adjoining the drain at the south-eastern part of the bus stand where also he helped the CI to collect remnants of the blast such as battery, piece of red wire, black plastic pieces, pieces of white gunny and steel fragments.

88.. PW41 Town CI holding additional charge of Kasaba circle on getting information that bomb blast had occurred at KSRTC bus stand and there was chance for explosion at Mofussil bus stand proceeded with his team to the Mofussil bus stand and on their

way when they reached Stadium junction he heard a huge sound of explosion on the premises of the Mofussil bus stand at a distance of about 150 metres and on reaching the spot he conducted further search for explosive but could not get any. It is PW41 who prepared Ext.P16 scene mahazar and also collected remnants of the blast in M01 series five packets and produced it in court under Ext.P52 form. PW27 who as stated above while cordoning the scene at the KSRTC bus stand on hearing the news of explosion at the Mofussil bus stand proceeded to the Mofussil bus stand and reached there by about 1.10 p.m shortly after the blast and inspected the place of occurrence which is the south-eastern portion of the bus stand adjoining the waste water drain.

89.. PW40 as stated above had taken photographs of the scene of the blast at the Mofussil bus stand marked as Exts.P50, P50(a), P50(b), P50(c), P50(d), P50(e), P50(f), P50(g), P50(h), P50(i) and P50(k), Exts.P41 series being the negatives.

90.. There had been little challenge to the factum of blast at both the sites as could be satisfied from the trend of cross examination of the aforesaid occurrence witnesses. However while cross examining PW42 police constable, Kozhikode City Bomb Squad who helped PW41 CI to collect remnants of the blast it was pointedly suggested that two country bombs recovered from Pannimukku in the morning on 3.3.2006 were brought to the place of occurrence in this case and deactivated there and it is the parts of such deactivated bombs that were collected as samples in this

case. Though the witness admitted recovery of the country bombs he strongly denied the other consequential suggestions. In view of the aforesaid picturesque and convincing ocular evidence of the occurrence of the blast at both sites which no one except virtual witnesses who experienced the blast alone could describe, it is idle for the defence to contend that no such blasts had occurred at all; I conclude that the twin blasts alleged by the prosecution had occurred.

91.. Coming to the components of exploded bombs, PW35 CI had collected remnants of the blast from the site near the KSRTC bus stand as is also described in Ext.P11 scene mahazar. Himself has also collected M02 series broken glass pieces of window glasses of Sagar Hotel nearby as described in the same mahazar. PW41 C.I had also collected M01 series, 5 items of remnants of the blast from the site at the Mofussil bus stand as is described in Ext.P16 mahazar.

92.. PW35 who collected items 1 to 3 from the place of explosion at the KSRTC Bus Stand produced the same in court under Ext.P85 form. M01 series being the 5 items from the Mofusil Bus Stand were produced in court under Ext.P52 form. PW53 had filed Ext.P67 and Ext.P68 forwarding notes for sending items including 1 and 2 from the three in Ext.P85. In Exts.P86 and P87 reports of chemical examination obtained from State Forensic Science Lab only the presence of Potassium Chlorate, Ammonium powder, Sulphur and Carbon was confirmed. After the NIA has taken over investigation

when PW58 in the course of his investigation gathered information also by questioning A7 Approver and others that some high explosive such as gelatin stick was used for the explosions, in order to verify the true nature of the explosive used, he sought further examination of the remnants received back in court from State Forensic Science Lab as also the remnants produced in court but not forwarded to the State FSL. He also sought examination of one more item being the 6th item collected by ASI of bomb squad on 8.3.2006 from the place of explosion at Mofussil Bus Stand which was under guard.

93.. Accordingly as per order dated 6.3.2010 in CrI.M.P 304/2010 and 305/2010 filed by NIA for sending the said remnants and item to the CFSL, New Delhi for proving the presence of gelatin sticks in the manufacture of the bombs, the remnants of the blast collected from both the sites were forwarded from this court to the Director, Central Forensic Science Lab, CBI, New Delhi through PW57 Ravi Gambir for further examination. Exts.P88 and P89 are the copies of the two forwarding notes filed by PW58 in this court in that regard. Thereupon Ext.P61 report prepared by PW47 and Ext.P62 report prepared by PW48 proving the presence of the Nitroglycerin, Nitrocellulose and Ammonium Nitrate in the contents collected from both sites, which substances are components of ammonium gelatin/gelatin sticks which is an explosive substance, were obtained, thus clinching the fact that the bombs which exploded at both the sites were made of gelatin

sticks.

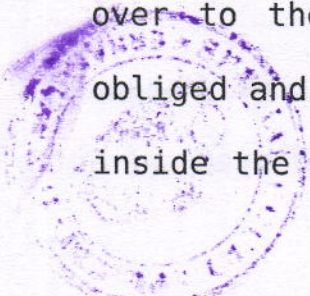
94.. The prosecution case is that it is A1 who prepared the bombs at Kannur then carried it to the the Kozhikode Markas Mosque where all the accused excepting A3 assembled and then on the instructions of A1 they were divided into two groups and thereafter the bombs were placed by the respective groups at the sites paving the way to the blasts.

95.. It is time to sift the evidence of PW1, the approver. Even before that task it is to be attorned that this is a case in which there is no sufficient reliable direct evidence, say statement of eye witnesses in proving the planting of bombs. Precisely that is the reason why the prosecution has heeded to the request of A7 to become approver and then took steps for recording his statement for that purpose. The said A7 to whom conditional pardon was tendered under Section 307 CrI.P.C. as accepted has been examined as PW1. In the facts and circumstances of the case before searching for the amount of circumstances appearing in evidence against the accused, it would be desirable to first of all deal with the deposition of the approver and then if his deposition is sufficient to stand test, of reliability as in the case of every other ordinary witness, then if necessary a search for corroboration by means of independent evidence, be it direct or circumstantial can be made.

96.. PW1 is a native of Parappanangadi in Malappuram District presently not employed, but previously employed in Gulf.

He had studied upto Degree, but did not pass. He claimed to know the accused present in court - A1, A3, A4 and A9 - as also A2, A6 and A8. He clarified that his acquaintance with A1 was as introduced by his neighbour Abdul Rahim who was not having any employment and who was subsequently killed in Kashmir. He became acquainted with A1 for the first time at Srampia Mosque near his house. A1 was introduced during the last part of 2005 stating that he was a person taking Thareequath classes. The witness had also attended 10 or 12 Thareequath classes at Parappanangadi and Chettipady. Subsequently he had seen A1 two or three times. A1 had also called him over telephone. His telephone number was furnished by Rahim. He lastly saw A1 on 3rd March 2006. On 2.3.2006 A1 had called him over phone and asked him to collect telephone numbers of Kozhikode Collectorate, Calicut Times and SP Office from the Internet. A1 had also asked him to instruct A9 to call him over telephone. The witness passed the message to A9. But he did not trace the telephone numbers as requested by A1. On 3.3.2006 A1 again called him over telephone by about 10.30 a.m and required the telephone numbers. Then he replied that those telephone numbers were available in book stalls.

97.. The witness was on his way to Kozhikode Logic Software Solutions to attend computer class. A1 had also asked him to go over to the Kozhikode Markas Mosque. Consequently the witness obliged and when he reached the Mosque six persons were seen there inside the church near the staircase such as A1 Naseer, A9 Yusuf



and four others who were introduced by A1 Naseer as Fayiz (A6), Ashar (A2), Shafas (A4) and P.P. Yoosaf (A8).

98.. There were two black big polythene covers which A1 told to be bomb manufactured by him at Kannur and brought from there. A1 also said that it was intended to be planted at Kozhikode Mofussil Bus Stand and KSRTC Bus Stand as a mark of protest on the issue of Muslims not being bailed out in Marad incident. A1 then divided the persons into two groups, one group comprising A1, Shafas and Yusuf and the other group consisting Fayiz, Ashar and P.P. Yoosaf.

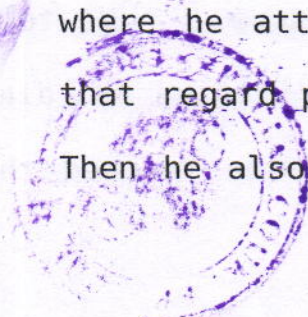
99.. PW1 was instructed to telephone for Calicut Times and inform the matter of planting the bombs. The teams departed carrying the bags. PW1 proceeded to telephone booth at Gulf Bazar which is hardly 500 meters away from the Mosque. Time was 12.30 noon. In the telephone booth he used coin box facility and called to Calicut Times. A lady had attended the call. He told her that they have planted bombs at Kozhikode Mofussil Bus Stand and KSRTC Bus Stand which will explode in five moments and also that it was as a mark of protest in Marad incident. He did not care what the lady said and he disconnected the phone.

100.. From there, as per earlier instruction of A1 he went to the Pattalam Mosque hardly 300 meters away from the booth. When he reached there A1 was seen outside the Mosque. He told A1 that he had to attend Spoken English class at Stadium building which is considerably far from the Mosque. When he reached the

class he heard people saying that bomb blast had occurred at two places in Kozhikode.

101.. Subsequently in January 2008 PW1 had gone to Gulf for employment. He returned in October 2008. After a month he again went to Gulf. Subsequently he returned only in March 2010 through the Nedumbassery Airport. At the Airport the NIA police had caught him. They took him to the Kozhikode Guest House. On the next day he was produced in this court. On that day he had filed Ext.P1 written petition in this court 'requiring to make him an accomplice. Subsequently on 31.3.2010 his Ext.P2 statement was recorded by Judicial First Class Magistrate. He appeared before the Magistrate on summons. Subsequently on 2.9.2010 he again filed Ext.P3 petition in this court to make him an accomplice.

102... At the time when he was caught by the police his bodily search was conducted, Ext.P4 being the search memo dated 19.3.2010. All the documents in his possession such as his passport, Ext.P5 leave application sanctioned from his employer, Ext.P6 plane ticket were seized by the police. He was also given in police custody for three or four days. During police custody he was required to show the various places to which he had gone, which he obliged. He agreed to show the Markas Masjid, the Pattalam Mosque, the coin box booth at Dubai Bazar, the place where he attended computer class and Spoken English class. In that regard police had also prepared Ext.P7 memo dated 24.3.2010. Then he also showed to the police all the said five places, for



which also police had prepared a memo. He also stated that this court has passed order making him an accomplice.

103... During cross examination by learned counsel for A1 and A4 PW1 revealed that he know to speak in English without difficulty and was also able to grasp English spoken to him. He admitted that during Ext.P1 confession he was in the custody of NIA. From the Airport he was directly taken to the Kozhikode Rest House. His younger brother Shafaz was also with him as per his own request. He disclosed that he had stated to the Magistrate everything in his knowledge in his Ext.P2 statement. He admitted that before the Magistrate he had not stated that while talking to Calicut Times he had revealed them regarding the Marad case. The reason for the omission is also disclosed by him. While swearing before the Magistrate he did not remember that.

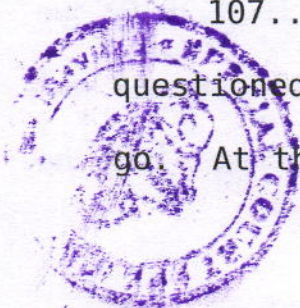
104.. When he was specifically asked as to why after filing Ext.P2 petition on 20.3 in court again filed Ext.P3 petition in court, he stated that he thought that he could thus be filed. At that time his younger brother had come to court. When the brother was consulted he advised him to file one more petition. Since his first petition was not considered by court he again filed the petition on the request of his younger brother. He was not aware of the order passed by the court on 20th itself in Ext.P1.

105... His arrest was recorded at 10 a.m. on 19.3.2010. He explained that his statement before the Magistrate that he was not in the custody of NIA before recording his arrest is true since he

thought that it was not custody. He further disclosed that when he was taken to the Magistrate for recording his statement he was not in the custody of NIA. He was taken to the Magistrate by escort policeman. He also disclosed that on producing him in this court, for two days he was in judicial remand and he was given to the custody of NIA for three or four days only thereafter. He had filed Ext.P1 in court by himself when the court wanted him to put in writing what he wanted to state and the petition was posted to another date for hearing him. He further disclosed that though in Ext.P1 he had written that he was revealing his role as well as the role of others who were along with him, he disclosed those details only before the Magistrate. He also stated that he did not tell to the Magistrate the telephone number of A1 and that A1 had called him from a telephone booth to his mobile phone.

106... He stated that for reaching Gulf Bazar from the Markas Masjid he took about 10 to 15 minutes. 3rd March 2006 was a Friday. It was time for the people to assemble for the Juma. People used to be present inside and outside the Mosque. Juma will be after Qutuba so that people who came for the Qutuba could also be available for the Juma. If there is much crowd, Juma was held even on tar roads. He stated that he had met A1 and team in the Mosque not during the Juma time but previous to that.

107.. Before he was arrested by NIA, Kerala Police had questioned him. On 19.3.2010 he was questioned and then let to go. At that time he did not disclose to the police about his role



in the offence. He also disclosed the reason; he was traced by the police to be questioned on the basis of some drawing/pictures prepared/issued during investigation. Subsequently he thought that he must tell in court the truth. That is why he filed Ext.P1. Previously he also did not choose to approach the Magistrate to disclose the truth for the reason that he was afraid of Al Naseer and allies. It is subsequently thereafter he went to Abudabi and then returned on leave. He also admitted that he made the confession on the strength of persuasion from his younger brother. Himself is a firm believer in Islam. Hiding the truth is unIslamic. Islam values truth the most.

108.. During further cross examination for A3 the witness clarified that after about two weeks of the occurrence in this case CW33 Xavier had summoned him and examined. During his investigation on the satisfaction that he had no role he was let to go. He also clarified that during the course of investigation on the understanding that some phone call had gone from some booths, the Investigating Officer had shown him to some attenders of booths and they stated that the witness was not the person who telephoned and he was hence let to go. He denied the defence suggestion that as on the date of occurrence and as on today there was no such a telephone booth in existence to which the witness had gone from Markas Mosque and telephoned. The Markas Masjid is at about 100 to 150 meters south of the Mofussil Bus Stand. On the date of occurrence the witness had participated in

the Juma in the Mosque near the stadium which is near his spoken English class. He denied the pinpointed defence suggestion that he has been made to depose as a witness against the accused on the pressure tact exerted by his own brother, consequent on the threat of the NIA officials that the brother would be made an accused in SC 1/2010. He conceded that while he was in Gulf on one occasion the NIA officials had talked to him over the telephone of his brother. His version is that while talking to the Office of the Calicut Times over telephone he did not say that the bomb would explode within $\frac{1}{2}$ an hour. He also conceded that he did not hear the sound of explosion of the bomb within five minutes of his telephone call. He only heard the news of the explosion from the talk of others. He also conceded that inside the bags he had not seen bomb but that Al Naseer has stated that it was bomb.

109.. During further cross examination for A9 PW1 disclosed that his ordinary language of communication is Malayalam and is not much fluent in English. He also clarified that while recording Ext.P2 statement Magistrate did not require him to speak-out in English. It was in Malayalam that the Magistrate put questions to him to ascertain the voluntariness of his version. When challenged with further question as to why he spoke out before the Magistrate in English he disclosed that he went to the Magistrate to speak out in English and there is no specific reason for that. He had also by himself prepared statement in English and it is thereafter he went to the Magistrate. He conceded that

Officers of the NIA who are not Malayalees were talking in English. He also conceded that before Ext.P2 statement his statement was recorded by NIA, though he does not remember whether that was in English. However he denied the pointed defence suggestion that the NIA had given him a statement in English which the witness learned by-heart and spoke it out before the Magistrate.

110.. He also denied another defence suggestion that he is swearing falsehood on being afraid that the NIA will again implicate him in some cases. However he conceded that he knew that in case he deviates from Ext.P2 version given before the Magistrate he would again be an accused in this case. While he was in Gulf he had the knowledge that he was an accused in this case and his whereabouts were being enquired and the news had appeared in T.V. and news papers. But he never expected the court to be exempted from the case. He only wanted to state the truth. He also denied the defence suggestion that since there was no other evidence available against the accused persons the witness was made an accomplice and stated that he did not know whether there was evidence or not and that he gave the statement in his own volition.

111.. The witness stated that in Markas Masjid on Fridays thousands of people assemble. When he reached the Masjid there were only about 10 to 15 persons. Previously also he had gone to the church on Fridays during Juma time. People seen in the church

were in North Indian dress such as Kurtha. It is people belonging to 'Thareequath' and 'Thabaleeg' who wear such dress. 'Thareequath' and 'Thabaleeg' people are in utter enmity with the fraction led by A.P. Aboobacker. Since this Mosque is within the town all sects of Muslims used to come there.

112.. The witness further pointed out that for about a month he has been residing at Palarivattam. This is on account of his requirement in the bail order that he shall be available in Ernakulam. He denied the defence suggestion that he was in custody of NIA for two or three days just preceding his examination in court. He also denied the suggestion that all the details stated by him are false. During re-examination PW1 clarified that on 3.3.2006 he attended the Juma in the Mosque near the stadium. He reached there just before the prayer which was scheduled to commence by 1 p.m. He also stated that the Malayalee S.P. Rajmohan of NIA was talking in Malayalam. He further explained that the telephone booth where from he telephoned was situated on the right side of the way called Bank Road when he was proceeding to the booth from Markas Masjid. He also disclosed that when he was questioned by the local police he was not implicated as an accused. His brother only persuaded him to state truth. On the next day when he appeared before the Magistrate he was let to go. His statement was recorded only on the next day, that is on 31.3.2010. During further cross examination by learned counsel for A3 when he was challenged whether his claim that the

telephone booth was located on the road side of the Bank Road, he clarified that the booth was shown to the NIA and he could not state the same in his statement.

113.. Though learned counsel appearing for A3 put some questions to some of the witnesses regarding the names of various roads in Kozhikode and the exact location of the Markas Mosque, Pattalam Mosque and telephone booth and tried to make some confusion therefor and regarding Gulf Bazar and Dubai Bazar which according to PW12 are one and the same, a reading of the deposition of PW1 would indicate that nothing serious was suggested to him regarding the topography.

114.. As every other witness the statement of an approver also requires consistency and personal corroboration in order that he may be found credit-worthy and his version reliable. His claim that when he was produced in this court for the first time on 20.3.2010 he filed application to be an approver is true. He is seen to have filed Ext.P1 petition (Criminal M.P 437/2010). On 31.3.2010 his Ext.P2 statement was got recorded through Judicial First Class Magistrate. Again on 2.9.2010 he filed Ext.P3 petition. NIA also filed Criminal M.P. 735/2010. It is on the strength of these material that order dated 2.9.2010 granting conditional pardon was passed and conditional pardon was tendered to him which he accepted, based on which he has been examined as the first witness for the prosecution.

115.. As rightly claimed by PW1 he was arrested on 19.3.2010

by PW58. Ext.P4 the search memo regarding his bodily search under which Ext.P5 leave sanction letter from his employer, Ext.P6 plane ticket, his passport etc. were seized from him corroborates his claim in that regard. The deposition of PW36 Judicial First Class Magistrate-I, Ernakulam would show that he had lawfully recorded Ext.P2 statement of PW1. Ext.P45 is the report filed by him in that regard. A reading of his deposition would further show that before recording Ext.P2 statement he had taken all the precautions necessary for the recording of the confessional statement.

116. It was then argued by learned counsel for A9 that Ext.P2 statement has been given by PW1 in English and it can be inferred that what was stated by the NIA officials who have been using English as their medium of communication had tutored him in English which he learned by-heart and reproduced it before the Magistrate. But this argument at once falls to ground. PW1 himself has sufficiently explained that though his vernacular and the ordinary language of communication is Malayalam and he is not well fluent in English, it was since the NIA officials who questioned him and asked him in English he was also mentally prepared to speak to the Magistrate in English and that is why Ext.P2 was given in English. He has studied upto B.Com. and had worked in Gulf." After being in the police custody of NIA PW1 was produced back in this court and was sent to judicial custody. It is while continuing in judicial custody that he was on the orders

of the Magistrate produced from prison and examined under Section 164 CrI.P.C. on 31.3.2010. PW1 himself has stated that as in Malayalam he can express himself in English though not so fluently and he had mentally prepared to speak to the Magistrate in English. Equally he has proved his eminence in Malayalam regarding the same version during his examination as PW1 in this court.

117.. It was argued by learned counsel for A3 that within days of the occurrence Kerala Police had questioned PW1 and he was also shown to be identified by some attenders of telephone booth but could not be identified and he was let to go and hence the present case of the prosecution that it is PW1 him who has actually telephoned to Calicut Times from the coin box telephone booth of PW12 is a fabrication not to be accepted. True PW1 has in the course of cross examination by learned counsel for A3 admitted that he was summoned by PW53 and examined and the telephone booth attenders could not also identify him. But it is not clear whether the attenders of telephone booth who were asked to identify PW1 were the attenders of the telephone booth of PW12. There was no suggestion made either to PW1 or to PW12 or to PW53 that the attenders of the booth who were asked to identify PW1 were the attenders of the telephone booth of PW12. In the absence of even such a suggestion there cannot be any conclusion or inference to favour the defence in this regard.

118.. A reading of the deposition of PW1 and his Ext.P2

statement given before PW36 the Magistrate would show that the latter sufficiently corroborates the former. There is sufficient coherence, consistency and co-ordination in his version as PW1. A reading of the evidence of the approver and the corroborative circumstances noted above is sufficient to find that he passes the test of credibility and the story told by him which also involves himself is intrinsically probable. But the question is, how far his version as to the participation and involvement of A1, A4 and A9 is corroborated by independent evidence from other sources or proved facts and circumstances.

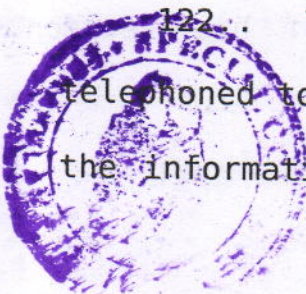
119.. The evidence of an approver is proverbially and presumptively unreliable. An approver is a criminal who has purchased his liberty by betraying his friends. Though a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice as laid down by Section 133 of the Indian Evidence Act; illustration (b) to Section 114 of Indian Evidence Act highlights the principle that an accomplice is unworthy of credit unless he is corroborated in material particulars. The corroboration needed is not personal corroboration, but corroboration by independent evidence or proved facts or proved circumstances. Evidence of the accomplice need not be corroborated on all circumstances of the case or in every detail of the crime. Corroboration that is insisted must be sufficient as to material circumstances of the crime and the identity of the accused persons. Such corroboration need not be

by direct evidence.

120.. It is the further case of PW1 that while he was in the custody of NIA for three or four days he had agreed to the police to show Markas Masjid, Pattalam Mosque, Coin Box Booth at Dubai Bazar, the place where he attended computer class and Spoken English class, recorded in Ext.P7 disclosure memo dated 24.3.2010 signed by himself, PW58 and witnesses. Available records would show that though on 20.3.2010 itself PW1(A7) was remanded to judicial custody, subsequently on the strength of order dated 22.3.2010 in CrI.M.P. 408/10 he was given to police custody for three days which corroborates the claim of PW1.

121.. PW58 has stated that after recording Ext.P7 disclosure memo, PW1 showed to him computer institution by name Logic Software Private Limited situated on the second floor of Darusalam complex to where he was led by PW1 himself. The deposition of PW10 who is the person conducting computer training institute at Darusalam Complex at Mavoor Road and Ext.P13 registration form signed by PW1 while being admitted to the institute by the witness is sufficient to find that the version of PW1 as approver that he was attending computer classes as claimed by him is true. PW10 has also stated that he had identified Shammi Firoz when he was brought to his institute on 23.4.2010.

122.. The further case of PW1 that it is himself who had telephoned to Calicut Times at about 12.30 p.m on 3.3.2006 passing the information as to the planting of the bomb at the KSRTC bus



stand from a telephone booth at Dubai Bazar is sought to be corroborated by the deposition of PW12 who stated that he was looking after the booth which belonged to his brother-in-law Mohammed Mustafa who had gone to Gulf. The booth had two landlines with Nos.2766010 and 2765869 and two coin boxes with Nos.2368653 and 2361583. Ext.P30(b) entry proved through PW31 would show that at 12.33 hours on 3.3.2006 there was a call made from the said coin box 2368653 to telephone No.2700834 of Calicut Times which lasted for 40 seconds. The figure 495 appearing before the telephone No.2368653 is the STD Code of Kozhikode. The said call which is proved to have been made as per record is shown to have been made by PW1. That is precisely the reason why he could state that there was such a call made. The statement of PW1 in Ext.P7 disclosure memo that "I can show and point out the coin box booth in Dubai Bazar if taken to that place from where on 3.3.2006, I had rang up 'Calicut Times' News paper office, Kozhikode at about 12.30 Hrs as per the directions of Naseer intimating planting of two bombs at KSRTC and Mofusil Bus Stand at Kozhikode" is thus proved to be genuine. He has shown to PW58 the place where the coin box booth was kept outside the shop wherefrom on 3.3.2006 he had rung-up Calicut Times News Paper office though the booth was not seen there. The entry in Ext.P30(b) stated above sufficiently guarantees the truthfulness of his version. The fact that there had been such a call at the said time to Calicut Times is stated by PW4 Shidha who attended the call.

123.. A reading of the claims of PW1 and PW4 in regard to the content of the call would show that the version of both of them is substantially the same except perhaps the time element within which the bomb was stated to explode which according to PW1 was "within five minutes" which also is the version of PW4 in court but which when appeared as news item in Ext.P9 paper at her hands was "within half an hour" for which also there is sufficient explanation from PW4 acceptable by court.

124.. As agreed in Ext.P7, PW1 also showed to PW58 the Markas Mosque near Calicut Tower being "the place where on 3.3.2006 he was asked by Naseer over phone to reach and meet him for some work, where I had met Naseer, Yusuf Chettipady, Shafas, K.P Yusuf, Faiz and Ashar, saw bombs in their possession, directions given by Naseer to them for placement of the said bombs and to him for intimating the "Calicut Times Newspaper".

125.. In Ext.P7 disclosure memo PW1 had also agreed to "show and point out the Pattalam Mosque if taken to that place where they all were supposed to meet after completion of the assigned work relating to placement of bomb and intimation over phone to Calicut Times News paper and Kozhikode Collectorate."

126.. The version of PW1 himself and of PW58 is that accordingly PW1 had shown to PW58 the entry of Pattalam Mosque. Subsequently as per the version of PW58, PW1 had also shown to him the place where he attended the Spoken English class on 3.3.2006 after going to Pattalam Mosque. PW1 being a witness to the



prosecution though an approver, his version in Ext.P7 does not have any taint of threat, inducement or promise for its admissibility. All the aforesaid institutions are places to where PW1 had gone on 3.3.2006 in the course of the transaction of planting of the bombs. His versions in Ext.P7 disclosure memo and Ext.P25 pointing out memo perfectly tally without room for any variation or discrepancy. His version in court as PW1 is also the same as given in Ext.P2 statement. Thus on an evaluation of the deposition of PW1 approver in this court it is sufficiently satisfied that there is the necessary corroboration rendered by his own Ext.P2 previous statement recorded by the Magistrate under Section 164 Crl.P.C on 31.3.2010 which itself has got a mark of judicial sanctity when compared to the statements recorded by the investigating agency under Section 161 Crl.P.C. and is on a higher pedestal as capable of being used for corroboration as well under Section 157 Indian Evidence Act in addition to contradicting the witness as provided in Section 145 Indian Evidence Act. There is also the further support to his version lent by all the circumstances aforesaid. His deposition is also seen to be of such a unique nature without being tainted by stint of any contradiction or omission of any material aspect, thus clinching the fact that he is a truthful and reliable witness and his deposition in court on oath is the true and correct version of what had really transpired on 2.3.2006 and 3.3.2006. Since the cloud of suspicion that is normally attached to an accomplice is

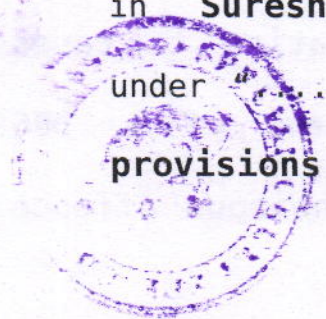
thus removed there is nothing wrong in accepting his own version proving involvement of the accused referred to by him as true and acting upon it without any further search for corroborative material to establish connection and involvement of those accused persons as indicated in Section 133 Indian Evidence Act.

127.. Tendering pardon to an accomplice is with the object of obtaining evidence in heinous crimes committed by several persons which otherwise would not be obtainable. In **Suresh Chandra Babri v. State of Bihar** reported in AIR 1994 Supreme Court 2420 the Hon'ble Supreme Court pointed out in para 42 that "42.. Section 306 of the Code (CrI.P.C) lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure. Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in S. 306 of the Code. The object of S. 306 therefore is to allow pardon in cases where heinous offence

is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that S.306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence."

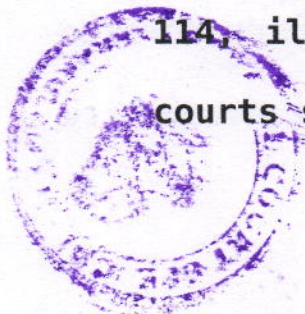
"33.. But where the suspicion is removed and the evidence of an approver is found to be trustworthy and acceptable then that evidence may be acted upon even without corroboration and the conviction may be founded on such a witness."

128.. Regarding the aspect of legality of conviction solely based on the accomplice's evidence and the requirement of corroboration if any necessary the Hon'ble Supreme Court has held in **Suresh Chandra Babri v. State of Bihar** vide para 43 as under it would be appropriate to make reference to the provisions of Section 133 of the Evidence Act which deal with



the testimony of an accomplice. It contemplates that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The first part envisages that an accomplice, in other words, a guilty companion in crimes, shall be a competent witness while the second part states that conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice. But if we read S. 133 of the Evidence Act with illustration (b) of S. 114 of the Evidence Act it may lead to certain amount of confusion and misunderstanding as to the real and true intention of the Legislature because quite contrary to what is contained in Section 133 illustration (b) to S.114 of the Evidence Act lays down "that an accomplice is unworthy of credit, unless he is corroborated in material particulars". A combined reading of the two provisions that is S.133 and illustration (b) of S.114 of Evidence Act go to show that it was considered necessary to place the law of accomplice evidence on a better footing by stating in unambiguous terms that according to S.133 a conviction is "not illegal" or in other words not unlawful" merely because it is founded on the uncorroborated testimony of an accomplice while accepting that an accomplice

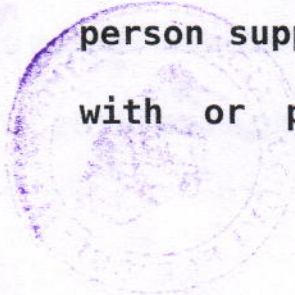
is a competent witness. But at the same time the Legislature intended to invite attention to the illustration (b) of S.114 of the Evidence Act with a view to, emphasis that the rule contained therein as well as in S.133 are parts of one and the same subject and neither can be ignored in the exercise of judicial discretion except in cases of very exceptional nature. However, the difficulty in understanding the combined effect of the aforementioned two provisions arises largely due to their placement at two different places of the same Act. It may be noticed that illustration (b) attached to S.114 is placed in Chapter VII of Evidence Act while S.133 is inserted in Chapter IX of the Act. The better course was to insert the illustration (b) to S. 114 as an explanation or in any case as a proviso to S.133 of the Act instead of their insertion at two different places and that too in different Chapters of Evidence Act. In any case since an approver is guilty companion in crime and, therefore, illustration (b) to S.114 provides a rule of caution to which the courts should have regard. It is now well settled by a long series of decisions that except in circumstances of special nature it is the duty of the court to raise the presumption in Section 114, illustration (b) and the Legislature requires that the courts should make the natural presumption in that section."



129.. As to appreciation of approver's evidence there is a classic decision by Bench of three Judges of the Hon'ble Supreme Court including Hon'ble Justice V.R. Krishna Iyer in Ravinder Singh v. State of Haryana reported in 1975 CrL. L.J. 765 held thus, "12.. An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of

involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

130... Rejection of the plea for bail of PW1(A7) after he accepted the conditional pardon tendered to him in this case was challenged by PW1 himself in the Hon'ble High Court in **Shammi Firoz v. NIA, Ministry of Home Affairs, Govt. of India, New Delhi (2011 CRL.L.J. 1529)** wherein the court held thus "9.. The object of the provision for tendering pardon to an accomplice is to get evidence in cases involving grave offences alleged to have been committed by several persons under circumstances making it difficult to get any evidence otherwise. No clue or trace of the offence might have been left behind by the perpetrators of the crime. The dominant purpose of pardon is that culprits behind such heinous and grave crimes do not go unpunished if a co-participant of the crime comes forward offering to make a clean breast of his own complicity as also the complicity of the other offenders. Evidence is accordingly collected by tendering pardon to a person supposed to have been directly or indirectly concerned with or privy to the offence. What is tendered is a

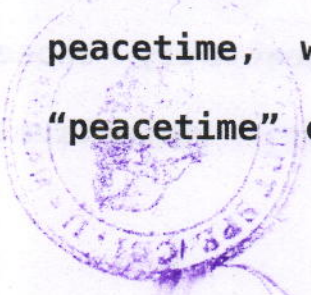


conditional"

131.. Most of the crimes are committed in secrecy, not to say of offences of the nature of 'terrorist acts'. The nature of evidence gatherable would largely depend on the nature of the offence, the method of preparation and the mode of commission adopted by the culprit. While searching for corroborative material in relation to the evidence of an accomplice the court has to adopt a practical approach. The twin bomb blasts involved in this case is alleged to be an act of terrorism. To quote from Hon'ble Lordships M.B. Shah, B.N. Agrawal and Arijit Pasayat from **Devender Pal Singh v. State of Delhi (AIR 2002 Supreme Court 1661)** "Menace of terrorism is not restricted to our country, and it has become a matter of international concern and the attacks on the World Trade Centre and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is. TADA is applied as an extreme measure when police falls to tackle with the situation under the ordinary penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case. As was noted in **Jayawant Dattatray Suryarao etc. etc. v. State of Maharashtra etc. etc. (2001 AIR SCW 4717)**, for finding out the intention of the accused, there would hardly be a few cases where there would be direct

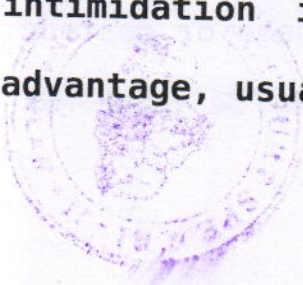
evidence. It has to be mainly inferred from the circumstances of each case. 2.. In *Hitendra Vishnu Takur and others v. State of Maharashtra and others* (1994(4) SCC 602) this court observed that "the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under Act or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity is to be one that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. It is in essence a deliberate and systematic use of coercive intimidation. "As was noted in the said case, it is a common feature that hardened criminals toady take advantage of the situation and by wearing the cloak of terrorism, aim to achieve acceptability and respectability in the society; because in different parts of the country affected by militancy, a terrorist is projected as a hero by a group and often even by many misguided youth. As noted at the outset, it is not possible to precisely define "terrorism." Finding a definition of "terrorism" has haunted countries for

decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agreed upon definition. Terminology consensus would, however, be necessary for a single comprehensive convention on terrorism, which some countries favour in place of the present 12 piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international counter measures. Cynics have often commented that one State's "terrorist" is another State's "freedom fighter." If terrorism is defined strictly in terms of attacks on non military targets, a number of attacks on military installations and soldiers' residences could not be included in the statistics. In order to cut through the Gordian definitional knot, terrorism expert A. Schmid suggested in 1992 in a report for the then UN Crime Branch that it might be a good idea to take the existing consensus on what constituted a war crime" as a point of departure. If the core of war crimes - deliberate attacks on civilians hostage taking and the killing of prisoners - is extended to peacetime, we could simply define acts of terrorism as "peacetime" equivalents of war crimes." 1. League of Nations



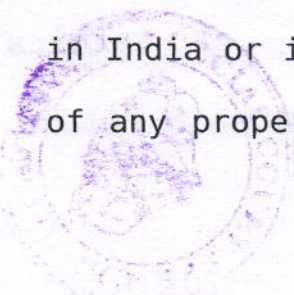
Convention (1937) "All criminal acts directed against a State along with intended or calculated to create a statute of terror in the minds of particular persons or a group of persons or the general public" (GA Res.51/210 measures to eliminate international terrorism).... **1 Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed:... 2.. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public a group of persons or particular persons for political purposes are in any circumstances unjustified whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."... 3. Short legal definition proposed by A.P. Schmid to United Nations Crime Branch (1992): Act of Terrorism – Peacetime Equivalent of War Crime. .. 4.. Academic Consensus Definition: "Terrorism is an anxiety inspiring of repeated violent action, employed by (semi-clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively

(representative or symbolic targets) from a target population and serve as message generators. Threat and violence based communication processes between terrorist organization) (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of attention, depending on whether intimidation, coercion or propaganda is primarily sought" (Schmid, 1988). Definitions: Terrorism by nature is difficult to define Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the U.S. Government cannot agree on one single definition. The old adage, "one man's terrorist is another man's freedom fighter" is 'still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation. Terrorism is the use or threatened use of force designed to bring about political change - Brian Jenkins. Terrorism constituted the illegitimate use of force to achieve a political objective when innocent people are targeted - Walter Laqueur ... Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence on audience - James M Poland.



... Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a Government, individuals or groups, or to modify their behaviour or politics – Vice President's Task Force, 1986. ... Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population or any segment thereof, in furtherance of political or social objectives. - FBI Definition"

132.. Section 15 of the Unlawful Activities (Prevention) Act 1967 as it stood on 3.3.2006 which is the date of the alleged offence defined 'terrorist act' as under. "Whoever, 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 in India or in any foreign country, does any act 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, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the



defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act."

133.. Our Hon'ble High Court in dealing with a bail application by an accused in Kalamassery Bus Burning Case had the occasion to observe in order dated 17.12.2009 in BA NO.7481/09 thus: "18.. It is not in dispute that terrorist activities are alarmingly on the increase in the State of Kerala. Nobody could say that these activities originated only recently. It is stated that four Keralities died in an encounter with the security forces in Kashmir, while those four persons tried to cross the border. It is also stated that one of those persons was involved in the present case as well. The resent crime took place in 2005. That means at least in 2005, there were organized terrorist activities in the State of Kerala. Terrorism is an evil. It is aimed at the people at large. The presence or absence of a person at the spot of terrorist attack alone determines whether he would become a victim or not. The State is bound to protect the citizens from the evil of terrorism. Narrow political considerations should be kept aside while dealing with

terrorism. No useful purpose would be served by resolving the dispute as to which of the political parties was at fault. People may not be interested in that. They are interested in their welfare and safety and the prevalence of peace in the society. The people cannot be blamed if they think that all the political parties failed to show the required political will in the matter of dealing with terrorist activities. The people could arrive at the conclusion on the basis of the events which took place in the State of Kerala during the last few years. Nobody can prevent the thinking process of the common man. But the people's voice is reflected mainly through the political parties. If the political parties do not show the required political will, the sufferers will be the people. ... 19.. It is strange that the intellectuals in the State of Kerala are keeping mum in respect of the 'terrorist activities in the State. They owe a duty to the society to react and to change the mindset of the erring people. ... 20.. The people at large also should ask a question to themselves. Do they have and do they exhibit the patriotic feelings to the full extent in their words and needs? If the people show their will power in the matter of combating terrorism, it would, to a great extent, solve the problem. Indulging in long

discussions in not so important local events, engaging in propagating separatist and narrow ideologies and at the same time not giving the required attention and importance to the sovereignty and integrity as well as the safety and security of the nation, would not do much good to the society. ... 21.. Short term and long term measures are to be taken to combat terrorism effectively. A concerted and whole hearted effort by the people is required for that purpose. We have to think of the safety and security of the people for the present and for the generations to come. Patriotic feelings should be inculcated in the minds of the youth and the students. It would also be appropriate to include in the curriculum, the required material to achieve the object. Students should come out of the educational institutions as proud Indian citizens. ...22.. People except much from the police. The police personnel should ask a question to themselves. Have they taken effective steps to combat terrorism, uninfluenced by any consideration whatsoever?"

134.. Here there is availability of further corroborative material including similar disclosure memos prepared basing on statements given by A1, A3 and A4 and the consequent pointing out memos. It is the definite version of PW58 that in the course of investigation of the case he got the information that A1 and A4 were arrested by Meghalaya Police at the Indo-Bangladesh Border

and since they were accused in Bangalore Blast case they were produced in Bangalore court and were under remand at Parapamhara jail. Upon his application in court necessary production warrants were issued for production of A1 and A4 in this court and accordingly they were produced in this court on 24.2.2010 and remanded to judicial custody.

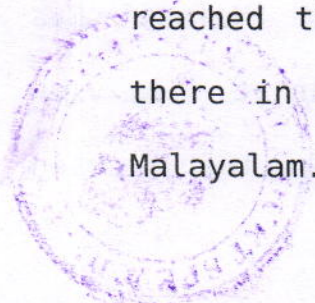
135.. In the judicial quest for search of corroborative material, **firstly regarding the involvement and complicity of A1 Naseer**, it is the definite case of PW58 that while A1 and A4 were in judicial remand he obtained police custody of A1 Naseer for 10 days from 1.3.2010 onwards and questioned him at the Kozhikode Camp office. The definite version of PW58 is that A1 then told him that (1) "I can show and point out the place at Kozhikode at Mananchira near Calicut Tower in a Mosque where myself, Shafas, Faiz, Ashar, Yoosaf P.P., Shammi Firoz and Yusuf Chettipady assembled with two bombs in the month of March 2006 for placing the same in retaliation for not granting bail to the accused belonging to Muslim Community in 2nd Marad incident, if taken to that place." (2) "I can also show and point out the exact place where I had placed one bomb on the said date in March 2006 near KSRTC Bus Stand, Kozhikode along with Yusuf Chettipady and Shafas, in the afternoon." (3) "I can also show and point out the place where the other bomb was placed by the Yoosaf P.P and Ashar on my direction on the same day at the Private Bus Stand near KSRTC Bus Stand, if taken to that place. However the exact

place of placement of bomb can be explained by Yoosaf P.P or Ashar." (4) "I can also show and point out the place/house of Ashar and Yoosaf P.P. at Kannur, where I had prepared and kept two bombs at Kannur meant for Calicut blasts, if taken to that place." and (5) "I can also show and point out the shop wherefrom I along with Faiz had purchased plastic pot etc. at Camp Bazar, Kannur in the name and style of Cannanore Plastic House for the purpose of preparation of bomb." PW1 has pointed out that this was the voluntary revelation of A1 and hence he prepared Ext.P17 disclosure memo on the spot signed by the witness, independent witnesses and A1. The version given by A1 in the vernacular was got written in English through the Dy.SP in the team and then it was translated into Malayalam and explained to the accused and witnesses who understood it.

136.. Based on the said disclosure memo, it is the further definite version of PW58 that at about 11 a.m on 2.3.2010 A1 led himself and party to the Markas Mosque near Calicut Tower at Kozhikode and pinpointed the place at the bottom of the staircase in the Mosque being the place where the accused persons assembled before planting the bombs. Then A1 took the team to the KSRTC Bus Stand and pinpointed the place within the KSRTC compound near Sagar Hotel being the place where the bomb was planted. A1 then took the team to the Kozhikode Private Bus Stand (Mofusil Bus Stand) being the place where the other bomb was planted. In view of the huge crowd assembled at these places when the accused

pointed out these places to the Investigating Officer and team and to prevent law and order situations that may spring up as also for the safety of the accused PW58 thought it fit not to prepare the mahazar on these spots and instead he reached the camp office at 1.30 p.m the same day along with the accused and then prepared Ext.P18 pointing out memo signed by himself and witnesses. The same also as in the case of Ext.P17 was prepared in English and then translated into the vernacular and explained to the witnesses. The next day on 3.3.2010, by, about 9.40 a.m A1 led the team and witnesses to Kannur and reached Camp Bazar at M.A Road and then A1 pointed out the shop by name Cannanore Plastic House being the place wherefrom himself and Fayiz purchased plastic pot and other articles. A1 also pinpointed a greenish plastic pot in the shop and stated that it was a similar pot which he purchased.

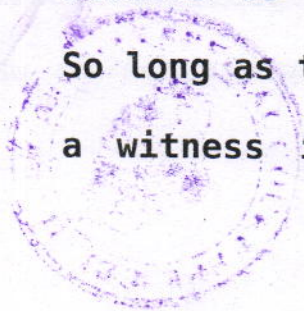
137.. Then A1 took the team to the first floor of KL Arcade in Thekki Bazar and stated that the two bombs prepared were kept at the right side corner of room No.4 where Ashar and Yusuf were residing and then pinpointed that place. As in the case of Ext.P18, since it was found to be impracticable to prepare the mahazar on the spot due to the heavy crowd and law and order situation that may arise and also for safety and security of the accused PW58 avoided preparing mahazars on the spot and instead reached the police club and prepared Ext.P19 pointing out memo there in English and explained it to the witness and others in Malayalam. Thereafter the team took the accused to camp office at



Kozhikode. After subjecting him to medical examination he was kept at the lock-up of Nadakavu police station.

138.. At about 6 p.m on 5.3.2010 when A1 was further questioned A1 is alleged to have stated to PW58 that "I can identify the house of Varghese @ Achayan at Vilangu, Ernakulam from where I along with Ismail had obtained gelatin sticks/detonators from Varghese during the year 2004 and out of the same (about 50 in No.), some gelatin sticks were used by me for preparation of bombs at Kannur for explosion in the year 2006 at Kozhikode, if taken to that place." This was recorded in English in the form of Ext.P20 disclosure memo on the spot. Based on the said statement of A1, on 6.3.2010 at 5.30 a.m as led by A1 the team started from Kozhikode camp office and reached Vilangu at Ernakulam by about 9.30 a.m. Then A1 led the team to Kizhakkambalam, housed at House No.234 at Kizhakkambalam, Vilangu, Ernakulam which is the house of K.C. Varghese. Then A1 led PW58 to the sitting room of the house and stated that it was there in 2004 Achayan had supplied him about 50 gelatin sticks and detonators free of cost. At that time Achayan @ Varghese was not present at the house while his son Basil K Varghese PW49 was present. On that spot PW58 prepared Ext.P21 pointing out memo in English. By about 10.45 a.m PW58 also conducted search of that house under Ext.P22 search list, but without any positive result. Subsequently he produced A1 back in this court whereupon he was taken to judicial custody.

139.. It is pertinent to note that there is no cross examination whatever challenging the particular part of the deposition of PW1 to the effect that 'Naseer had told me that it was bomb. He also told that he had manufactured it at Kannur and brought the same from there and it is intended to be planted at the Kozhikode Mofusil Bus Stand and KSRTC Bus Stand.' There is only a general challenge covering his entire deposition in court that he was swearing falsehood at the instance of the investigating agency. The failure to challenge the said claim of PW1 implicating A1 is not inconsequential. It will not help the defence to substantiate the stand that PW1 is unreliable or his version is untrue. The decision reported in 1987 (2) KLT 15 (Case No.28) (State of Kerala v. Venugopalan) lays down the rule that "If there is anything in the witness's statement which is disputed and the opponent avoids asking questions on those matters in cross examination the evidence in chief examination must be accepted unless of course there are inherent improbabilities. In a case where there is failure to cross examine witness on a particular point there can be a presumption that the witness's evidence is accepted. The failure to cross examine a witness on an aspect always amounts to acceptance of that aspect, by the opposite party. So long as there is nothing to show that the version given by a witness is not incredible or impossible the failure to



cross examine him may have the effect that the version given is not challenged."

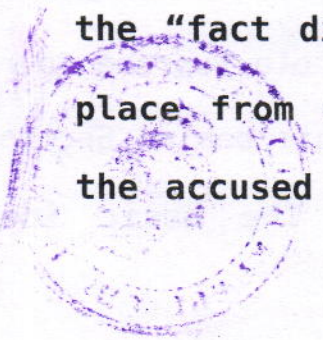
140.. Learned Special Prosecutor Sri K.N. Ravindran appearing for the NIA forcefully argued that the above said disclosure made by A1 have been made voluntarily and the deposition of PW58 supported by the said pointing out memos would reveal the truth of his disclosures by virtue of application of the doctrine of confirmation by subsequent events recognized in Section 27 of the Indian Evidence Act.

141.. Unless a new fact thence-to-fore lying hidden to the knowledge of the Investigating Officer is alleged to have been let known or discovered by any part of information supplied by accused. Section 27 Indian Evidence Act can have no application.

142.. Learned Prosecutor argued that it is not necessary that any material or physical object need not be discovered pursuant to any information supplied by the accused while being in police custody and it is enough if the existence of any fact including psychological fact such as knowledge of accused may also workout so as to guarantee the truthfulness of his previous information provided it is such information directly related to the discovery of the said fact. 135.. Learned Prosecutor also placed different decisions. In **State of Maharashtra v. Damu Gopinath Shinde and others** reported in **2000 CrL. L.J. 2301** the Hon'ble Supreme Court has laid down in Para 36 of the judgment the logic behind Section 27 of the Indian Evidence Act thus "36 ... The basic idea

embedded in S.27 of Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the Section."

The same principle has been reiterated in *State (N.C.T. Of Delhi) v. Navjot Sandhu* (Parliament attack case) reported in 2005 CrL.L.J. 3950 wherein the Hon'ble Supreme Court pointed out thus "the crux of the ratio in *Kotayya's* case was explained by this court in *State of Maharashtra v. Damu*. Thomas J. observed that "the decision of the Privy Council in *Pulukuri Kotayya v. Emperor* is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate



distinctly to that effect." In *Mohmed Inayatullah v. The State of Maharashtra* (1976) 1 SCC 828), Sarkaria J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kotayya's* case. The learned Judge, speaking for the Bench observed thus (Para 12 of AIR 1976 SC 483: "Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Pulukuri Kotayya v. Emperor*; *Udai Bhan v. State of Uttar Pradesh*)". So also in *Udai Bhan v. State of Uttar Pradesh* (AIR 1962 SC 1116). Raghubar Dayal J. after referring to *Kotayya's* case stated the legal position as follows: "A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence"".

143.. The pointing out memos though they proceed from the information supplied under the disclosure memos tend to prove the conduct of the accused subsequent to their arrest in relation to the offence alleged against them so as to make it admissible under

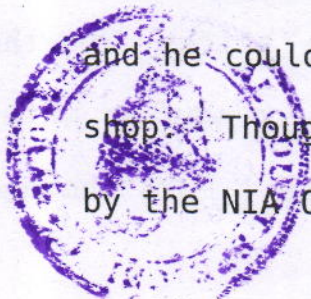
Section 8 of the Indian Evidence Act which abundantly clarifies that any fact which shows or constitutes a motive or preparation for any fact in issue or relevant fact is relevant including the conduct previous or subsequent which also includes statements when they accompany and explain acts of any person an offence against whom is the subject of any proceeding, if such conduct influences or is influenced by any fact in issue or relevant fact.

144.. The Hon'ble Supreme Court of India in **Prakash Chand v. State (AIR 1979 Supreme Court 400)** had the occasion to hold "There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen Articles or weapons which might have been used in the

commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

145.. The deposition of PW58 regarding his narration as to what transpired in relation to the facts mentioned in the pointing out memos is significant in this regard, be it the result of questioning by the Investigating Officer or be it the result of the inner urge of the accused influencing his conduct or be it a conduct influenced by the fact in issue, the truth has come out and A1 had shown the relevant places where himself and the co-accused assembled prior to the act and subsequent thereto as also the other places such as the house wherefrom A1 procured gelatin sticks, the room where he manufactured bombs and the shop wherefrom he purchased the plastic pots.

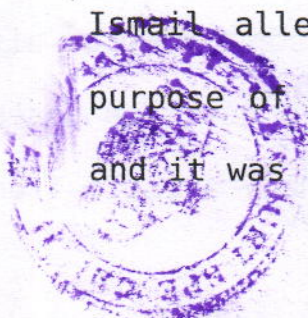
146.. For proving the correctness of the version of PW58 as to the subsequent conduct of A1 in showing the plastic shop at Kannur and the house of PW24 at Vilangu, Kizhakkambalam, there is the statement of relevant witnesses. The version of PW23 would show that on 3.3.2010 NIA Officers and A1 had come to his shop by name Cannanore Plastic House on M.A. Road dealing in plastic items and he could also identify A1 in court as the person taken to his shop. Though he has expressed his ignorance to the question posed by the NIA Officer as to whether A1 had purchased any article from



his shop, that is not material as often times for various reasons such identification may not be possible. However the witness identified A1 and remembered himself as having come along with NIA officials to his shop on 3.3.2010.

147.. There is also the further version of PW49, son of PW24 Kakkadan Varghese who in court claimed to know A1 whom he also identified and pointed out in court and stated that he was brought to his home by NIA Officers for a search on 6.3.2010 when his father was not available there. Ext.P22 is the said search list in which he is also a witness.

148.. There is the independent evidence in the nature of primary evidence as the deposition of PWs 24, 25 and 26. PW24 native of Kizhakkambalam running metal crusher claimed to know one Ismail whose mother's house is near his house and stated that Ismail had gone to jail while at Kannur in connection with the case of attempt on the life of Chief Minister E.K. Nayanar and also claimed to know Ibrahim who is stated to be the "mama" of Ismail. He further deposed that he had taken the father of Ismail to the Kannur jail for the purpose of showing him his son Ismail and after three months when Ismail was released from jail he came and met him and expressed his gratitude. He also stated that A1 whom he identified in court had come to his house along with Ismail alleging that Ismail wanted some gelatin sticks for the purpose of blasting rock in his well in which there was no water and it was his father who sent him for that purpose. PW24 who had



no stock of gelatin sticks disclosed that fact to them, but he agreed to introduce Joy @ Peter who is his crusher supervisor and accordingly took them to the crusher unit and introduced them to Joy and instructed Joy to provide Ismail with some gelatin sticks and Joy agreed to obtain it from Arackapadiyil Mathai and provide the same. The further version of PW24 that subsequently Joy had told him that he had thus obtained gelatin sticks from the house of Arackapadiyil Mathai and supplied it to Ismail.

149.. The said Joy @ Peter himself examined as PW25 who admitted to have worked as Supervisor for about 8 to 10 years, that is from 1992 to 2003 at the crusher unit of PW24 who is his neighbour stated that he knew Ismail who was introduced to him by PW24 Varghese in the year 2002. One day in the morning when he was in the crusher unit PW24 along with two persons came there. One of them was Ismail who was introduced to him. PW24 instructed him to obtain and furnish some gelatin sticks to Ismail for the purpose of blasting rocks. Immediately he rushed to the house of his friend Mathai in his bike. Mathai who had quarry had sufficient stock of gelatin sticks. Mathai had supplied him six or seven gelatin sticks on payment of price. By the time he returned to the crusher PW24 and the said two persons were not there. On his way to the house of PW24 he met Ismail and his companion near the school at Vilangu and he entrusted the stock of gelatin sticks to Ismail and also informed that fact to PW24.

150.. PW26 the said Mathai @ Arackapadiyil Mathai has

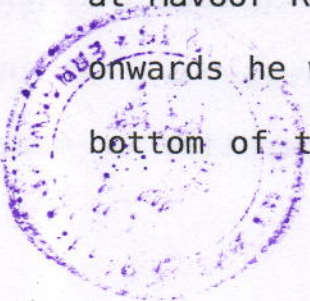
stated that during the period 2000-03 he had conducted quarry but without license in view of the difficulty in getting a license in those days. He was also prosecuted in that regard but acquitted. He stated that he knew Joy (PW25) who also had conducted quarry in those days. He further disclosed that one day Joy who was Supervisor at the crusher of Kakkadan Varghese had come to his house and requested for five or six gelatin sticks for the purpose of blasting rock in a well and since he had sufficient stock he supplied five or six to him and received the price for that.

151.. Then **coming to the complicity of A4 Shafas**, it is the further claim of PW58 that he obtained police custody of A4 Shafas for four days from 9.3.2010. When PW58 questioned him in the presence of witnesses he is alleged to have stated that (1) "I can show and point out the Markas Masjid, Kozhikode near Calicut Tower if taken to that place where on 3/3/2006 I along with Naseer, K.P. Yusuf, Faiz, Yusuf Chettipady, Shammami Firoz and Ashar assembled with two bombs and directions given by Naseer to us for placement of the said bombs and for intimating the authorities and media that the placement of the bombs is in retaliation to the 2nd Marad matter." (2) "I can show and point out the place where myself and Yusuf Chettipadi went along with bomb and later Naseer placed the bomb on 3/3/2006 near KSRTC Stand, Kozhikode if taken to that place" (3) "I can show and point out the coin box booth near KSRTC Stand, Kozhikode if taken to that place from where on 3/3/2006, I had rang up

'Collectorate', Kozhikode at about 12.30 Hrs as per the directions of Naseer intimating planting of a bomb at KSRTC Bus Stand at Kozhikode." and (4) "I can show and point out the Pattalam Mosque if taken to that place where myself, Naseer and Yusuf Chettipadi went after completion of the work relating to placement of bomb and intimation over phone to Kozhikode Collectorate." Immediately PW58 prepared Ext.P23 disclosure memo in that regard in English and obtained signatures of A4 and witnesses and then explained it in Malayalam to them all.

152.. The same day, it is asserted by PW58 that A4 led himself and team to the Markas Masjid near Calicut Tower at Kozhikode and then pointed out the place near the staircase of the Masjid being the place where the accused persons assembled in the morning on 3.3.2006 with the bombs. Then A4 took the team to the Kozhikode KSRTC Bus Stand and pointed out the place where A1 planted the bomb after receiving it from him on 3.3.2006. Then A4 led the team to a way near Mavoor Road and pointed out the place where the coin box was placed wherefrom he telephoned to Kozhikode Colelctorate on 3.3.2006 and also stated that in view of renovation of the building it is impossible to point out the coin box booth.

153.. Curiously enough PW11 presently conducting tea stall at Mavoor Road junction has pointed out that previously from 2003 onwards he was conducting STD Booth and toy shop "Sky Boy" at the bottom of the front staircase of Seema Tower which he stopped in

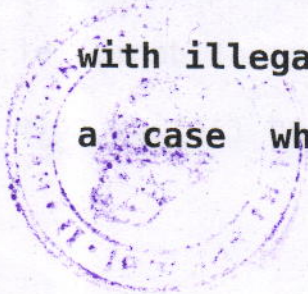


2009 in view of the dullness and fall in business. His deposition would further show that he had coin box phone with No.3942906 of Reliance Company. Ext.P30(a) in Ext.P30 call details proved by PW1 who furnished the same to the investigating agency is sufficient enough to establish that on 3.3.2006 at 12.30 hours there was a call made from the said coin box telephone to 2371400 which is the telephone number of Kozhikode Collectorate which lasted for 37 seconds thus clinching the conduct of A4 in that regard. This is in fact the call made by A4 to the Kozhikode Collectorate before the blasts informing the planting of the bombs. Thereafter A4 took the team to Pattalam Mosque near Mananchira ground and pointed out the same stating that it is the Pattalam Mosque where himself, Naseer and Yusuf Chettipady reassembled after completing the assigned task. For reasons already stated PW58 did not choose to prepare mahazar on these spots and prepared Ext.P24 only at the Kozhikode Camp Office. Himself and witnesses also signed Ext.P24 which was prepared in English and then explained it to the accused and witnesses in Malayalam. He then produced A4 back in this court and he was remanded.

154.. The aforesaid disclosure memos of A1 and A4 contain the revelations in the nature of confessional statements. The statements have been made by them while in police custody allowed by court. The law is clear on the aspect of confessions. As in the case of A1 the informations and revelations supplied or made

by A4 which also not provable under Section 27 of the Indian Evidence Act as no new fact be it physical or psychological can be proved to have been discovered which was still then lying covered and unknown. Nevertheless the conduct of A4 pointing out the aforesaid places are admissible under Section 8 of the Indian Evidence Act as in the case of A1 and have also been sufficiently proved.

155.. Though generally in criminal prosecutions motives are irrelevant in so far as a good motive will not legalize a criminal act or a bad motive will not criminalize a good or lawful conduct or act, there are occasions when motive may be relevant and proof of the same may afford sufficient corroboration essential in a court of law. That is why Section 8 of the Indian Evidence Act renders relevant motive, preparation and conduct. In **Suresh Chandra Babri v. State of Bihar** reported in **AIR 1994 Supreme Court 2420** the Hon'ble Supreme Court pointed out thus, "para 21... At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the



commission of the crime it affords added support to the finding of the court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. In the present case before us the prosecution has adduced evidence that the appellant Suresh Bahri had a strong motive to eliminate his wife and two children from his way which evidence has been accepted by both the courts below. We shall, therefore, have a look to the said evidence to see whether the two courts are justified or not in taking the view that the appellant Suresh Bahri had a strong motive to hatch a conspiracy with the assistance of the other two appellants, namely, Raj Pal Sharma and Gurbachan Sing to commit the murder of his wife and the two children."

156.. The very prosecution case is that it is by way of retaliation and as a mode of protest to the alleged partisan attitude of the State and the Judiciary in the matter of denial of bail to several Muslim accused persons in the Marad rioting case

that the accused persons herein conspired together and committed the offences.

157.. PW43 who retired as S.P, Kozhikode Crime Branch has testified that it is himself who conducted investigation of the 2nd Marad case registered as Crime No.82/03 of Bepur Police Station and submitted charge-sheet therein. He pointed out that out of the 142 accused persons included in the charge-sheet who are residents of Marad and Suburbs, excepting one to be singled out all the others are persons who belonged to Muslim community. He also stated that in the charge-sheet filed on 31.7.2003. The case was disposed of in December 2008. He had arrested 136 accused persons in the course of investigation and all of them were in judicial custody for about 4-4½ years. Finally it was consequent on Ext.P53 order of the Hon'ble High Court dated 19.12.2007 that some of the accused persons were ordered to be released on bail with effect on or after 1.1.2008. PW58 has also produced the same order marked as Exts.P95 and P96. PW1 has reproduced the words of A1 in this regard. PW1 had also stated this aspect to PW4 in his telephone call as per instructions from A1. Any further corroboration necessary to strengthen the statement of PW1 is thus seen sufficiently established. Any further search in that regard is not necessary.

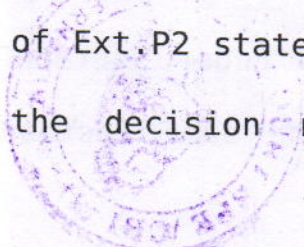
158.. It is also seen that A1 is an accused in SC 4/10(NIA) of Kalamassery bus burning case, SC 1/10 (NIA) of Edakkad case @ Kashmir recruitment case and that A4 is also a co-accused in SC

1/10 (NIA) pending in this court as per Exts.P93 and P94 documents produced by prosecution.

159.. It was strenuously argued by Sri K. Ramakumar, Senior counsel appearing for A1 and A4 that prosecution has suppressed Section 161 CrI.P.C statement of A7 (PW1) recorded at the time of his arrest and the same has prejudicially affected the defence in the matter of shaping the defence and its conduct. In order to substantiate his argument the counsel also relied on the decision in **Murali v. State of Kerala** reported in **2003(3) KLT 226**, the relevant portion of which reads as extracted from the decision reported in 1974 CrI.LJ 1373 that **"The prosecution is bound to produce the entire statements obtained from the witnesses under Section 161 CrI.P.C. whether the statement is in favour of the accused or in favour of the prosecution because the role of the police is to bring the real truth before the court. Non furnishing of some of the statements or some part of the statements of the same witnesses will vitiate the trial and the accused will be denied of a fair trial. Denial of fair trial would necessarily prejudice the accused to have a proper defence."** True PW1 has admitted in the course of his cross examination that at or after the time of his arrest he was questioned by officers of NIA and he had given statement. PW58 has stated that the statement thus recorded is the accused statement and not the statement under Section 161 CrI.P.C. As

regards a person whether he be accused, suspect or witness acquainted with the facts and circumstance of a case, his statement can be recorded only under Section 161 CrI.P.C. May be it is after the recording of that statement that A7 filed in this court Ext.P1 application dated 20.3.2010 after which he was given to police custody for further interrogation and thereafter on being produced back in court sent back to judicial custody and thereafter Ext.P2 statement was got recorded under Section 164 CrI.P.C. That being the position any statement previously made by A7 at a time when he was a person accused of an offence and not a witness at all though such person is by subsequent events turned out to be an approver in this case, the defence cannot claim to obtain copy of such statement and set-up a case of prejudice for non supply. Ext.P2 statement was supplied to the accused and he was also cross examined with reference to that. The defence argument that there has been prejudice caused due to non supply of Section 161 CrI.P.C statement cannot be accepted. The principle highlighted in the decision produced is in a different context and has no application in the facts of this case where a co-accused is examined as accomplice in respect of whom statement recorded under Section 164 CrI.P.C. alone governs the matter beyond which in the province of investigation the accused has no role to intrude.

160... It was then argued by the learned counsel that marking of Ext.P2 statement as such is illegal. In that regard he placed the decision reported in **2005 (4) KLT Short Note 74 Case**



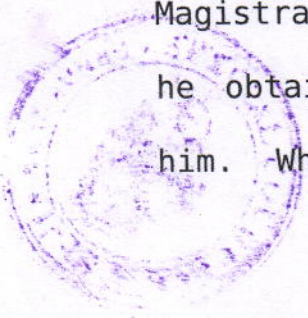
No.103, the relevant portion of which reads as under, "The word "statement" is used in S.164 of the CrI.P.C in a wider sense. A statement made under S.164 CrI.P.C is not inadmissible in evidence. It can be used either to corroborate or contradict the statement made in the court by a person who gave statement before the Magistrate in the manner provided in Sections 145 and 157 of the Evidence Act. Admission of such statements in evidence are governed and controlled by the provisions of Indian Evidence Act. It can be used for the purpose of cross examining him and to discredit the evidence of the maker of the same, but the same cannot be used as a substantive piece of evidence. The wholesale marking of a statement of a witness recorded by the Magistrate in evidence is also not legal."

161.. It is seen that Ext.P2 statement as such was got marked during chief examination of PW1 without any objection from the defence. More details of Ext.P2 statement are also stated by PW36 the learned Magistrate who recorded, it. The full text of the decision cited is not placed. The context in which the principle has been rendered is not clear from the short note relied and produced. It appears that the same has been rendered in the context of criticizing the defence in the matter of getting the entire previous statement of a witness recorded under Section 164 CrI.P.C. was taken into evidence by marking the same instead of

marking only the particular portion which ought to have been read out and brought to the notice of the witness for the purpose of contradicting such witness in reference to the said portion of his previous statement.

162.. It was also argued by the said learned defence lawyer that the evidence if at all available in the deposition of PWs 24 to 26 is that A1 obtained gelatin sticks from them in the year 2002 and not anywhere near or previous to the date of occurrence which is in 2006. PW58 would claim at one place during his cross examination that A1 who had obtained gelatin sticks with the help of Ismail (CW60) in the year 2002 preserved it by burying it on the ground at seacoast at Kannur and he used it for the manufacture of the bomb which was planted at the bus stands in 2006. Though it was argued by learned defence lawyers that gelatin sticks if buried in seacoast would get soon dissolved and be rendered useless, that argument cannot as such be appreciated and accepted since there are devices to preserve the same by proper covering and sealing. Even taking the view that the deposition of PWs 24 to 26 would if at all proved the supply of gelatin sticks in the year 2002, such evidence is sufficient to find that A1 had access to gelatin sticks and it was also available to him at his choice. In the nature of the offences alleged and the evidence available including the statement of the accomplice A1's accessibility to gelatin sticks would sufficiently render the necessary corroboration required.

163.. Then **coming to the involvement of A3** the narration of the steps in investigation by PW54 and PW58 in sequence would sufficiently show that it was from A3 Halim that the investigating agency for the first time could elicit the necessary clue regarding the involvement of the accused including A1. It is in evidence that before the NIA taking up investigation of the case it was PW54 Dy.SP and CID Kozhikode Crime Branch who conducted investigation from 13.6.2006 to 17.12.2009. Investigation was on the strength of Ext.P69 order of DGP and Ext.P70 order of ADGP (Crimes). Crime Nos.80/06 of Kasaba Police Station and 81/06 of Nadakkavu Police Station were re-numbered as CBCID Crime Nos. 183/06 and 184/06. It is asserted by PW54 that he arrested A3 Halim on 27.2.2009 at 9 a.m. at the Ernakulam Police Club. The arrest was in view of the fact that when PW32 was questioning A3 Halim in connection with the Kalamassery bus burning case A3 stated something about the present case whereupon PW32 conveyed the message to PW54, as a consequence of which PW54 reached the Ernakulam Police Club on 21.7.2009 and questioned A3. On the satisfaction that A3 was really involved in the present case he was kept under surveillance and lawfully arrested on 22.7.2009. Exts.P71 and P72 are the arrest memo and inspection memo. Thereafter he produced A3 before the Judicial First Class Magistrate III, Kozhikode and got him remanded to custody. Then he obtained police custody of A3 from 27.7.2009 and questioned him. Whereupon A3 agreed to show him room No.4 in the first floor



of the building by name KL Arcade where A2 Ashar was residing on rent where the bomb for explosion was manufactured and the conspiracy was entertained. As led by A3 PW54 and witnesses reached the said room. The room which as seen locked was got opened by PW51 building owner and he prepared Ext.P27 mahazar on the spot which contains the signatures of himself and witnesses.

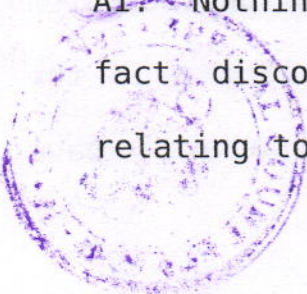
164.. PW54 also conducted search of the house of A3.

165.. Subsequently PW54 obtained in his custody A3 Halim from Judicial First Class Magistrate IV, Kozhikode for the period from 24.8.2009 to 29.8.2009. When he questioned A3 further, A3 is alleged to have stated to him that before the blasts at the Kozhikode bus stands myself and Naseer had prepared and test fired pipe bombs two times at the Kannur Maithanapilly coast. If I am taken to there I will show that place. On that information as led by A3 the team reached Kannur Maithanapilly coast. It is claimed that A3 then showed a place by putting mark with his leg stating that the bomb was manufactured and fired at the same place. In this regard PW54 prepared Ext.P64 mahazar dated 25.8.2009 signed by himself and witnesses.

166.. The further version of PW54 is that A3 then stated to him that after himself and Naseer had test fired at Kannur Maithanapilly coast "one day Abustad had conducted Thareequath classes at the house of Ashar at Kolavallur I also participated in the class. After the class was over at about 10 p.m in the night in a room on the up-stair of the house of Ashar I have

displayed to some persons who attended the Thareequath class the method of manufacturing bomb. Naseer had brought the gelatin sticks, detonator etc. required for manufacturing bomb. If I am taken to there I can show the house and room where I taught the method of manufacturing bomb." On the basis of that information as led by A3 PW54 and witnesses reached the residential house of A2 Ashar at Kolavallur. At about 3 p.m. on 28.5.2009 A3 showed that room to PW54 whereupon he prepared Ext.P64 mahazar also extracting the confessional portion of the statement of A3.

167.. It is significant to note that though there is some evidence available as the statement of PW21 that he had seen A1 in the company of A2 Mohammed Ashar and A8 Yoosaf who had for some time worked as Usthad/teachers at Darusalam Madrassa, Kannur and both of them also resided in room No.4 in the first floor of K.L. Arcade owned by PW21 who also pointed out that he had once seen A1 Naseer in the company of A2 and A8 near the building and subsequently in the course of investigation Naseer was taken to himself and got identified, that would, in fact probabalise the prosecution case that A1 had access to the said room which he may have made use of for the purpose of manufacturing bomb as claimed by the prosecution. But so far as A3 is concerned there is no witness who has sworn to have seen A3 in the company of A2, A8 or A1. Nothing incriminating was also recovered from the room and no fact discovered pursuant to any information supplied by A3 relating to the room. Admittedly PW1 had not seen A3 on 3.3.2006



at the Markas Mosque or Pattalam Mosque. PW1 has not in any way implicated A3. The further information alleged to have supplied by A3 that himself and Naseer manufactured and twice test fired pipe bomb at the seacoast at Maithanappilly is also not proved by recovering any material object in that regard or by discovering any fact thereto. The further information of A3 that at the house of A2 Mohammed Ashar Abustad had taken Thareequath class which he also attended and thereafter on the instructions of A1 he exhibited the method of manufacture of bomb to some persons who attended the class for which the necessary gelatin sticks detonators etc. were brought by A1 is also not proved by discovery of any fact including recovery of any article.

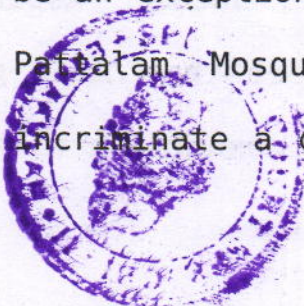
168.. When access by A1 to the residential room of A2 and A8 at Kannur is proved in the absence of any further concrete evidence, merely based on the conduct of A3 in pointing out that room, company of A3 with A1 and conspiracy or concertedness in action involving them cannot be presumed. Prosecution could not lay the foundation necessary to erect the edifice of its case against A3 as brought out by his revelations and conduct. It is always permissible to presume existence of any fact or the happening of any event having regard to the common course of natural events and human conduct. Logical deductions can also be made by court based on proved facts and circumstances. But such deductions if stretched beyond a certain limit would only be nothing less than mere conjectures and surmises. In any view,

such deductions cannot be allowed to rest on mere deductions. Thus as far as A3 is concerned there is no iota of evidence to connect him with the conspiracy alleged or planting of bombs.

169.. **Coming to A9**, learned counsel for A9 argued that there is no sufficient evidence which tends to establish the involvement of A9 also by proving his identity to the incident of criminal conspiracy or planting of bombs at the two bus stations except perhaps the trained version of PW1 co-accused as an accomplice. Prosecution has no case that police custody of A9 was obtained by the Investigating Officer or he was questioned or that he had revealed any information or exhibited any particular mode of conduct relevant to connect him. The involvement of PW1 in this case is minute. He had simply in response to the telephone call from A1 on 2.3.2006 requested A9 to call A1. PW1 did not choose to collect the phone numbers which A1 instructed him to collect. On 3.3.2006 when A1 again called him over phone and wanted to be supplied with the required telephone numbers he replied that those were readily available in book stalls. At that time PW1 had gone to the computer class at Logic Software Solutions. However in response to the direction of A1, PW1 went to Markas Mosque where he met the six persons including A1 and A9. There were two large polythene covers which A1 disclosed to be bombs manufactured by him at Kannur and brought by him intended to be planted at the Kozhikode Mofusil Bus Stand and KSRTC Bus Stand as a mark of protest to denial of bail to the Muslim accused

persons in the Marad rioting case whereupon A1 divided the team into two, one comprising A1 Naseer, A4 Shafas and A9 Abubacker Yusuf and the other comprising A6 Fayiz, A2 Mohammed Ashar and A8 P.P. Yoosaf. PW1 was simply given the task of making telephone call to Calicut Times and inform the fact of planting of bomb and the two teams departed carrying the polythene covers.

170.. It is the further case of PW1 that after he had made the telephone call to Calicut Times he had gone to the Pattalam Mosque as per previous instruction from A1 where he met A1. Since he wanted to attend his Spoken English class he took leave and departed. When he reached the class he heard the news of twin blast. It is significant to note that PW1 has no case that after departing of the team with the polythene bags and the blasts he had seen A9 so as to conclude that A9 continued to be a member of the team till the planting of bomb at the Mofusil bus stand. There is only the disclosure statement alleged to have been made by A1 and A4 stating that after planting the bombs they all including A9 reassembled at Pattalam Mosque and pinpointed the Pattalam Mosque. The said statement of A1 and A4 whilst in police custody is confessional in nature and is irrelevant and inadmissible and is also not provable, for the reason that the ingredients of Section 27 of the Evidence Act which works out to be an exception is not attracted. The conduct of pinpointing the Pattalam Mosque though tends to incriminate them would not incriminate a co-accused as A9. Thus the proved fact as against



A9 is only that in response to the request of A1 PW1 contacted A9 to call A1 on or after 2.3.2006 and subsequently in the morning on 3.3.2006 when A1 wanted the presence of PW1 in the Markas Mosque PW1 reached there, he also saw A9 in the company of A1, A4 and others. There is no evidence to the effect that A9 had uttered any word so as to reveal that he is a member of the conspiracy. There is no case for the prosecution that A9 has done any act or omission necessary to constitute the offences alleged. There is no evidence to find that he has in any way shared the intention of A1 or the common intention of others present at the Markas Mosque at that time and in the agreement which is alleged to constitute the offence of criminal conspiracy. Mere presence of A9 at the said place and time though cannot be disputed to be false is not sufficient in the facts of the case to connect him with the complicity of the offences. His role if at all is only minuter than the minuscule role of PW1 himself. His complicity is a suspicion rather than truth backed by proof. In view of the gravity of the offences alleged and the absence of any incriminating material against A9 except perhaps the reference of A9 in the deposition of PW1 left without any corroborative material, judicial wisdom, conscience and experience compel me to confer on him the benefit of reasonable doubt.

171... The deposition of DW1 Sunil Jacob, Assistant Commissioner of Police, Ernakulam to the effect that in a media conference held in his office on 21.7.2009 in connection with the

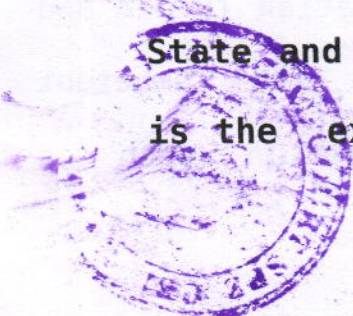
Ernakulam Collectorate Blast case and the present case, A3 Halim was shown to media persons, the deposition of DW2 who produced the CD in Crime No.175/06 of Kannur City Police Station and documents Exts.D22 and D23 marked through him and the further deposition of DW3 and Ext.D24 are insufficient to find that A3 was in illegal custody of police before his arrest was recorded for the purpose of the present case or for any other purpose so as to shaken or weaken the prosecution case available against A1 and A4. Defence exhibits are also not sufficient in that regard. In fact learned defence lawyers have not advanced any arguments based on DWs 1 to 3 or Exts.D1 to D23. I further conclude that the deposition of PW1 and the aforesaid independent evidence as also subsequent conduct of A1 and A4 in relation to the facts in issue and relevant facts have afforded sufficient evidence against A1 and A4 for the offences alleged.

172... It is further seen that before filing the final report the National Investigation Agency has also obtained sanction for prosecution as provided in Section 45(i) of the Unlawful Activities (Prevention) Act and Section 7 of the Explosive Substances Act. PW52 Under Secretary, to Government of India, Ministry of Home Affairs has stated that he has signed Ext.P65 sanction order in the name of President of India and himself is also competent to sign like that as per authentication (Order and other instruments) Rules, 1958. It is after the competent authority has examined materials placed before it such as



investigation report of NIA, review committee report and other materials seized by NIA as also statement of witnesses that the sanction order was issued. He has also ruled out exertion of political pressure or non application of mind suggested by the defence.

173.. How high soever may be the fairness that is required in a criminal trial, when an accused person is being tendered conditional pardon in the course of investigation, be it under Section 306 or 307 CrI.P.C., the tender itself is with a view to obtaining the evidence of such person so that it can be used against the other accused persons. The Section itself postulates the existence of an inducement or promise. At a later stage when he is examined as witness in trial there is further legal necessity for him to stick on to his previous statement in compliance of the terms of the conditional pardon tendered so as to entitle him to an acquittal. In Shammi Firoz v. NIA (decision above referred) it was further held "..... **pardon. The condition is that he will make a full and true disclosure of the entire circumstances within his knowledge concerning the offence and concerning every other person involved in the commission of the offence. The conditional pardon so tendered is thus a contract between the accomplice and the State and the consideration for the same qua the accomplice is the exoneration from liability and the consideration qua**



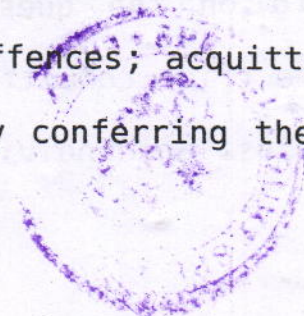
the State is the agreement to make a full and true disclosure. Once pardon is granted to an accused he ceases to be an accused person and becomes a witness for the prosecution." "The said provision further mandates that the approver shall be examined in the subsequent trial also. An approver will be exempted from the trial in the main case for the offences in respect of which pardon was granted and will be exonerated from punishment in that case only if he complies with the conditions of pardon during the trial of his erstwhile co-accused. If he, however, resiles from the conditions under which pardon was tendered, then as provided under S. 308 CrI.P.C. he is liable to be tried in the main case, though not jointly with the erstwhile co-accused." I also find that PW1 has complied with the terms of conditional pardon tendered to him. His own deposition as well as the proved facts and circumstances in this case would afford sufficient guarantee that what he has stated as PW1 is truth nothing but the whole truth within his knowledge which he was bound to disclose in terms of Section 306(1) and the oath administered to him as PW1 in this court, thus affording double guarantee of truth to his deposition. It has got the glow of truth glittering behind the twin blasts.

174.. It is significant to note that it is on a Friday at the time fixed for Juma prayer in Mosques that was selected by

accused persons for the bombs to blast in both the bus stations with the clear knowledge that all believers will be at the Mosques and premises participating in the Juma as a precaution to see that the believers are not hurt and leaving the rest to the rules of chance.

175.. Available evidence would further show that it was A1 who placed bomb at the KSRTC Bus Stand and it was at the instance and instruction of A1 another bomb was placed at the Mofusil Bus Stand, both of which exploded at short interval at noon on 3.3.2006. They are not crackers as claimed by learned Senior Counsel for A1 and A4. The available evidence would further show that on getting the information as to the planting of bombs there was hue and cry at both the bus stands and search for bombs but both the bombs exploded before being dealt by police. The sound was huge. There was pit formed on the ground. There was heavy rising of smoke and dust. Two persons namely PW37 Policeman and PW13 porter got injured. Ext.P36 is the wound certificate of PW37 prepared by PW33 Doctor at 1.20 p.m on 3.3.2006 mentioning the injuries sustained and the alleged cause of the injuries being bomb explosion at the New Bus Stand at 1.10 p.m the same day. Ext.P37 is the wound certificate proved through PW33 as prepared on the same day mentioning the injury sustained by PW13 porter as a result of the explosion in the Mofusil Bus Stand at 1.05 p.m the same day. Window glass panes of Sagar Hotel cracked and fell down on the impact or forcible thrashing of shreds. People in the bus

stand were evacuated and buses removed, terror as intended by A1 was indeed struck precisely with the motive of promoting enmity between different groups on grounds of cast or community, disharmony or feelings of enmity, hatred or illwill as embodied in Section 153(A) and to excite disaffection towards Government established by law in India as envisaged in Section 124(A) IPC. The planting of bomb and its explosion would also constitute terrorist act as defined in Section 15 of the Unlawful Activities (Prevention) Act 1967 as it stood as on 3.3.2006 thus attracting the offence punishable under Section 16(i) of that Act. The entire act has been the result of a criminal conspiracy proved to have been among accused persons including A1 and A4 but not proved against A3 and A9 thus attracting the offence under Section 18 of UAP Act and Section 120(B) IPC. Since A1 and A4 have been found to be in unauthorised possession of bomb capable of mass destruction the offence under Section 23 of the same Act is also attracted. The proved acts also constitute the offence under Sections 3 to 5 of the Explosive Substances Act 1908. Consequently I find A1 and A4 guilty of all the offences alleged namely 120(B) IPC, 124(A), 153(A), 324 r/w Section 34 IPC, Sections 16(i), 18 and 23 of the Unlawful Activities (Prevention) Act 1967 and Sections 3 to 5 of the Explosive Substances Act and I convict them thereunder. I also acquit A3 and A9 of all the said offences; acquittal of A3 on the ground of want of evidence and A9 by conferring the benefit of doubt. I also record that PW¹



complied with the terms of conditional pardon tendered to him by this court and he is exempted from trial. His bail bond stands cancelled.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, this the 11th day of August, 2011.

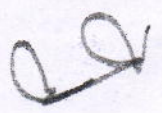
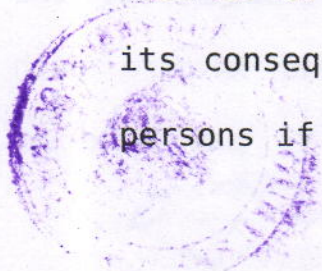
S. Vijayakumar,
JUDGE.

176.. Point No.8:- After convicting A1 and A4 as aforementioned and giving them sufficient time for reflection they have been personally heard on the question of sentence. A1 stated that he has got his wife and three children residing at Kannur being looked after by his family members and wanted him to be sent to Central Prison, Kannur so that it will be convenient for them to visit him. He also requested for the convenience of maintaining his beard and cap which have got religious significance as also to conduct prayers. A4 stated that he has got his wife and two small children with no one else to look after them and he may also be sent to Kannur Central Prison so that they may come and meet him. He pressed for maximum leniency. He also requested for the convenience of maintaining his beard which is mark of religious practice.

177.. Both sides have also been heard on the question. Learned Special Prosecutor pointed out that the crime committed by the convicts is terrorist act which is not against any individuals

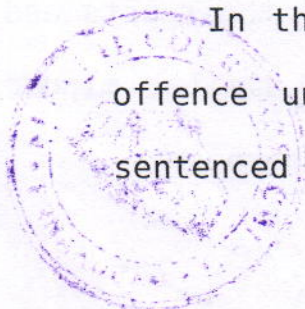
but is intended against the society at large. This cannot be curbed by ordinary law of the land and it traverses beyond the concept of rule of law and would arouse in people fear and insecurity and hence no leniency need be shown to the convicts. Learned defence lawyer pointed out that the act was only intended to be a protest against the non granting of bail to Muslim accused persons in the IInd Marad case even according to the prosecution and the same does not have any more seriousness.

178.. The available evidence has sufficiently established that A1 is the master-brain behind the twin blast. He is a religious fanatic who is intolerant to other religions and aiming at harming the secular fabric of our Constitution. It is by way of striking terror in the people and to create communal disharmony and incite violence by injuring innocent people at busy places such as bus stations that A1 painstakingly manufactured bombs, brought it to Kozhikode and with the help of a team recruited by him conspired to plant the bombs at the bus stands with the definite intention of threatening the unity and integrity of India and sovereignty of State. A4 who is his companion joined hands with him in planting the bomb at the KSRTC Bus Stand and in imparting advance information over telephone to Collectorate. Both of them deserve such punishment as would be appropriate to them as to help them to realize the grave nature of their acts and its consequences as also to make it a warning to similar minded persons if any behind them who are lured by their 'heroism'.



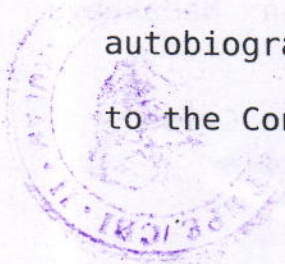
179.. In that view of the matter the offence of criminal conspiracy under Section 18 of the UAP Act for commission of the offence of terrorist act which has also been committed by them both A1 and A4 deserve punishment with imprisonment for life and fine of Rs.50,000/- each; for the offence of terrorist act punishable under Section 16(i) of UAP Act committed by A1 in concert with A4 as abettor, both of them deserve to be punished with imprisonment for life and payment of fine of Rs.50,000/- each; for the offence of sedition punishable under Section 124(A) IPC A1 and A4 deserve to be punished with imprisonment for 3 years and fine of Rs.10,000/- each; for the offence under Section 153(A) both A1 and A4 deserve to be punished with imprisonment for two years each; for the offence of making bomb by use of high explosive substance (gelatin) A1 also deserves to be sentenced under Section 4(b) of Explosive Substances Act with imprisonment for life and payment of fine of Rs.50,000/-. No separate sentence is needed for the offences under Section 120(B) IPC and Section 23 of UAP Act. Since other offences under Sections 3 to 5 of Explosive Substances Act and offence under Section 324 IPC are ingredients of the offence of terrorist act for which the convicts can be sufficiently dealt under Section 16(i) of UAP Act, no separate sentence need be imposed for those offences.

In the result A1 and A4 are sentenced as follows. For the offence under Section 18 of UAP Act both A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of




Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment of one year; for the offence under Section 16(i) of UAP Act A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment for one year; under Section 124(A) IPC A1 and A4 are each sentenced to undergo imprisonment for three years and to pay fine of Rs.10,000/- each (Rupees ten thousand only) with default sentence of three months; under Section 153(A) IPC A1 and A4 are each sentenced to undergo imprisonment for two years. In addition A1 is also sentenced under Section 4(b) of Explosive Substances Act to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of one year. It shall be sufficient if all the substantive jail sentences run concurrently.

It is further directed both the convicts shall be provided with the privilege of maintaining their beard at their choice as a mark of religious practice and A1 shall also be permitted to wear his cap on occasions of his choice. It is further provided that they shall be provided with physical labour and for that purpose if necessary they shall also be given vocational training so that they will realize dignity of labour. As an attempt to refine them, both the convicts shall also be provided with reading material such as vernacular version of biographies and autobiographies of great patriotic men of India and commentaries to the Constitution of India.



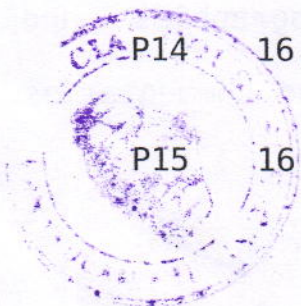
Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, this the 12th day of August, 2011.


JUDGE.

EXHIBITS

Exhibits marked on the side of prosecution

- | | | |
|------------|-----------------------|---|
| P1 | 20.3.2010 | -Crl.M.P.437/2010 – application for approver |
| P2 | 30.3.2010 & 31.3.2010 | -164 Crl.P.C. statement of A7 Shammi Firoz recorded by JFCM-I, Ernakulam. |
| P3 | 2.9.2010 | -Crl.M.P 1056/10 filed by Shammi Firoz |
| P4 | 19.3.2010 | -Arrest/search memo of Shammi Firoz (A7) in Crime No.5/09 of NIA. |
| P5 | 15.2.2010 | -Copy of Leave application of Shammi Firoz |
| P6 | 18.3.2010 | -Air ticket of Shammi Firoz (photocopy) |
| P7 | 24.3.2010 | -Disclosure memo of Shammi Firoz |
| P8 | 19.9.2009 | -164 Crl.P.C. statement of Shidha K.K. |
| P9 | 3.3.2006 | -Copy of Calicut Times evening daily |
| P10 series | | -Photographs (10 Nos.) taken by Sunil Kottooli (P10, P10(a) to P10(i)) |
| P11 | 3.3.06 | -Scene mahazar in Crime No.81/06 of Nadakkavu Police Station |
| P12 | 25.3.2010 | -Production memo in Crime No.5/09 & 6/09 of NIA |
| P13 | 20.1.06 | -Registration form of Shammi Firoz of Logic Software Solutions Pvt. Ltd. |
| P14 | 16.5.06 | -Sketch of scene of occurrence in Nadakkavu Police Station Crime No.81/06 |
| P15 | 16.5.06 | -Sketch of scene of occurrence in Crime |



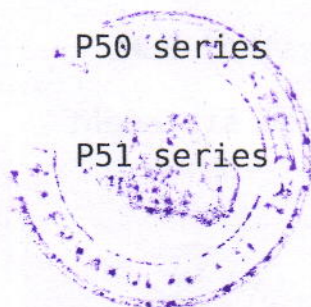


No.80/06 of Kasaba Police Station

P16	3.3.06	-Scene mahazar in crime No.80/06 of Kasaba Police Station.
P17	2.3.2010	- Disclosure memo in NIA Crime No.5/09
P18	-do-	-Pointing out memo in NIA Crime No.5/09
P19	3.3.2010	-Pointing out memo in NIA Crime No.5/09
P20	5.3.2010	-Disclosure memo (subject to proof)in NIA Case No. 5/09
P21	6.3.2010	-Pointing out memo in NIA Crime No.5/09 (subject to proof)
P22	6.3.2010	-Search list of the residence of K.C. Varghese in NIA Crime No.5/09
P23	10.3.2010	-Disclosure memo in NIA Crime No.5/09
P24	10.3.2010	-Pointing out memo in NIA Crime No.5/09
P25	24.3.2010	-Statement of CW70 Naseer T (pointing out memo)
P26		- "Mu- Allim" admission register
P27	29.7.09	-Observation mahazar in CBCID Crime 183/CR/S III/2006
P28	26.3.2010	-Letter of Barath Sanchar Nigam Limited
P29	3.12.09	-Seizure mahazar in CBCID Crime 183/CR/S III/2006
P30	3.3.06	-Incoming call details (3 pages) of BSNL
P30(a)	3.3.06	-Entry showing telephone call from No.4953942906 to 2371400
P30(b)	3.3.06	Entry showing telephone call from No.4952368653 to 2700834
P31	3.3.06	-Outgoing call details (8 pages) of BSNL
P32	22.7.09	-Forwarding letter of confession statement



- P33 22.7.09 -Extract of confession statement of Abdul Haleem recorded by A.P. Shoukathali.
- P34 3.3.06 -Certified copy of Ext.P30
- P35 3.3.06 -Certified copy of Ext.P31
- P36 3.3.06 -Wound certificate issued from Govt. General Hospital, Kozhikode to Unni, aged 46.
- P37 3.3.06 -Wound certificate of Asharaf K. issued from Govt. General Hospital, Kozhikode
- P38 26.3.10 -Covering letter addressed to NIA issued from BSNL
- P39 29.1.2010 -Letter of Principal General Manager, Telecom, Kozhikode to NIA
- P40 15.1.2010 -Carbon copy of letter addressed to Divisional General Manager, BSNL, Kozhikode.
- P41 from 1.3.06 to 31.3.06 -Call details of STD/ISD calls from VLL 2368046
- P42 26.3.2010 -Letter of NIA addressed to Divisional Engineer (Vigilance), BSNL, Kozhikode
- P43 31.3.2010 -Covering letter addressed to NIA from BSNL
- P44 3.3.06 -FIR in Crime No.81/06 of Nadakkavu Police Station.
- P45 -- -Report of Sri Ijas A., JFCM-I, Ernakulam
- P46 30.3.2010 -Order No.C1-1493/2010 of Chief Judicial Magistrate, Ernakulam.
- P47 3.3.06 -FIR in Crime No.80/06 of Kasaba Police Station
- P48 13.1.10 -Production memo in NIA case No.5/09 & 6/09.
- P49 3.3.06 - Video CD - Crime No.80/06 of Kasaba Police Station and Crime No.81/06 of Nadakkavu P.S
- P50 series -Photographs(18 Nos.)taken by P.Muraleedharan, Department staff.
- P51 series -Negatives of Ext.P50(17 Nos.)



- P52 7.3.06 - Property list in 151 Form in Crime No.80/06 of Kasaba Police Station
- P53 19.12.07 -Copy of order of the Hon'ble High Court of Kerala in BA No.7160 & 7162 of 2007
- P54 1.12.09 -Copy of order No.11034/31/2009 of Govt. of India MHA
- P55 4.12.09 -Copy of order No.11034/31/2009 of Govt. of India MHA (corrigendum)
- P56 8.12.09 -FIR in Crime No.5/09 of NIA
- P57 8.12.09 -FIR in Crime No.6/09 of NIA
- P58 12.1.10 -Application for arraying Yusuf as A9 (Crl.MP 40/10)
- P59 21.1.11 -Production memo in NIA case No.5/09 & 6/09
- P60 4.3.06 Calicut Times evening daily
- P61 30.3.10 -Report from Ballistic Division, Central Forensic Science Laboratory (CBI), New Delhi
- P62 31.3.10 -Report from Central Forensic Science Laboratory (CBI), New Delhi
- P63 25.8.2009 -Observation mahazar in CBCID Crime No.183/& 184/CR/S-III/2006
- P64 25.8.09 -Observation mahazar in CBCID Crime No. 183/CR/S-III/2006
- P65 31.7.10 -Sanction order of Govt. of India
- P66 9.3.2006 -Office copy of letter issued to Village Officer, Kasaba requesting to prepare and forward sketch plan of the scene in Crime No.80/06 of Kasaba Police Station.
- P67 21.3.06 -Copy of forwarding note in Crime No.81/06 of Nadakkavu Police Station.
- P68 21.3.06 -Copy of forwarding note in Crime No.80/06 of Kasaba Police Station.



22

P69 26.5.06 Order No.D3/21003/06 of DIG of Police, Trivandrum

P70 - Copy of order of ADGP Crimes, Trivandrum (fax)

P71 22.7.09 Arrest memo A3 Abdul Haleem

P72 27.7.09 Inspection memo of A3 Abdul Haleem

P73 23.7.09 Report for Section alteration

P74 9.12.09 Section Alteration Report

P75 12.8.09 Arrest memo of A3 in Crime No.81/06 of Nadakavu PS

P76 12.8.09 Inspection memo of A3 in Crime No.81/06

P77 28.7.09 Inclusion report of A6 and A7 crime No.184/06 of CBCID

P78 24.7.09 Inclusion report of A1, A3, A4, A5 in Crime No.184/06 of CBCID.

P79 23.7.09 Inclusion report of A1, A2,A3,A4,A5 in Crime No.183/06 of CBCID

P80 28.7.03 Inclusion report of A6 and A7 in Crime No.183/06 of CBCID

P81 6.8.09 Inclusion report of A8 in Crime No.183/06 of CBCID

P82 6.8.09 Inclusion report of A8 in Crime No.184/06 of CBCID

P83 19.3.10 Copy of letter to Superintendent of Police, Immigration wing, Cochin Airport.

P84 16.3.10 Letter from Passport Office, Kozhikode to Superintendent of Police, NIA

P85 3.3.06 Property list (151 Form) in Crime No.81/06 of Nadakavu Police Station.

P86 30.9.06 FSL report No.B1-1301/FSL/2006

P87 30.9.06 FSL Report No.B1-1300/FSL/2006

P88 6.3.10 Crl.MP 305/10 filed by NIA in Crime No.5/09

P89 6.3.10 Forwarding Note in Crime No.5/09



- P90 6.3.10 Criminal MP 304/10 in Crime No.6/09
- P91 6.3.10 Office copy of forwarding note in Crime No.6/09 of NIA
- P92 25.3.10 Office copy of letter addressed to Divisional Engineer (Vigilance) BSNL, Kozhikode by NIA.
- P93 17.8.09 Certified copy of final report in Crime No.356/08
- P94 17.12.10 Certified copy of charge-sheet in Crime No.5/2010 (NIA)
- P95 19.12.07 Certified copy of order in bail application No.7160/07 of the Hon'ble High Court of Kerala.
- P96 19.12.07 Certified copy of order bail application No.7162/07 of the Hon'ble High Court of Kerala.
- P97 31.3.10 Address details of caller of telephones enclosing of Ext.P43 dated 31.3.2010
- P98 14.6.10 CrI.M.P. 735/10 filed by NIA u/S 306 CrI.P.C.

Exhibits marked on the side of defence:

- D1 - Marked portion from CD statement of CW2
"I rushed to KSRTC
I heard another explosion"
- D2 - Marked portion of statement of CW30
"On question I stateplaced in the Bus stand"
- D3 - Marked portion of statement of CW48 "As such he went out
.....
from the Moffusil Bus Stand site"
- D4 - Portion of statement of CW70 "In pursuant of team to
first then to Pattalam Mosque"
- D5 3.12.09 Portion from the CD statement of CW21

"P.K. മൂലമുള്ള അന്വേഷണം, -- ഭരണകൂടം
മുന്നോട്ടു വെക്കുന്നു."

- D6 - Marked portion of statement of CW54 M. Jayachandran
 " നാലാമത്തെ മണിക്കൂറിലെ ഒന്നുമു
തന്നെ ഉണ്ട് "
- D7 - Marked portion of statements of CW58 "I recollect that no cap (detonate) was given along with the Thotta (gelatin)
- D7(a)- Marked portion of statement of CW58 "Went to one Arakkapadi who is stockist for explosives and crackers"
- D8 Marked portion of statement of CW59 "on being marked whether in small quantity"
- D8(a) "I used to procure Thotta - Pullat of Kodungallur.
- D8(b) "At that time they 200 Nos. of Thotta"
- D8(c) "At that time they used to purchase Thotta and cap quarry work for me"
- D9 26.1.10 Letter dtd 29.1.2010 of Principal General Manager, Telecom, Kozhikode to NIA
- D10 Marked portion of statement of CW72 "From this call details on the time mentioned above"
- D11 No document marked
- D12 Marked portion of statement CW4 "S.I Biju informed 500 meters away"
- D13 3.3.06 -Photocopy of General Dairy of Kasaba Police Station (4 sheets)
- D14 Marked portion of statement of CW31. "He had given the description ... reported namely (probably Santhosh)
- D15 Page showing call details in accused copy of charge



and documents (given to A3)

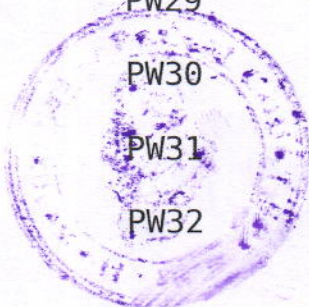
- D16 3.3.06 Copy of G.D. of City Control room, Kozhikode City
- D17 3.3.06 G.D. entry of Nadakkavu Police Station
- D18 3.3.06 G.D. entry of Police Outpost of KSRTC stand
- D19 12.4.06 Copy of letter issued by Director of Forensic Lab, Trivandrum to the Commissioner of Police, Kozhikode
- D20 11.10.06 Letter of Director of FSL, Trivandrum addressed to JFCM- IV, Kozhikode.
- D21 16.10.06 Letter of Director of FSL, Trivandrum addressed to JFCM III, Kozhikode.
- D22 3.11.09 Certified copy of Remand Report of Majeed Paramban Bai (A13)
- D23 18.7.08 Certified copy of Remand Report of A6 Muhammed Halim
- D24 Photocopy of relevant pages of Parav register
- D25 22.7.11 Address particulars of telephone No.2722286 & 2766433 issued by BSNL.
- D26 16.7.11 Address particulars of MNC 2722286 & VCC 2766433 issued by BSNL.

Prosecution Witnesses:-

- PW1 - Shammi Firoz
- PW2 - V. Mohan Das
- PW3 - P. Koyakutty
- PW4 - Mrs. Shidha K.K.
- PW5 - K. Balakrishnan
- PW6 - Valsan
- PW7 - K.P. Aboobacker
- PW8 - P. Sunil Kumar



PW9 - Somadas
PW10 - Sudeep Jeevan
PW11 - Subair P.A.
PW12 - Mohammed @ Kunjumon
PW13 - K. Asharaf
PW14 - Mohandas
PW15 - Abdul Khader
PW16 - V. Ashok Kumar
PW17 - Rejish
PW18 - Subeesh
PW19 - Nazeer T
PW20 - Chathoth Kamarudheen
PW21 - Uwais Sathar V.P.
PW22 - M. Jayachandran
PW23 - M.C. Abdul Nisar
PW24 - K.C. Varghese
PW25 - M.B. Peter @ Joy
PW26 - Mathai @ Arakkapadi Mathai
PW27 - K.B. Venugopal, Asst. Commissioner of Police, North Kozhikode City
PW28 - M.K. Bharathan, Addl. S.I. of Police, Nadakavu P.S.
PW29 - Rajan Nair, Commercial Officer, PGMT, BSNL
PW30 - P. Ramdas, S.I. of Police
PW31 - Subramanian
PW32 - Shawkathali, Dy.SP, CBCID





IN THE COURT OF THE SPECIAL JUDGE FOR NIA CASES, KERALA, ERNAKULAM

Sri.S. Vijayakumar, B.Sc., LL.B., Judge, Spl.Court for NIA Cases
Thursday, the 11th day of August, 2011/20th Sravana, 1933

Sessions Case No.2/2010(NIA)

(Crime Nos.5/06 and 6/06 of NIA, New Delhi),

Crime Nos.183,184/CR/S-III/2006 of CBCID,

Crime No.80/2006 of Kasaba Police Station, Kozhikode &

Crime No.81/2006 of Nadakkavu Police Station, Kozhikode

Complainant:

State represented by National
Investigation Agency, New Delhi

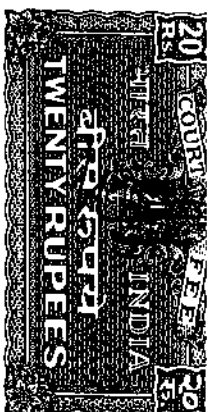
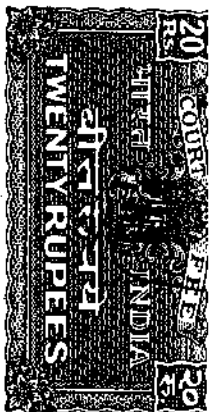
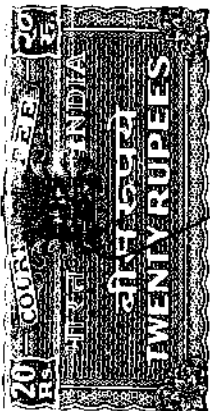
By Special Public Prosecutor Sri.K.N. Ravindran

Accused:

1. Thadiyantevida Naseer, (A1), @ Ummar Haji @
Haji, Sidhique, Naseer, Aged 33/09 years,
S/o Abdul Majeed, 'Baithul Hila',
Thayyil, Neerchal, Kannur Dist., Kerala.
2. Abdul Halim, (A3), @ Halim, Aged 33/09 years,
S/o Usman, 'Sakeenas', Thazhakath House,
Vazhakkatheru, Kannur. (now residing at
"Safiyabag", Thana, Kannookara, Kannur Dist.
3. Shafas, (A4), Aged 25/09 years,
S/o Shamsudhin,
"Shafnas", Thayyil, Pound Valapp,
Kannur.
4. Abubacker Yusuf, (A9), @ Yusuf Chettipady,
Aged 33/09 years, S/o Abubacker,
Nalagathu House, Neduva Village,
Tirurangadi, Tehsil, Malappuram.

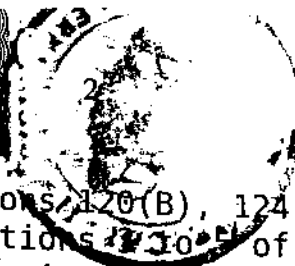
(A2 and A8 are absconding and case against
them are split up. No charge against A5.
A6 died. A7 approver)

A1 & A4 By Senior counsel Sri. K. Ramakumar
and Adv. Sri. T.K. Kunhabdulla
A3 By Adv. Sri. T.K. Kunhabdulla
A9 By Adv. Sri. P.C. Noushad



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Offence charged

: Sections 120(B), 124(A), 153(A), 324 r/w 34
IPC, Sections 10 of the Explosive
Substances Act and Sections 16(i), 18 and 23 of
the Unlawful Activities (Prevention) Act 1967

Plea of accused

: Not guilty

Finding of the court:

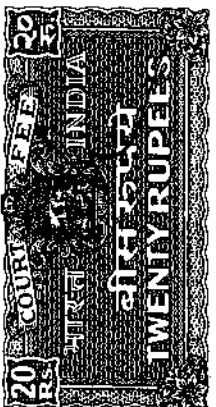
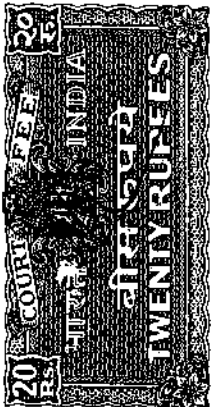
A1 & A4 - Guilty

A3 & A9 - Not guilty

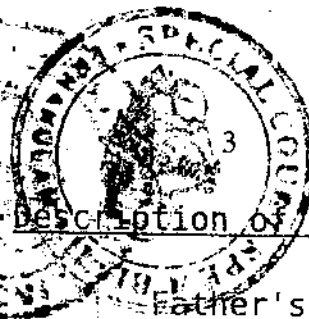
Sentence or Order:

A1 and A4 are sentenced as follows. For the offence under Section 18 of UAP Act both A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment of one year; for the offence under Section 16(i) of UAP Act A1 and A4 are each sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of imprisonment for one year; under Section 124(A) IPC A1 and A4 are each sentenced to undergo imprisonment for three years and to pay fine of Rs.10,000/- each (Rupees ten thousand only) with default sentence of three months; under Section 153(A) IPC A1 and A4 are each sentenced to undergo imprisonment for two years. In addition A1 is also sentenced under Section 4(b) of Explosive Substances Act to undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand only) with default sentence of one year. It shall be sufficient if all the substantive jail sentences run concurrently.

It is further directed both the convicts shall be provided with the privilege of maintaining their beard at their choice as a mark of religious practice and A1 shall also be permitted to wear his cap on occasions of his choice. It is further provided that they shall be provided with physical labour and for that purpose if necessary they shall also be given vocational training so that they will realize dignity of labour. As an attempt to refine them, both the convicts shall also be provided with reading material such as vernacular version of biographies and autobiographies of great patriotic men of India and commentaries to the Constitution of India.

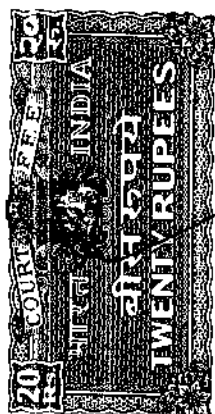


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Description of accused

Sl. No.	Name	Father's name	Religion	Occupation
1	Thadeyantevida Nazeer(A1)	Abdul Majeed	Muslim	Private job
2.	Abdul Halim (A3)	Usman	"	"
3.	Shafas (A4)	Shamsuddin	"	"
4.	Abubacker Yusuff	Abubacker	"	"



Age	Residence
33/09 (A1)	'Baithul Hilal', Thayyil, Neerchal, Kannur Dist., Kerala.
33/09 (A3)	"Safiyabag", Thana, Kannookara, Kannur Dist.
25/09 (A4)	"Shafnas", Thayyil, Pound Valappu, Kannur.
33/09 (A9)	Naduva, Malappuram District

Date of

Occurrence	Complaint	Apprehension	Bail	Commitment
3.3.2006	2.8.2010	24.2.10 (A1) 22.7.09 (A3) 24.7.09 (A4) 15.1.10 (A9)	- 2.8.2010(A3) - -	- - - -
.....				
Commencement of trial Close of trial Sentence/Order				
.....				
20.1.2011		27.7.2011		11.8.2011
.....				

This case finally heard on 2.8.2011 in the presence of Advocates for both sides and stood up for consideration to this date and on the same day the court delivered the following:-

JUDGMENT

This is the Kozhikode Twin Blast case investigated and charge-sheeted by the National Investigation Agency, New Delhi in

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Crime Nos.5/09 and 6/09.

2.. Originally it was registered as Crime No.80/06 of Kasaba Police Station and Crime No.81/06 of Nadakkave Police Station, Kozhikode on 3.3.2006 for offences under the Explosive Substances Act. Then the cases were transferred to CBCID SIG III on 13.6.2006 and in the course of investigation offences under Sections 120(B), 124(A),153(A),324 r/w 34 IPC, Sections 15(a), 15(a)(i) (15(a)(ii)) of Unlawful Activities (Prevention) Act 1967 (and Sections 3,4 and 5 of the Explosive Substances Act) were included. Subsequently investigation, was taken over by the National Investigation Agency as per order of Government of India (MHA) vide order No.11034/31/2009-IS-VI dated 1.12.2009 and 4.12.2009 and Crime Nos.5/09 and 6/09 of NIA were registered culminating in the final report filed on 2.8.2010.

3.. In the charge-sheet, NIA reported that their investigation revealed that Naseer @ Ummer Haji, r/o Kannur (A1), Mohammed Ashar r/o Thalassery (A2), Abdul Halim @ Halim r/o Kannur (A3), Shafas r/o Kannur (A4), Fayiz r/o Kannur (A6), Shammi Firoz r/o Malappuram (A7), P.P. Yoosaf r/o Kannur (A8) and Yusuf Chettipady, Malappuram (A9), accused herein conspired, planned and executed the twin bomb blasts in KSRTC bus stand and Mofussil bus stand, Kozhikode city on 3/3/2006 as a retaliation against the perceived partisan attitude of the Executive and the Judiciary in not granting bail to the Muslim accused persons involved in the II Marad incident. So, in order to show the resentment of the Muslim

PW57

Ravi Gambir, Dy. S.P., NIA

PW58

T.K. Rajmohan, S.P., NIA

Witnesses for defence:

DW1 Sunil Jacob

DW2 C.I. of Police, Kannur

DW3 Aneesh Joy, S.H.O., Kozhikode Town Police Station

Material Objects

M01 series - Packet (cover) containing the signature of PW15 (5 Nos)

M02 series - Broken pieces of glasses


JUDGE.

Name of the Court

Addl. Special Comm.
(CBI/SPE) Ernakulam

11 TTW

photocopy 1)

Year and No. of proceedings : SC 2/2010 NIA

Name of the applicant : Ash. K. N. Ravindran

No. & Date of the application : 371 P.P. NIA
11/145/2011 dt. 12/8/2011

Date of calling for stamp papers : 14/9/2011

Date of production of papers : 16/9/2011

Date of calling for Addl. papers : -

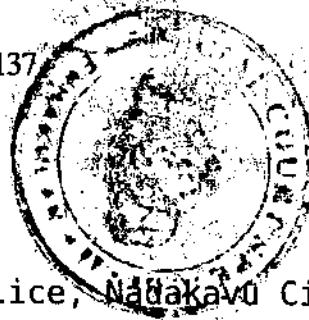
Date of production of Addl. papers : -

Date when copy was ready : 16/9/2011

Date fixed for appearance : 20/9/2011

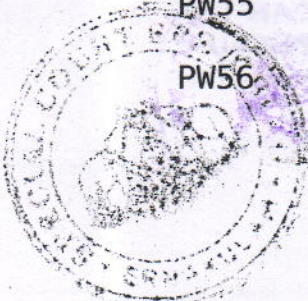
Date when copy was delivered : 16/9/2011


EXAMINER



PW33 Dr. Mini Kamala
PW34 P. Achuthan
PW35 S. Abhilash, C.I of Police, Nadakavu Circle
PW36 Mr. A. Ijas, Jdl. First Class Magistrate
PW37 M.T. Unni, Police Constable
PW38 K.R. Biju, S.I of Police, Kasaba PS
PW39 Sabu T.G.
PW40 Muraleedharan P
PW41 A.J. Babu, C.I. Kozhikode, Town Circle
PW42 Aneesh Kumar, Police Constable
PW43 T.V. Kamalakshan, S.P., CBCID
PW44 V.K. Akbar, Dy.SP, Kerala Police Academy
PW45 Mukesh Singh, S.P., NIA
PW46 Sreekumar
PW47 N.B. Bhardan, Principal Scientific Officer, CFSL, CBI, New Delhi
PW48 A. Dey, Principal Scientific Officer.
PW49 Basil K Varghese
PW50 K.T. Balan
PW51 Mubarak
PW52 Virender Kumar, Under Secretary to Govt. of India
PW53 T.F. Xavier, Dy.SP of DCRB, Kozhikode
PW54 D. Rajan, Dy.SP, CBCID, SIG-III, Kozhikode
PW55 C. Radhakrishna Pillai, Inspector of Police, NIA
PW56 Raja Sundaram, Additional witness

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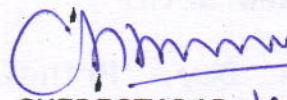
M01 series - Packet (cover) containing the signature of PW15 (5 Nos)

M02 series - Broken pieces of glasses


JUDGE.

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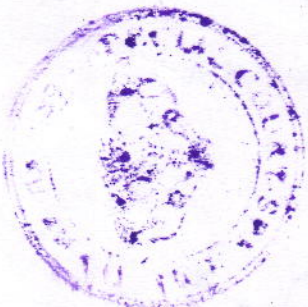
(By Order)



SHERISTADAR *ilc*

Date of Application - 12/8/2011

Date of order - 12/8/2011

Date of issue - 12/8/2011




SHERISTADAR *ilc*
SPECIAL COURT (SPE. CBI) -
ERNAKULAM



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