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HARI SINGH Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Puneet Ahluwalia, Advocate.

versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP.

MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

1. The Appellant in this case, challenges a judgment and order of the learned Additional Sessions Judge, Delhi, dated 30-07-2001, in SC No. 106/1993 (“the impugned judgment”) whereby he was convicted under Section 3 of the Anti-Hijacking Act, 1982 (“the 1982 Act”) read with Sections 186, 353 and 365, of the Indian Penal Code (“IPC”), and sentenced to undergo life imprisonment (for the offence under the 1982 Act) and various other prison terms, for the conviction in respect of the IPC offences.

2. The prosecution case was that on 27-3-1993, an Indian Airlines Airbus Flight IC 439 (“the flight”) took off from the New Delhi Palam Airport at 06:25 hours though it had to take off at 06:00 hours. It was a Madras bound flight, with a stopover at Hyderabad. According to

the prosecution, the flight, when air borne, was hijacked when it was about a 100 miles away, *enroute* Hyderabad. The prosecution alleged that at 07:50 hours, Shri. P. Elumalai (PW-2), Manager, Airport informed the Domestic Airport Palam control room that the flight was returning as there was an emergency landing, and according to information, the incident was one of suspected hijacking. The information was logged by a diary entry No.6 and was later exhibited as Ex. PW-19/A. After intimation of the information, it was relayed to Palam Airport and other investigation agencies, including the DCP of the Indira Gandhi International Airport. A wireless message was given to PS Palam Airport, about the possibility of emergency landing at 08:03 hours; a copy of the intimation was furnished to the SI of the Palam police station. SI Seesh Pal (PW-39) reached the place, around 08:40 hours.

3. The aircraft landed at Rajasansi airport, Amritsar, where the Appellant, who was a passenger in the flight, occupying seat No. 9A, and who had allegedly hijacked it (the flight) surrendered. The flight had 192 passengers, and was commanded by the pilot, PW-3, and co-piloted by PW-21. PW-4 was its flight engineer, and another pilot captain was PW-6A; its crew included a purser and six air hostesses. The prosecution alleged that the hijacker had, at 07:00 hours, handed over one black envelope to airhostess Sunita Sharma PW-5, which he wanted to be given to the captain commanding the flight in the cockpit. The envelope (Ex. PW-3/A) was marked "Very Urgent, Personal and Confidential", and addressed to Captain Rao PW-3. PW-5 Sunita Sharma later carried another message from the said passenger, insisting that the envelope should be opened and read over. On being given this, PW-3 opened the envelope, sent by one Hari Singh; the message conveyed was that if the pilot did not comply with his request, the plane would be destroyed with explosives. The sender claimed to be a trained LTTE cadre member, and part of its suicide squad, alleging that he was armed with PETN explosives and was a human bomb, which was similar to the device adopted for assassinating late Rajiv Gandhi and Vijay Ratne, the defence Minister of Sri Lanka. PW-3 called the hijacker into the cockpit, where he repeated the demand, and said that the flight should be diverted to Islamabad in Pakistan. The aircraft, which was flying over Bhopal, at that time, was diverted to Delhi. The pilot told the hijacker that there was not enough fuel to go there, upon which the hijacker insisted that the aircraft should land in Lahore. The pilot relayed a message to Delhi, and on receiving approval, diverted the flight to Lahore. The prosecution alleges that permission to land was not granted in Lahore, after which the hijacker was persuaded to agree that the aircraft could land in Amritsar, as it had

insufficient fuel. After the aircraft landed at Amritsar, negotiations were held between the hijacker and Shri K.P.S. Gill, the then Director General of Police, Punjab. Ultimately, he surrendered before Shri Gill at 11:30 hours, after receiving assurances that his demands would be met. The hijacker, i.e the Appellant here, was later charged with committing offences mentioned in the first paragraph of this judgment.

4. In the course of investigation, the prosecution claims to have seized the passenger manifest, 192 counterfoils of boarding passes from the office of the Traffic Superintendent, Indian Airlines Palam Airport. Statements of witnesses were recorded. Another FIR had been registered in Amritsar; the Appellant was arrested there, upon his surrender. The Investigating officer, of the Delhi Police, sought formal arrest of the Appellant, and obtained transit remand from the concerned competent court at Amritsar. The Appellant was questioned during investigation; he allegedly made a disclosure statement, on 30-3-1993, relating to preparation for the hijacking. Other evidence relating to his arrangement for travel, etc was also collected by the police. The specimen handwriting of the Appellant was secured, under orders of court, and sent for examination. The comparison was with the communication allegedly sent by him to PW-3 during the time when the flight was airborne, leading to its hijacking. The Central Government accorded sanction under the Act, for prosecution of the Appellant. A final report was filed and thereafter, the Appellant was charged with committing the offences he was found guilty of having committed. He entered the plea of not guilty, and claimed trial.

5. During the trial the prosecution examined 45 witnesses. The material witnesses, in this regard were PW-3, PW-4, PW-5, PW-6 and PW-18.

6. Mr. Sandeep Sethi, learned senior counsel for the Appellant, argued that the facts alleged and sought to be proved by the prosecution do not make out the essential ingredients of the offence under Section 4 of the Act. It was submitted that the offence of hijacking is defined in Section 3 of the Act. In terms of that provision, anyone on board an aircraft in flight, *“unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft”* commits the offence of hijacking. In this case, submitted counsel, there was nothing to suggest, or much less establish that the Appellant had used force, threat or “other form of intimidation” for the purpose of either seizing or exercising control of the aircraft. It was emphasized in this regard that the Appellant concededly was not

found to possess any weapon, or even represent that he was holding any weapon, so as to give rise to reasonable apprehension in the minds of anyone that he could use force while the aircraft was airborne. It was argued that the prosecution was unable to prove, in addition, that the Appellant had seized or exercised control of the aircraft. The Appellant was single, not in possession of any weapon or any other substance that could have led to apprehension in the minds of the pilot, crew, or passengers of the aircraft that they would come to any harm. He did not take charge or command of the aircraft, at any time, nor threaten to do so, nor use any arms to take control or seize it. Having regard to the facts alleged, and proved, the prosecution utterly failed to prove that the provisions of the 1982 Act were applicable, or that Appellant was guilty of any offence created in it.

7. It was argued next that the trial court erred in not seeing that the entire circumstances point to the pilot, PW-3 assuming that the Appellant had held up the aircraft. Reliance was placed on the evidence of PW-3 for this purpose, and it was contended that according to the witness, about 100 miles after the flight was airborne from Delhi, PW-5, on receiving an envelope from PW-6, handed it to the pilot PW-3. Allegedly the envelope was not opened in the first instance, and the so-called hijacker, who was allegedly seated on Seat No. 9A insisted that he ought to read it. Soon after reading it, the pilot apparently assumed that the Appellant had hijacked the flight, and instructed PW-21 to divert the course, as was deposed by the latter. In other words, all circumstances pointed to PW-3 first diverting the course of the aircraft, and later allegedly proceeding to negotiate with the Appellant. In these facts and circumstances, there was no hijacking or intimidation as to attract the finding of Appellant's guilt.

8. Learned counsel submitted that according to the prosecution, the Appellant's letter had resulted in the pilot and the crew being forced to divert the aircraft, and attempt a landing at Lahore. In this context, argued counsel, there was nothing on the record by way of log books, or black box recordings which could have substantiated this allegation. It was submitted that even the Air Traffic control records were not produced. All these were vital pieces of evidence which should not have been withheld from the court, regardless of whether or not they proved the prosecution case. Indeed, if they pointed to facts favourable to the Appellant, and contrary to the prosecution story, it was the latter's duty to nevertheless present them in court. Their deliberate non-production ought to have alerted the trial court to draw an adverse inference against the prosecution, and the court should have taken that as an important factor in the defence of the Appellant. In not considering this vital aspect, the trial

court fell into error.

9. The Appellant's counsel argued that the Trial Court failed to see that all indications pointed to the pilot, PW-3 panicking unnecessarily and inferring that the aircraft had been hijacked. It was emphasized that there was intrinsic evidence disclosing that a bunch of 31 papers had been handed-over to PW-3. Learned counsel relied upon the contents of those documents, which depicted illustrations of political leaders, such as Sh. L.K. Advani, Sh. P.V. Narasimha Rao, Dr. Manmohan Singh, Sh. Mahatma Gandhi and so on. Summarizing the said document, marked as DA, it was argued that its contents, if read, would have led no reasonable man to conclude that the author wanted to hijack anyone. Learned counsel submitted that the document reflects the anguish and frustration of each Indian citizen, highlighting the real concerns, like corruption in high places, debasement of moral values of society, oppression of the common man – Appellant considering himself to be one among them; insensitivity of the government; the self-centred political class; violence and strife in society in the aftermath of the Babri Masjid demolition; lowering of India's international image; lack of credibility of Enquiry Commission Reports and disintegration of society. It is pointed that the language used in the 31-page note is justified and parliamentary and underlines the writer's sense of helplessness and frustration. Although several witnesses deposed having seen the 31-page note being handed-over to PW-3, the latter denied it. This assumed significance, according to learned counsel.

10. Elaborating on the argument, it was submitted that PW-3, as per the duty roster, was not to be the Commander of the flight. Instead, the scheduled Commander was Moulay, PW-6A, and PW-21 Manjeet Singh was his co-pilot. It is also revealed that Capt. Rao claims to have assumed command and on the basis of a letter allegedly handed-over by PW-5, who told him about it being given by the passenger of Seat 9-A, inferred that the plane was being hijacked. This was a panic reaction, but opportunistically relied upon by PW-3, to gain credit for himself. Learned counsel submitted that the unequivocal evidence of crew members – PW-4 and PW-6A that the bunch of 31 pages were handed-over to PW-3, which the latter denies, merely confirms this inference. If in fact, PW-3 had gone through the document, there would have been in fact no incident at all. Learned counsel further argued that PW-6A and all the other eyewitnesses relied by the prosecution admitted that the Appellant was always calm and behaved with composure. This meant that he gave no cause to the pilot or crew members for an alarm, much less, for them to infer that the plane was "seized by him", or taken under

his control. In any event, he did not extend any intimidation or threat, or violence so as to attract provisions of the Act.

11. Learned senior counsel submitted that PW-3, Capt. Rao flouted the established protocols, and to his having panicked and assumed a hijacking. It was also urged that PW-3's conduct pointed to his having availed the opportunity provided by the incident to gain laurels for himself, when in fact there was no hijacking. It was submitted that the evidence of PW-4 and PW-21 establish that Capt. Rao was later promoted as Director, on account of his so-called commendable handling of the situation. If indeed, the aircraft had been hijacked, the airlines' protocols and guidelines required recourse to emergency procedures, which meant that the Airport Authority could have been notified through a radio frequency, by a signal in that regard. It was submitted that in fact, every such detail is recorded in detail and is very material. The records, as per the evidence of PW-4 are preserved by the Airport Authority. These details were obviously not available since the emergency protocol in this case had not been followed. Sh. Sandeep Sethi, learned senior counsel also argued that none of the prosecution witnesses deposed about such prescribed guidelines having been followed even in spirit.

12. Learned counsel also relied upon the deposition of PW-21, pointing-out that he clearly mentioned that immediately upon opening the envelope, PW-3/A, and reading its contents, Capt. Rao, PW-3 declared that the aircraft had been hijacked to Islamabad. On his instructions, when the aircraft was over Bhopal, PW-21 turned it back to Delhi and informed the Delhi control that the aircraft had been hijacked.

13. It was submitted that the contradictions between the version of PW-3 in the police statement, and the improvements made by him in the depositions recorded in the court, are such that he was an untrustworthy witness, whose testimony could not have been relied on by the court, to convict the Appellant. In this regard, it was pointed out that the contradictions were on the following aspects:

- (1) Asking PW-5 to verify who was occupying seat No. 9A;
- (2) Personally verifying which passenger was indeed occupying that seat;
- (3) Not being in command at the time, when he sought to verify the Appellant's identity;
- (3a) The Appellant not having gone to the cockpit on his own, but at the suggestion of PW-4 and PW-6A;

- (4) The Appellant wearing a kurta, containing caricatures of Indian leaders;
- (5) PW-3, not stating in the previous police statement recorded under Section 161, that he had made efforts to persuade the Appellant to agree that the aircraft be permitted to land in New Delhi airport;
- (6) His having handed over the 31 page document given by the Appellant, after the aircraft landing at Amritsar, to the local police.

14. Learned counsel submitted that having regard to an overall reading of the evidence, it is apparent that the Appellant could not have been convicted for the offence of criminal intimidation. It was argued that “intimidation” is not defined under the 1982 Act. To understand the offence, it would be appropriate to take recourse to the definition under the IPC. In this context, reliance was placed on Section 503, IPC, which reads as follows:

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person in whom the person threatened is interested, is within this section.”

It was argued that the offence of intimidation is not committed, unless the prosecution establishes intention. Absent *mens rea*, no one can be successfully charged with having committed the offence. It was submitted that the import of the offence of intimidation was explained by this court’s judgment reported as *Amitabh Adhar v NCT of Delhi* 85 (2000) DLT 415, to the following effect:

“The averments made in the FIR and in the case diary statement of the complainant against the petitioners also do not satisfy the essential ingredients of the offences punishable under Sections 506/509 IPC. The threats alleged to have been given to the complainant Ms. Bharti by the petitioners do not fall within the definition of criminal intimidation inasmuch as the complainant has nowhere stated that the threats given by the petitioners caused an alarm to her. It is well settled that mere threat is no offence. Similarly, the complainant has nowhere stated either in her FIR or in the case diary statement that the petitioners, intending to insult her modesty, uttered any word or made any sound or gesture..”

To the same effect, the judgment in *Kanshi Ram v State* 86 DLT (2000) 609 was relied on:

“10. So far as the offence under Section 506 IPC is concerned, the complainant Isran Ahmed stated in his case diary statement that at the relevant time the petitioner had exhorted his security personnel to thrash the journalists. According to Isran Ahmed, the exact words used by the petitioner were "Maro Salon Ko". Strangely enough, Isran Ahmed has nowhere stated in

his statement that the alleged threat had caused an alarm to him. On the contrary the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that mere threat is no offence. That being so the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC. Consequently, no charge under Section 506 IPC can be framed against the petitioner on the basis of the said evidence...”

Amulya Kumar Behara 1995 CriLJ 3559, says the Appellant’s counsel, also establishes that there must be an intention to cause harm. Reliance is placed on the following extract from the said judgment:

“7. Section 506, IPC deals with punishment for criminal intimidation. Section 503 defines the said offence. It has following essentials.

(1) Threatening a person with any injury;

(a) to his person, reputation or property ; or

(b) to the person or reputation of any one in whom that person is interested.

(2) The threat must be with intent; (a) to cause alarm to that person; or

(b) to cause that person to do any act which he is not legally bound to do as means of avoiding execution of such threat; or

(c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat.

Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person. Here expression of any words without any intention to cause alarm would not be sufficient to bring in application of Section 506, IPC.”

15. The Appellant’s counsel submitted that the trial court also erred in not seeing that the concerned documents (Ex. PW-3/B, being the letter allegedly written by him to PW-3) were not proved, and it was not established that he (the Appellant) wrote it. It was also argued that the initial police officer, investigating the matter, PW-42, clearly admitted that emergency drills and protocols existed which an aircraft would have resorted to in the case of an emergency, such as hijack. Clearly, these were not resorted to; the witness admitted that the black box, and ATC records, as well as other documents which related to the flight, were not even seized.

16. Learned senior counsel lastly submitted that by all accounts, even as per the prosecution evidence, the Appellant behaved politely, was peaceful and composed, and never gave a cause for fear to any member of the crew. In fact, he was also concerned that passengers should not panic. If the note written by him, were seen and read, it would have been clear that his effort was to highlight the deep loss of credibility and trustworthiness of

the political class, and the anguish felt by millions of countrymen. The letter was to be seen more as a political wake up call, meant to be viewed by all citizens. He could not, under the circumstances, be treated as a criminal and hijacker. In not seeing the complete lack of criminal intent, much less intent to cause harm to anyone, the Trial Court misdirected itself, and its findings are therefore, liable to be set aside.

17. The prosecution argues that the offences which the Appellant was charged with, were proved by it and the Trial Court judgment does not call for any interference. Elaborating on this aspect, it was submitted that in all essentials, the version made-out by the prosecution with regard to the original flight schedule of the aircraft, the sequence of events which led to its diversion, the identity of the hijacker, and his eventual surrender after the flight landed at Amritsar, cannot be doubted. It is submitted that the cumulative effect of depositions of PWs-3, 5, 6, 6A and 21 has put the matter beyond any shadow of doubt about the role and complicity of the Appellant in the whole episode.

18. The learned APP relied upon the depositions of PWs 3, 6A and 21 to submit that the flight was originally Chennai-bound, with an intervening halt at Hyderabad. When airborne about half an hour after take-off, at approximately 100 miles away from New Delhi, the Commander, PW-3 received an envelope, Ex. PW-3/A, which contained two sheets of paper (Ex. PW-3/B). This was delivered by PW-5, Sunita, who had in turn been handed the envelope by PW-6. The latter two witnesses corroborated each other on this aspect. PW-3 initially did not pay any heed; however, the sender of the envelope, who was in Seat No. 9A (and whose identity was proved by PWs-4, 5, 6 and 6A to be the Appellant) insisted that the Commander, PW-3 should open the envelope and go through the contents. This was conveyed by PW-5 to the Commander. Thereupon, the Commander opened the envelope, which was labelled "Very Urgent Private and Confidential" (in Hindi), and came across a two-page note. The two page note has been marked as Ex. PW-3/B. It is submitted by learned APP that the contents of the letter, which clearly held-out threats and intimidation, in as much as there is a direct reference to methods adopted by the LTTE. The sender of the letter stated that the Commander had to carry out his wishes or else the fate that awaited the crew and the passengers was not a good one. There was also a direct allusion to the methods employed by the LTTE, which the note stated, was responsible for the assassination of late Rajiv Gandhi and the Sri Lankan statesman Vijayarathne. The learned APP submitted that both the assassinations were carried-out with the aid of human bombs; thus the intent of the Appellant

was clearly to convey a serious threat that unless his wishes were carried-out, the lives of the passenger and the crew as also the safety of the aircraft were in grave danger. It was submitted by the learned APP that the further sequence of events, which unfolded was clearly spoken to by PWs-3, 4, 6A and 21. The evidence of PWs-4 and 6A established that initially attempts to engage the Appellant in a conversation, in a separate and isolated part of the aircraft (known as the “galley”) were unsuccessful. The Appellant thereafter went to the cockpit and started talking with PW-3. These facts, it is submitted, were clearly deposed and corroborated by the evidence of PWs-3 and 21. The Commander deposed having tried to reason with the Appellant not to insist upon the diversion of the aircraft but that the latter showed adamance that the aircraft had to land in Islamabad. PW-3 then tried to impress upon the Appellant that since the aircraft was short of fuel, it was essential to land in Delhi. The Appellant then insisted that instead of Delhi, the aircraft could land in Lahore.

19. Subsequently, an attempt was made to go to Lahore but the Pakistani authorities refused permission to the aircraft to fly over the Pakistani airspace. At this stage, emphasized the learned APP, relying upon the depositions of PWs-3 and 4 – the Appellant agreed that the aircraft could land at Amritsar. Learned APP submitted that the aircraft did land for re-fuelling; it was taken to a remote area and parked there; the airport authorities and the aerodrome control established radio contact; the police also joined control tower at this stage.

20. Learned APP emphasized that the PW-3 tried to reason with the Appellant to permit the passengers to alight the plane but that the latter refused to do so and insisted that the plane should refuel and fly to Islamabad. Thereafter, the Director General of Punjab Police, Sh. K.P.S. Gill arrived; established contact with the cockpit from the Control Tower. At this stage, the Appellant refused to talk to him. It was submitted that with the entire sequence being established by all the material prosecution witnesses, the so-called “discrepancies” or “doubts” have to be viewed in the context. On this aspect, it was urged that no doubt, the original duty roster did not reveal that PW-3 was to command the aircraft; he was to fly to Hyderabad, where he had been posted. However, the evidence of PW-21 and PW-6A clearly showed that the arrangement which was resorted to, i.e. handing-over of the command to PW-3 was a normal practice and much could not be made out of it. Learned APP relied upon the deposition of PW-6A to the effect that Capt. Rao, was an instructor, and it was decided that he could take charge of the aircraft. He also underwent all necessary procedures, such as medical check-up and flight clearance. It is submitted that these facts were deposed to by him

in the cross-examination. Learned counsel also relied upon the depositions of PW-21, who mentioned that Capt. Rao, though not mentioned in the original duty roster, was shown as “Fly-in-Command”.

21. Learned APP relied upon the testimony of DW-2, who was a purser on board. The said witness deposed that about 15-20 minutes after take-off, one of the Airhostesses informed him that a passenger in the flight wished to communicate with the Commander. DW-2 further deposed that the said individual was taken to the cockpit where Capt. Manjeet Singh, PW-21 and the Flight Engineer, PW-4, Sh. Nagar were present. DW-2 mentioned that the hijacker did not have any arms or ammunition, at least to his knowledge and that he (the witness) was stationed in the concerned galley for the entire period. It was emphasized that significantly, in the cross-examination, this witness – DW-2 deposed that after having seen the Appellant in Court, he (the witness) recalled that the Appellant was the hijacker.

22. It was next argued that since there was no dispute about the identification of the Appellant, as the hijacker, on the basis of clear and ocular testimony, the Court acted within its rights to proceed and convict him. It is submitted that so far as the other aspects, argued on behalf of the Appellants with regard to the handwriting etc. are concerned, PW-10's testimony established that the Appellant had purchased stationary items from him. PW-7 proved the ticket issued to the Appellant, which was marked as Ex. PW-7/A. PW-9, Sunil Kumar Rajput deposed that the Appellant had visited him on 22/23.03.1993 and enquired about flights leaving for Islamabad. The witness gave him the necessary information. Learned APP mentioned that crucially, PW-8, the owner of a photostat shop at 105, Municipal Market, Connaught Circus identified the Appellant and stated that he used to visit his shop for getting photostat copies done. The witness recalled that on 24.03.1993, he had got 10 sets of Photostat copies of 31 pages from his shop and paid Rs.470/- to him; the total bill was Rs.670/-. Learned APP also relied upon the evidence of PW-40, Sh. V.K. Khanna, Principal Scientific Officer, CFSL, with regard to the documents, Ex. PW-3/B, and which was compared with the marks S-1, S-1/1, A-1 and A-1/1. This witness clearly deposed that PW-3/B, which consisted of two pages, that the specimen handwriting in the other documents matched with the handwriting in Ex. PW-3/B.

23. Learned APP argued that the answers provided by the Appellant to the questions of the Court under Section 313 Cr.PC, revealed that he was aware about the time when the plane

landed at Amritsar, which he mentioned to be 09.00 am. He also stated that Capt. Rao was talking to the Amritsar Control Tower; he admitted that after Sh. K.P.S. Gill reached near the aircraft, he – the Appellant – sought permission of PW-22 to go to him. He also submitted that the *kurta* worn by him, Ex. P-1, and the flag with sticker, Ex. P-2 and P-3 were seized by the police; he also admitted to purchasing the air tickets, Ex. PW-7/A.

24. Learned APP repelled the Appellant's submissions that he cannot be convicted for the offence under Section 4. It was argued that the expression "seize" occurring in the provision as well as the term "exercise control" have to be understood in the context, which the Parliament intended them to be used. Learned APP submitted that "seizure" and "exercise of control through intimidation" as has to be proved in this case, is not confined to use of arms or threat of use of arms. It is not also confined to the hijacker "taking-over" the aircraft and flying it himself or through his accomplices. Parliamentary intention in enacting the 1982 Act, and creating the specific offence of hijacking under Section 4 was to address a wider menace of air-piracy. It was submitted that the Trial Court correctly deduced that the elements necessary to conclude that the Appellant had committed the offence were established. It is submitted that the acts or omissions of an individual are to be seen in their textual setting. If they are so seen, it would be apparent that a clear and unambiguous threat to blow-up the aircraft was held-out by the Appellant in Ex. 3/B. He first tried to pass on the envelope and after seeing that the Commander did not read it, insisted that he ought to do so; on being contacted after PW-3 read it, he demanded diversion of the aircraft. This demand could not be seen in a vacuum or isolated manner and had to be seen from the perspective of a responsible commander, with a large number of passengers and crew on board. Their lives and safety were paramount to the Captain, PW-3. There was hardly any time for him to investigate whether the Appellant was indeed in a position to carry-out his threat or was merely making a political or a public statement as was contended by him.

25. It is submitted that the use of the word "intimidation", no doubt, implies a threat of use of force. However, the factual matrix of each case makes all the difference. If an individual – as in the present case - the Appellant – threatens to blow-up the aircraft, or makes a clear reference to two past instances of human bombs, with a further threat that in case his demands are not complied with, the fate of the aircraft would not auger well, all those factors would be sufficient to imply intimidation and threat of use of force, as precisely happened in this case. Therefore, argued the learned APP, the Trial Court's findings and

convictions ought not to be interfered with.

26. The above narrative reveals that the Appellant was charged with having committed the offence mentioned in Section 4 of the 1982 Act. It would be necessary to, at this stage, notice Parliamentary intention in creating this special class of offence. The Long Preamble to the Act reads as follows:

“An Act to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and for matters connected therewith.

WHEREAS a Convention for the Suppression of Unlawful Seizure of Aircraft was, on the 16th day of December, 1970, signed at The Hague;

AND WHEREAS it is expedient that India should accede to the said Convention and make provisions for giving effect thereto and for matters connected there with;”

The Act defines, by Section 3, various terms such as aircraft, aircraft registered in India, military aircraft, and so on. Section 3 enacts what constitutes “hijacking”; Section 4 provides the punishment for the offence of hijacking under Section 3. The said provisions read as follows:

"2. Definitions *In this Act, unless the context otherwise requires,-*

(a) "aircraft" means any aircraft, whether or not registered in India, other than a military aircraft or an aircraft used in customs or police service;

(b) "aircraft registered in India" means an aircraft which is for the time being registered in India;

c. "Convention country" means a country in which The Hague Convention is for the time being in force;

d. "Hague Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on the 16th day of December, 1970;

e. "military aircraft" means an aircraft of the naval, military, air force or any other armed forces of any country and includes every aircraft commanded for the time being by a person in any such force detailed for the purpose.

CHAPTER II - HIJACKING AND CONNECTED OFFENCES

3. Hijacking

(1) Whoever on board an aircraft in flight, unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.

(2) Whoever attempts to commit any of the acts referred to in sub-section (1) in relation to any aircraft, or abets the commission of any such act, shall also be deemed to have committed the offence of hijacking of such aircraft.

(3) For the purposes of this section, an aircraft shall be deemed to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened

for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the competent authorities of the country in which such forced landing takes place take over the responsibility for the aircraft and for persons and property on board.

4. Punishment for hijacking

Whoever commits the offence of hijacking shall be punished with imprisonment for life and shall also be liable to fine."

27. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, (to which India is signatory and which is given effect to in municipal law, through the 1982 Act) was preceded by the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1970 and later, internationally, the subject matter (air piracy and hijacking) was again dealt with under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The latest in the series is the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. All of them stem from a common concern about the safety of air transportation and were negotiated with the aid of the International Civil Aviation Organization. The 1963 Convention is directed towards acts jeopardizing the safety, good order and discipline of aircraft and of persons and property on board, and merely mandates establishment of jurisdiction over the location of offences. It provides rules and procedures in cases of "*seizure, or other wrongful exercise of control of an aircraft in flight*" (Art. 11, Para. 1), and obliges a state party to take necessary measures for establishing its jurisdiction as the State of registration over offences committed on board aircraft registered in such State. This convention does not attempt to define, or oblige the state party to define any action or conduct endangering air safety or passenger safety as an offence; its requirement to establish jurisdiction applies to only acts committed on board an airborne aircraft.

28. The subsequent aviation instruments incrementally reacted to terrorist acts. The 1970 Convention defines a crime which state parties are required to punish by severe penalties. The signatory state has to penalize the act of a person who "*unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft*" (Art. 1, Para. (a)). Attempts to perform such acts and acting as accomplice of an offender have to only be penalized when committed on board an aircraft in flight, but the meaning of that term is expanded to mean after closure of its external doors following embarkation until the moment when any such door is opened for disembarkation; not just from take-off to landing. Both the 1963 and 1970 conventions were focused reactions or responses upon

attempts to hijack to gain control of airborne aircrafts. Acts, aimed at aircraft destructions were dealt with under the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. This convention mandates criminalization of aircrafts attacked in service, (i.e from beginning of pre-flight preparation of the aircraft by ground personnel or by crew for a specific flight until 24 hours after any landing- Ref Art. 2, para.(b)). It also extends to acts of violence against persons on board an aircraft in flight, aircraft or air navigation facilities if those acts are likely to endanger aircraft safety. Attempts to commit such acts are also sought to be outlawed, and penalized. The 1988 Protocol is connected to the 1971 Convention. It defines and applies the attempt and accomplice concepts to the additional offence committed by a person if he, using any device, substance or weapon performs a violent act against anyone at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport”.

29. The international conventions and treaties mentioned in the preceding paragraphs broadly reflect the international community’s resolve to present a uniform approach in dealing with air piracy issues, including their definition, the issues of jurisdiction which are likely to arise at the occurrence of such incidents, the common approach towards penalties, etc. India, as a signatory to the 1970 convention, and after ratifying it, effectuated the provision, by enacting the 1982 Act.

30. In the present case, the prosecution allegations against the Appellant were that he had boarded the aircraft, scheduled to Chennai, via Hyderabad, and soon after its being airborne (approximately 100 miles away from New Delhi) he passed on an envelope, to PW-6 Jyoti, who in turn passed it on to PW-5, for onward transmission to the commander PW-3. The latter is supposed to have inquired as to who had sent the envelope, on receiving it; PW-5 stated that it was the passenger seated in Seat No. 9A. The commander is supposed to have left his seat, to see whether he knew the sender of the envelope, and thereafter returned. The said passenger is supposed to have later insisted to PW-6 that the Captain should read the envelope’s contents. PW-3 opened PW-3/A and found the letter PW-3/B, which held out threats unless the demands of the author (of the letter) were met with. These factual aspects- i.e. the Appellant being seated in No. 9A, his passing the envelope to PW-3 through the two airhostesses, his trying to see if he knew the Appellant, and not opening the envelope, and

thereafter opening it, after the Appellant's subsequent insistence, is spoken to by various witnesses.

31. PW-6 Jyoti mentioned that the Appellant was occupying Seat 9A, and about 15 minutes after the flight took off, he handed over the envelope to be given to PW-3; since she was not supposed to take it, she inquired his name and the reason for handing over the envelope. The Appellant refused to divulge the details. She avoided him, but he later insisted that the envelope be transmitted to the captain. She said that therefore, she took it and asked the senior Hostess, PW-5. She confirmed, (in cross examination on some parts, by the prosecution) that the envelope was Ex. PW-3/A. She also confirmed that later the Appellant asked that the captain should be again requested to open the envelope. PW-5 corroborated the deposition of PW-6, and further stated that the envelope was handed over to PW-3 by her. PW-3 confirmed the deposition of the two air hostesses, and also stated that he inquired if the passenger was known to him, and that to satisfy himself, he went to the passenger cabin to have a look at the occupant of Seat No. 9A. He identified the Appellant, as did PW-5 and PW-6. Since the Appellant was not known to him, he did not open the envelope. Later, he opened the envelope Ex. PW-3/A and found two sheets of paper – Ex. PW-3/B. He read it, and discerned the hijack. PW-4 also confirmed the latter part of PW-3's deposition, stating further that he (PW-3) required him (PW-4) and PW-6A to start talking to the Appellant. These depositions have established the facts pertaining to the Appellant's seating position, his sending the envelope through the air hostesses, the envelope and its contents (Ex. PW-3/A and Ex. PW-3/B); the captain, PW-3 receiving it, his initial reluctance to open it, and later opening and reading the contents.

32. The Appellant's counsel had sought to highlight that PW-3 is an unreliable witness, because he was not scheduled to command the flight; instead that was the task of PW-6A. Reliance was placed on the depositions of PW-21 and other witnesses also to say that the entire episode was the result of a panic reaction, by PW-3, who did not assess or evaluate the situation properly, and assumed that the aircraft had been hijacked. It was also argued that PW-3 received a promotion, and commendation for his handling of the entire episode, which was what he had been angling for, during the flight, and that he contrived to convey such a state of affairs.

33. Now it is no doubt correct that PW-3 was not the scheduled pilot of the flight. Yet, it is a matter of record that he was an experienced pilot, and also an instructor. The evidence of PW-3, PW-4 and PW-6A establish that PW- 6A was the scheduled pilot of the flight as per

duty roster; PW-3 was to fly as “staff on duty travel”. However, it was decided that PW-3, a flight instructor, would take command in the first leg of the flight, which he did. PW-6A confirmed that Captain Rao (PW-3) underwent the necessary procedural formalities, including medical check up and clearances. PW-4 had stated that such changes were permissible, and sometimes resorted to. Therefore, PW-3’s taking charge of the command of the aircraft, and his experience (since he was a designated flight instructor) are undeniable.

34. The next issue is what transpired after Captain Rao opened and read the contents of PW-3/A. PW-4 deposed that he and PW-6A were asked by the Captain to bring the Appellant, which they did, first to a secluded part of the aircraft, away from the gaze of the passengers, known as the galley, where the Appellant changed into a kurta with cartoon depictions on it. PW-6A however did not corroborate this part, and stated that he and PW-4 took the Appellant directly to the cockpit. PW-4 stated that the Appellant remained in the cockpit for about 6-7 hours, with the captain; PW-6 A corroborated that he was in the cockpit. PW-6A deposed that the Appellant demanded that the flight should be diverted to Islamabad; PW-3 tried to persuade him not to insist upon it, but later demanded that the aircraft could land in Lahore. This is spoken to by both PW-3 and PW-4. Similarly, PW-3 establishing contact with Delhi Airport, to inform about flight diversion to Lahore, is corroborated by PW-6A; these two witnesses and PW-21 also deposed and corroborated the prosecution version that the Appellant was informed about insufficient fuel, in the aircraft, upon which he directed that the plane should land in Lahore. The subsequent effort of the pilot and his crew to land in Lahore, the Lahore authorities’ refusal to grant landing permission, the subsequent diversion of the aircraft to Rajasansi airport, Amritsar, have been spoken to by PW-3, PW-4, PW-6A and PW-21. No serious questioning of these witnesses was resorted to in their cross examination by the Appellant. In the circumstances, there can be no reason to hold that the trial court’s findings are without any factual foundation, on these aspects.

35. It is no doubt a fact that some of the airport records, such as the black box transcripts, and Airport Authority logs, containing the conversations between the Captain, and other cockpit crew members, with the ground staff, about the facts unfolding in the flight, and when it landed at Amritsar, have not been produced. Yet, the court is mindful of the fact that the black box recordings are limited to 30 minutes conversations, which take place in flight – spoken to by several witnesses, such as, for instance, PW-21. This witness was the co-pilot. He supported the prosecution version about the presence of the Appellant in the cockpit, and

various conversations with PW-3, which led to diversion of the aircraft, the attempted and unsuccessful landing at Lahore, its eventual landing at Rajasansi Airport in Amritsar, and the subsequent opening of negotiations with the officials and police. PW-4 and PW-3 also support the prosecution story that the Appellant was in the cockpit, till he agreed to surrender terms and gave himself up to the police. PW-24 also corroborated the prosecution version, and stated that after landing at Amritsar, the plane remained at a place, when negotiations went on for about 2- 3 hours. He was able to identify the Appellant as the hijacker, and even described his dress as a long white “gown” with cartoons or pictures. He further deposed about the commander PW-3 announcing about 2 hours after the flight taking off from New Delhi, that it had been hijacked.

36. The Appellant’s counsel had placed heavy reliance on the testimony of PW-21 to say that the commander did not wait to confirm any fact, and soon after opening and reading the envelope, hastily assumed that the aircraft had been hijacked. An isolated reading of PW-21’s deposition can possibly support such an argument. Yet, the court cannot ignore the depositions of other witnesses. The sequence of events after the captain received and opened the letter PW-3/A and read the contents of PW-3/B suggest that the other witnesses, PW-4 and PW-6A were asked to bring the passenger, which they did. The captain talked to the Appellant, who demanded that the aircraft would land in Islamabad. The captain tried to reason with him, and also stated that the fuel in the aircraft was insufficient. Upon this, the Appellant reluctantly agreed to modify his demand, but insisting that the aircraft could land in Lahore. This information and demand was then relayed to Nagpur air traffic control, and Delhi control tower, and an attempt was made to land in Lahore, which was unsuccessful, which in turn resulted in its landing at Amritsar. These broad facts are undeniable, notwithstanding the co-pilot’s somewhat varying version. Now, it must be kept in mind that the co-pilot never left the cockpit; on the other hand, the pilot had left once, to see who the hijacker was. Furthermore, the receipt of envelope, reading of the letter by PW-3 and his request to the Flight Engineer and Captain Moulay, resulting in the Appellant being led to the cockpit, have all been consistently spoken about by PW-3, PW-4 and PW-6A. These facts also receive corroboration from the testimonies of PW-5 and PW-6. All of them were either outside the cockpit, and had the opportunity to observe the unfolding events, or were part of it. PW-21, however, was not in the cabin, and remained in the cockpit throughout. His testimony was recorded more than 3 years after the incident. In these circumstances, the version of the other witnesses cannot be characterized as unreliable, since the limited nature

of PW-21's exposure to the incident, in the confines of the cockpit, and the passage of time, may have resulted in a differing perception, aided by a fading memory.

37. The letter PW-3/B or note, handed over to the Captain, talks of the writer being aggrieved by the aftermath of the Babri masjid demolition; the author claimed to be a human bomb, and a trained LTTE terrorist, armed with PETN explosives supported by the microchip technology. The letter further went on to say that since the author had no quarrel with the Captain or the passengers, it would be in the fitness that he (the captain) obeys the command (of the author) and divert the aircraft from its scheduled flight path, and land instead at Islamabad, Pakistan. The letter warned that if the demands – to divert the aircraft were not heeded, the aircraft would meet the same fate which was the result of tragic events in Bombay and Calcutta. The captain was asked to intimate about the hijacking of the aircraft to the Indian Government, as also the Pakistani envoy in India. The letter went on to express the hope that it would be in the interests of all if the news of hijacking were not publicized to avoid alarm and panic to passengers, particularly to women and children on board. The letter stated that as a truly secular citizen, as long as the author's demands were complied with, no obstruction would be forthcoming, and he would act like a true citizen. At the end of the letter, the author voiced the following demands:

1. 40 days' political asylum in Pakistan;
2. A press conference in Islamabad, prior to surrender (of the hijacker);
3. Entrusting investigation of the hijacking, of IC 439, to Interpol.

38. Considerable emphasis was given to the fact that the Appellant was unarmed, and that he did not by any overt act, or words, cause alarm, or hold out threats. Reliance was placed on the evidence of PW-21 and PW-6 as well as other witnesses in this regard. Learned counsel had submitted that the evidence clearly showed that a 31 page note had been handed over to PW-3; had he read it fully, there would have been no reason for him to panic and conclude that the aircraft had been hijacked. In this context, it was also argued that the actions of the Appellant cannot be called "intimidation" which resulted in his exercising control over the aircraft.

39. The court is conscious of the circumstance that the Appellant was unarmed. Yet, the fact remains that all eye witnesses – including one of the defence witnesses- have consistently deposed about the Appellant handing over the two page letter, making demands, threatening to blow up the plane, further holding out a menacing threat that the hijacker was a trained LTTE cadre with explosive on his person, and that he was a human bomb. The letter also cited two instances of assassination of leaders due to explosion of such human bomb. Several eyewitnesses have spoken about the Appellant's presence in the cockpit, and his demand that the flight be diverted to Islamabad, and later to Lahore.

40. Intimidation has not been defined in Section 4 of the act. However, it has to be read in the

context. Though the Act does not refer to IPC for its provisions, or interpretation, the Appellant's senior counsel had submitted that the term has to be understood, by taking guidance of Section 503 of the IPC. While on this topic, it would be useful to notice the observations of the Supreme Court, in *Romesh Chandra Arora v The State* AIR 1960 SC 154:

"...We are unable to accept this contention as correct. We agree with the High Court that the charge framed against the Appellant was not as clear as it might have been. It stated, however, that the offence of criminal intimidation was committed by threatening X and his daughter with injury to their reputation by having the indecent photographs published; the intent mentioned was to cause alarm to X and his daughter. The real intention, as disclosed by the evidence accepted by the trial Magistrate and the High Court, was to force X to pay "hush money." Section 506 is the penal section which states the punishment for the offence of criminal intimidation; the offence itself is defined in s. 503. Leaving out what is not necessary for our purpose, the section last mentioned is in two parts; the first part refers to the act of threatening another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories : one is intent to cause alarm to the person threatened and the second is to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. On the findings arrived at against the Appellant, the first part of the section is clearly fulfilled; and as to the intent, it comes more properly under the second category, that is, to cause X to do any act (in other words, to pay hush money) which he was not legally bound to do, as a means of avoiding the execution of the threat..... We, therefore, hold that the conviction of the appellant under s. 506 is correct. We further agree with the High Court that no prejudice was caused to the appellant by reason of the defect, if any, in the charge as to the intent of the appellant. He was fully aware of the case made by the prosecution and had full opportunity of rebutting the evidence given against him...."

On an application of the *ratio* in the above decision, it is evident that the intention of the Appellant in handing over the envelope, conscious of what was written there, i.e a clear and unobvious message to the pilot to divert the aircraft, or risk the lives and security of the passengers, and crew. The Appellant underlined this demand at least three times, and specifically pointed to a class of explosives, adding that he was a human bomb, and had LTTE like training. The underlying menace is loud and clear. The normal reaction of a pilot, or anyone in charge of the aircraft under such circumstances, would be to take all measures to ensure the safety of the flight, the passengers and crew members, at the same time keeping calm, so as not to cause panic. Captain Rao appears to have done that by all accounts, firstly asking PW-4 and PW-6 to go and fetch the Appellant, and then trying to engage him in a dialogue with a view to persuade him to land somewhere in India. If one sees the contents of PW-3/B carefully, and the description of the Appellant, the measures taken by Captain Rao

cannot be characterized as un-reasonable, or panic driven. Under such circumstances, only a foolhardy commander of an aircraft would take the risk of assessing whether the individual or passenger holding out the threat meant it seriously, or the kind of arms he was in possession of. Doing so would expose the passengers, crew and aircraft to an unacceptably high degree of risk. Another added aspect would be that the commander (or person in charge) would have little response time to gauge the psyche of the individual holding out the threat. These conclusions are fortified by the fact that during negotiations in the cockpit, the Appellant never sought to disabuse the captain's impression that he had hijacked the aircraft. If indeed, he did not intend to intimidate, he could always have said that the contents of his letter were not meant to be taken that seriously. In these circumstances, the court is of opinion that the letter, and the Appellant's behaviour (even though it did not hold out a threat of physical violence, and apparently indicated outward calm) could not be taken lightly; he did nothing to indicate otherwise. Therefore, the trial court's conclusion that he intimidated the commander and the crew, are correct and need no interference.

41. The next question is whether the Appellant can be said to have "seized" or exercised control of the aircraft. Here, Parliamentary intent was to outlaw use of force, or threat of its use, with the intent of disturbing the normal functioning of the flight, or its scheduled flight path. The history of international conventions, culminating in the 1970 convention, which is effectuated by the 1982 Act, was to strike at overt and covert acts of air piracy. Therefore, it would not be appropriate for the court to narrowly construe Section 4, as implying the offender taking direct control and flying the aircraft, or one of his associates doing so. It would be sufficient, if his intimidation, compels the diversion of the schedule of the aircraft, its destination or scheduled time, or during the flight, the pilot or commander has to act on his bidding. So viewed, there can be no doubt that the Appellant's actions resulted in his taking control of the aircraft, the flight schedule was disrupted at his direction and bidding, resulting in its not going to Hyderabad, but instead landing in Amritsar around 9 AM, and the passengers being held captive in the aircraft as long as he negotiated with the authorities, ultimately resulting in his surrender.

42. It would now be necessary to deal with the other evidence relied upon by the prosecution. As regards the handwriting on PW-3/B, it is no doubt true that the document appears to be stenciled. On this, however, the deposition of PW-40, Sh. V.K. Khanna, Principal Scientific Officer, CFSL, with regard to the concerned documents, Ex. PW-3/B, and

(which was compared with the marks S-1, S-1/1, A-1 and A-1/1, which were specimen signatures of the Appellant) are relevant. This witness clearly deposed that writing on PW-3/B, (which consisted of two pages), matched the specimen handwriting (in the other documents). PW-10's testimony established that the Appellant had purchased stationary items from him. PW-7 proved the ticket issued to the Appellant, marked as Ex. PW-7/A. PW-9, deposed that the Appellant had visited him on 22/23.03.1993 and enquired about flights leaving for Islamabad, and that he provided the requisite information. PW-8, the owner of a photostat shop identified the Appellant, further deposing that he used to visit his shop for getting photostat work. PW-8 recalled that on 24.03.1993, he had got 10 sets of Photostat copies of 31 pages from his shop and paid Rs.470/- to him; the total bill was Rs.670/-. There was no important contradiction or omission, of these witnesses, elicited during the course of their cross examination. In these circumstances, this court does not find any infirmity with the trial court's finding that the handwriting in PW-3/B matched with that of the Appellant. As regards the drama which unfolded during the hijacking incident, and the negotiations, PW-3, PW-21 and PW-6A are eyewitnesses. In addition, PW-31, the Airport Manager, IGI Airport, mentioned the precise details when the emergency was declared in the flight, and the various time periods when it was diverted to Lahore, when Pakistani authorities refused permission to land, when it actually landed at Amritsar, and so on. Initially, another FIR was registered in Amritsar, the local Punjab police proved that document; he also deposed having seized PW-3/B from Captain Rao, through Memo PW-22/G. The document was later taken into custody by the IO, PW-39.

43. In view of the above observations, this court finds no infirmity with the approach or the findings of the Trial Court; the conviction of the Appellant has to be sustained. However, it would be necessary to deal with an argument on his behalf about his conduct, and the reasons for what he claims, impelled him to take this step. It was emphasized that the Appellant did not behave violently, nor was any arm or explosive, or weapon recovered from him; likewise the letters given to the commander uniformly also revealed his concern for the passengers, and a great deal of anxiety for their well being. It was pointed out that he also behaved with calmness and exemplary politeness and courtesy, throughout the episode. Lastly, it was submitted that a careful reading of the 31 page letter would reveal that the Appellant was disturbed by falling social values, corruption in high places, unreliability of the political class and frustration about violence in society, and other public issues.

44. The record no doubt reveals that the Appellant was indeed unarmed, and behaved with politeness and courtesy. Perhaps he genuinely did not mean to harm anyone. Further, the issues and concerns he voiced in his long letter, are a matter of public concern, which should engage robust and meaningful debate in our society, if we are to overcome the multifarious challenges faced by the country. The issues are such as would worry every citizen, and lead him to think for solutions. Yet, the court is also equally mindful of the fact that even if the end- i.e highlighting the pressing need to address such public issues – is noble and unexceptionable, it is vital that the means to achieve it are also equally blameless. Writing a note like Ex. PW-3/B and diverting the aircraft through threat of bombing it, cannot be condoned. A conviction is justified in the facts of the case. Unfortunately for the Appellant, there is no sentencing choice once a conviction is returned, because Section 4 mandates only one punishment, i.e. life imprisonment.

45. This court felt it necessary to discuss the conduct and behaviour of the Appellant, which would otherwise have been considered as mitigating factors, in the peculiar facts of this case. The evidence on record also indicates that the Appellant had worked as a teacher, and used to prepare posters, during election campaigns. He had, at some stage, been associated with political leaders. The contents of the 31 page note reflect deep anguish and a sense of helplessness and frustration, which many concerned and responsible citizens might well empathize with. The prosecution also does not prove any previous criminal record. The evidence of PW-16, i.e the Appellant's sister, indicates that he sold his wife's jewellery to purchase the aircraft ticket (and perhaps fund the entire misadventure). The court also notes that the Appellant had been on bail during the trial; he served about 4 years of imprisonment. The court had suspended his sentence after considering the nominal roll furnished by the jail authorities, dated 18th July, 2003, which stated that the Appellant had

“done hard work dedicatedly And his conduct has been excellent.”

It is evident that the Appellant was a misguided individual, perhaps wishing to make a statement or political point. Such conduct is impermissible, and not in public interest, as it amounts to an individual jeopardizing the life and safety of several passengers, and also disrupting vital services. In view of all the above conspectus of circumstances, this court is of the opinion that having regard to the deterrent, and reformatory objectives of sentencing, in this case it would be appropriate for the government to consider the issue of suitably commuting or reviewing the Appellant's sentence, in exercise of its powers under the

Constitution, and the law.

46. The appeal, consequently, fails, and is, subject to the above observations, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**G.P. MITTAL
(JUDGE)**

MARCH 29, 2011